

New York City Department of Housing Preservation and Development

Heat and Hot Water Complaints

Report 2019-N-3 | September 2020

OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objective

To determine whether the New York City (NYC) Department of Housing Preservation and Development (HPD) addresses heat and hot water complaints timely, issues notices of violation, and seeks the imposition and collection of penalties as appropriate. Our audit covered heat and hot water complaints received during NYC Fiscal Years (FY) 2018 and 2019 (July 1, 2017 through June 30, 2019).

About the Program

Residential building owners must ensure that apartments in their buildings are safe and well-maintained, which includes the provision of adequate heat and hot water. Insufficient heat can pose safety risks, especially for vulnerable populations, and the use of kitchen ovens and space heaters to address insufficient heat can cause fires and pollute indoor air.

HPD is the nation's largest municipal housing preservation and development agency. Its Code Enforcement Division is responsible for ensuring that residential building owners comply with NYC's Housing Maintenance Code (Code) and the New York State Multiple Dwelling Law. In accordance with the Code, residential building owners must supply their tenants with adequate heat from October 1 to May 31, the "heat season," which translates to a minimum of 68°F between the hours of 6 a.m. and 10 p.m. when the outside temperature is below 55°F and at least 62°F between the hours of 10 p.m. and 6 a.m. regardless of the outside temperature. HPD requires all NYC tenant-occupied dwellings to provide hot water 24 hours a day, at a minimum temperature of 120°F.

Tenants who believe they are not receiving the required services can file a complaint through NYC's 311 municipal service system, which is then forwarded to HPD for its response. HPD considers a heat and hot water complaint to have been addressed if a tenant who has been contacted by HPD states that service has been restored or if HPD conducted or attempted to conduct an inspection. When an inspection confirms that the owner is not providing the required heat and/or hot water, HPD issues a notice of violation to the building owner, and can pursue progressive civil penalties against the owner through NYC Housing Court.

From July 1, 2017 through June 30, 2019, HPD's records indicate that it received approximately 447,000 heat and hot water complaints citywide. However, many complaints are often received for the same lack of heat and/or hot water problem at one building address. When this occurs, HPD's Information System (HPDInfo) links and treats them all as a single complaint. As a result of this practice, HPD considered only about 236,000 of the 447,000 complaints to be unique.

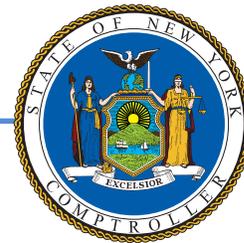
Key Findings

- HPD has incorrectly identified hundreds – possibly thousands – of heat and hot water complaints as duplicates and failed to respond to those complaints. For example, a building in Brooklyn did not have any heat and hot water inspections from July 10, 2017 through April 25, 2019 despite tenants submitting 175 complaints during this period. All 175 complaints were inappropriately linked as part of the same complaint.
- HPD needs to do more to make the inspection process for heat and/or hot water complaints effective. Specifically, we found:

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- A significant number of inspections are not being conducted timely, and HPD has not established formal time frames for inspecting complaints. HPD took three days or longer to conduct an inspection for 49 percent of the complaints in FY 2018 and 31 percent of complaints for FY 2019, resulting in some tenants having to live with inadequate services for days before HPD even confirmed the lack of service.
 - Only about 7 percent of the inspections resulted in the issuance of violation notices, potentially due to inspections not being conducted promptly. Inspections occurring two days or longer after a complaint is filed allow landlords time to correct the condition – in some cases only temporarily – in anticipation of an inspection, as indicated by some tenants.
 - HPD does not provide tenants with a window of time during which they must be available for inspections. As a result, tenants might not be home or might be unprepared to provide access at the time of HPD’s inspections, limiting inspectors’ ability to identify violations.

Key Recommendations

- Take corrective action to ensure HPDInfo processes all complaints appropriately, including accurately identifying all unique complaints.
- Establish a formal time frame for inspecting heat and hot water complaints.
- Periodically review open heat and hot water complaints to ensure they are addressed timely.
- As appropriate, provide tenants with advance notice of inspections.



Office of the New York State Comptroller Division of State Government Accountability

September 24, 2020

Ms. Louise Carroll
Commissioner
New York City Department of Housing Preservation and Development
100 Gold Street
New York, NY 10038

Dear Commissioner Carroll:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report entitled *Heat and Hot Water Complaints*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal Law. This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
Code	New York City Housing Maintenance Code	<i>Code</i>
Enforcement Unit	Judgment Enforcement Unit	<i>Division</i>
FY	Fiscal Year	<i>Key Term</i>
HHW	Heat and hot water	<i>Key Term</i>
HPD	New York City Department of Housing Preservation and Development	<i>Auditee</i>
HPDInfo	HPD's Information System	<i>System</i>
Link Problem ID	Number used by HPDInfo to identify and link HHW complaints	<i>Key Term</i>
MMR	Mayor's Management Report	<i>Key Term</i>
OSC	Office of the New York State Comptroller	<i>Agency</i>

Background

Residential building owners must ensure that apartments in their buildings are safe and well-maintained, which includes the provision of adequate heat and hot water (HHW). Insufficient heat can pose safety risks, especially for vulnerable populations. For example, the National Institute on Aging notes that older adults can rapidly lose body heat and suffer hypothermia when indoor temperatures are at or below 65°F. People who are sick may also have problems keeping warm, which could exacerbate their health condition. The use of kitchen ovens and space heaters to address insufficient heat can cause fires and pollute indoor air by releasing carbon monoxide and other contaminants.

The New York City (NYC) Department of Housing Preservation and Development (HPD) is the nation's largest municipal housing preservation and development agency. As part of its mission to promote quality, affordable housing, HPD works to protect tenants' rights relating to the safety and condition of their housing, and is responsible for ensuring that building owners comply with NYC's Housing Maintenance Code (Code) and the New York State Multiple Dwelling Law.

The Multiple Dwelling Law requires owners of multiple dwellings to provide hot water throughout the year and heat during the appropriate time of the year. Regarding the provision of heat, the Multiple Dwelling Law requires these owners to supply heat during the months between October 1 and May 31, sufficient to maintain the minimum temperatures mandated by local law, ordinance, rule, or regulation.

The Code specifies the minimum temperatures that owners must supply in every multiple dwelling and every tenant-occupied one- or two-family dwelling: during the "heat season" of October 1 to May 31, a minimum of 68°F between the hours of 6 a.m. and 10 p.m. when the outside temperature is below 55°F; and a minimum temperature of 62°F between the hours of 10 p.m. and 6 a.m. regardless of the outside temperature. HPD requires all NYC tenant-occupied dwellings to provide hot water 24 hours a day, at a minimum temperature of 120°F. Additionally, HHW violations are classified as immediately hazardous issues that must be corrected within 24 hours.

Tenants who believe they are not receiving adequate HHW can file a complaint through NYC's 311 system. The complaints are automatically forwarded to HPD's Integrated Information System (HPDInfo), which launches an inspection process. HPD uses an automated phone call to inform building owners that a complaint has been received and directs the owners to restore service. HPD then follows up with tenants to ascertain whether the services have been restored. If the tenant reports that services have not been restored, the complaint is routed to an HPD borough field office for inspection. HPD considers a HHW complaint to have been addressed if a tenant who has been contacted by HPD states that service has been restored or if HPD conducted or attempted to conduct an inspection.

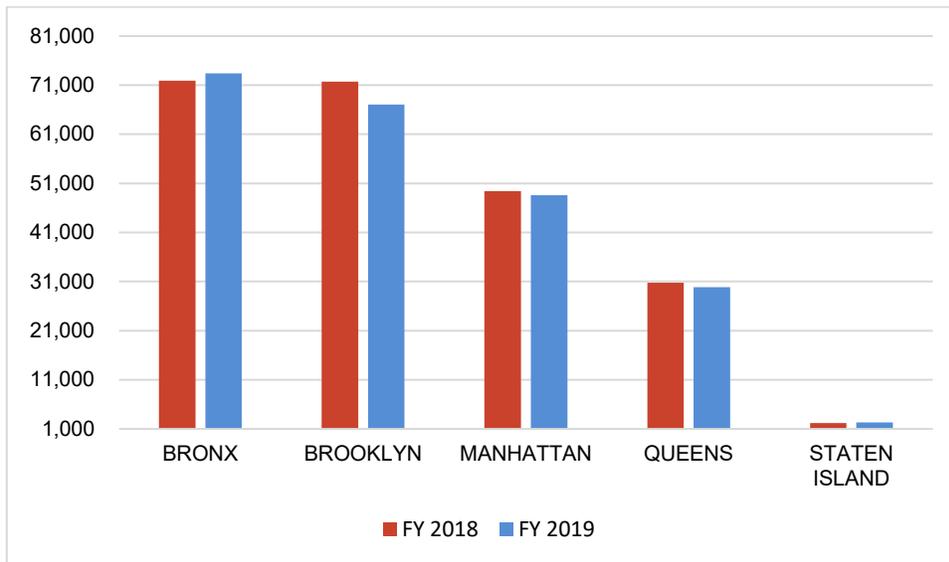
Each complaint record in HPDInfo is identified using a series of numbers, including a Link Problem ID. Complaints that HPDInfo determines to be duplicates of a complaint already recorded in the system (e.g., when multiple residents from the same building register the same HHW complaint) are assigned the same Link Problem ID and

treated as a single complaint. The duplicate complaints are not inspected separately and are closed when the initial complaint is closed.

According to HPD, duplicate complaints are not reported in the Mayor’s Management Report (MMR), an annual assessment of the operations and performance of NYC government entities. HPD only reports complaints that it deems unique, which includes only the first complaint linked to a series of duplicates.

According to HPD, for the period July 1, 2017 through June 30, 2019, it received about 447,273 HHW complaints from throughout the five NYC boroughs. Roughly half were determined to be duplicate complaints made by one or more tenants for the same HHW problem in a building. The following graph shows the breakdown of these complaints by borough:

HHW Complaints by Borough



Sources: HPD; OSC analysis.

A breakdown of the 447,273 complaints and their resolution is shown in Table 1, which follows.

Table 1 – Complaint Resolution

	FY 18	FY 19	Totals
Total Complaints Received	226,072	221,201	447,273
Unique Complaints Reported in MMR	114,637	121,750	236,387
Less: Those Resolved Prior to Inspection	(9,096)	(7,918)	(17,014)
Complaints Routed for Inspection	105,541	113,832	219,373
Total Inspections*	127,151	136,467	263,618
Routed Inspections Resulting in Violations	9,623	9,923	19,546
Number of Violations Issued**	11,143	11,478	22,621

Sources: HPD; OSC analysis.

*Inspectors may conduct additional inspections on behalf of other tenants residing at the same address as the tenant who complained.

**An inspection can result in more than one violation.

If an inspection finds HHW are not being provided as required, HPD issues a notice of violation, which is posted in the building’s lobby, and a notice is sent to the owner of the building. Complaints with violations that are not corrected remain open in HPD’s records and may advance to Housing Court, where HPD seeks resolution and, when appropriate, civil penalties. Owners are subject to progressive civil penalties of \$250 to \$1,000 per HHW violation each day the violation continues.

For Fiscal Years (FYs) 2018 and 2019, Housing Court imposed \$18 million in civil penalties related to 5,763 cases, according to HPD’s records. As of September 2019, \$4 million had been collected for nearly 90 percent of the cases. Of the cases that remained, 546 ended in default judgments, with \$13 million in penalties still outstanding, and 46 cases with \$1 million in imposed penalties were still in litigation.

Audit Findings and Recommendations

Given the potential risks to health and safety posed by inadequate HHW, it is important to rapidly deploy inspectors so that hazardous conditions are identified quickly and then corrected by the building owners within 24 hours of HPD's notice, as required by law. However, because of a "system glitch," hundreds – possibly thousands – of complaints were inappropriately considered duplicates and, as a result, not inspected. This error has been occurring as far back as 2014.

We found HPD's inspection process was inefficient, a significant number of complaints were not inspected timely, and HPD had not established a formal time frame for inspections. HPD took three days or longer to conduct an inspection for 49 percent of the complaints in FY 2018 and 31 percent of complaints for FY 2019. Delays in inspections result in tenants having to endure a lack of HHW for days before HPD even determines the lack of service and also gives landlords the opportunity to correct the condition, in some cases temporarily, to avoid violations and penalties. Inspection delays also prolong the potential hazards associated with cold apartments. During site visits to apartments, we observed tenants resorting to the use of electric heaters and ovens to warm their apartments, introducing the risk of fire and other hazards, such as indoor air contaminants.

In addition, our audit found that HPD does not provide tenants with a window of time when inspections will be done. As a result, tenants might not be home or might be unprepared to provide access at the time of HPD's inspection. Taking steps to improve access is vital, as our analysis indicates that when inspectors have access to apartments and can actually conduct HHW inspections, tenant complaints are more likely to be confirmed and violations are more likely to be issued.

We note that HPD is implementing the use of electronic tablets, which should increase HPD's ability to route complaints in real time and thus enhance its ability to inspect, identify violations, and hold owners more accountable.

Penalties are another tool for accountability. However, HPD officials told us that they settle cases for less than the possible minimum amounts prescribed by law depending on the circumstances.

Complaints Misidentified as Duplicates, Not Addressed

During our audit period, HPD's complaint management system did not always accurately identify complaints as original or duplicate, causing hundreds of misidentified complaints to be overlooked and not inspected – a major issue that could have been identified and corrected had HPD officials routinely monitored HPDInfo data to ensure complaints were being properly processed. In failing to respond to these complaints, HPD not only could have exposed tenants to prolonged substandard indoor conditions, but also missed the opportunity to hold owners accountable through potential civil penalty proceedings.

Using the HHW complaints received for FYs 2018 and 2019 as provided by HPD, we

analyzed those that were considered duplicate complaints by the HPDInfo system and assigned the same Link Problem ID. We found 5,019 complaints were identified as duplicates and linked to the same Link Problem ID even though their date of receipt, relative to the dates of the initial and the last linked complaint, suggested they were actually new and unrelated complaints. For these cases, the time lapse ranged from ten days to years. Only 440 of the 5,019 complaints were inspected and in all but 1 of the 440, the original complaint was inspected – the additional complaints inappropriately considered duplicates were not routed for inspection.

In response, HPD officials attributed the problem to an HPDInfo “glitch,” where the system linked additional, new complaints concerning the same building to the same Link Problem ID, which caused those complaints to be considered duplicates. As a result, those complaints were not routed for inspection, while, in other instances of this glitch, future complaints were linked but *were* routed for inspection. HPD officials also indicated that, for some of the complaints we identified, there was no HPDInfo error; instead, HPD had not timely addressed and closed the initial complaint in HPDInfo before other complaints for the same building were received.

Our review of a judgmental sample of Link Problem IDs with glitch issues for 25 buildings and 869 HHW complaints in FY 2018 and 533 in FY 2019 indicated that, for 24 of the 25 buildings, the complaints were incorrectly linked. As a result, more than 800 complaints affecting 24 buildings were not investigated and addressed by HPD. Table 2 illustrates the most egregious cases, by building.

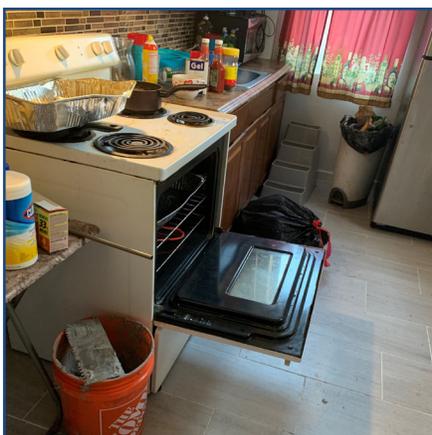
Table 2 – Data for Ten Buildings With Many Incorrectly Linked Complaints

Building Address	Units in Building	Linked Complaints	Days Between Initial and Last Linked Complaint in Scope
Bronx			
540 Southern Blvd.	65	86	512
875 Morrison Ave.	226	56	516
Brooklyn			
374 East 49th St.	38	175	654
2425 Nostrand Ave.	169	47	544
209 Ave. P	71	37	403
892 Flushing Ave.	27	31	511
Manhattan			
165 Sherman Ave.	100	127	557
3855 10th Ave.	23	32	460
Queens			
79-11 41st Ave.	353	45	615
98-30 57th Ave.	225	31	553

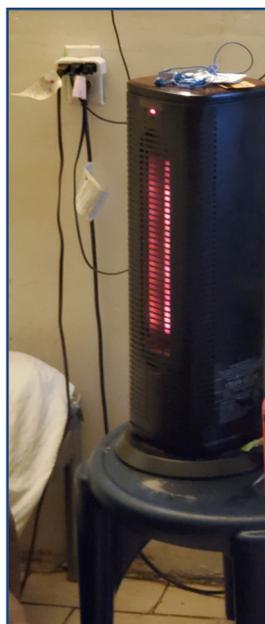
During our review of complaint data in HPDInfo, it became apparent that the system glitch existed long before our audit scope period, in one case dating back to 2014. HPD's lack of complaint monitoring resulted in hundreds – and possibly thousands – of tenants' complaints not being properly investigated and addressed, including the period December through February – the winter months.

For example, a building in Brooklyn did not have any HHW inspections from July 10, 2017 through April 25, 2019 despite tenants submitting 175 complaints during this period. All 175 complaints were inappropriately linked to the same Link Problem ID. None of the 175 complaints were routed for inspection because HPDInfo considered them duplicates. The owner of this building has not been held accountable, as no heat and/or hot water notices of violation can be issued without an inspection. The complaints of the tenants of this 38-unit building have gone unaddressed by HPD even though many of these complaints were received in the winter months, when HHW are essential.

HPD officials indicated that, although these HHW complaints were not inspected, there are other types of inspections of the buildings that give inspectors an opportunity to assess whether HHW are being provided. While this might be true, tenants' HHW complaints need to be addressed properly and timely so that, in accordance with its mission, HPD can hold owners accountable for the provision of these critical mandated services, issue notices of violation where appropriate, and seek the imposition of penalties. When tenants do not have adequate HHW, they may resort to using electrical heaters or ovens to warm their apartments, as we observed during visits to tenants in Brooklyn and Staten Island (see following images), introducing the risk of fires and other hazards, including carbon monoxide poisoning. During our visit to the tenant in Brooklyn, the temperature in the living room of this apartment was 52°F according to the HPD thermometer provided to our audit team.



Oven being used to warm apartment



Heater being used to keep warm

Inspection Process Deficiencies

HPD's current inspection process is inadequate to ensure all HHW complaints are investigated efficiently and effectively. As a result, during our audit scope, many inspections were initiated days after a complaint was received, many inspections could not be completed due to lack of access to an apartment, and few violations were issued.

Complaints Not Inspected Timely

Our analysis of the 219,373 unique complaints (see Table 1) that were routed for inspection shows that the majority of complaints were inspected in two days or less (see Table 3). The agency took an average of three days to inspect complaints during FY 2018 and two days during FY 2019. However, for a significant number of complaints, the time it took for HPD to inspect was much longer. During FY 2018, 49 percent of complaints took three days or longer to inspect, while for FY 2019, 31 percent of complaints took three days or longer to inspect. In addition, the maximum number of days from complaint receipt to inspection decreased from about 70 to 30 days.

Table 3 – Timeliness of HHW Complaint Inspections

Timing of Inspection	FY18	FY19
Same Day as Complaint	3%	5%
One Day After	27%	36%
Two Days After	21%	28%
Three or More Days After	49%	31%
Maximum Days to Inspect	70	30
Average Days to Inspect	3.1	2.1

Sources: HPD; OSC analysis.

HPD is making some effort to improve its response time. In January 2020, HPD launched a pilot software program in Manhattan and equipped inspectors with electronic tablets that receive complaint information, including addresses, in real time. This technology should help to ensure inspections are completed more timely and improve HPD's ability to accurately report on current HHW conditions and issue violations. HPD officials indicated that they are planning to expand the use of this technology to other boroughs.

No Formal Inspection Time Frame

Despite its 2015 commitment in response to a NYC Comptroller audit, HPD has yet to establish, in its internal written policies and procedures, a formal time frame to complete an inspection once a complaint has been received. The law does not impose an inspection time frame on HPD; instead, it directs building owners to correct the problem within 24 hours of HPD's notification. The absence of an explicit

required time frame by HPD might have contributed to inspections not being done timely. Furthermore, and as we discuss in more detail later, HPD does not properly monitor how long complaints remain open and uninspected.

In response, HPD officials indicated that they attempt to resolve every HHW complaint as quickly as possible, but response times depend on the volume of complaints and the occurrence of extended cold weather periods. Regardless, by law, the lack of HHW is considered a hazardous condition that owners must correct immediately, and HPD needs to establish formal time frames so violators can be held accountable.

Our review of a judgmental sample of 50 HHW complaints filed during the two-year audit scope also found delays in the inspection process. Of the 50 selected complaints, 5 were addressed by HPD's call to the tenants, where the tenants stated that service had been restored; 45 complaints were routed for inspection. On average, the inspections were conducted 2.76 days from the date the complaint was received. However, 11 complaints were inspected in 4 days or more, including two cases where the inspection found that HHW services were not being provided and notices of violation were issued.

We further reviewed those complaints taking four or more days to inspect to determine causes for the delay. We identified irregularities in HPD's scheduling of inspections. For example, one Bronx heat complaint was received on January 3, 2019 but was not routed for inspection until January 7, 2019, while 42 other Bronx HHW complaints received between January 4 and 6, 2019 were all routed for inspection before January 7, 2019.

In another instance, a Manhattan complaint was received on December 17, 2017 but not inspected until December 28, 2017. Meanwhile, 783 other complaints for Manhattan that were received between December 18 and 27, 2017 had been routed for inspection before this complaint was inspected on December 28, 2017.

Our analysis of the routed inspections for the complaints received during the two fiscal years in our scope period indicates that these were not isolated instances, as we found numerous cases where newer complaints were routed for inspection before older complaints. Had HPD officials been monitoring complaints to ensure they were not going unaddressed, they would have caught these older open complaints and could have ensured they were properly routed for inspection in the order received.

In response, HPD officials indicated that when inspectors are unable to conduct all the inspections on their daily routing sheets, the remaining complaints are supposed to be rescheduled for inspection. Officials added that, in some cases, inspectors are not referring these complaints for rescheduling at the end of their workday or are not doing it timely.

Few Violations Found

HPD's failure to timely inspect dwellings likely contributed to the low percentage of inspections confirming tenants' complaints and, therefore, the low percentages of violations found by HPD inspectors. Of the more than 127,000 inspections in FY 2018 and 136,000 in FY 2019, only about 7 percent resulted in violations.

During our observations of inspections conducted by HPD, tenants indicated to us that owners raise the heat after receiving notice of a complaint, knowing that an inspection will be conducted by HPD in the near future. For a few days, tenants noted, essential services are restored and then, following the HPD inspection, they are once again without service.

Our analysis of the buildings with the highest number of complaints (including duplicates) is shown in Table 4. We found that few notices of violation were issued, despite a significant number of attempted inspections by HPD inspectors. We note that these results include additional inspections conducted as part of HPD's response to initial complaints.

Table 4 – Chronic HHW Complaints, Repeat Inspections, and Few Violations Identified

Address	Days With Complaints	FY 2018			FY 2019		
		Complaints	Inspections	Violations	Complaints	Inspections	Violations
Bronx							
1025 Boynton Ave.	156	1,230	75	0	37	23	0
2090 E. Tremont Ave.	171	1,184	73	1	33	24	0
1425 MLK Blvd.	116	1,040	59	0	727	76	0
266 Bedford Park Blvd.	165	522	48	1	576	67	0
2968 Perry Ave.	147	508	48	0	329	49	0
2040 Bronxdale Ave.	150	483	58	0	794	70	0
3810 Bailey Ave.	70	459	34	0	139	14	0
480 Washington Ave.	89	419	43	4	295	37	6
750 Grand Concourse	105	348	46	0	264	42	0
Brooklyn							
9511 Shore Rd.	130	1,196	72	0	1,015	94	0
1711 Fulton St.	58	953	58	6	822	53	2
381 Vernon Ave.	169	641	71	21	580	52	30
417 Lorimer St.	77	608	57	1	236	31	1
2750 Homecrest Ave.	106	565	65	2	855	60	3
56 South 11th St.	43	385	49	27	5	3	1
5421 Beverly Rd.	139	360	45	0	77	55	0
410 East 17th St.	91	329	80	6	190	46	5
Manhattan							
507 West 139th St.	162	610	59	4	31	18	0
Queens							
89-21 Elmhurst Ave.	110	2,758	50	0	3,174	80	0
34-35 76th St.	64	342	28	0	92	29	0
Totals	2,318	14,940	1,118	73	10,271	923	48

HPD officials indicated that, in some of these buildings, it is just one person who continuously files complaints, while other tenants inform inspectors that the building does not have a HHW issue. We note, however, that HPD offered no data or other evidence to support this claim.

Use of Heat Sensors To Monitor Service

Reflecting the seriousness and persistence of complaints of inadequate heat, effective June 1, 2020, the NYC Council passed Local Law 18 of 2020 directing HPD to identify 50 buildings with temperature violations and other heat-related issues every two years, and to require the owners to provide and install an Internet-capable temperature-reporting sensor in each dwelling unit for up to four years. Electronic logs associated with the heat sensors can be used to record the actual apartment temperature throughout the day. HPD must then inspect these 50 buildings at least once every two weeks starting October 1, 2020.

We note that heat sensors have already been in use by tenants to compile evidence that their building owners are not providing the required services. For example, working with a Bronx tenant association, we obtained a tenant’s hourly sensor log for the periods November 7, 2017 through June 26, 2018 and January 14, 2019 through September 30, 2019. During the first period, the log shows 442 instances where the room temperature did not meet the legal requirement (at least 68°F between 6 a.m. and 10 p.m. when the outside temperature is below 55°F and at least 62°F between 10 p.m. and 6 a.m.). During the second period, the sensor’s log indicated 456 instances of the temperature falling below the requirements.

HPD’s records indicate that, for FYs 2018 and 2019, a total of 115 HHW complaints were filed against this tenant’s building. There were 73 inspections routed for this building but only 25 inspections were actually completed. Inspectors found ten violations and 15 instances where the heat was being provided as required by law. Data on the other 48 routed inspections indicated that 25 tenants had stated that service was adequate, 22 inspections were not performed due to lack of access, and 1 scheduled inspection was canceled.

As shown in Table 5, on seven inspection dates, HPD found no violations, while the hourly sensor log showed times during these days when required heat was possibly not being provided at this apartment.

Table 5 – Inspection–Heat Sensor Log Comparison

Date of Inspection With No Violation	Hourly Heat Violations per Sensor Log
11/8/2017	18
1/15/2019	16
1/17/2019	5
1/21/2019	16
2/7/2019	1
3/13/2019	24
4/16/2019	5

We did not test the accuracy of the sensor log, nor are we suggesting that HPD's inspection results are inaccurate. Rather, we present this information to highlight the potential value of this technology to supplement inspectors' observations during inspections. It is important that HPD continue to explore the use of technology to hold owners accountable for providing the required heat services to their tenants at all times.

Complaints Closed Due to Lack of Access

Access to a tenant's apartment is critical for determining whether HHW are being provided as required by law. When conducting inspections, inspectors first try to obtain access to the unit that made the complaint. If the tenant is not available, the inspectors attempt to access other units in the building.

According to HPD records, of the more than 219,000 total routed inspections in FYs 2018 and 2019, inspectors were unable to gain access to the original complaint apartment about 30 percent of the time. Inspectors then attempted to conduct inspections of other units in the building; the percentage of no access to any unit in the building was about 14 percent. However, tenants informed us that HHW conditions are not universal in all apartments in a building. Therefore, increasing access to the original complaint units is important.

Based on conversations with tenants and our own observations, HPD inspectors do not provide tenants with advance notice of an inspection time frame so that tenants can plan to be home – a courtesy that would not only improve inspection results but also minimize the amount of time otherwise wasted due to no access. Tenants also indicated, and we observed, that inspectors do not note the time of their attempt to gain access on the "No Access" cards left behind for tenants. We believe noting the time of the inspector's attempt to gain access to an apartment or building is important information for tenants, helps to hold inspectors accountable, and increases the confidence of tenants that their complaints will be taken seriously. During our audit, HPD officials indicated they are exploring the idea of providing tenants with a window of time for inspections so as to increase accessibility to apartments.

It is important for HPD to modify procedures in order to help inspectors successfully gain access to apartments so that inspections can be performed with minimal disruption to tenants. Our analysis indicates that when inspectors have access to apartments and can actually conduct HHW inspections, the rate of violations issued that confirm the lack of proper service is increased to about 30 percent. This is in contrast to the 6 percent rate of violations found for all routed inspections.

As part of our audit, we accompanied HPD inspectors to 44 routed inspections throughout the five boroughs during the period of December 11, 2019 through January 15, 2020. On these inspections, there were only 4 instances of no access, 23 instances when tenants in the building stated that service was adequate, and 17 inspections that were done. Of the 17 inspections, 8 resulted in a HHW notice of violation being issued. We note that these inspections were not always done in the apartment of the tenant who filed the complaint. It is important that HPD continue to

explore effective strategies to gain access to complainants' units.

As discussed earlier, the use of electronic tablets will allow complaints to be routed to inspectors in the area of the complaint-related building. As a result, the inspections will be conducted in real time. This, in tandem with a process for giving tenants advance notice of inspections, should help to increase the likelihood that inspectors will gain access, improve the effectiveness of inspection results, and accurately identify and issue violations.

Low-Penalty Settlements

HPD brings cases to Housing Court to have civil penalties imposed on owners found to be in violation of the laws concerning the provision of HHW. Where cases involve multiple violations, HPD typically negotiates with the owner to settle on a single amount covering all of them. If an owner fails to appear in court, Housing Court may grant a default judgment with civil penalties based on the number of days the violations have been outstanding, which could be very significant.

HPD's Judgment Enforcement Unit (Enforcement Unit) is responsible for enforcing the law and collecting civil penalties, settlement proceeds, and default judgments obtained in Housing Court against owners. Where an owner fails to voluntarily pay penalties, the Enforcement Unit has several methods at its disposal to collect the civil penalties due, including garnishment of wages, seizure of personal property, and foreclosure of the property.

We selected a sample of 25 complaint cases that resulted in notices of violations issued by HPD during the two fiscal years ended June 30, 2019. Of the 25 cases, 4 were dismissed after owners corrected the violations and 21 were referred to Housing Court. Of these 21 cases, 13 were settled, 4 ended in default judgments totaling \$184,550, and 4 were withdrawn.

As shown in Table 6, in eight of the settled cases, accounting for 116 alleged violations, HPD settled for amounts lower – in some cases, substantially lower – than the possible \$250 minimum civil penalty per violation.

Table 6 – Potential Minimum Penalties and Settlement Amounts

Case	Number of Violations	Potential Minimum Penalty	Settlement Amount
1	2	\$500	\$325
2	5	\$1,250	\$650
3	10	\$2,500	\$900
4	7	\$1,750	\$750
5	3	\$750	\$550
6	19	\$4,750	\$1,500
7	44	\$11,000	\$8,000
8	26	\$6,500	\$750

For the four cases that ended in default judgments, none of the \$184,550 in civil penalties imposed by the Housing Court had been collected as of February 2020. All four cases had been referred to the Enforcement Unit, but have been outstanding for more than a year as of February 2020. Per HPD officials, the default judgment amounts are very large penalties that, in reality, end up being negotiated down. Nevertheless, it is important that HPD use all of its available tools to collect outstanding penalties so that owners are held accountable and incentivized to provide the services to tenants.

Recommendations

1. Take corrective action to ensure HPDInfo processes all complaints appropriately, including, but not limited to:
 - Accurately identifying all unique complaints so they are routed for inspection.
 - Accurately identifying and linking duplicate complaints.
 - Establishing criteria that will define and distinguish initial and duplicate complaints and create rules in HPDInfo accordingly.
2. Establish a formal time frame for inspecting HHW complaints.
3. Periodically review open HHW complaints to ensure they are being addressed timely.
4. Continue pursuing the use of technology to enforce HHW laws.
5. As appropriate, provide tenants with advance notice of inspections.
6. Establish a policy requiring inspectors to note the time of their attempt to conduct inspections on the No Access cards.
7. Establish guidelines for attorneys to use when negotiating settlement amounts in Housing Court.
8. Increase collection efforts for outstanding default judgment amounts.

Audit Scope, Objective, and Methodology

The audit objective was to determine whether HPD addresses HHW complaints timely, issues notices of violation, and seeks the imposition and collection of penalties as appropriate. Our audit covered HHW complaints received from July 1, 2017 through June 30, 2019. We also conducted observations of inspections during the period of December 11, 2019 through January 15, 2020 and reviewed civil penalties collected as of February 2020.

To accomplish our objective and evaluate internal controls, we reviewed relevant laws and HPD's guidelines relating to HHW complaints. We interviewed HPD officials to gain an understanding of the underlying controls related to the systems and processes for maintaining and addressing HHW complaints as well their disposition. We judgmentally selected a sample of 50 complaints, based on the borough and the type of resolution. We traced each of the 50 complaints to the HPDInfo system and to HPD records to test both the completeness of HPDInfo and the timeliness of complaint resolution. Of those 50 complaints, 19 resulted in notices of violations being issued. We judgmentally selected another 6 complaints that resulted in notices of violations, based on the borough and the time elapsed, for a total of 25 notices of violations. We then reviewed HPD records for each of these 25 notices of violations to determine whether civil penalties were assessed and, if so, collected. Of the 25 inspections in our sample, 4 had outstanding civil penalties not yet collected as of February 2020. The results of our two judgmental samples cannot be projected. Because the 311 system is a widely used database, we relied on the 311 data without testing its completeness, though we did test its accuracy by verifying a sample of complaints back to the tenants who submitted them. We also accompanied inspectors during HHW inspections and spoke to tenants and one tenant association.

Statutory Requirements

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. These 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 objective. We believe that the evidence obtained during our audit provides a reasonable basis for our findings and conclusions based on our audit objective.

As is our practice, we notified HPD officials at the outset of the audit that we would be requesting a representation letter in which agency management provides assurances, to the best of its knowledge, concerning the relevance, accuracy, and competence of the evidence provided to the auditors during the course of the audit. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. Agency officials normally use the representation letter to assert that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. They affirm either that the agency has complied with all laws, rules, and regulations applicable to its operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors. However, officials at the New York City Mayor's Office of Operations have informed us that, as a matter of policy, mayoral agency officials do not provide representation letters in connection with our audits. As a result, we lack assurance from HPD officials that all relevant information was provided to us during the audit.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating threats to organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Reporting Requirements

We provided a draft copy of this report to HPD officials for their review and formal comment. Their comments were considered in preparing this final report and are included at the end of it. HPD officials disagreed with some of our conclusions, but generally agreed with our recommendations and indicated they had already taken actions to address the system issue discussed in this report. HPD officials

also indicated that, while committed to inspecting HHW complaints as quickly as possible, various factors, including staffing and the number and types of emergency complaints received during each heat season, precluded HPD from committing to a standard time frame for HHW complaints.

Within 180 days after final release of this report, we request that the Commissioner of the New York City Department of Housing Preservation and Development report to the State Comptroller, advising what steps were taken to implement the recommendations contained herein, and where the recommendations were not implemented, the reasons why.

Agency Comments



City of New York
DEPARTMENT OF
HOUSING PRESERVATION AND DEVELOPMENT
100 GOLD STREET, NEW YORK, N.Y. 10038
nyc.gov/hpd

LOUISE CARROLL
Commissioner

July 8, 2020

Mr. Kenrick Sifontes
Audit Director
Division of State Government Accountability
Office of the State Comptroller
59 Maiden Lane, 21st Floor
New York, NY 10038

Re: Audit of Heat and Hot Water Complaints, 2019-N-3

Dear Mr. Sifontes,

Thank you for the opportunity to respond to your Audit Report on Heat and Hot Water Complaints.

We were pleased that the report highlighted HPD's significant improvement in timeliness of response to heat and hot water complaints, which sped up from 3.1 days in Fiscal Year 2018 to 2.1 days in Fiscal Year 2019. As described in our audit response, HPD is continuing to make deep investments, in both technology and staff resources, to improve even further on this response time. We also note that HPD agrees with many of the recommendations made by the OSC; in fact, many were already implemented or in the process of being implemented during the audit period.

We believe, however, that several conditions related to HPD timeliness of response, likelihood of issuing violations, and degree of effort regarding collection of judgments and penalties have been mischaracterized in this report. HPD maintains that, based on its practices, violations are discovered, addressed, and corrected as promptly as possible, and with close attention paid to the overarching goal of owner compliance. Our audit response adds detail and context to descriptions of certain processes and scenarios in the report; we believe that this new detail changes the narrative of these descriptions to demonstrate HPD's current effectiveness.

Once again, thank you for providing the opportunity to comment on the Audit Report.

Sincerely,

A handwritten signature in black ink, appearing to read "Louise Carroll".

Louise Carroll

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Printed on paper containing 30% post-consumer material.

Agency Response:
New York City Department of Housing Preservation & Development (HPD)
to the Office of the New York State Comptroller (OSC)
Heat and Hot Water Complaints – 2019-N-3
Date: July 8, 2020

The New York City Department of Housing Preservation and Development (HPD) is providing comments in response to the Office of the New York State Comptroller's (OSC) review of HPD's processes for addressing heat and hot water (HHW) complaints, per a draft audit report ("the report") issued to HPD on June 8, 2020.

In accordance with the City's Housing Maintenance Code (HMC) and the agency's own mission, HPD is committed to ensuring that all New Yorkers live in quality, habitable housing. To that end, HPD creates, implements, and enforces policies and practices that protect the safety and health of any individual who resides, visits, or conducts emergency response in a New York City residence.

HPD appreciates the OSC's interest in its enforcement of HHW requirements, and values feedback to help us improve them. *It is important, however, that those who review the OSC's report first understand the wider context in which HPD's Office of Enforcement and Neighborhood Services (ENS) carries out enforcement work.*

- ENS' volume of activity is significant, and its investments are expanding. In Fiscal Year (FY) 2018/19, ENS received more than 1.1 million unique HMC complaints, conducted 1.4 million inspections, and issued 1.1 million violations. ENS expects to hire nearly 50 additional housing inspectors in FY 2021 (an increase of 17% over its current force), and continue to broaden the use of new technologies that increase the efficiency and accuracy of fieldwork (further described below).
- HPD Code Inspectors respond to all immediately hazardous conditions on every inspection and conduct enhanced enforcement on buildings in serious distress. A specific tenant complaint (such as HHW) might be what triggers an inspection, but inspectors are responsible, while on site for an inspection, for citing violations for *any* observed condition that immediately threatens health and safety as well as other conditions which the department has determined pose risks, including: mold and vermin, certain egress risks, and (for homes with children under 6) lead-based paint. For persistent and chronic building issues, ENS manages targeted programs such as the Alternative Enforcement Program and the Anti-Harassment Unit; ENS is also essential to the 2019 LeadFreeNYC plan and implementation.
- ENS' work is collaboration-focused, data-driven, and policy-oriented. As part of their work, ENS staff and inspectors educate and coordinate with tenants and owners on residential rights and responsibilities; ENS also uses new business intelligence tools and NYC Open Data resources to remain accountable and transparent regarding information on violations, emergency repairs, and active litigation. NYC's HHW laws became more stringent in part through ENS' own efforts and support of legislation to make them so.

As stated in the report, the objective of OSC's audit was "to determine whether HPD i) addresses heat and hot water complaints timely, ii) issues notices of violation, and iii) seeks the imposition and collection of penalties as appropriate." (Enumeration added.) *With regard to these three objectives, HPD generally notes the following.*

- i) Addressing HHW Complaints Timely: HPD continues to improve its response to HHW complaints. As the report states, HPD's average time from complaint to inspection was 2.1 days in FY19, speeding up the average response time by a full day between FY18 and FY19. Going forward, HPD expects to maintain or improve this response time by increasing the number of new inspectors and using Real Time Field Force, a new technology (currently piloting in Manhattan, and expected to be

rolled out to all borough offices by 10/1/2020) that significantly reduces complaint processing time, prioritizes older complaints for inspection, and allows inspectors to log results during an inspection.

- ii) Issuing Notices of Violation: Whereas HPD’s goal in enforcement is to gain compliance, the auditors have provided an oversimplified analysis by concluding that a “low” number of violations issued relative to complaints filed is a process failure. During the audit, HPD described various contributing factors that explain this complaint-to-violation ratio. These factors include, but are not limited to, condition correction prior to violation issuance (which is generally a success of HPD’s owner notification processes) and repeat complaints for the same issue in a short timeframe before resolution (which skews the ratio of complaints relative to violations).
- iii) Seeking the Imposition and Collection of Penalties: Like all agencies with enforcement powers, HPD primarily exercises these powers to achieve owner compliance; tenant safety rather than a high judgment figure is HPD’s overarching goal. HPD’s attorneys are authorized to settle if they can obtain Orders to Correct (which subject the owner to higher penalties if the condition recurs) and a civil penalty. HPD attorneys may consider situations where owners made immediate, good-faith efforts and face real-world limitations. Moreover, HPD explained to the auditors that default judgments initially calculate a penalty based on an assumption that the condition had not been corrected for the length of the court case, but are often eventually adjusted during the course of litigation in Housing Court to reflect actual length of time from violation to correction. This adjustment does not reflect a reduction in the potential settlement amount, but a recalculation to the *accurate amount*.

[Comment 1](#)

HPD is making consistent and concerted efforts to improve timely responsiveness to HHW complaints. However, *HPD’s overall processes and mechanisms for internal and external accountability are already extremely strong, and certain highlighted scenarios described in the report mask this fact*. For example:

- On page 15, the report describes a building with “a total of 115 HHW complaints” in FY 2018 and 2019 for which “25 inspections were actually completed”. As explained to the auditors (and even mentioned in the report), HPD’s process identifies duplicative complaints if they were already included in an earlier complaint and groups those duplicates with the original complaint if they are received before the original complaint is closed. In this example, *more than half of the complaints were legitimate duplicates*. For those that were *original*, each and every one either a) was closed based on phone contact with the complainant confirming correction, b) was closed based on a visit to the complainant’s apartment where HHW was confirmed adequate based on inspection or complainant’s verbal report, c) was closed based on confirmation by other tenants in the building that HHW was adequate, or d) resulted in issuance of a violation. Commenting upon number of inspections “actually completed” is misleading with regard to HPD’s pursuit of corrective action.

[Comment 2](#)

For the sake of brevity, HPD will not provide comparable analyses of every highlighted scenario in the report, but re-iterates that each scenario cited in the report under-represents the effectiveness of HPD’s existing systems.

Recommendation 1: *Take corrective action to ensure HPDInfo processes all complaints appropriately, including, but not limited to a) accurately identifying all unique complaints so that they are routed for inspection, b) accurately identifying and linking duplicate complaints, and c) establishing criteria that will define and distinguish initial and duplicate complaints and create rules in HPDInfo accordingly.*

HPD Response to Recommendation 1: During FY 2018 and 2019, 0.2% of all HHW complaints may not have been directly addressed as a result of the technical issue described in the report. For that 0.2%, HPD took immediate steps towards compliance with this recommendation during the period of the audit. Specifically, HPD took swift action to (1) properly close all older complaints so that newer complaints

would not become inappropriately linked to them, (2) closely monitor any new instances where this issue could occur, and (3) work to correct the issue.

HPD notes, however, that (as the report mentions) “other types of inspections of the buildings [that have HHW complaints concealed due to the ‘glitch’] give inspectors an opportunity to assess whether HHW are being provided.” This point should be repeated and emphasized: *HPD’s practices generally ensured that the “glitch” did not result in risks to health and safety.* Specifically, the report cites an example of a “building in Brooklyn [that] did not have any heat and hot water inspections from July 10, 2017 to April 25, 2019 despite tenants submitting 175 complaints during this period.” In fact, HPD attempted or conducted inspections on 99 different days during that time period. Inspectors cited violations as appropriate for the issues in those complaints and, as part of their regular procedure, would have issued violations if a lack of HHW had been observed or reported to the inspectors at the time of the inspections. Because no lack of HHW conditions were observed or reported, no HHW violations were issued.

[Comment 3](#)

Recommendation 2: *Establish a formal timeframe for inspecting HHW complaints.*

HPD Response to Recommendation 2: HPD remains committed to inspecting HHW complaints, and all emergency complaints, as quickly as possible. As noted in the report itself, HPD improved its speed of response to 2.1 days on average in FY 2019, and (as described above) has made deep investments to improve further on this average. However, as explained to the auditors, a host of factors during each heat season (including the number and types of emergency complaints received relative to staffing resources, new legislation that affects HPD’s practices, and the length of particularly cold periods) preclude HPD’s ability to commit to a standard timeframe for HHW complaints.

Recommendation 3: *Periodically review open HHW complaints to ensure that they are being addressed timely.*

HPD Response to Recommendation 3: HPD agrees with the recommendation. HPD’s monitoring of HHW complaints has thus far focused primarily on tracking and closing original complaints to ensure that they are inspected timely. Going forward, HPD will expand its data monitoring to ensure that both original and duplicate HHW complaints are closed.

Recommendation 4: *Continue pursuing the use of technology to enforce HHW laws.*

HPD Response to Recommendation 4: HPD agrees with this recommendation and, as discussed in the report, was already underway with its implementation before the audit began. Specifically: a) as described earlier, Real Time Field Force is currently being piloted in Manhattan and is expected to be rolled out to all borough offices by 10/1/2020; and b) as the report mentions, HPD is responsible for implementing a new program to evaluate the use of internet-capable temperature-reporting sensors in buildings with a record of previous heat violations, per Local Law 18 of 2020.

Recommendation 5: *As appropriate, provide tenants with advanced notice of inspections.*

HPD Response to Recommendation 5: As noted above, HPD conducted 1.4 million inspections in FY 2018/19; new complaints arrive 24 hours a day / 365 days per year, and inspection routes are carefully designed to be both as geographically-efficient and urgency-responsive as possible (to deliver top speed while maximizing personnel resources). The scheduling systems that the auditors proposed in conversation with HPD (where tenants schedule inspections at dates and times specific to their convenience) would prevent inspections from being performed as quickly as possible. As HPD assesses technology needs, as technology improves, and as HPD identifies specific areas or complaint types where scheduling might be beneficial, HPD will take steps to make its scheduling more flexible and transparent.

With regard to the auditors’ assertion (on page 16 of the report) that “increasing access to the original complainant unit is important”: According to HPD’s procedure (which was shared with the auditors),

3

when an inspector is unable to access the primary complainant apartment, the inspector next attempts to inspect other apartments in the building that made duplicate complaints. If there are no such duplicates, the inspector attempts an inspection in a neighboring apartment or an apartment above or below the complainant apartment, which is likely to have similar HHW conditions as the complainant apartment. In addition, on average, more than 50% of HHW complaints are filed anonymously (nearly 60% in Fiscal Year 2018), so inspecting the original complainant apartment is often not possible. The auditors highlighted a statement made by a group of tenants that (on page 16 of the report) “HHW conditions are not universal in all apartments in a building”; though variations of a few degrees are not uncommon, HPD has generally found that confirmation of sufficient heat in one unit indicates that standard building systems distributing heat are activated and functional throughout other units.

***Recommendation 6:** Establish a policy requiring inspectors to note the time of their attempt to conduct inspections on the No Access cards.*

HPD Response to Recommendation 6: HPD agrees with this recommendation to provide more information to tenants. Note that HPD inspectors are already required to sign a card in the building vestibule indicating that an inspection was attempted, whether the inspector gained access or not. Based on this recommendation, HPD will require that the time of inspection attempt appears on the card.

***Recommendation 7:** Establish guidelines for attorneys to use when negotiating settlement amounts in Housing Court.*

HPD Response to Recommendation 7: HPD was compliant with this recommendation prior to the start of the audit. HPD provided the auditors with several examples of the types of circumstances that the attorneys take into consideration when settling cases and determining civil penalties, and the standard practices of the Unit when these circumstances are presented. For these reasons and reasons described earlier in this response, HPD believes that the civil penalties it seeks are appropriate. Moreover, in combination with the types of penalties that HPD has the legal authority to impose on property owners (such as inspection fees for HHW and emergency repair charges should owners fail to restore heat), HPD believes that its overall enforcement through litigation is also appropriate.

***Recommendation 8:** Increase collection efforts for outstanding default judgment amounts.*

HPD Response to Recommendation 8: HPD is already consistently taking steps to increase collection efforts as a matter of practice. Over the past two years, HPD has bolstered its collection efforts by referring accounts for collection to the Law Department. As a next step regarding default judgments where the owner has not appeared in court, HPD is reviewing its processes to ensure that default judgments more accurately reflect the time period when HHW are not provided (e.g., the period against which civil penalties can be assessed) based on the date that HPD confirms that heat was restored, which provides a more accurate standard for assessing penalty collection. Note that in each of FYs 2018 and 2019, HPD collected approximately \$3.6 million in penalties.

State Comptroller's Comments

1. Our analysis is not oversimplified. We maintain that lack of access to apartments to conduct inspections contributes to the low number of violations issued. As our report indicates, when inspectors have access to apartments and can actually conduct HHW inspections, the rate of violations confirming the lack of proper service increases to about 30 percent.
2. We are simply reporting the results of the 73 scheduled inspections and do not take a position as to HPD's actions to address the 115 HHW complaints.
3. HHW violations are immediately hazardous conditions that must be corrected within 24 hours. Therefore, it is imperative that HPD has a system that properly captures HHW complaints so that they can be investigated by HPD and violations can be corrected within the 24 hours. That HPD conducted inspections at this building in response to non-HHW complaints misses the fact that HPD failed to answer the HHW complaints of the tenants in this and other buildings impacted by the glitch. As result, tenants potentially endured being deprived of these essential services for longer than necessary and owners were not held accountable.

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