

# United States Senate

WASHINGTON, DC 20510

August 5, 2024

## **VIA ELECTRONIC TRANSMISSION**

Ms. Adrienne Todman  
Acting Secretary  
Department of Housing and Urban Development

Dear Ms. Todman:

On May 30, 2023, the Department of Housing and Urban Development (HUD) Office of the Inspector General (OIG) released a Management Alert finding that “employees of thousands of contractors who receive funds from the U.S. Department of Housing and Urban Development (HUD) are not protected against retaliation for blowing the whistle on wrongdoing.”<sup>1</sup> The alert made clear that a gap exists in federal whistleblower law that became effective July 1, 2013, which requires agencies to include anti-retaliation provisions in contracts, and contracts that pre-existed the change in law.<sup>2</sup> Federal law also requires federal agencies to make “best efforts” to include the anti-retaliation provisions when major modifications are made to these pre-2013 contracts.<sup>3</sup> However, the OIG’s alert raised concerns that HUD isn’t proactively seeking modifications to the pre-July 2013 contracts to include the contractor whistleblower protection language.<sup>4</sup> The OIG alert made five recommendations for HUD to address these deficiencies.<sup>5</sup>

The OIG alert also provided that HUD acknowledged it didn’t need to wait for a major contract modification to seek the inclusion of the whistleblower protections and affirmed HUD would review all contracts that pre-date July 2013 to know whether these contracts contain the whistleblower protection provisions.<sup>6</sup> The OIG made five recommendations, all of which remain open and unresolved.<sup>7</sup>

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<sup>1</sup> Inspector General Rae Oliver Davis to Deputy Secretary Todman, *Management Alert (2023-IG-002) – HUD Should Take Additional Steps to Protect Contractor Employees Who Disclose Wrongdoing*, at 1 (May 30, 2023) <https://www.hudoig.gov/sites/default/files/2024-01/2023-IG-002.pdf>.

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Id.* at 3. The HUD OIG Recommended: 1. HUD (a) identify all contracts related to its programs that pre-date July 1, 2013 and that have not yet been modified to include Section 4712 whistleblower protections; and (b) review all contracts entered into on or after July 1, 2013, to ensure they include a clause that requires contractors to comply with Section 4712. 2. HUD seek voluntary cooperation from program participants to proactively modify pre-2013 contracts for the purpose of including a clause requiring compliance with Section 4712. 3. HUD use best efforts to include a clause requiring compliance with Section 4712 at the time of major modifications to contracts with program participants with whom HUD is unable to gain voluntary cooperation. 4. HUD seek legislative authority to expeditiously include Section 4712 protections within contracts for which HUD believes it must otherwise wait until there is a major modification. 5. HUD develop and implement controls to ensure that the provisions of Section 4712 are included in all contracts.

<sup>6</sup> *Id.* at 5-6.

<sup>7</sup> *Id.* at 5; see Department of Housing and Urban Development Office of the Inspector General, *HUD OIG Recommendations Dashboard*, HUD OIG (last visited Aug. 5, 2024) <https://www.hudoig.gov/open-recommendation/search> (HUD OIG reported that almost 800 of their recommendations currently remain open).

Contracts that don't include the statutory anti-retaliation provisions protecting contractor whistleblowers create a significant gap in the agency's ability to detect misconduct within its programs and a chilling effect on would-be whistleblowers.<sup>8</sup> Whistleblowers provide an invaluable service to the federal government by helping expose and root out waste, fraud, and abuse in federal programs. According to HUD's FY2025 Congressional Budget Justification, it requested \$16.1 billion in taxpayer dollars to fund the renewal or amendment of approximately 17,700 rental assistance contracts.<sup>9</sup> Thus, the failure to ensure that HUD contractor whistleblowers can report allegations of waste, fraud, and abuse without reprisal puts potentially billions of taxpayer dollars at risk of misuse.

So that Congress may conduct objective and independent oversight concerning HUD's inclusion of whistleblower protections within its contracts, please provide answers to the following no later than August 19, 2024.

1. How many HUD contracts fail to contain federal contractor whistleblower protections as required by federal law? Of those contracts, how many has HUD attempted to renegotiate to include whistleblower protections? How many has HUD successfully renegotiated to include whistleblower protections?
2. Please provide a detailed description of the actions HUD has taken or plans to take to address each HUD OIG recommendation from the Management Alert.
3. Since July 2013, what guidance, policies, and similar documents has HUD provided agency-wide and to contractors about updating contracts to include federal contractor whistleblower protections? Provide all records.<sup>10</sup>
4. What guidance, policies, and similar documents has HUD provided to its contractors to ensure contractor employees are informed about their rights to blow the whistle on waste, fraud, and abuse without retaliation? Provide all records.

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<sup>8</sup> See Craig McCarthy, Ben Kochman, Nolan Hicks, and Olivia Land, *70 current and ex-NYCHA workers cuffed in historic, decade-long \$2M 'classic pay-for-play' bribery and extortion bust*, New York Post (Feb. 6, 2024) <https://nypost.com/2024/02/06/metro/dozens-of-city-housing-employees-arrested-sources/> (From 2013- 2023, 70 New York City Housing Authority (NYCHA) workers were allegedly involved in bribery and extortion crimes involving NYCHA housing program contracts for construction, maintenance, and no-bid contracts which were funded, in part, by HUD grants); *see also* Aaron Katersky, *70 NYC housing workers charged in largest bribery takedown in DOJ history*, ABC News (Feb. 6, 2024) <https://abcnews.go.com/US/70-nyc-housing-authority-employees-arrested-corruption-investigation/story?id=106988012> ("The charges against the New York City Housing Authority employees present the largest number of federal bribery charges brought on a single day in the history of the Department of Justice.").

<sup>9</sup> Department of Housing and Urban Development, *FY2025 Congressional Justification*, at 24-2 [https://www.hud.gov/sites/dfiles/CFO/documents/FY\\_2025\\_Congressional\\_Justification\\_v3\\_E-File.pdf](https://www.hud.gov/sites/dfiles/CFO/documents/FY_2025_Congressional_Justification_v3_E-File.pdf).

<sup>10</sup> "Records" include any written, recorded, or graphic material of any kind, including letters, memoranda, reports, notes, electronic data (e-mails, email attachments, and any other electronically-created or stored information), calendar entries, inter-office communications, meeting minutes, phone/voice mail or recordings/records of verbal communications, and drafts (whether or not they resulted in final documents).

Thank you for your prompt review and responses. If you have any questions, please contact Brian Randolph of my Committee staff at (202) 224-0642.

Sincerely,



Charles E. Grassley  
Ranking Member  
Committee on the Budget