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Investigation of Alleged Ethics Violations by Lynne Patton, Former Regional Administrator, Region II, Department of Housing and Urban Development

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Executive Summary

INVESTIGATION INTO ALLEGED ETHICS VIOLATIONS BY
LYNNE PATTON, FORMER REGIONAL ADMINISTRATOR, REGION II,
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Report Number: 2021SI013682I

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In August and September 2020, the U.S. Department of Housing and Urban Development (HUD or Department) Office of Inspector General (OIG) received information from multiple sources alleging that Lynne Patton, then-Regional Administrator, Region II, violated various federal ethics laws by participating in the production of a video that later aired at the Republican National Convention on August 27, 2020.¹ In the video (RNC video), four New York City Housing Authority (NYCHA) residents discussed criticisms of New York City Mayor Bill de Blasio and the achievements of the Trump administration related to NYCHA.² The video also featured several photographs of Patton carrying out her official duties.

The OIG opened an investigation to determine whether Patton violated federal ethics laws by soliciting NYCHA residents to appear in the video, participating in the production of the video, or using official HUD time or resources for activities pertaining to the video. The OIG's investigation was framed by several applicable legal provisions, but principally 5 C.F.R. § 2635.702, which prohibits federal employees from using their public office for the private gain of third parties, and 5 C.F.R. § 2635.101(b)(14), which confers upon government employees a duty "to avoid any actions creating the appearance that they are violating the law or . . . ethical standards."

The OIG's investigation found that Patton:

- (1) Directly solicited one NYCHA resident whom she knew through her role at HUD to appear in the RNC video;
- (2) Participated in the video's filming and posed questions to the NYCHA residents while off camera, including questions directly related to her role as HUD Regional Administrator; and

¹ See, e.g., Letter from the Campaign for Accountability to Henry Kerner, Special Counsel, U.S. Office of Special Counsel et al. (Sept. 21, 2020). Additionally, on September 3, 2020, the U.S. House of Representatives' Committee on Oversight and Reform sent a letter to the U.S. Office of Special Counsel (OSC) requesting it investigate potential violations of the Hatch Act by the Trump administration during the RNC. See Letter from the U.S. House of Representatives, Comm. on Oversight and Reform, to Henry Kerner, Special Counsel, U.S. Office of Special Counsel (Sept. 3, 2020).

² The acronym RNC is used in this report to denote the Republican National Convention and not the Republican National Committee. The RNC is a nominating convention hosted by the Republican Party to formally nominate the Republican presidential candidate.

- (3) Failed to prevent or object to a video-production company employee making statements or asking questions of the NYCHA residents that insinuated Patton was participating in the video's filming as part of her official HUD duties.

Based on these facts, the OIG concluded that Patton used her official position to produce a video for the RNC in a manner that contravened 5 C.F.R. § 2635.702 and 5 C.F.R. § 2635.101(b)(14). The OIG also found that Patton's consultations with HUD ethics officials prior to her participation in the video did not afford Patton "safe harbor" under 5 C.F.R. § 2635.107 because she neither disclosed all relevant facts when she sought ethics advice nor followed the advice she received in good faith.

In addition, the OIG found evidence showing that: (1) Patton consulted regularly and frequently with subordinates about her participation in the RNC video and other personal political activity, highlighting the need for OGC to clarify subordinates' roles relating to their supervisors' ethics consultations; (2) Patton did not meet her obligation as a federal employee to cooperate fully with and provide accurate information to the OIG, including by making statements during her OIG interview that were inconsistent with documentary evidence and other interviewee statements; and (3) Patton's impermissible use of her personal phone to conduct official HUD business warrants further action by HUD to retrieve any messages pertaining to the Department's business that may still reside there.³

The allegations in this matter also implicate the Hatch Act, a federal statute that limits the political activities of federal executive branch employees, and over which the Office of Special Counsel (OSC) maintains exclusive jurisdiction for enforcement.⁴ HUD OIG coordinated with OSC on fieldwork for the investigation but conducted its investigation independently. On April 6, 2021, OSC reached a settlement with Patton, who agreed to a 48-month debarment from federal employment and a \$1,000 fine for actions in contravention of the Hatch Act.⁵

Methodology

In conducting the investigation, the OIG interviewed Patton and several witnesses, including Andrew Hughes, the Chief of Staff to former Secretary Carson, and two NYCHA residents who appeared in the RNC video. The OIG also reviewed relevant email correspondence from May to October 2020, and footage and documents obtained through a subpoena issued to the company contracted to produce the RNC video. Finally, the OIG reviewed phone records covering the relevant time period and certain text messages on HUD mobile devices.

The OIG interviewed Patton on December 10, 2020, while she was still a HUD employee. In March 2021, after leaving her position with HUD, Patton declined a second interview with the OIG and stated that she was doing so on the advice of personal counsel, even while indicating that

³ The OIG referred this matter to the U.S. Department of Justice for prosecution of any potential criminal violations and no prosecution resulted.

⁴ See 5 C.F.R. § 734.102; see also 5 USC §§ 7321-7326.

⁵ See Letter from Ana Galindo-Marrone, Chief, Hatch Act Unit, U.S. Office of Special Counsel, to Athena Jones, Principal Deputy Counsel to the Inspector Gen., Office of Inspector Gen., U.S. Dep't of Hous. and Urban Dev. (Apr. 6, 2021).

she had additional evidence to share with the OIG. The OIG requested that Patton provide this additional evidence, as well as any HUD-related records she created or received on her personal phone while in her HUD position. Patton did not respond to this request. The OIG contacted Patton again in August 2021 to offer her the opportunity speak with us prior to the finalization of our report of investigation, and to provide the additional evidence that she had referenced in March 2021. On September 1, 2021, Patton emailed a written response to the OIG to “enter . . . into [the] record.”⁶ Patton did not agree to a second interview. Additionally, Patton never provided a name or contact information for any attorney representing her nor did she provide any HUD-related records from her personal phone. Because the OIG does not have authority to issue subpoenas compelling the testimony of non-HUD employees, the OIG was unable to require Patton to attend a second interview and ask about numerous discrepancies between her interview testimony, documentary, and testimonial evidence obtained by the OIG subsequent to her interview, including discrepancies related to Patton’s role in the production of the RNC video and advice she received from HUD ethics attorneys about her participation in the video. The OIG did, however, permit Patton to review and provide written comments on a draft version of the factual findings in this report and subsequently incorporated some of these comments into the report.

Ben DeMarzo, who served as Assistant Deputy Secretary for Field Policy and Management and was Patton’s supervisor during the period relevant to this investigation, initially agreed to an interview with the OIG and appeared for one. At the start of his scheduled interview, however, DeMarzo cited concerns regarding confidentiality and the voluntariness of the interview before declining to proceed pending consultation with his personal counsel. When the OIG subsequently contacted DeMarzo about rescheduling the interview, DeMarzo declined to participate altogether. The OIG then emailed DeMarzo and cited the HUD Handbook on OIG Activities, 2000.3 REV-4, Section 3-2, which speaks to a HUD employee’s duty to cooperate with the OIG. DeMarzo again noted that he declined to be interviewed. The OIG subsequently emailed DeMarzo’s supervisor, then-Deputy Secretary Brian Montgomery, noting that DeMarzo’s declination was inconsistent with HUD policy, and requesting that Montgomery direct DeMarzo to cooperate by making himself available for an interview. In this email, the OIG recommended that if DeMarzo continued to refuse to cooperate after Montgomery had directed him to do so, Montgomery should take appropriate disciplinary action against DeMarzo. DeMarzo subsequently resigned, on January 20, 2021, concurrent with the start of the new presidential administration. The OIG did not receive evidence of any administrative actions taken or started as a result of DeMarzo’s failure to cooperate.

Michael Williams, who served as HUD Principal Deputy General Counsel during the period relevant to this investigation and who provided Patton legal advice about her proposed participation in the RNC video, also initially agreed to an interview with the OIG, but did not ultimately appear for an interview. After postponing his scheduled interview twice, Williams resigned on January 12, 2021, while OIG attempts to reschedule his interview were pending. The OIG wrote to Williams twice at his personal email address after his resignation requesting an interview but received no response.

⁶ This information included letters and tweets about potential bias in the investigation into Patton’s conduct, a statement indicating that Patton was “disheartened” that Resident 1 “did not disclose [that she was fully aware of the RNC video’s purpose] at the outset of [their] dialogue,” and several facts that Patton disputed in OSC’s findings.

Applicable Legal Standards

The OIG’s investigation into Patton’s conduct was framed by the general principles set forth in the federal ethics regulations.

Of note, 5 C.F.R. § 2635.702 states that “[a]n employee shall not use his public office . . . for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.” 5 C.F.R. § 2635.702 delineates instances when an employee is prohibited from using public office for private gain, but these prohibitions “are not intended to be exclusive or to limit the application of this section.” 5 C.F.R. 2635.702(a) prohibits a federal employee from using his or her “position or title or any authority associated with [his or her] public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to . . . friends, relatives, or persons with whom the employee is affiliated” outside of work.⁷ 5 C.F.R. §§ 2635.702(b) and (c) also prohibit federal employees from using their positions, titles, or authorities associated with public office in a manner that could reasonably be construed to imply that the government sanctions or endorses personal activities, or permit the use their positions, titles, or authorities to endorse a product, service, or enterprise.⁸

5 C.F.R. § 2635.705 states that employees must use official working time in an honest effort to perform government duties, and that “[a]n employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.”⁹

And 5 C.F.R. § 2635.101(b)(14) confers upon government employees a separate duty “to avoid any actions creating the appearance that they are violating the law or . . . ethical standards.” Among those relevant underlying ethical standards is 5 C.F.R. § 2635.702. 5 C.F.R. § 2635.101(b)(14) states that “[w]hether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.”

As discussed above, the allegations in this matter also implicate the Hatch Act.¹⁰ Although this report does not opine on whether Patton violated the Hatch Act, Patton’s interactions with HUD ethics attorneys prior to her involvement in the RNC video, which focused on the permissibility of Patton’s actions under the Hatch Act, were material to evaluating Patton’s conduct under the ethical provisions described above. For this reason, the Hatch Act is referenced throughout the report.

⁷ 5 C.F.R. § 2635.702(a).

⁸ *See id.* §§ 2635.702(b)-(c).

⁹ *Id.* § 2635.705.

¹⁰ *See id.* §§ 7321-7326.

Factual Findings

I. Patton's Tenure at HUD

Patton began her tenure as a political appointee at HUD on January 23, 2017. In June 2017, Patton was Regional Administrator for the Department's Region II, giving her oversight of HUD programs in New York and New Jersey, including those involving NYCHA.¹¹ NYCHA is the largest public housing authority in the United States, with over three hundred public housing developments across New York City.¹² Its residents are the beneficiaries of HUD grants that subsidize their monthly rent payments.¹³ In addition to overseeing NYCHA as part of her general duties, Patton also played an integral role in a multi-billion dollar settlement agreement, reached in January 2019, between HUD, the United States Attorney for the Southern District of New York, NYCHA, and New York City to reform living conditions for residents.¹⁴ In early 2019, Patton, with approval from HUD officials, lived in NYCHA housing units for approximately one month to observe living conditions there. Patton resigned from HUD on January 20, 2021.

II. The RNC Video as It Aired

The OIG reviewed both raw filming footage and an edited version of the video that aired at the RNC on August 27, 2020.¹⁵ The edited RNC video interspersed video clips of four NYCHA residents with words displayed on the screen, along with other short video clips and still photographs.

The video began with the following words transposed on a black screen: "President Trump promised to deliver real change for the residents of our nation's cities. He kept that promise." Next, the video contained short clips of four NYCHA residents (Residents 1-4) introducing themselves, interspersed with images of the exteriors of NYCHA buildings.¹⁶ In addition to introducing her name and role as the Resident Council President of a NYCHA public-housing development, Resident 1 also stated her political affiliation. Residents 1 and 3 then criticized New York City Mayor Bill de Blasio while still photographs of the Mayor appeared with the word "disgraceful" superimposed on one of the images. Resident 2 then said that, under the Trump administration, NYCHA received an influx of funds that it had not seen since 1997. Next, two short video clips of President Trump appeared, with Resident 4 then stating on camera that she was grateful for the

¹¹ See *HUD's Regions*, HUD.gov, <https://www.hud.gov/localoffices/regions> (last visited Feb. 22, 2021). Patton started at HUD in the role of Senior Advisor to Secretary Carson in January 2017.

¹² See *NYCHA 2020 Fact Sheet*, New York City Housing Authority, https://www1.nyc.gov/assets/nycha/downloads/pdf/NYCHA-Fact-Sheet_2020_Final.pdf (last visited Feb. 22, 2021) (stating that there are 302 individual developments).

¹³ See *NYCHA 2020 Fact Sheet at 2*, New York City Housing Authority, https://www1.nyc.gov/assets/nycha/downloads/pdf/NYCHA-Fact-Sheet_2020_Final.pdf (last visited Feb. 22, 2021).

¹⁴ See *Agreement* (Jan. 31, 2019), <https://www.hud.gov/sites/dfiles/PA/documents/HUD-NYCHA-Agreement013119.pdf>.

¹⁵ Patton told the OIG that there were two edited versions of the RNC video, an original long version and a condensed version that aired at the RNC on August 27, 2020.

¹⁶ For privacy reasons, the OIG is not identifying certain individuals or entities by name in this report. These include third-party companies, non-HUD employees who were not candidates for public office, HUD employees serving in non-supervisory GS-15 positions or below, and any other individuals whose identity was withheld because of confidentiality or other considerations.

spotlight that President Trump placed on NYCHA and that she felt it was “wrong that the Democrats put illegal immigrants before Black Americans.” When she stated this, the words “Democrats put illegal immigrants before Black Americans” appeared transposed on an image of now-President Biden.

Subsequently, the video showed images of the exterior of NYCHA buildings, with Resident 2 stating that, “since HUD came in with Lynne Patton as the Regional Director for HUD, it helped us identify some longstanding systemic problems that we are now putting on the table and having discussions on.” The video then displayed three still photographs of Patton shown in the process of carrying out her official duties. The first photograph was of Patton with Secretary Carson; the second was of Patton apparently walking in front of a public housing unit; and the third was of Patton with President Trump and Secretary Carson. Resident 2 then praised the Trump administration for listening and noted an improvement in public housing, while short video clips of President Trump carrying out his official duties appeared. Lastly, the words, “More funding. Better Housing. Results. Promises Made. Promises Kept.” appeared transposed on a black screen.

The edited RNC video, which was approximately three minutes in length, was produced by a third-party production company (Video Production Company). Patton told the OIG that the RNC and Trump campaign paid for the video and that its purpose was to promote the reelection of President Trump by promoting improvements made to NYCHA.

III. Ethics Advice

Patton Seeks Initial Advice from HUD Regional Counsel Regarding Her Participation in the RNC Video

Patton informed the OIG that she and the Trump campaign first envisioned the RNC video in early August 2020, when Patton discussed the possibility with a senior Trump campaign official (Campaign Official 1), and later with another senior Trump campaign official (Campaign Official 2). Patton said the purpose of the video was to highlight the Trump administration’s accomplishments, including improvements to NYCHA.

The evidence shows that Patton consulted throughout August 2020 with various HUD colleagues, including supervisors and ethics attorneys, about the video and her ability to participate in its production as a federal employee.

After preliminary outreach to two of her subordinates (Subordinate 1 and Subordinate 2), Patton met with HUD Regional Counsel by video conference on August 12, 2020. This was Patton’s first formal consultation with HUD ethics attorneys about her potential participation in the RNC video. Present at the meeting were Ventura Simmons, Regional Counsel, and Erica Levin, Deputy Regional Counsel, as well as Subordinate 1 and Subordinate 2.

According to Simmons, Patton stated during this meeting that the “White House” wanted her to do the RNC video, but that she needed to know how to participate without breaking the law. Patton told the OIG she recalled proposing a video for the RNC in which she appeared on camera in a roundtable with approximately three NYCHA residents or in which Patton narrated the video with

a voiceover. Patton told the OIG she did not consult with Levin or Simmons about the possibility of her asking questions of the NYCHA residents off camera.

According to Patton, she already had specific NYCHA residents in mind for the RNC video by the time of this initial ethics consultation with Levin and Simmons, and stated as much at the meeting. Simmons similarly recalled that Patton said she would contact several NYCHA residents whom she had met through her work with NYCHA as the Regional Administrator and ask questions of them about their experience at NYCHA under the Trump administration. Subordinate 2 recalled that Patton asked during this meeting if she could resign and then be reinstated at HUD after the RNC video.

Levin and Simmons both told the OIG that neither offered ethics advice during this meeting. Instead, Levin and Simmons said they told Patton they would need to coordinate with headquarters on her request, and that, in the meantime, Patton should speak to her leadership and advise her program office of her desire to participate in the video.

Simmons also stated that, at some point during Patton's consultations with ethics attorneys about the RNC video, Patton asked if she could participate in the video if she took leave without pay (LWOP) instead of resigning.¹⁷ According to Simmons, he and Levin informed Patton that she would still be subject to the Standards of Ethical Conduct even if she were on LWOP.¹⁸

Patton Sends a Text Message Indicating that Her Supervisory Chain Believed She Should Resign and Be Rehired to Participate in the RNC Video

Approximately two hours after her August 12 video conference with Levin and Simmons, Patton sent a text message to Simmons about conversations she had with Andrew Hughes, then-Chief of Staff to HUD Secretary Ben Carson, and Ben DeMarzo, who at the time was Assistant Deputy Secretary for Field Policy and Management and Patton's supervisor. This message stated:

FYI: So Ben DeMarzo and Andrew Hughes said exactly what I thought they would. That I need to do whatever the WH/Campaign asks of me to help POTUS [get] re-elected, but ideally without blatantly violating the laws. They agree that resigning immediately and being re-hired in November is likely the best option & they will do whatever necessary to ensure that happens¹⁹

Simmons told the OIG that he did not respond directly to this message. Hughes told the OIG that he did not recall speaking to Patton on August 12, 2020, but he did recall discussions with Patton about her resigning and potentially being rehired at a later time. Hughes said he did not tell Patton

¹⁷ According to Patton and Subordinate 2, the idea of using LWOP originated with Patton, which she felt would demonstrate that her personal activities were not being funded by taxpayer dollars. Subordinate 1 and Gayle Bohling, Deputy General Counsel for Operations, also stated that the idea of LWOP originated with Patton.

¹⁸ See 5 C.F.R. Part 2635.

¹⁹ Patton also subsequently sent a text to Simmons at 1:58 p.m., stating, "FYI: The campaign has nothing in writing from OGE or OSC...."

to resign, and also noted that Michael Williams, HUD’s Principal Deputy General Counsel at the time, informed Patton that she could not resign with a guarantee to be rehired.

Regional HUD Ethics Counsel Determines that Patton Must Resign to Participate in the RNC Video as She Had Initially Proposed

According to Levin and Simmons, Simmons verbally informed Patton at a little after 4 p.m. on August 12, 2020, that she would need to resign if she wished to participate in the RNC video under the circumstances she had proposed. Although Subordinate 2 was not on this call, Subordinate 2 told the OIG that Patton said she wanted to seek further guidance from the White House, the campaign, and HUD headquarters after receiving Simmons’ advice.

Patton Proposes an RNC Video Without Her Directly Appearing in It

After receiving Simmons’ August 12 advice, Patton met with Subordinate 1 and Subordinate 2 on the morning of August 13, 2020. Patton told the OIG that she wanted to meet with these subordinates because “it was important to [her] to have them as witnesses throughout this process . . . so that [she] was not misinterpreting anything.”

Subordinate 1 and Subordinate 2 both stated in their OIG interviews that Patton told them during this August 13 meeting she was not planning to resign per Simmons’ advice, but instead intended to participate in the RNC video in a legally permissible manner. According to Subordinate 2, Patton posed two broad questions during the conversation: first, whether the Trump campaign could use video of Patton interviewing residents in her official capacity, and second, whether someone else interviewing the residents instead of Patton would make her participation in the making of the video permissible.²⁰ Subordinate 1 recalled telling Patton that she could not have direct involvement in the RNC video by interviewing witnesses, appearing on camera, or using her title, and Subordinate 2 confirmed that both Subordinate 1 and 2 told Patton the answer to her first question was “no, that she couldn’t do a campaign video in her official capacity.” Subordinate 2 also recalled telling Patton that if she chose to participate in the video during her personal time, she would have to make it abundantly clear that she was there in her personal capacity and could not reference her HUD position or title, or otherwise allow any misimpression that she was there in her HUD capacity. Subordinate 1 and Subordinate 2 recalled discussing the idea of Patton not asking interview questions or appearing on camera during the meeting.²¹

Patton told the OIG that she continued to assess whether she should resign to participate in the RNC video, which was scheduled to be filmed on August 18, in the days following her August 13 meeting with Subordinate 1 and Subordinate 2. Notwithstanding this assertion, email evidence shows that Patton wrote to an employee of Video Production Company on August 14, 2020, stating that she “[j]ust want[ed] to make sure we’re on the same page with some minor requirements I’m bound to by HUD. No biggie.”

²⁰ Subordinate 2’s meeting notes also corroborate this testimony.

²¹ Subordinate 1 did not recall providing any advice to Patton about the possibility of her interviewing NYCHA residents off camera at that time, nor recalled Subordinate 2 doing so.

On August 17, 2020, Patton met again with Subordinate 1 and Subordinate 2 in the early afternoon. According to Subordinate 2, Patton had decided by this point to proceed with the RNC video filming without resigning, but was still looking for a way to participate in the video that would not violate the law. Subordinate 2 recalled that Patton now proposed a different role for herself in the RNC video than what she had proposed in their initial August 12 meeting on the subject, wherein Patton would not be filmed asking NYCHA residents questions. As Subordinate 2 stated to the OIG, “by that time it was clear she was not taking the advice to resign,” and instead she intended to take LWOP on August 18 so she could participate in the RNC video. Subordinate 1 similarly told the OIG that Patton was planning at that time to not have a “dominant presence” in the RNC video.

Following this meeting, Patton sent a screenshot of her request for LWOP on August 18, 2020, to Subordinate 1 and Subordinate 2. According to Subordinate 2, Patton sent this screenshot because Subordinate 2 had informed her that her LWOP request must be approved in HUD’s timekeeping system in advance of taking such leave.

Patton’s Supervisory Chain Advises Her about Participating in the RNC Video without Directly Appearing in It

Shortly after her August 17 meeting with Subordinate 1 and Subordinate 2, Patton spoke by phone with DeMarzo and Hughes. During her interview, Patton told the OIG that the intent of this August 17 call was to inform DeMarzo and Hughes of her impending resignation, but that DeMarzo and Hughes both “begged [her] not to resign” on the call. Although Hughes confirmed during his OIG interview that he participated in a conversation with Patton on that date, Hughes told the OIG that he did not “remember ever begging [Patton] to do anything,” including not to resign.

According to Patton, she, Hughes, and DeMarzo brainstormed ways that she could participate in the RNC video without resigning during this call. Patton told the OIG that she and the others on the call attempted to outline scenarios “that might pass the Hatch Act . . . barometer” so that Patton would not have to resign to participate in the video. According to Patton, this call is when Hughes first envisioned Patton participating in a video about NYCHA without any new video or audio of her, which would use only information already in the public domain. Patton told the OIG that the reason she did not ultimately resign from HUD is because an RNC video of this nature arose as an option. Patton said that the idea of a product without new video or audio of her had not previously crossed her mind before this August 17 call. Hughes, by contrast, told the OIG that he did not believe he or DeMarzo talked about what Patton could do in the video during this call, but rather talked about what she could not do. Moreover, Hughes did not recall any discussions with Patton about what her particular role in the RNC video might be.

After this August 17 call, Demarzo emailed Patton, copying Hughes and Williams -- who at the time was HUD’s highest legal authority and its principal ethics official -- informing her:

Lynne, as [the Office of General Counsel (OGC)] said you can take Leave Without Pay tomorrow for personal activities but you cannot discuss anything done in your official capacity here at HUD including your involvement with NYCHA, your official title, or any

actions you have taken in your official role since joining the administration.

Patton responded to DeMarzo, again copying Hughes and Williams, stating:

[P]er our conversation, I can discuss anything related to NYCHA improvements within the public domain with the exception of my personal stay in NYCHA, and NYCHA residents can answer questions as it pertains to their improved living conditions as long as I am not the one asking them questions directly and/or on camera.

The better scenario is that an independent narrator and/or video images tells the story of my stay in NYCHA, along with actions that the Secretary and I have taken in my official role at HUD to improve NYCHA and asks NYCHA residents direct questions about how their living conditions have improved at NYCHA, on or off camera.

It remains my choice to take LWOP tomorrow out of an abundance of caution, as I will be assisting with the off-camera production and/or filming of this video in my personal capacity.

In response, DeMarzo emailed Patton attaching Hatch Act guidance and related Frequently Asked Questions from OGC that he had referenced to her earlier, and Patton responded noting that she “could teach a[] [Hatch Act] class at this point.”

Patton Receives Advice from HUD’s Designated Principal Ethics Official about Participating in the RNC Video

Patton told the OIG that she subsequently spoke with DeMarzo, Hughes, and Williams by phone on August 17, 2020. Patton said Williams told her on this call that she could participate in the RNC video as long as this did not result in new video or audio of herself.²² Hughes’ recollection of this call was unclear, but he told the OIG that it was clear to him that the other participants made Patton aware that she “could not speak as a political person,” and could not identify herself in a political capacity if she took part in the RNC video.

Patton gave conflicting answers with respect to whether she mentioned during this August 17 call that she might interview NYCHA residents off camera. Patton first stated during her OIG interview “[w]e did not, to the best of my recollection, discuss whether or not I could ask [NYCHA residents] questions off camera.” Later in the same interview, however, Patton told the OIG that she believed Williams understood Patton would be asking the NYCHA residents questions off camera. But then Patton added that, “whether or not I was going to ask questions again remained to be determined” Hughes told the OIG the advice Williams conveyed to Patton was very clear, but could not answer whether Patton interviewing residents off camera would have complied with

²² Patton stated that she told DeMarzo, Hughes, and Williams that she had contacted Resident 1 for the RNC video, and had residents prepared to participate in the video.

Williams's advice, stating: "I could just tell you I think that [Williams'] advice was very clear I mean – yeah. . . . I mean, I don't – I don't know."

Immediately after this call, Patton sent a text message to Subordinate 1 and Subordinate 2, stating:

Ugh. Just sent you both an email. Michael Williams basically said he didn't want me doing the video tomorrow at all. I told him that wasn't something I could honor. Lol. He then told me I couldn't discuss NYCHA or my stay at NYCHA. I then told him that it was my understanding I could discuss anything within public domain. It got a tad heated. In the end, we agreed on the conditions I paid [sic] forth in my email. That if referencing my stay in NYCHA is an integral part of the video (which it is) then it needs to be told by an independent voiceover narrator OR "picture diary" without my direct voice over narrative referencing it.

Because Williams did not provide testimony to the OIG in this review, we interviewed other HUD officials about their conversations with Williams contemporaneous to his August 17 phone call with Patton.

For instance, Subordinate 1 recalled speaking to Williams on August 17 after his call with Patton. Subordinate 1 recalled that Williams asked Subordinate 1 to encourage and reiterate to Patton that she should not participate in the RNC video, and that Williams stated Patton could not use her name or image, participate in the production of the video, or "really have anything, substantively, to do with it." Subordinate 1 further recalled telling Patton it was not "wise" to do the video during a call to her that evening.

Gayle Bohling, Deputy General Counsel for Operations, told the OIG that she learned about the RNC video from email correspondence and from a conversation with Levin, and was concerned enough that Patton was proceeding with the video such that she called Williams to discuss the matter. Bohling told the OIG that Williams told her during this call that Patton could not participate in the RNC video, and although he was not aware at that time that Patton might take a role in the video where she interviewed NYCHA residents off camera, he believed his advice had conveyed to Patton that she could not take any role in the video. Bohling also stated that Williams felt DeMarzo's email "wasn't quite accurate," and that she was on the phone with Williams when he indicated that he was going to send a clarifying email. Bohling said she expressed to Williams that she had concerns that Patton was not understanding the advice, and Williams thought a subsequent email would "put that issue to bed." Bohling's impression was that, if the RNC video involved NYCHA, Patton should not be present behind the scenes or involved in the video at all.

At this point, Williams sent the following email to Patton:

Lynne, to clarify, as a Federal employee you cannot (in a campaign video) talk about or discuss anything (in writing, in video, or in audio) that happened in your official role (including anything done to improve NYCHA, or your stay in NYCHA).

Regarding the better scenario, what the campaign or the RNC decide to do, absent your participation, is up to the campaign and the RNC, and well beyond HUD's purview. If there is a video outlining the Administration's work with NYCHA you should not be involved (meaning no new video or audio of you or your voice included in the final product, nor anything that lists your title as HUD RA).

This is the last advice Patton received from any HUD ethics official prior to the RNC video filming. Patton told the OIG that she interpreted this advice to mean that the best scenario would be for the video to be produced without her participation, but that an acceptable scenario could involve her helping to produce the video so long as no new audio or video of her resulted.

After receiving this message from Williams, Patton texted Subordinate 2 the following:

[Subordinate 1] just called me b/c [Williams] called [Subordinate 1]. [Subordinate 1] is concerned that if I accidentally or blatantly violate now that I've talked to the 10th floor and not just [Simmons] that HQ will honor the OSC recommendation & terminate me. The only out is that someone else narrate the video about me and my stay. Looks like that's what's happening.

Patton then responded to Williams' email directly, stating:

Thank you, Michael. I just spoke to the campaign and, per our conversation, [Campaign Official 2] will be telling my story on video now and the production team will be speaking with NYCHA residents on camera about how their lives have improved under this administration

Patton forwarded this email exchange to Subordinate 1 and Subordinate 2 during the evening of August 17. Subordinate 2 told the OIG that upon receiving the exchange, Subordinate 2's understanding was that Patton would not be asking questions to NYCHA residents, whether on or off camera, and that the production team would instead be asking questions of the residents. Subordinate 1 understood Patton's email exchange with Williams to mean Patton could not talk about anything that happened during her tenure at HUD or appear or speak in the video, and therefore believed that Patton was not going to proceed with the RNC video at all.

Patton told the OIG that she sought further advice from Levin and Simmons after receiving Williams' August 17 advice, and that Levin and Simmons both deferred to Williams. But the evidence shows Simmons was on leave starting August 13, 2020, and did not return to the office until August 24, 2020, and Simmons told the OIG he did not learn of any updates regarding Patton's situation while he was on leave.

Patton also told the OIG that she consulted with Subordinate 1 and Subordinate 2 by phone during the morning of August 18, 2020, and that both Subordinate 1 and Subordinate 2 told her during

this call that, so long as Patton did not appear in the final RNC video, she would not be in violation of the law. But Subordinate 1 and Subordinate 2 both told the OIG that they did not recall Patton calling them on August 18. A review of Patton’s personal and work phone records did not show that she called either Subordinate 1 or Subordinate 2 that morning.

IV. Patton’s Involvement in the RNC Video

Patton Solicits Resident 1 to Appear in the RNC Video

Patton met Resident 1 in 2017 through Resident 1’s role as the Resident Council President of a NYCHA public housing development. During her one-month stay with various families in NYCHA housing in 2019, Patton lived with Resident 1 for approximately one week.

Patton told the OIG that, beginning in 2017 through August 2020, she became friends with Resident 1, and that they texted daily about personal topics, attended personal functions together, and socialized outside of HUD functions. Patton further told the OIG that Resident 1 “calls herself my second mother.” Patton also said that Resident 1, like other NYCHA tenant presidents, contacted her frequently about NYCHA-related issues, including when the heat would break down in a particular apartment.

Resident 1 told the OIG that her relationship with Patton was a mix of professional and personal, and that she would consider Patton a friend, although she did not generally reach out to Patton to socialize for non-HUD related purposes. Resident 1 confirmed that she contacted Patton regarding NYCHA-related issues, like a lack of heat or hot water, and said that a majority or almost all of their conversations were related to housing, NYCHA, and HUD issues. Resident 1 further explained, “one thing you have to realize is that we look at [Patton] as a . . . HUD Regional Director, not as . . . [a] Trump aide . . . , as far as we’re concerned, she’s just HUD [W]e interact with her as HUD Regional Director.”

Patton and Resident 1 told the OIG that Patton called Resident 1 about the RNC video one to two weeks prior to the video’s filming, making it unclear if this was before or after Patton first sought ethics advice on this matter on August 12, 2020. At the time Patton solicited Resident 1’s participation in the RNC video, Patton knew the production of the video was going to be for the RNC and to support the campaign of President Trump. Patton told the OIG that she informed Resident 1 that the video was for the RNC from the outset. By contrast, Resident 1 told the OIG that Patton did not initially advise her that the video was for the RNC, but did tell her the video would appear in front of 30,000 people, which caused Resident 1 to draw her own conclusion that the video could possibly be for a political event. Later in her OIG interview, Resident 1 stated she initially speculated the video might be for HUD until Patton confirmed on the day of filming that the video was for the RNC.²³

²³ In her September 1, 2021 email to the OIG, Patton disputed that Resident 1 did not know about the purpose of the RNC video from the outset, stating that she was “disheartened” after reading the OSC complaint because Resident 1 “did not disclose [that she was fully aware of the RNC video’s purpose] at the outset of [their] dialogue.” In response to a draft version of this report, Patton further stated that it “defies all logic that I would then deliberately conceal from [Resident 1] that this video would highlight NYCHA accomplishments made by the Trump

Resident 1 told the OIG that she probably would not have participated in the RNC video if someone other than Patton had asked her to do so, such as some other representative of the Republican Party. Resident 1 stated that part of the reason she participated in the RNC video was because the request came from Patton, and Patton had always helped Resident 1 with HUD-related inquiries. When asked how she thought Resident 1 would respond if someone else from the Trump campaign had asked her to participate in the video, Patton at first said she thought Resident 1 would have done the video. Patton later clarified through email that she thought Resident 1 “would have agreed to participate in the RNC video had the campaign called her directly,” but it may have depended on whether the question was phrased in a manner that highlighted the work of Patton, Secretary Carson, and the President, or whether it was just phrased in a manner to “help re-elect Donald Trump.”

Resident 1 Solicits Additional NYCHA Residents to Appear in the RNC Video

According to Patton, Resident 1 took the initiative to reach out to Residents 2 and 3, two other NYCHA residents, to ascertain whether they would be interested in appearing in the RNC video. Patton told the OIG that a fourth NYCHA resident, Resident 4, also appeared on the day of filming and asked to be included in the RNC video. Resident 1 similarly stated that Patton originally asked just her to do the video, and that it was Resident 1’s idea to call the other residents and ask them to participate along with her.²⁴

Patton told the OIG that she did not know the other NYCHA residents well before the video-filming date. Patton said that she had probably met Resident 2 in several HUD-related meetings but did not really know him until the filming date. Resident 2 told the OIG that he knew Patton from her role at HUD, and had spoken with her a total of three or four times prior to filming the RNC video, but did not have communications with her outside of HUD-related meetings.²⁵ Resident 2 further noted that if he emailed Patton, Patton’s subordinate (Subordinate 3), or any other HUD officials before this filming date, the email would have been solely related to NYCHA business. Resident 2 confirmed that he would not have known Patton were it not for her position at HUD.

Resident 1 noted that at the time she reached out to the other NYCHA residents, she did not know the video was for the RNC, and informed Residents 2 and 3 that the video would provide them with an opportunity to talk about NYCHA.²⁶ Resident 2 said that Resident 1 told him Patton wanted to make a video about NYCHA, but did not recall her stating that the video was for HUD. Although Resident 2 said Resident 1 did not tell him when she first contacted him that the video was for the RNC, he said that he and Resident 1 later speculated the video may be used for some

Administration during the Republican National Convention” because Resident 1 was, according to Patton, a known Trump supporter. This assertion has been refuted by Resident 1 according to other publicly available materials, and the OIG did not verify Resident 1’s political leanings as it was ultimately immaterial to this investigation.

²⁴ The OIG interviewed Residents 1 and 2, but we were unable to interview Residents 3 and 4 despite our attempts to do so. Resident 3 agreed to be interviewed but did not appear for the scheduled interview. Resident 4 originally agreed but later declined to be interviewed.

²⁵ Resident 2 also noted that he met one of Patton’s subordinates, Subordinate 3, during one of these meetings.

²⁶ Patton told the OIG that she did not know what Resident 1 told Residents 2 and 3 about the RNC video’s purpose when Resident 1 reached out to them.

political purpose like the RNC. Resident 2 told the OIG he wanted to participate in the video as a platform to advocate for housing issues.

Patton Appears with a HUD Subordinate on the Day of Filming

Patton took LWOP on August 18, 2020, the date of the RNC video filming. The filming took place at the tenant association room in the Frederick Douglass Houses, a NYCHA complex in Manhattan.

In addition to Patton, Subordinate 3 was also present at the beginning of filming. Subordinate 3 was aware that the video was for the RNC when Subordinate 3 came to the filming location, but was not asked or directed to go there. Unlike Patton, Subordinate 3 did not take leave of any kind on August 18. Patton told the OIG that she did not know if Subordinate 3 was on duty that day or whether Subordinate 3 took leave, even though Patton approved Subordinate 3's timesheet that week. Subordinate 3 told the OIG this appearance at the filming location happened during a work break, stating, "I believe we get one hour of leave . . . per day for a half an hour for lunch." Subordinate 3 did not seek ethics advice about attending the filming.

Although Resident 2 said he recognized Patton and Subordinate 3 as HUD personnel because he had previous interactions with them related to HUD activities, he did not recall Patton or Subordinate 3 indicating they were at the filming representing HUD. Resident 1 also said she recalled no direct references to Subordinate 3 being a HUD employee, and that Subordinate 3 was introduced that day by first name only.

Subordinate 3 recalled being on set for approximately 30 minutes, walking with Patton to the filming location, taking pictures, witnessing Patton getting her makeup done, as well as camera set-up and Resident 1's filming. Subordinate 3 did not engage in conversation with the NYCHA residents, but briefly spoke to the makeup artist and said hello to Resident 1. Subordinate 3 also recalled sending Resident 1 photographs of the filming at 3:57 p.m. that day, presumably during work hours.

Communication to NYCHA Residents on the Day of Filming Regarding the Purpose of the Video and Waivers

Patton told the OIG that she made it clear to the NYCHA residents at the time filming started that the video in which they were appearing would be aired at the RNC. Residents 1 and 2 both told the OIG that they knew on the day of the filming, based on what Patton told them directly, that the video was for the RNC.

The OIG observed in the video footage that a Video Production Company employee read the NYCHA residents waivers on camera to obtain permission to use the footage.²⁷ All the NYCHA residents responded to the waiver questions in the affirmative.²⁸ The waivers for Resident 1 and

²⁷ The OIG is not aware of any written waivers provided to the residents.

²⁸ Resident 2 responded in the affirmative after receiving assurances about him being able to see the video footage. Residents 1 and 2 both noted that they felt all the NYCHA residents participating in the RNC video received an

Resident 2 asked whether “the Trump campaign [had] permission to use this footage in any way they see fit.” The waiver for Resident 3, by contrast, asked only whether she gave Video Production Company permission to use the video that “Lynne is working on.” The waiver for Resident 4 asked only whether “Lynne” had permission to use this “in her video project.” Neither of these latter two oral waivers explicitly stated that the purpose of the video was for the Trump campaign.

In response to a draft version of this report, Patton asserted that each of the four residents was in the same room watching the waivers and interviews given by each of the other residents. Resident 2, by contrast, told the OIG that he was not present at least for the waiver given to Resident 1, and that the residents were not each consistently present in the room where filming took place.

Patton Poses Questions to NYCHA Residents Off-Camera During Filming

In reviewing the raw footage of the RNC video filming, the OIG observed that Patton asked the NYCHA residents questions directly related to her role as HUD Regional Administrator and about her stay at NYCHA public housing in that capacity. For example, Patton repeatedly referenced her stay at NYCHA housing units when she was interviewing Resident 1, including by stating, “[a]nd you know that . . . when I stayed in public housing, it did catch the attention of the President of the United States.” Patton asked Resident 1 about how things had been since Patton stayed at NYCHA public housing and took a more active role at NYCHA, asking, “have you seen things improve since then, and have you ever seen NYCHA receive that kind of attention before?” Patton also asked Resident 1, “[h]ow have you seen the day-to-day life improve since we forced new leadership here on the ground . . . at NYCHA . . .?” Patton similarly asked Resident 2 the following:

I’m the[] Regional Director . . . , President Trump appointed me to make sure that . . . NYCHA receives the attention that it deserves . . . did you see a spotlight being shown on . . . NYCHA over the last year because . . . of that involvement?

Patton also told Resident 4: “You can say I remember reading in the paper when Lynne Patton . . . from HUD was going to live” at NYCHA housing units.

During her interview, which took place before the OIG obtained and reviewed this video footage, Patton told the OIG that she did not ask questions about herself on the day of filming. Patton similarly told OSC attorneys in a January 25, 2021 email that, “only the [Video Production Company] employee asked questions referencing my month-long stay in NYCHA, not me.”

During the filming, Patton also asked more general questions about NYCHA, including questions about when NYCHA was at its best, and when it was at its worst. Patton asked Residents 1 and 3 whether NYCHA had received this attention before, and asked Resident 4, “are you grateful for the spotlight [President Trump] put on the New York City Public [Housing Authority]?” Patton

assurance that they would see the video before it aired. Resident 2 noted that he did not receive an advanced screening of the video.

also asked general questions about whether the residents had seen improvement with public housing.²⁹

Additionally, Patton used her role as interviewer to inform the residents of certain purported facts, as detailed below:

- Patton informed Resident 1 that NYCHA hired two contractors to support janitorial services;
- Patton informed Resident 1, Resident 2, and Resident 4 that the President signed a bill giving NYCHA more money than any administration since 1977;
- Patton informed Resident 1 that the President started a task force to address COVID in the inner city;
- Patton informed Resident 1 that when Congresswoman Alexandria Ocasio-Cortez first met with NYCHA residents in the Bronx, she said NYCHA should prioritize energy-efficient appliances;
- Patton informed Resident 2 crime had spiked in the previous four months;
- Patton informed Resident 2 about job programs that the Trump administration created;
- Patton informed Residents 1 and 3 that NYCHA is the largest public housing authority in the country, housing more people than the entire city of Miami;
- Patton informed Resident 3 she has always made sure the President understands that most residents of public housing, particularly NYCHA, are hard-working, rent-paying, taxpaying Americans;
- Patton informed Residents 2 and 3 that New York City Mayor Bill de Blasio had her position at HUD in the past; and
- Patton informed Resident 4 that one in six Hispanics voted for President Trump.

Patton also provided phrases for the residents to repeat in the video footage. For example, Patton said to Resident 1, “say [you were] invited to the White House . . . after Lynne Patton stayed with [you] because . . . of the conditions that the President saw . . . something like that.”

In the video footage, an individual retained by Video Production Company (Video Production Associate) referred to Patton by her role at HUD on several occasions. When Resident 3 referred to Patton by her first name, Video Production Associate stated, “don’t refer to [her as] Lynne” because “it won’t work in our video. . . . She’s HUD. . . . she’s the administration.” Video Production Associate also told Resident 4, “right now, you’re basically talking to HUD right here. [Patton] represents HUD . . . [as a] very high-ranking HUD officer. . . . [D]oesn’t it mean a lot that the administration is sending senior HUD officials into New York City to help us clean up the mess, right?” Video Production Associate later said, “[Patton] represents the administration.” Video Production Associate also reminded Resident 1, “Lynne Patton from HUD came in and

²⁹ Patton also asked other questions, including questions about the residents’ opinions of local leadership and how local leadership has done with public housing, about the size of the police force and resident thoughts on downsizing the police presence in New York City, and about putting illegal immigrants before black Americans in public housing.

actually lived here [at NYCHA].” Patton did not correct Video Production Associate or otherwise explain that she was present at the filming in her personal capacity, nor did anyone else present.³⁰

Video Production Associate also asked the residents questions about Patton while Patton was in the room, again referencing her role as Regional Administrator. For example, Video Production Associate asked Resident 2: “What does people like . . . HUD and Lynne, are they fighting for you?” Video Production Associate asked Resident 3: “And what about the new people from HUD that the President sent in?” Video Production Associate also told Resident 3, “I would say since [Patton is] sitting right here it seems like there is someone [from the administration] who’s interested in listening.” In response, Resident 3 said: “One of the ones I can say that has been out here on the frontline is Ms. Lynne Patton, the HUD Regional Director.”

During her interview with the OIG, which took place prior to the OIG’s viewing of the video footage, Patton stated, “the [Video Production Company] cameraman started asking questions, but he asked basic questions. He did not know the types of questions to ask. He asked things like how long have you been a resident of public housing, what do you think is the worst thing you’ve seen in public housing.” Regarding her own role in asking questions of the residents, Patton stated that she:

was able to interject, and I started asking off the top of my head just more specific questions, like I said what do you think of past NYCHA leadership? Do you think that they, you know, were -- were responsive to your concerns? What do you think of -- of, you know, the fact that 80 percent of NYCHA lost heat and hot water last year? These are things that the cameraman would not have known.

Patton explained her role as interviewer by stating that the RNC-video production team would not have known what questions to ask the NYCHA residents if she did not help. For example, Patton stated that the team would not have known that the residents had no heat the year before and to ask them how the heat and hot water improved during the Trump administration.

V. Patton’s Post-Production Interactions Regarding the RNC Video

Patton met with Subordinate 1 and Subordinate 2 the day after filming, on August 19, 2020. Subordinate 1 and Subordinate 2 both told the OIG that Patton informed them during this meeting that she had asked the NYCHA residents questions off camera during the filming. Subordinate 2 said this was surprising because Subordinate 2 had thought that Patton would not be asking questions based on her email correspondence with Williams and others on August 17, 2020. According to Subordinate 2, Patton relayed that she asked the questions because she felt the residents were more willing to open up with her asking them. Patton similarly told the OIG: “I think my presence there made [the NYCHA residents] feel more comfortable. They started laughing, smiling, letting their guard down.”

³⁰ In response to a draft version of this report, Patton asserted that she stated “countless times” throughout the filming that she was present in her personal capacity, requested that we include “the many times” that she stated this, and argued that the OIG’s “[f]ailure to do so represents outright bias.” However, the OIG viewed the entirety of the video footage from the filming, which contained no such statements from her.

Microsoft Word metadata shows that Patton edited a voiceover script for the RNC video on her work computer from 8:19 a.m. until 8:40 a.m. that day. At 8:42 a.m., Patton used her personal email to send an edited version of the script to several individuals, including one Video Production Company representative, noting that she had made one edit.

Later on August 19, Patton emailed two versions of potential RNC-video voiceover scripts to Subordinate 1 and Subordinate 2 from her HUD email address to their HUD email addresses. Patton told the OIG that she sent these versions to Subordinate 1 and Subordinate 2 so that they could see the differences between the two versions and because she wanted their opinions on whether the scripts violated the Hatch Act. Neither Subordinate 1 nor Subordinate 2 appears to have responded to this email.

Patton told the OIG that Video Production Company began editing the footage after the video's filming. According to Patton, she texted with a Video Production Company employee during this period. Patton said she used her personal email to send this employee pictures from the public domain for use in the RNC video, including pictures of "distressed" NYCHA conditions. Patton researched when she sent these pictures during her OIG interview, and said she sent them on August 25, 2020, at 11:55 a.m. Patton added that she did not know if she sent these pictures during work hours, but noted she could have done this during her lunch break. Patton said she probably only saw the RNC video twice during her post-production interactions with Video Production Company.

On August 26, 2020, Patton used her personal email account to write to an individual from a media company about the RNC video, stating that she wanted to make sure that the video highlighted the "horrific conditions" at NYCHA, that it included sufficient footage of Resident 1, and that Video Production Company used Resident 1 or someone else to highlight Patton's stay in public housing. Additionally, undated screenshots of text messages provided by Video Production Company show that Patton used her personal phone to send a message to Video Production Associate and a Video Production Company employee stating: "And add a line from . . . [Resident 1] about me living in public housing at 1:52," and another one stating: "I thought we could squeeze in some distressed conditions pic[ture]s between 00:57 – 1:000 (see attached pics)."

Although Williams did not provide testimony to the OIG during this review, Bohling recounted her conversations with him following the RNC-video filming during her OIG interview. Bohling said she spoke with Williams a couple of times on the topic during August 19 or 20, and both Bohling and Williams agreed that Patton did not follow Williams' August 17 advice to her. Bohling stated that Williams told her he could have been clearer by adding one extra sentence to his August 17 email specifically indicating that Patton "should go nowhere near the production of a video about NYCHA that is a campaign video" and that Patton should not be physically present during this video filming. Bohling told the OIG that both she and Williams thought his email had been clear, but that Patton's argument afterwards was she did not do anything wrong because she was behind the scenes.

Patton told the OIG that, because of the guidance she received prior to her participation in the RNC video, she believed that as long as her participation resulted in no new video or audio of her, she

would be following the guidance, and she could therefore ask the NYCHA residents questions off camera as she did. When asked by the OIG what she would have done differently in retrospect, Patton said she would have approached the residents herself, made sure the residents were a bit more “media savvy,” and “maybe [she] would have resigned.”

VI. Patton’s Contemporaneous Discussions with NYCHA Residents about Forming a Residential Management Corporation

During her OIG interview, Patton explained that NYCHA residents have the ability to form a Residential Management Corporation (RMC) and become a management agent for NYCHA. At the time of the RNC-video filming, NYCHA residents were attempting to meet with HUD representatives to learn more about forming an RMC. Indeed, email evidence shows that Resident 2 reached out to HUD about forming an RMC as early as 2018, and Patton told the OIG that Resident 1 had been asking her for weeks about an RMC meeting and that NYCHA residents had wanted answers from HUD about forming an RMC for a while.³¹

On August 13, 2020, just days before the filming of the RNC video, Resident 2 emailed Daniel Sherrod, Director of HUD’s Office of Field Operations for Prevention, Recovery, and Transformation of Federal Monitorships in Public and Indian Housing, about the formation of an RMC, and Sherrod sent an email to Patton on August 14, 2020, about setting up a meeting on this topic. On August 17, 2020, the day before the RNC-video filming, Patton responded to Sherrod’s email by noting this would work for her calendar. Patton told the OIG she responded to this email because Resident 1 had reminded her about the subject around that day.

On August 31, 2020, Sherrod emailed Patton to tell her he was no longer planning on scheduling an RMC meeting. Patton responded that same day by stating: “Sorry for the confusion, but can we PLEASE have to have [sic] the RMC meeting because I’ve personally promised . . . [Residents 1 and 2 and others] that we would. Sept. 3. I spoke to . . . [Resident 2] yesterday and he asked about it. Win win.” Patton told the OIG that she made this “personal promise” in her HUD capacity, and that she had promised the NYCHA residents that they would get answers they were seeking about RMCs.

Patton told the OIG that her promise of an RMC meeting did not influence the NYCHA residents’ decision to participate in the RNC video, but admitted that the timing “look[ed] weird.”³² Sherrod similarly told the OIG that he did not think Patton promised the residents the RMC meeting in exchange for their participation in the RNC video, nor did he think the availability of this meeting was related to the RNC video. Resident 2 told the OIG that he did not feel Patton agreed to an RMC meeting because of his participation in the RNC video, nor did he feel that if he had not participated in the video the RMC meeting would not have happened. Resident 2 reiterated that he was not promised anything for participating in the RNC video “[o]utside of the opportunity to advocate.”

³¹ In Patton’s interview, she indicated that HUD was helping the residents understand how to establish an RMC and specifically noted that HUD wanted to make clear that NYCHA was under no obligation to hire the RMC even if one was formed.

³² Email evidence shows that this meeting was scheduled. However, Sherrod could not recall if the meeting ever actually occurred.

VII. Patton's Ethics Training and Consultations

A HUD ethics attorney confirmed for the OIG that Patton attended annual ethics training sessions in 2017, 2019, and 2020.³³ The 2020 training included content related to Sections 5 C.F.R §§ 2635.702-705, and the Hatch Act.³⁴ Additionally, Patton received guidance from HUD ethics officials regarding her stay at NYCHA housing in January 2019.

On April 24, 2018, then-HUD General Counsel Paul Compton sent a memorandum to all Regional Administrators, including Patton, titled, "Speaking at Partisan Political Campaign Events." This memorandum discussed how to participate in political events "without running afoul of the Hatch Act." The memorandum also listed procedures to follow for obtaining approval from the Department to work on a political campaign.

In September 2019, OSC determined that Patton had violated the Hatch Act on two prior occasions and warned her that any additional violations would be considered willful and knowing, which could result in further action against her.³⁵ During her December 2020 interview, Patton informed the OIG that her "past violations" prompted her to request and begin participating in biweekly meetings with Regional Counsel to discuss ethics issues that could result from her political activity, and that these meetings had begun at some point in the preceding year-and-a-half to two years.

According to Subordinate 2, these meetings began around March 2018, well prior to Patton receiving her Hatch Act warning from OSC, and Simmons, Levin, and Subordinates 1 and 2 attended these biweekly meetings with Patton. Simmons recalled that he began participating in these meetings in June 2018 after he was promoted to Regional Counsel but that these meetings had begun prior to his promotion.³⁶

Subordinate 2 informed the OIG that on February 4, 2020, Patton discussed taking a leave of absence to work on the reelection campaign for President Trump, but that she never ultimately took this leave of absence. Indeed, Subordinate 2 recalled several conversations with Patton about her potentially taking a leave of absence for political activity, including the potential of her taking such leave beginning around Labor Day 2020 through October 2020. Patton sent a memorandum to Levin and Simmons, copying Subordinate 1 and Subordinate 2, with questions about what would be required to take this leave. On July 23, 2020, HUD ethics officials responded to Patton's inquiry and informed her that both the Hatch Act and federal ethics regulations would still apply to any federal employee working on a political campaign even if he or she were on leave at the time.³⁷

³³ This ethics attorney did not have a record that Patton attended annual ethics training in 2018.

³⁴ The content of the 2017, 2018, and 2019 ethics training was similar with respect to 5 C.F.R. § 2635.705, but detailed information related to the Hatch Act appeared only in the 2020 training.

³⁵ See Letter from Erica Hamrick, Deputy Chief, U.S. Office of Special Counsel, to Noah Bookbinder, Exec. Dir., Citizens for Responsibility and Ethics in Washington (Sept. 18, 2019).

³⁶ Simmons also noted that Patton attended numerous meetings with John Cahill, former Regional Counsel, Paul Compton, former General Counsel, Linda Cruciani, former Deputy General Counsel, and Lindsey Allen, Assistant General Counsel, from January 2017 until May 2018.

³⁷ This memorandum stated: "It is important to note that regardless of whether you are considered a paid or unpaid volunteer or are on annual leave or LWOP, you will be subject to all applicable government ethics, standards of

Analysis

I. Patton's Activities Associated with the Production of the RNC Video Violated 5 C.F.R §§ 2635.702 and 2635.101(b)(14)

5 C.F.R § 2635.702 generally prohibits any federal employee from using his or her public office for “the private gain of friends, relatives or persons with whom the federal employee is affiliated in a nongovernmental capacity.”³⁸ And 5 C.F.R. § 2635.101(b)(14) mandates that federal employees “shall endeavor to avoid any actions creating the appearance that they are violating the law,” including Section 2635.702, as judged “from the perspective of a reasonable person with knowledge of the relevant facts.”³⁹

In this case, the evidence shows that Patton's activities associated with the production of the RNC video violated Section 2635.702 or, at a minimum, created the appearance that she violated this ethics regulation, in violation of Section 2635.101(b)(14).

Patton Induced NYCHA Residents to Provide a Benefit to the Trump Campaign

Section 2635.702(a) clarifies that one particular manner in which a federal employee may violate Section 2635.702's general prohibition is by using or permitting the use of his or her government “position or title or any authority associated with [his or her] public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit . . . to . . . persons with whom the employee is affiliated in a nongovernmental capacity.”⁴⁰

Here, the evidence shows that Patton and others involved in producing the RNC video viewed the participation of NYCHA residents in it as a “benefit” for the Trump campaign, with which Patton was “affiliated in a nongovernmental capacity.”

Patton herself told the OIG that the purpose of the video was to promote the reelection of President Trump by showing improvements made to NYCHA under his administration, that the video was of sufficient “benefit” to the Trump campaign that they were willing to pay for its production, and a version of the video showing the NYCHA residents in fact aired during the RNC on August 27, 2020, as part of the campaign's effort to reelect President Trump.

Patton's “affiliation” with the Trump campaign and its efforts to elect a particular candidate to public office, a distinctly “nongovernmental” endeavor, is also plain. For example, Patton told the OIG that she personally discussed the idea of producing the RNC video with the campaign's senior

conduct, Hatch Act provisions, and Agency guidance while you remain a federal employee, including the guidance provided by J. Paul Compton, Jr., General Counsel, to all Regional Administrators, on April 24, 2018” Memorandum from Ventura Simmons, Regional Counsel, U.S. Dep't of Hous. and Urban Dev., to Lynne Patton, Regional Administrator, U.S. Dep't of Hous. and Urban Dev. (July 23, 2020). This memorandum also stated that while speaking in her personal capacity, Patton could only speak about matters in the public domain related to her official duties or within the scope of HUD's mission, and contained guidance regarding travel, fundraising, speaking, and outside income earned while on leave status. *See id.*

³⁸ 5 C.F.R § 2635.702.

³⁹ *Id.* § 2635.101(b)(14).

⁴⁰ *Id.* § 2635.702(a).

leadership, including Campaign Official 1 and Campaign Official 2. Patton also informed colleagues at HUD that the “White House” wanted her to do the video, and that she needed to “to do whatever the WH/Campaign asks of me to help POTUS [get] re-elected.”

Further, the evidence shows that Patton used her government position, title, and “authority associated with [her] public office” to “induce” Resident 1 to appear in the RNC video and then elicit particular responses of benefit to the Trump campaign from Residents 1-4.

As an initial matter, the evidence shows that the only reason Resident 1 participated in the RNC video at all was because Patton herself solicited her participation. Resident 1 told the OIG that she probably would not have participated in the production of the RNC video had anyone other than Patton asked her to do so. And Patton’s particular position with HUD played an essential role in her ability to secure the participation of Resident 1 and the other NYCHA residents in the video.

Resident 1 first met Patton because her position as NYCHA Resident Council President required her to interact with Patton, who as HUD Regional Administrator oversaw NYCHA, to discuss matters of importance to NYCHA residents. Although the evidence indicates that Patton and Resident 1 may have developed a friendship through these interactions and discussed non-NYCHA matters on occasion, Resident 1 made it clear during her OIG interview that Patton’s position with HUD remained central to their relationship. For example, Resident 1 told the OIG that a majority or almost all of her conversations with Patton were related to housing, NYCHA, and HUD issues. Resident 2 similarly told the OIG that he knew Patton solely because of her role at HUD and had never communicated with Patton outside of HUD-related meetings prior to his participation in the RNC video.

Residents 1 and 2 also told the OIG that they viewed their participation in the RNC video as a means of advancing issues of importance to NYCHA residents, which fell squarely within the purview of Patton’s “authority associated with [her] public office.” For example, Resident 1 said a primary factor in her decision to participate in the RNC video was that Patton had always helped her with HUD-related inquiries; when Resident 1 reached out to Residents 2 and 3 to solicit their participation in the video, Resident 1 told the other residents the video would provide them an opportunity to talk about NYCHA; and Resident 2 similarly told the OIG that he agreed to participate in the video because Resident 1 told him Patton wanted to make a video about NYHCA and he believed this would give him a platform to advocate for housing issues.

Thus, the evidence shows that Patton’s government position and its influence over housing issues was a key factor in inducing the NYCHA residents to appear in the RNC video in the first place. But the evidence also shows that Patton went on to use or permit another to use her position, title, and authority within the government to “induce” particular responses from the NYCHA residents of benefit to the Trump campaign during the filming of the RNC video as well.

For example, Patton:

- Repeatedly invoked her position, title, and the authority she had over NYCHA as HUD Regional Administrator to elicit particular responses with statements and questions such as the following:

- “I’m the[] Regional Director . . . President Trump appointed me to make sure that . . . NYCHA receives the attention that it deserves”
- “[D]id you see a spotlight being shown on . . . NYCHA over the last year because . . . of that involvement?”
- “How have you seen the day-to-day life improve since we forced new leadership here on the ground . . . at NYCHA . . . ?”
- Repeatedly referenced and solicited particular responses from the NYCHA residents regarding her stay in NYCHA housing units, something she did as part of her official duties as HUD Regional Administrator, including with statements or questions such as the following:
 - “And you know that . . . when I stayed in public housing, it did catch the attention of the President of the United States.”
 - “Have you seen things improve since then, and have you ever seen NYCHA receive that kind of attention before?”
 - “You can say I remember reading in the paper when Lynne Patton . . . from HUD was going to live” at NYCHA housing units.
 - “Say [you were] invited to the White House . . . after Lynne Patton stayed with [you] because . . . of the conditions that the President saw . . . something like that.”
- And repeatedly permitted a third party interviewing the NYCHA residents in her presence to invoke her government position and authority to elicit particular responses from them without objecting, including the following instances:
 - “[D]on’t refer to [her as] Lynne” because “it won’t work in our video She’s HUD . . . , she’s the administration.”
 - “[R]ight now, you’re basically talking to HUD right here. [Patton] represents HUD . . . [as a] very high-ranking HUD officer”
 - “[D]oesn’t it mean a lot that the administration is sending senior HUD officials into New York City to help us clean up the mess, right?”
 - “Lynne Patton from HUD came in and actually lived here [at NYCHA].”
 - “What does people like . . . HUD and Lynne, are they fighting for you?”
 - “[W]hat about the new people from HUD that the President sent in?”
 - “I would say since [Patton is] sitting right here it seems like there is someone [from the administration] who’s interested in listening.”

Patton’s conduct in this regard violated the specific provisions of Section 2635.702(b) or, at a minimum, created the appearance that she did so.

Additionally, at the time of the RNC video filming, NYCHA residents, including Resident 1 and Resident 2, were attempting to meet with HUD representatives to learn about forming an RMC, and an RMC meeting was scheduled contemporaneously with the RNC video filming. Although Patton said this RMC meeting did not relate to the NYCHA residents’ participation in the RNC video, she admitted that the timing “look[ed] weird.”

Notwithstanding the testimony denying any connection between the RMC meeting and the RNC video, the proximity in timing between the meeting and the residents’ participation in the video created an appearance that the NYCHA residents were granted the RMC meeting as a result of their participation in the RNC video. The evidence shows that Resident 2 reached out to HUD as early as 2018 about RMCs, and a meeting about RMCs was scheduled over two years later, right

after the filming of the RNC video. This appearance issue underscores the general risks inherent in a high-level HUD official with purview over NYCHA participating in an RNC video about NYCHA that included NYCHA residents when NYCHA residents had business or meetings with HUD of importance to them. The RMC issue also buttresses the totality of the facts supporting the finding that, at minimum, Patton’s conduct regarding the RNC video ran afoul of 5 C.F.R. § 2635.101(b)(14), which confers upon government employees a duty “to avoid any actions creating the appearance that they are violating the law or . . . ethical standards.”

Patton Used and Permitted the Use of her HUD Regional Administrator Position to Imply that HUD Endorsed President Trump’s Personal Efforts Seeking Re-Election

Section 2635.702(b) states that a federal employee shall not “use or permit the use” of his or her government “position or title or any authority associated with [his or her] public office in a manner that could reasonably be construed to imply that [his or her] agency or the [g]overnment sanctions or endorses [his or her] personal activities or those of another.”⁴¹

In facilitating the production of the RNC video, Patton repeatedly invoked her government position, title, and activities or permitted others to do so in a manner that could reasonably be construed by the NYCHA residents appearing in the video to mean HUD or the federal government endorsed Patton’s “personal activity” of supporting the Trump campaign.

The evidence indicates Residents 1 and 2 at least understood by the day of filming that the video in which they were participating would be used at the RNC, but it is not clear from the record that Residents 3 and 4 understood this. Patton told the OIG that she informed all the NYCHA residents on the day of filming that the video would be used at the RNC, but the OIG was unable to interview Residents 3 and 4, and footage from their interviews shows that those producing the video told them only that the video was something “Lynne is working on” or “[Patton’s] video project.”

Regardless of what Patton or others may have told the NYCHA residents about her role in producing the RNC video, Patton’s appearance on the day of filming and repeated invocation of her position, title, and duties as HUD Regional Administrator to elicit responses from the residents could reasonably be construed by each of those residents to imply that HUD or the federal government itself, including the White House, had “endorsed” her support of the Trump campaign.⁴² Indeed, Resident 1 specifically indicated during her OIG interview that NYCHA residents would not have viewed Patton’s personal support of the Trump campaign as something distinguishable from the official authority granted to her by the government: “[O]ne thing you have to realize is that we look at [Patton] as a . . . HUD Regional Director, not as . . . [a] Trump aide. . . . as far as we’re concerned, she’s just HUD. . . . [W]e interact with her as HUD Regional Director.”

Patton also violated or created the appearance that she violated Section 2635.702(b) in another manner as well. The evidence shows that Patton specifically sought and obtained responses from

⁴¹ *Id.* § 2635.702(b).

⁴² The OIG also notes that Subordinate 3, an individual who the NYCHA residents knew to be a HUD employee, made an appearance on the day of filming as well, and later sent Resident 1 photographs of the filming during work hours.

the NYCHA residents explicitly referencing her position, title, and duties as HUD Regional Administrator, which Patton knew would be combined with images of her and Secretary Carson performing their official duties in the RNC video. In so doing, Patton “permitted” the Trump campaign to use her government position in a manner that a person viewing the video could reasonably construe as HUD or some portion of the federal government endorsing President Trump’s reelection effort.

For example, Patton communicated with those editing the RNC video footage to provide them with pictures to use in the video, and to suggest that specific content from the interviews should be included, including a reference to her stay in NYCHA housing units, and to review and edit a version of the voiceover script. And footage from the video that aired during the RNC showed Resident 2 stating: “[S]ince HUD came in with Lynne Patton as the Regional Director for HUD, it helped us identify some longstanding systemic problems that we are now putting on the table and having discussions on,” which was combined with images of Patton carrying out official duties, including photographs of Patton with Secretary Carson and President Trump.

In short, Patton’s extensive participation in originating and shaping the particular content of the video shows that she actively “permitted” the use of her government position in a manner that could be so construed.

Patton Used and Permitted the Use of her HUD Regional Administrator Position to Imply that HUD Endorsed the Trump Campaign as an Enterprise

The specific provisions of Section 2635.702(c) are also instructive in demonstrating why Patton’s conduct violated the federal ethics regulations.⁴³ That subsection supplements similar terms found in Section 2635.702’s general prohibition and states that a federal employee “shall not use or permit the use of [his or her] [g]overnment position or title or any authority associated with [his or her] public office to endorse any product, service or enterprise.”⁴⁴

The terms “product, service or enterprise” appear most naturally suited to describe commercial endeavors, but Section 2635.702’s general prohibition states: “The specific prohibitions set forth in paragraphs (a) through (d) of this section apply this general standard, but are not intended to be exclusive or to limit the application of this section.”⁴⁵ In this regard, the term “enterprise” – which can be defined generally as a “project or undertaking” – could easily be interpreted to include a political campaign within the contemplation of Section 2635.702’s express terms.⁴⁶ This is especially so given that federal-employee endorsements of political activity are so robustly prohibited by other federal laws and policies, including the Hatch Act.

For all these reasons, the evidence is clear that Patton used or permitted the use of her government position, title, and authority associated with her public office to “endorse” or “benefit” the Trump campaign by her involvement with the RNC video, which is prohibited by the specific terms of Section 2635.702(a) through (c) and the regulation’s general prohibition against using one’s

⁴³ See 5 C.F.R § 2635.702(c).

⁴⁴ *Id.* § 2635.702.

⁴⁵ *Id.*

⁴⁶ *Id.*

government position for the “private gain” of others. The evidence similarly shows that, at a minimum, Patton failed to “avoid any actions creating the appearance” of noncompliance with federal ethics regulations through her involvement with the RNC video when judged “from the perspective of a reasonable person with knowledge of the relevant facts,” in violation of Section 2635.101(b)(14).⁴⁷

II. Patton’s Activities Associated with the Production of the RNC Video Are Not Covered by the “Safe Harbor” Provision Found in 5 C.F.R § 2635.107

5 C.F.R § 2635.107 states that a federal employee “who has engaged in conduct in good faith reliance upon the advice of an agency ethics official” shall not be subject to disciplinary action if the agency determines that the conduct was in violation of the federal ethics regulations, “provided that the employee, in seeking such advice, . . . made full disclosure of all relevant circumstances.”⁴⁸

In this case, Patton is no longer a federal employee and therefore not currently subject to agency disciplinary action for her participation in the RNC video in violation of Sections 2635.702 and 2635.101(b)(14) described above. But were Patton still a federal employee, the “safe harbor” provision found in Section 2635.107 would not shield her from disciplinary action because she did not make a “full disclosure of all relevant circumstances” when seeking advice from HUD ethics officials nor did she act in “good faith” compliance with the ethics advice she received.

The evidence shows that Patton consulted with HUD ethics officials about her participation in the RNC video in two separate interactions, and Patton indicated to the OIG that one of “several” mitigating factors was that she “voluntarily sought and relied upon to my detriment both legal and ethical guidance from HUD and the White House prior to filming the [RNC] video.” The OIG agrees that Patton voluntarily sought guidance but we disagree that she disclosed all relevant circumstances and relied upon the guidance she received in good faith.

Patton first raised the RNC video with HUD ethics officials in a video conference with Levin and Simmons on August 12, 2020.

At that time, Patton was planning to appear on camera or narrate a roundtable with NYCHA residents in the RNC video, which she told Levin and Simmons. Patton told the OIG that she did not consult with Levin or Simmons about the possibility of her asking the NYCHA residents questions off camera. Levin and Simmons both told the OIG that neither of them offered Patton any ethics guidance during the conference and instead told Patton that she should speak to her leadership and advise her program office of her desire to participate in the video. Later that same day, Patton texted Simmons to inform him of a meeting about the RNC video she had with DeMarzo and Hughes. In response, Simmons verbally told Patton that she would be in violation of the ethics regulations if she appeared in the RNC video in the manner she had proposed unless she resigned her position with HUD before doing so.

Patton’s second interaction with HUD ethics officials occurred throughout the day on August 17, 2020.

⁴⁷ *Id.* § 2635.101(b)(14).

⁴⁸ *Id.* § 2635.107.

This second interaction began when DeMarzo and Patton copied then-Principal Deputy General Counsel Williams on an email exchange regarding an earlier discussion they had about the RNC video that did not include Williams or any other HUD ethics official. In this exchange, Patton stated that, rather than appearing in the RNC video herself, she now planned to assist with “off-camera production” of the video in her personal capacity, but would not be discussing her “personal stay in NYCHA” and would “not be the one asking [NYCHA residents] questions directly and/or on camera.” Instead, Patton stated that the “better scenario” would be for “an independent narrator” to “tell[] the story of [her] stay in NYCHA, along with actions that the Secretary and [she had] taken in [her] official role at HUD to improve NYCHA” and “ask[] NYCHA residents direct questions about how their living conditions have improved at NYCHA, on or off camera.”

After this email exchange, Patton spoke by phone with DeMarzo, Hughes, and Williams. Patton made conflicting statements during her OIG interview regarding whether she may have somehow indicated to Williams during this call that she might possibly ask NYCHA residents questions off camera on the day of filming, which she had said she would not be doing in the email she sent Williams prior to the call. According to Patton, Williams told her during this call that she could participate in the production of the RNC video as long as any images of her or recordings of her voice used in the video had already appeared in the public domain. But other evidence calls the accuracy of this summary into question and shows that Williams did not provide approval for Patton to participate in the RNC video in the manner she ultimately did.

Patton herself wrote to Subordinate 1 and Subordinate 2 after this call to tell them Williams “basically said he didn’t want [her] doing the video . . . at all,” that she “couldn’t discuss NYCHA or [her] stay at NYCHA” if she did assist in producing the video, and that if there is any reference to Patton’s stay at NYCHA, it “needs to be told by an independent voiceover narrator or ‘picture diary’ without [her] . . . referencing it.”

Subordinate 1 told the OIG that Williams asked Subordinate 1 after the call to encourage Patton not to do the RNC video, telling Subordinate 1 that Patton could not use her name or image in the video, participate in the production of the video, or “really have anything, substantively, to do with it,” which caused Subordinate 1 to tell Patton it was not “wise” to participate in the video at all. Williams’ subordinate Bohling likewise told the OIG that Williams told her after this call that Patton could not participate in the video. Bohling also told the OIG that Williams was not aware of the possibility that Patton might participate in the video by interviewing the NYCHA residents off camera.

Williams memorialized his final guidance to Patton on the subject in an email shortly after his August 17 call with her. In this email, Williams first told Patton that she could not “talk about or discuss anything” that had “happened in [her] official role,” including “anything done to improve NYCHA, or [her] stay in NYCHA” in a campaign video of any kind.

Williams then specifically referenced what Patton had described as the “better scenario” in her earlier email to him, which would involve an “independent narrator” telling the story of her stay at NYCHA and actions she and Secretary Carson had taken to improve NYCHA, including by

asking the NYCHA residents questions, whether “on or off camera.” Particularly, Williams stated: “Regarding the better scenario, what the campaign or the RNC decide to do, *absent your participation*, is up to the campaign and the RNC, and well beyond HUD’s purview,” but if the RNC and Trump campaign chose to make such a video, Patton “should not be involved (meaning no new video or audio of [her] or [her] voice included in the final product, nor anything that lists [her] title as HUD RA).”⁴⁹

Williams’s advice to Patton made clear that any campaign video referencing Patton’s role at HUD, including actions she took in her official capacity such as her stay at NYCHA, would need to be produced “absent [Patton’s] participation” if she wished to remain in compliance with the ethics regulations. To the extent Williams conveyed in this email that the “meaning” of Patton “not be[ing] involved” with such a video was that there would be “no new video or audio of [her] or [her] voice included in the final product,” Patton should not have interpreted this as the sole criteria for her “not be[ing] involved” given the overall context of this email and her earlier interactions with Williams and other HUD ethics officials.⁵⁰ This is particularly so because the evidence indicates Williams was almost certainly not even aware of a potential scenario in which Patton would participate in the production of the RNC video by asking the NYCHA residents questions off camera that they would then answer on camera, as she did on the day of filming, meaning Williams had no cause to opine on whether this would be permissible in his email to her. Indeed, Patton had told Williams in her email referencing the “better scenario” that she would *not* be asking the NYCHA residents questions “on or off camera.”

Nonetheless, Patton told the OIG that she interpreted Williams’ advice to mean that while it would be preferable if she did not participate with any aspect of the RNC video, it would still be permissible for her to participate so long as this did not result in any new audio or video of her in the final product, meaning she could assist in producing the video by asking the NYCHA residents questions off camera. But even if this is credited as accurate, there is nothing in the advice that Williams or any other HUD ethics officials gave her that provided a “good faith” basis for her to participate in the video in the particular manner that she ultimately did. Indeed, the advice Patton received clarifies that she should not have participated in that manner.

Williams told Patton she should not “talk about or discuss anything” that had “happened in [her] official role,” including “anything done to improve NYCHA, or [her] stay in NYCHA” in a campaign video, and that the video should not contain “anything that lists [her] title as HUD RA.” In fact, Patton herself acknowledged in a text to colleagues that Williams told her she “couldn’t discuss NYCHA or [her] stay at NYCHA” if she did assist in producing the video.

The plain implication of this ethics advice is that Patton should not invoke or even mention her government position, title, or activities like her NYCHA stay at all if participating in the production of the RNC video, regardless of whether she was on or off camera. But Patton ignored this advice

⁴⁹ Emphasis added.

⁵⁰ The OIG notes that any potential ambiguities in Williams’ advice may have been lessened had Williams conveyed this advice in a more comprehensive written legal opinion, as opposed to an email, and that the earlier advice Patton received from Levin and Simmons was not formally documented in writing at all. In this regard, the OIG notes that we have previously commented on how formal documentation of OGC ethics advice would benefit the Department. *See, e.g.,* Office of Inspector Gen., U.S. Dep’t of Hous. and Urban Dev., 2018SI0060751B, Investigation Report, *Investigation into Alleged Misuse of Office by the Secretary for the Private Gain of a Relative* (2020).

and directly asked or permitted others to ask questions of the NYCHA residents that repeatedly invoked her HUD position, title, and activities to induce responses from the residents specifically referencing her position, title, and activities in violation of the ethics regulations, as discussed above.

The notion that Patton could have engaged in such conduct in “good faith” reliance on the advice she received from Williams is not reasonable from an objective standpoint, and is also undermined by what others told the OIG about how they interpreted this advice. For instance, Subordinate 2 indicated surprise when learning that Patton asked the NYCHA residents any questions on the day of filming based on the email correspondence between Patton and Williams, and Bohling told the OIG she and Williams both agreed Patton had not followed his advice when they learned of Patton’s involvement that day. According to Bohling, Williams believed his advice had conveyed to Patton that she could not take any role in the video and that she should not be physically present during the filming of such a video.

Indeed, the notion that Patton engaged in the particular conduct she did on the day of filming in “good faith” reliance on the advice of Williams is further undermined by the fact that Patton was already on notice that her government work and political activities were incompatible and should be distinctly separated before she ever consulted with Williams. In September 2019, OSC determined that Patton violated the Hatch Act on two prior occasions and warned her that any additional violations would be considered willful and knowing, which could result in further action against her.⁵¹ Patton herself recognized the significance of this in relation to her participation in the RNC video in a text message to Subordinate 2 after receiving the advice Williams gave her, saying that Subordinate 1 was “concerned that if [Patton] accidentally or blatantly violate[d] [the law] now that [she had] talked to [Williams] and not just [Simmons] that HQ will honor the OSC recommendation & terminate [her].”

Under the circumstances, “good faith” reliance for Patton would have been to follow the most conservative course under her own purported interpretation of Williams’ advice and not participate in the RNC video at all. But instead, the evidence shows that Patton remained in search of some grey area that would allow her to participate without “blatantly violating the laws” or that “might pass the Hatch Act . . . barometer,” even after receiving Williams’ advice. It appears Patton herself recognized she had not found such a suitable grey area after participating in the RNC video, as she was unwilling to fully disclose the details of her participation in her interview with the OIG and affirmatively misstated her role in communications with OSC, telling that agency, for example, that “only the [Video Production Company] employee asked questions referencing my month-long stay in NYCHA, not me.”⁵²

⁵¹ See Letter from Erica Hamrick, Deputy Chief, U.S. Office of Special Counsel, to Noah Bookbinder, Exec. Dir., Citizens for Responsibility and Ethics in Washington (Sept. 18, 2019).

⁵² In response to a draft version of this report, Patton stated that the “substandard quality of guidance [she received from HUD ethics officials] should be a continuing mitigating factor . . .” and that she was not aware “of the existence of the Merit System Protection Board [(MSPB)] or that [she] could have sought legal and ethical guidance from OSC directly.” Patton did not articulate how knowledge of the existence of the MSPB would have impacted her conduct here, or how it could have any bearing on the OIG’s evaluation of it. With respect to the notion that Patton could have sought advice from OSC about her participation in the video, our investigation found that she did not make a full disclosure of relevant facts to the HUD ethics officials with whom she did consult, nor did she

Simply put, the safe-harbor provision found in Section 2635.107 provides no protection to Patton in this case. The evidence does not establish that Patton made a “full disclosure” to Williams or any other HUD ethics official regarding the particular conduct she would engage in when participating in the RNC video, and that conduct is inconsistent with both the ethics regulations and the ethics guidance Patton did receive.⁵³

III. Patton’s Conduct Highlights the Need for OGC to Clarify Employees’ Roles and Responsibilities in the Department’s Ethics Program

The evidence shows that Patton’s personal political activity was a substantial focus of regular, biweekly meetings with Simmons, Levin, Subordinate 1, and Subordinate 2, which began as early as 2018 and continued through 2020. The evidence shows that Patton sought advice on her participation in the August 2020 RNC video during these meetings, in addition to other consultations with OGC and discussions with her subordinates.

Patton told the OIG she initiated these biweekly meetings because of her “past violations,” presumably of the Hatch Act. Patton also described these meetings by stating, “we review maybe some of the tweets I’ve made. We review some of the posts I’ve done. We review . . . any sort of . . . updates . . . to ethics We review any sort of potential . . . scenarios,” such as when she was “approached by . . . companies to highlight . . . things on Instagram, which is separate and personal.”⁵⁴

Simmons told the OIG that the topics discussed at these biweekly meetings included the Standards of Conduct, the Hatch Act, and social media use, noting that Patton understood how high profile she was, and that is why these meetings were held. Levin said that the biweekly meetings with Patton were held “just to go over any question she . . . may have regarding ethics or other matters,” noting, for example, that Patton “had talked about the campaign wanting her to take a leave of absence or, otherwise get involved so that she could . . . do campaigning on behalf of . . . then candidate President Trump.” Subordinate 2 recalled that the attendees at these meetings “frequently review[ed] the Hatch Act guidelines to make sure [Patton] underst[oo]d[] what[] [was] allowed, what[] [was] not allowed, and also misuse of position . . . things like that.”

Both Levin and Simmons told the OIG that the inclusion of Patton’s subordinates in these biweekly meetings was helpful to OGC because this allowed her subordinates to hear the guidance Patton received and informed them regarding what they could or could not do as Patton’s subordinates. Simmons stated that, until OGC determined that one of Patton’s activities was outside the scope of her subordinates’ duties, it was acceptable in his view for the subordinates to be present during discussions regarding that activity. Simmons also told the OIG he viewed Subordinate 2 as a “kind of partner in ensuring compliance,” as Subordinate 2 was helpful to OGC in determining which of

follow the advice she received in good faith. Moreover, OSC does not provide legal or ethical guidance to federal employees regarding the regulations at issue in this matter, Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. 2365.

⁵³ See 5 C.F.R § 2635.107.

⁵⁴ The OIG notes that to the extent any of these consultations with OGC concerned Patton’s prior conduct, such as prior tweets or social media posts, Patton would not have been seeking ethics advice but rather a review of conduct for violation, and that is not an activity in which any subordinate should have been required to participate.

Patton's activities fit within her official duties for HUD and in persuading Patton to accept the advice she received.

As a threshold matter, we question whether Patton's regular and frequent discussions about personal political activity with subordinates was an appropriate use of their time. We note that this conduct could implicate 5 C.F.R § 2635.705, which states that a federal employee "shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation."⁵⁵

Simmons originally told the OIG in an interview that he did not inform Patton that she should not include Subordinates 1 or 2 in these meetings even though he did at times tell Patton to exclude other subordinates from participating. However, after reviewing draft excerpts of this report, Simmons later stated that he did communicate and discuss concerns about the inclusion of Subordinates 1 and 2 to Patton, but determined that it was within the scope of these subordinates' duties and in the "best interest of HUD" for them to participate. Simmons further stated that he and Levin determined that the inclusion of Subordinates 1 and 2 was appropriate because Subordinate 1 was a political employee and Subordinate 2 was a management official, and that it was consistent with prior precedent. Levin similarly stated after reviewing draft excerpts of this report that she and Simmons considered the inclusion of Patton's subordinates in these meetings and structured the meetings so that the subordinates attended only "appropriate" portions of them, even though Levin had originally stated in her OIG interview that Subordinate 2 was generally present for the entirety of these biweekly meetings.⁵⁶

In response to a draft version of this report, OGC stated that these biweekly meetings were intended to ensure "ethics concerns are identified and all individuals with a role relevant to planned activities are aware of the ethics requirements and what steps must be taken to achieve compliance with those requirements." OGC further noted that the meetings show "a commitment to ethical behavior and should be considered a best practice." OGC also offered a description of the purpose of these meetings that differed from what Patton told the OIG, which stated:

[T]he purpose of the[se] meetings was not narrowly confined to the discussion of "Patton's political activities," . . . [but was rather] to discuss Standards of Conduct considerations in carrying out FPM functions (i.e., community outreach, requests for letters of support, responding to media inquiries, attending conferences and events, etc.). They were not instituted in response to Ms. Patton's violations of the Hatch Act and were not held for the sole purpose of discussing her personal partisan activities. In these meetings, ethics guidance was provided to FPM as an office.

⁵⁵ *Id.* § 2635.705(b).

⁵⁶ Levin and Simmons also told the OIG that they did at times communicate concerns and advise Patton regarding the use of her subordinates for certain tasks, specifying that these subordinates could only provide support for Patton's official work duties and functions.

The OIG agrees with the general assertion that regular meetings between OGC and its program office clients can be viewed as a commitment to ethical behavior and a best practice, and we encourage OGC and all HUD employees to engage in this manner. HUD employees, and especially senior officials and political appointees, should be free to seek ethics advice as frequently as is necessary to perform their duties consistent with the law and guidance from the Office of Government Ethics (OGE).

However, based on the evidence gathered, we question whether Patton was engaging her subordinate employees appropriately regarding her political activity, and we question whether those subordinates were placed in an inappropriate position of interpreting OGC's legal advice or even providing ethics advice on their own.

We note that the evidentiary record supports the conclusion that, although Patton's personal political activities may not have been the sole purpose for holding these meetings, her political activities were a significant focus of discussion at the meetings. We reviewed notes from four of these biweekly meetings and found that the bulk of discussion pertained to Patton's personal political conduct or adjustments that would be necessary within the office so that Patton could engage in such conduct while on leave.

The OIG does not take issue with the fact that these biweekly meetings occurred, but rather that they are part of a larger body of Patton's conduct that was potentially inappropriate. The facts gathered in this investigation call into question whether the totality of Patton's engagement with subordinates about her personal political activity went beyond what was appropriate and necessary to ensure compliance with ethics requirements.

We are concerned that Patton's subordinates were put in a position where they were interpreting OGC's legal advice as they were providing guidance to Patton. Although subordinates play a role in a successful government ethics program, we question whether the role Patton's subordinates played was the correct one, and we believe additional guidance is needed for HUD employees who might face similar circumstances in the future.

Patton's involvement in the RNC video exemplifies the risk inherent in positioning subordinates as partners in ensuring compliance with ethics regulations. The evidence shows that Patton repeatedly solicited input from Subordinate 1 and Subordinate 2 regarding the RNC video, including the following instances:

- Patton indicated that she consulted with Subordinate 1 and Subordinate 2 about the RNC video in the days preceding August 12, 2020, and then attended a video conference with Levin and Simmons that Subordinate 1 and Subordinate 2 also attended.
- After learning from Simmons that she would need to resign from HUD if she wished to appear in the RNC video, Patton consulted Subordinate 1 and Subordinate 2 again on August 13, to discuss how Patton might somehow participate in a legally permissible manner without resigning.
- On August 17, Patton met again with Subordinate 1 and Subordinate 2 before her phone call with Williams to discuss ways she might participate in the RNC video without having to resign from HUD. After the meeting, Patton provided a screenshot of her request for LWOP for the day of filming to Subordinate 1 and Subordinate 2, and Subordinate 2

reminded Patton that her request must be approved by her supervisor in WebTA prior to using LWOP.

- After Patton’s phone call with Williams on August 17, Patton informed Subordinate 1 and Subordinate 2 of what happened on the call.
- Subordinate 1 was then in direct contact with Williams to discuss the advice Williams had given Patton, and subsequently told Patton by phone on August 17 that it was not “wise” for her to participate in the video.
- Patton texted Subordinate 2 to provide information regarding her call with Subordinate 1 on August 17 and Subordinate 1’s concern that Patton could be terminated if she “accidentally or blatantly” violated the law now that she had consulted with Williams.
- Patton then forwarded her August 17 email exchange with Williams to Subordinate 1 and Subordinate 2, which caused Subordinate 2 to conclude that Patton would not be asking questions of the NYCHA residents on or off camera and Subordinate 1 to believe that Patton would not be doing the video at all, neither of which proved correct.
- On August 19, Patton met with Subordinate 1 and Subordinate 2 to discuss her role during filming of the RNC video the day before.
- Patton also forwarded two versions of voiceover scripts for the RNC video to Subordinate 1 and Subordinate 2 on August 19, which she told the OIG she did so that they could compare the two and because she wanted their opinion on whether either might violate the Hatch Act.⁵⁷

When discussing why she consulted Subordinate 1 and Subordinate 2 about the RNC video during her OIG interview, Patton said she did this because “it was important to [her] to have them as witnesses throughout this process . . . so that [she] was not misinterpreting anything.” We believe that subordinates may have an important but limited role in ensuring that supervisors like Patton properly understand the ethics advice provided by OGC. But here the facts indicate Patton leveraged her subordinates for advice in ways that arguably go beyond any appropriate role they may have had in HUD’s ethics program, and we are concerned that Patton’s subordinates were placed in the position of opining on issues that went beyond the facts provided to, and the guidance provide by, OGC.

HUD’s OGC questioned the OIG’s analysis of employee roles in response to a draft of this report. With respect to Subordinate 2, who held a supervisory role within the Department, OGC referenced the special role of supervisors in promoting ethical compliance as a justification for that employee’s inclusion in the biweekly meetings with Patton. In this regard, OGC cited an OGE regulation that states, “[e]very supervisor in the executive branch has a heightened personal responsibility for advancing government ethics Supervisors are also responsible for working with agency ethics officials to help resolve conflicts of interest and enforce government ethics laws and regulations.” We agree with the general assertion that supervisors have a heightened role and responsibility to ensure their own subordinates comply with ethics rules, but we believe HUD should seek additional guidance from OGE on the role subordinates should play with respect to advising their supervisors. Assuming this role is appropriate, we believe additional guidance is needed for HUD employees who might face similar circumstances in the future.

⁵⁷ The OIG notes that Subordinate 3 was also present at the beginning of filming for the RNC video, although both Patton and Subordinate 3 denied that Patton asked Subordinate 3 to be there. Subordinate 3 also sent Resident 1 photographs of the filming at 3:57 p.m. that day, presumably during work hours.

IV. Patton Did Not Meet Her Obligation to Cooperate Fully with the OIG

The HUD Handbook on OIG Activities, 2000.3 REV-4, Section 3-2, requires that the Department's employees "cooperate fully with the OIG during audits and investigations," which includes an obligation not to provide "false or misleading information" to the OIG.⁵⁸

In this case, the evidence indicates that Patton did not meet this obligation, as she made several statements during her OIG interview that were inconsistent with other interviewee statements or contemporaneous documentation of events.

For example, the evidence shows Patton may have failed to provide fully accurate information during her OIG interview regarding the manner in which she participated in the RNC video.

Review of the video footage indicates that Patton downplayed her interviewer role while speaking to the OIG when she stated that "the [Video Production Company] cameraman started asking questions, but he asked basic questions. He did not know the types of questions to ask," so Patton said she "was able to interject, and [she] started asking off the top of [her] head just more specific questions" This contradicts the video footage, which does not show the [Video Production Company] employee beginning the questioning and Patton later interjecting, but instead shows Patton acting as a primary interviewer throughout.

Review of the video footage also indicates that Patton lacked candor in describing the types of questions she asked during the RNC video filming. Patton told the OIG that she "never asked [the NYCHA residents] questions about [her]self," and similarly told OSC in an email that "only the [Video Production Company] employee asked questions referencing [her] month-long stay in NYCHA, not [her]." But in reviewing the video footage, the OIG observed that Patton repeatedly made statements or asked the residents questions pertaining directly to her role with NYCHA and her one-month stay there, as detailed above.

The evidence also shows that Patton may have failed to provide fully accurate information regarding the guidance she received from HUD ethics and other officials before participating in the RNC video.

When describing her August 17, 2020 discussion with DeMarzo and Hughes about her prospective participation in the RNC video, Patton told the OIG that the intent of this discussion was for her "to tell them [she] was resigning" so she could do the video, and that DeMarzo and Hughes both "begged [her] not to resign" during the discussion. However, Hughes told the OIG that he did not "remember ever begging [Patton] to do anything," and that he did not beg Patton not to resign. Subordinate 2 also told the OIG that at the time of this discussion Patton "did not think she had to resign" to do the video, which is corroborated by the fact that Patton had already submitted a request for leave on the day of filming and had informed a Video Production Company employee that she needed to comply with some "minor requirements" she was "bound to by HUD," but that this was "[n]o biggie."

⁵⁸ See U.S. Dep't of Hous. and Urban Dev., *Office of Inspector Gen. Activities*, 2000.3 REV-4 § 3-2, <https://www.hud.gov/sites/documents/20003C3OIGH.PDF> (last visited Aug. 18, 2021).

Patton also told the OIG that she consulted again with Levin and Simmons after receiving Williams' August 17, 2020 ethics advice and that Levin and Simmons deferred to Williams in this consultation. But the evidence shows that Simmons was on leave at that time and he told the OIG he did not receive any updates regarding this matter while on leave.

Finally, Patton told the OIG that she called Subordinate 1 and Subordinate 2 on the morning of August 18, 2020, just prior to the RNC-video filming and they told her during this call that, as long as Patton did not personally appear in the final product, she would not be in violation of the law. But (1) both Subordinate 1 and Subordinate 2 told the OIG they did not recall Patton contacting them that morning, (2) Patton's phone records do not show that such a call took place, and (3) Patton's characterization of the advice she purportedly received from Subordinate 1 and Subordinate 2 that morning is inconsistent with statements they made to the OIG, with Subordinate 1 believing that Patton would not be doing the video at all and Subordinate 2 believing that Patton would not be asking questions of the NYCHA residents on or off camera.

Patton declined to participate in a second interview with the OIG after she resigned her position with HUD, so the OIG was unable to confront her with the evidence indicating she had not furnished the OIG with fully accurate information during the interview in which she did participate. And although Patton asserted in response to a draft version of this report that she had provided testimony "to the best of [her] ability" and that if she "misspoke, it was NOT intentional," it appears from the available evidence that Patton did not meet her obligation to "fully cooperate" with the OIG by providing accurate information as required by applicable departmental policy.

V. Patton Used Her Personal Phone for HUD-Related Business

Title 36 C.F.R. § 1230.10 states that "[t]he heads of Federal agencies must: (a) Prevent the unlawful or accidental removal, defacing, alteration, or destruction of records" and "(d) Direct that any unauthorized removal, defacing, alteration or destruction be reported to [the U.S. National Archives and Records Administration (NARA)]."⁵⁹ Penalties "for the unlawful or accidental removal, defacing, alteration, or destruction of Federal records or the attempt to do so, include a fine, imprisonment, or both."⁶⁰ 36 C.F.R. § 1230.14 further states that "[t]he agency must report promptly any unlawful or accidental removal, defacing, alteration, or destruction of records in the custody of that agency to NARA"⁶¹

The evidence gathered by the OIG indicates that Patton may have engaged in the "removal" of official HUD records by regularly conducting HUD-related business on her personal phone throughout her tenure with the Department and then failing to provide records of that business to the Department before or after resigning her position.

In her OIG interview, Patton indicated that it was common for her to use her personal phone for HUD business, stating:

⁵⁹ 36 C.F.R. § 1230.10.

⁶⁰ *Id.* § 1230.12.

⁶¹ *Id.* § 1230.14.

I should be using my work phone to discuss work issues but . . . carrying two phones around has always been . . . something that I – I don’t do well. And . . . that’s my fault . . . and I know that that opens the door to . . . other issues when you use your personal phone. But, . . . for the most part, most people from HUD call me on my personal phone.

Patton clarified that “[a]ny email exchange has always been on my HUD email . . . but text messages and phone calls are usually on my personal cell phone.”

The OIG obtained several work-related text messages sent by Patton on her personal phone during the course of this investigation, and Subordinate 2 told the OIG that Patton used her personal phone for almost everything, and Subordinate 2 explained that Patton sent text messages from her personal phone to Subordinate 2’s HUD mobile phone. Subordinate 2 used a HUD e-mail account, HUD office phone, and HUD mobile phone to communicate with Patton about HUD business. Patton also stated that NYCHA residents contacted her often on her personal phone, which Resident 1 corroborated, telling the OIG that when she contacted Patton about HUD-related issues like NYCHA residents having no heat or hot water, she would send text messages to Patton’s personal phone.

In March 2021, the OIG sent Patton an email requesting that she preserve and voluntarily provide the OIG all documentation she possessed regarding the use of her personal phone for HUD-related business, including any text messages reflecting such business. Patton declined to respond to this request. Under the circumstances, the Department should consider referring Patton’s apparent removal of HUD records to NARA.

Recommendations

The OIG makes the following recommendations to the Department to assist them addressing the issues identified in this report:

1. Consider enhancing guidance and training for all staff regarding HUD employees’ rights and obligations related to OIG oversight activities. Guidance and training should be consistent with OMB guidance and the Joint Statement of Cooperation between HUD and the OIG, and communicate explicitly that employees have an obligation to cooperate with OIG oversight requests and that supervisors must take appropriate action when employees do not cooperate with requests related to OIG oversight.⁶²
2. Seek guidance from OGE regarding the inclusion of subordinates in ethics discussions related to the personal political conduct of political appointees, and develop or enhance existing policies, procedures, and training on the role of subordinates in ethics discussions

⁶² See OMB Memorandum M-22-04, *Promoting Accountability through Cooperation among Agencies and Inspectors General* (Dec. 2, 2021); see also Joint Statement by Marcia L. Fudge, Secretary, U.S. Dep’t of Hous. and Urban Dev., and Rae Oliver Davis, Inspector Gen., U.S. Dep’t of Hous. and Urban Dev. (Feb. 3, 2022).

related to the personal political activities of supervisors if the Department permits this practice to continue.

3. Assess (1) whether a referral to NARA is necessary regarding text messages on Patton's personal phone pertaining to HUD business from the period between January 23, 2017, and January 20, 2021, when Patton held her position with the Department; and (2) whether the Department has provided adequate training to employees on federal records laws and regulations.

Agency Comments and OIG Response

The Department did not provide a formal response to our report.



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U.S Department of Housing and Urban Development
Office of Inspector General
451 7th Street SW, Room 8254
Washington, D.C. 20410

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