

RPTAC Should Continue Work to Protect Against Conflicts & Improve Transparency, Timeliness, & Data Quality

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A report by the Office of the District of Columbia Auditor



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Executive Summary

Why ODCA Did This Audit

D.C. Code § 47–825.01a (j)(2) requires that the District of Columbia Auditor perform a management audit of RPTAC’s activities at least once every three fiscal years (or sooner as considered appropriate by the Auditor) or upon request of a Councilmember, and report the findings to the D.C. Council.

What ODCA Found

- Hourly Commissioners of the Real Property Tax Appeals Commission (RPTAC) continued to serve as contract workers rather than government employees as required by law leaving them outside District personnel and ethics rules.
- RPTAC’s safeguards against conflicts of interest in hearing appeals needed to be stronger.
- RPTAC hearings were not open to the public, and RPTAC did not publish hearing decisions.
- RPTAC’s data system was unreliable, resulting in RPTAC sending an annual report to the D.C. Council and the Mayor that may have contained inaccurate information.
- RPTAC decided most appeals by the February 1 deadline, but did not meet timeliness requirements by deciding all appeals within the statutorily required numbers of days after the hearing, reducing time available to taxpayers for financial planning.

What ODCA Recommends

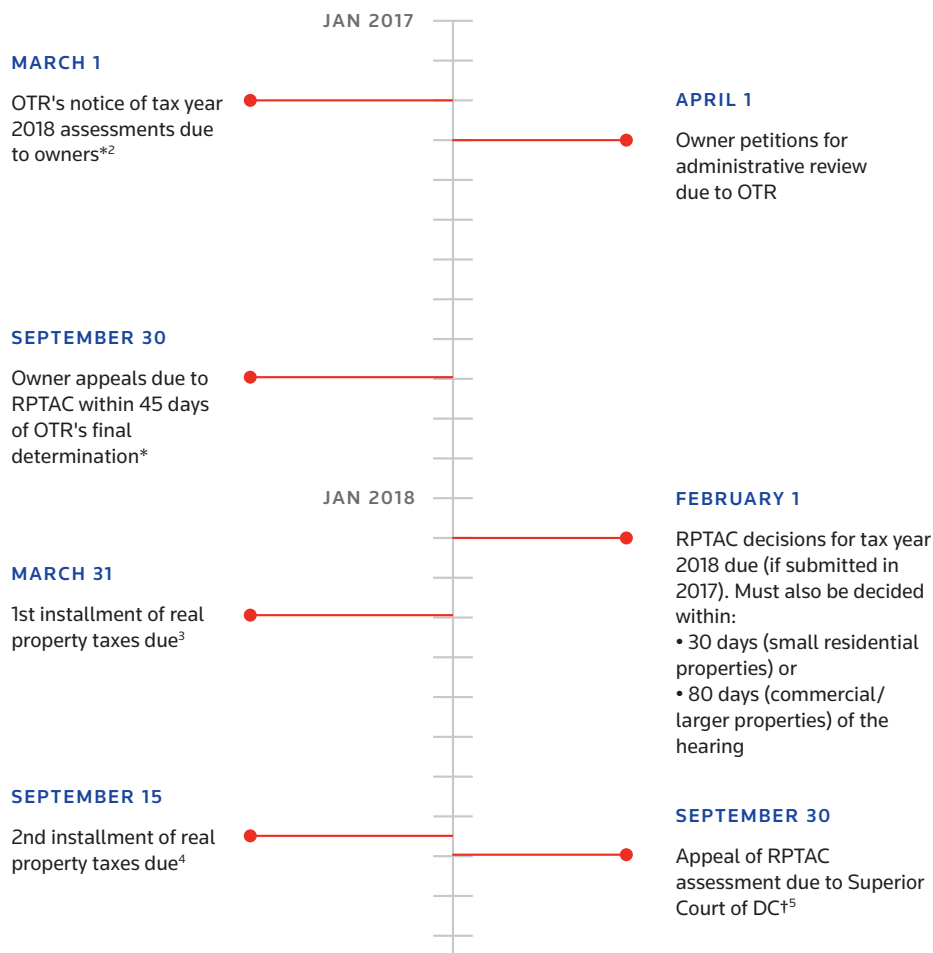
RPTAC should:

- Work with the Executive Branch leadership to comply with the statutory requirement that Commissioners be District government employees or propose a change to the law.
- Implement stronger policies and procedures to reduce the risk of Commissioners hearing an appeal on which they have a conflict of interest.
- Open all hearings that can be held as public without violating statutes that protect confidential information, and request changes to the statute to remove requirements to hold other hearings open to the public.
- As long as RPTAC’s statute requires open hearings, it should request an advisory opinion from the Office of Open Government on how to conduct an open hearing in which confidential information is required to be discussed privately with the panel.
- Request and allocate necessary resources to redact and post all decisions online before the beginning of the next hearing season.
- Include additional fields in its data system to record rehearing data.
- Periodically review the data system and train the data entry staff accordingly.
- Monitor written decision deadlines and status by author, and better manage Commissioner workloads.

Background

The Real Property Tax Appeals Commission (RPTAC) hears appeals from D.C. property owners challenging the assessment or classification of their property after they have appealed it to the Office of Tax and Revenue (OTR). If not satisfied with RPTAC's decision, the property owner can appeal to the Superior Court of D.C. Figure 1 describes the timeline for the appeal of a tax year 2018 real property assessment.

Figure 1: Tax Year 2018 Real Property Assessment Appeals¹



*Per D.C. Code, the timeline may be different for properties transferred in 2017, classified as vacant or blighted vacant, or for which OTR identifies a cause for delay.

†Or within 6 months of RPTAC's decision, whichever is later.

1 For dates not otherwise specified in the figure and footnotes, see D.C. Code §§ 47-825.01a(d) and 47-825.01a(e).

2 D.C. Code § 47-824(a).

3 D.C. Code § 47-811(b).

4 D.C. Code § 47-811(b).

5 D.C. Code § 47-825.01a(g)(2).

RPTAC decided between 3,000 and 5,000 appeals per year from its first year of operations in 2012 to tax year 2018. The number of hearings that RPTAC held was much smaller, however. Many of the hearings included the appeals for multiple units at the same property, which were heard and decided together. Based on the District's Office of the Chief Financial Officer's (OCFO) projection that first-level appeals for commercial real property taxes will increase for Tax Year (TY) 2021 because of the recession related to COVID-19⁶, ODCA expects that the number of second-level appeals to RPTAC may increase as well.

The D.C. Council enacted legislation to replace the Board of Real Property Assessments and Appeals (BRPAA) with RPTAC, which became effective in April 2011. RPTAC began operations in July of 2012. ODCA's first audit of RPTAC in 2016 found that RPTAC had made improvements to the appeals process that existed under BRPAA. We recommended that RPTAC hire hourly Commissioners as employees as the law requires, that RPTAC require Commissioners to file Financial Disclosure Statements, and that RPTAC create a recusal process for all Commissioners who may have a potential or actual conflict of interest.

The statute establishing RPTAC states that "The Commission shall be comprised of

- (i) A full-time Chairperson;
- (ii) A full-time Vice Chairperson;
- (iii) Four full-time Commissioners; and
- (iv) Eight part-time Commissioners".⁷

In addition, the statute states that "Commissioners shall be employees of the District government."⁸

During the scope of this audit, RPTAC had 14 Commissioners, including the Chairperson and Vice Chairperson. The six "full-time" Commissioners were full-time District government employees, paid an annual salary. Eight of the Commissioners were referred to as "part-time," regardless of the number of hours worked. The law requires that they be compensated on an hourly basis⁹, rather than with an annual salary, and for clarity this report refers to them as hourly Commissioners. During the audit scope, the hourly Commissioners were not District government employees.

6 D.C. Office of the Chief Financial Officer, April 2020 Revenue Estimates. April 24, 2020. Accessed at <https://cfo.dc.gov/node/1474211> on May 5, 2020.

7 D.C. Code § 47-825.01a(a)(1)(B).

8 D.C. Code § 47-825.01a(a)(5).

9 D.C. Code § 47-825.01a(a)(1)(C).

Objective, Scope, and Methodology

Objective

Determine if RPTAC complied with the statutory requirements in D.C. Code § 47–825.01a.

Scope

ODCA audited RPTAC operations for appeals related to TY 2018. In practice, this was September 2017 through February 2018 for most cases.

Methodology

To conduct this review, we:

- Determined whether the Commissioners serving for TY 2018 operations fulfilled the qualification and status requirements the law sets out for Commissioners, including that six be full-time, including the Chair and Vice Chair; that the other eight be hourly; that all 14 be employees of the District government¹⁰; and that they meet certain requirements for professional background, depending on the positions held.¹¹
- Reviewed a sample of appeal cases for compliance with legal requirements and compared them with the data system to determine its accuracy.¹² The statute requires that decisions only change existing assessments by 5% or more¹³, be completed by February 1 and by a certain number of days after the hearing¹⁴, contain decision rationale, indicate whether any panel members dissented, and are signed by all panel members.¹⁵
- Reviewed RPTAC's website for redacted written decisions, which was required by regulation¹⁶, and reviewed both the D.C. Register and RPTAC's website for notices of and minutes from meetings and hearings, to assess compliance with the requirement that all hearings be open to the public.¹⁷
- Reviewed the Board of Ethics and Government Accountability's (BEGA) website for Commissioner Financial Disclosure Statements for 2017 and 2018.
- Reviewed RPTAC's policies and procedures for its conflict of interest review process. By statute, RPTAC must prohibit Commissioners from hearing an appeal in which they have a direct or indirect interest, or an appeal related to a property with which they have had any financial dealings in the past two years.¹⁸
- Requested records of conflicts of interest determinations related to TY 2018 appeals and policies and procedures for reviewing Financial Disclosure Statements.
- Determined if the TY 2018 annual report RPTAC submitted to the Mayor and the Council contained all of the information required by the law, including "the net revenue impact on the District as a result of the

10 D.C. Code § 47-825.01a(a)(5).

11 D.C. Code § 47-825.01a(a)(1)(D).

12 For more details on sampling methodology, please see Appendix A.

13 D.C. Code § 47-825.01a(e)(4)(C)(ii).

14 D.C. Code § 47-825.01a(e)(7).

15 D.C. Code § 47-825.01a(c)(3).

16 9 DCMR 2018.14.

17 D.C. Code § 47-825.01a(c)(6).

18 D.C. Code § 47-825.01a(a)(2).

Commission's decisions"¹⁹, and attempted to verify that information.

- Conducted interviews with management on RPTAC's processes.

We assessed internal controls related to the audit's objective and we conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹⁹ D.C. Code § 47-825.01a(j)(1).

Audit Results

ODCA found that RPTAC met many of the requirements we reviewed. The audit found four areas for improvement, which are discussed below.

Finding 1

Contrary to law, RPTAC's hourly Commissioners continued to operate outside District personnel and ethics rules, and the safeguards against conflicts of interest in hearing appeals needed to be stronger.

In our 2016 audit ODCA identified RPTAC's failure to meet two statutory requirements: that all Commissioners be District government employees and that the appeals process be free from conflicts of interest. In this review we found that three aspects of RPTAC's policies and procedures fell short of providing reasonable assurance that all appeals were heard by Commissioners who are free of conflicts of interest:

- The ability to enforce the District Code of Conduct for all Commissioners, which was not possible because eight were not District government employees.
- Review and use of the information provided by the Commissioners in their public Financial Disclosure Statements.
- RPTAC's process to remedy a conflict of interest, such as requiring a Commissioner to recuse him or herself.

Below, each of these is discussed individually. Requirements for all three are encompassed in D.C. Code § 47-825.01a, which prohibits Commissioners from, among other things, "reviewing an appeal involving real property with which the Commissioner has had any financial dealings in the 2-year period prior to the filing date of the appeal," where financial dealings "includes the assessment, appraisal, purchase, sale, or rental of the real property in question." Furthermore, the statute states that a Commissioner "shall not review an appeal for which that Commissioner has a direct or indirect interest."

Two of these aspects are stronger since RPTAC created a recusal process and included Commissioners in a list sent to BEGA of required filers of public Financial Disclosure Statements, in response to findings from the previous ODCA audit. However, additional opportunities for improvement remain.

Status as non-employees

The District Code of Conduct was not enforceable against the eight hourly RPTAC Commissioners, who were not District government employees or otherwise subject to the District Code of Conduct.

The statute states that "Commissioners shall be employees of the District government."

Employees of the District government, including RPTAC's full-time Commissioners, are subject to the District Code of Conduct, which defines ethical conduct for District government employees and public officials. For example, the District Code of Conduct requires the disclosure of certain information in an annual Financial Disclosure Statement and prohibits employment, business, or other financial interest that would constitute a conflict with one's official duties. BEGA has the authority to impose fines on District government employees for violations of the District Code

of Conduct.

ODCA's 2016 audit recommended that hourly Commissioners be hired as District government employees, as required by the statute. ODCA continues to believe that the implementation of our prior recommendation would provide an additional safeguard against RPTAC Commissioners hearing appeals in which they have an interest. The District's annual budget includes a limit on the number of full-time equivalent employees (FTEs) each agency may employ, distinct from the funding for compensation. RPTAC had sufficient FTEs in its budget only for the full-time Commissioners to be employees. RPTAC made a formal request to the Executive Office of the Mayor to submit a proposal to the Council to change the statute from eight part-time commissioner positions to four "part-year" commissioner positions who would work essentially full-time for six months, and to add two FTEs to the RPTAC personnel budget.²⁰ The request cited a need for additional hours of work to support the completion of decisions in a timely manner, and noted that RPTAC's Agency Fiscal Officer determined that the change would be budget neutral. RPTAC made this request after it had received ODCA's previous audit. RPTAC, however, did not include in its request any reference to the Code of Conduct. The statute has not been changed, and according to RPTAC, the proposal was not approved by the Mayor's Office of Talent Acquisition.

Because the law requires only employees and public officials²¹ to file Financial Disclosure Statements (discussed below), BEGA was not required to follow up when hourly Commissioners did not file them, and there was no enforcement action to take against them for their failure to file.

Financial Disclosure Statements

With one exception, RPTAC included hourly and full-time Commissioners in a list sent to BEGA of required public Financial Disclosure Statement filers in response to findings from the previous ODCA audit. However, RPTAC did not review nor did it have a procedure for reviewing Commissioner Financial Disclosure Statements to identify potential conflicts of interest and inform Commissioner appeal assignments. A Financial Disclosure Statement requests information about assets, leadership positions, other employment, and other interests a Commissioner or a Commissioner's family members may have that could potentially conflict with the duty to decide an appeal impartially. All Commissioners submitted Financial Disclosure Statements for 2017 but RPTAC did not review them. Two of the Commissioners who were required to file Financial Disclosure Statements for 2018 did not. RPTAC had not notified BEGA that one of them was a public Financial Disclosure Statement filer for 2018, and the other Commissioner simply failed to file a Financial Disclosure Statement.

Commissioner Financial Disclosure Statements are a source of data that is available to RPTAC to inform its decisions about Commissioners' hearing assignments to provide reasonable assurance that Commissioners do not decide appeals in which they have conflicts of interest. No other entity, including BEGA, has the necessary information regarding the appeals a Commissioner will hear and the specifics about the property that is the subject of the appeal to help determine whether the Commissioner has a potential conflict. To achieve its objectives, an entity such as RPTAC "obtains relevant data from reliable internal and external sources" and the entity's management "uses the quality information to make informed decisions," according to the Standards for Internal Control in the Federal

²⁰ Carlynn Fuller, Executive Director of RPTAC, sent the request to Colin Sollitt (EOM) via email on January 10, 2019, with subject line "RE: PT Commissioners to FT Commissioners".

²¹ D.C. Code § 1-1161.01(47) and see D.C. Code § 1-523.01(e).

Government.²²

RPTAC officials indicated they did not review Commissioner Financial Disclosure Statements because they expected BEGA to review them and notify RPTAC if there were problems, and because RPTAC management had considered the information in Financial Disclosure Statements to be personal in nature, even though they are publicly available documents maintained on BEGA's website.²³ A review of Financial Disclosure Statements by RPTAC could have identified potential conflicts of interest; a review by BEGA likely would not. The Chair of RPTAC stated in an interview that he will review Financial Disclosure Statements going forward.

Process to remedy conflicts of interest

RPTAC created a recusal process in response to the 2016 ODCA audit. However, the process does not provide sufficient assurance that Commissioners had no conflicts of interest in the appeals they heard.

- RPTAC's policies and procedures call for the Chair of RPTAC, and not an independent party such as a panel of three Commissioners, to make determinations about his or her own potential conflicts of interest for any appeal assigned to the Chair.
- Parties to a hearing conducted by file review did not have an opportunity to assert that the Commissioner reviewing their appeal had a conflict of interest or potential conflict of interest.
- RPTAC did not keep records about decisions on actual or potential conflict of interest matters, including whether recusal was deemed necessary. There were no policies and procedures for keeping records of conflict of interest determinations.

RPTAC in practice assumes its current Commissioners make ethical decisions and remove themselves from a hearing for which they have a potential conflict of interest. The RPTAC Vice Chair stated that he makes informal arrangements to recuse himself from hearings where he knows one of the parties.

The lack of effective policies, procedures, and written records on conflicts of interest and recusals rendered RPTAC unable to determine whether any Commissioners heard appeals for which they had statutorily prohibited conflicts of interest. Therefore, ODCA was unable to determine whether Commissioners heard any appeals on which they had conflicts of interest.

Without adequate controls in place, Commissioners could have heard appeals even though they had conflicts of interest and inappropriately increased, decreased, or sustained tax assessments. This could have produced loss of revenue to the District government, high appeal costs for the property owner, and damage to the credibility and reputation of RPTAC.

RPTAC has taken a step to strengthen the process. During this audit, RPTAC created a form to record Commissioners' potential conflicts of interest and the Chairman's decision on recusals. The Chair of RPTAC also told ODCA that the form had been distributed to all Commissioners in hard copy. As explained below, more needs to be done to minimize the risk of potential conflicts of interest.

22 Standards for Internal Control in the Federal Government, U.S. Government Accountability Office. Paragraphs 13.01, 13.04, and 13.05. Retrieved from <https://www.gao.gov/products/gao-14-704g>.

23 Public Financial Disclosure Statements for 2017 and later years are available at <https://efiler.bega.dc.gov/FDSSearch>.

Recommendations

1. RPTAC should work with the Executive Branch leadership to comply with the statutory requirement that Commissioners be District government employees or propose a change to the law.
2. RPTAC should implement stronger policies and procedures to reduce the risk of Commissioners hearing an appeal on which they have a conflict of interest.

Finding 2

RPTAC hearings were not open to the public, and RPTAC did not publish hearing decisions.

All hearings were closed to the public in their entirety.

RPTAC's statute²⁴ requires, among other things, that "hearings of individual appeals, shall be open to the public" and that information presented shall be available for public inspection.²⁵ The statute also includes exceptions to protect certain information, including tax returns and information that is personal in nature or otherwise protected by law.²⁶ Tax returns and personal information are not to be made available for public inspection, and the discussion of such confidential information during a hearing shall be in camera, which means in a private discussion with the hearing panel.

In addition to the RPTAC statute, the Open Meetings Act requires the meetings of District government public bodies to be open to the public, with limited exceptions.²⁷ It defines meetings to include hearings, and public bodies to include a "commission...that takes official action by the vote of its members convened for such purpose."²⁸ The Open Meetings Act also requires that a public body provide notice before a meeting, including on a website and in the D.C. Register²⁹, and that the public body make minutes and a record of the meeting available for public inspection soon after the meeting.³⁰ These requirements reflect the policy of the District government, stated at the beginning of the Open Meetings Act, "that all persons are entitled to full and complete information regarding the affairs of government and the actions of those who represent them."³¹

All RPTAC hearings were closed to the public in their entirety, including discussion of information that was not confidential. RPTAC published notices and minutes of other public meetings, such as its administrative meetings, but did not publish notices of any hearings or the Commissioners assigned to each appeal. RPTAC officials stated that they supply redacted records of hearings if requested.

RPTAC officials stated that for commercial properties, so much of the information presented in the hearing is protected from public disclosure by statute that it would be impossible to hold hearings that are open to the public

24 D.C. Code § 47-825.01a.

25 D.C. Code § 47-825.01a(c)(6).

26 D.C. Code § 47-821(d)(2).

27 D.C. Code §§ 2-571–2-580.

28 D.C. Code § 2-574.

29 D.C. Code § 2-576.

30 D.C. Code § 2-578.

31 D.C. Code § 2-572.

without violating other parts of the statute. If the parties to an appeal had a private discussion with the hearing panel, and afterward RPTAC opened the hearing to the public and any of the parties stated any confidential information in the open session, RPTAC would be in violation of the statute. RPTAC officials explained that because it is not possible to know what someone will say in advance, all hearings are closed to the public in their entirety to ensure that protected information is not disclosed. However, RPTAC officials said that for some residential properties, such as single-family homes, it may be possible to hold hearings open to the public without disclosing protected information.

Holding all hearings closed to the public in their entirety had two important effects: RPTAC did not provide notice to the public of upcoming hearings, and members of the public could not attend. Members of the public who wished to know whether a property valuation was scheduled for a RPTAC hearing could not access that information before a hearing. It was only available after the hearing, by requesting the redacted record of the hearing from RPTAC, or after the hearing decision table was posted on RPTAC's website. Furthermore, taxpayers, including those planning to represent themselves in an appeal before RPTAC, could not attend a hearing to understand the appeal process or learn information to better anticipate what might happen on their appeal.

RPTAC did not publish appeal decisions on the website.

RPTAC did not publish the redacted written decision for each appeal on its website, as required by regulation³², and instead published a table of summary information for all hearing decisions, as required by its statute.³³ The regulations require that RPTAC place on its website each appeal decision, with confidential information redacted.³⁴ By regulation, RPTAC clearly is required to post the formal written decision, and the regulations state that every decision "shall contain a detailed written statement of the basis for the decision."³⁵ ODCA reviewed a sample of 60 decisions in hard copy and found that each included the decision rationale.

According to RPTAC, it does not have enough staffing resources to redact the volume of appeal decisions that RPTAC reviews each year to comply with the publication requirement. Publishing only summary decision information for appeals meant that the public did not have access to information about the reasoning RPTAC Commissioners relied on to make decisions. The details in the redacted decision documents would have been useful in planning the representation of an appeal before RPTAC, and to review decisions for fairness and consistency.

Recommendations

3. RPTAC should determine which hearings can be open to the public without violating confidentiality statutes, such as hearings regarding single-family residential properties, and open them to the public.
4. RPTAC should recommend statutory changes where open hearings on appeals and confidentiality statutes are in conflict.
5. As long as RPTAC's statute requires open hearings, RPTAC should request an advisory opinion from the Office of Open Government on how to conduct a hearing in which confidential information is required to be discussed privately with the panel during hearings (in camera).

32 9 DCMR 2018.14.

33 D.C. Code § 47-825a(c)(4). Tabular summary of RPTAC decisions for recent years is available at <https://rptac.dc.gov/service/rptac-hearing-decisions>.

34 9 DCMR 2018.14.

35 9 DCRM 2018.8.

6. RPTAC should determine and allocate resources needed to redact all hearing decisions for a given tax year and to post them online, as its regulations require. It should post them before the start of the next tax year's hearing season.

Finding 3

RPTAC's data system was unreliable, resulting in RPTAC sending an annual report to the Council and the Mayor that may have been inaccurate.

ODCA compared data on appeals in RPTAC's FoxPro data system with information contained in paper copies of appeal decisions and found discrepancies with regard to:

- The dates RPTAC received the appeal.
- Hearing dates.
- Hearing times and rooms.
- Decision dates.
- Assessment amounts before the appeal.
- Assessment amounts resulting from RPTAC's decision.

During the audit, ODCA concluded that RPTAC's data system was unreliable for TY 2018. When ODCA contacted RPTAC for assistance or a more reliable source of data, RPTAC management informed ODCA that it was aware that data from the system were unreliable. RPTAC's Executive Director said that RPTAC also tried to correct errors in the data before it sent it to the Mayor and the Council in the TY 2018 annual report.

According to the Standards for Internal Control in the Federal Government, to achieve its objectives, a government entity must obtain data from reliable sources, as stated above. Reliable sources are those that "provide data that are reasonably free from error and bias and faithfully represent what they purport to represent."³⁶ A successful entity also communicates "quality information externally through reporting lines."³⁷ The Standards define quality information as "appropriate, current, complete, accurate, accessible, and provided on a timely basis."³⁸ For RPTAC, this means obtaining accurate information about hearings and decisions to ensure that decisions comply with all requirements and that the annual report to the D.C. Council and the Mayor contains accurate information.

The Standards for Internal Control in the Federal Government also state that an entity must design control activities for information processing to achieve its objectives, such as "edit checks of data entered."³⁹

Insufficiently trained data entry staff without adequate supervision and a lack of appropriate fields in the data system contributed to errors and inconsistencies in the data system, which made the annual report unverifiable. ODCA identified errors that appear to be keystroke errors and other errors consistent with inexperienced staff entering the wrong date, as management had described to ODCA.

According to management, these errors were identified by supervisory review and corrected after many had been

36 Standards for Internal Control in the Federal Government. 13.01 and 13.04.

37 Standards for Internal Control in the Federal Government. 15.03.

38 Standards for Internal Control in the Federal Government. 13.05.

39 Standards for Internal Control in the Federal Government. 10.01 and 10.03.

made. The remaining errors ODCA found suggested that many were not identified and corrected. More frequent supervisory review may have identified more mistakes and precluded additional ones. In interviews, RPTAC stated that a process of more frequent supervisory reviews has been implemented since the audit scope.⁴⁰

In addition, the data system does not have fields in which to record the date, time, or assessment amounts for a rehearing. When a rehearing was held, RPTAC erased the data related to the initial hearing and replaced it with the rehearing data. However, RPTAC occasionally did this incompletely, leading to confusing entries such as some that made it appear that the appeal was decided before it was heard. The OCFO has engaged a vendor to provide a new data system that will replace FoxPro and will serve both the Office of Tax and Revenue and RPTAC. RPTAC has requested that the new data system include fields to capture rehearing information.

Risks associated with maintaining inaccurate data include:

- RPTAC management did not have accurate and consistent information readily accessible to use to monitor the timeliness of appeal decisions, the impact of decisions on assessments, or any other metric related to appeals and important for RPTAC's objectives. This may have contributed to appeals being decided later than required by law.
- The D.C. Council and the Mayor may not have had accurate information on tax revenues to be collected (either overestimated or underestimated) on which to base budgetary decisions. Providing an annual report to the Mayor and D.C. Council is a statutory requirement.⁴¹ The statute requires that RPTAC report such information as the number of property assessments that were increased, decreased, and sustained as a result of an appeal to RPTAC, as well as the net revenue impact on the District as a result of RPTAC's decisions. RPTAC derived its TY 2018 annual report from the FoxPro data system.

Recommendations

7. RPTAC should ensure that its data system includes additional fields to record all relevant rehearing data separately from original RPTAC hearing data.
8. RPTAC should ensure adequate supervision of its data entry personnel, and train them as necessary.

Finding 4

RPTAC decided most appeals by the February 1 deadline, but did not decide all appeals within the statutorily required numbers of days after the hearing, reducing time available to taxpayers for financial planning.

RPTAC is required to decide an appeal within either 30 days or 80 days of the hearing date. Decisions related to

⁴⁰ RPTAC stated that it could not send ODCA evidence of the increased supervisory review process because it could not access relevant documents while teleworking as part of the District government's response to the 2020 coronavirus pandemic.

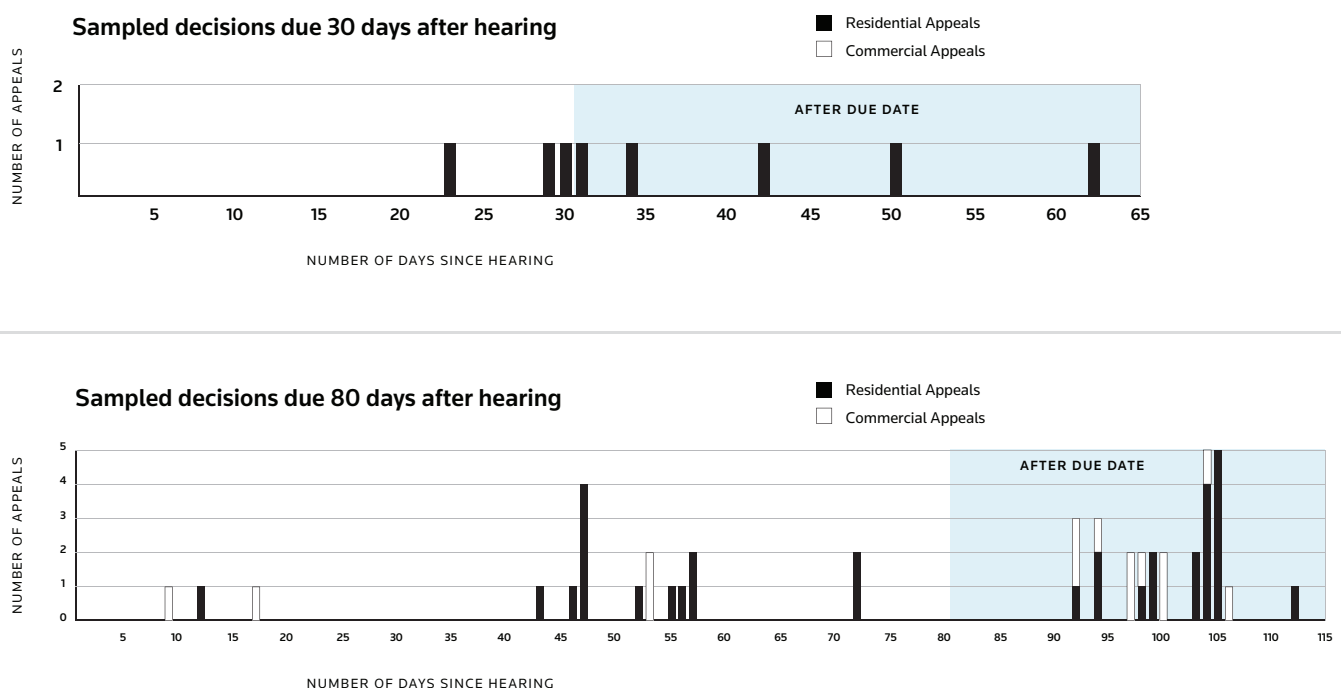
⁴¹ D.C. Code § 47-825.01a(j)(1).

residential real properties with four or fewer units are due 30 days after the hearings, and decisions for commercial properties and larger residential properties are due 80 days after the hearings.⁴² These deadlines are designed to manage workflow and provide for timely decisions. In addition, RPTAC must decide all real property appeals filed in the prior calendar year by February 1 of each year.⁴³

In our sampling of appeals for compliance with statutory deadlines, we reviewed 23 decisions that appeared to be late to ascertain if they were, in fact, later than required.⁴⁴ We also reviewed another 31 decisions selected at random for compliance with deadlines, for a total sample of 54 decisions.⁴⁵ Combining both sets of samples, we found that 33 of the 54 appeals were decided later than the 30 or 80 days allowed after the hearing. On the issue of completion by February 1, nearly all decisions—53 of the 54 decisions—were completed on time. The remaining appeal was decided on February 2.

On average in our sample, the late decisions that were required within 80 days were decided 21 days late, ranging from 12 to 32 days late, and the late decisions required within 30 days were decided 14 days late on average, ranging from 1 to 32 days late.

Figure 2: Days from Hearing to Decision for Sampled Appeals



42 D.C. Code § 47-825.01a(e)(7)(B).

43 D.C. Code § 47-825.01a(e)(7)(A).

44 Because of the errors in the data system (discussed in finding 3), we had to review the hard copies of decisions to see the correct dates so we could determine if they were late.

45 For more details on sampling methodology, see Appendix A. The proportion of late appeals in our sample is not representative of all RPTAC appeals because ODCA intentionally included 23 appeals that appeared to have been decided late.

Each RPTAC appeal was to be heard by a panel of one to three Commissioners.⁴⁶ RPTAC management scheduled the hearings and, therefore, knew the hearing date and the assigned panel members for each appeal in advance of the hearing. Management also knew the property type for each appeal, which it could have used to determine the number of days by which the decision was required to have been completed. Management, however, did not use the hearing date, property type, and allowed number of days to calculate the due date.

According to RPTAC, each panel selected one of its members to write the appeal decision. RPTAC management did not collect or receive the name of the Commissioner assigned to author each decision.

During the TY 2018 hearing season, RPTAC management sent a table to all Commissioners that highlighted appeals for which hearings had occurred but decisions had not been completed. The table did not include due dates or an indication of which appeals were late, and because management did not know which Commissioners were assigned to write each decision, it did not identify the Commissioner responsible for each decision to be completed. Information about the status of decisions assigned to each Commissioner could have helped RPTAC appropriately manage Commissioners and their workloads. For example, if RPTAC knew that a particular Commissioner was late in writing many decisions, RPTAC could have reassigned work, had a conversation with the relevant Commissioner about what supports he or she needed to be effective, or used the information to support a case for removing the Commissioner from RPTAC. In addition, reminding individual Commissioners of the decisions assigned to each of them to be completed, as well as each decision's status and due dates, would have helped them prioritize their work.

RPTAC has reported an increase in the number of appeals received, from 3,467 in its first year of operation, to 5,103 appeals for TY 2018. A higher caseload increases the risk that written decisions will not be completed timely, and to address these risks, RPTAC should implement safeguards.

Because of the late completion of some appeals, the property owners may have been notified later than they would have been if the appeals had been decided within the required time. Taxpayer expectations for prompt service from their government were met for some but not all appeals. Late decisions shortened the time available to property owners for financial planning to pay taxes associated with the appealed assessment, which may have caused financial hardship. ODCA did not find a significant impact on the time available for owners to appeal RPTAC decisions to the Superior Court of D.C. because all sampled decisions were completed by February 2, 2018, only one day after the statutory deadline.

Recommendation

9. RPTAC should develop and implement a system to monitor the status of decisions by authoring Commissioner and use it to help appropriately manage Commissioners and their workloads.

⁴⁶ D.C. Code § 47-825.01a(c)(1)(a); 9 DCMR 2003.1, 2003.4 to 2003.6.

Conclusion

RPTAC is faced with statutory and practical challenges on which we are recommending RPTAC officials take action. To resolve several of them, RPTAC will need to collaborate and coordinate with the Mayor and the D.C. Council in the development and implementation of provisions to make its operations consistent with statutes, including making Commissioners government employees, and continuing to strengthen its internal policies and procedures for addressing conflicts of interest. The agency also is challenged to supplement staff resources so that they are sufficient for redactions and make statutory requirements for holding hearings open to the public consistent with prohibitions on disclosing confidential information.

Additionally, RPTAC will need to request guidance from the Office of Open Government about how to hold a hearing open to the public in which confidential information is discussed privately with the hearing panel. RPTAC also should periodically review decisions entered in the data system and train data entry staff as necessary and monitor decision completion to follow up with the authors of outstanding decisions before the deadlines have passed.

RPTAC already has addressed some of the issues raised during this audit by developing policies and procedures for keeping records of decisions of possible conflicts of interest and any remedies and requesting the inclusion of data fields for hearings and rehearings in the new data system. The implementation of these recommendations is especially important given the possibility of a substantial increase in the number of appeals RPTAC will hear in the next hearing season.

Agency Comments

On May 26, 2020, we sent a draft copy of this report to the Real Property Tax Appeals Commission (RPTAC) for review and written comment. RPTAC responded with comments on June 16, 2020. Agency comments are included here in their entirety, followed by ODCA's response.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
REAL PROPERTY TAX APPEALS COMMISSION



June 16, 2020

Kathleen Patterson
District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th Street, N.W. Suite 900
Washington, D.C. 20005

Dear Ms. Patterson:

This letter is in response to your draft report on the audit of the Real Property Tax Commission, dated May 26, 2020. The Real Property Tax Appeals Commission (RPTAC) agrees with some of the report's findings. We identify areas of disagreement and try to provide solutions. We constantly work to improve the operations of the RPTAC. RPTAC's response to the recommendations contained in the report are as follows:

Recommendation 1.

RPTAC should work with the Executive Branch leadership to comply with the statutory requirement that Commissioners be District government employees or propose a change in the law.

The Executive Director, Carlynn Fuller and I met with the Mayor before our first audit three years ago where we discussed the conflict in the legislation that says that all Commissioners shall be District government employees in one section, and then describes part-time Commissioners as contractors who are paid on an hourly basis. I believe that the law intended for part-time Commissioners to work as independent contractors as they did with our predecessor, the Board of Real Property Assessments and Appeals (BRPAA). We further discussed the issue with the previous Deputy Mayor for Planning & Economic Development. Over the past year, we have discussed the issue with Steve Walker, Director of the Mayors Office of Talent & Appointments.

I recently contacted our General Counsel to help me address some of the issues relative to converting part-time Commissioners from independent contractors to employees. We have been communicating with the Mayor's Legal Counsel and the Legislative Director of the Office of the Deputy Mayor for Planning & Economic Development in the effort to change RPTAC's structure, which would require an amendment to our statute. The amendment would convert part-time Commissioners (independent contractors) to temporary employees (hearing

examiners), who would serve for 6 months and would be compensated commensurate with the hourly rate of full time Commissioners. The change would benefit the Commission in the following ways:

- It increases Commission efficiency to meet its statutory decision deadlines due to the increased Full-time availability of the hearing examiners during RPTAC's peak season.
- It greatly reduces the administrative workload tracking Part-time independent contractors' irregular working hours, reviewing timesheets, constant changes in scheduling, etc.
- It would eliminate the pay inequity between Part-time and Full-time Commissioners who essentially perform the same functions.
- The change would also satisfy your recommendation and Internal Revenue Service requirements.

Recommendation 2.

RPTAC should implement stronger policies and procedures to reduce the risk of Commissioners hearings on appeal on which they have a conflict of interest.

The Commission has improved its recusal form that the Chairperson is required to fill out when a Commissioner reports that he/she is unable to participate due to a conflict, or potential conflict of interest. The form requires the date of the hearing, address and legal description of the property, Petitioner's name, Commissioner's name, a description of the conflict, and the Commissioner's signature. The form also requires the Chair to check a box as to whether the Chairperson accepted or not accept the recusal and the Chairperson's reasoning for doing so. The recusal process is included in RPTAC's annual training program held prior to the start of the hearing season.

All Commissioners are required to complete a Financial Disclosure form. The Chairperson is now required to examine all Financial Disclosures to see if any disclosures might reflect a potential conflict of interest.

Recommendation 3.

RPTAC should determine which hearings can be open to the public without violating confidentiality statutes, such as hearings regarding single family residential properties, and open them to the public.

I do not believe that hearings that involve commercial *income producing* properties can be presented before a public audience without exposing confidential information. Perhaps open hearings can be conducted for residential properties, but even then, I think most homeowners will feel uncomfortable discussing their concerns or problems as to why they believe the

assessment of their property overstated. It would likely be embarrassing for a homeowner to explain why their property is in a *blighted* state of condition because: they ran out of money and could not afford keeping it up, that the occupant has a "hoarding" problem, or that the family is in an estate battle and can't afford to repair the basement flooding problem. These kinds of cases are relatively routine. I'm not sure why is it necessary for these appeals to have an audience. The Commission has not received any complaints from the public regarding closed hearings.

Recommendation 4.

RPTAC should recommend statutory changes where open hearings on appeals and confidentiality statutes are in conflict.

The question is, why would it be necessary for appeals to be open to the public? Perhaps an amendment should be made that allows a hearing to be open to the public *only* when the owner allows for it to be open. Otherwise, the hearing should be closed in my opinion.

Recommendation 5.

As long as RPTAC's statute requires open hearings, RPTAC should request an advisory opinion from the Office of Open Government on how to conduct a hearing in which confidential information is required to be discussed privately with the panel during hearings (in camera).

In my personal opinion, RPTAC's statute requiring hearings to be open to the public should be retired and replaced with a statute that allows for the property owner (petitioner) to decide whether the case should be heard in public. However, the Commission will reach out to OOG for advice as to how RPTAC should handle this issue

Recommendation 6.

RPTAC should determine and allocate resources needed to redact all hearing decisions for a given tax year and to post them online, as its regulations require. It should post them before the start of the next tax year's hearing season.

The Commission does not have the resources to redact all hearing decisions for a given tax year and post them on line. This would require additional personnel and training of the personnel.

Recommendation 7.

RPTAC should ensure that its data system includes additional fields to record all relevant rehearing data separately from original RPTAC hearing data.

We currently use the Office of Tax and Revenue's (OTR) FoxPro system. The system is currently being reconfigured by OTR to improve the systems capabilities. The Executive Director, who

recently left the agency, had met with OTR on this matter. RPTAC is working with OTR to ensure that all required data fields are addressed in the new system.

Recommendation 8.

RPTAC should ensure adequate supervision of its data entry personnel, and train them as necessary.

Agreed. It appears that RPTAC will have to go through training to learn how the new system has been improved.

Recommendation 9.

RPTAC should develop and implement a system to monitor the status of decisions by authoring Commissioner and use it to help appropriately manage Commissioners and their workloads.

The problem with managing Commissioners is that you never know how many Commissioners you will have to work with each year. Part-time Commissioners work irregular hours. Although Commissioners come on board with the idea that they can avail themselves to work at least 20 hours per week, some never meet that standard. Part-time Commissioners are more likely to have to be rescheduled which forces the Commission to use other, already work overloaded Commissioners to replace them. RPTAC's ability to meet its statutory mandates depends entirely on the number of cases the Commission receives each year. I have found that the Commission can handle up to approximately 4,500 appeal cases fairly well. The Commission has a very hard time meeting its deadlines when the case load hits 5,000 or more cases. The proposed statutory conversion of part-time Commissioners to temporary employees, as outlined in the response to Recommendation 1, should lead to improvements.

Sincerely,



Gregory Syphax
Chairman

ODCA Response to Agency Comments

We appreciate the response to the draft report provided by the Real Property Tax Appeals Commission (RPTAC), especially its agreement with many of our recommendations, and the steps that it already has taken to implement recommendations 1, 2, and 7.

We appreciate the steps RPTAC has taken already to try to make hourly Commissioners, to whom its comments refer as part-time Commissioners, employees of the District government. The current proposal for temporary six-month employees would meet our recommendation and likely also assist in better management of the caseload which could see an increase in response to the coronavirus pandemic. In addition to the benefits RPTAC identifies, the change would have the important effect of making hourly Commissioners subject to the District Code of Conduct.

We appreciate RPTAC's agreement with our recommendations to strengthen policies and procedures to prevent conflicts of interest, and to ensure the new data system will include the necessary fields, and the steps that it has taken already to implement both recommendations. We also appreciate RPTAC's agreement with our recommendation on training data entry personnel and requesting an advisory opinion from the Office of Open Government on how to conduct open hearings.

We stand by our recommendations that RPTAC should hold hearings open to the public when it can do so without violating statutory confidentiality requirements and should recommend a change in the law to resolve any conflict between the two requirements. Implementation of these recommendations is needed to comply with the law that requires hearings to be open to the public. We stand by our recommendation that RPTAC should determine what resources it needs to post redacted copies of all decisions and take steps to ensure that it is able to comply with its own regulations, including seeking additional funding if necessary.

We continue to believe that RPTAC should synthesize and collect available data about the status of written decisions and use this information to better manage Commissioner time. This is particularly relevant now, as property values change in response to the coronavirus pandemic, possibly increasing the number of appeals owners will file with RPTAC in the coming hearing season.

Since drafting the report, ODCA has learned that RPTAC is experiencing a change in its Executive Director and the RPTAC Chairman this year. We thank both outgoing leaders for their cooperation with our office during this audit, and hope that the incoming management team will continue the work the outgoing management team began in implementing our recommendations to make RPTAC more transparent and efficient.

Summary of Report Recommendations

Most of the recommendations in this report can be implemented without any additional costs to RPTAC, and/or help to advance the goals of RPTAC, as seen below.

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/Entity or District-Wide Goal Advanced by Recommendation
1. RPTAC should work with the Executive Branch leadership to comply with the statutory requirement that Commissioners be District government employees or propose a change to the law.	No	No	"RPTAC's mission is to conduct fair and impartial hearings" for property owners who use the RPTAC appeals process. ⁴⁷
2. RPTAC should implement stronger policies and procedures to reduce the risk of Commissioners hearing an appeal on which they have a conflict of interest.	No	No	"RPTAC's mission is to conduct fair and impartial hearings" for property owners who use the RPTAC appeals process. ⁴⁸ Additionally, RPTAC's fiscal year (FY) 2020 performance plan includes the strategic objective to "Create and maintain a highly efficient, transparent, and responsive District government." ⁴⁹

⁴⁷ Real Property Tax Appeals Commission District of Columbia Government Commissioner's Handbook, page 1.

⁴⁸ Real Property Tax Appeals Commission District of Columbia Government Commissioner's Handbook, page 1.

⁴⁹ RPTAC FY 2020 Performance Plan, available at <https://oca.dc.gov/node/160652>.

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/Entity or District-Wide Goal Advanced by Recommendation
3. RPTAC should determine which hearings can be open to the public without violating confidentiality statutes, such as hearings regarding single-family residential properties, and open them to the public.	No	No	"The public policy of the District is that all persons are entitled to full and complete information regarding the affairs of government and the actions of those who represent them."⁵⁰ Additionally, RPTAC's FY 2020 performance plan includes the strategic objective to "Create and maintain a highly efficient, transparent, and responsive District government."⁵¹
4. RPTAC should recommend statutory changes where open hearings on appeals and confidentiality statutes are in conflict.	No	No	"...valuation records protected under § 47-821(d), tax returns, and information that is personal in nature shall not be available for public inspection and discussion of same during a hearing shall be in camera."⁵²
5. As long as RPTAC's statute requires open hearings, RPTAC should request an advisory opinion from the Office of Open Government on how to conduct a hearing in which confidential information is required to be discussed privately with the panel during hearings (in camera).	No	No	"The [Office of Open Government] provides formal and informal advice to public bodies seeking guidance on compliance with the provisions of the DC Open Meetings Act, and conducts training and outreach on the procedural requirements of the Act."⁵³

⁵⁰ D.C. Code §2-572.

⁵¹ RPTAC FY 2020 Performance Plan, available at <https://oca.dc.gov/node/160652>.

⁵² D.C. Code § 47-825.01a(c)(6).

⁵³ "Office of Open Government." Accessed at <https://www.open-dc.gov/office-open-government> on April 8, 2020.

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/Entity or District-Wide Goal Advanced by Recommendation
6. RPTAC should determine and allocate resources needed to redact all hearing decisions for a given tax year and to post them online, as its regulations require. It should post them before the start of the next tax year's hearing season.	Yes	No	RPTAC's FY 2020 performance plan includes the strategic objective to "Create and maintain a fair and transparent hearing process by providing detailed information on the agency website." ⁵⁴
7. RPTAC should ensure that its data system includes additional fields to record all relevant rehearing data separately from original RPTAC hearing data.	No	No	One of RPTAC's strategic objectives is to "Create and maintain a highly efficient, transparent, and responsive District government." ⁵⁵
8. RPTAC should ensure adequate supervision of its data entry personnel, and train them as necessary.	No	Yes, if errors in the final assessment field are corrected in the District government's favor.	One of RPTAC's strategic objectives is to "Create and maintain a highly efficient, transparent, and responsive District government." ⁵⁶
9. RPTAC should develop and implement a system to monitor the status of decisions by authoring Commissioner and use it to help appropriately manage Commissioners and their workloads.	No	Yes. Workload tracking may contribute to efficiency.	RPTAC's FY 2020 performance plan includes the strategic objectives to "Process and render decisions within the statutory deadlines on all appeals heard by the Commission," and "Create and maintain a highly efficient...District government." ⁵⁷

54 RPTAC FY 2020 Performance Plan, available at <https://oca.dc.gov/node/160652>.

55 RPTAC FY 2020 Performance Plan, available at <https://oca.dc.gov/node/160652>.

56 RPTAC FY 2020 Performance Plan, available at <https://oca.dc.gov/node/160652>.

57 RPTAC FY 2020 Performance Plan, available at <https://oca.dc.gov/node/160652>.

Appendix A

Sampling Methodology

ODCA used FoxPro data to select a sample for review in hard copy. As discussed in Finding 3, we could not rely on FoxPro for values such as dates and dollar amounts, but testing demonstrated that TY 2018 information in FoxPro was reliable for use simply as a list of all appeals made to RPTAC.

FoxPro contains one entry for each decision, and some decisions may belong to a group with others related to the same property. For example, a residential property that was built and zoned as condominiums but was owned by one owner and managed as a single apartment building would have been assessed and appealed as multiple individual properties with one common hearing. Although such a building would only have one hearing, it could result in hundreds of individual entries in FoxPro. To limit the sample to one decision for each hearing that took place, ODCA indexed all entries in FoxPro based on the date, time, and room of the hearing.

ODCA estimated the number of days after the applicable decision due date that each decision was made. This was done by estimating which due date length would apply, based on the information about tax class recorded in FoxPro. Residential properties with four units or fewer are to be decided within 30 days of the hearing, and residential properties with five or more units and commercial properties are to be decided within 80 days of the hearing. ODCA used the date of the hearing and the decision date recorded in FoxPro to estimate how many days after the allotted time any decisions were recorded to be. Based on these estimates, ODCA selected an appeal from 23 different hearings that appeared to have been decided many days after their due dates.

ODCA also randomly selected an additional 31 decisions from 31 different hearings to review for compliance with deadlines, for a total sample of 54 decisions reviewed for timeliness. An additional six appeals which did not result in decisions were included for other purposes, for a total sample of 60. The 60 appeals were reviewed for compliance with other legal requirements and to determine whether values in FoxPro were accurate.

Because ODCA already had information that nearly half the sample may have been decided late before we reviewed the files, it increased the chances that the majority of the sample would be late. Finding 4 should not be interpreted as an indication that RPTAC decided more than half of all cases appearing before it later than the 30- or 80-day deadline.

About ODCA

The mission of the Office of the District of Columbia Auditor (ODCA) is to support the Council of the District of Columbia by making sound recommendations that improve the effectiveness, efficiency, and accountability of the District government.

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