



DEPARTMENT OF VETERANS AFFAIRS  
**OFFICE OF INSPECTOR GENERAL**

*Office of Special Reviews*

OFFICE OF CONSTRUCTION AND FACILITIES  
MANAGEMENT

Alleged Misconduct by  
Construction and Facilities  
Deputy Executive Director  
Not Substantiated



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## Executive Summary

In February 2020, the VA Office of Inspector General (OIG) received allegations of misconduct relating to VA's Office of Construction and Facilities Management (OCFM). Based on the allegations, the OIG conducted an administrative investigation into whether OCFM's deputy executive director, in his role as acting executive director, failed to respond appropriately to a 2018 audit by the office's Quality Assurance Service concerning a lease acquisition by OCFM's Central Region Office (the tenant). The OIG also investigated whether the deputy executive director falsely attested to the effectiveness of the organization's internal controls in 2019. The OIG did not substantiate either allegation.

The 2018 Quality Assurance Service audit report concluded that OCFM approved the lease acquisition based on an assertion that the landlord had asked the tenant to vacate its existing office space, but that the available evidence was insufficient for the auditors to verify that the tenant had been asked to vacate. The 2018 audit report did not include a determination that fraud had occurred, nor did it include any finding that the assertion was indeed untrue. Instead, the auditors concluded that their inability to substantiate that the tenant had been asked to vacate evidenced a process flaw that could pose "a potential risk of fraud" in the future.

In this administrative investigation, the OIG did not reexamine the unsubstantiated assertion but focused on the deputy executive director's conduct in responding to the 2018 audit report.<sup>1</sup> The deputy's response to the 2018 audit was not governed by OCFM policies because the audit was deemed a special review, which lacks the established protocols that apply to the office's standard compliance reviews.

The deputy executive director received the 2018 audit report from the Quality Assurance Service in December 2018. In the first few months following the issuance of the report, the deputy executive director discussed the findings and recommendations with OCFM staff. The deputy executive director told OIG investigators that he did not agree with all the findings and recommendations in the report. The deputy executive director also determined that the individuals who approved the lease acquisition were no longer OCFM employees, precluding VA from taking any disciplinary action if it determined any had engaged in misconduct. In November 2019, 11 months after receiving the report, the deputy executive director emailed OCFM's executive leadership team discussing the findings, recommendations, and his proposed action plan. He did not provide the email to the staff who had conducted the special review. The OIG found the deputy executive director's delayed response and the limited distribution of his email left an impression in OCFM that he had ignored the report. Although the OIG did not substantiate the allegation that the deputy executive director failed to properly respond to the

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<sup>1</sup> Among other reasons, the additional passage of time renders further analysis an unproductive use of resources, especially where the initial audit was hindered by a lack of evidence. See appendix A for more on the scope and methodology, including more detail on why allegations of fraud were not reexamined.

2018 audit report, the OIG determined that OCFM lacks a policy or procedure relating to special reviews performed by the Quality Assurance Service.

The other part of the allegation pertained to the interim and final fiscal year (FY) 2019 statements of assurance the deputy signed as acting executive director of OCFM. The statements are required under Office of Management and Budget Circular No. A-123. In them, the deputy executive director attested that OCFM's internal controls were effective and did not suffer from any material weaknesses. Yet during a February 2020 OCFM meeting, the deputy commented that he was neither "happy" nor "comfortable" signing the FY 2019 statements because of concerns he had about the quality of OCFM's controls and its assessment process.

When interviewed by the OIG, the deputy executive director denied any knowledge of material weaknesses in OCFM's controls. He testified that his comments were meant to emphasize the importance of improving controls and the A-123 assessment process in the future.

Contemporaneous communications corroborated his testimony that in his February 2020 meeting comments, the deputy executive director referenced only nonmaterial weaknesses in OCFM's controls. Additionally, while several witnesses interpreted the deputy's comments as an admission of false statements, others viewed them as bluster intended to motivate staff to focus on the importance of internal controls. The OIG determined that the deputy's comments during that meeting were not sufficient evidence to support an allegation of a false statement related to his attestation that OCFM's internal controls did not have material weaknesses. This is consistent with an informal inquiry later conducted by the current OCFM executive director regarding the deputy's comments that found that the deputy executive director's comments were misinterpreted by those who raised the fraud allegations and that the June 2019 statement of assurance was valid.

Although the OIG did not substantiate the allegations, the administrative investigators did identify the absence of a governing policy with respect to OCFM management's response to special review reports issued by the Quality Assurance Service, for which the OIG makes a corresponding recommendation.

In response to this report, the executive director of OCFM provided written comments in which he concurred with the OIG's findings and recommendation. He provided an action plan to implement the recommendation, which the OIG will monitor. The entirety of VA's response can be found in appendix B.



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## Abbreviations

AIMS	Action Item Management System
FY	fiscal year
OALC	Office of Acquisition, Logistics, and Construction
OCFM	Office of Construction and Facilities Management
OIG	Office of Inspector General



## Introduction

In February 2020, the VA Office of Inspector General (OIG) received a complaint alleging misconduct by the deputy executive director of VA's Office of Construction and Facilities Management (OCFM). In particular, the complainant alleged that the deputy executive director did not respond appropriately to a 2018 audit criticizing OCFM's handling of a lease acquisition for one of its regional offices.<sup>2</sup> The complainant also alleged that the deputy executive director "knew of material weaknesses and fraud risk within OCFM's system of internal controls" when he signed an interim statement of assurance on June 10, 2019, attesting that his "organization's system of internal controls is effective and achieving its intended objectives with no Material Weaknesses/Material Non-Compliance with Laws and Regulations."<sup>3</sup>

The OIG did not substantiate either allegation. However, the OIG identified the absence of a policy on special reviews conducted by OCFM's Quality Assurance Service and makes a corresponding recommendation.

## Findings and Analysis

### **Finding 1: The Deputy Executive Director Did Not Dismiss the 2018 Audit but Provided a Delayed Action Plan to a Limited Audience**

The OIG investigated the allegation that the deputy executive director dismissed a December 2018 audit (the 2018 audit) performed by the OCFM Quality Assurance Service, including a finding that an unsubstantiated assertion was used to justify a lease acquisition for one of its regional offices, which left VA's major lease program at risk of future fraud.<sup>4</sup> The OIG did not substantiate this allegation but did find there was no governing policy related to conducting and responding to special reviews by the Quality Assurance Service.

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<sup>2</sup> The deputy executive director served as the acting executive director for OCFM from September 28, 2018, until November 11, 2019, during which time the alleged misconduct occurred.

<sup>3</sup> Although not part of the complainant's allegation, the OIG also analyzed whether the deputy executive director falsified OCFM's final statement of assurance for FY 2019, submitted September 5, 2019.

<sup>4</sup> As noted in the summary, the OIG did not reinvestigate the circumstances underlying the 2018 audit, only the deputy executive director's response to that audit. The initial audit was hindered by a lack of evidence that would only have been exacerbated by the additional passage of time. Whether or not the audit's findings were valid, the OIG found it necessary to address how OCFM leaders could be held accountable for how they respond to special review audit findings in the future. For more information on the administrative investigation's scope and methodology, including the three reasons for not revisiting the audit findings, see appendix A.

## Quality Assurance Service and the 2018 Audit

The Quality Assurance Service was formed following an OIG 2005 audit recommendation regarding VA’s major construction contract award and administration processes.<sup>5</sup> The service provides comprehensive oversight of OCFM programs and operations primarily through its compliance review program, which is governed by standard operating procedures. Through this program, the Quality Assurance Service establishes a schedule each year to review a sampling of OCFM major construction and major lease projects. The service reviews relevant documents and may perform a site visit to assess the quality of project management and contract administration. When the Quality Assurance Service conducts a compliance review, it creates a report for OCFM executive leaders of its findings and develops an action plan that is tracked in the Action Item Management System (AIMS).

The Quality Assurance Service also performs “special reviews,” which are audits of OCFM operations that are not within the ordinary compliance review program schedule.<sup>6</sup> Special reviews are rare in the service’s work. Only two have been performed between 2015 and 2020—one undertaken on referral from the OIG and the other the self-initiated December 2018 audit. Although special reviews are conducted in accordance with the same auditing principles applied in the service’s compliance reviews, there is no OCFM or Quality Assurance Service written policy or procedure for special reviews.<sup>7</sup> Moreover, special review recommendations and action plans are not tracked in AIMS. As discussed below, these circumstances contributed to the misperception that OCFM management had not responded to the 2018 audit findings.

The 2018 audit was done at the direction of the then associate executive director of OCFM’s Office of Programs and Plans. The audit was initiated after the Quality Assurance Service received “multiple independent, unsolicited disclosures over a period of months” that raised concerns about a lease acquisition by OCFM’s Central Region Office (the tenant). According to the Quality Assurance Service’s audit report, OCFM used an unsubstantiated assertion to justify the lease acquisition. Specifically, the tenant’s then director had indicated in several lease approval memorandums and related documents that the landlord asked the tenant to vacate its existing office space.

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<sup>5</sup> VA Office of Inspector General, *Audit of Veterans Health Administration Major Construction Contract Award and Administration Process*, Report No. 02-02181-79, February 8, 2005.

<sup>6</sup> According to Quality Assurance Service managers, the only difference between a special review and regularly scheduled compliance reviews is that special reviews arise when service personnel identify circumstances that merit review rather than being programmed in advance. Because the review work is not substantively different, there appears to be no impediment to service leaders addressing and tracking the results of a special review in the same manner as follow-up actions to a compliance review (i.e., tracking the results through AIMS).

<sup>7</sup> The 2018 audit report states that the audit was conducted “in accordance with generally accepted government performance auditing standards.”

The Quality Assurance Service determined, based on the interview and documentary evidence the auditors gathered, that it could not corroborate this assertion that the landlord asked the tenant to vacate. Therefore, rather than concluding that the assertion was fraudulent, the report characterized it as “unsubstantiated.” Service reviewers made several recommendations related to this finding, including that OCFM’s Office of Real Property require documented justifications for lease acquisitions.

In responding to OCFM managers’ comments on the report, the Quality Assurance Service noted that it “[did] not assert that fraud occurred” during the lease acquisition. Nevertheless, the service maintained that the use of an unsubstantiated assertion to justify a procurement action “represents a potential risk of fraud.”

The Quality Assurance Service also found several instances of noncompliance with leasing requirements related to office space footprint restrictions and workspace sizes, and full and open competition. The service made corresponding recommendations in the 2018 audit report, but these were not tracked in AIMS, as previously noted.

### **The Deputy Executive Director Took 11 Months to Respond to the 2018 Audit Report and Sent His Action Plan to Executive Leaders Only**

The deputy executive director was first briefed on the 2018 audit in November 2018, soon after he became OCFM’s acting executive director. The report was issued on December 6, 2018. Thereafter, the deputy executive director engaged in numerous discussions with OCFM staff regarding the findings and recommendations, and then provided his thoughts to OCFM senior leaders via email. The first written communication from the deputy executive director to the associate executive directors regarding the 2018 audit report was an email on December 21, 2018, stating, “I will address the subject report with appropriate thoughtfulness.” He asked the associate executive directors to “[p]lease be patient as [he] carefully evaluate[s] and determine[s] the disposition of each of the recommendations, and what other steps should be taken.”

On December 28, 2018, the deputy executive director emailed the then associate executive director of the Office of Programs and Plans outlining concerns he had with the 2018 audit report. These included his concern that the Quality Assurance Service should not investigate fraud as part of its mandate and should not have performed a review to investigate potential fraud in the first place. In his view, the service should have instead referred the fraud allegation to the OIG or another independent entity.<sup>8</sup> Additionally, the deputy executive director noted the lack of a determination by the Quality Assurance Service that the lease justification was “untrue,” and

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<sup>8</sup> The OIG considered these allegations when they were raised around the time of the lease acquisition itself. The OIG declined to initiate an investigation at that time due to the failure to meet key priority factors and instead advised the complainant to refer the issues to OCFM quality oversight officials for review, which then resulted in the Quality Assurance Service 2018 audit report with recommendations for corrective action.

no discussion in the report regarding managers' approval of the justification. According to the deputy executive director, because there was no fraud, the burden of determining the propriety of the decision fell to the supervisory chain for the tenant's director—i.e., the former associate executive director for OCFM's office of operations and the former executive director for OCFM. The deputy executive director also explained in discussions and emails with certain OCFM staff that he did not think some of the report's recommendations were practical, such as finding another tenant for the small amount of excess space in the tenant's new location. He also believed some of the findings were inaccurate and contrary to regulations, such as OCFM being responsible for instituting space management and resource policies.

The deputy executive director also discussed with certain OCFM staff how best to implement changes in response to the audit and sought advice from the Quality Assurance Service because he was still learning how OCFM operated. On February 28, 2019, the Office of Programs and Plans provided the deputy executive director with five options for addressing the lack of documented justification noted in the 2018 audit report: (1) referring it to the OIG again; (2) referring it for an independent fact-finding investigation; (3) referring it to VA's Office of Accountability and Whistleblower Protection for investigation; (4) convening an administrative investigation board; or (5) asking the associate executive director of operations to lead a supervisory fact-finding effort. The deputy executive director did not implement any of these options. He told OIG investigators this was because he disagreed with some of the findings and recommendations and because some key personnel were unavailable, as described below. Instead, another OCFM employee prepared a draft message to OCFM senior leaders based on the deputy executive director's detailed review of and comments on the report. The deputy executive director and the employee exchanged several drafts from June through November 2019.

The deputy executive director told OIG investigators that he had researched the lease acquisition justification issue. He determined that managers with approval authority for the lease acquisition were no longer OCFM employees, including the OCFM executive director and the associate executive director of operations at the time, hampering his ability to investigate and pursue any necessary disciplinary action. From the deputy executive director's perspective, the "crucial pieces were not just the [tenant's director] describing the need and whether he was forthright with the information or not. It was also about the [associate executive director] that okayed the request and the [executive director] who okayed the request because... they, too, have responsibility to ensure that their subordinates have justified their requests[,]” but he could not ask them about the issue because they were gone. Although the tenant's director was an OCFM employee until the end of June 2019, those who approved the justification left OCFM before the 2018 audit report was issued.

On November 8, 2019, the deputy executive director advised his executive leadership team by email how OCFM would address the findings and recommendations in the 2018 audit report. He reminded the team that he first learned of the audit in November 2018 when he was briefed by

Quality Assurance Service staff, and that his response then “was the same response [he] would give today if briefed on similar issues. The assertions should have been raised to leadership and submitted to the [OIG].... This is especially true because the review touched many people and organizations within CFM.”<sup>9</sup> The deputy executive director noted his disagreement with the findings and recommendations. He also stated that he had “spent over a year observing and working to improve CFM processes” and that “CFM processes were inconsistent and accountability for decision making wasn’t clear.” In the deputy executive director’s opinion, the “findings in the [2018 audit report] offer glimpses into old internal CFM processes.” The deputy executive director acknowledged in testimony to the OIG that “it took far too long” to communicate this to his associate executive directors.

The deputy executive director concluded by outlining several steps that would be taken in response to the 2018 audit and that would be addressed with the incoming OCFM executive director. The steps he outlined included (1) clear guidance for resource requests and associated approval processes; (2) development of templates to ensure shared expectations regarding requirements, schedules, and expected costs; (3) encouragement of reviews of certain guidance and practices associated with internal VA space management; and (4) review of OCFM space use to ensure efficiency. According to the deputy executive director, his approach was to change how OCFM’s internal decisions are made to ensure there is “more structure and discipline” and a more transparent request process.

In late 2020 and early 2021, the OIG sought confirmation that the deputy executive director had carried out the actions named in the November 2019 action plan. The deputy executive director told OIG investigators in late 2020 that certain steps had been taken, but not formalized. The new executive director, interviewed by OIG investigators in late 2020, acknowledged that OCFM’s Office of Real Property had enhanced some of its processes, but said he was not aware if any of the steps identified by the deputy executive director in November 2019 had been completed. In April 2021, the deputy executive director provided a summary listing of general improvements that he believed had occurred in OCFM’s practices, processes, and training. According to the deputy executive director, the improvements were “management practices” that were not reflected in written policies or procedures. The deputy executive director also reported that he had discussed the circumstances of the 2018 audit report with a senior attorney in the VA Office of General Counsel in late 2019, as indicated in the follow-up actions enumerated in the November 2019 email.

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<sup>9</sup> Absent the existence of a criminal investigation, which was not the case here, there is no impediment to VA management conducting its own investigation of the circumstances and taking steps to address conditions that heighten the risk for fraud, waste, and abuse.

## **The Limited Distribution of the November 2019 Action Plan Left Some Nonrecipients Believing the Deputy Executive Director Ignored the 2018 Audit Report**

Because the deputy executive director limited the distribution of his November 2019 email to his executive leadership team, individuals below that level were unaware that the deputy had outlined steps to address the 2018 audit. The OIG found no evidence that the email was forwarded to lower-level OCFM employees. For that reason, some OCFM employees said they believed that the risk of fraud persists within the organization. A Quality Assurance Service employee explained to the deputy executive director that he needed to do something “real” and “visible to the CFM community because people in the CFM community know that this lease is [bogus], and [the employee] need[s] to see some type of communication from leadership about the matter.” The lack of organization-wide communication regarding the response to the 2018 audit was inconsistent with the Quality Assurance Service’s typical compliance review process, which involves broad discussions of review findings and the tracking of recommendation implementation in AIMS.

### **Finding 1 Conclusion**

The OIG did not substantiate the allegation that the deputy executive director failed to respond to the 2018 audit report. The OIG did, however, recommend that OCFM determine whether special reviews should be conducted by the Quality Assurance Service and, if so, develop policies and procedures related to communicating and tracking the implementation of the results.

The deputy executive director’s failure to broadly address the 2018 audit report, as well as his delay in doing so, led to some OCFM staff believing he ignored the report and failed to adequately follow up on the risk of fraud. In the first few months after its issuance, the deputy executive director engaged in discussions with OCFM staff regarding the report, but he failed to outline any action items for nearly a year. When he did so, he limited his response to a small group of executive leaders. The absence of a policy defining how special reviews are conducted, distributed, and addressed also may have contributed to the confusion on how to proceed with the results. Clear policy will help OCFM leaders address future complaints of fraud, waste, or abuse in OCFM programs.

## **Finding 2: Neither the Interim nor the Final Statement of Assurance by the Deputy Executive Director Was a False Statement**

As previously noted, the OIG investigated allegations that the deputy executive director, in his role as the acting executive director of OCFM, made false statements when he signed the office's interim and final statements of assurance in June and September 2019, respectively. In these statements he attested that OCFM's internal controls were effective and did not suffer from any material weaknesses. Specifically, the OIG investigated allegations that as early as December 2018, the deputy executive director "knew of material weaknesses and fraud risk within [O]CFM's System of Internal Controls" and that at an OCFM meeting on February 6, 2020, the deputy executive director "*publicly admitted* to the 20-30 people in attendance that he signed [O]CFM's 2019 Statement of Assurance (pursuant to [Office of Management and Budget] Circular A-123) in June 2019 with full and complete knowledge that the statement contained materially false information" (emphasis in original).

The OIG did not substantiate the allegations and found instead that the supporting evidence indicated that the deputy executive director's comments on February 6, 2020, were directed at encouraging his staff to participate in improving the FY 2020 A-123 assessment process. While several witnesses interpreted the deputy's comments as an admission of false statements, others did not agree (including those participating in an informal OCFM inquiry). As described in the sections that follow, the OIG determined that the deputy's comments during that meeting were not sufficient evidence to support an allegation of a false statement related to his attestation that OCFM's internal controls did not have material weaknesses.

Those comments reflected his acknowledgment of nonmaterial weaknesses in OCFM's controls and assessment processes. When considered in context, his comments were meant to emphasize the importance of improving internal controls, and were not an admission of a past false statement.

### **The Deputy Executive Director Signed Interim and Final FY 2019 Statements of Assurance**

An internal control is a policy, procedure, or process an entity puts in place to provide reasonable assurance that the entity's objectives will be achieved and to ensure compliance with applicable law. The head of every executive agency must assess its system of internal controls annually and report its findings to the President and Congress.<sup>10</sup> As part of VA's assessment of its internal controls, OCFM submits interim and final statements of assurance addressing whether there is

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<sup>10</sup> The annual assessment is required pursuant to the Federal Managers' Financial Integrity Act of 1982 (FMFIA), 31 U.S.C. § 3512. Office of Management and Budget (OMB) Circular No. A-123, "Management's Responsibility for Enterprise Risk Management and Internal Control," sets forth implementation guidance for the FMFIA, including how to perform evaluations and report on internal controls.

reasonable assurance that its internal controls are achieving their intended objectives and whether there are any material weaknesses in those controls.<sup>11</sup>

The deputy executive director signed interim and final statements of assurance on behalf of OCFM on June 10, 2019, and September 5, 2019. In the June 2019 interim statement of assurance, the deputy executive director attested that he could “[p]rovide reasonable assurance that [his] organization’s system of internal controls is effective and achieving its intended objectives with no Material Weaknesses/Material Non-Compliance with Laws and Regulations.” In the September 2019 final statement of assurance, the deputy executive director “reaffirm[ed] that there [were] no changes to [his] FY 2019 Interim Statement of Assurance.”

### **The Deputy Executive Director Commented on Concerns with the FY 2019 Statements of Assurance at a Meeting**

OCFM held a meeting on February 6, 2020, to kick off its FY 2020 A-123 assessment. Most of the associate executive directors and some of their staff were in attendance. The meeting was designed to introduce OCFM staff to a management consultant hired to assist in the assessment.

Some OCFM employees who attended the meeting alleged that in his comments, the deputy executive director suggested that because he had concerns, he should not have signed the FY 2019 statements of assurance. One OCFM employee told OIG investigators that the deputy executive director indicated that he was “very uncomfortable with the... statement of assurance that was given to him.” In a contemporaneous email dated February 6, 2020, this same employee stated that the deputy executive director “stated publicly... that he signed [O]CFM’s 2019 Statement of Assurance... in June 2019 with full and complete knowledge that the statement contained materially false information.” Another employee wrote in an email dated February 21, 2020, that after the deputy executive director “provided some opening remarks on the important [sic] of CFM having effective internal controls,” the deputy executive director stated that he “signed the FY19 statement of assurance even though he said he wasn’t happy doing it.”

Other staff in attendance whom the OIG interviewed, including one manager, did not harbor a similarly serious view of the deputy executive director’s comments. Another OCFM employee expressed concern that the deputy executive director based his statements of assurance on a flawed FY 2019 A-123 assessment process, but in response to OIG investigators’ questioning,

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<sup>11</sup> VA Financial Policies and Procedures, “Management’s Responsibility for Internal Controls,” vol. 1, ch. 5, February 27, 2019. Deficiencies in internal controls are classified at three levels: control deficiency; significant deficiency; and material weakness, which is the most severe deficiency. Material weaknesses may take many forms, though generally they involve conditions that materially (i) impair the fulfillment of essential operations or agency mission; (ii) deprive customers and veterans of services; (iii) violate statutory or regulatory requirements; or (iv) significantly weaken established safeguards against fraud, waste, loss, unauthorized use, or misappropriation of assets. Both control and significant deficiencies are reported internally within VA, while material weaknesses are reported externally to the President and Congress.

this individual did not agree that the deputy executive director falsified the statements of assurance.

An OCFM manager told OIG investigators that the deputy executive director's remarks were intended to be encouraging, as the deputy executive director explained that the FY 2020 A-123 process was going to be different from the FY 2019 process. This manager noted that the FY 2019 assessment process was not done "in an organized manner." The manager told OIG investigators that the deputy executive director's message was that "internal controls are important, and we're going to make sure that we do a better job in 2020." Finally, the manager told OIG investigators that the deputy executive director stated that he was "uncomfortable signing the statement of assurance" and that "I'll be honest with you. I don't know if I should have signed [the FY 2019 statement of assurance]." The manager interpreted this as meaning that OCFM did not "have a very good structured assessment taking place [in FY 2019]" and that OCFM was "changing that this year." This manager told the OIG that the deputy executive director's comments were the "wrong thing to say" but were "a little bit of hyperbole" and had to be understood in the context of a "leadership message to encourage people to do a better assessment in 2020." He conveyed this interpretation to others in conversations immediately following the meeting as well.

Several other firsthand witnesses corroborated this manager's interpretation of the deputy executive director's comments. Following the February 2020 meeting, the Office of Acquisitions, Logistics, and Construction (OALC) learned of "serious concerns" raised by OCFM employees who attended the meeting.<sup>12</sup> In response, OALC's principal executive director instructed the new OCFM executive director to conduct an informal inquiry into the deputy executive director's comments.<sup>13</sup> The executive director interviewed four OCFM staff who attended the meeting and who would be able to provide diverse perspectives as they were in different offices. All four OCFM staff indicated to the executive director that, as they perceived it, the deputy executive director did not admit to making false statements of assurance at the February 2020 kick-off meeting. Rather, they interpreted the comments as expressing the idea that there were improvements to be made in OCFM's internal controls and its A-123 assessment and that he would like to see them implemented during FY 2020. No one questioned the deputy executive director's integrity, although one interviewee told the executive director that better terminology than the word "uncomfortable" might have been used. After conducting the inquiry, the executive director issued his findings to all OCFM staff concluding that the deputy executive director's comments were misinterpreted by those who raised the fraud allegations and that the June 2019 statement of assurance was valid. He found, "[i]t is feasible to comply with policy and regulation as articulated in a Statement of Assurance AND for a Senior Leader to have concerns

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<sup>12</sup> OCFM is a component of OALC.

<sup>13</sup> On November 12, 2019, the executive director began serving in that role and the deputy executive director ended his service as the acting executive director.

or be uncomfortable with their organization’s internal controls - these are not mutually exclusive.”

### **The OIG Agrees the Deputy Executive Director’s Comments Were Not an Admission of Material Weaknesses**

A government employee may not “knowingly and willfully falsify a material fact or make any materially false or fraudulent statement in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States.”<sup>14</sup> The OIG found that the deputy executive director’s testimony and contemporaneous statements he made during the FY 2019 A-123 assessment process corroborated that his comments did not support a finding of false statements on the assurance submissions. The deputy executive director’s comments reflected concerns about nonmaterial weaknesses in OCFM’s controls and concerns about the FY 2019 process.

When interviewed by the OIG, the deputy executive director did not recall using the word “uncomfortable” with respect to signing the FY 2019 statements of assurance, nor did he recall stating that he should not have signed the statements. According to him, he told the audience that while OCFM “had all the minimal stuff to meet the needs” of the A-123 assessment, OCFM’s controls “did not include the things that I’m used to” and he did not want “to do that again” in FY 2020. He also used the kick-off meeting as an opportunity to pitch his idea that the A-123 process be used as a model for a “significant and comprehensive business controls approach, not just responding to A-123.”<sup>15</sup>

He also told OIG investigators it was his recollection that at the February meeting he said OCFM had a lot of work to do on controls. One OCFM employee told the OIG team that the FY 2019 A-123 assessment process was “helter skelter,” with administrative staff “running around trying to put something together at the eleventh hour” and turning that assessment “into crisis management.” According to the deputy executive director, OCFM hired a management consultant to address that issue, among others, and that his comments were intended to energize his staff to embrace the consultant’s assistance in completing the FY 2020 A-123 assessment.

The deputy executive director explained to OIG investigators that despite the characterization of his February comments, he never considered not signing FY 2019 statements of assurance. He felt that OCFM could improve its business controls and processes even though it “met the

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<sup>14</sup> 18 U.S.C. § 1001(a); *see also* 31 U.S.C. § 3729(a)(1)(B).

<sup>15</sup> The deputy executive director differentiated between “internal” and “business” controls and acknowledged to OIG investigators that some OCFM staff may not have understood the distinction he was making. He described internal controls as ensuring effective financial management and reporting, including fraud prevention, which are the focus of the A-123 assessment. In contrast, business or “management controls” are “the basis for [a] well-run business” and for the “repeatable successful delivery of either product or service.” Moreover, his organization’s internal controls could be fully compliant with OMB Circular No. A-123—effective and without material weaknesses—and still lack sufficient business controls that go beyond minimum requirements.

minimum requirements” of the A-123 assessment. According to the deputy executive director, by the time he signed the interim statement in June 2019, he “had a fair amount of familiarity with both the formal and informal controls in place” at OCFM and “felt very comfortable about signing for [A-123] purposes.”

This testimony is supported by an email the deputy executive director sent to OALC senior managers around the time he signed the June 2019 interim statement of assurance. On May 29, 2019, the deputy executive director informed OALC senior managers by email that he had identified three areas for improvement within OCFM: financial management controls, the timeliness of completing contractor performance assessments, and early project development collaboration. Specifically, the deputy executive director advised OALC senior managers that he “believe[d] these are areas that do not rise to a level of weakness or deficiency but some improvements are required based on [his] assessment.” In his testimony to the OIG, the deputy executive director stated that although he wrote that these areas did not constitute “deficienc[ies],” what he meant was that they did not constitute material weaknesses that needed to be reported to OALC through the statement of assurance.

## **Finding 2 Conclusion**

The OIG did not substantiate the allegation that the deputy executive director made false statements when he signed OCFM’s interim and final statements of assurance in June and September 2019. The deputy executive director told OIG investigators that he felt very comfortable signing the FY 2019 A-123 statements of assurance as OCFM met the minimum requirements of the assessment, a statement that was supported by email evidence. Testimony helped clarify that the deputy executive director’s use of “internal” and “business” controls led to confusion among some OCFM staff about whether he signed the assurance statements believing that inadequate controls constituted material weaknesses. The OIG determined that the evidence showed the deputy executive director’s comments were intended to improve the A-123 assessment process for FY 2020.

## Conclusion

The OIG did not substantiate the allegation that the deputy executive director, in his role as the acting executive director of OCFM, failed to respond to the 2018 audit report, nor did the OIG substantiate that the deputy executive director made false statements when he signed the FY 2019 statements of assurance. The OIG did recommend that OCFM examine whether its quality assurance staff should perform “special reviews” and, if so, how to better communicate and address any resulting findings.

## Recommendation

1. The Executive Director of the Office of Construction and Facilities Management determines whether conducting special reviews should be conducted by the Quality Assurance Service, and if so, establishes policy or procedures to govern this type of work, including standardized processes for communicating and tracking the implementation of recommendations.

## VA Comments and OIG Response

The OCFM executive director concurred with both OIG findings and the recommendation (see appendix B). He commented that “[a]n incomplete [OCFM] reorganization occurred in 2019, prior to my arrival, likely contributed to misunderstanding organizational roles, responsibilities, and communications.” The implementation plan includes reorganization within OCFM and clarification of oversight roles and responsibilities. Clear direction is also planned for internal management and oversight controls.

As part of its routine monitoring, the OIG will follow up and close the recommendation when sufficient documentation is submitted that demonstrates proposed actions have been implemented.

## **Appendix A: Scope and Methodology**

### **Scope**

The conduct under review by the OIG spanned September 2018 through May 2020. The OIG focused its inquiry on assessing the deputy executive director's response to the Quality Assurance Service's 2018 audit report and his signing of the statements of assurance in 2019. The OIG did not reinvestigate the circumstances underlying the 2018 audit, including the unsubstantiated assertion related to a notice to vacate and potential risk of fraud, and did not validate the Quality Assurance Service audit findings.

There were three primary reasons for not reexamining the 2018 allegations of potential fraud. First, in the 2018 audit, the Quality Assurance Service did not conclude that fraud occurred. Instead, as noted in its report, the service did not substantiate that a false assertion was used to justify the lease acquisition but did identify a corresponding process failure associated with documenting the support for the justification. The service concluded only that this process failure left OCFM's major lease program vulnerable to potential fraud in the future.

Second, attempting to validate the findings of the review would be hindered by evidentiary deficiencies. Significant time had passed between the conduct relevant to the 2018 audit and the complaint that sparked the OIG's administrative investigation. As noted in the 2018 audit report, pertinent evidence, such as the lease approval documents, are dated between 2013 and 2015, and the tenant's move occurred in 2017. Given the time elapsed following these events, as well as the departure from VA of many individuals with personal knowledge of the circumstances of the lease acquisition, the OIG determined that it would not be practical to determine the basis for the unsubstantiated assertion on which the lease acquisition was made.

Third, as noted in the 2018 Quality Assurance Service audit report, the OIG previously considered these allegations when they were raised around the time of the lease acquisition itself. The OIG declined to initiate an investigation at that time due to the failure to meet key priority factors and instead advised the complainant to refer the issues to OCFM quality oversight officials for review, which resulted in the 2018 audit report's findings and recommendations that were responsive to the complaint. The OIG nonetheless found it appropriate to assess the deputy executive director's response to the 2018 audit report through this administrative investigation.

### **Methodology**

The OIG reviewed applicable laws, regulations, policies, and procedures. Individuals interviewed included the deputy executive director and relevant OCFM employees. Additionally, the OIG collected and reviewed emails of the deputy executive director and relevant OCFM employees.

## **Government Standards**

The OIG conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Investigations*.

## Appendix B: Management Comments

### Department of Veterans Affairs Memorandum

Date: October 12, 2021

From: Executive Director, Office of Construction and Facilities Management (003C)

Subj: Response to Draft Office of Inspector General (OIG) Report, Alleged Misconduct by Construction and Facilities Deputy Executive Director Not Substantiated (Report # 2020- 02908-SR-0582)

To: VA Office of the Inspector General (Attn: Director, Office of Special Reviews)

1. Please find the following in response to your report, *Alleged Misconduct by Construction and Facilities Deputy Executive Director Not Substantiated*. I concur with all findings and recommendations and will take appropriate actions referenced in the implementation plan below by the suggested target completion dates.

2. **Finding 1**: The Deputy Executive Director Did Not Dismiss the 2018 Audit but Provided a Delayed Action Plan to a Limited Audience.

**Response**: Concur

3. **Recommendation 1**: The Executive Director of the Office of Construction and Facilities Management determines whether conducting special reviews should be conducted by the Quality Assurance Service (QAS), and if so, establish policy or procedures to govern this type of work, including standardized processes for communicating and tracking the implementation of recommendations.

**Response**: Concur, and I have determined that conducting special reviews **should not** be conducted by QAS.

- a. In consideration of Finding 1 and Recommendation 1, I have further determined the following:
  - (1) An incomplete Office of Construction and Facilities Management (OCFM) reorganization occurred in 2019, prior to my arrival, likely contributed to misunderstanding organizational roles, responsibilities, and communications. The Senior Executive Service (SES) position for Associate Executive Director, Office of Programs and Plans (OPP) was eliminated to free up an SES authorization for conversion to a new Deputy Executive Director position. The change was made without consideration of functional or organizational realignment of OPP elements: Quality Assurance Service (QAS), Project Controls Service (PCS), and Consulting Support Services (CSS).

- (2) QAS, PCS, and CSS functions are currently misaligned within the OCFM organizational structure.
  - (3) Conducting OCFM internal special inquiries, as referenced in this report, is unnecessary and inappropriate. There are clearly established Department procedures for reporting fraud, waste, and abuse.
- b. OCFM will do the following:
- (1) Reorganization of QAS, PCS, and CSS:
    - i. Within 30 days OCFM will complete a plan for realignment of QAS, PCS, and CSS for better alignment across OCFM organizations.
    - ii. Within 90 days OCFM will submit formal request to the Office of Acquisition, Logistics, and Construction for approval of the realignment plan.
    - iii. Within 180 days OCFM will complete the QAS, PCS, and CSS reorganization.
  - (2) Clarify executive oversight roles and responsibilities for quality assurance. I will issue a memorandum clarifying Associate Executive Directors are accountable and responsible for quality assurance, oversight, and administration of contracts containing quality control provisions.
  - (3) Provide clear direction on internal management and oversight controls versus external audits and special inquiries. I will issue a memorandum clarifying the limits and differences between internal management and oversight processes; internal controls; and internal inquiries; and reinforce procedures for requesting external audits and special reviews.
4. **Finding 2:** Neither the Interim nor the Final Statement of Assurance by the Deputy Executive Director Was a False Statement.

**Response:** Concur

5. If you have any questions, please contact [REDACTED].

(Original signed by:)

Michael D. Brennan, Ph.D., AIA

## OIG Contact and Staff Acknowledgments

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