

H. CARL McCALL
STATE COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

April 19, 2002

Ms. Judith A. Calogero
Commissioner
NYS Division of Housing and Community Renewal
Hampton Plaza, 38-40 State Street
Albany, New York 12207

Re: Report 2001-F-67

Dear Ms. Calogero:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, and Article II, Section 8 of the State Finance Law, we have reviewed the actions taken by officials of the New York State Division of Housing and Community Renewal (DHCR) as of March 1, 2002, to implement the recommendations contained in our audit report, *Processing of Major Capital Improvement Rent Increase Applications* (Report 98-S-79). Our report, which was issued January 7, 2000, reviewed the effectiveness of DHCR's procedures for reviewing building owners' applications for rent increases due to major capital improvements.

Background

The New York State Division of Housing and Community Renewal (DHCR) is the sole administrator of the State's rent regulation laws. DHCR's Office of Rent Administration (ORA) is responsible for regulating rents in approximately 1 million privately-owned rental units statewide under four laws: the Emergency Housing Rent Control Act, the Local Emergency Tenant Control Act, the Rent Stabilization Law, and the Emergency Tenant Protection Act (ETPA). These four laws are the foundation of the rent regulation systems commonly known as rent control and rent stabilization.

ORA is organized into six bureaus, four of which are the major case-processing bureaus: Overcharge; Services, Compliance, Owner Restoration, and Enforcement (SCORE); Owner Multiple (OM); and Rent Control/ETPA. The remaining two bureaus, Policy/Liaison and Management Services, provide the four processing bureaus with overall legal and policy direction, public information services, automation support, and records-management services.

Building owners may receive rent increases for making major capital improvements (MCIs) subject to ORA's approval. ORA's OM bureau processes the MCI applications.

Summary Conclusions

In our prior audit, we identified instances in which DHCR had approved rent increases without adequately verifying the work performed or the costs incurred. We also identified instances in which DHCR did not follow up on tenant complaints relating to prospective rent increases before granting approval for the increases. We made eight recommendations to improve DHCR's procedures relating to such rent increases.

In our follow-up review, we found that DHCR is in the process of updating its MCI processing procedures manual. The updated manual includes new procedures that will accomplish most of our recommendations.

Summary of Status of Prior Audit Recommendations

Of the eight prior audit recommendations, DHCR officials have implemented four recommendations, partially implemented three recommendations, and have not implemented one recommendation. Recommendations 2, 4, and 11 in the draft report were deleted before the report was issued as a final.

Follow-Up Observations

Recommendation 1

Improve internal controls by developing a new case processing procedure manual which will establish more reliable indicators for rent examiners to rely upon when they confirm MCI work and its costs.

Status - Partially Implemented

Agency Action - A new MCI Processing Procedures Manual is in draft stage. The Initial Case Processing and Case Evaluation sections of the draft manual provide guidelines and indicators that examiners can rely on when confirming MCI work and its costs. Although DHCR officials report that the final draft of the manual will be ready for review in a "few" months, some sections are currently in use.

Recommendation 2

Deleted for the final report.

Recommendation 3

Require owners to submit copies of J-51 tax abatement certificates, when the owners indicate on the MCI application that they have been granted tax abatements.

Status - Implemented

Agency Action – According to DHCR officials, the examiners have been verbally instructed to request the tax abatement documentation. Further, Section 412 of the draft manual (*J-51 Tax Abatements - Offset in the MCI Order*) establishes the steps for processing a J-51-related application, and a January 9, 2002, memorandum from the OM Bureau Chief covers the subject of certificates of eligibility.

Recommendation 4

Deleted for the final report.

Recommendation 5

Clarify on the tenant notice the distinction between MCI-related and service-related complaints.

Status - Partially Implemented

Agency Action - DHCR officials agree that clarifying the types of complaints would assist in the processing of applications and complaints, but declined to use the tenant notice to do this. They said they believe the issue has been clarified with the inclusion of a notation on the final disposition order that states, “Tenants are advised to file decrease in services (rent reduction) applications with this agency if building services are not being maintained.”

Auditor Comment – Such a general notation in the final disposition order may not signify to tenants that some of their specific responses to the MCI notice had been classified by DHCR as service-related and not relevant to the MCI complaint. It also does not clarify the difference between the two types of responses. DHCR officials have indicated they will explore ways to make the notation more specific.

Recommendation 6

Send tenants, as an attachment to the MCI application notice, the appropriate form and instructions for filing a service-related complaint.

Status - Not Implemented

Agency Action – DHCR officials told us they continue to believe that the recommendation creates the appearance of impropriety and bias based on an assumption that services are not being provided in a particular building. Therefore, they declined to implement the recommendation.

Recommendation 7

Include instructions for rescheduling an appointment on the inspection notice.

Status - Implemented

Agency Action - The notice of inspection has been revised and now provides a tenant the option of rescheduling the inspection (for a good cause) by calling the inspector, in advance, at a number listed on the notice.

Recommendation 8

Provide a specific definition of a room on the MCI application notice to the tenants and explain what is specifically required to contest a room count.

Status - Partially Implemented

Agency Action - The language in the notice to the tenants has been modified to state that the room count can be challenged by presenting substantive evidence in the form of floor plan copies or hand-drawn diagrams that include exact measurements. However, the actual definition of a room is not included because DHCR officials believe it would be too lengthy. Instead, the notice advises the tenant where the definition may be obtained (i.e., on the DHCR web site or from a Regional Rent Office).

Recommendation 9

Track rejected MCI applications.

Status - Implemented

Agency Action – DHCR officials showed us a log of rejected MCI applications that are currently being tracked. In addition, they said the new manual will incorporate procedures for dealing with this issue. According to Section 203 (*Rejection*) of the new manual, a copy of the rejected application, with all supplements, is to be retained along with the rejection notice.

Recommendation 10

Establish time standards for closing cases.

Status - Implemented

Agency Action – DHCR officials indicated that time standards were in place regarding MCI applications, but that strict application of time limits could be prejudicial to the parties involved. Therefore, they said guidelines that are reasonable but flexible are being proposed for Section 103 (*Case Processing Time Guidelines*) of the new manual. Although the manual is in draft form, the section on time guidelines is already being implemented.

Recommendation 11

Deleted for the final report.

Major contributors to this report were Howard Feigenbaum, Claudia Byam, and Sheila Jones.

We would appreciate your response to this report within 30 days, indicating any actions planned or taken to address any unresolved matters in this report. We also thank the management and staff of the Division of Housing and Community Renewal for the courtesies and cooperation extended to our auditors during our review.

Very truly yours,

Frank J. Houston
Audit Director

cc: John J. Solodow
Deirdre A. Taylor