



# New York City Department of Housing Preservation and Development

## HomeWorks Program: Compliance with Selected Program Requirements

Report 2007-N-20



Thomas P. DiNapoli



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# State of New York Office of the State Comptroller

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## Division of State Government Accountability

November 09, 2009

Mr. Rafael E. Cestero  
Commissioner  
New York City Department of Housing  
Preservation & Development  
100 Gold Street  
New York, NY 10038

Dear Commissioner Cestero:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the HomeWorks Program: Compliance with Selected Program Requirements. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller  
Division of State Government Accountability*





# State of New York Office of the State Comptroller

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## EXECUTIVE SUMMARY

### Audit Objective

Our objective was to determine whether the New York City Department of Housing Preservation and Development (Department) adequately monitors developer compliance with selected requirements for the pricing and sale of buildings in the HomeWorks Program.

### Audit Results - Summary

In the Department's HomeWorks Program, small, vacant City-owned buildings are transferred to developers for renovation and sale to eligible owner-occupants under formal agreements between the Department and the developers. Usually, several buildings in the same neighborhood are transferred to the same developer as a single project.

The developer is responsible for selling the buildings in a project. If the aggregate sale price of these buildings exceeds the originally expected sale price, the developer is to remit half the difference to the Department. This requirement is intended to promote affordable home prices in the project. However, we found that the developers often sell the buildings for higher prices than were initially agreed upon and may not always remit the full amounts due to the Department from these higher sale prices.

For example, when we examined the sale prices in six projects that accounted for most of the new activity in the Program between 2003 and 2007, we found that the actual aggregate sale prices exceeded the expected aggregate sale prices in five of the projects. In one project, the actual aggregate sale price of the 13 buildings exceeded the expected aggregate sale price by \$847,372, an average of \$65,182 per building; overall, the actual aggregate sale prices at the five projects exceeded the expected aggregate sale prices by a total of \$2.0 million, an average of \$39,495 per building. On the basis of these higher than expected sale prices, the developers should have remitted the Department a total of \$987,374; however, only \$201,500 was remitted, leaving an apparent shortfall of \$785,874.

Department officials believe no additional amounts are owed by these developers. They say the original pricing agreements had to be modified when the developers' costs were higher than expected and upgrades were made to some of the housing units. However, the Department did not adequately verify the developers' claims of additional costs. As a result, there is no assurance

prices had to be increased by the amounts they were. We recommend the Department verify these claims and determine whether any of the \$785,874 should, in fact, be remitted by the developers. We note that, if the remittances owed to the Department are not made, there will be less incentive for developers in the HomeWorks Program to keep home prices affordable.

Developers participating in the HomeWorks Program sell buildings to buyers who must meet certain eligibility requirements established by the Department. According to Department guidelines, the developers must select buyers from random lotteries that are conducted by the developers and supervised by the Department. However, when we reviewed the records maintained by two developers, we found that the developers did not always comply with these requirements.

For example, both developers sold buildings to individuals who were either not eligible for the HomeWorks Program because they did not have the minimum required income or down payment or whose income-eligibility was not documented. As a result, the risk of mortgage defaults increased. We also found that both developers passed over eligible applicants to offer, and sell, buildings to other applicants with worse lottery numbers. As a result, the fairness intended by the lottery selection process was undermined. We recommend the Department strengthen its oversight of the developers' homebuyer selection process.

Our report contains 14 recommendations for improving the Department's operation of this program. Department officials agreed with our recommendations and in responding to our draft report, indicated they have already taken action to implement many of them.

This report, dated November 09, 2009, is available on our website at: <http://www.osc.state.ny.us>. Add or update your mailing list by contacting us at (212) 474-3271 or  
Office of the State Comptroller  
Division of State Government Accountability  
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# Introduction

## Background

The mission of the Department is to maintain and improve the availability, affordability and quality of housing in New York City. The Department works with private, public and community partners to strengthen neighborhoods and help New Yorkers either become homeowners or rent well-maintained, affordable housing.

In its HomeWorks Program (Program), the Department takes small, vacant City-owned buildings and sells them for \$1 to experienced developers. The developers rehabilitate the buildings to create one- to four-unit homes. The developers are responsible for securing financing to cover the rehabilitation costs. However, a developer may also receive a loan from the Department to assist with these costs (in such cases, the loan is passed on to the homebuyer, though it does not have to be repaid if the buyer resides in the building for a certain period of time).

Generally, each participating developer acquires several buildings in a neighborhood. This building group is referred to as a cluster or project. When the properties are transferred, the developer and the Department sign various agreements that identify the properties, describe the developer's obligations, define the procedures that are to be followed if the developer defaults, and enumerate other Program requirements. For example, the developer is usually required to complete all project renovations within 18 months of acquiring the properties. In addition, if a project's total aggregate sale price is above the originally expected sales price, the developer is required to remit a certain portion of the proceeds to the Department.

The developers are also required to follow Department guidelines when they advertise the projects and select potential homebuyers. For example, supervised by the Department, the developers hold lotteries to select potential homebuyers. At least half the selected homebuyers must be current residents of the community, and the homebuyers must occupy one unit in their purchased building as their primary residence. The homebuyers are also required to meet certain minimum income requirements.

From the Program's inception in 1997 through December 31, 2007, the Department reportedly transferred 496 buildings to developers and provided \$24.4 million in City loans toward rehabilitation costs. Between January 1, 2003 and December 31, 2007, 134 buildings were reportedly transferred to 15 developers and about \$4.6 million in City loans were provided to the developers. A total of 113 of these 134 buildings were transferred to

six developers, and constituted eight projects. Our audit generally focused on these eight projects, which are located in Brooklyn, Manhattan and the Bronx.

## **Audit Scope and Methodology**

We audited selected aspects of the Department's administration of its HomeWorks Program for the period January 1, 2003 through May 31, 2008.

To accomplish our objective, we reviewed the Department's policies and procedures and related Program records. We also examined developer agreements, application logs and homebuyer eligibility files. In addition, we reviewed deeds, closing and settlement statements, real property transfer tax forms and grant agreements relating to properties that were sold in the Program. We also interviewed Department and developer officials.

Our audit focused on eight projects with 113 buildings that were to be renovated and sold by six large developers: (1) Mutual Housing Association of New York, Inc./Loewen Development - Homeworks III, LLC.; (2) East New York Homes, Inc.; (3) JF/P&M Joint Venture LLC; (4) Home Again in Harlem LLC; (5) NHS Community Development Corporation; and (6) Classic Townhouses, LLC.

We conducted our performance audit in accordance with generally accepted government auditing standards. 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.

As is our practice, we notified Department officials at the outset of the audit that we would be requesting a representation letter in which agency management provides assurances, to the best of their knowledge, concerning the relevance, accuracy and competence of the evidence provided to the auditors during the course of the audit. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. Agency officials normally use the representation letter to assert that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. They affirm either that the agency has complied with all laws, rules, and regulations applicable to its operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors. However, officials at the New York City Mayor's Office of Operations have informed us that, as a matter of policy, mayoral agency officials do not provide representation letters in connection with our audits. As a result, we lack assurance from

Department officials that all relevant information was provided to us during the audit.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

**Authority**

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

**Reporting Requirements**

A draft copy of this report was provided to Department officials for their review and comment. We considered their comments. Their comments were considered in preparing this report and are included at the end of this report.

Within 90 days of the final release of this report, we request that the Commissioner of the New York City Department of Housing Preservation and Development report to the State Comptroller, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

**Contributors to the Report**

Major contributors to this report include Frank Houston, Cindi Frieder, Gene Brenenson, Alina Mattie, Farhan Ahmad, Adele Banks, Jean-Renel Estime, Katrina Lau, and Dana Newhouse.



## Audit Findings and Recommendations

### Higher Than Expected Home Prices

To ensure that the homes in the Program are affordable, the agreements between the Department and the developers set an expected sale price for each building in a project. If the actual aggregate sale price of all the buildings in a project is greater than the expected aggregate sale price established in the agreement, the developer must remit half the difference to the Department. This amount (which is called the Contingent Commitment Fee) is due within five business days from the date of the last building sale in a project.

The agreements define the sale price as the total actual consideration paid by the homebuyer to the developer for the building. This would include down payments, mortgages, purchaser cash due at closing, developer obligations assumed by the purchaser (except amounts due to the Department, which are specifically excluded from the calculation of the sale price), and any grants provided to the purchaser – offset by closing costs and any amounts paid by the developer to, or on behalf of, the buyer (such as taxes and water/sewer fees paid in advance by the developer or cash returned to the buyer at the closing).

For each sale, the developer must submit to the Department copies of the deed effectuating the transfer, the attorney's closing statement, and a real property transfer tax form that indicates the amount of consideration (for example, down payments, mortgages, purchaser cash due at closing) paid by the purchaser.

To determine whether developers were complying with these requirements, we compared the actual aggregate sale price to the expected aggregate sale price for six projects. In addition, if the actual price exceeded the expected price, we verified the accuracy of the amount remitted by the developer as a Contingent Commitment Fee.

We selected six projects from our overall sample of eight projects (comprising the 113 buildings transferred to six developers during our audit period). We did not select the other two projects because some of the buildings in those two projects were not yet sold at the time of our review, and consequently, the actual aggregate sale price for those two projects had yet to be determined. In the six selected projects, the final building in the project was sold sometime between December 2005 and April 2008.

To determine the actual sale price for each building in these projects, we reviewed the settlement statements provided by the Department, as well as the deeds, attorney’s closing statements, real property transfer tax forms, and other supporting documentation for the sales. For 12 of the 76 sales reviewed, the Department did not have complete information on the consideration paid by the homebuyers (e.g., in some cases, the settlement statements and the attorney’s closing statements were not present). In these cases, we determined the total consideration paid on the basis of the information that was provided (e.g., in some cases, we used the deed price or the sale price reported on the real property transfer tax form).

We then aggregated the actual sale prices of buildings in each project and compared them with the expected aggregate sale prices that were specified in the formal agreements between the Department and the developers. We found that, in five of the six selected projects, the actual aggregate sale price exceeded the expected aggregate sale price, as follows:

Developer	Project	Number of Buildings	Aggregate Sale Price		Excess
			Actual	Expected	
Home Again in Harlem LLC	Harlem Central I	13	\$7,980,372	\$7,133,000	\$847,372
NHS Community Develop Corp	Bedford/Stuyvesant Phase I	9	\$3,374,744	\$3,192,875	\$181,869
NHS Community Develop Corp	Bedford/Stuyvesant Phase II	8	\$3,386,037	\$3,008,375	\$377,662
NHS Community Develop Corp	Bronx	8	\$3,144,250	\$2,998,125	\$146,125
Classic Townhouses LLC	Harlem Central II	12	\$8,056,600	\$7,634,880	\$421,720
Mutual Housing/Loewen Develop	HomeWorks III	26	\$6,649,771	\$6,673,156	\$ 0
Total		76			\$1,974,748

As a result, many of the buildings in those five projects were not as affordable as the Department intended. For example, the sale prices of the 13 buildings in the Harlem Central I project were, on average, \$65,182 higher than originally expected. Similarly, in the Bedford/Stuyvesant Phase II project, the sale prices of the eight buildings in that project were, on average, \$47,208 higher than originally intended. Overall, the sale prices of the 50 buildings in the five projects were, on average, \$39,495 higher than originally intended.

Department officials stated that it was their goal to make the buildings in the five projects as affordable as possible. They did not anticipate that the sale prices would increase the way they did.

In addition, on the basis of these higher than expected sale prices, the developers for those five projects should have remitted to the Department a total of \$987,374 in Contingent Commitment Fees (half the \$1,974,748 difference between the expected and actual aggregate sale prices for the projects). However, as of May 2008, only \$201,500 had been remitted (by Home Again in Harlem LLC). It thus appears that the developers for these five projects owe the Department an additional \$785,874 in Contingent Commitment Fees.

However, Department officials believe that no additional Contingent Commitment Fees are owed on these five projects, for the following reasons:

- In some cases, a building's sale price increased because the developer's costs increased unexpectedly due to unforeseen building structure and/or labor problems. The developer initially asked for increased funding from the Department, but there was no more funding available. As a result, the developer asked if the building's expected sale price could be increased to cover these unexpected costs, and the Department agreed. Accordingly, in these instances, there was no difference between the expected and actual sale price, and thus, no Contingent Commitment Fee was owed.
- In other cases, the sale prices increased because homebuyers elected to purchase upgrades offered by the developers such as central air conditioning and whirlpool tubs. Department officials stated they do not consider upgrade packages in the purchase price and therefore exclude them when Contingent Commitment Fees are calculated.

We question whether it was prudent for the Department to agree to an increase in a building's expected sale price without first verifying that the increase was commensurate with the costs actually incurred. We saw no

indication that the Department took adequate steps to verify the developers' actual additional costs.

We recommend cost verifications be performed before the Department agrees to developer requests for increases in expected sale prices. Otherwise, there is no assurance the increases are justified. (We identified a similar problem in our audit of the Department's Neighborhood Homes Program - audit report 2006-N-13, issued in September 2007.)

We also question the appropriateness of the methods used by the Department to change the expected sale prices. The agreements between the Department and the developers were not formally modified to reflect the changes. Rather, they were documented haphazardly in emails and other correspondence that lacked specific details (e.g., the cost increases claimed by the developers were neither quantified nor itemized).

Since it is not unusual for costs to increase in construction projects, we recommend the Department establish a formal process for the review and approval of developer requests to increase building prices in response to cost increases.

As for the upgrade packages, any such enhancements paid for by the homebuyers would be part of the total actual consideration paid, and accordingly, would be included in the sale price as it is defined in the agreements between the Department and the developers. Therefore, the price of the packages should be taken into account when Contingent Commitment Fees are calculated.

**Recommendations**

1. Determine whether any of the \$785,874 in potentially unremitted Contingent Commitment Fees for the projects in our sample are due from developers and recover these amounts.
2. Review all project sales completed to date for the Program to determine whether any additional Contingent Commitment Fees are due from developers, and seek recovery of these amounts.
3. Monitor future Program building sales to ensure that all Contingent Commitment Fees are remitted when they are due.
4. Monitor Program building sales to ensure that developers provide complete information on the total consideration paid for the buildings.
5. Verify a developer's claim of unexpected costs before increasing a building's expected sale price on the basis of that claim, ensure that

the price increase is commensurate with the cost increase, and maintain documentation of the verification process.

6. Establish a formal process for the review and approval of developer requests to increase building sale prices in response to unexpected cost increases.
7. Include the price of any upgrade packages in the total actual consideration paid for a building.

### **Homebuyer Eligibility and Selection**

According to the Department's guidelines, the developers must sell Program buildings to buyers who meet the Program's eligibility requirements, and these buyers are to be selected in random lotteries that are supervised by the Department. Specifically, once a developer begins marketing a Program project, interested buyers may submit applications to a post office box. After the application deadline has passed, the developer and a Department representative are to pick up the applications from the post office and conduct a lottery.

In this lottery, the applications are to be mixed together and random selections made until all the applications have been selected. The order of selection is to be recorded on the project application log, and the applicants are to be considered in that order. When considering an applicant, the developer is to verify that the applicant meets all Program eligibility requirements, certify to the applicant's eligibility, and maintain documentation showing this eligibility (such as copies of W-2 forms and income tax returns).

To determine whether developers were complying with these requirements, we reviewed the records maintained by two of the six developers in our sample. The two developers were NHS Community Development Corporation (NHS), which was responsible for 25 buildings in three projects in Brooklyn and the Bronx, and JF/P&M Joint Venture LLC (JF), which was responsible for 14 buildings in one project in Manhattan.

We found that the two developers did not always comply with these requirements, as they both sold buildings to individuals who were either not eligible for the Program or whose eligibility was not documented, and they both passed over eligible applicants to offer, and sell, buildings to other applicants with worse lottery numbers.

#### Ineligible Buyers and Undocumented Eligibility

To be eligible for the Program, a homebuyer has to meet certain minimum income and down payment requirements. The specific income requirements

are set by the developers, but they must comply with Department guidelines. For NHS, homebuyers had to have a minimum income ranging from \$41,500 to \$54,200, depending on the price of the building. For JF, a minimum income of \$58,800 was required for buildings selling for less than \$544,000, and a minimum income of \$98,600 was required for buildings selling for \$544,000 or more. Both developers also set down payment requirements.

At the time of our review, buyers had been selected for 38 of the 39 buildings offered by the two developers. We reviewed the income eligibility of these 38 buyers. We found that, for 17 of the 38 buyers (45 percent), either the documentation on file at the developers showed that the buyers did not meet the minimum income and/or down payment requirements or there was inadequate documentation on file. For example:

- According to the tax returns and W-2 forms on file at NHS, one buyer's household income totaled only \$36,112, which was less than the required minimum of \$41,500. The price of the building was \$379,000.
- According to the documentation on file at JF, a buyer had an income of almost \$70,000, which was significantly less than the required minimum of \$98,600. The price of the building was more than \$800,000.
- The documentation on file at JF did not include a tax return for a buyer who purchased a Manhattan building for \$680,000. The minimum required income for this building was \$98,600, but the only documentation on file relating to income was a 1099 form for miscellaneous income totaling \$11,500.
- The NHS files for eight buyers contained no documentation of income. These files contained neither tax returns nor W-2 forms. As a result, there was no assurance the buyers met the minimum income requirements for their buildings, which sold for between \$276,000 and \$435,000.

If buyers do not meet the minimum income requirements, there is an increased risk they could default on their mortgages. Such defaults would be contrary to the home ownership goals of the Program and could disrupt the housing situations of tenants in multiple-unit buildings.

Neither developer could adequately explain why buyers who did not meet the minimum income threshold were permitted to buy Program buildings. Each stated that, if an applicant could obtain a mortgage, it did not matter that the applicant did not meet the minimum income requirement. Officials at NHS also stated that some files had been misplaced, which was why the documentation for those files was missing.

Department officials stated that developers could lower the minimum income requirement if a potential buyer contracted for a high down payment. This option was not disclosed in the advertisements for the buildings, but Department officials stated that future advertisements for Program buildings will disclose this option. The officials also stated that, in the future, they will conduct periodic field visits to review the developers' documentation of homebuyer eligibility.

We note that there were buyers in our sample who failed to meet the minimum income requirements who did not provide high down payments (e.g., the three such buyers cited above provided down payments ranging from only 5 to 10 percent of the purchase price). We also note that, if this was the criteria that was used by the developers, it should have been disclosed to all prospective homebuyers. In the absence of this disclosure, some prospective buyers who could have made a larger down payment, but did not have the minimum required income, may have been discouraged from applying for participation in the Program.

- Recommendations**
8. Monitor building sales to determine whether buyers of Program buildings are meeting the minimum income requirements, and take corrective action when they are not.
  9. Monitor building sales to ensure that the developers maintain sufficient documentation of the homebuyers' eligibility for the Program.
  10. Monitor the minimum income requirements advertised for Program buildings to ensure that they are complete and accurate.
  11. Review the circumstances surrounding the 17 ineligible or potentially ineligible building purchases in our sample and take appropriate corrective action.

#### Eligible Buyers Passed Over

To determine whether buyers were being considered for buildings in the order in which they were selected in the lotteries for the projects, we reviewed the application logs, applications and related files at the two developers (NHS and JF). At NHS, we only reviewed the records for the two Brooklyn projects (a single lottery was held for the two projects); we did not review the records for the Bronx project. At JF, we reviewed the records for the Manhattan project.

At the time of our review, a total of 30 buildings had been sold in these three projects (17 by NHS and 13 by JF). NHS had reached lottery number 479

in its log of 907 applicants (i.e., it had supposedly considered the first 479 applicants who were selected in its lottery), while JF had reached lottery number 103 in its log of 700 applicants. At NHS, we randomly selected 30 of the 462 applicants who had supposedly been considered but had not purchased buildings (479 minus 17); and at JF, we randomly selected 19 of the 90 such applicants.

We then reviewed the applications and related records for these 49 applicants (30 at NHS and 19 at JF) to determine whether they were appropriately considered by the developers when buildings were ready to be sold.

The developers are supposed to go down their list of applicants in numerical order, contacting the applicants to confirm their interest, verifying their eligibility, and giving the eligible applicants an opportunity to make a purchase. Applicants can be considered out of order only when other Program criteria are being taken into account (e.g., both NHS and JF advertised that 50 percent of the buildings in their projects would be sold to community residents and 5 percent would be sold to uniformed members of the New York City Police Department; accordingly, to satisfy these percentages, applicants who met these criteria could be considered ahead of those who did not).

We found that 31 of the 49 applicants (18 at NHS and 13 at JF) were appropriately considered by the developers when buildings were ready to be sold. These applicants did not purchase buildings because they either did not respond to the developers' inquiries, were not eligible for the Program, or were not community residents and were passed over in favor of applicants who were community residents.

However, it did not appear that the remaining 18 applicants (12 at NHS and 6 at JF) were appropriately considered by the developers. For example:

- An applicant was denied by JF because his offered down payment of \$20,000 was considered insufficient for the more expensive buildings in the project, and according to JF officials, these were the only ones that were still available when they reached the applicant's number (42) on the log. However, we determined that one of the less expensive buildings was sold to another applicant who was number 59 on the list (with a \$21,600 down payment). We therefore question why applicant 42 was passed over. JF records indicate that both applicants (42 and 59) were community residents.
- An applicant was denied by JF because her \$60,000 income was insufficient for the more expensive buildings in the project, and according to JF officials, these were the only ones that were still

available when they reached the applicant's number (17) on the log. However, we determined that one of the less expensive buildings was sold to another applicant who was number 27 on the list. Applicant 17's income would have met the minimum income requirement (\$58,800) for this building. We therefore question why applicant 17 was passed over. The developer's records indicate that neither applicant 17 nor applicant 27 was a community resident.

- At least eight applicants with lottery numbers between 39 and 105 did not appear to be contacted by NHS (there was no documentation substantiating that they had been contacted). However, NHS did contact applicant 111 and sold this applicant a building. We question why the other applicants were passed over.

According to JF and NHS records, some applicants did not respond to their inquiries and others indicated that they were no longer interested. However, the developers do not always maintain documentation to account for these applicants. For example, we found that neither developer kept copies of the letters that were supposedly sent to these applicants, and neither retained copies of the letters that were supposedly returned as undeliverable. Also, we saw no files for applicants who are no longer interested in a Program building.

In the absence of documentation showing that all applicants are being considered in the order in which they were selected, there is no assurance this is the case. The Department-monitored lotteries are intended to protect against favoritism in the selection of homebuyers. If developers pass over potential buyers without valid and documented justification, there is no assurance the selection process has been fair.

When we attempted to contact the applicants in our sample, we found indications the process may not always be fair, as one of the applicants who responded to our inquiries said that he was never contacted by the developer and another said that the developer scheduled an interview during her workday. She tried to reschedule, but was told she would lose her spot if the time was changed.

While the Department's guidelines for the Program contain procedures for marketing the buildings, for conducting lotteries and for retaining purchaser records, they are silent regarding record retention guidance relating to potential buyers who are not selected for a Program building. We recommend such procedures be developed, and we recommend they include specific documentation requirements.

In response to our findings, Department officials indicated that they would develop a procedure manual addressing the homebuyer approval process. Further, they indicated that agency personnel would periodically spot check the developers' selection records.

- Recommendations**
12. Develop detailed procedures for the homebuyer selection and approval processes, and require that developers maintain adequate and complete documentation of the processes.
  13. Monitor the homebuyer selection process to determine whether applicants are being considered by the developers in the order in which they were selected in their lotteries, and take corrective action when this is not the case.
  14. Review the circumstances surrounding the 17 ineligible or potentially ineligible building purchases in our sample and take appropriate corrective action.

# Agency Comments



RAFAEL E. CESTERO  
Commissioner

Office of the Commissioner  
100 Gold Street  
New York, N.Y. 10038

June 5, 2009

Frank Houston,  
Audit Director  
Office of the State Comptroller  
Division of Management Audit  
123 William Street - 21st Floor  
New York, New York 10038

**Re: Audit of the Homeworks Program Compliance with Selected Program Requirements**  
**Audit Number: 2007-N-20**

Dear Mr. Houston:

The following represents the Department of Housing Preservation and Development's response to the recommendations contained in your audit of the Homeworks Program Compliance with Selected Program Requirements.

If you have any additional questions, please call Deputy Commissioner Bernard Schwarz at 863-6610.

Thank you.

Sincerely,

Rafael E. Cestero

AUDIT RESPONSE  
NEW YORK STATE COMPTROLLERS AUDIT  
NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT  
HOMEWORKS PROGRAM: COMPLIANCE WITH SELECTED PROGRAM REQUIREMENTS  
REPORT 2007-N-20

**Finding**  
Higher than  
Expected  
Home Prices

**Recommendation 1.**  
Determine whether any of the \$785,874 in potentially unremitted Contingent Commitment Fees for the projects in our sample are due from developers and recover these amounts.

**Recommendation 2.**  
Review all project sales completed to date for the Program to determine whether any additional Contingent Commitment Fees are due from developers, and seek recovery of these amounts.

**Recommendation 3.**  
Monitor future Program building sales to ensure that all Contingent Commitment Fees are remitted when they are due.

**Response 1.** HPD has researched the amount in question and determined that there are no Contingent Commitment Fees due to the Agency. The discrepancy lies with the format used to approve the adjustment in house prices. Program exercises the authority to accept changes in house prices for various reasons. Those changes will in the future be acknowledged by formal amendments to the Subsidy Agreement. The sales price threshold will be adjusted accordingly.

**Response 2.** HPD will review projects completed to date. For those projects that are ongoing, attention will be paid, as instructed, to request additional documentation and record formal acknowledgement of any changes that affect house prices by amending the disposition documents.

**Response 3.** Future building sales and post sales documents will be more closely monitored for payments made over the agreed upon sale price (payments not related to a closing transaction fee), to determine and collect any Contingent Commitment fees due to the City.

(212) 863-6100



TTY (212) 863-7934

AUDIT RESPONSE  
NEW YORK STATE COMPTROLLERS AUDIT  
NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT  
HOMEWORKS PROGRAM: COMPLIANCE WITH SELECTED PROGRAM REQUIREMENTS  
REPORT 2007-N-20

**Recommendation 4.**

Monitor Program building sales to ensure that developers provide complete information on the total consideration paid for the buildings.

**Response 4.** HPD now requests that developers return the HUD 1's and all related documentation on fees collected at the end-loan closing.

**Recommendation 5.**

Verify a developer's claim of unexpected costs before increasing a building's expected sales price on the basis of that claim, ensure that the price increase is commensurate with the cost increase, and maintain documentation of the verification process.

**Response 5.** Requests for home sale price increases will be carefully scrutinized before an approval is given. Where applicable, our construction review (DACE) unit will be asked to analyze construction additions and submit those findings in writing for the files.

**Recommendation 6**

Establish a formal process for the review and approval of developer requests to increase building sale prices in response to unexpected cost increases.

**Response 6.** All requests will be channeled through the appropriate units for review (i.e. DACE, Marketing, etc.) The written responses will be presented for final approval by the Assistant Commissioner.

**Recommendation 7.**

Include the price of any upgrade packages in the total actual consideration paid for a building.

**Response 7.** The sales price threshold will be amended in the appropriate document to include any formally approved sales price increases due to upgrades, construction or project issues.



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Homebuyer Eligibility and Selection-Ineligible Buyers and Undocumented Eligibility	<p><b>Recommendation 8.</b> Monitor building sales to determine whether buyers of Program buildings are meeting the minimum income requirements, and take corrective action when they are not.</p> <p><b>Recommendation 9.</b> Monitor building sales to ensure that the developers maintain sufficient documentation of the homebuyers' eligibility for the Program.</p> <p><b>Recommendation 10.</b> Monitor the minimum income requirements advertised for Program buildings to ensure that they are complete and accurate.</p> <p><b>Recommendation 11.</b> Review the circumstances around the 17 ineligible or potentially ineligible building purchases in our sample and take appropriate corrective action.</p>	<p><b>Response 8.</b> Marketing will formally review all requirements and procedures with developers before the selection process begins.</p> <p><b>Response 9.</b> Marketing has initiated periodic and/or spot visits to development offices to review documents.</p> <p><b>Response 10.</b> Marketing has added language to the advertisement indicating that a larger down payment could lower the minimum income requirement.</p> <p><b>Response 11.</b> Marketing has created a Project Manager's Procedural Manual; initiated site visits to developers' offices to review documents; and conducts formal pre-selection meetings with developers as corrective actions...</p> <p>HPD will also review the 17 building purchases.</p>
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Eligible Buyers Passed Over	<p><b>Recommendation 12.</b> Develop detailed procedures for the homebuyer selection and approval processes, and require that the developers maintain adequate and complete documentation of the processes.</p> <p><b>Recommendation 13.</b> Monitor the homebuyer selection process to determine whether applicants are being considered by the developers in the order in which they were selected in their lotteries and take corrective action when this is not the case.</p> <p><b>Recommendation 14.</b> Review the circumstances surrounding the 17 ineligible or potentially ineligible building purchases in our sample and take appropriate corrective action.</p>	<p><b>Response 12.</b> Marketing has created a Procedural Manual for its staff to address the approval process and other relevant marketing issues. Staff will be required to follow the procedures as outlined in the Manual</p> <p><b>Response 13.</b> The procedures outlined in the Procedural Manual address this issue.</p> <p><b>Response 14.</b> HPD will review the 17 building purchases.</p>
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