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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

September 6, 2019

Ms. RuthAnne Visnauskas
Commissioner/Chief Executive Officer
Homes and Community Renewal
Hampton Plaza
38-40 State Street
Albany, NY 12207

Re: Enforcement of the Mitchell-Lama
Surcharge Provisions
Report 2019-F-9

Dear Ms. Visnauskas:

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 followed up on the actions taken by officials of the Division of Housing and Community Renewal (DHCR) to implement the recommendations contained in our audit report, *Enforcement of the Mitchell-Lama Surcharge Provisions* (Report [2017-S-12](#)).

Background, Scope, and Objective

The Mitchell-Lama program (Program) was created in 1955 to provide affordable rental and cooperative housing to middle-income families. In exchange for low-interest mortgage loans and real property tax exemptions, the Program requires limitations on profit, income limits for tenants, and supervision by DHCR.

There are currently 140 State-supervised Mitchell-Lama developments with approximately 66,076 apartments. Applicants must meet eligibility requirements related to income limits, family size, and apartment size prior to taking occupancy of an apartment. Residents must also meet DHCR's income eligibility requirements on an ongoing basis during occupancy. By April 30 of every year, occupants of each apartment are required to submit an income affidavit attesting to their income and certain deductible expenses incurred during the preceding calendar year. Mitchell-Lama housing developments are responsible for distributing and collecting these annual income affidavits. If the reported aggregate annual income of all occupants in an apartment exceeds the development's maximum income limit for that apartment, building management is required to add a surcharge, up to a maximum of 50 percent, to the monthly rent or carrying charge. Payment of surcharges is a legal obligation. It is important that surcharges for tenants

with incomes exceeding legal thresholds be calculated correctly and collected timely, as surcharge income is applied to meet the operating costs of each development.

Our initial report, which was issued on April 10, 2018, examined whether DHCR properly assessed surcharges at Mitchell-Lama housing developments.

While surcharges were generally properly calculated and assessed for the tested transactions at the sampled developments, there were significant deficiencies in the processes used. We found that only 30 percent of the required income verification audits for our sample had been done. We also found that developments were not charging tenants the maximum allowable surcharges when tenants did not provide a certified tax return to substantiate self-reported income. Additionally, DHCR is several years behind in generating the match between tenants' self-reported information and their tax records. At the time of our review in 2017, DHCR's most recent match was for 2012. Further, the Private Housing Finance Law states that tenants whose income exceeds the maximum income limit by 25 percent or more require DHCR's approval to remain in their units. Our initial audit identified 29 units at our sampled developments that exceeded the limit. However, we found no evidence that DHCR had approved the residency of these tenants.

The objective of our follow-up review was to assess the extent of implementation, as of August 21, 2019, of the six recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that DHCR has made some progress in addressing the issues identified in our initial report. Of the six recommendations, three were partially implemented and three were not implemented.

Follow-Up Observations

Recommendation 1

Provide training to development officials on the proper surcharge and income verification procedures.

Status – Partially Implemented

Agency Action – DHCR officials told us that, since the issuance of our initial report, they have provided training on the proper surcharge and income verification procedures to employees from 9 of their 140 developments; all new employees are required to attend this training. However, documentation provided by DHCR showed that the training was given to employees from only six developments. The training included topics such as the tenant selection, income affidavit, and income verification processes. Additionally, DHCR officials informed us that they are in the process of developing a series of webinars, some of which will cover topics related to income verification. They anticipate a number of these webinars will be available at the end of this year.

Recommendation 2

Monitor building managers to ensure that follow-up verification audits are completed properly and timely and surcharges are correctly assessed.

Status – Partially Implemented

Agency Action – According to DHCR officials, they now require follow-up verification audits to be submitted electronically so that they can more closely monitor building managers throughout the process. They explained that if verification audits are not completed timely, a standardized email reminder that the verification audit is outstanding is sent to the building’s managing agent. For 2013, building managers were required to return their follow-up verification audits to DHCR by November 19, 2018. We found that only 39 of the 140 developments submitted their follow-up audits on time; DHCR did not send reminder emails to the other 101 developments until May 14, 2019 – six months after the due date.

We randomly selected a sample of 100 tenants (20 each from Electchester, Co-op City, Starrett City, Knickerbocker Village, and Rochdale Village) to determine if follow-up verifications were completed properly. We found that 18 of 100 tenants (18 percent) who required a follow-up verification were not included in the follow-up verification audits, and there is no evidence that DHCR contacted the developments to determine why. Further, DHCR officials only review surcharge calculations (for accuracy) if a tenant files an appeal disputing the surcharge.

Recommendation 3

Follow up on the occupant-related matters at the three developments we examined, as detailed in the report.

Status – Not Implemented

Agency Action – DHCR officials continue to disagree with this recommendation. They responded that our initial audit highlighted immaterial issues that did not warrant findings. However, we believe the issues we identified, such as not assessing surcharges accurately, should be addressed. Tenants who do not pay appropriate surcharges are not paying their required share, which places an undue burden on other tenants because lost revenue from uncollected surcharges can result in an increase in rent or carrying charges for all residents. Such rent increases would make the State’s Mitchell-Lama housing stock less affordable, hurting the tenants who pay the surcharges and placing an unnecessary financial burden on lower-income tenants.

Recommendation 4

Develop formal policies and protocols regarding tenants whose incomes exceed the maximum allowable limit. Perform periodic reviews to ensure compliance with those policies and protocols.

Status – Not Implemented

Agency Action – According to DHCR officials, any change of policies regarding tenants whose incomes exceed the maximum allowable limit would require legislative action. DHCR officials informed us that the State Legislature introduced a modification to increase the admission limits for Mitchell-Lama tenants who would have formerly been over the limit. However, this modification has not yet been signed into law. DHCR officials told us that policies will be reviewed when this happens.

In response to the initial audit, DHCR officials noted that the New York City Department of Housing Preservation and Development (HPD) received similar criticism from the Office of the State Comptroller regarding over-income tenants, and said that they intended to reach out to HPD to jointly study a legislative alternative, such as an enhanced surcharge structure, to ensure that over-income residents pay their fair share. DHCR officials told us that, since the issuance of our report, they have met with HPD officials three times (as recently as March 2019) to discuss policies regarding over-income tenants.

Recommendation 5

Conduct the outstanding annual tenant income matches with Finance records for 2013-2015 promptly, and ensure future matches are conducted and communicated to the developments on a current basis.

Status – Partially Implemented

Agency Action – DHCR officials have completed the annual tenant income matches with Department of Taxation and Finance (Finance) records for 2013 and are currently working on completing the income matches for 2017. Further, they informed us that they are in the process of collecting the 2018 income affidavits from the housing companies. DHCR officials stated they are prioritizing the most recent years first and will evaluate completing the income matches for 2014 and 2015 if resources permit. While DHCR has decided to prioritize the income verification process for the most recent years, its own regulations require it to verify tenant-reported income annually. Therefore, DHCR should complete all outstanding 2014, 2015, and 2016 income verifications.

Recommendation 6

Ensure the data file prepared for the Finance income match is accurate.

Status – Not Implemented

Agency Action – DHCR officials continue to disagree with this recommendation. However, they informed us they will hire a new third-party vendor to prepare the data file, which, officials anticipate, will improve the quality of the data.

DHCR should ensure that this data file is accurate because this information will be used to identify which tenants to audit and surcharge.

Major contributors to this report were Diane Gustard, Jasbinder Singh, and Leanna Dillon.

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

Very truly yours,

Aida Solomon, CPA
Audit Manager