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December 11, 1998

Mr. Joseph Lynch  
Acting Commissioner  
New York State Division of Housing and Community Renewal  
Hampton Plaza  
38-40 State Street  
Albany, New York 12207

Re: Report 98-F-21

Dear Mr. Lynch:

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 action taken by the Division of Housing and Community Renewal (DHCR) as of August 5, 1998, to implement the recommendations included in our audit "*Processing of Rent Overcharge Complaints in New York City*" (Report 95-S-120, issued February 21, 1997). That audit addressed the following questions concerning DHCR's practices for processing complaints about excessive rents from tenants in New York City for the period April 1, 1992 through March 31, 1996:

- Has DHCR taken appropriate action to reduce the backlog of complaints?
- Has DHCR developed adequate plans and procedures for processing incoming complaints in a fair and timely manner?

**Background**

The New York State Omnibus Housing Act of 1983 mandated the consolidation of all rent regulations under the control of DHCR. Effective April 1984, DHCR's Office of Rent Administration (ORA) assumed the responsibility for administering rent regulations for rent-controlled and rent-stabilized apartments in New York State. Rent-control and rent-stabilization regulations are designed to provide owners with an adequate return on their investments and tenants with protection from burdensome rent increases in a market with a persistent shortage of decent, affordable rental housing. As the sole administrator of the State's rent regulation laws, ORA is responsible for administering the rent control and rent stabilization system to protect the rights of tenants and landlords. There are

nearly one million rent-stabilized and 100,000 rent-controlled housing units in New York City. There are also about 65,000 rent-stabilized apartments in other counties.

As of December 31, 1995, ORA's Rent Overcharge Bureau had a backlog of about 30,000 unresolved rent overcharge complaints from tenants. Our prior audit focused on the operations of the Rent Overcharge Bureau, which handles complaints about rents from New York City tenants living in rent-stabilized apartments.

### **Summary Conclusions**

Our prior audit found that, while DHCR officials had taken steps to try to reduce the backlog of tenant complaints and begin processing incoming complaints in a timely manner, the backlog was still very large and complaints still took years to resolve. During that time, tenants often moved and could not be located to learn of the results of their overcharge complaint. As of December 31, 1995, the number of unresolved rent overcharge complaints from New York City tenants was 30,374 - down slightly from 30,558 on March 31, 1993.

Further, we found it took an average of 52 months for DHCR to determine whether the rent was excessive. We determined that 9 percent of the unresolved complaints were between 7 and 12 years old. We also found that many such tenants never receive their refunds, because the tenant has moved by the time the complaint is resolved, and the address on file is not current.

Our follow-up review found that DHCR had made significant progress in reducing the caseload of unresolved complaints. According to DHCR records, the number of unresolved complaints as of July 25, 1998, was down to 11,495; average processing time had also been significantly reduced. However, we found that DHCR has not taken additional steps to notify tenants involved in the older, backlogged cases, who have since moved, that they have been awarded refunds.

### **Summary of Status of Prior Audit Recommendations**

Of the seven prior audit recommendations, four have been implemented, one has not been implemented, one recommendation is no longer applicable; and one recommendation was revised based on additional information obtained during the follow-up review.

### **Follow-up Observations**

#### **Recommendation 1**

*Develop and implement specific Strategic Plan strategies and activities to eliminate the rent complaint backlog as quickly as possible and to keep the processing of the complaints current thereafter. Consider:*

- *utilizing the “wake-up” notices on a continuing basis until the backlog is resolved,*
- *making a comprehensive request for complete rent history documentation from the landlord and tenant when a complaint is first filed, and*
- *updating the procedures manual for overcharge complaint processing and establishing written procedures for the processing of appeals.*

### **Status - Implemented**

Agency Action - DHCR developed and implemented specific Strategic Plan strategies and activities to reduce the rent-complaint backlog and to process new complaints on a more timely basis. According to DHCR records, there has been significant progress in achieving these goals as the number of unresolved complaints as of July 25, 1998, was down to 11,495. Also, according to DHCR records, new complaints are processed in a more timely manner. Ninety-one of the 94 complaints filed during September 1997 were processed on average, in six months. The remaining three complaints were “open” as of August 7, 1998.

Further, DHCR officials explained that they had considered the three bulleted suggestions in Recommendation 1. In response, they designed a new intake form that elicits comprehensive information on tenants and landlords when the complaint is filed. In addition, although DHCR officials said they considered updating their procedures manual for overcharge complaint processing and establishing written procedures for the processing of appeals, they maintained that such actions would be premature in light of significant pending litigation concerning the interpretation of relevant statutes. Instead, DHCR officials explained that they provide direction through training sessions, and have enhanced automated processing.

### **Recommendation 2**

*Develop a system to measure ORA performance which includes measurable goals and objectives and the use of performance indicators.*

### **Status - Implemented**

Agency Action - ORA officials have developed a computerized case-tracking and statistical reporting system that generates numerous reports that they explained are used to monitor a variety of performance indicators. Such reports include production by individual staff member, production by case type, number of cases started and closed, monthly summary report on “last-in-first-out cases” (used to determine the average processing time), and an “Aged Cases Project” that tracks progress in eliminating the oldest cases.

**Recommendation 3**

*If a complainant cannot be located, the case should be suspended and then reopened if the complainant recontacts ORA.*

**Status - No Longer Applicable**

Agency Action - ORA officials explained that they have established, through the use of “wake-up” notices, a current list of complainants who are interested in pursuing their claims. Furthermore, they said, since new cases are currently processed on a more timely basis, cases are “fresh” and suspension is no longer an issue. They said they will reopen the case for a tenant who initially could not be located, but later contacted the agency, provided the tenant can prove that he or she had notified the agency of a change of address.

**Recommendation 4**

*Include in the Overcharge Complaint Form the need for tenants to notify DHCR of any change of their address while the complaint is being processed.*

**Status - Implemented**

Agency Action - DHCR’s new Docket Acknowledgment Notice warns complainants to notify the Overcharge Bureau if their mailing address changes.

**Recommendation 5**

*Measure the results of pilot projects and evaluate whether they should be fully implemented on an ongoing basis.*

**Status - Implemented**

Agency Action - ORA officials indicated that, although they did not commit their evaluations to writing, they nonetheless have measured and evaluated the pilot projects. They stated that these evaluations led to continuation of the “last-in-first-out” processing method and revisions to the overcharge complaint form. We confirmed that these methods have been incorporated by ORA; therefore, we consider this recommendation to be implemented. However, in the future, we suggest that such evaluations be committed to writing.

**Recommendation 6**

*Attempt to locate missing tenants who are due rent overcharge awards, and document such attempts in the case files.*

**Status - Not implemented**

Agency Action - ORA officials stated that when the notification letters ORA sent were returned as undeliverable, they verified the accuracy of the address against their existing database; held the returned letter for 30 days in case they received a change of address notification from the tenant; and sent a copy of the notification letter to the new tenant living at the address in the event that the new tenant had a forwarding address for the prior tenant.

Auditors' Comment - As indicated in Report 95-S-120, ORA was not processing rent overcharge complaints in a timely manner. During that period, decisions could take years, and, as a result, tenants had often moved and did not receive notification of their overcharge awards. We reported that \$7.9 million in such awards had been issued to tenants who could not be located. Given this set of circumstances, we believe that ORA should make a more concerted effort to locate these tenants and inform them that they are due funds. ORA officials agreed to consider making additional attempts to locate such missing tenants.

**Recommendation 7**

*Establish a procedure to forward to the State Comptroller's Office any Rent Overcharge Account funds that are unclaimed in accordance with Section 1310 of the Abandoned Property Law.*

**Status - We revised this recommendation based on additional information obtained during our follow-up review.**

Agency Action - DHCR officials agree that unclaimed funds should be transferred to the State Comptroller's Office. They indicated that they are in the process of developing a mechanism for transferring such funds; and that the account currently holds approximately \$53,400.

Major contributors to this report were Cindi Frieder and Robert Tabi.

We would appreciate your response to this report within 30 days, indicating any action planned or taken to address any unresolved matters discussed in this report. We also wish to thank officials at the New York State Division of Housing and Community Renewal for the courtesies and cooperation extended to our staff during this review.

Very truly yours,

William P. Challice  
Audit Director

cc: Robert L. King, DOB