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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

January 19, 2021

Ms. RuthAnne Visnauskas  
Commissioner/Chief Executive Officer  
Homes and Community Renewal  
25 Beaver Street  
New York, NY 10022

Re: Administration of Mitchell-Lama  
Waiting Lists  
Report 2020-F-19

Dear Ms. Visnauskas:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Article X, Section 5 of the State Constitution, we have followed up on the actions taken by officials of the Division of Housing and Community Renewal to implement the recommendations contained in our prior audit report, *Administration of Mitchell-Lama Waiting Lists* (Report [2016-S-46](#)).

**Background, Scope, and Objective**

The Mitchell-Lama Housing Program (Program) was created in 1955 to provide affordable rental and cooperative (co-op) housing to middle-income families. A total of 269 State-supervised developments, with over 105,000 apartments, were built under the Program. In exchange for low-interest mortgage loans and real property tax exemptions, the Program required limitations on profit and supervision by the Division of Housing and Community Renewal (DHCR), an agency within Homes and Community Renewal (HCR). Twenty years after initial occupancy, housing companies are statutorily permitted to voluntarily dissolve (buy out) and leave the Program. When developments buy out, they are no longer subject to DHCR supervision and apartments do not need to be kept affordable for middle-income families. There are currently 133 State-supervised Program developments with approximately 64,000 apartments.

Apartments are rented or sold to applicants on waiting lists maintained by DHCR's Automated Waiting List (AWL) system. When there are vacancies, applicants should be offered and awarded apartments in the order their names appear on the waiting lists. Applicants must meet certain eligibility requirements such as income limits and family size before taking occupancy of a unit. In addition, while internal transfer applicants (those already occupying Program units) have priority over external applicants for available apartments, developments are required to offer one out of every four available units to applicants on external lists.

We focused our initial audit on the five developments noted on DHCR's website with closed waiting lists (not accepting new applicants, generally because the list was already full) at the time audit fieldwork began: Mayflower Terrace (Mayflower), a co-op in the Bronx;

Amalgamated Warbasse Houses (Warbasse), a co-op in Brooklyn; Towers of BayRidge (BayRidge), a co-op in Brooklyn; Knickerbocker Village (Knickerbocker), a rental development in Manhattan; and Westview, a rental development on Roosevelt Island. Since the issuance of our initial audit report, Westview bought out of the Program. This follow-up review focused on the four remaining developments.

Our initial audit report, which was issued on August 17, 2017, found that DHCR needed to improve its monitoring of the developments to preserve the integrity of the Program and ensure that affordable units were awarded in compliance with New York Codes, Rules and Regulations, Title 9, Section 1727 (Regulations). Specifically, the audit found instances of non-compliance with key regulations, such as: applicants who were not selected from the AWL; developments not complying with the required 3:1 internal/external applicant ratio; successions not approved by DHCR; files missing required documentation to support tenant selection; and units vacant for extended periods of time. The audit also found that DHCR gave approval to admission and transfer applications that did not comply with the Regulations.

The objective of our follow-up review was to assess the extent of implementation, as of December 30, 2020, of the seven recommendations included in our initial report.

### **Summary Conclusions and Status of Audit Recommendations**

DHCR officials have made progress in addressing the issues identified in our initial report. Of the initial report's seven recommendations, one was implemented and six were partially implemented.

### **Follow-Up Observations**

#### **Recommendation 1**

*Identify changes in tenancy on a routine basis, and confirm that new occupants (including successions and transfers) were approved by DHCR.*

Status – Implemented

Agency Action – In response to our audit findings, DHCR officials issued a memorandum on July 7, 2017 to remind housing companies not to award apartments without DHCR's approval and to follow the process before permitting occupancy to applicants. DHCR officials explained that housing management representatives assigned to each Program development routinely review rent rolls to identify occupancy changes and, on a sample basis, verify whether new occupants were approved by DHCR. Additionally, effective March 17, 2020, housing companies are required to submit automated waiting list snapshots with applications to an electronic drop box for DHCR approval.

We reviewed a sample of 36 occupancy changes (12 admissions, 12 transfers, and 12 successions) between January 1, 2018 and October 6, 2020 for the four sampled developments and found that, according to the AWL system and apartment assignment log, 35 of the changes were approved by DHCR. The one other occupancy change did not require DHCR approval because it was for the removal of a deceased co-head of household of record from the stock certificate.

## **Recommendation 2**

*Take appropriate action regarding tenants who were awarded apartments without DHCR approval and/or not selected from the AWL.*

Status – Partially Implemented

Agency Action – During our initial audit, DHCR officials did not provide sufficient documentation to show that 12 applicants were selected from the AWL system or were eligible and/or that DHCR approved the apartments they occupied. These 12 applicants included 3 transfers not selected from the AWL system, 8 successions without proof of eligibility and DHCR approval, and 1 Knickerbocker employee who occupied an apartment at Knickerbocker without DHCR's approval.

During this review, DHCR officials provided documentation (applications and request for approval forms [HM-14s]) showing that they approved 11 of the 12 applicants identified in the prior report. However, DHCR did not provide us with documentation, such as income affidavits, to show how DHCR determined succession eligibility for seven of the eight successions. For the 12th case, involving the Knickerbocker employee, DHCR officials responded that housing company employees do not require HCR's approval when the apartment is a condition of their employment. They stated 9 NYCRR 1727-3.7 provides that housing companies may assign apartments for resident employees and their families if such assignments will provide for more efficient operation of the project. However, while 9 NYCRR 1727-3.7 allows a housing company to assign apartments for resident employees, it also states that such assignments are subject to DHCR's prior written approval, which was never provided.

## **Recommendation 3**

*Ensure that occupancy changes are supported by documentation showing the order in which applicants are selected.*

Status – Partially Implemented

Agency Action – In response to our initial audit, DHCR officials stated they directed all housing companies to retain copies of all relevant AWL pages along with each application in tenants' files or with the canceled application. In addition, DHCR officials modified their policies to require housing companies to submit printouts of the AWL to DHCR along with applications to be approved. These printouts identify the applicant's position on the waiting list at the time of application submission.

Our review of a sample of 24 occupancy changes for the period of January 1, 2018 through October 6, 2020 found that 22 applicants were selected in the order they appeared on the waiting list and 2 were not. DHCR officials asserted that multiple offers are made simultaneously, and they ensure that applicants ahead of selected applicants are given offers or that notations are made in the AWL system to explain why an offer was not sent to a previous applicant on the list. However, the supporting documentation we received did not explain why these two applicants were not selected in the order they appeared on the waiting list. For example, at the time of the selection of one applicant from the Knickerbocker one-bedroom waiting list, there were seven applicants ahead of the selected applicant without an offer or notations. The other applicant, from

Warbasse's one-bedroom waiting list, was also selected while two applicants were ahead on the AWL without an offer or notations.

#### **Recommendation 4**

*Ensure that housing developments comply with the requirements for awarding apartments, including (but not limited to) the 3:1 internal/external applicant ratio, the proper use of AWLs, as well as the prompt filling of vacant apartments.*

Status – Partially Implemented

Agency Action – In response to our initial audit, DHCR officials indicated that they reminded all housing companies to comply with the 3:1 ratio requirement and to select all applicants from the AWL system. They also had planned to work with the Office of Information Technology Systems (ITS) to determine options for efficiently administering and authenticating compliance review with the 3:1 ratio without conducting manual searches of the AWL. However, DHCR officials stated that, due to time constraints, ITS was unable to complete this redesign. In addition, DHCR officials amended the request for approval of apartment application forms requiring housing company officials to certify compliance with this requirement.

In our review of 371 occupancy changes (changes) approved between January 1, 2018 and October 6, 2020 for the four developments, we found that each development selected their approved applicants from the AWL system. However, applicants were not always selected in compliance with the 3:1 ratio requirement. Of the 371 changes reviewed, 282, or 76 percent, were in compliance with the 3:1 ratio requirement. The remaining 89 changes (69 at Warbasse, 11 at BayRidge, 8 at Knickerbocker, and 1 at Mayflower) were not in compliance with the 3:1 ratio.

In our initial audit, apartments were vacant for extended periods at Westview and Knickerbocker; Westview later filed for a certificate of dissolution with the Department of State on October 9, 2018 and was not part of this follow-up review. Knickerbocker's June 30, 2020 Marketing Activity Report showed 14 apartments were vacant for over a month, including applications for two apartments sent to DHCR on February 12, 2020 for approval. One of these apartments had been vacant since December 31, 2017 and the other since June 9, 2019. Similarly, a DHCR management representative reported on March 27, 2020 that Knickerbocker housing company officials must be consistent when submitting applications to DHCR and renting apartments to reduce vacancies. DHCR officials explained that some of Knickerbocker's vacancies are related to the housing company's efforts to upgrade its infrastructure. They also stated that Knickerbocker's overall vacancy rate was less than 5 percent, which is below the standard market rate.

#### **Recommendation 5**

*Ensure that Knickerbocker converts its paper waiting list to the AWL system.*

Status – Partially Implemented

Agency Action – In response to our initial audit, DHCR officials explained that they issued a directive on January 23, 2017 to Knickerbocker to remove the legacy paper list. In addition, DHCR officials stated that Knickerbocker's site manager advised DHCR on

March 1, 2017 that all items on the paper list had been added to the AWL system.

At the end of our initial audit, 17 applicants were active on Knickerbocker's paper waiting list and should have been transferred to the AWL. Our review found only 12 of the 17 had been entered in the AWL system. The remaining 5 were not found in the AWL system. DHCR responded that Knickerbocker officials had placed these five applicants in open units prior to the DHCR directive. However, they did not provide documentation to show that these applicants were appropriately selected and approved for apartments.

### **Recommendation 6**

*Determine whether successions approved by Knickerbocker meet eligibility criteria.*

Status – Partially Implemented

Agency Action – In response to our initial audit, DHCR officials stated they directed Knickerbocker to submit all unapproved successions to DHCR for approval. In addition, DHCR officials provided a copy of the memorandum they issued to all housing companies on July 7, 2017 to address succession procedures and requirements.

Our review found that 25 succession applicants were approved by DHCR during the period January 1, 2018 through October 6, 2020. We found that 12 of these 25 applicants were eligible for succession rights. However, documentation provided for the remaining 13 was insufficient to prove these tenants were eligible for succession rights.

### **Recommendation 7**

*Ensure that management representatives conduct field visits, including office and site reviews, at least yearly, as required.*

Status – Partially Implemented

Agency Action – In our initial audit, DHCR housing management representatives did not always conduct annual field visits at the sampled developments to comply with their housing management guidelines (guidelines). DHCR officials explained that, in the beginning of 2020, they modified their guidelines to prioritize or defer field visits to developments based on a risk assessment system that ranks developments as excellent, stable, marginal, or troubled. For example, if the assessment ranked a development as excellent, a visit would be deferred to the following year; if troubled, a visit would be prioritized.

We requested field visit reports (reports) for the four sampled developments and found that, since January 2018, DHCR housing management representatives had issued eight reports for four developments (BayRidge, Knickerbocker, Mayflower, and Warbasse). For 2018, annual visits were conducted at the four developments. For 2019, DHCR provided support for visits at three developments and indicated that, for the fourth development, the report was in draft. However, DHCR officials did not provide a copy of the draft report. For 2020, they indicated that one development (Warbasse) was visited on January 14, 2020 but did not provide us with supporting documentation. DHCR officials also indicated that three developments were scheduled to be visited during 2020. For example, Knickerbocker and BayRidge field visits were scheduled for May 10, 2020 and August 10, 2020, respectively. DHCR officials

explained that visits were not conducted due to COVID-19 pandemic-related conditions and restrictions.

Major contributors to this report were Diane Gustard, Adele Banks, Tina Jiang, and Reginald Martin.

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 also thank the management and staff of DHCR for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Aida Solomon  
Audit Manager

cc: Ronald Dickens, HCR