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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

May 26, 2011

Mr. Darryl C. Towns
Commissioner
NYS Division of Housing
and Community Renewal
Hampton Plaza, 38-40 State Street
Albany, NY 12207

Re: Housing Preference for Disabled Veterans
Report 2010-S-42

Dear Commissioner Towns:

We audited the New York State Division of Housing and Community Renewal's (Division) compliance with the Private Housing Finance Law provision for granting preference to disabled veterans in admission to Mitchell-Lama projects.

On November 27, 2007, the Private Housing Finance Law (Law) was amended to require housing companies to provide disabled veterans with a preference in admission to Mitchell-Lama housing developments. In advance of that Law's enactment, the Division issued a memorandum on November 6, 2007, directing housing companies on how they should implement the Law. The Division now requires housing companies to revise their tenant selection procedures, marketing advertisements, outreach letters, and apartment applications to give disabled veterans priority consideration for available housing. In addition, the housing companies were to notify existing waiting list applicants of this new priority.

We found housing companies failed to follow the Division's guidance. The Division also failed to monitor the housing companies adequately. As a result, disabled veterans have not received the intended housing preference.

According to the centralized Mitchell-Lama Automated Waiting List maintained by the Division and updated by the housing companies, the names of disabled veterans appeared on the waiting lists of 14 housing companies. A total of 25 disabled veterans were on these lists, including 16 who either were inactive or remained on the list because the housing development had no vacancies. Four of the remaining nine had been granted the disabled veteran preference, while five (each at a separate development) had not. In fact, we found 66 applicants had been offered a unit ahead of these five disabled veterans. In addition, we found 16 applicants had actually been placed in units ahead of four of the five disabled veterans. The fifth had been placed in a unit, but that occurred only after others had been offered the unit. When we asked

why the disabled veterans had not been given the required preference, the housing companies generally said it was an oversight. A representative of one of these housing companies told us they were not aware of the requirement.

Division officials stated some of the individuals identified on the waiting list as disabled veterans had later been found ineligible (in some cases due to income qualifications) or deemed to be inactive as they did not respond to correspondence. Had these individuals been afforded the preference at the time it should have been provided, they might have been eligible for a unit.

Importantly, Division management approves the selection of applicants for most Mitchell-Lama developments, explaining that they examine the order in which the applicant is selected, to ensure that other applicants have not been skipped unfairly and that preferences have not been afforded to unqualified applicants. However, officials stated that they do not review the waiting list to identify names of disabled veterans on the list. By failing to oversee this process adequately, Division management has contributed to disabled veterans not receiving the intended preference.

We visited these 14 housing developments, along with four others that did not have a disabled veteran on their waiting lists. We found the following:

- Eight developments were required to have a tenant selection plan. Three of them had not updated their plans to include disabled veteran preference.
- Six developments had placed advertisements since the change in the Law. Five of them had not mentioned the disabled veteran preference even though the advertisements had been approved by the Division for publication. Division officials pointed out that just two advertisements had been placed by companies with existing vacancies. However, the existence of vacancies does not change the requirement that the preference be advertised.
- Eight of the 17 developments that had open waiting lists since the Law changed had not updated their applications. Two had updated them only after hearing we were reviewing compliance with the Law.
- Seven of the 18 housing developments had not sent letters to applicants on their waiting list, informing them of the change in the Law. One development sent the letters as a result of our audit. In response to the letters sent by that development, one applicant claimed disabled veteran status and has since been interviewed for an apartment.
- The Division had reviewed tenant selection practices and prepared Management Field and Office Reports on 14 of the 18 developments. None of these reports identified deficiencies, although we found problems at 13 of the 14 developments.

Division officials state that they took numerous steps to advise housing developments of the new requirements, including reflecting these changes in updated regulations, field representative tenant selection review procedures, and tenant selection material posted on the

Division's website. Officials also stated they responded to housing company inquiries about how to implement the change. Despite these additional measures, we found many housing developments we visited were either not aware of the preference or were not in compliance with the new requirements. When we asked whether any additional memos had been sent to housing developments regarding the preference, Division officials informed us the only guidance sent to the housing companies was the original memo.

Recommendations

1. *Train Housing Management Representatives to properly review housing company compliance with applicable laws and Division guidance.*
2. *Increase monitoring of housing company compliance with applicable laws and Division guidance.*

Division officials agree with both recommendations and, in responding to our draft report, indicate they have taken action and will take additional steps to implement them.

Audit Scope and Subsequent Event

Our audit covered the period November 1, 2007, through September 7, 2010, and focused on housing companies located within New York City. Subsequent to our audit, on September 12, 2010, the Law was amended to extend admission preference for all veterans who served during time of war, and their surviving spouses, regardless of disability, who are residents of New York State. This change is likely to significantly increase the number of individuals eligible for preference and therefore makes it even more critical that the Division makes the changes we recommend.

Audit Authority and Methodology

The audit was based on the State Comptroller's authority under Article V, Section 1, of the State Constitution; and Article II, Section 8, of the State Finance Law. To accomplish our objectives, we met with Division and housing company officials to gain an understanding of how they were complying with the Law. We visited 18 housing companies located within New York City and reviewed documentation regarding their tenant selection practices. We also reviewed the centralized automated waiting list.

We did our audit according to 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 the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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. A draft copy of this report was provided to Division officials for their review and comment. Their comments have been considered in preparing this final report, and are included as Appendix A.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Division of Housing and Community Renewal shall report to the Governor, the State Comptroller, and the leaders of the Legislature and Fiscal Committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

Major contributors

David R. Hancox, John Buyce, Cindi Frieder, Myron Goldmeer, Daniel Raczynski, Legendre Ambrose, Nicholas Angel, Menard Petit-Phar

We wish to thank the management and staff of the Division of Housing and Community Renewal for the courtesy and cooperation extended to our auditors during this audit.

Very truly yours,

A handwritten signature in black ink, appearing to read "John L. Buyce". The signature is fluid and cursive, with a large initial "J" and "B".

John Buyce, CPA, CIA, CGFM
Audit Director

cc: Jon Brown, Director of Internal Audit
Thomas Lukacs, DOB



NEW YORK STATE
DIVISION OF HOUSING
& COMMUNITY
RENEWAL

HOUSING
TRUST FUND
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NEW YORK MORTGAGE
AGENCY

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HOUSING FINANCE
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BOND BANK AGENCY

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FINANCING
CORPORATION

ANDREW M. CUOMO
GOVERNOR

Darryl C. Towns
Commissioner

April 21, 2011

Mr. John Buyce, CPA
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State St. 11th floor
Albany, NY 12236

Dear Mr. Buyce:

Thank you for the opportunity to respond to the Office of the State Comptroller's audit report "Housing Preference for Disabled Veterans 2010-S-42". The Report recommends staff training and increased housing company monitoring to address administrative deficiencies in the implementation of the admission preference for disabled veterans at State supervised Mitchell-Lama developments.

We have reviewed the Report in detail and agree with OSC's recommendations. Homes and Community Renewal (HCR) is committed to making the Mitchell-Lama tenant selection process transparent and constantly strives to enhance training opportunities for staff and to improve its compliance monitoring.

The failure of some housing companies to obtain the necessary documentation (the disability must be service related and rated at 10% or more, as certified by the U.S. Department of Veterans Affairs) before identifying applicants as disabled veterans on their waiting lists made it difficult for our apartment assignment reviewers, and OSC's auditors, to determine whether qualified disabled veterans were being afforded the preference. As a result, we will make the following reforms:

- Staff will be instructed to routinely scan waiting lists to identify veterans and to follow up with the housing companies to insure that they have been pre-qualified and are being processed properly;
- Technical services staff will reprogram our apartment assignment and tracking system to allow us to capture data on applicants with the veteran preference so that periodic reports can be generated allowing us to better monitor housing company compliance;
- Additional training sessions will be held on the veterans preference for field staff;
- Staff will now document on housing company compliance in their field reports.

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Appendix A

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As stated in the Report, the Private Housing Finance Law was amended, effective September 12, 2010, to extend the admission preference to all veterans, or their surviving spouses, who served during time of war and reside in New York State. Upon enactment of the new law, HCR issued a memo advising housing companies of the amendment and provided step by step implementation instructions. Moreover, in an effort to outreach directly to veterans, we have written to eight different veteran organizations advising them of the new preference and providing them with listings of State supervised Mitchell-Lama developments and contact information for obtaining applications. We asked these organizations to disseminate this material to all of their chapters in New York State and to notify their membership. We also provided a staff contact for veterans who have questions.

The Mitchell-Lama tenant selection process is complex and the applicable regulations differ depending on the federal programs involved. For example, more than 75% of our portfolio participate in one or more federal programs, such as Low Income Housing Tax Credit, Section 8, Section 236, Rent Supplement or Rental Assistance Programs, which override state preferences and restrict admission to various ratios of low, very-low, and/or extremely-low-income applicants and can affect the otherwise chronological order of selection. Federal preferences, HUD approved owner preferences, and State preferences (i.e., the preference for transfer applicants for 3 out of 4 available apartments and the current admission preference for veterans) further complicate the order in which applicants are selected, as can the availability of apartments that have been designed specifically for persons with mobility impairments.

In an effort to make the process more transparent, to provide consistent oversight, to ensure that all applicants are treated fairly, and to address irregularities promptly, HCR has put the following systems in place:

- Mitchell-Lama Automated Waiting List (AWL), a web based system which simplifies waiting list administration for housing companies, enhances HCR's monitoring capabilities, facilitates audits, and enables applicants to track their waiting list position and remotely update their contact information.
- Complaint Tracking System (CTS), which centralizes the intake of applicant and tenant complaints, tracks the resolution process, and enables timely identification of training needs and regulatory non-compliance at our housing companies.
- Applicant Appeal Process, which provides applicants who were refused apartments the opportunity to appeal to HCR's Office of Legal Affairs to redress wrongful rejections or irregularities in application processing and, like the above mentioned CTS, enables us to identify training needs and regulatory non-compliance at our housing companies.

With respect to the Report finding that five disabled veterans were not properly afforded the preference, staff has carefully reviewed the audit work papers and housing company records and concluded that four of the five applicants either did not provide the required documentation to qualify for the preference or failed to respond to apartment offering. The fifth applicant was assigned an apartment once demonstrating that he qualified for the preference.

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We appreciate the opportunity to clarify some of the fine points of the tenant selection process and we look forward to working with you and your team to improve our operations.

Sincerely,


Brian E. Lawlor
Chief Operating Officer

*State Comptroller's Comment: At the time of the audit, housing company officials agreed that these five applicants who were identified as disabled veterans did not receive the required preference, and that other applicants were offered units before them. Further, and noted in the report, the housing companies agreed that these were oversights, with one company stating that they were not even aware of this preference.