

New York City Department of Housing Preservation and Development

Oversight of Mitchell-Lama Application Fees

Report 2018-N-4 | December 2019

OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objectives

To determine if the New York City Department of Housing Preservation and Development (HPD) ensured that managing agents properly accounted for application fees received and, if applicable, returned fees to applicants or turned them over to the Office of the State Comptroller as abandoned property. Our audit covered the period April 30, 2013 through July 10, 2019.

About the Program

HPD is the nation's largest municipal housing preservation and development agency. Its mission is to promote the quality and affordability of housing.

The Mitchell-Lama Program (Mitchell-Lama) provides affordable rental and cooperative housing to middle-income families. In New York City, there are 93 HPD-supervised Mitchell-Lama rental and cooperative developments with approximately 46,500 total apartments. Each development is governed by a Board of Directors, which may hire a managing agent to handle day-to-day affairs. Under the Rules of the City of New York (Rules), at the time of our scope, Mitchell-Lama developments collected application fees of up to \$200 per applicant. (In August 2019, this was reduced to a non-refundable \$75.) These fees are held indefinitely unless an applicant requests a refund or the application is rejected by the development or HPD. Generally, as vacancies occur, apartments should be offered and awarded to applicants based on their order on the waiting list, which is updated to reflect the withdrawal, rejection, and approval of applicants. Developments close their waiting lists when enough applicants are available to fill foreseeable vacancies. Waiting lists are periodically re-opened and new applicants are selected by lottery.

Our audit at three housing developments in Manhattan focused on waiting lists that were current as of May 2019.

Key Findings

- HPD is establishing lengthy waiting lists, and managing agents are collecting fees from hundreds of applicants. However, few of these applicants are obtaining apartments.
- HPD has not established criteria as to the number of applicants who should be selected and placed on waiting lists when conducting lotteries for the various developments.
- Waiting lists contained numerous inaccuracies related to applicant status that could preclude eligible applicants from obtaining scarce housing units and, conversely, could allow ineligible applicants to obtain units.
- We found weak controls and a lack of HPD guidance over application fees at the three selected developments, resulting in mishandled fees and discrepancies in fee payment statuses, ultimately impacting applicants' statuses on the waiting lists.

Key Recommendations

- Utilize turnover rates when establishing waiting list sizes. Make these rates public so that applicants have this information available when making a determination about whether they want to apply or remain on the waiting lists.
- Establish policies and procedures instructing managing agents on how to account for application fees, handle refunds (from lotteries prior to the application fee change), and canvass waiting lists; and periodically review for compliance.



Office of the New York State Comptroller Division of State Government Accountability

December 20, 2019

Ms. Louise Carroll
Commissioner
New York City Department of Housing Preservation and Development
100 Gold Street
New York, NY 10038

Dear Commissioner Carroll:

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 entitled *Oversight of Mitchell-Lama Application Fees*. 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,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
Fee	Application fee	<i>Key Term</i>
HPD	New York City Department of Housing Preservation and Development	<i>Auditee</i>
Maxwell-Kates	Maxwell-Kates, Inc.	<i>Managing Agent</i>
Metro	Metro Management Development, Inc.	<i>Managing Agent</i>
Mitchell-Lama	Mitchell-Lama Program	<i>Program</i>
OSC	Office of the State Comptroller	<i>Agency</i>
Rules	Rules of the City of New York	<i>Rules</i>
Trinity	Trinity House	<i>Housing Development</i>
Tudor	Tudor Realty Services Corp.	<i>Managing Agent</i>
Washington	Washington Square Southeast	<i>Housing Development</i>
York	York Hill	<i>Housing Development</i>

Background

The New York City Department of Housing Preservation and Development (HPD) is the nation's largest municipal housing preservation and development agency. Its mission is to promote the quality and affordability of housing and the strength and diversity of its many neighborhoods.

The Mitchell-Lama Program (Mitchell-Lama), created in 1955, provides affordable rental and cooperative housing to moderate- and middle-income families. In New York City, there are 93 HPD-supervised Mitchell-Lama rental and cooperative developments with approximately 46,500 total apartments (as of August 7, 2019). HPD has sole oversight responsibility for 85 of the 93 Mitchell-Lama developments; the remaining 8 are jointly supervised by HPD and the U.S. Department of Housing and Urban Development. Each development is governed by a Board of Directors, which may hire a managing agent to handle day-to-day affairs.

Title 28, Chapter 3 of the Rules of the City of New York (Rules) requires that developments maintain waiting lists for renting or selling apartments. Waiting lists are often closed because developments have enough applicants to fill vacancies for the foreseeable future. Periodically, these waiting lists open and new applicants are accepted through a lottery. Candidates selected by lottery are placed on waiting lists in the order they are selected. Managing agents notify newly selected applicants of their position on the list and send them an application form requesting an application fee (fee) of up to \$200.¹ These fees are held indefinitely unless an applicant requests a refund or the application is rejected by the managing agent or HPD. According to the Rules, applicants should be offered and awarded apartments in the order they appear on the waiting list, which is updated each time an applicant is approved, rejected, or withdrawn. Applicants can access the NYC Housing Connect website to view the application number and date of the last approved application.

We focused on waiting lists that were current as of May 2019 at three housing developments in Manhattan: Trinity House (Trinity), a rental development managed by Maxwell-Kates, Inc. (Maxwell-Kates); and Washington Square Southeast (Washington) and York Hill (York), cooperative developments managed by Metro Management Development, Inc. (Metro). York was managed by Tudor Realty Services Corp. (Tudor) until February 2018.

¹ In August 2019, the Rules were amended to require a non-refundable application fee of \$75. This report describes the Rules that were in effect prior to August 2019, when the maximum application fee was \$200.

Audit Findings and Recommendations

Weak controls, low turnover, and lengthy waiting lists have resulted in a significant amount of fees not being returned to applicants, thus making those fees susceptible to diversion or misuse by the developments. We found HPD is establishing lengthy waiting lists, and developments are collecting fees from hundreds of applicants. However, due to low turnover, few apartments are being awarded. We also found that HPD has not established criteria as to the number of applicants who should be selected and placed on waiting lists when conducting lotteries for the various developments. In addition, we found numerous discrepancies with waiting list notes regarding applicants' statuses, which could preclude some eligible applicants from obtaining housing units. We note that the managing agents for the three developments also manage other Mitchell-Lama developments, which could allow for potentially similar issues at these other developments.

HPD does not provide appropriate oversight over managing agents' handling of fees; officials believe this is not their responsibility. Our review found mishandled fees as well as discrepancies in certain applicants' fee payment statuses. During our review, HPD officials informed us that they would amend the Rules to require a non-refundable application fee of \$75, instead of up to \$200. This reduction could mitigate some of the risks we identified during our review. As stated above, this fee reduction took effect in August 2019.

Many Fees Paid; Few Apartments Awarded

The three developments offer affordable and desirable housing. As such, many people applied and subsequently paid the \$200 application fee. However, few applicants were awarded apartments. As shown in Table 1 below, 1,002 applicants on the waiting lists were noted as having paid fees totaling more than \$200,000 for the three developments in our audit scope. These lists resulted from lotteries that were held in 2013, 2016, and 2017.

Table 1 - Application Fees According to Waiting List Notes of May 2019

Year of Lottery	Apartment Size	Number of Applicants Selected	Applicants Recorded as Submitting Fees	Total Collected Based on \$200 Fee and Number of Applicants Recorded as Submitting Fees	Number of Move-Ins	Applicants Recorded as Requesting Refund	Number Still Active	Total Fees That Should Still be on Hand
York								
2017	Studio	750	309	\$61,800	3	3**	303	\$60,600
2016	One-Bedroom	500	151	30,200	1*	4	146	29,200
	Total	1,250	460	\$92,000	4	7	449	\$89,800
Trinity								
2016	Studio	750	316	\$63,200	6	9	301	\$60,200
2013	One-Bedroom	300	51	10,200	8	5	38	7,600
2013	Two-Bedroom	300	106	21,200	2	6	98	19,600
	Total	1,350	473	\$94,600	16	20	437	\$87,400
Washington								
2017	Three-Bedroom	250	69	\$13,800	3	2	64	\$12,800
	Total	250	69	\$13,800	3	2	64	12,800
	Grand Total	2,850	1,002	\$200,400	23	29	950	\$190,000

* A one-bedroom applicant transferred to the studio waiting list and moved into a studio apartment.

** One applicant was refunded the fee during the audit.

According to information on the waiting lists, as of May 2019, 23 applicants had received apartments from these lotteries and another 29 had requested refunds, leaving 950 on the waiting lists.

The three developments also had active lists from five lotteries that were held between 1997 and 2001 – we did not test these lists. Based on the notes on these older waiting lists, the developments appear to have collected \$198,400 in fees from these prior lotteries. However, more than 18 years later, only 66 applicants from these lists were awarded apartments; 116 requested refunds and 756 are still active (see Table 2).

Table 2 - Application Fees From Prior Lotteries According to Waiting List Notes of May 2019

Year of Lottery	Apartment Size	Number of Applicants Selected	Applicants Recorded as Submitting Fees	Total Collected Based on \$200 Fee and Number of Applicants Reported as Submitting Fees	Number of Move-Ins	Applicant Recorded as Requesting Refund	Other Inactive (Transferred or Rejected)	Number Still Active	Total Fees That Should Still be on Hand
York									
1997	Two-Bedroom	2,600	356	\$71,200	11	36	39	270	\$54,000
1997	Three-Bedroom	2,600	115	23,000	2	7	10	96	19,200
	Total	5,200	471	\$94,200	13	43	49	366	\$73,200
Trinity									
Prior to 2000	Three-Bedroom		29	\$5,800	3	24	0	2	\$400
	Total	0	29	\$5,800	3	24	0	2	\$400
Washington									
2001	One-Bedroom	1,600	263	\$52,600	42	23	0	198	\$39,600
2001	Two-Bedroom		229	45,800	8	26	5	190	38,000
	Total	1,600	492	\$98,400	50	49	5	388	\$77,600
	Grand Total	6,800	992	\$198,400	66	116	54	756	\$151,200

The three developments were holding more than \$340,000 in fees for 1,706 applicants. Based on current turnover, most of these applicants are unlikely to be awarded units. As there are many other desirable Mitchell-Lama developments in the five boroughs, there is likely a significant amount of fees paid by applicants and held by developments.

Moreover, our audit found that HPD has not established criteria as to the number of applicants who should be selected and placed on waiting lists when conducting lotteries. However, we note that the Division of Housing and Community Renewal's Mitchell-Lama regulations state that acceptance of applications should be limited to an adequate number of eligible applicants to fill anticipated vacancies.

HPD officials indicated that it is difficult to determine turnover rates because factors such as in-house transfers are hard to predict. However, to avoid collecting funds from applicants who have limited or no chances of receiving a unit, it is important that HPD establish criteria for determining the number of applicants needed when establishing waiting lists. HPD should also provide more information regarding turnover rates on its website to ensure that prospective applicants are aware of their chances of getting an apartment.

As noted in the tables above, few applicants request refunds, which could be the result of managing agents not canvassing the waiting lists and HPD not providing enough information to applicants to help them determine whether they should remain on the waiting list or request a refund. According to HPD officials, there are no rules that mandate the canvassing of applicants. While not required by the Rules, periodic canvassing would provide managing agents with updated information about applicants on the waiting lists, as well as inform applicants of their chances of getting an apartment or their rights regarding fee refunds.

In addition to contacting HPD or the development, applicants can view the last applicant approved (by waiting list number) on the NYC Housing Connect website to get an idea of how long the wait might be. We determined that these information sources are inadequate and could be misleading, as certain applicants, such as veterans, are given preference. Consequently, HPD should provide additional information to the public, such as apartment turnover rate and the number of approvals (move-ins), to help guide applicants in their decision about whether to remain on a list or request a refund.

Poor Controls Over Fees Can Impact Awarding of Housing Units

The Rules require HPD to approve the awarding of housing units to applicants. Generally, managing agents offer housing units to applicants based on their place on the waiting list as well as their fee payment statuses. Inaccurate waiting list information can lead to eligible applicants being skipped over in favor of ineligible applicants. Therefore, it is important that waiting lists accurately indicate which applicants paid and which have had their fees refunded so only eligible applicants are considered when apartments become available.

According to waiting list notes, from the six lotteries held during the audit's scope, the three developments we reviewed received a total of \$200,400 in fees from 1,002 applicants (see Table 1). To determine whether managing agents properly accounted for all fees received, we compared total fees that should have been received (according to waiting list notes) with total fees deposited (according to bank statements). We found \$30,350 (\$23,150 at York, \$6,200 at Trinity, and \$1,000 at Washington) in discrepancies between the total fees deposited into the developments' accounts versus the total that should have been deposited.

We found that most of the \$23,150 discrepancy at York was due to Tudor, the former managing agent, inappropriately retaining \$23,050 in fees. Our review found that Tudor mailed selection notices requesting that the \$200 fee be submitted in two separate checks: \$150 to York and \$50 to Tudor. When asked about this practice, Tudor officials responded that, per HPD guidelines, the \$50 is an administrative fee for conducting the lottery. However, we found that the HPD-approved agreement between York and Tudor granted Tudor \$50 only after an apartment sale has closed or after the first month's rent or carrying charge and security deposit, if appropriate, has been paid. As a result, by requesting the funds at the time the application fee was submitted, Tudor inappropriately claimed at least \$23,050 that should have been paid to York. We note that Tudor is the management company for eight other HPD developments. We question whether this practice is occurring at the other developments managed by Tudor.

We also reviewed applicants' files for copies of checks or money orders to support their payment statuses, as these were used to determine which applicants should be offered units. We could not find copies of checks or other forms of payments for 30 applicants who were listed on the waiting lists as having paid the fees. However, we found copies of checks and money

orders for another eight applicants who, according to the waiting lists, had not paid the fees; two other applicants had their fees refunded.

Officials at Maxwell-Kates, Trinity's managing agent, informed us the waiting list for studio apartments showed 24 applicants who should not have been active on the list as they did not submit \$4,800 in fees. Maxwell-Kates officials asserted that these were errors but did not explain why they occurred. While we did not find payment support in the files for these 24 applicants, neither HPD nor the managing agent could rule out the possibility that funds had, in fact, been received. Maxwell-Kates officials did not provide an explanation for another five applicants listed as having paid for whom we did not find supporting documentation.

An applicant on Washington's three-bedroom waiting list was noted as having submitted the fee. As a result, an offer was made to the applicant to view two apartments on February 12, 2019. However, we did not find support to show that the applicant had indeed paid the fee. Subsequently, Metro, the managing agent, confirmed that the fee had not been paid. Had this applicant responded to the offers, it is possible a scarce, affordable apartment would have been given to an ineligible applicant.

In addition, had the eight applicants listed as not having paid fees (six at Trinity, one at Washington, and one at York) and for whom we found support that they had indeed paid, been higher on the waiting lists, they would have likely been skipped, missing out on being offered a scarce, affordable apartment. As a result of our audit, the managing agents have updated the waiting lists to accurately reflect that these eight applicants paid the fees and are active.

Given the weaknesses found at the three developments, we believe HPD should provide guidelines to managing agents that require reconciliations of fees deposited with applicants listed as having paid the fees. In addition, HPD should periodically monitor for compliance with the fee reconciliation requirement. However, HPD officials assert that this is a basic accounting process that is not their responsibility. We note that accurate payment information on the waiting lists is vital to ensure that eligible applicants are being offered apartments. Without this oversight, there is a risk that HPD could approve the awarding of a housing unit to an ineligible applicant. We note that the managing agents for the three developments are also the managing agents for additional Mitchell-Lama developments. It is possible that the weaknesses identified at the three developments also exist at other developments managed by these same managing agents.

Returning Fees to Applicants; Turning Fees Over to Unclaimed Funds

According to the Rules, if an applicant withdraws an application, the managing agent may retain up to \$50 and return the balance. However, if an applicant is rejected, the entire fee should be returned. Our review found weaknesses in the process for returning fees when applications are rejected or when applicants do not respond to apartment offers.

Returning of Fees for Rejected Applications

According to HPD guidelines, when mail is returned as undeliverable, the managing agent should confirm that the address matches the one on the waiting list. The guidelines also state that the applicant should be called to confirm the address; this attempt to contact the applicant should be noted in the waiting list's comments.

We found that York and Washington did not comply with these guidelines. These two developments sent rejection notices to 107 applicants (92 at York and 15 at Washington). Thirteen notices were returned as undeliverable: 2 at Washington and 11 at York.

Some of the letters were returned as far back as three years ago. Yet the managing agents made no further attempts to contact the rejected applicants, even though additional contact information, such as email addresses and telephone numbers, was on file. In fact, as a result of our inquiry, unopened, undelivered envelopes with returned checks or money orders were found in a box at York. In addition, it took about one year after the February 2018 Washington application deadline for Metro to send notices, checks, and money orders to rejected applicants.

These applicants were not aware of their status on the waiting lists. Further, because the fees were submitted by money order or certified check, the funds are still with the issuer (i.e., banks, post offices). HPD should instruct the developments to make additional attempts to contact rejected applicants so their fees can be returned. As a result of our review, HPD officials stated the managing agents have since reached out to almost all of the rejected applicants to return their fees.

Potential Unclaimed Funds

Abandoned Property Law Section 1315(2) states that unclaimed money held in escrow is deemed abandoned property after three years. Part 115 of Title 2 of the New York Codes, Rules and Regulations requires abandoned property

to be filed with the Office of the State Comptroller (OSC). Given the length of time applicants are on waiting lists, it is possible they may have moved by the time an offer for an apartment is received. As a result, the refundable portion of their application fees could be deemed unclaimed funds.

We found that HPD has not established criteria for determining when fees should be considered abandoned property. According to HPD officials, as long as applicants are on a waiting list, their fees are never considered abandoned, and it is the applicants' responsibility to request a refund. As a result of this practice, the fees for several applicants who did not respond to offers years ago are still being held by the developments. In addition, one development is still holding onto the fee for an applicant who we learned was deceased.

We identified 14 applicants (5 at Trinity, 4 at Washington, and 5 at York) who submitted fees but did not respond to apartment offers. The managing agents could not support that further attempts were made to contact these applicants to return their fees. For instance, in 2013, Maxwell-Kates mailed apartment offers to five applicants. These applicants did not respond to the offers and remain on the waiting list. Their fees have been with Trinity for over six years, where they will remain until the applicants contact Maxwell-Kates. Metro and Maxwell-Kates officials told us they never turn fees over to OSC's Unclaimed Funds as abandoned property.

Our preliminary report recommended that HPD consider reducing fees to address some of the concerns regarding fees, refunds, and unclaimed funds. HPD officials informed us that they would amend the Rules to require a non-refundable fee of only \$75, rather than allowing for fees up to \$200. As stated above, this new fee took effect in August 2019. Going forward, this change will mitigate some of the risks we identified.

For applicants on current waiting lists, HPD officials stated that they will canvass the lists on a case-by-case basis and include a checkbox for refund requests. In addition, they will consider posting information on their website regarding how to request a refund.

Missing Records

When applications are received by the managing agents, they are reviewed for eligibility, including for the correct family composition. The fees for rejected applications are generally not deposited, but are returned to applicants. According to the Rules, developments must maintain all books, records, and other relevant documents and keep them available for inspection. In addition, HPD guidelines state that managing agents must keep a separate file for each applicant, including copies of all notices sent with proofs of mailings.

Maintaining these documents provides an audit trail to ensure the integrity of the waiting lists.

We found the managing agents at the three developments had rejected 189 applicants on waiting lists due to incorrect family composition. To determine whether managing agents made the proper determination regarding family composition, we attempted to review these applicants' files and found that the managing agents did not maintain records for 88 applicants (75 at York and 13 at Trinity). As a result, we could not determine whether the managing agents' determination of incorrect family composition was accurate for the 88 rejected applicants. In addition, we did not see documentation supporting the return of fees at Trinity. Maxwell-Kates, the managing agent at Trinity, did not respond to our request for supporting documentation for the rejected applications.

As part of our review, we sent letters to 185 of the 189 rejected applicants to confirm the family composition and the return of their application fees. We received 57 responses stating that the family composition requirement was not met or application fees had been returned. Another 29 applicants indicated their fees had not been returned. We followed up on these 29 and found proof that fees were mailed to some of them.

It is important that managing agents maintain all records as required to ensure HPD and other audit entities can verify that decisions made are accurate and appropriate.

Recommendations

1. Utilize turnover rates when establishing waiting list sizes. Make these rates public so applicants can determine whether they want to apply or remain on the waiting lists.
2. Establish policies and procedures instructing managing agents on how to account for application fees, handle refunds (from lotteries prior to the change in the application fee), and canvass waiting lists; and periodically review for compliance.
3. Follow up on the discrepancies identified in this report and update the waiting lists as necessary.
4. Notify York's Board of Directors of the application fees kept by Tudor and recoup those fees as appropriate.

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5. Instruct York's managing agent to review the 11 disqualified applicants whose mail was returned and make additional attempts to return their fees.
 6. Establish criteria for determining when application fees are deemed abandoned and turn them over to OSC's Unclaimed Funds.
 7. Monitor managing agents' compliance with the requirement to maintain records to support applicant rejections and the return of fees.

Audit Scope, Objectives, and Methodology

The audit objectives were to determine if HPD ensured that managing agents properly accounted for application fees received and, if applicable, returned these fees or turned them over to OSC as abandoned property. Our audit covered the period April 30, 2013 through July 10, 2019.

To accomplish our objectives and evaluate internal controls, we reviewed relevant Rules and HPD guidelines relating to application fees. We interviewed HPD officials and managing agents at three Mitchell-Lama developments to gain an understanding of the underlying controls related to the accounting for application fees received and the refund of fees to applicants. We selected a judgmental sample of three developments based on risk identified from a prior audit and dates lotteries were held. We reviewed the three developments' current waiting list notes, bank statements, applicant files, and refund documentation. In addition, we sampled 480 applicants to confirm the accuracy of waiting list notes as they pertain to application fees received and returned. This included a random sample of 281 applicants and a judgmental sample of 199 applicants. Our random and judgmental samples cannot be projected to the population as a whole.

Statutory Requirements

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.

We conducted our performance audit in accordance with generally accepted government auditing standards. These 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 during our audit provides a reasonable basis for our findings and conclusions based on our audit objectives.

As is our practice, we notified HPD 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 its 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 HPD 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 threats to 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.

Reporting Requirements

We provided a draft copy of this report to HPD officials for their review and formal comment. Their comments were considered in preparing this final report and included at the end of it. HPD officials generally agreed with our findings and recommendations and indicated that they were taking actions to address many of the issues we identified. HPD officials disagreed with our recommendation to use turnover rates when establishing waitlist sizes and stated that they already have a system in place for determining waitlist length. Our responses to certain HPD comments are embedded within HPD's response.

Within 180 days after 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 the recommendations were not implemented, the reasons why.

Agency Comments and State Comptroller's Comments



City of New York
DEPARTMENT OF
HOUSING PRESERVATION AND DEVELOPMENT
100 GOLD STREET, NEW YORK, N.Y. 10038
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LOUISE CARROLL
Commissioner

December 11, 2019

Mr. Kenrick Sifontes
Audit Director
Division of State Government Accountability
Office of the State Comptroller
59 Maiden Lane, 21st Floor
New York, NY 10038

Re: Audit of the Oversight of Mitchell-Lama Application Fees, 2018-N-4

Dear Mr. Sifontes,

Thank you for the opportunity to respond to your Audit Report on the Oversight of Mitchell-Lama Application Fees (the "Audit Report").

We were pleased that, as expected, the audit revealed no instances of fund misappropriation or violation of Mitchell-Lama rules, and that most of the issues cited were resolved by the time the audit report was issued. As the report notes, we also proactively undertook a rule change reducing the application fee to \$75 non-refundable, which will effectively address most of the report's findings; we will be implementing or fortifying additional procedures as well.

We believe, however, that several conditions related to controls at Mitchell-Lama properties as being weak or unexamined were mischaracterized in this report. HPD takes care in the administration of its duty to oversee Mitchell-Lama managing agents, and we hope that our attention to the recommendations in your audit reveal this commitment.

Once again, thank you for providing the opportunity to comment on the Audit Report.

Sincerely,



Louise Carroll

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Agency Response:
NYC Department of Housing Preservation and Development (HPD)
to Office of the New York State Comptroller (NYS Comptroller)
Audit of the Oversight of Mitchell-Lama Application Fees
Audit Number: 2018-N-4
Date: December 11, 2019

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We believe, however, that several conditions related to controls at Mitchell-Lama properties as being weak or unexamined were mischaracterized in this report. As key examples:

- 1) The NYS Comptroller makes repeated reference to the notion that Mitchell-Lama waitlists are unnecessarily "lengthy" and that "based on unit turnover, most of these applicants are unlikely to be awarded units". It is important to note, however, that the length of waitlists reduces down to a very small number of applicants who are both eligible for Mitchell-Lama units and responsive to engagement from managing agents (as described further in the response to Recommendation 1). Put simply, unit turnover is not the only factor affecting receipt of a unit, and there is a rationale behind Mitchell-Lama properties maintaining waitlists at the lengths observed during the audit.

State Comptroller's Comment – We stand by our comment. While we acknowledge that turnover is not the only factor, it is a crucial factor, as an apartment needs to be available to be offered to an applicant on the list.

- 2) The NYS Comptroller states that "lengthy waitlists have resulted in a significant amount of fees not being returned to applicants" and that "fees are held indefinitely unless an applicant requests a refund or the application is rejected by the development or HPD".

State Comptroller's Comment – HPD misquoted the report. Our report states, "Weak controls, low turnover, and lengthy waiting lists have resulted in a significant amount of fees not being returned to applicants."

There exists no correlation between length of waitlists and the question of whether fees are returned; also, insofar as fees are returned upon applicant request or upon rejection, they are (by definition) not held "indefinitely". Moreover, the report asserts that unreturned fees are "susceptible to diversion or misuse by the developments." There is no evidence and no findings in the report to support such a claim.

State Comptroller's Comment – As indicated in the report, \$23,050 was diverted from York's application fees.

HPD takes care in the administration of its duty to oversee Mitchell-Lama managing agents through periodic audits, support, and training, and does not, as the report claims “believe [it] is not their responsibility” to “provide appropriate oversight of managing agents.”

State Comptroller's Comment – Again, HPD misquoted the report. Our report states, “HPD does not provide appropriate oversight over managing agents’ handling of fees; officials believe this is not their responsibility.” HPD officials informed us that the handling of fees was a basic accounting process that is not their responsibility but rather the responsibility of the managing agents. As indicated in its response, HPD will be implementing a new practice requiring regular submission of documents related to fees received and refunded. We believe this is a positive step in HPD’s oversight of application fees.

Our attention to the recommendations below exhibits this commitment to our oversight responsibilities.

I. Section: Many Fees Paid, Few Apartments Awarded

Recommendation 1: Utilize turnover rates when establishing waiting list sizes. Make these rates public so applicants can determine whether they want to apply or remain on the waiting lists.

Agency Response to Recommendation 1: HPD already has in place a system for determining waitlist length. Specifically, a new lottery list is generated when the current list is near depletion (with “depletion” determined by the speed of turnover for individual developments). A new lottery waiting list is generally limited to 300 to 500 applicants; these applicants are screened initially for household size, but are not screened for income eligibility until they reach the top of the waitlist (as family income circumstances may change in the intervening time).

State Comptroller's Comment – As indicated in Tables 1 and 2 in the report, lotteries were generally not limited to 300 to 500 applicants. In prior years, as many as 2,600 applicants were selected. More recently, in 2017, 750 applicants were selected for a studio lottery.

By the time an applicant reaches the top of the waitlist, the applicant may be ineligible for, or uninterested in, a Mitchell-Lama unit. As such, a waitlist of this length is necessary to ensure a sufficient number of applicants who are both eligible and responsive. Moreover, as explained during the audit process, unit turnover is not a reliable predictor for determining receipt of housing (based on the above, and on other factors such as prioritization requirements); it is therefore misleading to advertise such rates as being related to an applicant’s anticipated waiting time or likelihood of obtaining a unit.

State Comptroller's Comment – It is important that HPD use turnover rates as a crucial factor when determining the length of waiting lists. We do not see a rationale for having 366 applicants from as far back as 1997 still waiting for housing units. Turnover rates are even more important now that the application fee is non-refundable.

State Comptroller's Comment – Potential applicants should have all information available, including the turnover rate, so they can make an informed decision as to whether they should apply and pay the now \$75 non-refundable fee.

II. Section: Poor Controls Over Fees Can Impact Awarding of Housing Units

Recommendation 2: Establish policies and procedures instructing managing agents on how to account for application fees, handle refunds (from lotteries prior to the change in the application fee), and canvass waiting lists; and periodically review for compliance.

Agency Response to Recommendation 2: HPD partially agrees with this recommendation and will implement a new practice requiring regularly-submitted documentation from all managing agents outlining whether fees were received, when/how fees were handled upon receipt (if received), and when/how fees were refunded (upon application rejection or withdrawal).

Recommendation 3: Follow up on the discrepancies identified in this report and update the waiting lists as necessary.

Agency Response to Recommendation 3

a. Discrepancies Between Fees Deposited and Totals That Should Have Been Deposited:

The total of remaining fees to be investigated is \$1,300, approximately 4% of the original total.

- **York Hill**: As noted in the report, \$23,050 of the \$23,150 in discrepancies was due to retention of fees at Tudor, the previous managing agent; these fees were transferred to York Hill, the new managing agent in September of 2019, leaving a balance of \$100. (This \$100 balance may be an accounting error and is being investigated.)
- **Trinity**: The \$6,200 in discrepancies nearly directly corresponds to the 30 applicants identified on the waiting list as having paid fees that were not accounted for. Further investigation indicates that these applicants in fact did not pay the fees; notations in their files have been corrected accordingly. This accounting correction leaves a balance of \$200. (This \$200 balance may be an accounting error and is being investigated.)
- **Washington Square**: The \$1,000 in fees is being investigated.

b. Applicants For Whom NYS Comptroller Could Not Find Copies of Payments: All discrepancies have been resolved.

- **Trinity**: As stated above in a., the 30 applicants identified on the waiting list as having paid fees that were not accounted for did not, in fact, pay those fees; notations in their files have been corrected accordingly.
- **Washington Square**: A reconciliation since the time of the audit indicates that no fee was received for this single applicant.

c. Applicants Listed as Not Having Paid Fees: All applicant files have been updated to reflect payments made.

d. Applicants Who Should Not Have Been Active: This set of applicants is the same as the set of applicants discussed in b., above; all discrepancies have been resolved.

- **Trinity**: As stated above, the 30 applicants identified on the waiting list as having paid fees that were not accounted for did not, in fact, pay those fees; notations in their files have been corrected accordingly.

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- **Washington Square:** An updated annotation since the time of the audit indicates that no fee was received for this single applicant.

e. Returning Fees for Rejected Applicants: All fees have been returned. (See also the response to Recommendation 5, below.)

f. Potential Unclaimed Funds:

- **York Hill:** The management company has not been able to make contact with the applicants regarding pending apartment offers. Therefore, their applications are inactive but not rejected. Since applicants, under certain circumstances, can still receive apartment offers if they engage with management, their fees are not yet subject to refund.
- **Trinity:** The management company has not been able to make contact with the applicants regarding pending apartment offers. Therefore, their applications are inactive but not rejected. Since applicants, under certain circumstances, can still receive apartment offers if they engage with management, their fees are not yet subject to refund.
- **Washington Square:** Of the four applicants, two are in the same circumstance as the York Hill and Trinity applicants above, one has received a refund, and the other did not pay an application fee initially. (This is the same applicant mentioned in b. and c., above.)

g. Missing Records:

- **York Hill:** All missing records were found by the managing agents.
- **Trinity:** The missing records are currently being investigated.

Recommendation 4: Notify York's Board of Directors of the application fees kept by Tudor and recoup those fees as appropriate.

Agency Response to Recommendation 4: This recommendation has already been implemented. The fees were transferred via check in September 2019. (See details in Recommendation 3a.)

III. Section: Returning Fees to Applicants; Turning Fees Over to Unclaimed Funds

Report Sub-Section: Returning of Fees for Rejected Applicants

Recommendation 5: Instruct York Hill's managing agent to review the 11 disqualified applicants whose mail was returned and make additional attempts to return their fees.

Agency Response to Recommendation 5: This recommendation has already been implemented. York Hill contacted all applicants by phone and email; they reached all 11 ultimately and all fees were returned.

Report Sub-Section: Potential Unclaimed Funds

Recommendation 6: Establish criteria for determining when application fees are deemed abandoned and turn them over to OSC's Unclaimed Funds.

Agency Response to Recommendation 6: As stated during the audit, HPD disagrees with the assertion that OSC's Unclaimed Funds unit is the appropriate receiver for funds that managing agents have been unsuccessful in returning.

HPD will investigate other options for how these funds should be dispersed and/or managed.

Report Sub-Section: Missing Records

Recommendation 7: Monitor managing agents' compliance with the requirement to maintain records to support applicant rejections and the return of fees.

Agency Response to Recommendation 7: HPD agrees with this recommendation and will implement a new practice requiring regularly submitted documentation from all managing agents outlining when/how fees were refunded; it will also reinforce current practices requiring documented justification for applicant rejection.

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