

THOMAS P. DINAPOLI  
COMPTROLLER



110 STATE STREET  
ALBANY, NEW YORK 12236

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

March 23, 2017

Ms. Maria Torres-Springer  
Commissioner  
New York City Department of Housing Preservation and Development  
100 Gold Street  
New York, NY 10038

Re: The Mitchell-Lama Program -  
Awarding Housing Units and  
Maintaining Waiting Lists  
Report 2016-F-25

Dear Commissioner Torres-Springer:

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 have followed up on the actions taken by officials of the New York City Department of Housing Preservation and Development (HPD) to implement the recommendations contained in our audit report, *The Mitchell-Lama Program: Awarding Housing Units and Maintaining Waiting Lists* (Report 2014-N-3).

**Background, Scope and Objective**

The New York City Department of Housing Preservation and Development (HPD) is the largest municipal housing preservation and development agency in the nation. The agency promotes the construction and preservation of affordable, high quality housing for low- and moderate-income families in thriving and diverse neighborhoods in every borough by enforcing housing quality standards, financing affordable housing development and preservation, and ensuring sound management of the City's affordable housing stock. The Mitchell-Lama program was created in 1955 to provide affordable rental and cooperative (co-op) housing to moderate-income families. In New York City, there are 94 HPD-supervised Mitchell-Lama rental and limited-equity cooperative developments, with approximately 44,000 total units.

Prospective tenants and members of cooperatives (applicants) are eligible to rent or purchase an apartment if their income falls below a prescribed limit and the number of people in the household matches the occupancy standards for the unit. Applicants apply to the individual developments, and their names are placed on waiting lists (lists). When a development has a sufficient number of applicants, its list can be "closed." As units are assigned to applicants (and waiting lists shorten), developments periodically reopen their lists, and new applications are

accepted based on a lottery system. As vacancies occur, applicants should be offered and awarded units in the order they appear on the lists, after HPD approval.

Our initial audit report, which was issued July 29, 2015, examined whether the Mitchell-Lama-financed units were assigned to eligible persons in compliance with properly established lists. We found that applicants who were next in line for units in a specific development were not always offered and/or awarded a unit in the order they were listed. We observed inconsistencies in the methods used by HPD staff to place applicants on development waiting lists. Development officials often did not indicate who made notations (e.g., indicating applicants' continued interest in Mitchell-Lama units) on the manually prepared lists or when those notations were made. We tested several notations and found they were unsupported and/or disputed by applicants. Further, HPD did not adequately monitor building managing agents, nor did they take corrective actions, when appropriate.

The objective of our follow-up report was to assess the extent of implementation, as of February 10, 2017, of the eight recommendations included in our initial audit report.

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

HPD officials made considerable progress addressing the problems we identified in the initial audit report; however, additional actions are still needed. Of the initial report's eight audit recommendations, four were implemented, three were partially implemented, and one was not implemented.

### **Follow-Up Observations**

#### **Recommendation 1**

*Formalize procedures to conduct lotteries and establish waiting lists for housing developments. The procedures should sufficiently detail steps necessary to ensure a fair applicant selection process and provide consistency among developments.*

Status – Implemented

Agency Action – In 2016, HPD implemented an automated lottery process which provides information about current NYC Mitchell-Lama lotteries and allows residents to apply directly online for all lotteries. In conjunction with this, HPD developed procedures intended to provide a fair applicant selection process and consistency among the developments.

#### **Recommendation 2**

*Ensure that waiting lists provide sufficient space to post and update notations regarding applicants' status, including continued interest in housing units.*

Status – Partially Implemented

Agency Action – Using commercial software, HPD developed a spreadsheet which provides sufficient space to post and update notations regarding applicants’ status and continued interest in housing units. HPD has utilized this spreadsheet for the three waiting lists that have were recently established. However, HPD officials stated that it was not practical to convert the existing hand-written waiting lists to the new spreadsheet system. As a result, no changes were made to the pre-existing hand-written lists. Because these waiting lists lack sufficient space to post and update notations, we continue to recommend that HPD ensure all waiting lists provide sufficient space for notations.

### **Recommendation 3**

*Require managers of housing developments/buildings to maintain appropriate supporting documentation for notations made to waiting lists.*

Status – Implemented

Agency Action – After we issued our initial report, HPD issued a memorandum (in October 2015) to all managing agents and site managers, requiring that a file be created and maintained for all external and internal applicants. The file must contain: the original and any updated applications; all notices, letters, address and family composition changes; and any other pertinent correspondence. Further, the memorandum required managing agents and site managers to maintain proof of: mailings of letters notifying applicants of their selection in the lottery; removals of applicants from waiting lists due to no response to offering letters or because applicants reached the maximum number of offers; and any other notice of applicant ineligibility. In February 2016, HPD sent to managing agents and site managers a follow-up email which included the October 2015 memorandum and notice that all applications were subject to possible verification of waiting list notations and proof of mailings. In addition, the email advised that an application may be subject to rejection if the requested supporting documentation was not maintained. The email also reiterated the recordkeeping requirements pertaining to applicants who are removed from waiting lists.

### **Recommendation 4**

*When awarding available units, prepare and maintain sufficient documentation of the reasons for awarding units to applicants other than the next available applicant on the waiting lists.*

Status – Not Implemented

Agency Action – In response to our initial report, HPD officials did not agree to prepare and maintain documentation for units awarded to applicants other than the next available applicant, and consequently, they did not implement the recommendation. Instead, they stated they would require the developments to maintain the documentation, which they would review by placing a special focus on units that are awarded to applicants other than the next available applicant on the waiting list. To determine whether HPD’s practice was

followed, we reviewed recent applicant approvals at Clinton Towers and York Hill, two HPD-supervised developments located in Manhattan. We found the following:

- Clinton Towers – HPD approved five applicants for one-bedroom units during the period January through October 2016. However, there were 18 applicants on the waiting list ahead of the applicants who were awarded the units. The waiting list had notations for the 18 indicating why each did not receive an available unit. To ensure compliance with program rules, HPD staff should have reviewed the list and the related supporting documentation maintained by the development to explain why the 18 applicants were passed over for the units. Nonetheless, HPD provided evidence they reviewed documentation to confirm the notations for only one of the 18 applicants.

Further, we visited Clinton Towers to determine if management maintained documentation to support the notations on the waiting list. However, management was unable to provide evidence to support any of the list’s notations. (Note: Auditors found evidence to support a notation for one applicant during their documentation review.) Lacking support documentation, we could not determine if there was sufficient justification for passing over nearly all of the applicants in question. In addition, HPD officials told us that Clinton’s previous housing manager resigned suddenly, and the new manager might not know where to find the requested supporting documentation. We believe the circumstances at Clinton Towers reinforces the propriety of the recommendation from our initial report, and the need for corrective action.

- York Hill – We reviewed one of the two applicants who had been approved by HPD to move into a studio unit from January through October 2016. Although the applicant was selected for a unit, there were 61 applicants higher on the waiting list. For each of the 61 applicants, there were notations why they were not provided with the next available unit, which HPD officials should have reviewed. However, HPD provided evidence that they reviewed confirming documentation for only 17 of the 61 applicants. They did not have documentation for the remaining 44 applicants. We visited York Hill and found that management there had evidence to support the notations for all 61 applicants who were passed over. Specifically, we observed proof of mailing from the United States Postal Service, letters indicating that applicants were no longer interested, and applications which exceeded income limits. Nonetheless, without reviewing this documentation, HPD had limited assurance that applicants were justifiably passed over.

#### **Recommendation 5**

*Develop and implement formal plans to automate the lottery process and waiting lists. Such plans should include timetables for completing key phases of the projects.*

Status – Partially Implemented

Agency Action – HPD has automated the lottery process by allowing residents to apply directly online for all lotteries. They have also added information on their website which shows the public the last waiting list number approved for each bedroom size at each of the developments.

However, HPD has not fully automated the waiting list function. As a result, paper waiting lists, which have a greater risk of unreliability, are still manually prepared and maintained. HPD officials indicated that they plan to fully automate the waiting list function in conjunction with a larger HPD automation project, and they are currently in the vendor selection process for this. However, officials were unable to provide timetables for completing key phases of the waiting list automation.

#### **Recommendation 6**

*Increase the number and frequency of internal compliance reviews to ensure units are occupied by eligible, HPD-approved applicants. Formally follow up on significant deficiencies to ensure that they are corrected.*

Status – Implemented

Agency Action – HPD has significantly increased the number of compliance reviews. Our original audit found that nine compliance reviews had been performed in the 35 months ended November 2014. In contrast, in the subsequent 24 months, HPD conducted 11 compliance reviews. Although some issues were not fully resolved, we saw evidence of HPD follow up on the issues identified in the more recent compliance reviews.

#### **Recommendation 7**

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

Status – Partially Implemented

Agency Action – At Trinity House and Washington Square Southeast, HPD provided documentation indicating they had followed up on the occupant-related matters detailed in our report, and these issues were resolved. We selected a sample of two of these issues at each development and confirmed HPD received information to ensure they were resolved.

At Cadman Towers, HPD provided documentation that they followed up on the seven occupant-related matters detailed in our report. However, we found that two issues, related to succession rights to units at Cadman Towers, remained unresolved. While resolution of such matters can take some time, no action had been taken concerning the two outstanding issues since September 2015. As such, there is material risk that the parties living in the units were not entitled to them, thus potentially depriving other applicants of an opportunity to live in the units. Further, we maintain that HPD should

actively pursue resolution of these matters.

**Recommendation 8**

*Follow up on the apparent misuse of Airbnb by occupants of units at Washington Square Southeast.*

Status – Implemented

Agency Action – HPD officials followed up with Washington Square Southeast regarding the two tenants who offered their units through Airbnb. Officials provided documents showing that development management applied to HPD for eviction hearings for the residents of the two units identified in our audit. Further, in July 2015, HPD sent a directive to Mitchell-Lama managing agents reminding them that use of Airbnb or a similar arrangement is prohibited.

Major contributors to this report were Nicholas Angel, Peter Blanchett and Amitai Uriarte.

We would appreciate your response to this report within 30 days, indicating any additional action planned to address the unresolved issues discussed in this report. We also thank HPD officials for the cooperation extended to our auditors during this review.

Very truly yours,

Cindi Frieder  
Audit Manager

cc: George Davis, Mayor's Office