



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Enforcement of Mitchell-Lama Surcharge Provisions

New York City Department of Housing Preservation and Development



Report 2015-N-3

March 2016

Executive Summary

Purpose

To determine whether surcharges are being appropriately assessed and collected at Mitchell-Lama housing developments supervised by the New York City Department of Housing Preservation and Development (HPD). This audit focused on the income affidavits submitted for the 2012 calendar year and related processes.

Background

HPD is the nation's largest municipal housing preservation and development agency. Its mission is to make strategic investments that will improve and strengthen neighborhoods while preserving the stability and affordability of New York City's existing housing stock. The Mitchell-Lama program was created in 1955 to provide affordable rental and cooperative housing to moderate-income families. In New York City, there are 97 HPD-supervised Mitchell-Lama rental and limited-equity cooperative developments, with more than 45,000 total units. (Note: Included in the 97 developments is Penn South, an Article 5 development with similar attributes to Mitchell-Lama developments.)

Mitchell-Lama apartments are rented or sold through waiting lists kept by each development. Each Mitchell-Lama development has eligibility requirements related to income limits, family size, and apartment size. Residents must also meet HPD income eligibility requirements on an ongoing basis during occupancy, as detailed in Title 28, Chapter 3-03 of the Rules of the City of New York. By April 30 annually, occupants of each unit are required to submit an income affidavit, attesting to their income and certain deductible expenses incurred during the preceding calendar year. If the reported aggregate annual income of all occupants of the unit exceeds the development's maximum income level, the building management adds a surcharge (ranging from 5 percent to a maximum of 50 percent, depending on the amount of income) to the monthly rent/carrying charge.

Key Findings

- For four of the five sampled developments, surcharges appeared to be properly calculated, assessed, and collected, based on self-reported data on residents' income affidavits. However, there were significant deficiencies in the processes used to confirm the accuracy of the affidavits, and incomes were sometimes incorrectly reported. Further, the fifth development, Big Six Towers, incorrectly calculated the surcharge for 14 (35 percent) of the 40 sampled tenants, which in some cases resulted in incorrect surcharge assessments.
- The income data used to identify tenants subject to an income verification audit was incorrect for 28 (14.7 percent) of the 191 tenants we sampled. As a result, certain tenants may be incorrectly excluded from audit and possibly from additional surcharges.
- Managing agents did not conduct most of the income verification audits required by HPD. We determined that 117 of the 191 judgmentally sampled tenants required an income verification audit; however, 87 of them were not done. Of the 30 audits that were completed, 14 identified under-reported income by the tenant, four of which resulted in the imposition of surcharges.
- We identified a significant number of households with high incomes, including several

households reporting annual earnings of over \$500,000.

- The Law states that tenants whose income exceeds the maximum income limit by 25 percent or more require HPD approval to remain in their units. Of the 191 selected tenants, 59 exceeded the maximum limit by at least 25 percent. However, HPD officials informed us they have not enforced this requirement.

Key Recommendations

- Ensure the data file prepared for the Department of Taxation and Finance to verify tenant incomes is accurate.
- Monitor building managers to ensure that self-reported income is verified and surcharges are properly assessed.
- Develop formal policies and protocols related to households that exceed the maximum allowable income limit.

Other Related Audit/Report of Interest

[The Mitchell-Lama Program: Awarding Housing Units and Maintaining Waiting Lists \(2014-N-3\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

March 10, 2016

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

Dear Commissioner Been:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively. By so doing, it provides 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 of our audit of the New York City Department of Housing Preservation and Development, entitled *Enforcement of Mitchell-Lama Surcharge Provisions*. 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,

*Office of the State Comptroller
Division of State Government Accountability*

Table of Contents

| | |
|---|----|
| Background | 5 |
| Audit Findings and Recommendations | 7 |
| Surcharge Calculation and Assessment | 7 |
| Data-Entry Errors | 7 |
| Income Verification Audits | 9 |
| Tenants who Exceed Maximum Allowable Income | 12 |
| Questionable Primary Residence | 13 |
| Recommendations to HPD | 14 |
| Audit Scope and Methodology | 14 |
| Authority | 15 |
| Reporting Requirements | 15 |
| Contributors to This Report | 16 |
| Exhibit | 17 |
| Agency Comments | 18 |

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Background

Many New Yorkers have been increasingly challenged to find affordable housing, in the face of stagnant or declining income and rising housing costs. As of 2012, the U.S. Census Bureau estimated that more than 50 percent of renters and 30 percent of homeowners in New York State exceeded the U.S. Department of Housing and Urban Development's "home affordability threshold" of 30 percent (i.e., percentage of income spent on housing costs); and within those groups about 1.5 million households spent more than half their income on housing. This audit is part of the Comptroller's statewide initiative for audits of public programs designed to improve housing opportunities for working-class residents.

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 make strategic investments that will improve and strengthen neighborhoods while preserving the stability and affordability of New York City's existing 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 97 HPD-supervised Mitchell-Lama rental and limited-equity cooperative developments, with more than 45,000 total units. (Note: Included in the 97 HPD-supervised developments is Penn South, which is subject to Article 5 of the Private Housing Finance Law. Penn South has program attributes very similar to Mitchell-Lama developments, but it is not subject to Mitchell-Lama Rules.)

HPD has sole oversight responsibility for 84 Mitchell-Lama developments, and it jointly supervises the remaining 13 developments with the federal Department of Housing and Urban Development. Each rental development is administered by a managing agent, and each co-op development is administered by a Board of Directors, which hires a managing agent to handle the day-to-day affairs of the development.

Mitchell-Lama units are rented or sold through waiting lists kept by each development. Many waiting lists are closed because there are already enough applicants to fill vacancies expected for the foreseeable future. Each Mitchell-Lama development has eligibility requirements related to income limits, family size, and apartment size. Income limits are based on many factors, including whether a development is a rental or a cooperative and whether it is federally assisted.

Residents in Mitchell-Lama housing units must also meet HPD income eligibility requirements on an ongoing basis during occupancy, as detailed in Title 28, Chapter 3-03 of the Rules of the City of New York (Rules). Thus, by April 30th of every year, each unit is required to submit an income affidavit, attesting to each occupant's earnings and certain deductible expenses incurred during the preceding calendar year. Mitchell-Lama housing developments are responsible for distributing and collecting the income affidavits each year. If the reported aggregate annual income of all occupants of the unit exceeds the development's maximum income level, the building management adds a surcharge – ranging from 5 percent to a maximum of 50 percent, depending on the amount of income (see Exhibit at end of report) – to the monthly rent/carrying charge. Surcharge billing begins by July 1st of each year.

The housing developments submit surcharge tabulation sheets listing tenants, income information, and their respective surcharges, as well as the related income affidavits, to HPD for its review. To verify the accuracy of the income information, HPD has established a system with the New York State Department of Taxation and Finance (Tax and Finance) to compare the amounts reported on the income affidavits with those on the residents' State tax returns.

According to the Private Housing Finance Law (Law), tenants whose income exceeds the maximum income limits by more than 25 percent shall be subject to removal from the units unless they receive HPD approval. Tenants whose income exceeds the maximum allowable income by more than 50 percent can remain in their unit beyond three years only with HPD approval (Penn South, as an Article 5 development, is not subject to this Article of Law).

Residents of Mitchell-Lama units report a wide range of incomes. For calendar year 2012, 32,341 units submitted income affidavits. These affidavits are electronically entered by a third-party vendor for subsequent verification with Tax and Finance. According to this data (some of which was incorrect), more than half the units reportedly had income below \$50,000 while 230 units had incomes of \$250,000 and above (including some in Penn South); and several households had incomes exceeding \$500,000.

Audit Findings and Recommendations

Generally, surcharges appeared to be properly calculated, assessed, and collected, based on self-reported data on residents' income affidavits. However, we identified significant deficiencies in the processes used to confirm the accuracy of tenants' self-reported income. Specifically, there was a significant rate of data-entry errors (14.7 percent) in tenant incomes sent to Tax and Finance for verification. In addition, there were deficiencies in the processes used to identify tenants who should be audited by developments' managing agents for income verification and in the number of required income verification audits conducted. Of the 30 audits completed (for our sample of tenants), we noted that residents of 14 units under-reported income. We also found limited compliance with certain provisions of the Law regarding tenants whose incomes exceeded the maximum allowable limits for Mitchell-Lama housing.

Surcharge Calculation and Assessment

We visited five Mitchell-Lama developments and reviewed the calculation, assessment, and collection of surcharges. We chose one development in each borough – Big Six Towers in Queens; Confucius Plaza in Manhattan; Kings Bay II in Brooklyn; North Shore (formerly known as Arlington Terrace) in Staten Island; and Tracey Towers in the Bronx – generally selecting those developments with higher-income residents. To test the surcharge process, we judgmentally selected 31 or 40 tenants for analysis at each development, often selecting tenants with higher incomes (as further detailed on page 9 of this report). In total, we selected 191 tenants. Subsequently, we selected 51 additional tenants at the five developments who did not submit an income affidavit. We confirmed all 51 were exempt from submission for a variety of reasons, such as receiving rental subsidies or having vacated the unit.

Based on our review of the 191 sampled tenants (from the initial sample), it appeared that surcharges were correctly calculated, assessed, and collected in four of the five selected developments, based on the tenant-reported income affidavit data. However, at Big Six Towers, the surcharge calculations for 14 (35 percent) of the 40 sampled tenants were performed incorrectly. We recalculated the surcharges using HPD guidelines and determined that 4 of the 14 resulted in either under- or overcharges. In one case, for example, Big Six management did not calculate a surcharge for a household that should have paid surcharges totaling \$1,245 for the period July 2013 through June 2014. In another case, a household paid surcharges totaling \$1,346 for the same period when, in fact, no surcharge should have been assessed. In the remaining ten instances, the improper methodologies that were applied did not impact the amount of the surcharges. Nonetheless, the fact that surcharge calculations were sometimes performed incorrectly significantly increases the risk that amounts of surcharges will be wrong, sometimes by material amounts.

Data-Entry Errors

The Rules provide for HPD verification of information reported by Mitchell-Lama residents on their income affidavits. HPD's system of verifying tenant income utilizes a third-party vendor to

input the income affidavit information into a database, which is then sent to Tax and Finance for verification. We compared the income information on the 191 sampled income affidavits to the data file prepared by the vendor and found that 28 (or 14.7 percent) had vendor data-entry errors related to the income amount, as shown in Table 1.

Table 1 - Income Affidavit Data-Entry Errors

| Development | Income Entered Incorrectly | Income Entered Correctly | Total |
|---|-----------------------------------|---------------------------------|--------------|
| Big Six Towers | 11 | 29 | 40 |
| Confucius Plaza | 6 | 34 | 40 |
| Kings Bay II | 2 | 38 | 40 |
| North Shore | 3 | 28 | 31 |
| Tracey Towers | 6 | 34 | 40 |
| Total Income Affidavits Reviewed | 28 | 163 | 191 |

In a number of cases, the errors involved an additional digit mistakenly typed in, as follows:

- One tenant residing at Big Six Towers reported income of \$70,575; however, the vendor entered the tenant's income as \$700,075.
- A second tenant at Big Six reported income of \$97,822; however, the income was entered as \$978,222.
- Another tenant at Big Six reported income as \$49,960; however, the income was entered as \$449,960.
- At Kings Bay II in Brooklyn, a tenant reported income of \$18,500; however, the vendor entered \$185,000.

Some of the errors occurred because the vendor used prior year's income information for tenants who did not complete their affidavits for the most current complete year. (The vendor informed us that in 2014, HPD instructed it to not use the prior year's information.) Additional errors occurred when tenants' incomes exceeded \$1 million, thus requiring more than the standard six-digit field for data entry. For example, two tenants at Penn South (a co-op in Manhattan that was not part of our core sample of five locations) earned more than \$1 million in 2012. One tenant reported an annual income of \$1,167,620 on the affidavit, but the vendor data-entered only \$116,762. The second tenant's affidavit showed income of \$1,422,594, but the vendor input \$142,259. Thus, in both instances, the tenants' annual incomes were understated by more than \$1 million.

Because this data is used to identify tenants subject to audit, tenants may avoid audit (and possible additional surcharges) if their income is underreported. Also, the high rate of data-entry errors casts doubt on the accuracy and reliability of the Mitchell-Lama program's income statistics, which HPD could use to evaluate success toward program goals and/or to change program policies or procedures.

HPD officials said they became aware of the data-entry errors when tenants began to question the need for an impending income verification audit. According to officials, because of the high

error rates, HPD will consider other data entry vendors when it lets future contracts for that service.

Income Verification Audits

To verify tenants' income, Tax and Finance compares the information in the data file prepared by the vendor to the State income tax returns received from the same people. Tax and Finance classifies each tenant's income verification result in one of four categories, which HPD has defined as follows:

- High – Indicates that the State tax return and the income affidavit are a match;
- Low – Indicates that the income on the affidavit is lower than the income on the State tax return;
- Not Found – Usually indicates that the resident did not file a tax return; and
- Unmatched – This could indicate a problem in the comparison with the tax return. It could also be an indication that the tax return didn't show the same address as the income affidavit.

When selecting the 191 tenants for our sample, we based our selection on the Tax and Finance income verification results from the 2012 tax year and chose the highest earners in each of the four classifications, as shown in Table 2.

Table 2 - Classification of Sampled Tenants

| Classification | Big Six Towers | Confucius Plaza | Kings Bay II | North Shore* | Tracey Towers | Total |
|----------------|----------------|-----------------|--------------|--------------|---------------|------------|
| High | 10 | 10 | 10 | 25 | 10 | 65 |
| Low | 10 | 10 | 10 | 3 | 10 | 43 |
| Not Found | 10 | 10 | 10 | 2 | 10 | 42 |
| Unmatched | 10 | 10 | 10 | 1 | 10 | 41 |
| Total | 40 | 40 | 40 | 31 | 40 | 191 |

*The sample size at North Shore (formerly known as Arlington Terrace) was the entire population of tenants who submitted 2012 income affidavits.

In December 2014, HPD sent a directive to its Mitchell-Lama managing agents regarding the 2012 income verification audit process. HPD provided each development with the results of the comparison done by Tax and Finance. They directed the developments to contact each tenant (except those classified as High) within 30 days to either complete a form to release their tax return income to management or obtain a certified tax return directly from Tax and Finance. HPD's directive stated, "If a resident fails to sign a release form or provide a certified copy of their tax return within a reasonable timeframe, they may be subject to a maximum surcharge pursuant to ... the City Mitchell-Lama rules."

Managing agents are responsible for completing the income verification audit process (i.e.,

comparing the income on the certified tax returns with that reported on the affidavit and adjusting surcharges to reflect the appropriate amount). In accordance with the Rules, the housing developments can impose a penalty when additional income is found resulting in an additional surcharge. HPD also advised the developments that the income verification process “not only reviews the income for surcharge purposes but is also a useful tool in identifying potential ‘Non-Primary Residence’ cases.”

HPD’s directive did not define “reasonable timeframe,” nor did it provide guidance as to whether the maximum surcharge should be retroactively assessed for the period reviewed (in this case, the 2012 income affidavit period, for which surcharges were assessed between July 2013 and June 2014) or on a prospective basis. HPD officials informed us that it is up to the development’s discretion whether to impose surcharges retroactively or prospectively.

We also identified a lack of clarity in HPD’s classifications, specifically the High designation. Officials involved with the match through Tax and Finance informed us that a High designation means that the income reported by the third-party vendor could be from \$500 below the amount stated on the State tax return up to any amount above. The High classification, therefore, does not assure a match with the affidavit amount, and could result in tenants not being identified for audit. For example, the Big Six tenant who reported income of \$70,575 (but was erroneously listed by the vendor as making \$700,075) was classified as High, since the affidavit amount was greater than the resident’s tax return income. The development’s managing agent would not know whether the correct tax return amount is the amount the tenant wrote on the affidavit (\$70,575) or a higher amount (for example, \$200,000). Both of these amounts would result in classification of High. This tenant might be subject to a surcharge, but the managing agent would not know this because the tenant was classified as High and excluded from audit.

Based on HPD’s directive, 117 of the 191 tenants in our sample required income verification audits, as shown in Table 3. Our site visits to the five Mitchell-Lama developments in May 2015 and June 2015 indicated that, in general, income verification audits were not done. While four of the five developments had contacted the tenants to release their tax information, the remaining development had not begun the audit process at the time of our visit. Overall, we found that 87 (74 percent) of the 117 required audits were not done, as summarized in Table 3.

Table 3 - Status of Required Income Verification Audits in Sample

| Development | Audits Required | Audits Not Done |
|--------------------|------------------------|------------------------|
| Big Six Towers | 30 | 30 |
| Confucius Plaza | 24 | 19 |
| Kings Bay II | 30 | 30 |
| North Shore | 5 | 4 |
| Tracey Towers | 28 | 4 |
| Total | 117 | 87 |

We found delays in obtaining the tax release forms and related tax information for tenants requiring an audit, as well as a lack of uniformity in procedures among the developments, which resulted in inconsistent surcharges and fees. For example:

- At Big Six Towers in Queens, the 30 tenants requiring audits were sent tax release forms but only 15 had returned them at the time of our June 2015 visit. Further, Big Six management had not forwarded these 15 to Tax and Finance for verification, nor taken action regarding the 15 non-responders. Although the Rules require management to impose the maximum surcharge for non-compliance, it had not. Also, management did not respond to our repeated queries to determine if the 2011 audits were completed.
- At Confucius Plaza in Manhattan, 24 of the sampled tenants required an audit. Building management sent tax release forms to affected tenants in January 2015. However, at the time of our May 2015 field visit, audits were completed for only five (21 percent) of the 24. In August 2015 Confucius Plaza's management informed us that three additional audits were completed after our visit. Nevertheless, management did not send tax release forms to the remaining 16 for various reasons, including that several tenants were already paying the maximum surcharge and some elderly tenants had a history of not filing tax returns. Management stated that it often relied on its knowledge of the tenants' circumstances rather than complete the income verification audit. Management also informed us that it completed the 2011 audits.
- At Kings Bay II in Brooklyn, all 30 of the sampled tenants who required an audit were not contacted and thus were not audited. In fact, management informed us it had not done any audits in at least five years.
- At North Shore in Staten Island, five of the sampled tenants required an audit. North Shore's managing agent sent tax release forms to the five tenants in December 2014. However, at the time of our June 2015 visit, management had completed only one of the five audits. The managing agent advised us that the four tenants for whom audits were not done had not submitted their tax release forms. In May 2015, management sent the four tenants follow-up letters, which allowed eight additional weeks to respond. By the end of July 2015, seven months after the original request was sent to the tenants, management imposed a \$150 monthly penalty and the maximum surcharge for non-submission of tax information to the three remaining nonresponding tenants.
- At Tracey Towers in the Bronx, 28 of the sampled tenants required an audit and were sent tax release forms in January 2015. Audits were completed for 24 (86 percent) of the 28 tenants and not done for the remaining four (14 percent). Two of the four were not done because management did not forward the signed release forms to Tax and Finance for a response. The remaining two were delayed because the tenants did not return signed release forms/certified tax returns to management. Subsequent to our visit, in July 2015, the latter two tenants were assessed the maximum surcharge for non-submission of tax information. Management told us that it did not conduct income verification audits for the prior year (2011) because HPD had waived the development's 2011 audits due to the development's mortgage refinancing and rent increases that took place at that time.

Since most of the required audits were not done, there is no assurance that tenants were assessed appropriate surcharges. Of the 30 audits that were completed among our sample, we identified

14 units with under-reported income, four of which resulted in the imposition of surcharges. Specifically, at Confucius Plaza, three of the five completed audits identified under-reported income, one of which was under-reported by \$87,129 and resulted in a surcharge of 50 percent (\$461 per month). This household was retroactively charged \$5,605 for unpaid surcharges. Of the 24 completed audits at Tracey Towers, we noted 11 units under-reported the occupants' income, and three (of the 11) resulted in surcharges ranging from 10 to 15 percent.

Given the significant level of non-compliance by tenants and managing agents in the income verification process identified in this audit, we recommend HPD provide greater oversight and monitoring to ensure that self-reported income is verified and that surcharges are properly assessed.

Tenants who Exceed Maximum Allowable Income

The Law states that Mitchell-Lama tenants whose income exceeds the maximum allowable income by more than 25 percent shall be subject to removal from the units unless they receive approval from HPD, and those whose income exceeds the maximum by more than 50 percent for three consecutive years can remain in their units after these three years only with HPD approval.

In our review of the 191 sample tenants at the five developments, we identified a significant number whose income was greater than 25 percent above the maximum allowable income in 2012, as shown in Table 4. In addition, a substantial number exceeded the maximum allowable income by more than 50 percent for three consecutive years. We note that our sample was selected so as to include a large number of high-income tenants, as our testing focused on the surcharge process.

Table 4 - Tenants Exceeding Maximum Allowable Household Income

| Development | Total Sample | Tenants Exceeding 25% | Tenants Exceeding 25% Who Also Exceeded 50% For 3 Years |
|-----------------|--------------|-----------------------|---|
| Big Six Towers | 40 | 7 | 4 |
| Confucius Plaza | 40 | 20 | 12 |
| Kings Bay II | 40 | 21 | 14 |
| North Shore | 31 | 0 | 0 |
| Tracey Towers | 40 | 11 | 5 |
| Total | 191 | 59 | 35 |

We asked management at each of the four developments with tenants exceeding maximum allowable income by 25 percent whether they had received HPD approval for the tenants to remain in their units. Kings Bay II's managing agent informed us they had not obtained such approval; Tracey Towers and Big Six Towers did not respond to our inquiry; and Confucius Plaza informed us that "Mitchell-Lama cooperative owners are not subject to eviction based on income."

We reviewed the 2012 income affidavits for several of the highest-earning Mitchell-Lama residents as reported in the vendor-prepared data file and found they were paying very little rent relative to their household income. For example:

- A household at Kings Bay II (Brooklyn) with total income of \$801,377 paid monthly rent of \$636 (which included the 50 percent maximum surcharge of \$191) for a four-room apartment. This monthly rent represented less than 1 percent of the household's income.
- A household at Tracey Towers (Bronx) with total income of \$721,144 paid monthly rent of \$911 (which included the 50 percent maximum surcharge of \$377) for a five-room apartment. This monthly rent represented 1.5 percent of the household's income.

Thus, tenants with incomes exceeding the maximum limits (and sometimes by large amounts) are residing in Mitchell-Lama developments without the required HPD approval. HPD officials informed us they have not enforced this section of the Law because it would cause hardship to families. Rather, they said they are pursuing legislative changes to increase the surcharge percentages and eliminate the removal clause, consistent with the policies established for Penn South (an Article 5 development). According to HPD officials, at Penn South the maximum surcharge is 200 percent of the standard rental amount (in contrast to 50 percent for the Mitchell-Lama program), and there is no removal clause.

While the changes to the Law are being pursued, HPD needs to develop policies and protocols to enforce this section of the Law, as the Mitchell-Lama waiting lists are full of individuals whose incomes might make them more suitable candidates for this housing.

Questionable Primary Residence

The Rules require that the Mitchell-Lama unit occupied by a tenant/cooperator must be his or her primary place of residence. HPD's guidance to building managers on income-verification audits stated that the process of verifying income can also identify tenants who have primary residences other than the Mitchell-Lama unit.

During our site visit to Big Six Towers, we reviewed the tax release forms submitted by the tenants to be remitted to Tax and Finance as part of the income verification audits. The tax release forms require tenants to note the address shown on their tax return, as well as their current address if it is different than the address shown on the return. We noted four tenants, who were not part of our sample, whose tax release forms indicated a different address than the one on the income affidavit. One address was in May Landing, New Jersey; two were in Long Island, New York; and the remaining one was in Queens, New York. These could indicate that the tenants have a different primary residence than the Mitchell-Lama development.

While the tax release forms were signed by the tenants in January 2015, no follow-up action had been taken by management prior to our June 2015 visit. We subsequently informed Big Six management about these four cases, and they advised us they will "... pursue whatever non-primary cases we find." We also notified HPD officials about this situation and provided supporting documentation for their review.

Recommendations to HPD

1. Provide training to managing agents on the proper surcharge and income verification procedures.
2. Ensure the data file prepared for Tax and Finance income verification is accurate.
3. Monitor building managers to ensure that self-reported income is verified and surcharges are properly assessed.
4. Review the guidance on income verification to Mitchell-Lama building managers to make sure that it is clear and consistent.
5. Develop formal policies and protocols for the actions to be taken with respect to tenants whose incomes exceed the maximum allowable household income limit. Perform periodic quality assurance verifications to ensure compliance with those policies and protocols.
6. Follow up on the occupant-related matters at the five developments we examined, as detailed in the report.

Audit Scope and Methodology

We conducted this audit to determine whether surcharges were appropriately assessed and collected at HPD-supervised Mitchell-Lama housing developments. Our audit focused on the income affidavits submitted for the 2012 calendar year.

To accomplish our objective, and assess related internal controls, we reviewed the laws and regulations pertaining to the Mitchell-Lama program and HPD's policies and procedures relating to the assessment of surcharges and income-verification audits. We interviewed HPD officials, managing agents of five Mitchell-Lama developments, a representative of the data-entry vendor, and a representative from the Office of Information Technology Services (regarding the Tax and Finance data verification process). Using the 2012 income verification file, we chose five developments (one in each borough), generally selecting developments with higher-income residents. We selected a judgmental sample of 191 tenants based on the Tax and Finance income verification results from the 2012 tax year, choosing the highest earners in each of the four classifications. In addition, we selected 51 tenants who did not submit an income affidavit. We reviewed the sampled developments' rent rolls, tenant ledgers, tabulation sheets, records related to income verification audits, bank statements, and deposit records. We reviewed income affidavits submitted by selected tenants for 2010, 2011, and 2012, including tenants at developments that were not among the five in our sample.

We conducted our performance audit in accordance with 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 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 their 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 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.

Authority

This 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.

Reporting Requirements

We provided a draft copy of this report to HPD officials for their review and comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of this report. HPD officials generally concurred with our report's recommendations and indicated the steps that have been and/or will be taken to implement them.

Within 90 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 in this report, and where recommendations were not implemented, the reasons why.

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Exhibit

Schedule of Surcharges

| Income | Surcharge (Percent of Basic Rent) |
|---|--------------------------------------|
| Up to 100% of maximum income limit | None |
| From 100% to 105% of maximum income limit | None |
| From 105% to 110% of maximum income limit | 5 |
| From 110% to 115% of maximum income limit | 10 |
| From 115% to 120% of maximum income limit | 15 |
| From 120% to 125% of maximum income limit | 20 |
| From 125% to 130% of maximum income limit | 25 |
| From 130% to 135% of maximum income limit | 30 |
| From 135% to 140% of maximum income limit | 35 |
| From 140% to 145% of maximum income limit | 40 |
| From 145% to 150% of maximum income limit | 45 |
| From 150% and over | 50 |

Source: New York City Rules and Regulations, Section 3-03

Agency Comments



VICKI BEEN
Commissioner

Office of the Commissioner
100 Gold Street
New York, N.Y. 10038

January 8, 2016

Frank Patone, CPA
Audit Director
Office of the State Comptroller
Division of State Government Accountability
123 William Street- 21st Floor
New York, NY 10038

**Re: Audit Report of the Mitchell-Lama Program: Enforcement of Mitchell-Lama
Surcharge Provisions
Audit Number: 2015-N-3**

Dear Audit Director Patone:

I write to thank you for your audit of HPD's Mitchell-Lama Program, "Enforcement of Mitchell-Lama Surcharge Provisions." The attached document contains the agency's responses. As you will note, we have already begun to address the concerns identified in the audit.

Thank you in advance for considering our response to the audit report. I would be happy to discuss it with you if that would be helpful.

Sincerely,

Vicki Been



Printed on paper containing 30% post-consumer material.

STATUS REPORT
OFFICE OF THE NEW YORK STATE COMPTROLLER
NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT
AUDIT REPORT ON ENFORCEMENT OF MITCHELL LAMA SURCHARGE PROVISIONS
REPORT 2015 N-3
Date: January 8, 2016

| Audit Finding | Audit Recommendation | Response |
|---|---|---|
| Surcharge Calculation and Assessment | HPD should provide training to managing agents on the proper surcharge and income verification procedures. | HPD will conduct income affidavit and surcharge calculation training for managing agents in January, 2016. Training on income verifications will be scheduled in conjunction with the issuance of the next income verification audit this Spring. |
| Data Entry Errors | HPD should ensure the data file prepared for Tax and Finance income verification is accurate. | Prior to this audit, HPD had identified the deficiencies of the work performed by the previous vendor. HPD has identified and entered into an agreement with a new vendor to enter income affidavit data, has significantly revised the scope of work, and is requiring the vendor to adopt quality controls. |
| Income Verification Audits | HPD should monitor building managers to ensure that self-reported income is verified and surcharges are properly assessed. | HPD currently has plans to conduct 10 to 15 Mitchell-Lama compliance review audits annually. As part of the compliance review audit, HPD will now expand its audit to ensure that the managing agent has completed the verifications of the income for residents who were flagged in the income verification process. |
| | HPD should review the guidance on income verification to Mitchell-Lama building managers to make sure it is clear and consistent. | HPD will review the guidance and direction given to Mitchell-Lama building managers to ensure clarity and consistency including detailing the implementation of surcharges and the timeframe for residents' responses. |
| Tenants who Exceed Maximum Allowable Income | Develop formal policies and protocols for the actions to be taken with respect to tenants whose incomes exceed the maximum allowable household income limit. Perform periodic quality | As the State Comptroller's Office indicated in its report, less than one-half of 1% (0.5%) of Mitchell-Lama residents earn above \$250,000. Even given this very small percentage of Mitchell-Lama residents, HPD is seeking to |

| Audit Finding | Audit Recommendation | Response |
|--------------------------------|---|--|
| | assurance verifications to ensure compliance with those policies and protocols. | require that people pay their fair share. Therefore, HPD will pursue State legislation to increase the maximum surcharge and eliminate the eviction requirement for over-income Mitchell-Lama residents. |
| Questionable Primary Residence | Follow-up on the occupant-related matters at the five developments we examined as detailed in the report. | HPD is following up on occupant related matters, as needed. |