

**State of New York  
Office of the Inspector General**



**An In-Depth Review of the  
Division of Housing and Community Renewal's  
Oversight of the Mitchell-Lama Program**

**September 2007**

**Kristine Hamann  
State Inspector General**

# Contents

<b>I. EXECUTIVE SUMMARY.....</b>	<b>1</b>
<b>II. BACKGROUND.....</b>	<b>10</b>
<b>A. The Mitchell-Lama Housing Program.....</b>	<b>10</b>
<b>B. The New York State Division of Housing and Community Renewal (DHCR) .....</b>	<b>11</b>
1. DHCR Divisions Responsible for Mitchell-Lama Oversight .....	12
a. The Office of Housing Operations .....	12
<b>C. Involvement of the State Inspector General’s Office.....</b>	<b>14</b>
<b>D. Scope of Report .....</b>	<b>15</b>
<b>III. FINDINGS OF THE INSPECTOR GENERAL’S OFFICE .....</b>	<b>17</b>
<b>A. Systemic Deficiencies in Mitchell-Lama Oversight .....</b>	<b>17</b>
1. Failure to Enforce Fairness in Apartment Allocation .....	17
a. Improper Approval of Applications .....	18
b. Failure of Exempt Companies to Submit Quarterly Activity Reports .....	18
c. Failure to Examine Tenant Lists.....	19
2. Ineffective Housing Representatives .....	20
a. Field Visits.....	20
b. Review of Heating Systems .....	22
c. Evaluation of Managing Agents.....	23
3. Sporadic Receipt and Review of Financial Reports .....	24
a. Financial Statement Submissions .....	24
b. Budget Submissions .....	25
c. Identity of Interest Filings .....	27
4. No Tracking or Response to Complaints.....	28
5. Employees Disproportionately Residing in Mitchell-Lama Housing.....	29
<b>B. The Tenant Selection Process at Three Problem Developments .....</b>	<b>30</b>
1. Overview of Mandated Tenant Selection Procedures.....	31
2. Manipulation of Waiting Lists .....	33
a. Towers of Bayridge .....	33
b. Cathedral Parkway Towers .....	36
3. Unexplained Removals from the Waiting List .....	38
a. Cathedral Parkway Towers.....	38
b. Towers of Bayridge .....	39
4. Occupancies by Unapproved Tenants.....	40
a. Cathedral Parkway Towers.....	41
b. Towers of Bayridge .....	43
c. Westview Apartments.....	45
5. Illegal Occupants and Subletting .....	46
a. Westview Apartments.....	46

6. Residents Exceeding Income Requirements .....	48
7. Warehousing .....	49
a. Westview Apartments .....	50
<b>C. Financial Oversight at Co-op City.....</b>	<b>52</b>
1. History of Misconduct and Financial Mismanagement .....	53
2. Insufficient DHCR Staff Assigned to Co-op City .....	54
a. Failure to Supervise Field Staff .....	54
3. Procurement Rules Were Ignored .....	55
4. Performance Bonds Were Not Obtained for Multi-Million Dollar Repairs .....	58
5. Lack of Timely Financial Statements and Budgets .....	59
a. Audited Certified Financial Statements .....	59
b. Proposed Budgets .....	60
6. Residents Approved a Fee Increase Based on Misinformation .....	60
7. DHCR Abdicated Responsibility for Verifying Completion of Construction .....	62
<b>IV. RECOMMENDATIONS.....</b>	<b>64</b>
<b>V. AGENCY RESPONSE.....</b>	<b>68</b>

# **I. Executive Summary**

## **BACKGROUND AND SCOPE OF REPORT**

New York's Mitchell-Lama housing program has provided affordable rental and cooperative apartments for hundreds of thousands of middle-income New Yorkers since its inception in 1955. The State has made a substantial investment in Mitchell-Lama housing, providing private developers with low-interest loans and tax exemptions to build apartments subject to regulated rents and purchase prices. The majority of Mitchell-Lama housing developments are located in New York City, where the program is especially important as middle-income families may earn too much to qualify for federal government housing vouchers, yet struggle to pay market-rate rents.

The New York State Division of Housing and Community Renewal (DHCR) is responsible for regulating and monitoring the 189 projects currently in the Mitchell-Lama program. DHCR's duties include ensuring that Mitchell-Lama housing companies select tenants and establish rents in a fair manner; adequately maintain apartment buildings; properly conduct contract procurements; comply with financial and other reporting requirements; and generally operate on a sound basis.

The Office of the State Inspector General undertook an examination of DHCR's stewardship of the Mitchell-Lama program during the period January 2003 to October 2006 in response to numerous complaints that DHCR was failing to meet its responsibilities. As described in the following report, the Inspector General's review concluded that DHCR's monitoring of Mitchell-Lama housing companies and its enforcement of its own regulations has been grossly deficient on a broad scale. Rather than safeguarding the integrity of the program, DHCR, through its own shortcomings, has allowed housing companies to flout rules regarding apartment allocation, financial reporting, and contracting. DHCR's deep and systemic failures have resulted in deterioration of facilities, waste of taxpayer money, increase in charges to tenants, and the allocation of apartments to unqualified applicants at the expense of those legitimately entitled to those same apartments.

The findings section of our report presents the results of our review of various facets of DHCR's activities relating to the Mitchell-Lama program. First, we examine systemic deficiencies in DHCR's oversight of the program on a statewide basis. Second, we review tenant selection practices at three New York City developments — Cathedral Parkway Towers, Westview Apartments, and Towers of Bayridge — where potential problems had been indicated. Third, we analyze DHCR's oversight of financial and related concerns at Co-op City, a cooperative in the Bronx.

### **SYSTEMIC DEFICIENCIES IN DHCR OVERSIGHT**

The Inspector General's review revealed serious inadequacies in nearly every aspect of DHCR's Mitchell-Lama oversight. DHCR field staff represent the agency's primary point of contact with housing companies, yet they are not properly trained or supervised. Worse still, field staff failed to inspect housing complexes to the extent required. As DHCR's own records show, 106 developments, or 54 percent of the total number of active developments, did not receive the required number of field visits during 2005.

Even when inspections were conducted, field staff often did not perform required tasks. In a serious lapse, of 138 site-visit field reports prepared by DHCR staff during the 2005-2006 heating season, 36 percent did not include required examination of the developments' heating systems. When asked why some staff seemed to only provide limited information about problems they found, their director said she was "happy to the extent they report on [problems]" at all.

DHCR lacked adequate controls to prevent conflicts of interest arising from DHCR employees residing in Mitchell-Lama complexes. Of a randomly selected sample of 30 DHCR employees who live in New York City and are responsible for direct supervision of Mitchell-Lama complexes, 10, or 33.3 percent, resided in Mitchell-Lama projects or in projects that recently bought out of the program, compared with 2 percent of New York City residents in general. The potential for abuse inherent in this situation is underscored by the arrest and conviction of Mark Marcucilli, Assistant Director of DHCR's Housing Management Bureau, and Jody Wolfson, a DHCR employee, on federal charges relating

to the unlawful occupancy and transfer of apartments at Southbridge Towers, a Mitchell-Lama complex in lower Manhattan.

While DHCR acknowledged that complaints are the primary basis for auditing housing companies, it handled complaints in a manner that was uncoordinated, undocumented, and nearly useless. In distorted logic, DHCR officials said they did not see a reason for logging complaints because they received so many there is not time to log or respond to all of them. When asked how complaints were tracked without logs, officials said that they keep copies of all “important” complaints for follow-up. They conceded, however, that they had no definition of “important” complaints, and could not produce a single copy of a complaint deemed important.

DHCR failed to ensure that housing companies submit required financial statements, proposed budgets, and other reports designed to detect potential financial mismanagement or abuses of authority. A random sample of 31 housing companies revealed that the majority had not submitted financial statements on time. Even when reports were submitted, DHCR failed to review many of them in a timely manner.

### **TENANT SELECTION AT THREE PROBLEM DEVELOPMENTS**

Nothing is more important to the fair operation of the Mitchell-Lama program than the integrity of apartment waiting lists. At any given time, thousands of eligible applicants are on waiting lists, some so long that a potential resident may wait years before being offered an apartment. Yet, when we examined tenant selection practices at Cathedral Parkway Towers, Westview Apartments, and Towers of Bayridge, we found numerous instances of apartments being provided to individuals who were ineligible or had unfairly jumped ahead of others on the waiting list. In each instance, an eligible individual was deprived of his or her rightful access to a Mitchell-Lama apartment.

At Bayridge, we found 59 instances where the housing company improperly inserted applications in the waiting list in the period 2002 to 2004. For example, six applications, which should have appeared far down the list, were placed virtually at the top.

Employees of Bayridge’s management agent accomplished this by inserting these

applications immediately after applicant 201 on the list (the next applicant due to be offered an apartment) and giving them the irregular designation 201A-201F.

In 2006 Cathedral Parkway granted apartments to three individuals who were not on the waiting list, bypassing at least six applicants who had been waiting for an apartment since 1999. When we asked the manager of the complex for an explanation, she said, “they just walked in and filled out applications and we gave them apartments.”

Similarly, in numerous cases we found that eligible applicants were improperly dropped from waiting lists. At Bayridge, 263 applicants were removed from the list between April 2000 and September 2006. From a random sample of 23 of these applicants, we were able to contact 10, six of whom said they were removed from the waiting list improperly. Additionally, at Cathedral Parkway approximately 125 individuals had been removed from the waiting list without explanation. From a random sample of 10, we were able to make contact with three. None of the three had received any indication from the housing company that there were no longer on the list.

We also found that the housing companies were granting apartments to applicants without the required DHCR approval. Astonishingly, in 109, or 70 percent, of the 156 tenancies we reviewed, the housing companies had granted apartments despite the fact that the applications had not been submitted to DHCR for approval or had been submitted but returned as incomplete or denied.

Most troubling, DHCR failed to detect or correct these irregularities because it neglected to enforce its own rules and properly train its staff. When we questioned the assigned DHCR field representative about obviously improper changes in the Bayridge waiting list, he claimed that he had not noticed them.

Further, DHCR failed to detect unauthorized residents in Mitchell-Lama complexes because it conducted so few audits of apartment rent rolls, and those it did conduct were inadequate. For example, when DHCR performed a rent roll audit at Bayridge, it relied solely on a tenant list provided by the housing company that was inaccurate, rather than also examining other available records, such as the yearly income affidavits of individual

tenants that are submitted to DHCR. As a result, DHCR failed to recognize that the housing company listed 21 residents who no longer lived in the complex, including four who were deceased.

## **FINANCIAL OVERSIGHT AT CO-OP CITY**

At Co-op City, the largest Mitchell-Lama development in the State, the Inspector General's review found a virtual abdication by DHCR of its oversight responsibilities regarding financial matters. Co-op City's history of financial difficulties has resulted in the expenditure by New York State of more than \$100 million to prevent the bankruptcy of Riverbay, the housing company that operates Co-op City. In addition, residents have suffered from increases in carrying charges and losses to the value of the property due to deferred maintenance. DHCR's failure to adequately supervise Riverbay's financial health was a major failure impacting New York's taxpayers and tens of thousands of residents.

In this oversight vacuum, Riverbay engaged in a number of acts of regulatory non-compliance, including a willful avoidance of DHCR contracting requirements. In April 2007, following a joint investigation by the Inspector General's Office and the United States Attorney's Office for the Southern District, Iris Baez, a former president of Co-op City's board of directors was indicted on charges that she accepted nearly \$100,000 in bribes from a painting contractor who was awarded a \$3.5 million contract by the board.

In view of these events, it is not surprising that our review found serious lapses in DHCR's monitoring of contract procurement at Co-op City. Our review sampled 47 Co-op City contracts executed between 2002 and 2006 with a total value of \$127.5 million and representing about 20 percent of the contracts during the period. In 40 of the contracts, valued at \$56.4 million, Riverbay, the housing company that operates Co-op City, failed to comply with Mitchell-Lama procurement rules. We identified the following violations by Riverbay:



- Failure to obtain DHCR approval of bids for 16 contracts, together worth \$43.4 million. DHCR approval ensures that there are a sufficient number of bidders and a sufficient number of minority or women-owned businesses as bidders;
- Failure to advertise the contract or obtain sealed bids for 15 contracts, together worth \$43.4 million;
- Execution of contracts without DHCR approval for 15 contracts, together worth \$11.9 million.

Even more troubling, DHCR approved 21 of the 47 contracts, despite the violations. When asked why, DHCR officials explained that agency rules allow an exemption from any regulation upon a determination that compliance with the regulation would create an undue hardship for the housing company. With respect to contract procurements, the DHCR officials stated, staff may properly waive bidding requirements if they determine that to do so is “not prejudicial to the interests of the tenants, the lienholders or the public.” To the contrary, 9 NYCRR § 1725-2.9 permits waiver of regulations only in “exceptional circumstances” as determined by the DHCR Commissioner. In fact, DHCR employees at all levels were permitted to grant waivers with limited guidance or review of supervisors. DHCR had no written procedures or even guidelines on how such determinations should be made, resulting in an egregious misuse of waivers.

DHCR oversight was also inadequate in a major garage repair project at Co-op City. In August of 2003, New York City engineers condemned five of the eight garages at Co-op City. Subsequently, tens of millions of dollars was budgeted to repair the garages, \$77 million of which was awarded to a single vendor. Riverbay awarded and DHCR approved 10 contracts to this vendor, even though many of them were awarded in violation of DHCR’s procurement requirements. Specifically, DHCR approved the largest contract, worth \$43,200,750, and two other contracts, worth a combined \$2,375,525, despite the fact that they had been awarded without consideration of other bidders and without any written justification for a waiver of the exemption from mandated bidding requirements. Furthermore, while DHCR policy required contractors to obtain a performance bond for all contracts of \$100,000 or greater in case unforeseen

circumstances prevented completion of the project or otherwise resulted in additional costs to the client, in the case of this vendor, performance bonds were not obtained for a majority of the contracts. DHCR's failure to scrutinize these contracts or require compliance with its rules is particularly troubling in that investigation of this vendor using publicly-available information identified multiple integrity-related concerns, including the fact that the New York City School Construction Authority had imposed a five-year suspension of a business previously owned by the vendor's president.

Despite Co-op City's size, DHCR assigned to it only a single senior representative, violating its own policy of assigning a minimum of one housing representative and one senior housing representative to all projects, even the smallest. Further, DHCR appeared to do little or nothing to ensure that the senior housing representative's responsibilities at Co-op City were being fulfilled. In 2006, the director of DHCR's Housing Management Bureau, who supervises the senior representative, did not record any of her subordinate's field visits to Co-op City, although she maintained a log expressly for this purpose. Consequently, the supervisor was unable to confirm that any of the scheduled visits had occurred.

In addition, DHCR paid little attention to Co-op City's financial statements or budgets. For the fiscal year ending March 31, 2004, Riverbay, Co-Op City's owner, submitted its financial statement 253 days late; for the fiscal year ending March 31, 2005, it was delinquent by 210 days. DHCR did not review the 2005 statement until almost three months after its already-late submission and never reviewed the financial statement for 2004. Similar lapses occurred with respect to submission of proposed budgets. When we asked DHCR officials about these deficiencies, they claimed that Co-Op City was exempt from budget submission regulations by prior agreement between the housing company and DHCR, but did not provide documentation of this agreement nor any justification for granting such an exemption.

## **RECOMMENDATIONS**

The Inspector General concluded that DHCR must fundamentally reform its oversight of the Mitchell-Lama program if it is to reach its goal of providing affordable rental and cooperative apartments for eligible New Yorkers. Recommendations by the Inspector General to assist DHCR in this effort include the following:

1. DHCR must improve its enforcement of waiting list regulations and income eligibility standards. DHCR should conduct a complete audit of its waiting lists, identify persons who have been improperly removed from waiting lists and develop a plan for reinstating them at the appropriate level of priority. DHCR should also conduct a complete review of existing tenants to identify those who are ineligible and develop a plan of action to remediate the situation.
2. All existing waivers should be reviewed by the DHCR Commissioner or designee. Waivers deemed appropriate under sufficiently exigent circumstances, as required by DHCR regulations, should be justified in writing and the remainder revoked. Waivers should be granted according to the DHCR regulation and only in exceptional circumstances. If agency regulations are obsolete or otherwise inappropriate, DHCR should amend them through its formal rule-making process.
3. DHCR should implement a system to monitor agency compliance with laws, rules, and regulations, and with its own policies and procedures. This system should include an internal, independent audit group.
4. DHCR should develop comprehensive written policies and procedures, and institute a training program for employees and managers regarding implementation of these policies and procedures. DHCR should develop criteria in each major area of oversight to help identify housing companies at risk and to serve as early warning signs of potential problems.
5. DHCR should keep a record of all complaints. Supervisors should ensure that complaints are investigated and their outcomes recorded. The record of complaints

should be periodically examined to identify housing companies that may need additional scrutiny.

6. DHCR should determine whether its existing management structure is best-suited for carrying out supervision of the Mitchell-Lama program. DHCR should ensure that managers have the tools necessary, including management skills and technical support, to monitor the activities of their employees.

## **II. Background**

### **A. THE MITCHELL-LAMA HOUSING PROGRAM**

New York State has a long history of encouraging the construction of affordable housing by private developers. The vast majority of this housing was developed under the Mitchell-Lama program, which was established in 1955 to spur the development of affordable housing throughout New York State.<sup>1</sup> At the time, the Legislature explicitly stated that the lack of acceptable, affordable housing in cities constituted “an emergency and a grave menace to the health, safety, morals, welfare and comfort of citizens of this state” and created the program to encourage private companies to address this need.<sup>2</sup> In all, 269 state-supervised developments with more than 105,000 apartments were built under the program. Because developments may leave the program and become unregulated after a certain period, only 70 percent of these developments remain in the program. At present, the Mitchell-Lama program encompasses some 80,000 dwelling units housing hundreds of thousands of middle-income New Yorkers.

Mitchell-Lama projects include both rental and cooperative buildings, and are owned by private housing companies. These companies, created pursuant to the Private Housing Finance Law, are formed with the principal purpose of providing housing for middle-income persons and families. In exchange for agreeing to charge rental and purchase prices well below market rates,<sup>3</sup> housing companies receive tax exemptions and government-financed low-interest loans. In some cases, the housing companies manage the day-to-day operations at the projects, while others contract with independent managing agents to perform this function.

All persons who meet eligibility requirements related to income, family size, and other criteria may rent or buy Mitchell-Lama apartments. As a result, the demand for Mitchell-Lama housing nearly always exceeds the supply, particularly in New York City, where an

---

<sup>1</sup> The program bears the names of its legislative sponsors, State Senator MacNeil Mitchell and Assemblyman Alfred Lama.

<sup>2</sup> Private Housing Finance Law § 11.

<sup>3</sup> For example, at Trump Village III, a 1,700-unit Mitchell-Lama cooperative in Brooklyn, a one-bedroom unit typically sells for approximately \$30,000, compared to a market price of about \$150,000.

acute shortage of affordable housing exists. The New York City Department of Housing Preservation and Development reported in its 2005 Housing Vacancy Survey that the citywide vacancy rate for rental apartments was 3.09 percent. Among rent-stabilized apartments, the vacancy rate was even lower. In contrast, the U.S. Census Bureau reported national rental vacancy rates of 10 percent in 2005. As a result of the shortage of apartments, waiting lists for Mitchell-Lama apartments typically are long and slow-moving, and it is not uncommon for several years to pass before an eligible individual obtains housing. In some developments, waiting lists are so lengthy that they are closed to new applicants.

## **B. THE NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL (DHCR)**

New York State has enacted a statutory and regulatory structure to ensure the orderly and equitable operation of Mitchell-Lama Housing developments. Mitchell-Lama projects are governed by Article 2 of the Private Housing Finance Law, the purpose of which is to encourage private companies to provide affordable housing. Under this statute, the New York State Commissioner of Housing, head of the Division of Housing and Community Renewal (DHCR), is responsible for the supervision and regulation of the developments.<sup>4</sup> To fulfill this mandate, DHCR has promulgated, and is responsible for enforcing, rules and regulations that are codified in 9 New York Code of Rules and Regulations (NYCRR) Sections 1725 through 1729. At present, DHCR, among its other functions and duties, has responsibility for the regulation of 189 Mitchell-Lama projects, the majority of which are located in New York City.<sup>5</sup> Among other things, DHCR is responsible for ensuring that housing companies make debt service payments on mortgages; establishing rents; approving tenants; approving co-operative and corporate bylaws and contracts; reviewing project expenditures; and generally enforcing the

---

<sup>4</sup> Private Housing Finance Law §§ 2, 32, 32-a.

<sup>5</sup> DHCR's jurisdiction is limited to Mitchell-Lama projects that were developed with State-held mortgages. New York City, through its Department of Housing, Preservation and Development, supervises an additional 107 Mitchell-Lama projects with City-held mortgages. The New York City program is outside the scope of this report.

regulations applicable to each individual development. As stated on its website,<sup>6</sup> the mission of DHCR is as follows:

*To make New York State a better place to live by supporting community efforts to preserve and expand affordable housing, home ownership and economic opportunities, and by providing equal access to safe, decent and affordable housing.*

## **1. DHCR Divisions Responsible for Mitchell-Lama Oversight**

This section provides an overview of those divisions, bureaus, or offices within DHCR that are responsible for various functions related to Mitchell-Lama oversight. These offices will be discussed at various points throughout the report.

### a. The Office of Housing Operations

DHCR's Office of Housing Operations performs most of the functions related to the agency's oversight of the Mitchell-Lama program, as well as other public or low-income housing projects. Within Housing Operations, the Housing Management Bureau maintains the most direct and frequent contact with Mitchell-Lama housing projects and management agents. Also within Housing Operations, the Bureau of Housing Audits and Accounts and the Architectural and Engineering Bureau perform oversight functions. Approximately 17 percent of DHCR's staff works in Housing Operations.

#### *Housing Management Bureau*

According to DHCR's website, the Housing Management Bureau "monitors the operations of the state-assisted housing portfolio by providing management assistance to managers and owners of state-assisted housing, publicizing standards and guidelines governing the operations of the developments and enforcing Division policies, rules and regulations."<sup>7</sup> The front-line interaction between DHCR and housing companies is conducted by representatives in the Housing Management Bureau. These representatives are responsible for overseeing the management of their assigned projects; conducting reviews they deem necessary to determine if the assigned projects are being operated

---

<sup>6</sup> <http://www.dhcr.state.ny.us/general/mission.htm>.

<sup>7</sup> <http://www.dhcr.state.ny.us/ohm/units/hmb/ohmhmb0.htm>.

efficiently and in accordance with applicable laws and regulations; recommending corrective action of deficiencies noted; advising management with respect to compliance with regulations and policies; and evaluating project management. Within the Housing Management Bureau, an Administrative Unit is primarily responsible for reviewing tenant applications to determine eligibility.

At the time of our review, the Housing Management Bureau employed 17 housing representatives to oversee Mitchell-Lama complexes. The primary responsibility of these housing representatives is to conduct field visits to review and evaluate the operations of housing complexes and management agents. Teams of three to five housing representatives are supervised by senior housing representatives, who report to the assistant director of the Housing Management Bureau. The director has overall responsibility for the bureau.

According to the director of the Housing Management Bureau, housing representatives are the “primary control” in DHCR’s oversight of the Mitchell-Lama program. The most important part of a housing representative’s duties is performed in the field. In 2005, representatives were each responsible for monitoring between nine and seventeen housing projects. Representatives are required to make a minimum of two field visits per year to every complex. One of the required annual visits (the “site” visit) includes an inspection of a complex’s physical plant and grounds. The other required visit (the “office” visit) involves review of documents, such as tenant application and selection records, which are maintained at the housing complex or the office of its management agent. The duties of representatives also include working with the housing company or management agent staff to resolve problems identified during field visits.

Representatives are required to document the results of their visits in field reports.

Additionally, housing representatives serve as directors and attend board meetings of those complexes that are operated by such bodies. On a bi-annual basis, representatives are also required to prepare written evaluations of the performance of management agents.



### *Housing Audits and Accounts Bureau*

The Housing Audits and Accounts Bureau is responsible for the financial oversight of State-aided developments. This bureau reviews and approves housing company budgets and establishes the appropriate rent levels for Mitchell-Lama developments.

### *Architecture and Engineering Bureau*

The Architecture and Engineering Bureau is responsible for overseeing the construction, maintenance and preservation of state-aided developments. It reviews plans and contract specifications, performs inspections, and provides technical assistance to the housing companies.

## **C. INVOLVEMENT OF THE STATE INSPECTOR GENERAL'S OFFICE**

During the past several years, the Office of the State Inspector General (Inspector General) has received complaints about the activities of DHCR as they relate to the Mitchell-Lama program. A common theme in the complaints was that DHCR has failed to prevent corruption in all facets of the Mitchell-Lama program, including procurement of contracts, tenant eligibility and selection, and proper and lawful functioning of housing company boards of directors. The Inspector General has received and investigated numerous complaints from a wide range of residents, board members, and employees regarding Co-op City in the Bronx, Southbridge Towers in Manhattan, and Towers of Bayridge in Brooklyn. In responding to the complaints, the Inspector General identified serious shortcomings in the conduct of the housing companies, boards of directors, and management agents that operate many Mitchell-Lama projects, and, more troubling, what appeared to be a systemic breakdown in DHCR's oversight functions. The results of our investigations, including the criminal prosecutions of DHCR employees Mark Marcucilli and Jody Wolfson by the U.S. Attorney for the Southern District of New York, prompted the Inspector General in March 2006 to undertake a broader examination of housing companies' compliance with Mitchell-Lama regulations, with the ultimate goal of evaluating DHCR's effectiveness in monitoring and enforcing these regulations.

## **D. SCOPE OF REPORT**

Our review covered the period from January 2003 to October 2006 and was multi-faceted. We examined DHCR's monitoring of, and housing companies' compliance with, tenant selection regulations at three developments: Cathedral Parkway Towers and Westview Apartments, rental developments in Manhattan and Roosevelt Island, respectively, and Towers of Bayridge, a cooperative in Brooklyn. In addition, at Co-op City in the Bronx, we reviewed DHCR's actions in ensuring compliance with contracting, determination of maintenance charges, and other requirements related to financial management of the development. These developments were selected for analysis either because problems were discovered during the Inspector General's ongoing investigations, or because of unusually slow movement of applicants from waiting list to apartments.<sup>8</sup>

Additionally, our review sought to determine if DHCR was taking adequate steps to ensure that all Mitchell-Lama projects within its jurisdiction properly submit financial statements and other required documents that are essential to effective program monitoring. Finally, we evaluated the work performance of DHCR field staff that interact most directly with the housing companies and managing agents that operate Mitchell-Lama projects, and whose diligence and competence are integral to the success of the program.

Following this introduction, the report will detail findings in three sections. The first section sets out system-wide failures of DHCR in supervision of the Mitchell-Lama program. The subsequent two sections discuss specific findings at four housing developments that were examined in more detail. The proper assignment of apartments to qualified tenants is examined for Towers of Bayridge in Brooklyn, Westview Apartments on Roosevelt Island, and Cathedral Parkway Towers in Manhattan. Contracting and financial reporting are examined for Co-op City in the Bronx. Following these findings, recommendations are made for reform at DHCR to help the agency to meet its obligations to monitor and enforce regulations applying to Mitchell-Lama housing.

---

<sup>8</sup> A stagnant waiting list can indicate that legitimate applicants for apartments are being passed over in favor of persons who have subverted the required application process.

The report discusses both the conduct of DHCR in carrying out its supervisory responsibilities, as well as the conduct of the housing companies or managing agents who are responsible for day-to-day administration of the housing developments. Below are the names of the housing companies and managing agents at the examined developments, as well as any changes that took place in management during the period under review.

- Co-op City is owned by Riverbay Corporation (“Riverbay”), a tenant-owned corporation, and is managed by Marion Scott Real Estate, Inc.
- Towers of Bayridge was initially managed by J.A.L. Management Diversified Corporation (JAL). However, based on information provided by the Inspector General, in early 2005 DHCR conducted an audit of Bayridge. As a result of the audit, on June 22, 2005, DHCR recommended that the soon-to-expire contract of the managing agent of Bayridge, JAL Diversified, should not be renewed due to “serious deficiencies” in its handling of the tenant selection practices at the complex. JAL was replaced by Cooper Square Realty.
- Westview Apartments is owned by Westview Houses, Inc. Westview was managed by several different management agents. In February 2004, a contract was entered into to sell Westview to a private entity, with the clear intent, once the property was free of regulation, to convert the property to condominium ownership. As a condition of the sale, the buyer required DHCR to grant a waiver of the competitive bidding requirements of the complex’s management agent contracts in order to permit the buyer to assume the management of the property. DHCR granted the waiver in September 2004, agreeing to have the property managed on a month-to-month basis by a joint venture between the current owner and the buyer until the sale of the property was consummated or the contract was abandoned. The deal fell through in March 2006. Westview is currently managed by R.Y. Management.
- Cathedral Parkway Towers, which is owned by the United Tenants Association of Cathedral Parkway Towers, is managed by Cathedral Parkway Towers Management, Inc.

### **III. Findings of the Inspector General's Office**

#### **A. SYSTEMIC DEFICIENCIES IN MITCHELL-LAMA OVERSIGHT**

Despite DHCR's mandate to oversee the Mitchell-Lama program, and its mission "to make New York State a better place to live by supporting community efforts to preserve and expand affordable housing, home ownership and economic opportunities, and by providing equal access to safe, decent and affordable housing," it failed to enforce many regulations designed to ensure proper financial management and fair assignment of apartments. These failures were obscured and, in fact, encouraged by the lack of any formal system to monitor receipt and review of required documents, sloppiness in record-keeping, and inadequate supervision of employees. When Housing Management employees did perform their oversight functions, they were inhibited from properly doing so by incomplete agency policies and inadequate training.

This section examines problems identified by the Inspector General that apply to the agency's overall supervision of the Mitchell-Lama program. These problems are not limited to the four complexes that were examined in detail. Specific findings related to these four complexes are discussed following this section.

##### **1. Failure to Enforce Fairness in Apartment Allocation**

As is the case with many governmental subsidies, the allocation of Mitchell-Lama housing is inevitably subject to attempts at abuse or exploitation. An individual may attempt to secure an apartment by misleading a housing company about his income, exploiting their award of an apartment by illegally subletting it to another, or attempting to secure an apartment rightfully belonging to a person ahead of him on the waiting list. DHCR's regulations are designed to identify ineligible tenants and to prevent housing companies from intentionally or inadvertently misallocating apartments. Unfortunately, DHCR's sporadic enforcement of the regulations has left the agency unable to carry out these tasks. The allocation of apartments in three closely-examined developments will be discussed later in the report. Here we identify system-wide weaknesses that leave the Mitchell-Lama program exposed to these types of abuses.

#### a. Improper Approval of Applications

Although prospective Mitchell-Lama tenants submit applications directly to housing companies, for most companies, DHCR is responsible for reviewing those applications prior to the award of the tenant's occupancy. (As discussed below, certain housing companies with short waiting lists may be exempt from DHCR review of applications.) Unfortunately, DHCR functioned poorly in this area. DHCR failed to implement its own regulations and procedures, thereby allowing unauthorized tenants to occupy and remain in Mitchell-Lama apartments.

DHCR did not provide sufficient guidance to employees responsible for reviewing applications, resulting in sometimes erroneous application of the rules. Two principal clerks in the DHCR Housing Management Bureau's Administrative Unit are assigned the responsibility of reviewing the 70 to 75 applications submitted by housing companies in an average week. While DHCR has established review guidelines, for many applications the decision is a "judgment call," one of the clerks told us. For example, except for income requirements, the guidelines do not include a list of acceptable documentation for eligibility. Therefore, when verifying the age or family status of applicants, it is the clerk's judgment whether the documentation submitted by the applicant is sufficient. This subjectivity in the process was even more of a concern in light of the fact that there is no supervisory review of a clerk's decision, except when an application was denied.

#### b. Failure of Exempt Companies to Submit Quarterly Activity Reports

Regulations allow DHCR to exempt housing companies from the requirement that DHCR review and approve tenant applications prior to occupancy "only if, among other things, the housing company for the previous 12-month period had been in full compliance with the tenant selection procedures, and the waiting list for apartments in the housing company's project has routinely been of a 12-month or shorter duration."<sup>9</sup> As of May 2006, 83 housing companies were considered "exempt." Instead of submitting individual applications for approval, exempt housing companies are required to submit to DHCR, within 30 days of the end of each quarter, a Quarterly Tenant Selection Activity Report

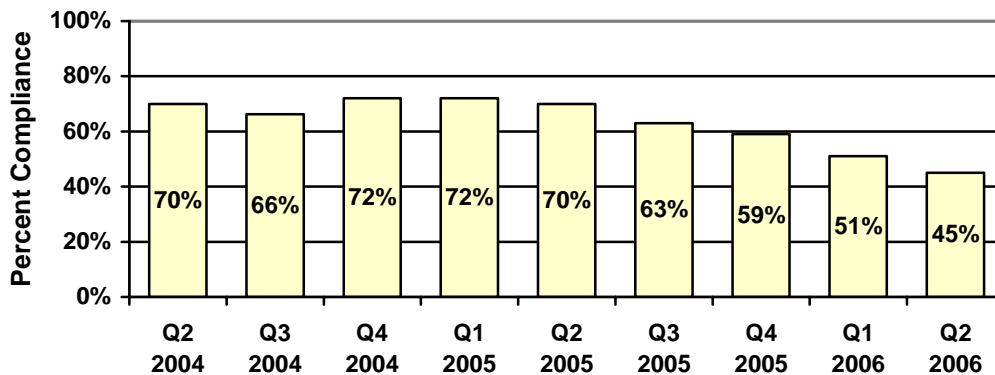
---

<sup>9</sup> 9 NYCRR § 1727-1.3(i)

certifying that tenant admissions and transfers have been processed in accordance with the regulations.

Between 2004 and 2006, DHCR regularly overlooked the failure of exempt housing companies to submit this report. In any given quarter over the past two years, between 28 percent and 56 percent of exempt housing companies failed to comply with the reporting requirement, without consequence. Moreover, as the chart below illustrates, the rate of non-compliance has increased during that time.

**Submission of Quarterly Tenant Selection Activity Reports:  
Rate of Compliance Among 83 Exempt Housing Companies**



Twelve exempt housing companies, or 14 percent, were not in compliance with the reporting requirement for two years or more. Thirty-four of the exempt housing companies maintained waiting lists with a duration of more than a year, a violation of regulations. Despite this record of non-compliance, DHCR rescinded the exempt status of only a single housing company. DHCR initiated this rescission action in October 2006, while our review was ongoing.

c. Failure to Examine Tenant Lists

DHCR has the capability to compare tenant lists to its own records to ensure that tenants occupying Mitchell-Lama apartments have received the requisite approval.

Unfortunately, DHCR did not perform this comparison, known as a “rent roll audit,” on a

regular or proactive basis. In fact, from 2002 to 2006 DHCR conducted only three rent roll audits, all in response to complaints and one at the request of this Office.

One of the audits, at Towers of Bayridge, was conducted by the same DHCR field representative responsible for day-to-day monitoring at the development, in violation of standard audit practice. Further, because the audit relied solely on a tenant list provided by Bayridge's housing company that was inaccurate, DHCR failed to detect many of the unauthorized residents in the building. The tenant list the housing company provided to DHCR listed 21 residents who no longer lived in the complex, including four who were deceased. DHCR likely would have noticed that the tenant list was inaccurate if it had also examined other available records, such as the yearly income affidavits of individual tenants that are submitted to DHCR.

## **2. Ineffective Housing Representatives**

As the primary point of contact between DHCR and housing companies that participate in the Mitchell-Lama program, the work of DHCR's housing representatives is essential to effective oversight of the program. Supervisors at the Office of Housing Operations rely on the information provided by field representatives to evaluate a company's operation. According to a manager at the Office of Housing Operations, her ability to properly monitor housing developments is only as good as the information she receives from the representatives. Despite this heavy reliance on the representatives, DHCR failed to ensure that they were adequately fulfilling their responsibilities, or that they are guided by policies that help them to identify potential areas for DHCR intervention.

### a. Field Visits

The effectiveness of DHCR's system of monitoring Mitchell-Lama developments was hampered by ineffective supervision of housing representatives and the resulting failures by those representatives to carry out required tasks. In many instances, housing representatives did not make the required number of field visits, and often they did not perform required reviews and analyses when they made visits. In addition, DHCR had no method for identifying at-risk developments that may warrant additional field visits.

Each year DHCR establishes how many field visits each housing complex will require. At a minimum, each complex must receive one site visit and one office visit per year, according to DHCR officials. Site visits must include examination of a development's grounds, structures, and heating system. Office visits cover, among other areas, a housing company's fiscal and budget operations, contracts, and tenant selection activities. Most housing companies are required to receive more visits than the minimum of two, depending on specific circumstances.

According to DHCR's records, in 2005, 106 developments, or 54 percent of the 196 active developments, did not receive the required number of field visits. Thirty-five percent of developments did not receive the required number of site visits and 49 percent did not receive the required number of office visits. Twenty percent did not receive the required number of both site and office visits. Among representatives, compliance with requirements for conducting field visits varied from 6 percent to 80 percent.

At one development where both the city and the state have oversight, the New York City Department of Housing Preservation and Development identified 38 housing code violations in May 2006. Four of these violations were classified as "immediately hazardous." However, although two site visits by DHCR were required, the housing representative made only one field visit in 2005 and failed to note the hazardous conditions. The representative made no site visits in 2006.

Even when the required visits were made, representatives often did not perform the functions required by DHCR's Guidelines on Evaluation of Project Operations. For example, at one housing company that had received the required office visits, the manager told us she could not recall the representative ever asking to review an invoice or a contract. She further stated that the only matter the representative reviewed during the past few years was the petty cash, and that this was done only once.

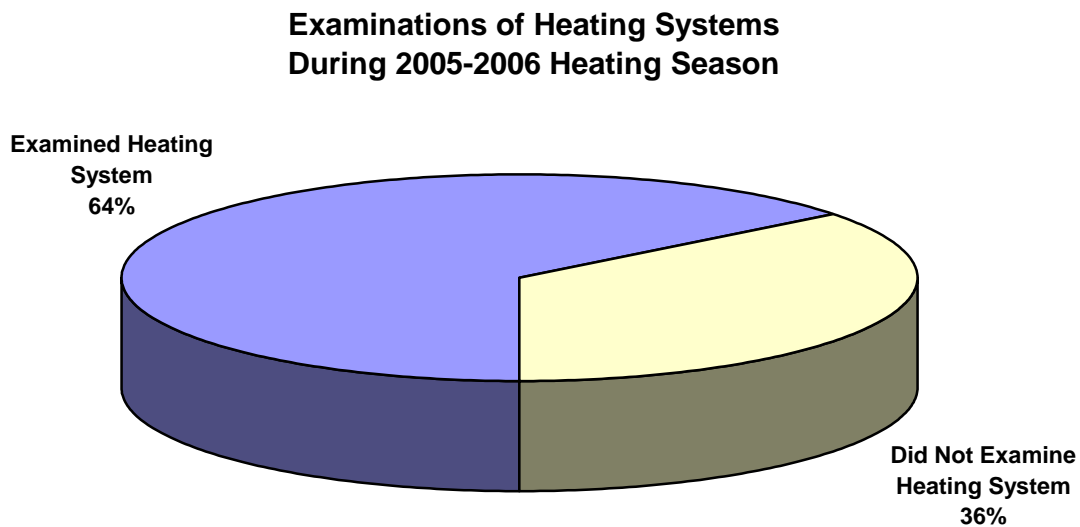
Finally, DHCR had not developed written criteria for determining whether additional field visits to a housing complex were necessary, nor did the agency establish performance measures to identify complexes that were at greatest risk of mismanagement or non-compliance. The director of the Housing Management Bureau and the assistant



director in charge of field units had determined once a year the number of field visits required for each project based, in the words of the director, on whether the complex was troubled or not. When asked how they knew if a complex was troubled, the director stated that she read every field report. When asked to produce a field report that indicated a problem, she stated that she did not keep copies of the field reports but threw them out.<sup>10</sup>

#### b. Review of Heating Systems

Among items to be examined by housing representatives during field visits, the proper functioning of heating systems is of particular importance because of the safety implications for residents. Unfortunately, of 138 site-visit field reports during the 2005-2006 New York City heating season,<sup>11</sup> 49 (36 percent) did not include examination of the developments' heating systems. When asked, the director of the Housing Management Bureau stated such gaps occurred because “everyone had different styles and different interests.”



---

<sup>10</sup> According to DHCR, all field reports are maintained in an electronic database and are available to all employees.

<sup>11</sup> Heating season falls between October 1 and May 31, according to the New York City Housing Maintenance Code.

This laissez-faire attitude towards heating system evaluation could potentially result in a health hazard for residents. Under the New York City Housing Maintenance Code, a lack of heat or hot water falls within the most serious class of housing violations and is considered “immediately hazardous.” Nonetheless, according to the 2005 New York City Housing and Vacancy Survey, 12 percent of Mitchell-Lama co-op shareholders and tenants reported that they had experienced a heating equipment breakdown that lasted six consecutive hours or longer during the winter prior to the time of the survey. Of those who experienced a breakdown, 38 percent reported that they had experienced four or more such breakdowns. Fourteen percent of the shareholders and tenants reported using additional sources of heat during the prior winter because the regular system did not provide sufficient heat.

### c. Evaluation of Managing Agents

In addition to conducting mandatory field visits at the complexes, representatives are required to evaluate and report on the performance of the housing companies’ managing agents every two years. DHCR officials stated that reporting problems and non-compliance with DHCR rules and regulations in their managing agent evaluations was one of the primary methods they had to ensure compliance with DHCR regulations. However, as with field visits, these evaluations were not always completed, and when they were, they often failed to provide a meaningful assessment of the managing agent.

For example, of the 12 exempt<sup>12</sup> complexes that, for more than two years, had not submitted their Quarterly Activity Reports as required by DHCR’s Application Review Procedures, representatives at seven produced no managing agent evaluations. For the remaining five, representatives failed to report the lack of Quarterly Activity Reports in their evaluations, and two incorrectly stated that the housing company was in compliance with this requirement.

Many problems were not identified because DHCR had not provided representatives with adequate written guidance or formal training regarding the procedures they should have

---

<sup>12</sup> As discussed above, certain “exempt” housing companies do not have to submit tenant applications to DHCR for approval, but must file Quarterly Activity Reports detailing rental activity.

followed to evaluate housing companies' operations or the criteria they should have used to determine if a problem exists. If a problem was found, there was no corrective plan of action required and no monitoring system was in place, other than field reports, to determine if managing agents were rectifying the problems.

When asked for an explanation about why some representatives seemed to only provide limited information about problems they found, the director stated that this was difficult to answer because "I can't get into people's heads." The director added she was "happy to the extent they report on [problems]" at all, evincing the absence of standards and lack of supervision of field representatives.

### **3. Sporadic Receipt and Review of Financial Reports**

Housing companies are required to prepare certain financial reports so that DHCR may ensure compliance with regulations. Housing companies have benefited from substantial state subsidies and therefore have a responsibility to operate their facilities responsibly and economically. The various reports required under regulations are designed to allow DHCR to detect potential financial mismanagement or abuses of authority. The section below discusses DHCR's failure to track or review documents essential to its identification of accounting irregularities, poor financial planning, and conflicts of interest.

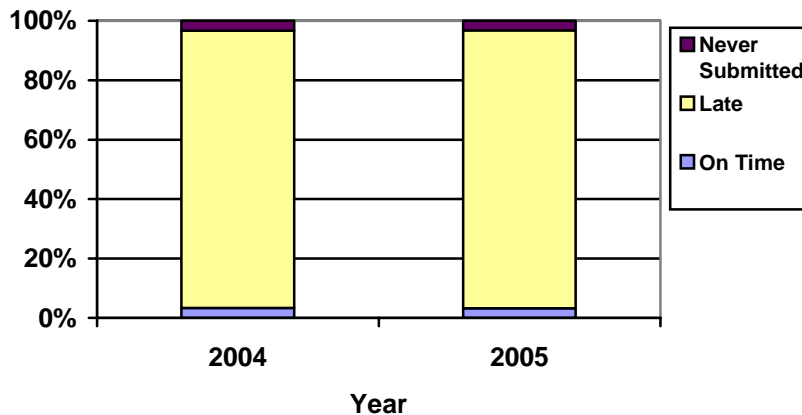
#### a. Financial Statement Submissions

According to 9 NYCRR Section 1728-2.2, each housing company must submit annually an audited certified financial statement to DHCR within 60 days after the close of the fiscal year. A random sample of 31 housing companies revealed that the majority of housing companies had not submitted the financial statements on time. In both 2004 and 2005 only one housing company in each year submitted its financial statements within the required 60 days. One company in 2004 and one in 2005 never submitted a financial statement.

The accountants in DHCR's Housing Audits and Accounts Bureau who were assigned to review the statements did not do so promptly or consistently. In 2004, DHCR never reviewed 16 of the 30 financial statements that were submitted, and only two financial

statements were reviewed within 60 days of their receipt. In 2005, DHCR reviewed only 13 of the 30 submitted financial statements within 60 days; reviewed eight between 76 and 404 days after submission; and never reviewed one statement. Of the remaining eight financial statements, DHCR staff did not indicate a review date.

**Timely Submission of Certified Financial Statements by 31 Housing Companies**



The director of the bureau stated that he was disappointed with the performance of his staff, although his failure to establish and enforce policies contributed to the inconsistent performance of the accountants. The director said that he relied on individual accountants to monitor submissions and to remind housing companies by letter when they were overdue. However, when we asked one accountant for copies of his reminder letters, he said he had none because he conducted telephone follow-ups, of which he had kept no record. The director also said that the accountants are expected to conduct their reviews promptly, but he acknowledged that no specific deadlines had been established for completing the reviews.

**b. Budget Submissions**

Similar to financial statements, housing company budgets provide DHCR with information that is essential to its monitoring duties. Proposed rent increases may be included in housing company budgets, as are spending plans that housing companies must follow. Regulations require that housing companies submit proposed two-year

budgets to DHCR for approval at least 165 days prior to the beginning of their budget cycles. DHCR must review and act on the budget within 30 days following the deadline for submission. If a housing company does not submit a budget within 30 days after the deadline, DHCR is required to establish a budget for the housing company.<sup>13</sup>

In the course of this examination, we were unable to determine whether DHCR is complying with the above timetable. Budgets were not consistently or legibly date-stamped upon receipt, and cover letters that would indicate the date the housing companies sent the documents were not maintained. According to DHCR officials, monthly control sheets should log the receipt of the budget from each housing company. However, these control sheets did not consistently provide the date of receipt of the budget.

Of the same 31 housing companies examined with respect to audited certified financial statements, we were able to identify the date of receipt of the 2006 budget for only nine companies. Of the nine, three were submitted between 116 and 290 days late. For budgets due in 2005, only 14 of the 31 files reviewed included dates of receipt. Of the 14 budgets, six were submitted between 26 and 185 days late. We also noted that in one budget cycle, 11 housing companies submitted budgets that covered periods later than the period requested by DHCR. For example, DHCR requested from one housing company a budget that would run from January 1, 2001 to December 31, 2002. The housing company instead submitted a budget for the period April 1, 2002 to March 31, 2004, yet DHCR approved the budget covering October 1, 2002 to September 30, 2004. Therefore for the 21-month period from January 1, 2001 to September 30, 2002, the housing company operated without a budget reviewed or approved by DHCR.

We were unable to assess DHCR compliance with deadlines for reviewing budgets because DHCR does not document when a review occurs. Further, despite regulations that require DHCR to prepare a budget when housing companies do not do so by a certain date, DHCR ignored this responsibility. When these issues were discussed with DHCR management officials, they responded in writing that the agency placed greater emphasis

---

<sup>13</sup> 9 NYCRR § 1728-1.2(a)

“on the substance and integrity of the budget/rent determination process as opposed to whether particular time frames and procedures were strictly adhered to.” The assistant commissioner asserted that the agency’s regulations were merely “guidelines.” (In a 2002 decision regarding DHCR, New York State Court of Appeals explicitly stated that, “agencies are required to abide by their own regulations.”<sup>14</sup>)

### c. Identity of Interest Filings

Because of their responsibilities to manage housing developments, board members and housing company or managing agent employees are in a position to award large contracts. To prevent waste or abuse, housing companies are required to follow procurement rules when awarding these contracts. These rules include a requirement to make every reasonable effort to avoid entering into contracts or other transactions for materials or services that may involve a potential conflict of interest.<sup>15</sup> The conflict of interest rules prohibit those who make or who can influence procurement decisions from being in a position to profit financially or gain other advantages from those decisions. Where conflicts of interest exist, regulations require that they be disclosed to DHCR.

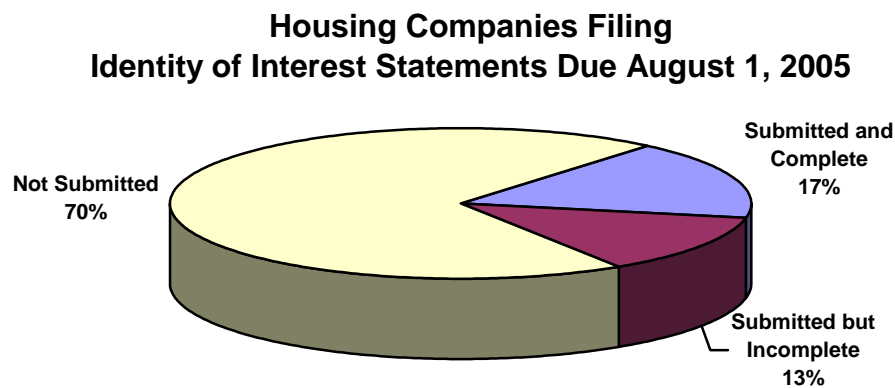
In 2005, DHCR imposed stricter conflict-of-interest disclosure requirements in response to concerns raised by the Inspector General regarding irregularities in contracting practices at a number of housing companies. DHCR issued a memorandum to all housing companies participating in the Mitchell-Lama program requiring that by August 1, 2005 they submit Identity of Interest reports that included the names of all “covered individuals” (housing company board members and principals; managing agent principals and key employees; and any shareholder, individual or entity with a greater than 10 percent interest in the housing company); conflicts of interests involving any “covered individuals”; and a plan of action to address any conflicts of interest. DHCR required submission of the report even if a housing company had no conflicts of interest to disclose.

---

<sup>14</sup> *Gilman v. New York State Division of Housing and Community Renewal et al.*, 99 N.Y.2d 144, 2002.

<sup>15</sup> 9 NYCRR § 1725-2.5

Despite the new policy, the majority of housing companies did not submit Identity of Interest reports. Of a total of 196 housing companies participating in the Mitchell-Lama program at the time of the August 1, 2005 submission deadline, only 58, or 30 percent, had submitted the required form as of May 2006. Of the 58 submissions, only 33 included all of the requested information. The list used to track compliance was substantially out of date – it contained more than 70 housing companies that were no longer part of the Mitchell-Lama program.



The DHCR employee assigned to track the Identity of Interest filings said that she had been given no guidance on what to do if housing companies failed to comply.

#### **4. No Tracking or Response to Complaints**

Although a functioning complaint process is an essential component of effective oversight, DHCR handled complaints in a manner that was uncoordinated, undocumented, and nearly useless.

DHCR administrators stated that complaints are the primary basis for selecting housing companies for audit, but the agency had no written complaint policy and maintains no record of complaints. Officials in DHCR’s Office of Housing said that they did not see any reason for logging complaints because they received so many that they did not have the time to log or respond to all of them. When asked how complaints can be tracked without logs, officials said that they keep copies of all “important” complaints in a file and later follow up on them with the field units. They acknowledged, however, that they

had no definition of “important” complaints, and could not produce a single copy of a complaint deemed important.

When complaints regarding Mitchell-Lama projects were received, they were forwarded to the DHCR field representative assigned to the very housing company that was the subject of the complaint. This occurred even when the complaint concerned the performance of the DHCR representative or his or her supervisor. The representatives we interviewed told us that when they received complaints, they typically contacted the housing company or managing agent and asked them to respond, regardless of whether the complaint was against the housing company or managing agent. However, because no documentation of these contacts was maintained, we were unable to determine if complaints were handled appropriately or if there was any DHCR follow-up. Management staff said they had no means of tracking complaints made directly to the housing representatives.

### **5. Employees Disproportionately Residing in Mitchell-Lama Housing**

On December 21, 2005, Mark Marcucilli, assistant director of DHCR’s Housing Management Bureau, was arrested on charges that he defrauded DHCR by providing false information regarding his residency at Southbridge Towers, a Mitchell-Lama complex in lower Manhattan. Following a joint investigation by the United States Attorney for the Southern District of New York, the New York State Attorney General’s Office, and the Inspector General, Marcucilli was accused of obtaining and maintaining an apartment at Southbridge, which he used periodically as his own residence, by falsely representing that his father resided with him there. Marcucilli’s income was too high for him to qualify for this apartment as the sole occupant. Instead, he commenced the application process for the apartment in the names of his parents. Marcucilli was also accused of helping a personal friend to obtain and maintain an apartment at Southbridge, which the friend illegally sublet; and assisting an effort by Jody Wolfson, another DHCR employee and Southbridge resident, to illegally sell her apartment to another by falsely representing to DHCR that she lived with the person to whom she intended to transfer the apartment. The U.S. Attorney’s Office also prosecuted Jody Wolfson, charging her with conspiracy and mail fraud in connection with the scheme to illegally sell her Southbridge



apartment, as well as a second scheme to defraud relating to a separate Southbridge apartment owned by Wolfson's mother. It was alleged that with the assistance of Mark Marcucilli, Wolfson falsely represented to DHCR that her nephew resided with her mother, in an effort to obtain succession rights for her nephew to her mother's apartment.

Marcucilli pled guilty in United State District Court for the Southern District of New York on September 28, 2006 to mail fraud; theft of United States government funds; and conspiracy to commit mail fraud and theft of United State government funds. On March 29, 2007, he was sentenced to one year and one day in federal prison. As part of his plea, he agreed to forfeit all rights to his Southbridge residence. On April 4, 2006, Wolfson pled guilty to conspiracy to commit mail fraud and mail fraud. As of the writing of this report, Wolfson has not been sentenced.

The Marcucilli and Wolfson prosecutions raise concerns as to whether DHCR has in place adequate controls to prevent potential abuses or conflicts of interest that may arise when DHCR employees reside in Mitchell-Lama complexes. Of a randomly selected sample of 30 DHCR employees who were responsible for direct supervision of Mitchell-Lama complexes in New York City, 10, or 33.3 percent, resided in Mitchell-Lama projects or in projects that recently bought out of the program. In contrast, only 2 percent of New York City residents reside in Mitchell-Lama housing. DHCR did not require agency employees to report their residency in projects under DHCR oversight, and a DHCR official told us he didn't think this situation was a "big deal."

The DHCR official did tell us that a conflict of interest would exist if an agency employee was assigned to work involving a complex in which the employee resided. In fact, our review identified such a situation, involving a DHCR employee who reviewed tenant applications for the Mitchell-Lama complex where she resided. DHCR knew, or should have known, of this conflict, as it had approved the employee's application for an apartment in the complex.

## **B. THE TENANT SELECTION PROCESS AT THREE PROBLEM DEVELOPMENTS**

In this section we examine the allocation of apartments at three developments in which we found indications of problems in their tenant selection processes, either because of complaints or because of excessively slow movement of tenants from the waiting list into apartments. The three developments discussed below, Westview Apartments, Towers of Bayridge, and Cathedral Towers, all showed irregularities to varying degrees in allocation of apartments. In the end, we found that each of the developments has provided apartments to individuals who were either ineligible, or who had unfairly jumped ahead of others on the waiting list. In every one of these instances, the result was that an eligible individual was deprived of his rightful access to a Mitchell-Lama apartment. Unfortunately, DHCR did little, if anything, to prevent these misallocations or to correct the situation that allowed the misallocations to take place.

### **1. Overview of Mandated Tenant Selection Procedures**

Provisions of the Private Housing Finance Law, the New York Codes, Rules, and Regulations, and DHCR procedures establish a process for selecting tenants in Mitchell-Lama developments.<sup>16</sup> Under this protocol, a prospective tenant submits an application to the appropriate housing company, which then makes an initial eligibility determination, largely based on the prospective tenant's income and household composition. In practically every instance, eligible applicants are put on a waiting list for an apartment, which must be offered on a first-come, first-served basis. (For some apartment buildings or complexes, a consultant hired by the housing company conducts a lottery to determine who will go on the waiting list.) At any given time, thousands of eligible applicants are on waiting lists, some of which are so long that a potential resident may wait years before being offered an apartment. Separate waiting lists are maintained for each apartment size (e.g., studio, one-bedroom, etc.)

---

<sup>16</sup> Private Housing Finance Law § 31; 9 NYCRR § 1727-1.3(b); DHCR Apartment Application Review Procedure.

The waiting list, a simple, numbered list of applicants for apartments, is the primary mechanism for ensuring that Mitchell-Lama apartments are allocated on a first-come, first-served basis. Except in some limited special circumstances (such as an applicant who is a veteran of the armed forces), new applicants for apartments must be added to the bottom of an “external” waiting list. Likewise, existing tenants seeking to change apartments, usually because of a change in family composition, must be added to the bottom of an “internal” waiting list. Although applicants on the internal waiting list, all existing residents of the complex, are given priority, regulations mandate that one out of every five apartments of each size be allocated to persons on the external waiting list.<sup>17</sup>

Housing companies historically maintained their waiting lists in logbooks, which were kept at the apartment complexes and available for inspection by DHCR field staff. In 2003, as part of a project initiated by DHCR, housing companies began converting their logbooks to an automated waiting list, a computer system designed to manage and monitor the tenant selection process more efficiently. DHCR maintains the automated waiting list on the agency computer network, which housing companies can access in order to input waiting list information.

As waiting lists may last for extended periods, regulations require that housing companies conduct, at least annually, a canvass of a sample of applicants on the list to determine their continued interest and eligibility in obtaining an apartment. Housing companies are also mandated to properly annotate the waiting lists to reflect any change in a prospective tenant’s status, including an applicant’s removal from the list, as well as the basis for such change.

When an apartment becomes available, the prospective tenant must resubmit an application to the housing company for a new eligibility determination, again with the primary focus on income and household composition. Except in the case of certain exempt housing companies, approved applications are forwarded to DHCR, whose approval is required prior to the tenant occupying the apartment.

---

<sup>17</sup> 9 NYCRR § 1727-1.3(a)(1).

DHCR did not review applications denied by the housing companies unless a complaint was filed. When a prospective tenant's application is denied, the tenant must be notified of the reason for the determination and his right to appeal the decision to DHCR.<sup>18</sup> However, DHCR delegated the obligation to notify the rejected applicant of his rights to the individual housing companies and did not track whether such notice was actually sent.

Regulations further require that tenants submit updated income information to the housing companies every year after taking occupancy of their apartments, including in their submissions the income of any co-habitants of the apartment. This requirement ensures that income limits are enforced, with tenants exceeding the limits assessed a rent surcharge.<sup>19</sup> Regulations also prohibit subletting and require that a Mitchell-Lama apartment must be a tenant's primary residence.<sup>20</sup>

## **2. Manipulation of Waiting Lists**

Our investigation uncovered numerous violations of regulations regarding waiting lists at two of the three developments examined. DHCR failed in its oversight role to uncover these violations in its field examinations or to make any effort to correct the violations. As described below, our investigation uncovered violations of each of the following areas:

- Assignment of new applicants to waiting lists;
- Assignment of tenants requesting transfers to waiting lists;
- Recording of changes to the waiting lists and the justifications for those changes; and
- Procedures for converting from written waiting lists to the automated waiting list.

### a. Towers of Bayridge

When we examined the logbooks at Bayridge, an 811-unit cooperative apartment complex in Brooklyn, we found serious violations of the DHCR regulations governing

---

<sup>18</sup> 9 NYCRR § 1727-1.3(g)

<sup>19</sup> 9 NYCRR §§ 1727-2.3, 2.6.

<sup>20</sup> 9 NYCRR § 1727-5.3(a)(9).

external waiting lists. 9 NYCRR §1727-1.3(b) requires that prospective tenants' applications be entered in the log in the order they were received. At Bayridge, this principle was turned on its head. Six applications, which should have appeared far down the external list, were placed virtually at the top. Employees of Bayridge's management agent accomplished this by inserting these applications immediately after applicant 201 on the list (the next applicant due to be offered an apartment) and giving them the irregular designations 201A-201F. Overall, we found 59 instances where applications were improperly inserted in the Bayridge external waiting list in the period 2002 to 2004.

In violation of 9 NYCRR §1727-1.3(b)(3), we also found 12 instances at Bayridge in which the waiting list number assigned to individuals who had been removed from the external waiting list or inactivated for various stated reasons (refusal of apartment offered, etc.) were reassigned to persons who were either not on any list or who had been on the internal lists for tenants seeking to transfer apartments. New applications should have been placed at the end of the external waiting list,<sup>21</sup> and applications for transfer should not have been placed on the external list at all.<sup>22</sup> Many of these improper revisions were made by "whiting out" the correct log book entry, which violates the DHCR rule stating that when log book information is superseded, it "should be lined out, not whited out."<sup>23</sup>

With respect to the 59 improper insertions and other irregularities in the external waiting list, a representative of J.A.L. Diversified Management Corporation (JAL), Bayridge's managing agent at the time,<sup>24</sup> acknowledged that the logs have "too many insertions, notes, cross-outs, write-overs." However, the JAL representative attempted to blame DHCR, in part, for the practice, stating: "The whole process of recordkeeping was made extremely complicated by the sanctioning of insertions into the waiting lists, which has gone on for over 15 years." The JAL representative appeared to refer to an April 11, 2002 letter from JAL to a DHCR senior housing management representative requesting permission to make such insertions to the list. Copies of the letter were attached to the

---

<sup>21</sup> 9 NYCRR § 1727-1.3(a)(3).

<sup>22</sup> 9 NYCRR § 1727-1.3(a)(1).

<sup>23</sup> Apartment Application Review Procedure, Item B.2.b.

<sup>24</sup> JAL's management contract was not renewed after June 30, 2005.

logs where insertions were made. Despite JAL's apparent reliance on this letter, no evidence was provided to show that DHCR ever approved the request, either in writing or orally. The DHCR senior representative to whom the letter was addressed told the Inspector General that DHCR did not formally respond to JAL's request, and that she verbally informed JAL that the request was denied.

#### *DHCR Oversight*

The DHCR representative with direct responsibility for monitoring Bayridge failed to note the numerous insertions and white-outs in the logbooks — clear violations of DHCR regulations — in either his field reports or his evaluation of JAL. Indeed, despite the numerous and obvious irregularities in the logbooks, the DHCR representative in his March 9, 2004 field report declared that the “re-sale staff [at Bayridge] does an excellent job maintaining and updating the list.” When we questioned the representative about the irregularities, he claimed that he had not noticed them, insisting that he had told Bayridge staff that new applications must be added at the end of the list.

The DHCR Housing Management Bureau's Administrative Unit also ignored or failed to notice these violations when it conducted a review of Bayridge's conversion from written logbooks to the automated waiting list in January 2004. As noted, our review found that 12 improper insertions and re-assignments were transferred to the automated waiting list by JAL and accepted by DHCR. According to the user manual for the automated waiting list, DHCR is required to do a line-by-line comparison of the logbook and automated waiting list entries to ensure that the active portions of the manual logs were completely and accurately transcribed before approving the conversion. Further, 34 applications on one Bayridge internal waiting list were not transferred to the automated waiting list; at least eight of these applications were active and, therefore, still awaiting apartments. When we asked Administration Unit staff to explain the omissions, they surmised that copies of several pages from the logbook were not sent to DHCR by the housing company.

### b. Cathedral Parkway Towers

At Cathedral Parkway Towers, a 309-unit rental complex in Manhattan, we found that regulations for both the internal and external waiting lists had been violated, often flagrantly. In March and April 2006, Cathedral Parkway granted apartments to three individuals who were not on any waiting list, bypassing at least six applicants who had been waiting for an apartment since 1999. When we asked the manager of the complex for an explanation, she said, “they just walked in and filled out applications and we gave them apartments.”

In another egregious instance, a Cathedral Parkway management employee responsible for maintaining the waiting list received an apartment at the complex even though his application to DHCR was returned unapproved. This employee was not on the waiting list, but occupied the apartment even before his application was sent to DHCR. His sister, who was on the waiting list, received an apartment as well, bypassing several individuals ahead of her on the list.

In yet another serious oversight by DHCR, we found that approximately 125 applicants were dropped from the waiting list when Cathedral Parkway converted from logbooks to the automated waiting list. Because the logbooks lacked the annotations that are required by regulation, it was not possible to determine if the deletions from the list were proper. When interviewed, the Cathedral Parkway manager said she could not explain the lack of annotations because the staff person who handled the conversion no longer worked for the housing company.

In violation of 9 NYCRR §1727-1.3(a)(1), Cathedral Parkway failed to maintain an internal waiting list of tenants wishing to transfer to a different apartment. Despite the absence of an internal waiting list, Cathedral Parkway management had allowed at least 27 tenants to transfer to other apartments. Without a list or other documentation concerning the transfers, we could not determine whether the first-come, first-served rule had been followed or whether different-sized apartments had been properly allocated according to household composition.

We also found that Cathedral Parkway failed to properly implement a separate internal transfer plan requested by DHCR intended to move certain tenants into smaller apartments so that they could continue to be eligible for federal housing subsidies. DHCR had provided Cathedral Parkway with a list of these “downsize transfers” and directed that they be given priority over any other internal transfer. When we compared the list with actual transfers, we found that Cathedral Parkway had not only failed to follow the prescribed order for the “downsize transfers,” but had inserted ineligible tenants in the list and allowed their transfers without DHCR approval. DHCR was unaware of this situation because it failed to conduct a follow-up review of the “downsize transfer” plan.

#### *DHCR Oversight*

The DHCR representative assigned to Cathedral Parkway failed to remedy any of the violations discussed above regarding maintenance of waiting lists, annotation of waiting lists, and improper assignment of apartments. The representative could not have seen that the logbooks lacked required annotations because he did not review the waiting lists during his field visits to the apartment complex, although DHCR Management Representative Guidelines “suggest” he review the lists. Likewise, DHCR’s Administrative Unit, which was responsible for overseeing the conversion from paper to electronic waiting lists, failed to adequately review the conversion process. A comparison of the Cathedral Parkway logbooks to the automated waiting list, as required by DHCR rules,<sup>25</sup> would have revealed approximately 125 dropped applicants. Administrative Unit staff theorized that the applicants might have been deleted from the waiting list after a canvass indicated that they were no longer interested in apartments in the development, but they were not able to provide any indication that such a canvass had, in fact, been conducted.

---

<sup>25</sup> Automated Waiting List User Manual.



### **3. Unexplained Removals from the Waiting List**

To keep external waiting lists current, the regulations<sup>26</sup> require that housing companies conduct an annual canvass, consisting of a survey of a sample<sup>27</sup> of applicants seeking apartments. The purpose of the canvass is to assess applicants' continued interest in obtaining apartments and to collect information regarding any changes in family composition, address, or income that might affect eligibility. While a canvass may be performed by regular mail or certified mail with return receipt requested, when an applicant fails to respond to an initial regular mail canvass, the housing company is required to re-canvass the individual by certified mail, return receipt requested. Failure by an applicant to respond to the certified mail canvass is deemed to be non-interest and results in removal from the waiting list.

At both Cathedral Parkway and Bayridge, persons were removed from the waiting list without proper explanation or documentation. At both sites, unexplained removals were attributed to the canvass, although this explanation could not be verified. DHCR administrative staff, as well as the field representative assigned to the developments, failed to enforce any regulations regarding the canvass, even failing to check whether the canvass had ever been conducted.

#### a. Cathedral Parkway Towers

Because DHCR administrative staff had attributed the unexplained removal of approximately 125 persons from the waiting list at Cathedral Parkway to a canvass, we looked further into the possibility that a canvass was the cause for removing these applicants from the list. As noted above, DHCR administrative staff posited that Cathedral Parkway might have conducted a canvass in 2004, but could provide no documentation for this suggestion. The current Cathedral Parkway management could not offer an explanation for the removal of the applicants. The DHCR representative assigned to Cathedral Parkway was of no help in our inquiry, admitting he did not know if a canvass had been done because he had not checked at the time.

---

<sup>26</sup> 9 NYCRR § 1727-1.4(d).

<sup>27</sup> According to regulation, the canvass must include "a sufficient number of applicants on the waiting list equal to three times the annual turnover rate" at the complex.

To determine if Cathedral Parkway had in fact conducted a canvass, we selected a random sample of 10 of the approximately 125 individuals who had been removed from the waiting list. Of the 10, we were able to make contact with three, all of whom stated that they had not received a canvass letter or any communication at all from Cathedral Parkway since their original application.

#### b. Towers of Bayridge

Following the review at Cathedral Parkway, we returned to Bayridge to determine if the removal of applicants from the external waiting list at that apartment complex had resulted from a properly conducted canvass or other legitimate reasons, as indicated in the annotations to the list. Of the total of 263 applicants removed from the list between April 2000 and September 2006, we selected a random sample of 23. Bayridge was not able to provide documentation explaining the removals, although such documentation is required by regulation.<sup>28</sup> We then attempted to contact the 23 applicants, and were able to reach 10 of them.

Four of the 10 applicants we contacted told us that they recalled receiving a canvass letter from Bayridge management, and that their removals from the list were proper.

Interviews with the remaining six applicants revealed not only that they were removed from the waiting list improperly, but also that the waiting list contained false or mistaken annotations and that at least one Bayridge management employee may have engaged in misconduct. In all cases discussed below, Bayridge did have the correct address on file for the applicant.

- Three applicants who were removed for what the list's annotations indicated were failures to respond to canvasses stated they had never been contacted by Bayridge — assertions consistent with the absence of canvass-related documentation in their files at Bayridge.
- According to the list's annotations, an applicant was contacted four times from 2000 to 2002, removed from the list in 2005 for failing to answer a canvass, and subsequently reinstated by DHCR. The applicant told us he was contacted twice,

---

<sup>28</sup> 9 NYCRR §1727-1.3(b)(3).

and neither contact was between the dates specified in the list's annotations. He said that about 10 years ago, someone from Bayridge had intimated there were unauthorized ways to move up the list faster, but he said he didn't pursue the matter. The applicant said he wasn't contacted again until 2006, when he was finally assigned an apartment.

- Two additional applicants, who, according to the annotations, had each been contacted four times between 2000 and 2002, said that none of these contacts occurred. Rather, one of the applicants said that Bayridge had informed her in 1996 there were only six people ahead of her on the list, but that she was not contacted again until she was offered an apartment 10 years later. The other applicant said he had not heard from Bayridge since 1996.

#### *DHCR Oversight*

That these irregularities occurred is not surprising given what can only be described as DHCR's inattention to list annotations. Housing companies were simply allowed to annotate or not annotate their waiting lists as they saw fit. DHCR did not ensure that housing companies were making annotations at all, that those annotations that were entered properly justified the action taken, or that the information contained in the annotation was true. Without these reviews, DHCR could not determine whether an applicant's removal from a waiting list was proper. When it did receive documentation to justify removals from waiting lists, its staff did not verify the validity of those explanations. DHCR did not believe that this was its responsibility and therefore had not trained its staff in this area, or written any policies and procedures in this regard.

#### **4. Occupancies by Unapproved Tenants**

At no point in the process does DHCR exercise more direct responsibility for ensuring that the Mitchell-Lama program operates properly than in its review of tenant applications. By regulation,<sup>29</sup> applications approved by housing companies must be forwarded to DHCR, and tenants may not occupy apartments until DHCR approval has

---

<sup>29</sup> NYCRR § 1727-1.3(h).

been obtained. Thus, DHCR's involvement at this step provides a critically important check that apartments are let or sold in accordance with eligibility criteria.

Our investigation revealed that neither the housing companies nor DHCR complied with these regulations. On numerous occasions, the examined housing companies rented or sold apartments without obtaining approval from DHCR. DHCR failed to perform checks intended to identify unauthorized rentals and sales, and failed to take remedial action when housing companies rented or sold apartments without having obtained the requisite approvals from DHCR.

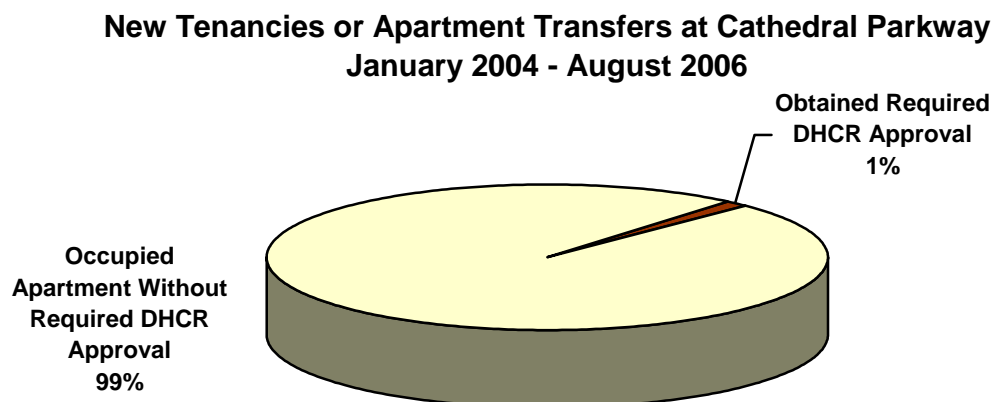
To assess whether DHCR was fulfilling this critically important function, we reviewed a total of 156 tenancies: 40 at Cathedral Parkway, 79 at Bayridge, and 37 at Westview. Our goal was to determine if the tenant assignments had been approved properly and whether tenants' files contained all of the items required by regulations to establish eligibility.

The results of our review reflect failures by both DHCR and the housing companies. Astonishingly, of the 156 tenancies we reviewed, 109, or 70 percent, either had not been submitted to DHCR for approval or had been submitted but returned by DHCR to the housing company as incomplete or denied, and therefore not approved for occupancy.

#### a. Cathedral Parkway Towers

At Cathedral Parkway, our review found 79 current tenants who either had moved into the development or transferred into new apartments during the period from January 2004 to August 2006. Only one was submitted to and approved by DHCR, a 99 percent non-compliance rate. Of these 79 tenancies, we tested a random sample of 40 (20 new and 20 transfers) to determine whether the tenants were eligible for their apartments. The sample included the one tenant who was approved by DHCR. We found that tenant to be eligible. However, when we examined the files for the other 39 tenants, we found that not a single one qualified for an apartment under the regulations. The receipt of apartments by 19 new applicants was in complete violation of the tenant selection process. None was on the waiting list nor did their files contain an apartment application form. The Cathedral Parkway manager explained to us that some of the new tenants were

children of tenants, and had been living with their parents at the complex. According to the manager, these children, although not on the waiting list, received apartments “because they needed their own place.” Others, the manager acknowledged, were individuals who “just walked in and filled out applications and we gave them apartments.” When we asked why individuals were given apartments instead of applicants legitimately on the waiting list, some for as long as seven years, the manager conceded: “You’re right, that should not have happened.”



Cathedral Parkway management staff seemed to be completely ignorant of application submission requirements. When we asked the manager of the complex if she had sent to DHCR any HM-14 forms (the form housing companies use to request DHCR approval for apartment applications), she asked, “What is an HM-14 form?”

#### *DHCR Oversight*

At Cathedral Parkway, applicants were allowed to occupy apartments without having submitted the necessary paperwork or having obtained approval from DHCR. The DHCR representative admitted that he had never reviewed the waiting list. The field representative noted in his field reports and in conversations with his supervisor that Cathedral Parkway repeatedly failed to submit the form to DHCR requesting approval for new tenancies. The representative and his supervisor discussed the issue with Cathedral Parkway management; however, the problem persisted for almost three years.

According to the DHCR representative, other than reporting the violation in field reports and management agent evaluations, there is little else that he can do. The director of DHCR's Housing Management Bureau agreed, telling us that persuasion was the primary means of achieving compliance with regulations. According to the director, DHCR's enforcement options are limited.

Contrary to these assertions, DHCR has the ability to impose serious sanctions in cases of noncompliance, although it rarely does so. For housing companies with managing agents, such as Cathedral Parkway, DHCR can issue the management agent an unsatisfactory evaluation. This can result in disapproval of a requested management fee increase, a fee reduction, placing the agent on a month-to-month contract, or termination of the agent. Between 2003 and 2006, DHCR rated only two companies as unsatisfactory, resulting in one being placed on a month-to-month contract and the other being replaced. For housing companies that do not employ managing agents, DHCR possesses the authority to take over a company's board of directors and put the housing company in receivership.

#### b. Towers of Bayridge

At Bayridge, we tested a sample of 79 tenancies. The sample was selected based on information provided by complainants regarding possibly illegally obtained apartments and represents approximately 10 percent of the total apartments in the complex. Of the 79 tenancies reviewed, we found that 57, or 72 percent, were not approved by DHCR. Fifty, or 88 percent, of these 57 were not submitted to DHCR for approval, while the other seven submitted to DHCR were denied. In addition, 64 out of the 79, or 81 percent, had received apartments in violation of waiting list rules, although DHCR had approved seven of them.

#### *DHCR Oversight*

J.A.L. Diversified (JAL), Bayridge's management agent at the time, acknowledged to DHCR that there had been a deliberate effort to avoid DHCR review of tenant applications, but identified as the culprit a single employee who acted, according to a JAL official, "from start to finish with minimal oversight from the manager and the

Board.”<sup>30</sup> Even if true, DHCR had sufficient opportunities to detect these problems. In the first instance, the file review by the DHCR representative assigned to Bayridge failed to note any of the 57 tenants JAL had allowed to move into apartments without DHCR approval. Additionally, there was no evidence that the representative examined Bayridge’s turnover rate, which can signal non-compliance and is a recommended action by DHCR’s Housing Management Representative Guidelines. (DHCR’s calculation of the turnover rate is based on its receipt of apartment applications for approval. If DHCR is receiving few or no application requests, it can indicate that apartments are being occupied without the necessary approval.) The Inspector General’s analysis showed that the recorded turnover rate for new tenants at Bayridge declined steadily from approximately five percent in 1999 to near zero in 2004, a strong indication of possible improprieties.<sup>31</sup>

DHCR could have detected these problems by comparing its records of approved applications with the annual income affidavits it receives from tenants. Tenants at Mitchell-Lama projects are required to submit to housing companies annual income affidavits, which are used in determining tenants’ continuing eligibility.<sup>32</sup> The housing companies forward the affidavits to DHCR. Had DHCR compared the names of tenants who submitted income affidavits with those whose applications for apartments it had approved, it could have detected unauthorized tenancies. When we conducted the comparison using the same sample of 79 tenancies, we found 50 tenants who had submitted income affidavits but whose applications had either not been submitted to DHCR for approval or had been submitted but not approved.

Additionally, DHCR did not follow up on a longstanding violation of regulations by Bayridge that may have detected the existence of a problem. Housing companies are required to submit to DHCR a monthly Marketing Activity Report, which shows, among other things, the number of apartments vacated and leased/sold during the preceding 30

---

<sup>30</sup> As noted previously, JAL was replaced as Bayridge’s managing agent.

<sup>31</sup> After an audit performed by DHCR in 2005, the number of applications submitted to DHCR for approval increased. The termination of JAL as Bayridge’s manager contributed to this improvement.

<sup>32</sup> According to 9 NYCRR § 1727-2.2, housing companies are responsible for reviewing once a year aggregate annual income of tenants. Likewise, §1727-2.3(c) states that income determination for continued occupancy of apartments is subject to review by field representatives.

days. When the reported activity fails to match applications approved by DHCR, unauthorized tenancies should be suspected. We found that Bayridge’s housing company failed to submit this mandated report for nearly four years, and that DHCR took no action to address this failure. Despite the potential usefulness of this monthly report for detecting unauthorized rentals, DHCR lacked a tracking system to ensure that the reports were submitted as required and it had not provided field representatives with any criteria for analyzing the information it had contained.

### c. Westview Apartments

At Westview, we tested a sample of 37 tenancies whose postal change of address records did not coincide with tenant records at the complex. These 37 accounted for approximately 10 percent of the apartments in the complex. Of the 37, we found that 13 did not have DHCR approval for occupancy and 15 were not eligible according to regulations. The majority of the non-approved tenancies at Westview involved applications of relatives to take over the apartment lease, or “succession” applications.<sup>33</sup>

Of the tenancies we examined at Westview, 10 involved succession rights. In none of these succession tenancies was an application submitted to DHCR for approval.<sup>34</sup> When we reviewed these files using the DHCR’s Apartment Application Review procedure, we found that only two of the 10 had sufficient documentation to support a request for succession rights. Five succession tenants/shareholders lacked sufficient proof that the succession applicant was a family member, and three lacked proof that the apartment had been the primary residence of both the tenant of record and the succession applicant for at least two years, as regulations require.

For the period 1998 to 2006, we found that Westview submitted no succession applications to DHCR for approval. When we asked the current housing company

---

<sup>33</sup> When the tenant or shareholder dies or moves out, the right of a family member to remain in the apartment is governed by Mitchell-Lama succession regulations (9 NYCRR §1727-8). These “succession regulations” permit particular individuals to succeed to an apartment and take over the lease, but typically only if the successor can document that the apartment is his/her primary residence, and that he/she has been living with the tenant and was listed on the income affidavit for a period of two years. DHCR succession regulations define family member as an immediate family member or a person who can prove emotional and financial commitment and interdependence between himself/herself and the tenant.

<sup>34</sup> Nine were processed prior to October 2004 under the previous management agent.



manager about this situation, she said she believed that many housing companies do not submit succession applications as they believe the right to succession is implied.

Our analysis of the Application Log (a DHCR database of all submitted applications) for the same period showed that of the 194 complexes listed, only 42 submitted any succession applications to DHCR, and 10 of the 42 complexes accounted for more than 86 percent of these applications. These figures likely indicate that other complexes in addition to Westview are failing to comply with succession regulations.

## **5. Illegal Occupants and Subletting**

Common violations by existing tenants include subletting and failure to disclose the incomes of all residents in the apartment. Rules relating to subletting and income disclosure were promulgated to ensure that only qualified individuals reside in Mitchell-Lama housing, and that each tenant pays the appropriate rent based on his household income. While DHCR's regulations include policies designed to identify and prevent these abuses, it does not adequately utilize the tools at its disposal. These policies include the requirement that tenants submit an Occupants' Annual Affidavit of Family Income (Income Affidavit) listing the income of all persons living in the apartment<sup>35</sup> and that tenants notify the housing complex of changes concerning the occupants of an apartment within 90 days.<sup>36</sup> DHCR did not conduct adequate reviews of these documents, and lacked procedures to ensure that apartments are not sublet or occupied by unapproved tenants.

### a. Westview Apartments

By comparing postal change of address records with tenant files at Westview, we found 43 individuals in 33 apartments who appeared to have lived there within the past three years without appearing on the housing company's list of tenants. Then, through a review of tenant files, we found that 25 of these 43 individuals had not been reported to the housing company or included on the income affidavit of the apartment where they purportedly resided. Failure of a tenant to report information concerning his or her

---

<sup>35</sup> 9 NYCRR § 1727-2.3(b).

<sup>36</sup> 9 NYCRR § 1727-3.6.

income or that of any member of his household violates regulations and is presumed to indicate excess income, which would allow the rent to be raised to the maximum rent allowed in the surcharge schedule.<sup>37</sup> Because housing companies have not developed adequate procedures to detect these reporting failures, they miss opportunities to collect additional income that is due them. Failure to report additional household members allows violators to benefit from lower rents than other similarly situated tenants who follow regulations.

We attempted to interview 10 of these 25 individuals to discuss their living arrangements at Westview and were able to talk with seven. Based on the interviews, we determined that six of the seven actually lived at Westview, but did not report their tenancy or income to the housing company. Of the six tenants who admitted living at Westview, however, one was subletting and five were sharing apartments with the tenant of record.

For the 27 apartments whose residents we were not able to contact, we attempted to determine if the apartment was the primary residence of the leaseholders using Department of Motor Vehicles and voter registration documents, and local property records. We identified at least four additional tenants of record who did not appear to actually reside in their Westview apartments. Two of these individuals owned other properties, according to local records, and a third individual owned a second home. These findings raised serious concerns as to whether individuals living in Mitchell-Lama apartments are approved tenants and whether the owners of record are using their apartments as their primary residences. Pursuant to 9 NYCRR § 1727-5.3(a)(9), failing to use the apartment as the principal residence of the tenant and his family is grounds for eviction.

#### *DHCR Oversight*

When we discussed these issues with the DHCR representative assigned to Westview, he said that he was unaware that these problems existed. He informed us that unless he received a complaint, he would have no way of knowing about unauthorized occupants or illegal subletting, as DHCR lacked procedures to check if the tenant residing in an

---

<sup>37</sup> 9 NYCRR § 1727-2.6.

apartment is the correct tenant. When we raised this issue with DHCR management staff, they said they viewed it as a housing company matter, not a DHCR problem, claiming that the housing company or its management agent is in the best position to verify continued occupancy eligibility.

## **6. Residents Exceeding Income Requirements**

Tenants or cooperative shareholders must fall within a certain income range in order to reside in Mitchell-Lama housing. The law allows some flexibility for rising incomes once new residents have occupied their apartments. Where incomes exceed the maximum allowable, occupants may pay a surcharge of up to 50 percent of the rent or maintenance charge and remain in their apartments. However, when a resident's income exceeds the maximum by more than 50 percent, that person or family is no longer eligible to reside in Mitchell-Lama housing.<sup>38</sup> According to regulations, it is the responsibility of housing companies, subject to approval of the commissioner, to "require persons or families to remove as required by law when incomes exceed legal limits."<sup>39</sup> When a tenant refuses or fails to file income information, he is assumed to have excess income and is also subject to eviction.<sup>40</sup>

In fact, housing companies and DHCR do not enforce income eligibility requirements for existing tenants. When income exceeds the maximum by more than 50 percent, or when residents fail to submit income affidavits, residents are charged the maximum surcharge but are allowed to remain in their subsidized apartments.

In 2004, at Cathedral Parkway, 93 percent of residents did not submit income affidavits. Income affidavits were not submitted by 7 percent and 9 percent of residents at Bayridge and Westview, respectively.

In addition, at Westview, residents of two apartments submitted income affidavits indicating that the occupants earned over \$500,000 per year. These tenants exceed the maximum allowable income by at least \$200,000. One pays a monthly rent of

---

<sup>38</sup> Private Housing Finance Law § 31(3).

<sup>39</sup> 9 NYCRR § 1727-2.2(e); 9 NYCRR § 1727-5.3(a)(7).

<sup>40</sup> 9 NYCRR § 1727-2.6(a); 9 NYCRR § 1727-5.3(f)(1).

approximately \$1,500 for a two-bedroom apartment, and the other pays approximately \$2,000 for a three-bedroom apartment.

Neither the housing companies nor DHCR made an adequate effort to enforce submission of income affidavits or provisions concerning maximum allowable incomes. Allowing income-ineligible tenants to continue to reside in Mitchell-Lama apartments results in fewer apartments being available for eligible applicants.

## **7. Warehousing**

The law permits housing companies to “buy out” of the Mitchell-Lama program after a certain period of time if the mortgage is fully paid.<sup>41</sup> A buyout can present the owner with a substantial profit, since vacant apartments may be sold or rented at market prices once the development leaves the program. Housing companies may not receive the same windfall from occupied apartments. Unlike vacant apartments, occupied rental apartments that fall within rent-stabilization guidelines would continue to be subject to rent regulation. Where a rental development is converting to cooperative apartments, the renter may have the right to purchase the apartment at a below-market price. Likewise, an occupied cooperative apartment may be subject to increased maintenance fees, but profits from its sale would be the property of the cooperative shareholder, not the housing company. Thus, where a buyout is imminent, the housing company may “warehouse” apartments by holding them off the market. DHCR officials stated that warehousing is a common problem with owners who are attempting buyouts from the Mitchell-Lama program. While DHCR regulations do not directly address warehousing, a DHCR attorney advised us that housing companies and managing agents are required, under the terms of their contract with DHCR, “to operate in accordance with . . . the maintenance of waiting lists; selection of applicants in accord with the regulations; and the prompt restoration of vacated apartments, . . . which by implication require a regularized process for rental of vacant apartments. Failure to continue such a process in anticipation of dissolution is therefore considered a violation of DHCR regulations.”

---

<sup>41</sup> Private Housing Finance Law § 35.

DHCR did little to address this well-known problem. While DHCR collected vacancy information as part of the Marketing Activity Report it receives monthly from housing companies, it made no effective use of the information. DHCR lacked a tracking system to ensure that the reports were submitted, and it did not review them for historical trends. Even if the DHCR representatives, to whom the reports were submitted, reviewed the information, DHCR did not provide them with criteria for use in identifying problems. Thus, the decision to refer a complex to DHCR management for additional review rested solely within the unguided discretion of the representative.

a. Westview Apartments

In the course of conducting other aspects of our review, we found that warehousing of Mitchell-Lama units appeared to be occurring at Westview, which is a highly desirable rental development with a waiting list of more than 1,000 applicants. As of August 2006, the complex had 31 vacant apartments, each of which had been vacant for an average of 327 days.

In February 2004, a private entity signed a contract to purchase Westview, with the clear intent, once the property was free of Mitchell-Lama regulations, to convert it to condominium ownership. As a condition of the sale, the prospective buyer required DHCR to grant a waiver of the competitive bidding requirements of the complex's management agent contracts in order to permit the buyer to assume the management of the property. DHCR granted the waiver in late 2004, agreeing to have the property managed jointly by the current owner and the buyer on a month-to-month basis until the sale of the property either was consummated or the contract was abandoned. The deal fell through in March 2006.

Shortly after the agreement to jointly manage Westview was reached, the number of vacancies began to rise. Before the agreement, Westview had, at most, three to five vacant units at any time. However, by November 2005, the number of vacancies had risen to 27, or a rate of 7.5 percent. According to an official at the U.S. Department of Housing and Urban Development, there should be no vacancies in subsidized housing in New York City, but if vacancies exist, they should not exceed one percent. Nonetheless,

in his field report of December 5, 2005, the DHCR representative assigned to Westview termed the complex's inflated vacancy rate "satisfactory."

### *DHCR Oversight*

In February 2006, a Westview resident complained to DHCR about "major warehousing of apartments." (A field representative had already noted a problem with vacancies in his report of February 2005, but had never referred the matter to DHCR management until he received the complaint.) In response to the complaint, a high-ranking DHCR official instructed the DHCR representative to "talk to [the management agent]; we'll talk to the owner." However, DHCR took no additional action until June 2006, when a second complaint was received and after the Inspector General had begun this review. In an email regarding this second complaint, the DHCR senior housing representative responsible for Westview wrote to his supervisor, "The site manager has all but acknowledged that the 'owner' has put a freeze on rentals." In response, a senior DHCR official called the managing agent and told him that warehousing of units is "unacceptable and contrary to our regulations" regardless of whether there is a buyout application pending. Nevertheless, as of October 2006 the vacancy rate remained high (8 percent) and more than 1,000 applicants remained on the waiting list, some of whom had been on the list for seven years or more.<sup>42</sup>

---

<sup>42</sup> According to DHCR, the agency is making every effort to address this problem, stating that as of August 2007, twenty-six of thirty-one vacancies remain at Westview, with twenty-three in the process of being occupied.

## **C. FINANCIAL OVERSIGHT AT CO-OP CITY**

Co-op City in the Bronx is the largest Mitchell-Lama project in the State, consisting of 35 high-rise buildings and several hundred townhouses. It houses approximately 55,000 residents in more than 15,300 units. Co-op City is owned by Riverbay Corporation, a tenant-owned corporation organized under the Public Housing Finance Law, and managed by Marion Scott Real Estate, Inc. Residents of Co-op City purchase equity shares in Riverbay upon moving to the development, and pay monthly maintenance fees, known as “carrying charges.” Riverbay is run by a board of directors consisting of 15 members, who are Co-op City residents elected by other residents, and one non-voting member, a DHCR employee who is appointed by the DHCR Commissioner.

As outlined in the following section, Co-op City has experienced ongoing financial difficulties, including many years of failing to meet its mortgage obligations to the State. In light of this, one would expect that DHCR would provide close scrutiny of the budget, financial reports, and awarding of contracts at this development. In fact, we found just the opposite to be the case. DHCR claimed that due to constant interaction it has with Riverbay, ordinary procedures such as issuance of field reports need not be followed. Despite this purported frequency of communication, this method of supervision was clearly insufficient. The discussion below will detail DHCR’s failures in the following areas:

- DHCR assigned field staff to Co-op City at a level that was wholly inadequate and failed to ensure that the assigned senior housing representative fulfilled the tasks required of him.
- DHCR failed to properly monitor Riverbay contract procurements, and, in numerous instances approved contracts it knew to be deficient.
- DHCR failed to enforce timely submissions by Riverbay of financial statements, proposed budgets, and other necessary and required reports. When such documents were received, DHCR’s review was often delinquent.
- DHCR undermined its ability to provide oversight to Riverbay by indiscriminately applying a regulation that allowed it to grant waivers in

emergency or exceptional circumstances.<sup>43</sup> DHCR used this statute to exempt Riverbay from submitting routine contract approvals and financial statements.

### **1. History of Misconduct and Financial Mismanagement**

The construction of Co-op City was financed by a mortgage loan from the New York State Housing Finance Agency (HFA). In 1975, Riverbay defaulted on its mortgage loan and since then has entered into successive settlement agreements with HFA. In 2004, Riverbay stopped making mortgage payments to HFA, saying it simply did not have the money. Later that year, Riverbay satisfied its mortgage obligation with HFA, except for existing arrears, through a refinancing with New York Community Bank. This transaction led to yet another settlement agreement among DHCR, HFA, and Riverbay, under which Riverbay agreed to remain in the Mitchell-Lama program for at least seven more years in return for concessions on the arrears.

Riverbay's managing agent since 1999, Marion Scott Real Estate, Inc., has repeatedly attempted to influence Riverbay's oversight body, its board of directors. In 2002, it was revealed that Marion Scott had helped finance candidates seeking election to Riverbay's Board, a violation, according to DHCR, of Riverbay's standards of conduct.<sup>44</sup> That same year, the Inspector General advised DHCR that a Marion Scott representative admitted to providing jobs to Co-op City Board members, their friends, and at least ten of their relatives, without disclosing this employment to either DHCR or the Board — violations of DHCR regulations<sup>45</sup> and Riverbay by-laws.<sup>46</sup> In 2005, a Marion Scott representative admitted to DHCR that the managing agent had provided sports tickets to Riverbay Board members, violating a longstanding Riverbay Board resolution.

---

<sup>43</sup> 9 NYCRR § 1725-2.9 states, "Rules and regulations may be waived in exceptional circumstances if, in the opinion of the commissioner, their application to a specific case, or under an emergency condition, may be shown to effect undue hardship."

<sup>44</sup> Riverbay Standards of Conduct, Article XII. Appendix "A."

<sup>45</sup> 9 NYCRR 1729-1.4.

<sup>46</sup> Riverbay Bylaws Article III, Section (d).



## **2. Insufficient DHCR Staff Assigned to Co-op City**

Despite Co-op City's enormous size, DHCR failed to assign enough housing representatives to adequately monitor the development. In fact, DHCR failed to adhere to its own policy of assigning a minimum of one housing representative and one senior housing representative to even the smallest housing project. The one senior representative who was assigned to Co-op City did not receive adequate supervision. His supervisor said he did not know whether he was meeting his obligations as senior representative to Co-op City or as DHCR's representative to the Riverbay board of directors.

The senior representative assigned to Co-op City told us that in addition to attending Co-op City Board meetings, he is responsible for overseeing other housing companies and supervising DHCR staff. As a result, he said, he did not have time to fulfill his oversight responsibilities at Co-op City. For example, DHCR management guidelines state that housing representatives are required to conduct visits to review fiscal and budget processes, including contract procurements, at each housing company, but no such reviews were conducted at Co-op City. The directors of Finance and Contracts at Riverbay told us that they could not recall ever having met with the senior representative to review contracts or other fiscal matters.

### a. Failure to Supervise Field Staff

DHCR appeared to do little or nothing to ensure that the senior housing representative's responsibilities at Co-op City were being fulfilled. The director of DHCR's Housing Management Bureau maintained a log of visits by housing representatives to their assigned housing developments, such visits being either to review the physical buildings and grounds (site visits) or to review contract procurements and other administrative matters (office visits). Except for Co-op City, the log indicated both scheduled and completed visits for all Mitchell-Lama developments. According to the log, in 2006, the Co-op City representative had scheduled physical inspections of the grounds but no office visits. However, his supervisor had not recorded the completion of any visits, and could not confirm that any of the scheduled site visits had actually occurred.

It is difficult to determine what information DHCR receives from the senior housing representative about matters at Co-op City. The representative attends board meetings as the DHCR Commissioner's appointee and regularly receives meeting minutes and management reports, including audit reports and complaint summaries. However, when asked to provide these documents, he stated that due to the large number of documents he receives from Co-op City, he discards some of them. Further, DHCR does not require the representative to produce field reports of his visits, and he does not do so. According to DHCR officials, field reports are not required for Co-op City because the housing company is unique due to its size and there is constant communication between the agency and the complex.

### **3. Procurement Rules Were Ignored**

To ensure that goods and services are obtained through fair competition and at reasonable prices, DHCR regulations require Riverbay to utilize competitive bidding to the fullest extent possible. All contracts greater than \$50,000 awarded by Riverbay require DHCR approval.<sup>47</sup> Contracts that exceed \$100,000 require, among other provisions, public advertising and sealed bids.<sup>48</sup>

“Special skills” contracts for legal, accounting, architectural, and other professional services are not subject to competitive bidding requirements. However, DHCR approval is required for these types of contracts, regardless of the amount. Additionally, for architectural services contracts exceeding \$15,000, proposals must be solicited through Request for Proposals (RFPs) that are first approved by DHCR.<sup>49</sup>

We reviewed a sample of 47 Co-op City contracts executed between 2002 and 2006 that had a combined value of \$127.5 million. These 47 contracts, which represented about 20 percent of the contracts during the period, were chosen for review based on their high dollar value, or because they did not appear on DHCR's contract log as required, or due to other risk factors such as indications of the lack of competitive bidding. When we

---

<sup>47</sup> DHCR granted Riverbay the \$50,000 threshold in recognition of Co-op City's size and complexity. For other cooperative projects that are part of the Mitchell-Lama program, the limit is \$15,000 or \$30,000 depending on the size. [9 NYCRR § 1728-4.1 (d).]

<sup>48</sup> 9 NYCRR Section 1728-4.1(e).

<sup>49</sup> DHCR Housing Management Bureau Memorandum #95-B-5

examined the contract log that is kept by the DHCR senior representative assigned to Co-op City, which lists contracts received from the housing company, we found it was incomplete. We noted that some contracts referred to in board minutes were never recorded in the log. In addition, contracts we requested to examine could not be located for several weeks by DHCR. We found that with respect to 40 of the 47, or 85%, of the contracts in our sample, valued at \$56.4 million, Riverbay violated statutes, Mitchell-Lama rules and regulations, or DHCR policies and procedures that govern contract procurement. The following violations were identified:

- Failure to obtain DHCR approval of bids, which insures that there are a sufficient number of bidders and a sufficient number of minority or women-owned businesses as bidders, for 16 contracts, together worth \$43.4 million;
- Failure to advertise the contract or obtain sealed bids for 15 contracts, together worth \$43.4 million;
- Execution of contracts without DHCR approval for 15 contracts, together worth \$11.9 million;
  - Twelve of these 15 contracts were never submitted to DHCR.
  - Three of these 15 were submitted to DHCR but were executed without DHCR action.
- Failure to advertise or obtain DHCR approval for six architectural/engineering service contracts worth a total of \$244,960.

#### *DHCR Oversight*

Of our sample of 47 contracts, DHCR approved 21 contracts worth \$39.7 million, even though Riverbay's procurements did not comply with bidding requirements or other provisions of regulations. When asked why these contracts were approved, DHCR officials explained that agency rules allow an exemption from any regulation upon a determination that compliance with the regulation would create an undue hardship for the housing company. With respect to contract procurements, the DHCR officials stated, staff may properly waive bidding requirements if they determine that to do so is "not prejudicial to the interests of the tenants, the lienholders or the public." To the contrary, however, 9 NYCRR § 1725-2.9 provides: "Rules and regulations may be waived in

exceptional circumstances if, in the opinion of the commissioner, their application to a specific case, or under an emergency condition, may be shown to effect undue hardship.”

Not only did DHCR rely on an incorrect interpretation of the waiver provision, it had no written procedures or even guidelines on how such determinations should be made. Employees at all levels were permitted to grant waivers with limited guidance or review by supervisors. Of the 21 contracts discussed above, none of the files contained evidence of an evaluation or analysis that would justify a waiver from the important requirement of competitive bidding. Only one file contained documentation that a waiver had been approved, and only two files contained a record of Riverbay having requested a waiver.

The improper approval of contracts can be attributed to a breakdown of supervision and assignment of responsibility with regard to DHCR’s required review functions. DHCR’s Housing Management Bureau Memorandum #2000-D-1, dated January 3, 2000, designates certain agency staff to approve contracts based on the monetary value of the contracts, with only senior staff permitted to approve the largest contracts.<sup>50</sup> Nonetheless, the senior housing representative assigned to Co-op City approved nine contracts in our sample that were well above his approval threshold of \$160,000. These contracts ranged in value from \$200,000 to \$2.1 million, with a total value of \$7.9 million. The DHCR Assistant Deputy Commissioner stated that he was not aware that the representative had approved contracts above his authorized threshold, and attributed the improper approvals to one or more unidentified emergencies.

When asked to explain these actions, the representative said that DHCR management’s main concern is that contracts be approved quickly, whether or not it complied with policy. The representative could not provide documentation to endorse such a practice, asserting only that it was communicated to him verbally.

---

<sup>50</sup> Under this policy, representatives may approve contracts for up to \$80,000, senior representatives may approve contracts for up to \$160,000 and assistant directors may approve contracts for up to \$200,000. Any contract for an amount that exceeds \$200,000 must be approved by the assistant commissioner.

#### **4. Performance Bonds Were Not Obtained for Multi-Million Dollar Repairs**

In August of 2003, city engineers condemned five of the eight garages at Co-op City, pushing 7,000 cars onto local streets and forcing Riverbay to convert its greenways into parking lots. In 2004, after refinancing its mortgage, Riverbay began the necessary repairs of its garages. Tens of millions of dollars were budgeted towards this project, \$77 million of which was awarded to a single vendor discussed below.<sup>51</sup>

The Inspector General conducted a background review of this vendor using publicly-available information and identified multiple integrity-related concerns. For example, a five-year suspension by the New York City School Construction Authority of a business previously owned by the vendor's president was in effect at the time Riverbay hired the vendor

Riverbay awarded 10 contracts to this vendor, all of which were approved by DHCR even though many of them were awarded in violation of DHCR's procurement requirements. The largest contract, worth \$43,200,750, was granted to the vendor without consideration of other bidders. Despite no written justification for or waiver of the exemption from bidding requirements, DHCR approved the contract. Two other contracts, worth a combined value of \$2,375,525, were also awarded to this vendor without competitive bidding.

Typically, a contractor will post a performance bond pending completion of a project, in case unforeseen circumstances prevent completion of the project or otherwise result in additional costs to the client. According to DHCR's contract approval form (HM-23), DHCR policy requires contractors to obtain this type of bond for all contracts of \$100,000 or greater. However, in the case of this vendor, performance bonds were not obtained for a majority of the contracts. In some cases, the vendor promised to obtain a performance bond but never did. In others, the vendor was never asked for a bond, even though no waiver was granted by DHCR for this exemption.

---

<sup>51</sup> A total of \$85 million in contracts was awarded to this vendor.

For one contract, originally worth \$1,928,750 and later increased to \$2,928,750, Riverbay had specified that the winning bidder would be required to obtain a performance bond worth 100 percent of the contract value. However, once the bid was awarded to this vendor, Riverbay agreed to accept a \$40,000 credit in lieu of the bond. DHCR approved the contract, although it was never provided with a copy of a bond, nor did it prepare a waiver of the bond requirement. Riverbay never sought payment of the promised \$40,000 credit until the Inspector General inquired about its receipt.

For the largest contract, worth over \$43 million, the vendor again did not provide a performance bond. Even though no bond or waiver was included with the documents approved by the agency, five DHCR employees, including the director of the Housing Management Bureau and the assistant commissioner, signed DHCR's contract approval form attesting, among other things, that the documents they were approving included the performance bond. When questioned about the missing bond, the assistant commissioner who gave the final approval for the contract stated that he simply ratified the staff's approval.

## **5. Lack of Timely Financial Statements and Budgets**

Despite Co-op City's history of failing to meet its financial obligations, DHCR has paid little attention to Riverbay's financial statements or budgets, allowing the company to miss deadlines and failing to review documents when they were submitted. Co-op City's history of financial difficulties resulted in the expenditure by New York State of more than \$100 million to prevent Riverbay's bankruptcy. In addition, residents suffered from increases in carrying charges and losses to the value of the property due to deferred maintenance. DHCR's failure to adequately supervise Riverbay's financial health is a major failure impacting New York's taxpayers and tens of thousands of residents.

### **a. Audited Certified Financial Statements**

9 NYCRR Section 1728-2.2 requires housing companies to submit to DHCR Audited Certified Financial Statements within 60 days after the close of the fiscal year. For the fiscal year ending March 31, 2004, Riverbay submitted its financial statement 253 days late; for the fiscal year ending March 31, 2005, it was delinquent by 210 days.

The Bureau of Housing Audits and Accounts did not review the 2005 statement until almost three months after its already-late submission and has never reviewed the financial statement for 2004. When asked for an explanation, the director of the bureau said his staff could not offer a reason for their failures. The director also said he was “disappointed” in the quality of work, a problem that he discovered while providing records in response to requests from the Inspector General.

#### b. Proposed Budgets

Under 9 NYCRR Section 1728-1.2, housing companies are required to submit to DHCR biannual proposed budgets at least 165 days prior to the beginning of the budget periods. The regulation also requires DHCR to send reminders to housing companies at least 45 days prior to the submission deadline. Further, within 30 days following the submission deadline, DHCR must review the proposed budget, assuming one has been submitted. If a housing company has not submitted a budget within 30 days, DHCR is required to prepare a budget on the company’s behalf.

For the last two budget cycles, Riverbay submitted its proposed budget to DHCR 253 and 210 days late, respectively. In both instances, DHCR failed to send reminders 45 days before the deadline and failed to prepare the budget after it was 30 days late. Although officials at the Housing Audits and Accounts Bureau said they know if a housing company’s submission was outstanding through a monthly control sheet maintained by the director, we examined the sheets and noted that Co-op City had not been listed for the past five years.

When we asked the officials about these deficiencies, they claimed that Riverbay was exempt from budget submission regulations by prior agreement between the housing company and DHCR, but could not provide documentation of this agreement nor any justification for granting such an exemption.

### **6. Residents Approved a Fee Increase Based on Misinformation**

In 2004, Co-op City’s residents voted for a carrying charge (monthly resident fee) increase of \$22 million over four years based on incorrect information that overestimated the need for the increase in the short-term, but underestimated the need for increases in

the future. The residents approved the increase while under the assumption that Riverbay would be receiving additional financing from the state's Housing Finance Agency (HFA), and that the increases were necessary to pay the debt service. After the vote, Riverbay abandoned the HFA financing plan and instead secured a \$480 million loan from New York Community Bank to satisfy its mortgage with HFA and to pay for necessary maintenance. Compared to the HFA financing plan, the terms of the loan from New York Community Bank provided for smaller debt payments in the short term, with larger payments to commence after five years.

Before a carrying charge increase can be implemented, DHCR must review the housing company's projected budget to determine if a carrying charge increase is justified.<sup>52</sup> Although DHCR had received a new 15-year budget projection from Riverbay based on the New York Community Bank loan, it continued to rely on the older projection that assumed additional financing from HFA.

When DHCR approved the carrying charge increase, it relied on the outdated projection. Although regulations require DHCR to provide residents with justification for an increase and a 30-day comment period, DHCR provided neither, even though the informed involvement of shareholders is an explicit goal of the regulations.<sup>53</sup> In the end, the carrying charge increase that was implemented was larger than necessary in the short term, and the information provided to residents left them unaware that much larger increases would be needed in the future to meet Riverbay's obligations to New York Community Bank.

When we asked DHCR officials about their actions, they stated that it did not matter that they failed to follow the required procedures because New York Community Bank, the new lender, was comfortable with the increases. Although DHCR ignored its obligations to the residents of Co-op City, the officials justified their failures by claiming that no one

---

<sup>52</sup> 9 NYCRR Section 1728-1.2 requires that "The division shall analyze and review the proposed budget ... If the division finds that projected revenues for the applicable two-year period do not appear to be sufficient to fund all obligations without a rental adjustment... then: final approval of the budget shall take place upon conclusion of the rent determination procedure."

<sup>53</sup> 9 NYCRR Section 1728-1.3 requires that "The division shall establish a period of at least 30 days during which residents, their representatives, those who have requested notice and other interested parties, may comment upon the proposed budget and rent revision."



complained. The Inspector General could not assess whether there were complaints, since, as discussed above, DHCR has no standard complaint-tracking procedure.

### **7. DHCR Abdicated Responsibility for Verifying Completion of Construction**

Although Riverbay's refinancing plan with New York Community Bank in 2004 satisfied its outstanding mortgage payments to the New York State Housing Finance Agency (HFA), the loan did not cover the \$152.8 million in arrears owed to HFA for that mortgage. A settlement agreement among DHCR, HFA and Riverbay allowed Riverbay to earn credits against these arrears by completing certain construction projects at Co-op City. While HFA had the authority to approve or deny requested credits, it agreed to rely on DHCR's verification that work claimed by Riverbay had in fact been satisfactorily completed. HFA, mistakenly believing that DHCR was fulfilling its agreed-upon obligations, granted Riverbay credits totaling \$111.6 million between September 2005 and June 2006 for unverified construction projects. DHCR provided two incompatible explanations for its failure to verify the work, one of which would indicate a complete breakdown of communication within the agency, and the other an abdication of DHCR's responsibilities under the agreement.

In the first explanation, a DHCR official told us that upon receiving information from Riverbay that a construction project had been completed, he forwarded the material to the senior housing representative assigned to Riverbay for verification. According to the DHCR official, when the paperwork was returned to him with the representative's signature, he assumed that the representative had determined that the work was completed and qualified for credit by HFA. The DHCR official said he then forwarded the Riverbay material to HFA. However, the representative said his signatures were merely intended to acknowledge that Riverbay's request for credits had been received, not to verify that the work had been completed. He told us that he was not qualified to certify that construction work has been properly completed and was incapable of doing so because DHCR no longer assigned a full-time architect and full-time engineer to Co-op City.

Later, DHCR claimed that it had delegated its verification responsibility to Riverbay's lender, New York Community Bank, which had hired a consultant for this task. Despite a request from the Inspector General, DHCR could not provide any documentation of such an agreement.<sup>54</sup> Nor did DHCR officials tell us that they had received consultant reports or other information from New York Community Bank indicating that any work claimed by Riverbay had been verified. Even if such an agreement exists, it is completely inappropriate, as the bank has a direct interest in reducing Riverbay's obligations to HFA. As Riverbay's new creditor, New York Community Bank helps to ensure the security of its loan by erasing Riverbay's large HFA debt, an incentive to ignore any incomplete or defective construction work. Meanwhile, HFA, which had no knowledge of any third-party role in the verification process, continued to approve credits to Riverbay based on a mistaken belief that DHCR was verifying completed work.

---

<sup>54</sup> Minutes of the meeting between DHCR, Riverbay, and New York Community Bank provided to us by the senior housing representative made no mention of an agreement.

## IV. Recommendations

The stated vision of the New York Division of Housing and Community Renewal is as follows: “A dedicated group of professionals who, through a commitment to building partnerships, excellence in customer service, and seeking innovative solutions to people's housing needs, support community efforts and strive to make safe, decent and affordable housing available to New Yorkers.” As the above findings indicate, DHCR fell woefully short of this vision in its supervision of the Mitchell-Lama housing program. The Inspector General makes the following recommendations so that DHCR may better meet this vision.

1. **Properly Enforce Tenant Requirements:** The above report has detailed a number of irregularities and outright violations with regard to enforcing tenant eligibility. Violations may be severe, such as illegal subletting, income ineligibility, or circumventing the waiting list, or they may be minimal, such as missing documentation for an otherwise eligible tenant. The occupation of subsidized apartments by ineligible tenants creates additional scarcities for those intended to benefit from the program.
  - DHCR must improve its enforcement of waiting list regulations and income eligibility standards to preserve the integrity of the Mitchell-Lama program and its mission to provide “equal access to safe, decent and affordable housing.”
  - DHCR should conduct a complete audit of its waiting lists, with particular attention to the conversion from paper logs to the automated list, to identify any irregularities.
  - DHCR should identify persons who have been improperly removed from waiting lists and develop a plan for reinstating them at the appropriate level of priority.
  - DHCR should conduct a complete review of existing tenants to identify those who are ineligible and develop a plan of action to remediate the situation.

2. **Monitor Compliance with DHCR Rules and Procedures:** DHCR has many obligations under its regulations but lacks standards to ensure compliance or gauge whether these obligations are fulfilled. For example, housing representatives are required to make at least two site visits per year. While these visits are recorded in a log, the log contains incomplete information and is not reviewed by supervisors. Tracking receipt of required documents from housing companies and timely response by DHCR employees is similarly deficient.
  - DHCR should implement a system to monitor agency compliance with laws, rules, and regulations, and with its own policies and procedures. This system should include an internal, independent audit group.
3. **Review All Waivers:** DHCR employees failed to follow or enforce many of its regulations, including those relating to submission of budgets, canvassing prospective tenants for continued interest and eligibility, and approving contracts. The Inspector General was told that some of these requirements had been modified or waived by DHCR, but no documentation of waivers was provided.
  - All existing waivers should be reviewed by the commissioner or her designee. Waivers deemed appropriate under sufficiently exigent circumstances, as required by DHCR regulations, should be justified in writing and the remainder revoked.
  - Waivers should be granted according to the DHCR regulation and only in exceptional circumstances. If agency regulations are obsolete or otherwise inappropriate, DHCR should amend them through its formal rule-making process.
4. **Create Standards for Employees and Improve Training:** DHCR's employees lack formal guidance in the performance of their jobs. For example, housing representatives are unsure how to identify which developments may require additional scrutiny, and administrative staff who review tenant applications lack adequate procedures to help them determine apartment eligibility.

- DHCR should develop comprehensive written policies and procedures, and institute a training program for employees and managers regarding implementation of these policies and procedures.
- DHCR should develop criteria in each major area of oversight to help identify housing companies at risk and to serve as early warning signs of potential problems.

5. **Create an Effective Complaint Tracking and Response System:** Although DHCR relies on complaints to help it identify problems at housing developments, it does not record complaints systematically or conduct follow-up to ensure that complaints are resolved. Complaints are forwarded to the housing representative assigned to a particular development, even where the complaint involves that same representative.

- DHCR should keep a record of all complaints, regardless of the method of receipt. Supervisors should ensure that complaints are investigated and their outcomes recorded. The record of complaints should be periodically examined to identify housing companies that may need additional scrutiny.
- Where a complaint is against a particular employee or housing company, someone other than the target of the complaint should be responsible for investigating it.

6. **Review Management Structure and Skills:** Managers and supervisors of DHCR's Office of Housing Operations seem to have little awareness of whether their employees are completing required tasks. At times, managers conveyed surprise after learning from the Inspector General that employees had been remiss in their duties.

- DHCR should determine whether its existing management structure is best-suited for carrying out supervision of the Mitchell-Lama program.
- DHCR should ensure that managers have the tools necessary, including management skills and technical support, to monitor the activities of their employees.

**7. Modify the Duties of Housing Representatives to Avoid Conflicts of Interest:**

Housing representatives act as liaisons with housing companies, providing them assistance and accommodation where necessary. The same representatives are responsible for enforcing housing companies' compliance with regulations.

These conflicting duties should not be part of one individual's responsibilities.

- DHCR should modify the duties of housing representatives to ensure that personnel responsible for enforcement of compliance are separate from those acting as liaisons or assistants to housing companies.

## **V. Agency Response**

The Inspector General invited Commissioner of New York State Division of Housing and Community Renewal Deborah VanAmerongen to comment on the findings in this report prior to its issuance. Set out below is the text of the commissioner's response, including her detailed plan of action to address the problems identified in the above report.

Thank you for the opportunity to respond to the recommendations of your draft audit Report on the Division's oversight of the Mitchell-Lama Program. The Inspector General's Draft Report of the prior administration's oversight of the Mitchell-Lama Program is based upon an exhaustive investigation of DHCR's day to day implementation of its statutory and regulatory obligations and its oversight of four specific Mitchell-Lama projects.

The Report identifies numerous opportunities and challenges for the current administration to reform and update the existing regulatory system and to quickly correct project-specific and system-wide abuses by property owners, tenants, applicants and DHCR employees.

DHCR has carefully reviewed and fully concurs in the IG's recommendations. Based on the IG's recommendations, DHCR's executive staff has developed immediate, short term and long term goals and strategies to address the issues raised in the report and to restore public confidence in DHCR's supervision of the Mitchell-Lama program.

Those goals and strategies are set forth below, followed by the activities that DHCR will undertake to achieve the agency's goals.

While the report finds that certain employees broke the law and that others may have abused their position or neglected their responsibilities, please be assured that these isolated cases do not reflect the professionalism or work ethic of DHCR's 900+ workforce. Since the period covered by the report, new leadership has assumed responsibility for DHCR and senior staff is actively working to dispel any impression that the actions of those former employees reflect the conduct of any current staff members.

### **DHCR's Goals for Reforming the Mitchell Lama Program:**

#### **Short term goal:**

Immediately commence reorganization and redeployment of staff and retain the necessary consultants to address and correct the most egregious abuses within the program and to restore integrity to and public confidence in the program.

**Long term goal:**

Adopt and implement a revised regulatory system that instills public confidence in the agency’s ability to manage its affordable housing portfolio, reflects the input of the regulated parties, mirrors the goals of the program and the administration, is manageable and understood by DHCR staff, is not overly burdensome to the regulated parties, provides feedback to the regulated parties regarding compliance, and includes incentives for the regulated parties to comply with their obligations.

**DHCR’s Strategy for Implementing its Goals:**

**Short term strategy:**

DHCR has identified key staff to lead a team which will address the most urgent problems identified in the IG’s report. This team’s priorities will include the review of the tenant selection process and the existing tenancies of the projects, and address procurement issues and waivers. DHCR will communicate to employees the importance of ethical conduct in the work place and provide them with assistance and training to make ethical decisions and review the status of employees residing in DHCR regulated housing.

**Long term strategy:**

DHCR will review and reform the regulatory system and the agency-wide management structure in order to modernize the way in which the agency performs its asset management function. The existing system was developed ad hoc in response to specific situations without conducting an overall review of the system to verify that it was accomplishing the agency’s statutory and regulatory obligations. DHCR has identified and will hire an individual at a Deputy Commissioner level with agency-wide authority to assume a strategic management and planning function. This individual will lead the agency’s efforts to examine current operations for compliance with statutory and regulatory obligations and to institute management reform and restructuring where necessary.

**DHCR’s Response to the IG’s Recommendations and Actions to Implement its Strategy:**

**1. Properly Enforce Tenant Requirements**

*IG Recommendation* (IG recommendations are in italics followed by the response of DHCR)

- *DHCR must improve its enforcement of waiting list regulations and income eligibility standards to preserve the integrity of the Mitchell-Lama program and its mission to provide “equal access to safe, decent and affordable housing.”*



- *DHCR should conduct a complete audit of its waiting lists, with particular attention to the conversion from paper logs to the automated list, to identify any irregularities.*
- *DHCR should identify persons who have been improperly removed from waiting lists and develop a plan for reinstating them at the appropriate level of priority.*
- *DHCR should conduct a complete review of existing tenants to identify those who are ineligible and develop a plan of action to remediate the situation.*

**Immediate actions** (Immediate actions will be addressed within thirty days)

- Priorities will be established and parameters set to begin the audits of waiting lists for all housing companies. Auditors will be solicited and interviewed to undertake this task. Desirable rental developments and cooperatively owned developments will be audited first.
- Waivers of reporting requirements granted to housing companies with no or short term waiting lists will be reviewed and rescinded where appropriate.

**Short term actions** (Short term actions will be implemented over a ninety day period)

- Engage auditors to audit waiting lists for all developments.
- Engage auditors to review the accuracy of past conversion of manually maintained waiting lists to automated waiting lists to determine propriety of people removed and added to waiting lists, and all move-ins.
- Assign staff to track DHCR approved applications for new tenancies and transfers.
- Provide continued training for staff and managing agents on compliance issues.
- Explore additional automation opportunities to identify potential waiting list discrepancies.

**Long term actions** (Long term actions are items that are being developed and implemented over a period that exceeds ninety days)

- Re-establish waiting lists or establish new waiting lists as required by auditor's findings.
- Use existing appeal process to determine eligibility of applicants improperly removed from the list.
- Reinstatement of eligible applicants improperly removed from waiting lists.
- Create web-based public access to waiting lists that would allow applicants to view their position on the list and allow applicants to submit changes or update information such as a new mailing address or change in family composition.
- Review and revise Automated Waiting List (AWL), employee user manual and existing procedures to maximize efficiency in processing a new application.

- Existing occupants who are identified to be ineligible will be evaluated for possible referral to the Attorney General for further appropriate action.
- Require all projects to implement the AWL system and no longer use manual logs. Provide housing companies and building managers with additional AWL training.

## 2. Monitor Compliance with DHCR Rules and Procedures

### *IG Recommendation*

- *DHCR should implement a system to monitor agency compliance with laws, rules, and regulations, and with its own policies and procedures. This system should include an internal, independent audit group.*

### **Immediate actions** (Immediate actions will be addressed within thirty days)

- DHCR's Information Technology office has commenced work to develop a system to track all housing companies' financial reports and budget submissions, received or outstanding from regulated parties.
- Create a risk analysis model to identify troubled projects, i.e. vacancy rates, inadequate reserves, physical deficiencies, etc.
- An independent compliance monitoring internal control group will be formed to monitor and test compliance with laws, rules, policies and procedures.

### **Short term actions** (Short term actions will be implemented over a ninety day period)

- Commence a review of all regulations, with the assistance of the New York State Bar Association's Real Property Committee, to ascertain whether the regulations are obsolete, require revision or are otherwise inappropriate.
- Implement a "team approach" consisting of legal, accounting, management and technical staff to be assigned to large projects, e.g. Co-op City.

### **Long term action** (Long term actions are items that are being developed and implemented over a period that exceeds ninety days)

- Review statutorily required agency functions and develop operational parameters to monitor compliance with time frames and quality of work.
- Solicit input from regulated community regarding appropriate DHCR role in asset management.
- Explore different levels of regulation for large projects or projects that have agreed to remain in the Mitchell Lama program.

### 3. Review All Waivers

#### *IG Recommendation*

- *All existing waivers should be reviewed by the Commissioner or her designee. Waivers deemed appropriate under sufficiently exigent circumstances, as required by DHCR regulations, should be justified in writing and the remainder revoked.*
- *Waivers should be granted according to the DHCR regulation and only in exceptional circumstances. If agency regulations are obsolete or otherwise inappropriate, DHCR should amend them through its formal rule-making process.*

#### **Immediate actions** (Immediate actions will be addressed within thirty days)

- The Deputy Commissioner and Assistant Commissioner will review all existing waivers at Co-op City and rescind those granted improperly.

#### **Short term actions** (Short term actions will be implemented over a ninety day period)

- The Deputy Commissioner and Assistant Commissioner will review all existing waivers at all housing companies and rescind those granted improperly.
- Review and identify vulnerable procedures, guidelines, internal controls and periodic testing to ensure that waivers are only granted under the permitted regulatory circumstances.
- Complete review of all waiver regulations, to ascertain whether they are obsolete, require revision or are otherwise inappropriate.

#### **Long term actions** (Long term actions are items that are being developed and implemented over a period that exceeds ninety days)

- Adopt procedures to ensure that existing and future waivers are documented and granted in compliance with regulatory requirements.

### 4. Create Standards for Employees and Improve Training

#### *IG Recommendation*

- *DHCR should develop comprehensive written policies and procedures, and institute a training program for employees and managers regarding implementation of these policies and procedures.*
- *DHCR should develop criteria in each major area of oversight to help identify housing companies at risk and to serve as early warning signs of potential problems.*

**Immediate actions** (Immediate actions will be addressed within thirty days)

- Commence review of DHCR housing management staff functions that will include tenant selection, waiting list management, managing agent evaluations, procurement requirements and quality of work performed.

**Short term actions** (Short term actions will be implemented over a ninety day period)

- DHCR will begin on-going, in-house training for staff on tenant selection, guidelines for field visits, procurement and waivers.
- DHCR will provide managers with additional training for creative management strategies
- DHCR managers will provide staff with regular and timely performance reviews and feedback on their performance.

**Long term actions** (Long term actions are items that are being developed and implemented over a period that exceeds ninety days)

- DHCR will develop and implement comprehensive written policies and procedures on tenant selection, guidelines for field visits, procurement and waivers.
- Ensure that employees receive training on a regular basis and develop internal controls that will identify areas for future training.

**5. Create an Effective Complaint Tracking and Response System**

***IG Recommendation***

- *DHCR should keep a record of all complaints, regardless of the method of receipt. Supervisors should ensure that complaints are investigated and their outcomes recorded. The record of complaints should be periodically examined to identify housing companies that may need additional scrutiny.*
- *Where a complaint is against a particular employee or housing company, someone other than the target of the complaint should be responsible for investigating it.*

**Immediate actions** (Immediate actions will be addressed within thirty days)

- DHCR's Information Technology office has commenced work to develop a web-based complaint tracking system can be used in conjunction with a toll free number that can be used to file complaints.

**Short term actions** (Short term actions will be implemented over a ninety day period)

- Implement a telephone complaint hotline that will be solely dedicated to receiving complaints from tenants and applicants.

- Create an internal computerized complaint system for employees to log letters or calls that are not received by the newly created hotline or web based complaint systems.
- Newly created compliance monitoring of internal complaint group will review complaints against employees or housing companies to ensure that employees are not self investigating complaints.

**Long term actions** (Long term actions are items that are being developed and implemented over a period that exceeds ninety days)

- Implement a web-based complaint process for the public to file complaints twenty four hours per day, seven days per week. This system will allow the public to contact DHCR with a click of a mouse and notify us of any issues at the development and will be designed to ensure that all complaints are acknowledged with a tracking number and prompt response.

## **6. Review Management Structure and Skills**

### ***IG Recommendation***

- *DHCR should determine whether its existing management structure is best-suited for carrying out supervision of the Mitchell-Lama program.*
- *DHCR should ensure that managers have the tools necessary, including management skills and technical support, to monitor the activities of their employees.*

**Immediate actions** (Immediate actions will be addressed within thirty days)

- Commence work with consultant (Public Strategies Group or PSG) to implement the IGs recommendations in this area and to further develop strategies for creating an appropriate management system and structure.

**Short term actions** (Short term actions will be implemented over a ninety day period)

- Consultant (PSG) will assess and recommend structure to improve management organization, promote staff morale and reinforce ethical climate.
- Reinforcement of the role of supervisors to routinely check and orient field representatives in compliance with regulations and written guidance documents.
- Engage consultant (Quadel Consulting Services) to a short term contract to examine existing asset management models in private/public sectors and make recommendations of best practices to be implemented for improved oversight of DHCR's portfolio of subsidized housing, including the Mitchell-Lama portfolio.

**Long term actions** (Long term actions are items that are being developed and implemented over a period that exceeds ninety days)

- Commence restructuring of Housing Management operations and redeployment of staff.
- Retain a consultant to assist in reforming DHCR's existing asset management system consistent with the consultant's recommendations.
- Promote participation of managers in periodic State training courses in management and supervisory skills.

## **7. Modify the Duties of Housing Representatives to Avoid Conflicts of Interest**

### ***IG Recommendation***

- *DHCR should modify the duties of housing representatives to ensure that personnel responsible for enforcement of compliance are separate from those acting as liaisons or assistants to housing companies.*

**Immediate actions** (Immediate actions will be addressed within thirty days)

- Distribute recently drafted Residency Disclosure Form to be completed by all agency employees in order to alert managers of any employees residing in any DHCR supervised property.
- Enforcement of existing policy that employees residing in DHCR supervised properties are not assigned duties involving such properties.

**Short term actions** (Short term actions will be implemented over a ninety day period)

- Expand project monitoring from individual to team responsibility.
- All employees will participate in mandatory training in ethics and will receive a copy of the recently developed Guide to Ethical Conduct for Employees.
- Engage consultant (Institute for Global Ethics) to assist with developing a program to improve the ethical climate and employee morale.

**Long term actions** (Long term actions are items that are being developed and implemented over a period that exceeds ninety days)

- Confirm that employees presently residing in DHCR supervised properties are properly residing in those properties.
- Annual monitoring of residency and avoidance of any conflict of interest with assignments for employees in DHCR supervised properties.
- Ensure that employees receive training on a regular basis and develop internal controls that will identify areas for future training.