



ANDREW M. CUOMO  
Governor

## Homes and Community Renewal

RUTHANNE VISNAUSKAS  
Commissioner/CEO

### **Management Response to Enforcement of the Mitchell-Lama Surcharge Provisions 1 Year Follow-Up Audit Report 2019-F-9**

**Recommendation 1:** “Provide training to development officials on the proper surcharge and income verification procedures.”

#### **Status – Partially Implemented**

OSC Stated Agency Action – DHCR officials told us that, since the issuance of our initial report, they have provided training on the proper surcharge and income verification procedures to employees from 9 of their 140 developments; all new employees are required to attend this training. However, documentation provided by DHCR showed that the training was given to employees from only six developments. The training included topics such as the tenant selection, income affidavit, and income verification processes. Additionally, DHCR officials informed us that they are in the process of developing a series of webinars, some of which will cover topics related to income verification. They anticipate a number of these webinars will be available at the end of this year.

**DHCR Response:** DHCR agrees and will continue to provide training and workshops for our portfolio regarding the proper surcharge and income verification procedures. We also believe that our other modernization efforts will enable us to expedite our efforts and accordingly provide instruction to the developments regarding new requirements.

**Recommendation 2:** “Monitor building managers to ensure that follow-up verification audits are completed properly and timely and surcharges are correctly assessed.”

#### **Status – Partially Implemented**

OSC Stated Agency Action – According to DHCR officials, they now require follow-up verification audits to be submitted electronically so that they can more closely monitor building managers throughout the process. They explained that if verification audits are not completed timely, a standardized email reminder that the verification audit is outstanding is sent to the building’s managing agent. For 2013, building managers were required to return their follow-up verification audits to DHCR by November 19, 2018. We found that only 39 of

the 140 developments submitted their follow-up audits on time; DHCR did not send reminder emails to the other 101 developments until May 14, 2019 – six months after the due date.

We randomly selected a sample of 100 tenants (20 each from Electchester, Co-op City, Starrett City, Knickerbocker Village, and Rochdale Village) to determine if follow-up verifications were completed properly. We found that 18 of 100 tenants (18 percent) who required a follow-up verification were not included in the follow-up verification audits, and there is no evidence that DHCR contacted the developments to determine why. Further, DHCR officials only review surcharge calculations (for accuracy) if a tenant files an appeal disputing the surcharge.

**DHCR Response:** DHCR agrees with this recommendation with regard to ensuring that follow-up audits are completed timely. As such, we reexamined our income verification process and have initiated the new procedures and safeguard, noted above. However, because of delays caused by various factors, HCR is also considering modifying its processes to follow-up with delinquent housing companies.

However, it is not DHCR’s responsibility (by statute, regulation, policy or otherwise) to review the accuracy of surcharge calculations. This is the requirement of the privately-owned housing company. This recommendation is asking DHCR to duplicate (rather than monitor) the process that is deliberately set forth by and among DHCR, the New York State Department of Tax and Finance, the housing company and the resident. DHCR’s regulations do not mandate that the agency conduct surcharge calculations on behalf of the privately-owned housing companies.

**Recommendation 3:** “Follow up on the occupant-related matters at the three developments we examined, as detailed in the report.”

#### **Status – Not Implemented**

OSC Stated Agency Action – DHCR officials continue to disagree with this recommendation. They responded that our initial audit highlighted immaterial issues that did not warrant findings. However, we believe the issues we identified, such as not assessing surcharges accurately, should be addressed. Tenants who do not pay appropriate surcharges are not paying their required share, which places an undue burden on other tenants because lost revenue from uncollected surcharges can result in an increase in rent or carrying charges for all residents. Such rent increases would make the State’s Mitchell-Lama housing stock less affordable, hurting the tenants who pay the surcharges and placing an unnecessary financial burden on lower- income tenants.

**DHCR Response:** DHCR continues to disagree with this recommendation. OSC’s report highlighted discrete, immaterial issues at individual housing companies that were not representative of any larger or systematic problem requiring agency intervention. As such, we continue to believe they do not warrant findings.

**Recommendation 4:** “Develop formal policies and protocols regarding tenants whose incomes exceed the maximum allowable limit. Perform periodic reviews to ensure compliance with those policies and protocols.”

#### **Status – Not Implemented**

OSC Stated Agency Action – According to DHCR officials, any change of policies regarding tenants whose incomes exceed the maximum allowable limit would require legislative action. DHCR officials informed us that

the State Legislature introduced a modification to increase the admission limits for Mitchell-Lama tenants who would have formerly been over the limit. However, this modification has not yet been signed into law. DHCR officials told us that policies will be reviewed when this happens.

In response to the initial audit, DHCR officials noted that the New York City Department of Housing Preservation and Development (HPD) received similar criticism from the Office of the State Comptroller regarding over-income tenants, and said that they intended to reach out to HPD to jointly study a legislative alternative, such as an enhanced surcharge structure, to ensure that over-income residents pay their fair share. DHCR officials told us that, since the issuance of our report, they have met with HPD officials three times (as recently as March 2019) to discuss policies regarding over-income tenants.

**DHCR Response:** DHCR agrees with this recommendation with regard to the establishment of protocols. DHCR staff has met internally and with our HPD counterparts to evaluate needs and identify potential criteria for such protocols. DHCR intends to implement new policies upon the passage of any new income laws.

**Recommendation 5:** “Conduct the outstanding annual tenant income matches with Finance records for 2013-2015 promptly, and ensure future matches are conducted and communicated to the developments on a current basis.”

#### **Status – Partially Implemented**

OSC Stated Agency Action – DHCR officials have completed the annual tenant income matches with Department of Taxation and Finance (Finance) records for 2013 and are currently working on completing the income matches for 2017. Further, they informed us that they are in the process of collecting the 2018 income affidavits from the housing companies. DHCR officials stated they are prioritizing the most recent years first and will evaluate completing the income matches for 2014 and 2015 if resources permit. While DHCR has decided to prioritize the income verification process for the most recent years, its own regulations require it to verify tenant-reported income annually. Therefore, DHCR should complete all outstanding 2014, 2015, and 2016 income verifications.

**DHCR Response:** DHCR agrees with this recommendation and has implemented new protocols to ensure timely income matching— this includes but is not limited to the requirement that all income affidavits be submitted electronically via a drop-box. DHCR is also in the midst of procuring a new vendor to assist it in performing these duties.

**Recommendation 6:** “Ensure the data file prepared for the Finance income match is accurate.”

#### **Status – Not Implemented**

OSC Stated Agency Action – DHCR officials continue to disagree with this recommendation. However, they informed us they will hire a new third-party vendor to prepare the data file, which, officials anticipate, will improve the quality of the data.

DHCR should ensure that this data file is accurate because this information will be used to identify which tenants to audit and surcharge.

**DHCR Response:** DHCR disagrees with this recommendation. While spot-checking may be appropriate, redoing the work of an outside contractor would be duplicative and self-defeating.