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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

November 13, 2018

Ms. RuthAnne Visnauskas
Commissioner/Chief Executive Officer
Homes and Community Renewal
Hampton Plaza
38-40 State Street
Albany, NY 12207

Re: The 80/20 Housing Program
Report 2018-F-18

Dear Ms. Visnauskas:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Article X, Section 5 of the State Constitution, we have followed up on the actions taken by the officials of the Housing Finance Agency (HFA) to implement the recommendations contained in our audit report, *The 80/20 Housing Program* (Report 2015-S-83).

Background, Scope, and Objective

Homes and Community Renewal (HCR) is an umbrella entity consisting of all the State's major housing and community renewal agencies and authorities, including the HFA. HFA's mission is to create and preserve high-quality, affordable, multifamily rental housing. Its 80/20 Housing Program (Program) provides low-interest financing to multifamily rental developers who commit to designate at least 20 percent of a development's units to low-income individuals and families. The federal government provides income tax credits, and municipalities provide real estate tax abatements, as incentives to developers. In New York City, participating Program developers receive tax abatements through Section 421-A of New York's Real Property Tax Law. As of September 27, 2018, 93 developments, mostly in Manhattan, were occupied and had allocated 20 percent of their apartments (approximately 6,600 units) to low-income tenants. The remaining 80 percent are rented at market rates, but are subject to rent stabilization.

Our initial audit report, issued May 31, 2017, examined whether housing developers participating in the Program complied with Program requirements regarding the number of designated affordable units and tenant eligibility, and analyzed the costs and resources used to achieve program results at four participating developments. The audit report concluded that, based on the rents charged for our four sampled developments, the proper number of affordable

units was made available to low-income tenants. Our review of the files for a sample of 43 low-income tenants found that, in most cases, the developments used “reasonable judgment” in determining eligibility. However, for 4 of the 43 tenants, we question whether the developers exercised reasonable judgment in evaluating tenant file information. We also found that for 18 (42 percent) of the 43 tenants reviewed, developments did not verify applicant incomes with the Internal Revenue Service (IRS). Additionally, we found that the financial benefits received by the owners of the four sampled developments could not be fully calculated. Benefits that could be quantified (local tax abatements per Section 421-A and federal tax credits) amounted to almost \$427.3 million for the four sampled developments. This did not include the benefits of HFA low-interest loans.

The objective of our follow-up review was to assess the extent of implementation, as of October 2, 2018, of the three recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that HFA has made some progress in addressing the issues identified in our initial report. Of the three recommendations, one was implemented and two were not implemented.

Follow-Up Observations

Recommendation 1

Require Program developments to verify the incomes of all prospective tenants, prior to moving into an apartment, with the IRS.

Status – Implemented

Agency Action – In January 2018, HFA officials issued an email blast to Program developments requiring them to authenticate or obtain a copy of the income tax return(s) from the IRS (using IRS Form 4506-T) for tenants and applicants for each member of the household age 18 or older. HFA required that a copy of the executed IRS form, proof of mailing or faxing, and the eventual tax return transcript(s) be included in each tenant file so HFA could verify compliance. A reminder memo on this issue was sent to Program developments in May 2018. Additionally, HFA posted this requirement and applicable guidance on its website.

Recommendation 2

Work with the management staff at participating Program developments to develop sound and consistent methodologies to project income when determining eligibility.

Status – Not Implemented

Agency Action – HFA officials continue to disagree with this recommendation, stating that, consistent with their existing practices, they will continue to advise owners/agents to improve confirmation of tenant affidavits and affirmations with adequate support prior to all future move-ins, based on Housing and Urban Development’s (HUD) and Section 42 of the IRS code’s guidelines. HFA officials state they believe their current practices, including requiring agents to complete Low Income Housing Tax Credit training, requiring agents to comply with HUD requirements and regulatory agreements, and checking that the agents are in compliance during their field visits, are sufficient.

However, as highlighted in our initial audit, for 4 of the 43 tenants, we question whether the developers exercised reasonable judgment in evaluating tenant file information. We maintain that it would be beneficial to provide management staff at participating developments with additional guidance on sound and consistent methodologies to project income in cases that are unusual or where income is irregular.

Recommendation 3

Ensure that adequate information is collected to enable decision makers to adequately assess the costs and benefits of the Program.

Status – Not Implemented

Agency Action – HFA officials stated that they collect and review market data on a consistent basis from numerous sources and are comfortable with their current policy decision and that the development of these mixed-income projects furthers HFA’s core mission. They added that HFA policy makers have given significant consideration to the Program and do not believe additional evaluation is needed at this time.

As detailed in the initial report, the full financial incentives/benefits provided to developers could not be readily determined because HFA did not maintain information on alternative market financing for these developments. However, the benefits that could be quantified for the four sampled developments totaled almost \$427.3 million. Given the Program’s continuing fiscal and programmatic significance, we encourage HFA officials to reconsider our recommendation to help assure that a holistic assessment of the costs and benefits of the Program can be made.

Major contributors to this report were Diane Gustard, Joan Williams, and Leanna Dillon.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of the Housing Finance Agency for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Cindi Frieder
Audit Manager

Cc: Stephen B. Chohey, HFA
Dan Murphy, HFA