

New York City Department of Housing Preservation and Development

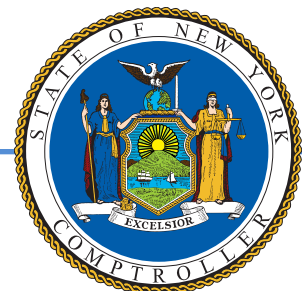
Mitchell-Lama Vacancies

Report 2020-N-2 | July 2021

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objective

To determine whether the New York City (NYC) Department of Housing Preservation and Development (HPD) is ensuring that vacant apartments at Mitchell-Lama developments are filled timely. Our audit covered apartments that were vacant, and those that became vacant, in calendar year 2019 and actions taken by HPD through March 12, 2021.

About the Program

The Mitchell-Lama Housing Program was created in 1955 to provide affordable rental and cooperative (co-op) housing to middle-income families. HPD, the nation's largest municipal housing preservation and development agency, is charged with promoting the quality and affordability of NYC's housing. In NYC, there are 93 HPD-supervised Mitchell-Lama rental and limited-equity co-op developments with approximately 47,000 total apartments.

Apartments in Mitchell-Lama developments tend to be desirable because of their affordability; consequently, the waiting lists for many of these apartments can be quite lengthy. To ensure efficient turnover of vacant apartments, HPD's Reporting and Compliance Directive (Directive), issued in June 2017, requires developments to fill vacancies within 120 days. Developments are also required to submit quarterly Apartment Turnover and Vacancy Reports (vacancy reports) to HPD, showing apartments that were filled during the quarter (turnovers) and current vacancies that need to be sold or rented. For apartments that have been vacant for periods exceeding 120 days, developments must provide a written explanation for the delay as well as a plan of action to resolve the matter causing the prolonged vacancy. HPD's staff of Property Managers are responsible for monitoring the developments' apartment turnovers and vacancies to ensure compliance with requirements.

Key Findings

HPD does not adequately monitor developments to ensure their compliance with the requirements of its 2017 Directive.

- Despite the scarcity of affordable housing, vacant apartments were generally not filled within the 120-day time frame, with 1,286 apartments taking, on average, 222 days to fill, including 214 that remained vacant for a year or longer.
- As of December 31, 2019, 78 developments reported 670 vacancies, 371 (55 percent) of which had been vacant for over 120 days, including 111 apartments vacant for over a year and eight apartments vacant for more than 3 years.
- We estimate that protracted delays in filling apartments cost the developments about \$9.1 million in unrealized income as of December 2019.
- Of a sample of 49 vacancies from the December 31, 2019 quarterly reports, 20 were still vacant as of February 9, 2021, including 4 three-bedroom apartments in the Bronx, each with a monthly rent of less than \$2,000.
- At one development – Lindsay Park in Brooklyn – 15 apartments had been vacant for as long as 30 years.

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- HPD does not enforce the requirement for developments to submit plans of action for apartments vacant for over 120 days, nor does it have evidence that it follows up with developments for status updates.
 - Developments' quarterly vacancy reports are not submitted to HPD in an analysis-friendly format, which compromises their value as a monitoring tool.

Key Recommendations

- Obtain and analyze the vacancy reports to identify developments that consistently have delays in filling their vacant apartments, and work with these developments to identify issues and improve performance.
- Improve monitoring of developments with vacancies greater than 120 days and ensure they provide a plan of action to fill the apartments, and follow up with developments to ensure compliance with the plan.



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

July 13, 2021

Louise Carroll
Commissioner
New York City Department of Housing Preservation and Development
100 Gold Street
New York, NY 10038

Dear Commissioner Carroll:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report entitled *Mitchell-Lama Vacancies*. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
Directive	HPD's Reporting and Compliance Directive	<i>Policy</i>
HPD	New York City Department of Housing Preservation and Development	<i>Auditee</i>
HUD	Housing and Urban Development	<i>Key Term</i>
Rules	Rules of the City of New York	<i>Law</i>
Vacancy report	Apartment Turnover and Vacancy Report, which developments are required to submit to HPD quarterly	<i>Key term</i>

Background

The Mitchell-Lama Housing Program was created in 1955 to provide affordable rental and cooperative (co-op) housing to middle-income families. The New York City (NYC) Department of Housing Preservation and Development (HPD), the nation's largest municipal housing preservation and development agency, is charged with promoting the quality and affordability of NYC's housing and the strength and diversity of its many neighborhoods. In NYC, there are 93 HPD-supervised Mitchell-Lama rental and limited-equity cooperative developments, with approximately 47,000 total apartments (Manhattan: 19,909; Brooklyn: 11,709; Bronx: 7,581; Queens: 6,996; Staten Island: 989).

Title 28, Chapter 3 of the Rules of the City of New York (Rules) requires that developments maintain waiting lists for renting or selling apartments. Waiting lists are often closed because developments have enough applicants to fill vacancies for the foreseeable future. Periodically, these waiting lists open and new applicants are accepted through a lottery. Candidates selected by lottery are placed on waiting lists in the order they are selected. Developments' managing agents notify newly selected applicants of their position on the list and send them an application form. Managing agents are responsible for filling vacant apartments at their developments, although tenants are ultimately approved by HPD. When vacancies occur, applicants should be offered apartments in the order their names appear on the lists. Upon accepting an offered apartment, the prospective tenant must submit documentation showing they meet certain eligibility requirements, including proof of income and family size. HPD then verifies that the prospective tenant meets the Mitchell-Lama eligibility requirements and is the next qualified applicant on the waiting list.

Apartments in Mitchell-Lama developments tend to be desirable because of their affordability; consequently, the waiting lists for many of these apartments can be quite lengthy. The Rules set forth the criteria for the management of HPD-supervised Mitchell-Lama developments. However, the Rules do not explicitly address the time frame in which developments should fill vacant units. To ensure efficient turnover of vacant apartments, HPD issued a Reporting and Compliance Directive (Directive) in June 2017, requiring managing agents to fill vacancies within 120 days and to provide written explanations for any excessive vacancy periods and submit a plan of action to resolve the matter causing the delay in filling the vacancy. Developments are also required to submit quarterly Apartment Turnover and Vacancy Reports (vacancy reports) to HPD, showing apartments that were filled during the quarter (turnovers) and current vacancies that need to be sold or rented.¹ HPD's staff of Property Managers are responsible for monitoring the developments, and apartment turnovers and vacancies, to ensure compliance with these requirements.

¹ For 2019, only 87 of the 93 developments were required to submit vacancy reports; the other 6 were not entirely under HPD supervision during that period.

Audit Findings and Recommendations

Despite HPD's Directive, which was intended to ensure that apartments available for occupancy would be filled timely, vacancy reports for calendar year 2019 show an overall lack of compliance by the Mitchell-Lama developments to fill vacant apartments within the required 120 days. Of the 1,286 turnovers that were reported for the period, 784 (61 percent) apartments (see Exhibit A) from 77 developments, took longer than 120 days to fill, including some that took over 1,300 days. Additionally, vacancy reports for the fourth quarter of 2019 show some developments had a significant number of apartments vacant for excessive periods beyond the 120 days, including Lindsay Park in Brooklyn, where 15 apartments had been vacant for as long as 30 years.

Vacant Mitchell-Lama apartments are costly, not only to New Yorkers who are in need of affordable housing but also to the developments and their tenants. Based on the 2019 rent rolls and rental information provided by HPD and the developments, we estimate that protracted delays in filling apartments cost the developments about \$9.1 million in unrealized income. Loss of income could have ramifications in terms of rent increase and/or the inability to address needed repairs.

Notably, HPD issued its 2017 Directive in response to the lengthy vacancy rates at Clinton Towers that the Office of the State Comptroller identified in a prior audit – and where HPD agreed that “all Mitchell-Lama vacancies should be filled as quickly as possible.” Despite its intentions, HPD does not adequately monitor developments' compliance with Directive requirements.

According to the NYC Rent Guidelines Board, in 2019, there was a net estimated loss of 2,444 rent-stabilized apartments. Furthermore, at the end of the last decade, the number and the percentage of renters in NYC who pay 30 percent or more of income for housing costs both rose when compared to the beginning of the decade. So, too, did the number and share of renters who were severely burdened with costs representing at least half of household income.² Given these statistics, it is imperative that HPD take appropriate steps to improve its enforcement of the Directive and its monitoring of developments to ensure vacancies are filled in a timely manner.

Toward this end, we also note that the main tool HPD relies on for monitoring purposes – the vacancy report – does not offer data analysis functionality because these reports are mainly submitted in a PDF format. As a result, HPD's ability to identify and track protracted vacancies is limited. We encourage HPD to upgrade its reports to a format that can be easily analyzed, thereby improving the ability to monitor compliance.

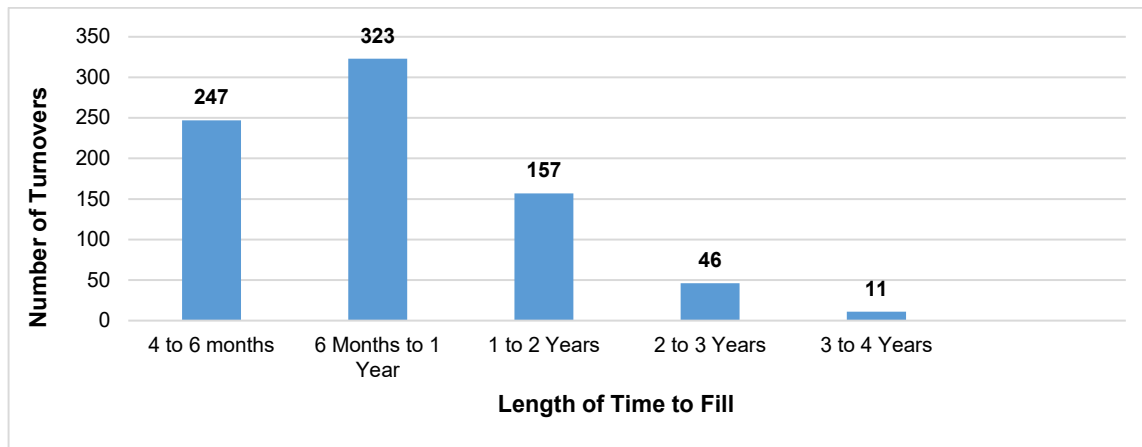
Turnovers

We analyzed turnovers for calendar year 2019 based on the quarterly vacancy reports that HPD provided for 86 of the 87 developments that were required to submit them for that year. Of these 86 developments, 1,286 apartments were turned

² [Housing Affordability in New York State, June 2019](#)

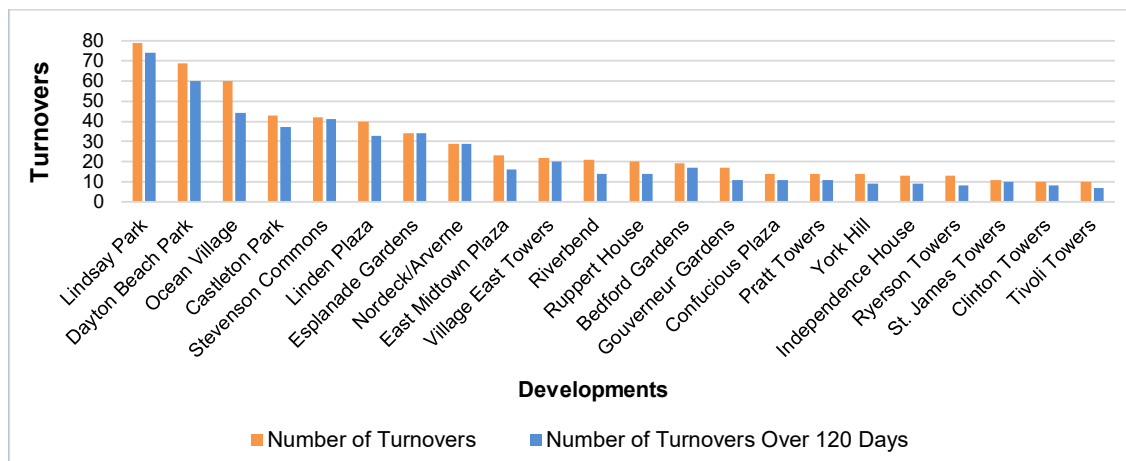
over at 81 developments. On average, it took the developments 222 days (7.4 months) to fill these 1,286 apartments – nearly twice the maximum time under the Directive. Only 502 apartments (39 percent) were filled within the required 120-day time frame. As shown in Chart 1, of the 784 apartments not filled within 120 days, 537 took 6 months or longer to fill, including 11 that took 3 or more years. We note that these findings do not account for an additional 155 turnovers that we excluded from our analysis due to missing or incomplete apartment turnover date information in the developments' reports.

Chart 1 – Turnovers That Took Over 120 Days to Fill



Our analysis also showed that a significant number of developments had a high number and high percentage of vacancies that were not filled timely. For instance, 77 of the 81 developments with turnovers accounted for the 784 apartments not filled within 120 days. Of the 38 developments with ten or more turnovers, 22 had a 60 percent or higher rate of non-compliance with the 120-day requirement, as shown in Chart 2.

Chart 2 – Developments With Ten or More Turnovers and 120-Day Non-Compliance ≥ 60 Percent



In response, HPD officials indicated that some developments had extenuating circumstances that contributed to the high rates. For example, at Nordeck/Arverne in Queens, where none of its 29 turnovers in calendar year 2019 were filled within the 120 days, including 20 apartments that took between 824 days (2.2 years) and 1,094 days (3 years) to fill, HPD officials explained that 11 of the apartments had significant damage from Superstorm Sandy and the development did not have the necessary funding to get the apartments back on the rent roll.

HPD's explanations notwithstanding, our analysis shows the lack of compliance with filling apartments timely to be widespread among developments and indicative of the need for more consistent monitoring on HPD's part. For example, in our 2017 audit ([2017-N-1](#)) of vacancies at Clinton Towers, we found significant delays in filling vacancies despite a waiting list of over 9,000 applicants. A follow-up ([2019-F-55](#)) in January 2020 found that, although HPD had taken some steps to address the long-standing vacancies, the development was still falling short: its September 2019 quarterly report showed three apartments had been vacant for more than 120 days, including one vacant since August 2017. Based on the findings of the current audit, it is clear that HPD's oversight continues to be lacking, as Clinton Towers is still not filling apartments timely. Clinton Towers reported ten turnovers for 2019, eight of which were not filled within 120 days. On average, the ten turnovers were filled in 269 days (8.67 months). In addition, as of December 2019, Clinton Towers had five vacancies, three of which had been vacant more than 120 days, including a two-bedroom apartment renting at approximately \$1,637 a month, which had been vacant since April 1, 2018.

HPD officials indicated that they do not conduct detailed or trend analyses of developments' turnovers. However, such analyses would help HPD identify developments that consistently fail to fill apartments timely, and would assist them in minimizing the length of time that apartments remain vacant. As previously mentioned, developments submit their reports in a format that is impractical and inefficient for data analysis purposes.

Assessment of Efforts for Five Selected Developments

We reviewed the issue further using a judgmental sample of five developments with a high number and percentage of turnovers that exceeded the 120-day requirement: Ocean Village, Castleton Park, Dayton Beach Park, East Midtown Plaza, and Village East Towers. We met with officials from these five developments to get an understanding of their process for filling vacancies and, for a judgmental sample of ten turnovers at each development, learn why the apartments were not filled within the required 120 days. Development officials gave various reasons for their apartments' extended vacancies, such as applicants not being interested in the specific apartment offered, delays due to construction, and delays in obtaining approval for the federal Housing and Urban Development (HUD) Section 8 program (for eligible low-income families).

We also asked development officials for documentation to support actions taken to try to fill their sampled apartments within the required 120 days. Four developments – Ocean Village, Castleton Park, Dayton Beach Park, and East Midtown Plaza – submitted no documentation to support their efforts. Consequently, we have no assurance that these developments took any action to fill vacant apartments within the required 120 days.

Village East Towers, in Manhattan, provided some documentation to support its efforts to fill the apartments (e.g., copies of offer letters, construction invoices, and proof of mailings). However, for seven of the ten apartments, we determined the documentation showed the efforts were insufficient to fill the apartments timely. For example:

- Apartment 411/2C (one-bedroom) became vacant in November 2016 but the apartment was not offered to an applicant until June 2017 – 7 months later. Subsequent offers were made to three other applicants in July 2017 and April 2018. However, the apartment was not filled until November 2019 – 3 years after it became vacant.
- Apartment 170/3E (one-bedroom) became vacant at the end of April 2018 but was not offered to any applicant until August 2018. Subsequent offers were made to eight applicants in February 2019 and May 2019. However, the apartment was not filled until June 2019, over a year after it became vacant.
- Apartment 411/23D (two-bedroom) had been vacant for almost a year, and there was no documentation to show that the apartment had been offered to any applicants. Officials explained that there was no documentation because the offers involved internal transfers. Contrary to their assertion, documentation is required regardless of the type of offer.

HPD Monitoring

HPD officials could not provide documentation to support that they had been monitoring these apartments and following up regularly with the developments. However, they identified several overarching factors that contributed to the long-standing vacancies, such as building renovations/construction, cleanup projects, management transitions, and turnover of principal staff. In some instances, delays stemmed from the applicants themselves (i.e., applicants struggling to come up with the necessary equity or other issues at closing or not meeting HPD's qualifying requirements).

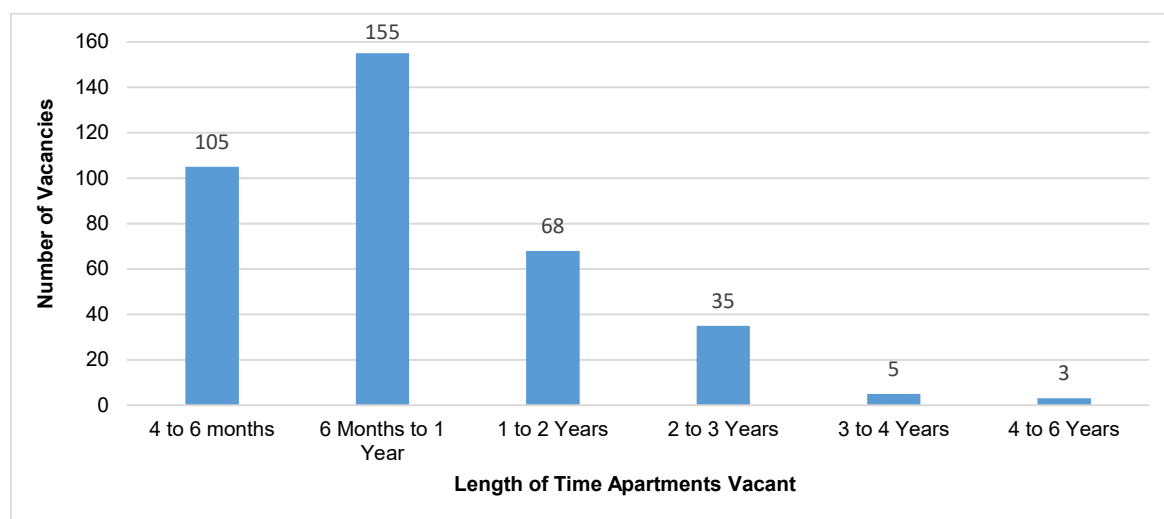
- Ocean Village – This was a distressed development that came under HPD supervision in 2012. Extenuating circumstances included: building renovations; some Section 8 apartments, which tend to have a lengthy approval process; and in 2019, the termination of the employee responsible for filling vacancies. Additionally, HPD officials indicated that the development identified apartment-related errors on its 2019 third-quarter report. According to HPD, the development submitted an updated report, which HPD is currently reviewing.

- **Castleton Park** – This was a distressed State-supervised development that came under HPD’s supervision in 2015 after refinancing. It underwent substantial construction and security enhancements.
- **Dayton Beach Park** – A management transition in January 2018, followed by substantial cleanup and construction work, led to delays in filling vacancies. In addition, in some instances, applicants who were offered an apartment struggled to come up with the necessary equity.
- **East Midtown Plaza** – Many applicants on the development’s waiting lists were ultimately not interested in apartments. Despite this explanation by HPD officials, we were also told by East Midtown Plaza officials that canvassing the waiting lists to identify applicants who were still interested was not necessary. Additionally, one apartment was held by an estate and thus took longer to fill.
- **Village East Towers** – Officials had issues finding interested applicants or applicants withdrew their applications. In one case, the applicant had closing delays; in another, the applicant was denied by HPD.

Vacancies

Our analysis of 85 developments’ vacancy reports for the fourth quarter ending December 31, 2019 indicated there were 670 vacant apartments (see Exhibit B) (Bronx: 120; Brooklyn: 192; Manhattan: 234; Queens; 77; Staten Island: 47) at 78 developments. As shown in Chart 3, 371 (55 percent) of these apartments were vacant for over 120 days, including 111 that had been vacant for over a year and 8 that were vacant for more than 3 years. Notably, and as discussed in more detail later, the Lindsay Park report listed an additional 15 “uninhabitable” apartments that had been vacant for possibly as long as 30 years. We also note that these findings do not account for an additional 36 vacancies that we excluded from our analysis due to missing or incomplete vacancy/occupancy date information.

Chart 3 – Number of Vacancies Over 120 Days as of December 31, 2019



Assessment of Efforts for Five Selected Developments

We reviewed this issue further based on a judgmental sample of five developments with a high number and percentage of vacancies exceeding 120 days: Esplanade Gardens (45 of 53 vacancies exceeding 120 days); Independence House (nine of ten vacancies); O.U.B. Houses (all 18 vacancies); Roberto Clemente Plaza (17 of 20 vacancies); and Stevenson Commons (25 of 28 vacancies).

We asked development officials for documentation supporting that they actively tried to fill a sample of 49 of the 114 vacant apartments. Esplanade Gardens and O.U.B. Houses did not submit any documentation, thus providing no assurance that they made any efforts to fill their vacant apartments timely.

Independence House, Roberto Clemente Plaza, and Stevenson Commons provided documentation, such as offer letters sent to applicants, HPD denial emails, and letters from applicants declining apartments, for 23 of their 29 apartments. However, we determined only two of the explanations were reasonable to justify the delay (i.e., the apartment was being used by the contractor during construction or to house tenants who were displaced while their apartments were being worked on). The documents provided for the other 21 apartments did not show that officials took sufficient action to fill the vacant apartments. For example:

- At Independence House, Apartment 12I (one-bedroom) became vacant in December 2017 but wasn't offered to an applicant until May 2019, over a year later. Subsequently, three more offers were made between October 2019 and December 2020. The apartment was still vacant as of December 29, 2020.
- At Roberto Clemente Plaza, Apartment 15G (two-bedroom), which became vacant in September 2015, was first offered in November 2019 to ten applicants. However, the apartment was not filled until July 2020, 5 years after it became vacant. Officials explained that their two-bedroom external list was exhausted by 2017 and a new waiting list (lottery) was not held until August 2019. This explanation does not address why a highly desirable two-bedroom apartment vacant in 2015 went unfilled for 2 years before the waiting list was exhausted.
- At Stevenson Commons, the ten vacant apartments selected became vacant between 2017 and 2019. According to development officials, starting in 2017, the apartments were in the process of being converted to Section 8 and could not be filled during this period. However, development officials could not provide documentation to support this assertion. Officials provided some documentation for December 2019 and 2020 with HPD Section 8 denials.

We note that Independence House and Stevenson Commons are part of seven developments that have been approved for Project-Based Section 8. Officials from these two developments indicated that the Section 8 approval process for individuals who are offered these apartments could be lengthy, causing these apartments to be vacant for an extended period of time. HPD explained that the influx of HUD subsidy

after a tenant is finally approved is viewed as worth the wait as it helps fortify the development's finances. Development officials indicated that they have not received guidance as to how long they need to wait to hear from the HPD department that approves Section 8 before offering the vacant apartments to other applicants on the waiting lists.

Compliance With Directive Requirements

Pursuant to HPD's Directive, where apartments remain vacant for more than 120 days, developments are required to provide a written explanation for the excessive vacancy period and a plan of action to resolve the matter. We determined these requirements are loosely enforced by HPD as developments did not always report the reason for protracted vacancies or the explanation was insufficient to justify the length of delay. Nor did developments submit plans of action for apartments that were vacant for longer than 120 days.

For our sample, the most commonly cited reasons for the vacancy were: construction, waiting on HPD approval, pending lottery, application process, and Section 8. However, in some instances, we found that the developments' explanations were questionable and should have been followed up on by HPD Property Managers.

In response, HPD's Property Managers attributed the deficient oversight to reduced staffing, stating that each of the current five Property Managers, including one who also supervises the team, are responsible for overseeing approximately 18 developments. The Property Managers explained that they have weekly calls with the developments and are thus aware of the reasons for the vacancies, and that the comments included on the vacancy reports are usually sufficient. However, HPD could not provide any documentation, such as meeting notes, to show that such issues were discussed.

HPD Monitoring

HPD officials could not provide documentation to support that they had been monitoring the apartments and following up with the developments to address matters. In fact, of the 49 vacant apartments in our sample as of December 2019, 20 were still vacant as of February 2021 per information provided by HPD. However, for each development, they identified factors that contributed to delays, as follows:

- Esplanade Gardens refinanced its mortgage to undertake several large construction projects related to waterproofing the façade and roof, and there were issues related to the new plumbing. Additionally, one of the apartments in our sample was taken offline due to sewage backups. The issue has since been resolved and the apartment sold.
- Independence House had significant capital repairs and converted 80 apartments to Section 8. The Section 8 process includes multiple steps, which adds to the rental time.

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- Regarding O.U.B. Houses, there were concerns as to whether its waiting list had been compromised (i.e., altered), and the development could not fill apartments while an investigation by an outside agency was ongoing. The application process started again in October 2019. However, we note that, as of February 9, 2021, eight of the ten apartments are still not filled, including 4 three-bedroom apartments with a monthly rent of less than \$2,000 each.
 - At Roberto Clemente Plaza, up until 2020, the offer process involved sending offer letters one at a time and allowing applicants multiple opportunities to turn down apartments. HPD officials stated that, in November 2020, they directed development officials to send out multiple offers at a time and to only allow applicants one chance at an apartment. However, we note that the long-standing vacancies go back to 2015. Had HPD been more proactive in its monitoring, this policy would have been corrected and rendered more efficient far sooner.
 - Stevenson Commons was partially converted to Section 8 in 2017. As part of this process, the individual apartments were upgraded. Applicants on the waiting list had to meet the income and Section 8 requirements when they were offered a Section 8 apartment. Additionally, one of the apartments was taken offline for 18 months due to water leaks.

Long-Standing Vacancies at Lindsay Park

As mentioned previously, our audit of the 2019 fourth-quarter vacancy reports found 15 apartments at Lindsay Park that were identified as “uninhabitable.” Lindsay Park officials explained that these apartments were taken offline many years ago by the prior managing agent due to plumbing issues. The current managing agent, who has been at Lindsay Park since January 2018, is in the process of fixing the apartments. One of the 15 apartments was renovated during the course of the audit and was filled in January 2021. For the remaining apartments, the new management indicated that its plan is to fix one apartment every other month using operating funds.

When we followed up with HPD officials about these uninhabitable apartments, they, too, were unable to specify exactly when these apartments became vacant, but explained that most of the first-floor apartments had plumbing problems and had been offline since the 1980s. Unaware that Lindsay Park officials were in the process of repairing the 15 apartments, on December 18, 2020, HPD officials informed us that they were directing Lindsay Park to remove the uninhabitable apartments from the rent roll, which would take the 15 apartments offline permanently. In March 2021, HPD officials reversed their position after speaking with Lindsay Park management. According to HPD, repairing the apartments is now possible due to a large refinancing loan received from the Housing Development Corporation on November 26, 2018.

If the development had submitted plans of action, as required, HPD would have been better informed of the development’s intentions. On March 12, 2021, HPD provided a status update for the 15 apartments: In addition to the one apartment filled in

January 2021, 12 apartments are offline and under construction and 2 are rented to a storage company. Given the scarcity of affordable housing, it is incumbent on HPD to perform diligent, constant monitoring to identify problematic vacancies and work with developments to fill apartments more efficiently.

Unrealized Income for Developments

Vacant Mitchell-Lama apartments are costly, not only to New Yorkers who are in need of affordable housing, but also to the developments and their tenants. Based on the 2019 rent rolls and rental information provided by HPD and the developments, we estimate that protracted delays in filling apartments cost the developments about \$9.1 million in unrealized income as of December 2019, not including any revenue loss during the first 120 days of apartment vacancy and for the 15 long-standing vacancies at Lindsay Park.

While HPD reiterated that a number of these apartments were vacant for extended periods due to construction, they account for only 13 percent of the estimated revenue loss. Excluding from our calculation those apartments that were identified by HPD as long-standing vacancies due to construction, the unrealized income totaled \$7.9 million – a significant amount of lost revenue that developments could have otherwise used to make repairs, cover other expenses, or defray potential rent increases.

In a scenario where a development's actual income loss due to vacancies exceeds its projected budgeted amount, it is plausible that greater-than-expected income losses may drive developments to request approval for a rent increase from HPD. While we cannot say there is a direct correlation, several developments that had vacancy issues also had rent increases approved by HPD.

Other Matters

Vacancy/Turnover Report Errors

According to HPD's Portfolio Property Management guidelines, the purpose of the vacancy report is to identify apartments that need to be sold or rented. Where vacancies exist, the report serves as a reminder to initiate the application process to fill them. It also enables HPD to determine if vacancies are being filled in a timely manner and help avoid losses by identifying apartments that have remained vacant for extended periods. However, as a monitoring tool, these reports are only as valuable as the accuracy of the data they contain. Our review of the 2019 vacancy reports identified 155 turnovers (10.7 percent) and 36 vacancies (5 percent) where critical occupancy/vacancy dates were missing or incomplete or contained obvious errors. We also identified 46 instances where apartments were listed multiple times with slightly different information. For example, Apartment 2H at Dayton Beach Park was listed as a turnover three times with the same incoming tenant but with different move-in dates, ranging from June 1, 2019 to September 1, 2019.

Understandably, HPD cannot verify every piece of information that is included on a vacancy report, particularly when the data is submitted in PDF format, which is impractical and inefficient for data analysis purposes. However, the information in the reports needs to be accurate for optimum monitoring. In the interest of all New Yorkers who are waiting for affordable housing opportunities, HPD should require developments to submit vacancy reports in a format that can be easily analyzed. This would enable Property Managers to easily analyze the vacancy data, identify inaccuracies and inconsistencies, and follow up with the developments.

Recommendations

1. Create an electronic vacancy form or other means for developments to report quarterly data in an analyzable format, which includes explanations for apartments that are vacant beyond the 120-day requirement.
2. Improve monitoring of developments, including but not limited to testing vacancy reports for accuracy and completeness and documenting review of the quarterly vacancy reports.
3. Obtain and analyze the vacancy reports to identify developments that consistently have delays in filling vacancies, and work with these developments to identify issues and improve performance.
4. Improve monitoring of developments with vacancies greater than 120 days and ensure they provide a plan of action to fill the apartments, and follow up with developments to ensure compliance with the plan.
5. Provide additional guidance and communication to management of Project-Based Section 8 developments to ensure apartments are filled timely.
6. Monitor Lindsay Park to ensure the uninhabitable apartments are repaired and returned to the rent roll expeditiously.

Audit Scope, Objective, and Methodology

The objective of this audit was to determine whether HPD is ensuring that vacant apartments at Mitchell-Lama developments are filled timely. Our audit covered apartments that were vacant, and those that became vacant, in calendar year 2019; we followed these apartments through March 12, 2021.

To accomplish our objective and evaluate internal controls, we reviewed HPD directives related to Mitchell-Lama vacancies. We interviewed HPD and development officials to gain an understanding of the process for filling vacancies and for explanations of long-standing vacancies. To determine if vacant apartments were being filled timely, we analyzed vacancy reports for calendar year 2019. We judgmentally selected 10 developments from the 86 that submitted vacancy reports for 2019 and, across these 10 developments, selected a total of 99 apartments from the 294 vacancies and turnovers reported based on the number and percentage of turnovers or vacancies over 120 days. Our samples were not designed to be projected to the entire population. We asked development officials to explain the specific issues regarding our selected apartments and to provide supporting documentation. We also conducted site visits to six developments to verify that apartments that were reported as vacant were actually not occupied. Using the 2019 rent rolls and apartment rental information provided by HPD and developments, we also calculated the income that would have been generated for vacant apartments if they were filled within 120 days.

Statutory Requirements

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section I of the State Constitution and Article III of the General Municipal Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained during our audit provides a reasonable basis for our findings and conclusions based on our audit objective.

As is our practice, we notified HPD officials at the outset of the audit that we would be requesting a representation letter in which agency management provides assurances, to the best of its knowledge, concerning the relevance, accuracy, and competence of the evidence provided to the auditors during the course of the audit. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. Agency officials normally use the representation letter to assert that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. They affirm either that the agency has complied with all laws, rules, and regulations applicable to its operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors. However, HPD officials told us that they do not provide representation letters in connection with our audits. As a result, we lack assurance from HPD officials that all relevant information was provided to us during the audit.

Reporting Requirements

A draft copy of this report was provided to HPD officials for their review and comment. Their comments were considered in preparing this final report and are included in their entirety at the end of it. While HPD officials generally agreed with the report's recommendations and indicated actions they have taken or will take to implement them, they disagreed with certain audit premises and methodology. We addressed certain remarks in our State Comptroller's Comments, which are embedded within HPD's response.

Within 180 days after final release of this report, we request that the Commissioner of the New York City Department of Housing Preservation and Development report to the State Comptroller, advising what steps were taken to implement the recommendations contained in this report, and where recommendations were not implemented, the reasons why.

Exhibit A

Reported Turnovers at Mitchell-Lama Developments for Calendar Year 2019

Development	Number of Apartments	Number of Turnovers	Number of Units Not Filled in 120 Days	Average Days to Fill Units	Percentage of Units Not Filled Within 120 Days
Lindsay Park	2,702	79	74	259	94%
Dayton Beach Park	1,144	69	60	336	87%
Manhattan Plaza	1,688	62	1	49	2%
Ocean Village	1,093	60	44	192	73%
Dayton Towers	1,752	60	18	92	30%
Arlington Terrace	535	49	29	195	59%
Castleton Park	454	43	37	548	86%
Stevenson Commons	947	42	41	470	98%
1199 Housing	1,586	42	17	127	40%
Linden Plaza	1,525	40	33	204	83%
Big Six Towers	982	35	13	128	37%
Seaview Towers	461	35	10	89	29%
Esplanade Gardens	1,870	34	34	376	100%
Nordeck/Arverne	342	29	29	840	100%
Franklin Plaza	1,632	29	3	96	10%
Village View	1,232	26	14	135	54%
Masaryk Towers	1,105	25	3	77	12%
East Midtown Plaza	746	23	16	294	70%
Village East Towers	427	22	20	331	91%
Hamilton House	183	22	10	138	45%
Riverbend	622	21	14	165	67%
Tracey Towers	869	21	11	161	52%
Ruppert House	652	20	14	241	70%
Bedford Gardens	647	19	17	184	89%
Kings Bay I	538	19	7	120	37%
Gouverneur Gardens	778	17	11	157	65%
DCA Central Brooklyn	216	17	4	100	24%
Confucius Plaza	760	14	11	297	79%
Pratt Towers	326	14	11	219	79%
York Hill	296	14	9	129	64%
Independence House	120	13	9	226	69%
Ryerson Towers	326	13	8	143	62%
River Terrace	430	13	1	86	8%
St. James Towers	326	11	10	252	91%
Tilden Towers II	265	11	5	131	45%
Clinton Towers	396	10	8	269	80%
Tivoli Towers	302	10	7	175	70%
St. Martin's Towers	179	10	4	109	40%
Aguilar Gardens	256	9	9	366	100%
Washington Sq. Southeast	174	9	8	350	89%
Cadman Towers	421	9	7	153	78%
Keith Plaza	301	9	1	92	11%
Brighton House	191	8	4	140	50%
Tanya Towers	157	8	2	114	25%
Chatterton Terrace	132	7	6	242	86%
Dennis Lane	280	7	3	129	43%

Woodstock Terrace	319	7	2	84	29%
Rosedale Gardens	497	6	6	300	100%
Atlantic Terminal I	200	6	5	279	83%
Sam Burt Houses	146	6	6	237	100%
Strycker's Bay Apartment	233	6	2	105	33%
Jefferson Towers	189	6	0	92	0%
Tilden Towers I	125	5	5	438	100%
R.N.A. House	207	5	2	270	40%
Contello Towers II	321	5	4	265	80%
Crown Gardens	238	5	5	242	100%
Cannon Heights	170	5	3	179	60%
Cedar Manor	215	5	2	104	40%
Hutchinson Parkway Apts	158	5	0	39	0%
Goddard-Riverside	193	4	3	351	75%
Scott Towers	351	4	3	343	75%
Atlantic Terminal II	304	4	3	194	75%
Bronxwood Towers	108	4	1	112	25%
Rosalie Manning	108	4	0	59	0%
Goodwill Terrace	207	4	1	47	25%
Bethune Towers	133	3	3	250	100%
Clayton Apartments	159	3	2	238	67%
Highlawn Terrace	124	3	2	184	67%
Tri-Faith	147	3	2	175	67%
Northside Gardens	41	3	3	164	100%
Trinity House	199	2	2	456	100%
Essex Terrace	104	2	1	140	50%
Kings Bay II	356	2	1	136	50%
Evergreen Gardens	355	2	2	123	100%
Kelly Towers	301	2	1	71	50%
Mins Plaza	83	1	1	611	100%
O.U.B. Houses	359	1	1	248	100%
Kingsbridge Arms	105	1	1	206	100%
Lincoln-Amsterdam	168	1	1	167	100%
Lindville	142	1	1	152	100%
Lind-Ric	171	1	0	84	0%
Totals		1,286	784		61%

Exhibit B

Reported Vacancies at Mitchell-Lama Developments, as of December 31, 2019

Development	Borough	Number of Apartments	Number of Fourth-Quarter Vacancies	Number of Fourth-Quarter Vacancies Over 120 Days	Percentage of Vacancies Over 120 Days
1199 Housing	Manhattan	1,586	15	0	0%
Adee Towers	Bronx	292	0	0	0%
Aguilar Gardens	Queens	256	3	1	33%
Arlington Terrace	Staten Island	535	39	14	36%
Atlantic Terminal I	Brooklyn	200	6	3	50%
Atlantic Terminal II	Brooklyn	304	1	0	0%
Bay Towers	Queens	374	Vacancy report not provided	Vacancy report not provided	Vacancy report not provided
Bedford Gardens	Brooklyn	647	10	6	60%
Bethune Tower	Manhattan	133	2	0	0%
Big Six Towers	Queens	982	7	0	0%
Brighton House	Brooklyn	191	4	1	25%
Bronxwood Towers	Bronx	108	0	0	0%
Cadman Plaza North	Brooklyn	250	7	6	86%
Cadman Towers	Brooklyn	421	3	1	33%
Cannon Heights	Bronx	170	3	3	100%
Carol Gardens	Bronx	314	3	1	33%
Castleton Park	Staten Island	454	8	3	38%
Cedar Manor	Queens	215	0	0	0%
Chatterton Terrace	Bronx	132	0	0	0%
Clayton Apartments	Manhattan	159	3	1	33%
Clinton Towers	Manhattan	396	5	3	60%
Confucius Plaza	Manhattan	760	14	7	50%
Contello Towers II	Brooklyn	321	4	3	75%
Crown Gardens	Brooklyn	238	5	5	100%
Dayton Beach Park	Queens	1,144	12	6	50%
Dayton Towers	Queens	1,752	8	3	38%
DCA Central Brooklyn	Brooklyn	216	6	1	17%
Dennis Lane	Bronx	280	8	4	50%
East Midtown Plaza	Manhattan	746	14	9	64%
Esplanade Gardens	Manhattan	1,870	53	45	85%
Essex Terrace	Brooklyn	104	4	3	75%
Evergreen Gardens	Bronx	355	4	3	75%
Franklin Plaza	Manhattan	1,632	8	0	0%
Goddard-Riverside	Manhattan	193	2	2	100%
Goodwill Terrace	Queens	207	4	1	25%
Gouverneur Gardens	Manhattan	778	8	1	13%
Hamilton House	Manhattan	183	3	3	100%
Highlawn Terrace	Brooklyn	124	1	1	100%
Hutchinson Parkway Apts	Bronx	158	0	0	0%
Independence House	Manhattan	120	10	9	90%
Jefferson Towers	Manhattan	189	2	1	50%
Keith Plaza	Bronx	301	2	1	50%
Kelly Towers	Bronx	301	4	0	0%
Kings Bay I	Brooklyn	538	6	1	17%
Kings Bay II	Brooklyn	356	4	4	100%
Kingsbridge Arms	Bronx	105	2	1	50%
Lincoln-Amsterdam	Manhattan	168	2	0	0%
Linden Plaza	Brooklyn	1,525	50	34	68%
Lind-Ric	Bronx	171	0	0	0%
Lindsay Park	Brooklyn	2,702	47	31	66%
Lindville	Bronx	142	2	2	100%
Luna Park	Brooklyn	1,573	N/A*	N/A*	N/A*

Manhattan Plaza	Manhattan	1,688	16	1	6%
Masaryk Towers	Manhattan	1,105	2	0	0%
Mins Plaza	Bronx	83	6	6	100%
Nordeck/ Arverne	Queens	342	23	22	96%
Northside Gardens	Brooklyn	41	2	0	0%
Ocean Village	Queens	1,093	14	0	0%
O.U.B. Houses	Bronx	359	18	18	100%
Pratt Towers	Brooklyn	326	1	0	0%
River Terrace	Manhattan	430	4	0	0%
Riverbend	Manhattan	622	11	7	64%
R.N.A. House	Manhattan	207	3	1	33%
Roberto Clemente Plaza	Brooklyn	532	20	17	85%
Rosalie Manning	Manhattan	108	1	0	0%
Rosedale Gardens	Bronx	407	8	8	100%
Ruppert House	Manhattan	652	8	7	88%
Ryerson Towers	Brooklyn	326	4	2	50%
Sam Burt Houses	Brooklyn	146	2	2	100%
Scott Towers	Bronx	351	6	1	17%
Seaview Towers	Queens	461	6	0	0%
St. James Towers	Brooklyn	326	2	1	50%
St. Martin's Towers	Manhattan	179	2	0	0%
Stevenson Commons	Bronx	947	28	25	89%
Strycker's Bay Apartment	Manhattan	233	4	2	50%
Tanya Towers	Manhattan	157	Vacancy report not provided	Vacancy report not provided	Vacancy report not provided
Tilden Towers I	Bronx	125	3	3	100%
Tilden Towers II	Bronx	265	4	1	25%
Tivoli Towers	Brooklyn	302	3	1	33%
Tracey Towers	Bronx	869	16	10	63%
Tri-Faith	Manhattan	147	3	0	0%
Trinity House	Manhattan	199	5	3	60%
Village East Towers	Manhattan	427	15	3	20%
Village View	Manhattan	1,232	13	3	23%
Washington Sq. Southeast	Manhattan	174	2	2	100%
Woodstock Terrace	Bronx	319	3	0	0%
York Hill	Manhattan	296	4	1	25%

* According to HPD, units at Luna Park were not being filled because of an ongoing issue concerning the waiting list.

Agency Comments and State Comptroller's Comments



City of New York
DEPARTMENT OF
HOUSING PRESERVATION AND DEVELOPMENT
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nyc.gov/hpd

LOUISE CARROLL
Commissioner

June 2, 2021

Mr. Kenrick Sifontes
Audit Director
Division of State Government Accountability
Office of the State Comptroller
59 Maiden Lane, 21st Floor
New York, NY 10038

Re: Audit of Mitchell-Lama Vacancies, 2020-N-2

Dear Mr. Sifontes,

Thank you for the opportunity to respond to your Audit Report on Mitchell-Lama Vacancies.

We appreciate the OSC's interest in our Mitchell-Lama portfolio, and we share the desire to see affordable units filled as expeditiously as possible. As described in our audit response, we are already in the process of implementing various technological solutions that will increase the monitoring capacities of the Mitchell-Lama team at the Agency; our work on these solutions pre-dates the period of this audit. To that end, we agree with or partially agree with all recommendations concerning enhanced processes.

We also note in our response, however, our disagreement with fundamental elements of the audit premise and methodology. Specifically, the report deploys a methodology that artificially inflates both the scope and scale of this issue, and incorrectly attributes a monetary cost to the issue, contrary to standard property management accounting methods. Notwithstanding HPD's commitment to improve continuously upon our systems and practices, our response raises issue with the overall audit approach, which discounts the enormous value that Mitchell-Lama housing provides New Yorkers across the five boroughs and HPD's staunch stewardship of this important portfolio.

Once again, thank you for providing the opportunity to comment on the Audit Report.

Sincerely,

Louise Carroll

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Agency Response:
New York City Department of Housing Preservation & Development (HPD)
to the Office of the New York State Comptroller (OSC)
Mitchell-Lama Vacancies – 2020-N-2
Date: June 2, 2021

The New York City Department of Housing Preservation and Development (HPD) is providing comments in response to the Office of the New York State Comptroller's (OSC) audit to determine whether vacant units in the Mitchell-Lama portfolio are filled timely, per a draft audit report ("the report"), issued to HPD on May 3, 2021.

Since 1955, the Mitchell-Lama program has been a source of invaluable affordable housing for low- and middle-income New Yorkers, as well as a path to homeownership, for many who might not otherwise have access to this opportunity. HPD is proud of its work in preserving the affordability of these properties for generations and in ensuring that the buildings and units remain of high quality. In addition to our staunch stewardship, from the start of Housing New York in 2014 through the end of Fiscal Year 2021, HPD preserved nearly 60,000 units of Mitchell-Lama housing (supervised by the State or City). These preservation efforts are a critical step in ensuring that New Yorkers remain stably housed.

HPD appreciates the OSC's interest in its Mitchell-Lama portfolio, and shares the desire to see affordable units filled as expeditiously as possible. As outlined in this response, however, we disagree with fundamental elements of the audit premise and methodology, which we believe distort the scope and scale of various issues presented. *Specifically, HPD notes that the OSC inflated (overcounted) the number of vacant units by failing to distinguish between vacancies during the course of regular unit turnover and those that are undergoing construction or have other extenuating explanations, miscalculated the monetary loss from unit turnover by using an approach that differs from the industry standard method of accounting for vacancy loss, and intentionally sampled properties known to be particularly challenged and atypical (rather than a random sample).*

State Comptroller's Comment – Our report did not distort the scope and scale of the issues, inflate the number of vacant units, or miscalculate the monetary loss from unit turnovers. Our audit findings are based on an analysis of the vacancy reports provided by HPD and reflect a portfolio-wide issue with the filling of affordable vacant units in a timely manner.

- Many vacancies counted in the OSC's totals are not part of the regular Mitchell-Lama unit turnover. As the OSC notes, HPD has issued a directive requiring that, for all Mitchell-Lama units vacated in the course of regular unit turnover, property managers fill the units within 120 days or provide explanations for the turnover delays. However, not all vacancies constitute a regular unit turnover. During the audit, HPD explained to the OSC that a number of vacancies with a delayed occupancy of more than 120 days had habitability issues and were the subject of capital construction, significant rehabilitation, or upgrades required per Federal subsidy regulations for the units supported by such subsidy. These are not units that HPD expects to be filled within 120 days because, as the individual scopes of work for these properties reflect, these units required a specific level of renovation work for occupancy. Moreover, OSC counted units that were filled at the 120-day mark (which is not outside of compliance per the directive), as well as units experiencing turnover delays related to the processing of Section 8 subsidy (described to OSC during fieldwork as an acceptable delay, and further detailed in the response to Recommendation 5, below). Combined, units with comprehensive habitability conditions, Federal subsidy requirements, and a 120-day turnover represent an estimated 257 of the 784 units.

State Comptroller's Comment – HPD's Directive and vacancy reports do not distinguish between regular and non-regular unit turnovers. OSC accounted for the units in the same manner HPD uses

to account for them. Further, HPD's assertion that we counted units filled in 120 days is incorrect, as OSC started its calculation at 121 days. Additionally, while HPD is now estimating 257 units as having habitability conditions, federal subsidy requirements, etc., it did not provide this breakdown during the course of the audit, despite our repeated requests. Moreover, even if we excluded the estimated 257 units HPD considered to be non-regular turnovers, 527 or 51 percent of the remaining turnover units would not have been filled in a timely manner. We do not believe HPD officials or residents seeking affordable housing would consider such a high percentage of non-compliance to be acceptable. Despite their disagreements, HPD officials still could not identify the actual number of units impacted, as they are using an estimated number.

- The “unrealized income” figure of \$9.1M is not unrealized income, but anticipated vacancy loss. In budgeting for anticipated revenue, HPD projects a vacancy loss of approximately 2% for Mitchell-Lama projects. The OSC used a different set of principles to reach the amount stated here (based on the number of dollars that would have been collected in individual unit revenue for each cited vacancy after a 120-day turnover period), and characterized this amount as “unrealized income”. Yet the percent of units that the report cited as vacant in the 4th quarter is less than 2% across the Mitchell-Lama portfolio. HPD therefore believes that the OSC’s figure is not “unrealized income”, but rather an amount that was already projected, in the regular course of business and budgeting, to go uncollected (in accordance with not just HPD’s financial planning principles, but those deployed as standard in property portfolio management). Further, the \$9.1M figure is a misleading aggregation, as each Mitchell-Lama housing company is a separate corporation, and a possible deficit in one does not erase or undermine a surplus in another.

State Comptroller’s Comment – In real estate, vacancy loss refers to the money that a property owner will not receive due to unfilled units or the non-payment of rent. Our calculations consist only of the portion of the vacancy loss that results from failure of Mitchell-Lama managing agents to meet the HPD Directive to fill vacancies within 120 days. Moreover, HPD projecting its vacancy loss at a rate that incorporates widescale non-compliance with its Directive and then claiming that the impact of such widescale non-compliance is acceptable because the amount lost was planned seems counterproductive to basic accountability and continuous improvement principles. Further, by ignoring the impact of this widescale non-compliance and claiming that it is an acceptable loss, HPD undermines the importance of its own Directive, which is meant to decrease the amount of time for unit turnover, make more affordable housing units available, and decrease vacancy loss. This excess vacancy loss due to non-compliance – which we estimated at \$9.1 million – could have been used for repairs and maintenance and was calculated to show the real impact of HPD’s failure to appropriately monitor these housing developments. Moreover, the fact that each Mitchell-Lama housing company is a separate corporation does not negate the fact that, across all developments, there was the potential to collect an additional \$9.1 million in rent/maintenance had units been filled in a timely manner. Rather than focusing on the vacancy rate, HPD should focus on the fact that, as of December 31, 2019, there were 670 vacant units, including 371 that were vacant for more than 120 days, 111 vacant for more than a year, and eight vacant for more than three years.

- The OSC selected “a judgmental sample” of ten properties with a high number and percentage of vacancies exceeding 120 days. HPD indicated to the OSC that selecting ten projects with unique and extreme unit turnover challenges would not create an accurate portrait of the portfolio overall, and specifically described the reasons why these ten properties were experiencing turnover delays. Explanations range from major construction work (noted above) to conditions outside of HPD and managing agent control (such as units being declined multiple times by multiple applicants in the course of routine applicant processing). We appreciate that the OSC included in the report the extenuating circumstances for these delays that we described, and that the OSC also acknowledged that conclusions drawn from their samples “were not designed to be projected to the entire [Mitchell-Lama portfolio] population” (page 17). However, HPD submits that a clearer analysis for the report reader would have located explanations alongside applicable findings.

State Comptroller's Comment – We reviewed, analyzed, and reported on the turnovers and vacancies at all developments for which HPD provided information, and selected a judgmental sample for more detailed review. The purpose of the judgmental sample was to obtain an understanding of why developments could not comply with the 120-day requirement, to confirm vacancy status during site visits, and to determine whether HPD was properly monitoring these developments. Our sample selection methodology is appropriately explained in the Audit Scope, Objective, and Methodology section of our report.

As one example: On page 12 of the report, OSC states that Independence House “did not show that officials took sufficient action to fill the vacant apartments,” and cites as proof a vacant unit that was not offered for occupancy for a year, and was subsequently offered three more times to different applicants between October 2019 and December 2020. Later, however, on page 13, the OSC notes that “Independence House had significant capital repairs and converted 80 apartments to Section 8... which adds to the rental time.” HPD believes that a major upgrade of the unit for safety and compliance, followed by several recorded offers to subsidy-qualified applicants, is not a “failure to take sufficient action” but rather a demonstration of consistent effort to fill the unit as quickly as possible while ensuring that the quality of the unit matches Section 8 requirements.

State Comptroller's Comment – OSC asked Independence House officials to provide any documentation showing the actions taken by the development to fill the unit or to explain why the unit could not be filled. No documentation regarding construction was ever provided. OSC also asked HPD for a list of developments and units that were affected by construction. This unit was not on the list provided to the auditors.

Despite this fundamental disagreement with the methodological approach the OSC took in this report, HPD is always seeking to improve its internal processes and practices to better serve the people of New York City. Several of the changes that were already underway at the time of the audit are described below in the responses to the Recommendations.

Recommendation 1: *Create an electronic vacancy form or other means for developments to report quarterly data in an analyzable format, which includes explanations for apartments that are vacant beyond the 120 day requirement.*

HPD Response to Recommendation 1: HPD agrees with this recommendation, and has been working for several years to develop technological solutions responsive to the administrative needs of Mitchell-Lama portfolio management, including digitizing income affidavits, waitlists and conducting lotteries electronically. The agency had originally planned to include automation of vacancy tracking in its Housing Connect 2.0 (HC 2.0) system, launched in summer 2020. However, due to budget cuts, this functionality was not included in the original HC 2.0 rollout. The agency recently received finding and approval to begin to build a holistic and comprehensive solution that would streamline processes; however, it will take an extended period of time before it is fully operational. While awaiting implementation of this functionality, HPD’s Office of Asset and Property Management is working with HPD Tech to develop a system whereby the Mitchell-Lama managing agents will send vacancy information in a digitized format rather than in PDF; this system will also provide the ability to generate portfolio-wide reports for analysis.

Recommendation 2: *Improve monitoring of developments, including but not limited to, testing vacancy reports for accuracy and completeness, and documenting review of the quarterly vacancy reports.*

HPD Response to Recommendation 2: HPD partially agrees with this recommendation. HPD’s Mitchell-Lama division rigorously monitors the Mitchell Lama portfolio, including working with developments with significant delays on unit turnover. HPD will continue to build out its technological capabilities to enhance

and support its oversight over this important portfolio. The system described above is being designed to track submissions of the quarterly reports and send reminders if they are not submitted timely. HPD's Mitchell-Lama division will review the reports generated by the system to identify trends, and will follow up with the managing agents with concerns. While HPD cannot commit to conducting vacancy report "testing" (sampling) as a regular practice, the Mitchell-Lama division will use its review process to require developments to continue to implement corrective action to expedite the availability of vacant units.

Recommendation 3: *Obtain and analyze the vacancy reports to identify developments that consistently have delays in filling vacancies, and work with these developments to identify issues and improve performance.*

HPD Response to Recommendation 3: HPD partially agrees with this recommendation, in that the Mitchell-Lama team already tracks and responds to instances of non-compliance, and OSC's analysis of ten particular properties with unique challenges does not reflect this effort. In addition, HPD intends to enhance its processes and add new mechanisms for follow-up in conjunction with the enhanced reports that the new system will provide, including trending analysis, highlighting long-term vacancies, training for property managers on digitized waitlists, and individual property manager review as needed.

Recommendation 4: *Improve monitoring of developments with vacancies greater than 120 days and ensure they provide a plan of action to fill the apartments, and follow up with developments to ensure compliance with the plan.*

HPD Response to Recommendation 4: HPD does not agree that all unit vacancy scenarios cited by the OSC warrant follow-up or a plan of action. As noted above, units with extended periods of vacancy due to capital construction, significant rehabilitation, and/or upgrades required per Federal subsidy regulations or Section 8 subsidy administration are not considered by the Mitchell-Lama program to be vacancies that are non-compliant. HPD agrees, however, to improve monitoring of non-compliant vacancies via the systems described above, and looks forward to the implementation of those systems to support that effort.

State Comptroller's Comment – We believe that it is HPD's responsibility to follow up on all vacant units to ensure that they are ready to be occupied by qualified applicants as expeditiously as possible.

Recommendation 5: *Provide additional guidance and communication to management of Project-Based Section 8 developments to ensure apartments are filled timely.*

HPD Response to Recommendation 5: HPD disagrees with this recommendation, insofar as it does not agree that a lack of guidance and communication are the reasons that Project-Based Section 8 (PBV) units often take longer than 120 days to fill. As explained to the OSC, HPD recognizes that turnovers involving Section 8 will almost universally take longer than 120 days, as the process of placing a qualified tenant into a PBV unit may necessarily become elongated by virtue of the Federal requirements associated with the process. The OSC indicates that HPD explained that PBV approval is "worth the wait as it helps fortify the development's finances" (page 13); however, the full sentiment from HPD was that Section 8 has the dual benefit of fortifying property finances while (most importantly) providing the deepest affordability possible for low-income individuals. It is both counter to HPD's mission and illegal to deny housing to a low-income individual based on issues related to source of subsidy, and HPD will continue to provide applicants with every opportunity to access PBV (and Section 8 generally).

State Comptroller's Comment – At no time in this report does OSC state or imply that housing should be denied to low-income individuals based on issues related to source of subsidy. However, due to the need for these Section 8 units, HPD should ensure that they are filled as quickly as possible to provide needed housing to individuals and revenue to the developments. Providing additional guidance and communication can only help fill units in a more timely manner.

Recommendation 6: *Monitor Lindsay Park to ensure the uninhabitable apartments are repaired and returned to the rent roll expeditiously.*

HPD Response to Recommendation 6: HPD has already implemented this recommendation. Lindsay Park,

4

with the addition of a new management agent steeped in asset management efficiency practices, identified the units that can be rehabilitated; these will be added back to the rent roll. Any that cannot be rehabilitated will be removed from the rent roll permanently.

State Comptroller's Comment – We question the assertion that this recommendation has already been implemented. Based on HPD's June 2, 2021 response to the draft report, "Any that cannot be rehabilitated will be removed from the rent roll permanently," we conclude that the work has not yet been completed. Therefore, HPD still needs to ensure the units are repaired and returned to the rent roll expeditiously.

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