

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Opportunity to Comment On Proposed Rules Governing Tax Exemption under §421-a of the Real Property Tax Law

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE Commissioner of Housing Preservation and Development by §1802 (6) (c) and in accordance with the requirements of §1043 of the New York City Charter that the Department of Housing Preservation and Development intends to modify the rules governing tax exemption under §421-a of the Real Property Tax Law of the State of New York. Additions to the rules are underlined and proposed deletions are [bracketed].

Written comments regarding these rules may be sent to the Department of Housing Preservation and Development, Attention: Arden Sokolow, Director of Inclusionary Housing and 421-a Affordable Housing Programs, 100 Gold Street, Room 9-P17, New York, New York 10038, on or before March 31, 2008. A public hearing will be held from 1:00 P.M. to 4:00 P.M. on March 31, 2008, at 100 Gold Street, 9th floor, Room 9V6, New York, New York. Persons seeking to testify are requested to notify the Director of Inclusionary Housing and 421-a Affordable Housing Programs at the foregoing address. Written comments and a summary of oral comments received at the hearing will be available for public inspection within a reasonable time after receipt between the hours of 9:00 A.M. and 5:00 P.M. at the Office of the Director of Inclusionary Housing and 421-a Affordable Housing Programs.

The proposed rule amendments were included in HPD's 2007-08 Regulatory Agenda.

Persons who request that a sign language interpreter or other form of reasonable accommodation for a disability be provided at the hearing are requested to notify the Director of Inclusionary Housing and 421-a Affordable Housing Programs by March 21, 2008.

Section one. The definition of "substantial governmental assistance" in subdivision (c) of section 6-01 of Chapter 6 of Title 28 of the Rules of the City of New York is amended to read as follows:

Substantial governmental assistance. "Substantial governmental assistance" shall mean grants, loans or subsidies [from] provided to any building or buildings under common ownership on a zoning lot or any portion thereof applying for benefits pursuant to the Act by any federal, state or local agency or instrumentality pursuant to a program for the development of affordable housing [, but shall not include taxable bonds issued by any federal, state, or local agency or instrumentality; purchase money mortgages from any federal, state or local agency or instrumentality entered into after the date of promulgation of these rules; mortgage insurance provided through any federal, state or local agency or instrumentality; or permanent financing provided through the State of New York Mortgage Agency]. Such subsidies may include allocations of low income housing tax credits and, in the discretion of the Department, below market sales or sales subject to evaporating purchase money mortgages by a federal, state or local agency or instrumentality, but shall not include permanent financing provided through the State of New York Mortgage Agency, purchase money mortgages, or mortgage insurance. For purposes of this definition of "substantial governmental assistance," "under common ownership" shall mean each of the buildings on such zoning lot or portion thereof applying for benefits

pursuant to the Act is owned and/or controlled directly or indirectly by the same individual or entity.

§ 2. Subdivision (c) of section 6-01 of Chapter 6 of Title 28 of the Rules of the City of New York is amended by adding two new definitions, a definition of "program for the development of affordable housing" and a definition of "zoning lot", to read as follows:

Program for the development of affordable housing. "Program for the development of affordable housing" shall mean housing which complies with the requirements of a grant, loan or subsidy from any federal, state or local agency or instrumentality to provide units affordable to and occupied by or available for occupancy by individuals or families whose incomes do not exceed a specified limit and which has been approved by the commissioner pursuant to this chapter.

Zoning lot. "Zoning lot" shall mean a "zoning lot" as defined in Section 12-10 of the Zoning Resolution.

§ 3. Paragraph (3) of subdivision (b) of section 6-02 of chapter 6 of Title 28 of the Rules of the City of New York is amended to read as follows:

(3) new multiple dwellings located in the geographic exclusion area if the commencement of construction occurred after November 29, 1985 and before December [31, 2007] 28, 2010, only if construction is carried out with substantial governmental assistance or if affordable units are created in accordance with the requirements of § 6-08 of this chapter.

§ 4. Paragraph (10) of subdivision (c) of Section 6-02 of Title 28 of the Rules of the City of New York is amended to read as follows:

(10) Except for multiple dwellings qualifying for the benefits of the Act pursuant to §6-08 of this chapter[.];

(i) any project commenced, as that term is defined herein, after November 29, 1985 and before March 7, 2006 within the geographic exclusion area, bounded and described as follows: Beginning at the intersection of the bulkhead line in the Hudson River and 96th Street extended; thence easterly to 96th Street and continuing along 96th Street to its easterly terminus; thence easterly to the intersection of 96th Street extended and the bulkhead line in the East River; thence southerly along said bulkhead line to the intersection of said bulkhead line and 14th Street extended; thence westerly to 14th Street and continuing along 14th Street to Broadway; thence southerly along Broadway to Houston Street; thence westerly along Houston Street to Thompson Street; thence southerly along Thompson Street to Spring Street[.]; thence westerly along Spring Street to Avenue of the Americas; thence northerly along Avenue of the Americas to Vandam Street; thence westerly along Vandam Street to Varick Street; thence northerly along Varick Street to Houston Street; thence westerly along Houston Street and continuing to its westerly terminus; thence westerly to the intersection of Houston Street extended and the bulkhead line in the Hudson River; thence northerly along said bulkhead line to the intersection of said bulkhead line and 11th Avenue extended; thence northerly to 11th Avenue and

continuing along 11th Avenue to 14th Street; thence easterly along 14th Street to 10th Avenue; thence northerly along 10th Avenue to 28th Street; thence easterly along 28th Street to 9th Avenue; thence northerly along 9th Avenue to 33rd Street; thence easterly along 33rd Street to 8th Avenue; thence northerly along 8th Avenue to 34th Street; thence easterly along 34th Street to 7th Avenue; thence northerly along 7th Avenue to 41st Street; thence westerly along 41st Street and continuing to its westerly terminus; thence westerly to the intersection of 41st Street extended and the bulkhead line in the Hudson River; thence northerly along said bulkhead line to the place of beginning;

(ii) any project commenced, as that term is defined herein, on or after March 7, 2006 and before May 11, 2007 within the geographic exclusion area, bounded and described as follows: Beginning at the intersection of the bulkhead line in the Hudson River and 96th Street extended; thence easterly to 96th Street and continuing along 96th Street to its easterly terminus; thence easterly to the intersection of 96th Street extended and the bulkhead line in the East River; thence southerly along said bulkhead line to the intersection of said bulkhead line and 14th Street extended; thence westerly to 14th Street and continuing along 14th Street to Broadway; thence southerly along Broadway to Houston Street; thence westerly along Houston Street to Thompson Street; thence southerly along Thompson Street to Spring Street; thence westerly along Spring Street to Avenue of the Americas; thence northerly along Avenue of the Americas to Vandam Street; thence westerly along Vandam Street to Varick Street; thence northerly along Varick Street to Houston Street; thence westerly along Houston Street and continuing to its westerly terminus; thence westerly to the intersection of Houston Street extended and the bulkhead line in the Hudson River; thence northerly along said bulkhead line to the intersection of said bulkhead line and 11th Avenue extended; thence northerly to 11th Avenue and continuing along 11th Avenue to 14th Street; thence easterly along 14th Street to 10th Avenue; thence northerly along 10th Avenue to 30th Street; thence westerly along 30th Street to 11th Avenue; thence northerly along 11th Avenue to 41st Street; thence westerly along 41st Street and continuing to its westerly terminus; thence westerly to the intersection of 41st Street extended and the bulkhead line in the Hudson River; thence northerly along said bulkhead line to the place of beginning; or

(iii) any project commenced, as that term is defined herein, on or after May 11, 2007 and before July 1, 2008 within the geographic exclusion area, bounded and described as follows: Beginning at the intersection of the bulkhead line in the Hudson River and 96th Street extended; thence easterly to 96th Street and continuing along 96th Street to its easterly terminus; thence easterly to the intersection of 96th Street extended and the bulkhead line in the East River; thence southerly along said bulkhead line to the intersection of said bulkhead line and 14th Street extended; thence westerly to 14th Street and continuing along 14th Street to Broadway; thence southerly along Broadway to Houston Street; thence westerly along Houston Street to Thompson Street; thence southerly along Thompson Street to Spring Street; thence westerly along Spring Street to Avenue of the Americas; thence northerly along Avenue of the Americas to Vandam Street; thence westerly along Vandam Street to Varick Street; thence northerly along Varick Street to Houston Street; thence westerly along Houston Street and continuing to its westerly terminus; thence westerly to the intersection of Houston Street extended and the bulkhead line in the Hudson River; thence northerly along said bulkhead line to the intersection of said bulkhead line and 30th Street extended; thence easterly along 30th Street to 11th Avenue; thence northerly along 11th Avenue to 41st Street; thence westerly along 41st Street and continuing to its westerly terminus; thence westerly to the intersection of 41st Street extended and the bulkhead line in the Hudson River; thence northerly along said bulkhead line to the place of beginning[.];or

(iv) any project commenced on or after July 1, 2008 within the geographic exclusion area as defined pursuant to section 6-09 of this chapter except as otherwise provided in such section 6-09.

§ 5. Paragraph (4) of subdivision (d) of section 6-02 of chapter 6 of Title 28 of the Rules of the City of New York is amended to read as follows:

(4) The twenty year exemption is available in the borough of Manhattan for buildings on tax lots now existing or hereafter created south of or adjacent to either side of one hundred tenth street which commenced construction after July 1, 1992 and before December [31, 2007] 28, 2010; only if:

§ 6. Paragraph (1) of subdivision (d) of section 6-05 of title 28 of the Rules of the City of New York is amended by adding a new subparagraph (ix) to read as follows:

(ix) For applications received for any projects that commence construction on or after December 28, 2007, an affidavit from the owner certifying that either (A) all building service employees employed or to be employed at the building shall receive the applicable prevailing wage for the duration of such building's tax exemption pursuant to the Act, or (B) such project contains less than fifty dwelling units, or (C) at initial occupancy, at least fifty percent (50%) of the dwelling units will be affordable to individuals or families with a gross household income at or below one hundred twenty-five percent (125%) of the area median income and that any such rental units will remain affordable for the entire period during which they receive benefits pursuant to this Act.

§ 7. Paragraph (1) of subdivision (b) of section 6-08 of chapter 6 of Title 28 of the Rules of the City of New York is amended to read as follows:

(1) Obtaining the Certification of the Department that twenty percent (20%) of the units contained in the multiple dwelling applying for benefits pursuant to the Act shall be rented to persons of low and moderate income as defined by this chapter at rents to be determined by the Department pursuant to this section. [Such affordable units must be located in the same building and must contain the same average square footage and bedroom mix of all residential units contained in such multiple dwelling.]

§ 8. Subparagraph (ii) of paragraph (1) of subdivision (g) of section 6-08 of chapter 6 of Title 28 of the Rules of the City of New York is amended to read as follows:

(ii) If the affordable units are created in accordance with § 6-08(b)(1) and unless preempted by federal requirements, (A) all affordable units must [contain the same average square footage and same bedroom mix as the average square footage and bedroom mix of the residential units contained in the multiple dwelling located in the geographic exclusion area seeking benefits pursuant to this Act] have a comparable number of bedrooms and a unit mix proportional to the market rate units contained in such multiple dwelling, or (B) at least fifty percent (50%) of the affordable units must have two or more bedrooms and not more than fifty percent (50%) of the remaining affordable units can be smaller than one bedroom, or (C) the floor area of the affordable units must be no less than twenty percent of the total floor area of all dwelling units in such multiple dwelling.

§ 9. Chapter 6 of Title 28 of the Rules of the City of New York is amended by adding a new section 6-09 to read as follows:

Section 6-09. Eligibility Requirements On or After July 1, 2008.

(a) Definitions. For purposes of this section 6-09, the following terms shall have the following meanings:

Affordability requirement. "Affordability requirement" shall mean that not less than twenty percent of the onsite units in such multiple dwelling are GEA 60% AMI units or GEA SGA units.

Commence. "Commence" shall mean:

(a)(1) the later to occur of (i) the date upon which a new metal or concrete structure to be incorporated into the multiple dwelling that shall perform a load bearing function for such multiple dwelling is installed; or (ii) the date upon which a building or alteration permit for the multiple dwelling (based upon architectural, plumbing and structural plans approved by the Department of Buildings) was issued by such department ; or

(2) if a project includes new residential construction and the concurrent conversion, alteration or improvement of a pre-existing building or structure, the later to occur of (i) the date upon which the actual construction of the conversion, alteration or improvement of the pre-existing building or structure begins; or (ii) the date upon which an alteration permit for the multiple dwelling (based upon architectural, plumbing and structural plans approved by the Department of Buildings) on which the actual construction of the conversion, alteration or improvement takes place, was issued by such department;

(b) provided, however, that (1) with respect to subparagraph (1) of paragraph (a), if piles or caissons are required, "commence" shall mean the later to occur of (i) the date upon which at least one fully driven pile or caisson is installed; or (ii) the date upon which a building or alteration permit for the multiple dwelling (based upon architectural, plumbing and structural plans approved by the Department of Buildings) was issued by such department; and

(2) with respect to both subparagraphs (1) and (2) of paragraph (a):

(i) such installation of a new metal or concrete structure or such beginning of the actual construction of the conversion, alteration or improvement of the pre-existing building or structure, respectively, and such issuance of a building or alteration permit, must both have occurred in order for the multiple dwelling to meet this definition of "commence" ; and

(ii) for multibuilding projects, each multiple dwelling in such multibuilding project shall be deemed to "commence" (A) with respect to subparagraph (1) of paragraph (a), on the later to occur of (1) the date upon which a new metal or concrete structure to be incorporated into the first multiple dwelling in such multibuilding project that shall perform a load bearing function for such multiple dwelling is installed; or (2) the date upon which a building or alteration permit for the first multiple dwelling in such multibuilding project (based upon architectural, plumbing and structural plans approved by the Department of Buildings) was issued by such department, provided that all of the multiple dwellings in such multibuilding project have been issued by the Department of Buildings a building or alteration permit (based upon architectural, plumbing and structural plans approved by such department) on or before the date upon which the construction of the first multiple dwelling in such multibuilding project commences, and the periods of construction and permanent real property tax exemption benefits granted pursuant to the Act shall commence simultaneously for all of the multiple dwellings in such multibuilding project; and (B) with respect to subparagraph (2) of paragraph (a), on the later to occur of (1) the date upon which the actual construction of the conversion, alteration or improvement of the first pre-existing building or structure in such multibuilding project begins; or (2) the date upon which an alteration permit for the first multiple dwelling in such multibuilding project (based upon architectural, plumbing and

structural plans approved by the Department of Buildings) on which the actual construction of the conversion, alteration or improvement takes place, was issued by such department, provided that all of the multiple dwellings in such multibuilding project have been issued by the Department of Buildings a building or alteration permit (based upon architectural, plumbing and structural plans approved by such department) on or before the date upon which the construction of the first multiple dwelling in such multibuilding project commences, and the periods of construction and permanent real property tax exemption benefits granted pursuant to the Act shall commence simultaneously for all of the multiple dwellings in such multibuilding project; and

(iii) if the architectural, plumbing and structural plans approved by the Department of Buildings in conjunction with the issuance of the first such building or alteration permit are thereafter amended to provide for more than a thirty-five percent (35%) increase (the "35% standard") in the floor area of such multiple dwelling as defined pursuant to the Act, the construction of such multiple dwelling shall be deemed to have commenced on the date upon which such amended plans are filed with such department, provided, however, that, in the case of a multibuilding project that meets the requirements of clause (ii) of this paragraph (2), any such increase in the floor area may be distributed amongst the multiple dwellings in such multibuilding project in any manner permitted under the Zoning Resolution and the 35% standard may be applied to such multibuilding project on an aggregate rather than a single building basis; and

(iv) the construction of any such multiple dwelling also must be completed without undue delay. For purposes of this definition of "commence", (A) if a project consists of one multiple dwelling and such multiple dwelling is completed within thirty-six (36) months from the later to occur of (1) the date of the installation of a new metal or concrete structure or of the beginning of the actual construction of the conversion, alteration or improvement of the pre-existing building or structure, respectively, (2) the date upon which a building or alteration permit for the multiple dwelling (based upon architectural, plumbing and structural plans approved by the Department of Buildings) was issued by such department, or (3) December 28, 2007, such multiple dwelling shall be deemed to have been completed without undue delay, and (B) if a project meets the requirements of clause (ii) of this paragraph (2), if all of the multiple dwellings in such multibuilding project are completed within thirty-six (36) months from the later to occur of (1) the date of the installation of a new metal or concrete structure for the first multiple dwelling in such multibuilding project or of the beginning of the actual construction of the conversion, alteration or improvement of the first pre-existing building or structure in such multibuilding project, respectively, (2) the date upon which a building or alteration permit for the first multiple dwelling (based upon architectural, plumbing and structural plans approved by the Department of Buildings) was issued by such department, or (3) December 28, 2007, all of the multiple dwellings in such multibuilding project shall be deemed to have been completed without undue delay. Where construction is not completed within such thirty-six (36) month period and an architect or professional engineer has certified that such construction was completed without undue delay, the Department will not merely rely on such certification. In order to determine whether such construction was, in fact, completed without undue delay, the Department will consider the following factors: (i) the extraordinary size and/or complexity of the construction project; (ii) strikes or other unavoidable labor stoppages of substantial duration and severity; (iii) industry-wide shortages of construction materials of substantial duration and severity; and (iv) substantial damage to completed construction work caused by fire or other casualty. In each case, the Department will consider such factors and determine whether construction could reasonably have been completed in a materially shorter period of time.

Geographic exclusion area or GEA. "Geographic exclusion area" or "GEA" shall mean the boundaries for any geographic exclusion areas set forth in section 421-a of the Real Property

Tax Law and section 11-245 of the Administrative Code that are effective on or after July 1, 2008.

GEA 60% limit. "GEA 60% limit" shall mean (A) for a multiple dwelling owned and operated as a rental, (1) incomes at the time of initial occupancy that do not exceed sixty percent of the area median incomes adjusted for family size, and (2) rents at the time of initial occupancy that do not exceed thirty percent of sixty percent of the area median incomes adjusted for family size, and (B) for a multiple dwelling owned and operated as a condominium or cooperative development by individual condominium unit owners or shareholders, (1) incomes at the time of initial occupancy that do not exceed sixty percent of the area median incomes adjusted for family size, and (2) sales prices at the time of initial sales that result in mortgage payments, including both principal and interest calculated at the prevailing thirty-year fixed rate and assuming that the mortgage constitutes 90% of the purchase price, and common charges or carrying charges, respectively, that collectively do not exceed thirty percent of sixty percent of the area median incomes adjusted for family size.

GEA SGA limit. "GEA SGA limit" shall mean (A) for a multiple dwelling owned and operated as a rental, (1) incomes at the time of initial occupancy that do not exceed one hundred twenty percent of the area median incomes adjusted for family size and, where such a multiple dwelling contains more than twenty-five units, incomes at the time of initial occupancy that do not exceed an average of ninety percent of the area median incomes adjusted for family size, and (2) rents at the time of initial occupancy that do not exceed thirty percent of one hundred twenty percent of the area median incomes adjusted for family size, and, where such a multiple dwelling contains more than twenty-five units, rents at the time of initial occupancy that do not exceed an average of thirty percent of ninety percent of the area median incomes adjusted for family size, or (B) for a multiple dwelling owned and operated as a condominium or cooperative development by individual condominium unit owners or shareholders, (1) incomes at the time of initial occupancy that do not exceed one hundred twenty-five percent of the area median incomes adjusted for family size, and (2) sales prices at the time of initial sales that result in mortgage payments, including both principal and interest calculated at the prevailing thirty-year fixed rate and assuming that the mortgage constitutes 90% of the purchase price, and common charges or carrying charges, respectively, that collectively do not exceed thirty percent of one hundred twenty-five percent of the area median incomes adjusted for family size.

GEA 60% AMI unit. "GEA 60% AMI unit" shall mean (A) if a multiple dwelling is owned and operated as a rental, a unit that, upon its initial rental and upon all subsequent rentals of the unit after a vacancy, complies with the GEA 60% limit, or (B) if a multiple dwelling is owned and operated as a condominium or cooperative development by individual condominium unit owners or shareholders, a unit that, upon the initial sale of such unit, complies with the GEA 60% limit.

GEA SGA unit. "GEA SGA unit" shall mean (A) if a multiple dwelling is owned and operated as a rental, a unit that, upon its initial rental and upon all subsequent rentals of the unit after a vacancy, complies with the GEA SGA limit, or (B) if a multiple dwelling is owned and operated as a condominium or cooperative development by individual condominium units owners or shareholders, a unit that, upon the initial sale of such unit, complies with the GEA SGA limit.

Multibuilding project. "Multibuilding project" shall mean a project that consists of more than one multiple dwelling where the multiple dwellings are contiguous and are under common ownership. For purposes of this definition of "multibuilding project", multiple dwellings shall be deemed to be (a) "contiguous" if such multiple dwellings are on tax lots that (1) are adjacent for at least ten linear feet, or, (2) but for the intervention of streets or street intersections, would be adjacent for at least ten linear feet and front the same street or intersection, and (b) "under common ownership" if each of the multiple dwellings in such multibuilding project is owned and/or controlled directly or indirectly by the same individual or entity.

Onsite. "Onsite" shall mean situated within a building or buildings under common ownership on the same zoning lot, or, if only a portion of such zoning lot is being granted benefits pursuant to the Act, situated within a building or buildings under common ownership on such portion of such zoning lot; provided, however, that (1) each of the buildings on such zoning lot or portion thereof are part of the same application for benefits pursuant to the Act, and (2) the periods of construction and permanent real property tax exemption benefits granted pursuant to the Act for each of the buildings on such zoning lot or portion thereof being granted benefits pursuant to the Act shall commence simultaneously. For purposes of this definition of "onsite", "under common ownership" shall mean that each of the buildings on such zoning lot or portion thereof being granted benefits pursuant to the Act is owned and/or controlled directly or indirectly by the same individual or entity.

Party in interest. "Party in interest" shall mean any person or entity holding an ownership, ground lease, mortgage, or other security interest, or holding any other interest which may be converted to such interest, in the real property containing the multiple dwelling receiving the benefits pursuant to the Act.

(b) Multiple Dwellings Affected.

(1) Unless otherwise exempted pursuant to the Act, a multiple dwelling within the geographic exclusion area that commences construction on or after July 1, 2008 and which would otherwise be eligible for the benefits of the Act, is only eligible if:

(i) not less than twenty percent of the onsite units in such multiple dwelling are GEA 60% AMI units; or

(ii) the construction of such multiple dwelling is carried out with substantial governmental assistance provided pursuant to a program for the development of affordable housing and not less than twenty percent of the onsite units in such multiple dwelling are GEA SGA units; or

(iii) such multiple dwelling has purchased negotiable certificates in order to entitle it to the benefits of the Act for a specified number of units in the geographic exclusion area; provided, however, that such negotiable certificates were generated by a written agreement with the Department entered into prior to December 28, 2007 pursuant to Section 6-08(b) (4) of this chapter.

(2) For thirty-five years from the completion of construction, all GEA 60% AMI units and GEA SGA units in multiple dwellings must (i) if they are owned and operated as rentals, remain rent

stabilized and allow tenants holding a lease and in occupancy at the expiration of such thirty-five year period to remain as rent stabilized tenants for the duration of their occupancy, (ii) comply with the affordability requirement, and (iii) upon the renewal of leases or at any time during the term of the lease, be rented to existing tenants for the lesser of (A) the rents permitted under the Rent Stabilization Law of 1969 and the Emergency Tenant Protection Act of 1974 and all regulations promulgated in connection thereto (collectively, "Rent Stabilization Laws"), or (B) 30% of the applicable income limit for such GEA 60% AMI unit or GEA SGA unit, respectively, provided, however, that no increase authorized pursuant to 28 RCNY § 6-04(b) of this chapter and no exemption or exclusion from any requirement of the Rent Stabilization Laws, including, but not limited to, any exemption or exclusion from the rent limits, renewal lease requirements, registration requirements, or other provisions of the Rent Stabilization Laws due to (a) the vacancy of a unit where the rent exceeds a prescribed maximum amount, (b) the fact that tenant income and/or unit rent exceed prescribed maximum amounts, (c) the nature of the tenant, or (d) any other factor, may be applied to any such GEA 60% AMI unit or GEA SGA unit during such thirty-five year period. Furthermore, the lease for each such unit owned and operated as a rental and for the renewal thereof must contain a notice in at least twelve (12) point type stating the approximate date on which such thirty-five year period is expected to expire and informing such tenant that after such thirty-five year period, (i) the unit will no longer have to comply with the affordability requirement and (ii) if the tenant is holding a lease and in occupancy at the expiration of such thirty-five year period, such tenant shall have the right to remain as a rent stabilized tenant for the duration of such tenant's occupancy. The rent stabilization and lease rider requirements contained in section 6-02(g) of this chapter shall continue to apply to the multiple dwellings owned and operated as a rental containing such GEA 60% AMI units or GEA SGA units to the extent that they do not conflict with this paragraph.

(3) Unless otherwise exempted pursuant to the Act, the owner of a multiple dwelling that is located within the geographic exclusion area and that commences construction on or after July 1, 2008:

(i) when filing an application for a Preliminary Certificate of Eligibility pursuant to § 6-05(b) of this chapter, must submit (A) written certification that it meets the affordability requirement, or (B) if such multiple dwelling is qualifying for benefits pursuant to subparagraph (iii) of paragraph (2) of this subdivision, and subject to the provisions contained in § 6-08(m)(1) of this chapter, submit the negotiable certificates issued pursuant to section 6-08 of this chapter, evidencing the bearer's entitlement to the benefits of the Act for the units for which the owner is seeking tax benefits.

(ii) when filing an application for a Final Certificate of Eligibility pursuant to § 6-05(d) of this chapter for a multiple dwelling that contains GEA 60% AMI units or GEA SGA units, submit evidence satisfactory to the Office that a restrictive declaration in a form satisfactory to the Office (A) has been executed by all parties in interest, (B) has been recorded against the real property containing the multiple dwelling receiving benefits pursuant to the Act, and (C) provides that the GEA 60% AMI units or the GEA SGA units in such building must for thirty-five years from the completion of construction (1) comply with the affordability requirement, and (2) if such multiple dwelling is owned and operated as a rental, remain rent stabilized and allow tenants holding a lease and in occupancy at the expiration of such thirty-five year period to remain as rent stabilized tenants for the duration of their occupancy.

(iii) when filing an application for a Final Certificate of Eligibility pursuant to § 6-05(d) of this chapter for a multiple dwelling that contains GEA 60% AMI units or GEA SGA units and unless such multiple dwelling is receiving substantial governmental assistance from the Department

pursuant to a program for the development of affordable housing and the dwelling units in such multiple dwelling are marketed under the Department's monitoring, submit an affidavit from the owner containing such information as the Department may require to certify that such units will be marketed pursuant to a fair and open process in accordance with the Department's marketing guidelines, and that either (A) residents of the community board where the multiple dwelling for which benefits are being granted pursuant to the Act is located shall, upon initial occupancy, have priority for the purchase or rental of 50% of the GEA 60% AMI units or 50% of the GEA SGA units, respectively, or (B) such multiple dwelling does not have to comply with such community priority requirement because the community priority requirement is preempted by federal requirements that such owner has specified in such affidavit.

(iv) in addition to the record keeping requirements contained in section 6-07 of this chapter, must retain all books, records and documents relating to the GEA 60% AMI units or GEA SGA units, including an annual schedule of rents for each such rental unit for thirty-five years from the completion of construction of such multiple dwelling, and a schedule of the initial sales prices for each such home ownership unit for six years from the completion of construction of such multiple dwelling, and make them available for inspection by the Department.

(4) In addition to the grounds for revocation provided pursuant to section 6-07 of this chapter, the Commissioner of the Department of Finance or the Commissioner of the Department of Housing Preservation and Development may withdraw tax exemption granted to a building pursuant to the Act, retroactively or prospectively, upon its failure to comply with any of the provisions of this section 6-09.

(5) Unless otherwise exempted pursuant to the Act, any multiple dwelling that commences construction on or after December 28, 2007 and which would otherwise be eligible for the benefits of the Act, is only eligible if:

(i) such multiple dwelling contains at least four dwelling units as set forth in the certificate of occupancy, unless the construction of such multiple dwelling is carried out with substantial governmental assistance provided pursuant to a program for the development of affordable housing; and

(ii) if such new multiple dwelling is situated in (a) a Neighborhood Preservation Program Area as determined by the Department as of June 1, 1985, or (b) a Neighborhood Preservation Area as determined by the New York City Planning Commission as of June 1, 1985, or (c) an area that was eligible for mortgage insurance provided by the Rehabilitation Mortgage Insurance Corporation (REMIC) as of May 1, 1992, or (d) an area receiving funding for a neighborhood preservation project pursuant to the Neighborhood Reinvestment Corporation Act (42 U.S.C. Sections 8101 et seq.) as of June 1, 1985, such new multiple dwelling shall no longer be eligible for the benefits available pursuant to section 421-a(2)(a)(iii) of the Act unless either (a) the construction is carried out with substantial governmental assistance provided pursuant to a program for the development of affordable housing, or (b) the Department has imposed a requirement or has certified that at least twenty percent of the onsite units in such multiple dwelling are affordable to and occupied or available for occupancy by individuals or families whose incomes at the time of initial occupancy do not exceed eighty percent of the area median incomes adjusted for family size, provided, however, that of such units, no more than a number equal to five percent of the number of units which commenced construction in buildings receiving tax benefits pursuant to the Act in the previous calendar year shall be affordable and occupied or available for occupancy by individuals or families whose incomes at the time of

initial occupancy are between sixty percent and eighty percent of the area median incomes adjusted for family size.

(6) Eligible multiple dwellings that meet the requirements of paragraphs (1) or (5) (ii) of this subdivision (b) may receive a ten, fifteen, twenty or twenty-five year tax exemption, as described herein. In order to qualify for such benefits, the multiple dwelling must meet the eligibility requirements described below for each level of exemption.

(i) Only the ten year exemption is available to multiple dwellings located in Manhattan on tax lots now existing or hereafter created south of or adjacent to either side of 110th street if such multiple dwelling meets the requirements of subparagraph (iii) of paragraph (1) of this subdivision (b).

(ii) Only the fifteen year exemption is available to multiple dwellings located in the boroughs of the Bronx, Brooklyn, Queens, Staten Island and in Manhattan north of 110th Street if such multiple dwelling meets the requirements of subparagraph (iii) of paragraph (1) of this subdivision (b).

(iii) The twenty year exemption is available in the borough of Manhattan for buildings on tax lots now existing or hereafter created south of or adjacent to either side of one hundred tenth street only if such multiple dwelling meets the requirements of subparagraph (i) or (ii) of paragraph (1) of this subdivision (b) or the requirements of subparagraph (ii) of paragraph (5) of this subdivision (b).

(iv) The twenty-five year exemption is available to multiple dwellings located in the boroughs of the Bronx, Brooklyn, Queens, Staten Island or Manhattan north of 110th Street only if such multiple dwelling meets the requirements of subparagraph (i) or (ii) of paragraph (1) of this subdivision (b) or the requirements of subparagraph (ii) of paragraph (5) of this subdivision (b).

Statement of Basis and Purpose. These proposed rule amendments provide regulatory guidance for the new affordability requirements for the expanded Geographic Exclusion Area and some of the new limitations on eligibility for benefits pursuant to Real Property Tax Law Section 421-a throughout the City of New York as enacted by Local Law 58 of 2006 and Chapters 618, 619 and 620 of the Laws of 2007, and Chapter 15 of the Laws of 2008 (hereinafter "State Amendments").

Local Law 58 of 2006 eliminates as-of-right 25 year 421-a benefits for projects located in NPP/REMIC areas and now provides that projects located in these areas will only get 25 years of benefits if they meet on-site affordability requirements or receive substantial governmental assistance pursuant to an affordable housing program. It also eliminates 421-a benefits for three-unit buildings unless they are constructed with substantial governmental assistance pursuant to an affordable housing program. Finally, Local Law 58 expands the boundaries of the Geographic Exclusion Area and eliminates the negotiable certificate program. Now, affordable units must be provided on-site in order for projects in the Geographic Exclusion Area to be eligible to receive 421-a real property tax exemption benefits. In order to ascertain which projects are subject to the new requirements, Local Law 58 refines the definition of "commencement of construction" and now requires not only an architect or professional engineer's certification that excavation and construction of initial footings and foundations has commenced in good faith after the issuance of a building or alteration permit based upon

architectural, plumbing and structural plans, but also an architect or professional engineer's certification that such construction has been completed without undue delay.

The State Amendments, among other things, further expand the boundaries of the Geographic Exclusion Area. They also mandate specified income limits for buildings to qualify for benefits within the expanded Geographic Exclusion Area. If no substantial governmental assistance is utilized, at least 20% of the units must at initial rental or sale and at all subsequent rentals upon vacancy be affordable to individuals or families whose incomes are at or below 60% of area median income. If construction is carried out with substantial governmental assistance provided pursuant to a program for the development of affordable housing, at least 20% of the units must meet one of the following requirements: (a) initial and subsequent rentals in buildings with 25 units or less must be affordable to individuals or families whose incomes are at or below 120% of area median income, (b) initial and subsequent rentals in buildings with more than 25 units must be affordable to individuals or families whose incomes are at or below 120% of area median income and cannot exceed an average of 90% of area median income, or (c) homeownership units at initial sale must be affordable to individuals or families whose incomes are at or below 125% of area median income.

The State Amendments impose a requirement that residents of the community board in which the building receiving 421-a benefits is located be given priority for the purchase or rental of 50% of the affordable units. They also require the affordable units in the Geographic Exclusion Area to meet one of the following requirements unless they are otherwise preempted by federal requirements: (a) have a comparable number of bedrooms as market rate units and a unit mix proportional to market rate units, (b) at least 50% of the affordable units must have two or more bedrooms and no more than 50% of the remaining units can be smaller than one bedroom, or (c) the floor area of affordable units must be no less than 20% of the total floor area of all dwelling units. Furthermore, affordable rental units in the Geographic Exclusion Area must now be kept affordable and rent stabilized for 35 years, and after such 35 year period, tenants with leases may remain as rent stabilized tenants for the duration of their occupancy.

The State Amendments require buildings receiving 421-a benefits to pay their building service employees prevailing wages unless they contain less than 50 dwelling units or at least 50% of their units are affordable to persons at or below 125% of area median income and, where rental units, will remain affordable throughout the 421-a benefit period.

The proposed rule amendments address these aspects of Local Law 58 and the State Amendments in a new section 6-09 and leave intact those provisions that remain applicable Citywide and in the preexisting Geographic Exclusion Area. In order to ensure that the mandated affordability requirements are met, they additionally stipulate the authorized rents to be charged at initial and subsequent occupancy of rental units and the initial sales prices of homeownership units. They also impose a Citywide requirement that substantial governmental assistance be pursuant to a program for the development of affordable housing and provide further definition of what constitutes an affordable housing program. Finally, they articulate which boundaries of the Geographic Exclusion Area are applicable at designated time periods prior to July 1, 2008, after which the boundaries will be statutorily defined, and conform the unit and bedroom mix requirements in the existing Geographic Exclusion Area to those that will apply elsewhere in the expanded Geographic Exclusion Area pursuant to the State Amendments.

Commissioner Shaun Donovan

February 27, 2008