Written Public Comments Submitted to the Department of Finance

Rules for RACE for Space Program & the Industrial & Commercial Abatement Program.

If you would like to review the original submission of any comment, including attachments, please email dofrules@finance.nyc.gov

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1. Tener Consulting Services – 10/24/2025 – Email & NYC Rules Webpage

   Tener Consulting Services is a tax consulting firm assisting real property owners with tax and valuation matters. We routinely assist our clients with applications for property tax benefits, including those pursuant to the Industrial and Commercial Abatement Program (ICAP).

   We are writing to express our concern with the practical implications of the proposed changes to §36- 01 of Title 19 of the Rules of the City of New York as they relate to renovation projects.

   The proposed addition to subsection (f)(2) creates a two-part test to determine project completion. The proposed updates state that the Department of Finance may determine completion based on (i) a site inspection or (ii) an architect's or engineer's certification.

   In the Statement of Basis and Purpose of Proposed Rule, the Department of Finance states that the changes to §36-01(f) are intended to avoid situations where architects or engineers certify that work is complete when it has not been completed, in order to obtain additional ICAP benefits. We are concerned that this rationale does not take into account the distinct characteristics of renovation projects.

   In contrast to new construction, renovation projects often consist of multiple discrete construction jobs that evolve over time as an owner's plans for their building change. Such work may occur in separate phases, and there may be lags between construction stages depending on factors such as financing and leasing. The completion of a renovation project cannot be determined solely on the basis of a site inspection, especially when the work is structured in multiple phases.

   The test for completion set forth in the proposed revision to subsection (f)(2) is an "or" test. Thus, Finance could declare a project complete on the basis of a site inspection without any additional information from an applicant. As a result, it is plausible that such a determination could occur before an applicant has completed an ICAP project, particularly if the project is structured in multiple phases. In this scenario, Finance's determination of completion could also occur before an 2 applicant files a Notice of Completion, before an applicant meets the Minimum Required Expenditure (as defined in §489-aaaaaa(10)), or before there is sufficient taxable growth to generate any ICAP abatement, despite an applicant's intention to continue construction.

The language of subsection (f)(2) could produce adverse results for owners if it elevates Finance's determination above the sworn statements of architects or engineers. If the Department of Finance has concerns about the veracity of those statements, they can be validated through inspection. The ICAP rules already allow for the denial, reduction, suspension, termination, or revocation of benefits where applicants engage in fraud under §36-15(c)(2).

If Finance deems a project complete and the applicant disagrees, the proposed rules contain no provision for applicants to supply information to dispute such a finding. The "or" test imposes no requirement that Finance consider anything other than its own inspection. This could give rise to litigation by applicants adversely affected by Finance's determination of project completion. Furthermore, if the Department of Finance unilaterally determines that a project is complete before the maximum allowable construction period, and later adds a physical assessment increase for the remaining work in a year after the post-construction tax year tax (as deemed by the Department of Finance), the applicant would be denied the ICAP benefit associated with that increase. This may compel applicants to pursue litigation against Finance to challenge the completion determination.

In order to protect against incorrect determinations of project completion, Finance could amend the current rules to require applicants who complete construction early to notify Department of Finance and further require a site inspection to confirm project completion. Implementing such a requirement would prevent unfair treatment of applicants who intend to utilize the maximum allowable construction window to complete their work while still allowing Finance to verify early completion claims and ensure the program's integrity. Such an approach would also reduce the risk of litigation that might otherwise ensue to adjudicate disagreements.

If the Department of Finance adopts the proposed language allowing it to declare projects completed based solely on its own inspection, and that differs from an applicant's determination of completion, at a minimum, the rules should be amended to include a notice provision requiring Finance to notify applicants when it deems a project complete and provide an opportunity to respond to that determination. Without such notice, applicants could inadvertently fail to meet other ICAP requirements whose deadlines are triggered by the construction completion date, including the Notice of Completion filing.

We urge the Department of Finance to reconsider the proposed amendments to §36-01. There are ample ways to deter bad actors without replacing the current requirements for construction completion with a test that may be wholly discretionary. The proposed changes fail to improve clarity and may ultimately lead to costly litigation to resolve disputes. Thank you for your consideration of these points. Sincerely, Tener Consulting Services

2. Real Estate Board of New York – 10/24/2025 – NYC Rules Webpage
The Real Estate Board of New York (REBNY) is the City's leading real estate trade association representing commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople, and other organizations and individuals active in New York City real estate. REBNY appreciates the opportunity to submit comments to the New York City Department of Finance on Proposed Rules for RACE for Space Program and Industrial and Commercial Abatement Program.

Relocation Assistance Credit per Employee (RACE) program
We would like to extend our gratitude to the City, the State, and the Governor for their leadership in creating the Relocation Assistance Credit per Employee (RACE) program. We are deeply appreciative of the vision and collaboration that brought this initiative to life, and we are eager to support its implementation in any way possible.

This new RACE program represents a bold and necessary investment in New York City's commercial office stock. By encouraging the reactivation of underutilized space and attracting large out-of-state tenants, RACE will help reinvigorate our business districts, support local jobs, and contribute to a more dynamic and resilient city economy.

We respectfully offer one small note for consideration regarding the following provision in the proposed rules: "(2) if contained in real property wholly contained in the borough of Manhattan, are premises for which final certificates of occupancy were issued prior to January 1, 2000." We encourage the Department of Finance to interpret this provision as broadly as possible to align with the program's core goal of encouraging occupancy in older Manhattan buildings. Specifically, some buildings built before 2000 have undergone substantive renovations that required amending the Certificate of Occupancy, even though the underlying structure and character of the building remain consistent with pre-2000 development. We encourage the Department of Finance to allow such properties to participate, as doing so would maximize the program's reach and effectiveness.

Industrial and Commercial Abatement Program (ICAP)

REBNY and our members have long valued and actively participated in the ICAP program, recognizing it as a critical tool that supports thoughtful development across New York City. The program's success depends on clear and predictable rules that allow developers, architects, and property owners to plan and execute projects efficiently.

Under the current ICAP rules, a project's completion date is established through certification by a licensed architect or engineer, together with an ownership certification. This system provides a clear and objective standard that ensures both accountability and predictability. The proposed rule would change this by establishing a new two-part test for determining completion under subsection (f)(2). The Department of Finance may determine that construction is complete based on either a site inspection or an architect's or engineer's certification.

According to the Statement of Basis and Purpose of the proposed rule, the Department of Finance seeks to prevent situations where professionals certify completion before work is finished. While we understand this concern, the rationale is not adequate to justify such significant reforms to the program and does not reflect the realities of renovation projects. Unlike new construction, renovation work often occurs in multiple phases that evolve over time based on financing, leasing, and building needs. Because of this, completion cannot be determined solely through a single site inspection, particularly for projects that proceed in multiple stages.

This proposal would allow the Department of Finance to declare a project complete based only on its own inspection without input from the applicant and their team of project professionals. This could occur before all planned work is finished, before an applicant files a Notice of Completion, or before the project meets the Minimum Required Expenditure or generates sufficient taxable growth for ICAP benefits. This approach replaces a predictable professional certification process with a discretionary one and undermines the transparency and fairness that have made

ICAP successful. It also undermines the as-of-right nature of the program by introducing unnecessary subjectivity.

If the Department of Finance has concerns about the accuracy of certifications, those can be verified through inspection or addressed under existing provisions in §36-15(c)(2), which allow the denial or revocation of benefits in cases of fraud. The proposed change is unnecessary and introduces new risks.

The proposed rule also provides no way for applicants to dispute a Department of Finance determination. There is no requirement that the department notify applicants when it deems a project complete. It also does not allow them to provide additional information. Without notice or a right to respond, applicants could miss critical ICAP deadlines, lose benefits, and face the need for costly litigation to recover them.

If the department proceeds with this rule, it should be amended to require written notice and an opportunity for applicants to respond before any final determination of completion. Furthermore, at a minimum, any rule changes should apply only to new applications that have not yet filed preliminary materials, allowing existing applicants to proceed under the standards they relied upon.

REBNY urges the Department of Finance to reconsider the proposed amendments to §36-01. There are sufficient safeguards in the current rules to address fraud and ensure compliance. The proposed changes would create confusion, administrative burdens, and legal disputes rather than clarity and consistency. Maintaining transparency and predictability is essential to preserving confidence in the ICAP program and supporting continued investment in New York City.

3. The Five Borough Jobs Campaign – 10/27/2025 – NYC Rules Webpage
   We write to express our strong support for the Relocation Assistance Credit per Employee (RACE) program as New York City advances this innovative program through the rulemaking process on behalf of the Five Borough Jobs Campaign. This is an important step toward ensuring New York City remains the best place in the country to build and grow a business.

   The Five Borough Jobs Campaign is a New York City-wide coalition of local economic development corporations, business improvement districts, and businesses fighting for a more affordable New York City by bringing new jobs to our communities and creating a more sustainable economic future for us all.

RACE represents a smart, targeted approach to economic development that will help draw companies from outside New York State to occupy significant commercial space and increase economic activity. By offering up to $5,000 in tax credits per employee annually for up to ten years with a focus on larger tenants, RACE is designed to generate meaningful job creation while catalyzing new private investment in our communities. Amid rising costs and lingering uncertainty in the post-pandemic office market, this is a much-needed program to revitalize NYC's core economic engine while keeping our state affordable and enticing to new businesses.

The Five Borough Jobs Campaign proudly fought for the passage of RACE because we believe policies like this – which help drive business from out of state to NYC – are essential to driving a more affordable, prosperous, and inclusive future for New York City. Our coalition brings together the voices of neighborhood business leaders from every borough, united by a shared goal of expanding access to good-paying jobs and revitalizing our commercial corridors. RACE is a critical step towards that goal.

We want to extend our sincere gratitude to everyone who made this innovative program a reality: Senator Andrew Gounardes and Assemblymember Grace Lee for their leadership in sponsoring this legislation, along with every legislative leader who supported it, and to both Mayor Eric Adams for introducing it at the city level and Governor Kathy Hochul for signing it into law. Their vision and commitment to New York's economic future deserve recognition and appreciation from anyone who cares about creating jobs and strengthening our city's competitiveness.

As RACE moves into implementation, we look forward to its positive impact being felt across all five boroughs. To maximize RACE's impact, the city needs to aggressively market the new program to potential businesses. The Five Borough Jobs Campaign stands ready to work alongside our public partners to cement its success and to continue advancing policies that keep our city open for business.

Thank you for your continued commitment to New York City's economic growth.

4. Marcus & Pollack LLP – 10/27/2025 – Email

Our firm represents owners of substantial commercial properties throughout New York City who have made major investments in new construction or renovation projects that were made economically viable through the incentive provided by the Industrial and Commercial Abatement Program (“ICAP”).

The availability of an as-of-right and broad-based benefit through ICAP and its predecessor ICIP has contributed to the continued growth and adaptation of commercial real estate to meet the changing needs of the many industries that depend on it. Programs with a narrow focus or that require discretionary approval have their place, but ICAP has a much greater impact then all of those combined.

However, an incentive program is only fully effective if there is certainty as to how the benefits will be determined. This requires a stable set of rules and administrative practices that are consistent with the program’s purpose.

The current proposal to modify the definition of completion of construction has the potential to undermine the certainty that is necessary to make ICAP an effective economic development too.

The existing rules allow a state-licensed design professional to describe the scope of the ICAP project and then certify its completion. The purpose of the program would best be effectuated if these rules remained unchanged.

We believe that the cases that may have given rise to the perceived need for the rule change involved relatively small projects where DOF staff believed that the project was not yet complete on the date claimed by the applicant. There are sufficient existing powers under the current rules for DOF to prevent abuses of this kind.

However, there are many larger, more complex projects where great harm can be done to the project's financial viability by an incorrect determination of the completion date by the assessing staff. This would particularly be the case were the DOF assessing staff to decide that a project was completed as of a taxable status date earlier than the one stated in the Notice of Completion but then set an assessed value that does not yet reflect the full value added by the project.

This possibility creates a severe risk for developers and undermines the needed incentive. The absence of effective administrative remedies for incorrect determinations by the DOF staff further exacerbates the potential harm.

Although we believe the amendment is unnecessary, in the interest of reducing its potential for harm, we have set forth below a proposed revision of the amendment that limits the change to cases where DOF believes that completion has not occurred or occurred on a date later than that asserted by the applicant.

Simultaneously with the submission of this comment we have submitted a petition for rulemaking relating to the cases where the creation of a condominium is needed to isolate uses that are disallowed in a property benefiting from ICAP. This is particularly needed given the growing list of excluded uses.

We respectfully urge the retention of the existing definition of completion, or in the alternative, the adoption of a modified amendment as proposed here, and the adoption of a rule relating to the use of condominium structures to preserve ICAP eligibility.