

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Adoption of Rules Governing Tax Exemption Under §421-a of the Real Property Tax Law of the State of New York

Notice is hereby given that pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development by Sections 1043 and 1802 of the City Charter and Section 421-a of the Real Property Tax Law, HPD is adopting amendments to Chapter 6 of Title 28 of the Rules of the City of New York (the "421-a Rules").

A public hearing was held on January 12, 2015.

New material is underlined.
[Deleted material is in brackets.]

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. The definition of "Applicable Deadline" contained in subdivision (a) of Section 6-09 of Chapter 6 of Title 28 of the Rules of the City of New York is amended to read as follows:

Applicable deadline. "Applicable Deadline" shall mean, unless otherwise exempted pursuant to the Act, (a) with respect to a multiple dwelling within the Geographic Exclusion Area, June 30, 2008, [and] (b) with respect to the limitations on benefits imposed pursuant to paragraph five of subdivision b of this section, December 27, 2007, (c) with respect to the limitations on benefits imposed pursuant to paragraph six of subdivision b of this section, June 30, 2008, except for multiple dwellings that purchase negotiable certificates generated by a Written Agreement with the Department entered into prior to December 28, 2006, and (d) with respect to the limitations on benefits imposed pursuant to paragraph six of subdivision b of this section, for multiple dwellings that purchase negotiable certificates generated by a Written Agreement with the Department entered into prior to December 28, 2006, June 30, 2009.

§ 2. Clause (iii) of subparagraph (2) of paragraph (b) of the definition of "commence" contained in subdivision (a) of section 6-09 of Chapter 6 of Title 28 of the Rules of the City of New York is amended to read as follows:

(iii) for any multiple dwelling that was not located in the GEA on or before the Applicable Deadline, but is located in the GEA after the Applicable Deadline, or for any multiple dwelling that would not have been subject to the exemption cap pursuant to the provisions of subdivision 9 of the Act on or before the Applicable Deadline, but would be subject to such exemption cap after the Applicable Deadline, if the architectural and structural plans approved by the Department of Buildings in conjunction with the issuance of the first such building or alteration permit for such multiple dwelling are thereafter amended to provide for more than a thirty-five percent (35%) increase (the "35% standard") in the floor area, as defined pursuant to the Zoning Resolution, 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] approved by 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] the amendments to this clause (iii) that were adopted on [insert effective date of CAPA rule] shall only apply to multiple dwellings whose applications for a Preliminary Certificate of Eligibility are approved by the Department on or after May 1, 2014; and

Statement of Basis and Purpose of Rule

Real Property Tax Law §421-a provides real property tax exemptions for eligible, new multiple dwellings. HPD determines eligibility for §421-a real property tax exemptions. HPD is amending Chapter 6 of Title 28 of the Rules of the City of New York (the "421-a Rules") to clarify a grandfathering provision that was added to the rules after major programmatic changes were enacted by State and local legislatures between December 2006 and February 2008.

Deadline for Exemption from Affordability Requirements and the AV Cap

- Under the 421-a Program, developers apply to HPD for certificates of eligibility to receive the tax exemption. A Preliminary Certificate of Eligibility entitles a project to a real property tax exemption for up to three years of construction, and a Final Certificate of Eligibility entitles a project to post-completion exemption benefits, which last between 10-25 years and are phased out over the benefit period.
- The §421-a Program includes a Geographic Exclusion Area, which is a residential zone in the City established by State and local laws. In the Geographic Exclusion Area, §421-a benefits are not as-of-right and projects must meet certain affordability requirements to receive a §421-a tax exemption ("Affordability Requirements").
- If projects in the Geographic Exclusion Area provide affordable units offsite instead of onsite, they may only receive §421-a benefits for a portion of the project's billable exempt assessed value ("AV Cap"), depending upon when the project commenced and completed construction and the date of the written agreement for the construction of offsite affordable units. If the AV Cap applies, a portion of the project's assessed value is fully taxable.
- The Geographic Exclusion Area was expanded by State and local laws between December 2006 and February 2008. However, these laws included an exemption for projects that commenced construction prior to July 1, 2008. Projects that were formerly outside the Geographic Exclusion Area and which commenced construction prior to July 1, 2008 would not have to meet the Affordability Requirements.
- The rules implementing these legislative changes defined commencement of construction as the later of:
 - (a) the date of issuance of a building or alteration permit based upon Department of Buildings (DOB)-approved architectural and structural plans, or,
 - (b) 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.
- The rules also addressed the effect of any future upzoning of properties within the new Geographic Exclusion Area. The rules provided that the commencement date for a

project located on property that was later upzoned would only be altered if the architectural and structural plans initially approved by DOB were amended to provide for more than a 35% increase in the multiple dwelling's floor area ("35% standard").

- HPD intended for the 35% standard to apply to (1) projects that were outside the Geographic Exclusion Area before the applicable deadline, but in the Geographic Exclusion Area after the applicable deadline; and (2) projects that would not have been subject to the AV Cap before the applicable deadline, but would have been subject to the AV Cap after the applicable deadline.
- The proposed rule amendments reflect HPD's original intention for the 35% standard: The 35% standard will only apply to projects that were affected by the change in the Geographic Exclusion Area in relation to the Affordability Requirements or the AV Cap.
- The proposed rule amendments also incorporate the definition of floor area contained in Zoning Resolution §12-10, which should govern the measured building expansion.

Commissioner Vicki Been
February 24, 2015