

## DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

### Notice of Adoption of Amendments to 421-a Rules

Notice is hereby given that pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development by Section 1802 of the City Charter and Section 421-a of the New York State Real Property Tax Law, and in accordance with the requirements of Section 1043 of the New York City Charter, the Department of Housing Preservation and Development is amending chapter 6 to Title 28 of the Rules of the City of New York regarding rents for 421-a affordable units in multiple dwellings that are subject to Housing Assistance Payments Contracts.

A notice of proposed rulemaking was published in the City Record on March 2, 2017. A public hearing was held on April 3, 2017.

### Statement of Basis and Purpose of Adopted Rule

New York State Real Property Tax Law §421-a provides real property tax exemptions for eligible, new multiple dwellings (“421-a Benefits”). HPD determines eligibility for §421-a real property tax exemptions.

#### **Income Limits**

New multiple dwellings that commenced construction on or after July 1, 2008 in areas of New York City designated as the Geographic Exclusion Area (“GEA”) are eligible for 421-a benefits if at least 20% of the onsite units are affordable to and occupied by either:

- (a) persons or families with incomes at or below 60% of Area Median Income (AMI) (“GEA 60% AMI units”), or
- (b) for multiple dwellings that receive substantial governmental assistance other than 421-a benefits, persons or families with incomes at or below 120% of AMI or, if such multiple dwellings contain more than 25 units, incomes that do not exceed an average of 90% of AMI (“GEA SGA units”).

#### **Rent Caps**

Furthermore, HPD’s 421-a rules cap rents for such units in new rental multiple dwellings at 30% of the applicable AMI, minus the amount of any applicable utility allowance. Since 421-a units must be registered as rent stabilized with the State Division of Housing and Community Renewal (SDHCR), the legal regulated rents also cannot exceed 30% of the applicable AMI.

#### **Amendments**

Currently, new multiple dwellings that have a project-based Section 8 contract are eligible for subsidies from the United States Department of Housing and Urban Development (“HUD”) that would cover the difference between the tenant’s payment (30% of such tenant’s income) and HUD Contract Rents. However, because the current 421-a rules require owners of such multiple dwellings to register rents at no higher than 30% of the applicable AMI they cannot take full advantage of this subsidy.

The rule amendments would, under very limited circumstances, allow such projects to register **120% of** HUD Contract Rents as the SDHCR legal regulated rent, which would be above the current cap of 30% of the applicable AMI. This would allow owners to collect the full subsidy available from HUD through the Housing Assistance Payments Contract (HAP Contract).

Specifically, the rule amendments:

- Authorize rents for 421-a affordable units in a multiple dwelling that is subject to a HAP Contract during the term of such contract to exceed 30% of the applicable AMI at initial occupancy and upon lease renewals if:
  - (a) such rents do not exceed 120% of Contract Rents established by HUD,
  - (b) the tenant portion of rent does not exceed the lesser of:
    - (1) 30% of the applicable AMI limit, OR
    - (2) the tenant's maximum payment under the HAP Contract, and
  - (c) at least 20% of affordable units that are first rented after the effective date of this rule amendment for either initial leasing or at re-rental, are rented to eligible homeless households referred by the City.
- Requires owners in such multiple dwellings to file annual affidavits reflecting compliance with the requirements for rents for such affordable units.
- Requires the restrictive declaration filed by such owners to provide for compliance with the rent provisions for the affordable units in such multiple dwellings.

HPD's authority for these rules is found in section 1802 of the New York City Charter and section 421-a of the Real Property Tax Law.

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. Subdivision (a) of section 6-09 of Chapter 6 of Title 28 of the Rules of the City of New York is amended by adding the following three new definitions in alphabetical order:

Contract Rents. “Contract Rents” shall mean the rent approved by the United States Department of Housing and Urban Development for dwelling units in a project with a HAP Contract.

HAP Contract. “HAP Contract” shall mean any project-based Section 8 housing assistance payments contract, governed by subpart E of part 983 of chapter IX of subtitle B of title 24 of the Code of Federal Regulations, covering units in the multiple dwelling, as may be amended or renewed.

Section 8. "Section 8" shall mean a federal rental subsidy pursuant to the Section 8 project-based rental assistance program, or any successor programs under the United States Housing Act of 1937, as amended.

§ 2. Subdivision (b) of section 6-09 of Chapter 6 of Title 28 of the Rules of the City of New York is amended by adding a new paragraph (2-a) to read as follows:

(2-a) (i) Notwithstanding anything to the contrary contained in this section, rents for GEA 60% AMI units or GEA SGA units in multiple dwellings that are subject to a HAP Contract may exceed 30% of the applicable income limit for such GEA 60% AMI units or GEA SGA units, at initial occupancy and upon renewal of leases, if

(A) such rents do not exceed one hundred twenty percent of the Contract Rents for such units,

(B) such rents, less any rent subsidies pursuant to Section 8 of the United States Housing Act of 1937, do not exceed the lesser of (1) the GEA 60% limit or the GEA SGA limit, as applicable, or (2) the tenant's maximum payment allowed under the HAP Contract, and

(C) at least twenty percent (20%) of the GEA 60% AMI units or GEA SGA units, as applicable, in such multiple dwellings that are first rented to tenants on or after the effective date of this rule amendment either for initial occupancy or for re-rental upon a vacancy, are rented through referrals from the City of homeless households who meet the applicable income requirements and other eligibility criteria permitted by the marketing guidelines of the Department.

(ii) Each year, upon annual registration of its rental dwelling units with the New York State Department of Housing and Community Renewal, the owner of a multiple dwelling subject to subparagraph (i) of this paragraph must file with the Department an affidavit in a form approved by the Department attesting that each lease of a GEA 60% AMI unit or GEA SGA unit, or renewal thereof, during the preceding year complied with the applicable rent requirements under subparagraph (i) of this paragraph at the time of execution of the lease, or renewal thereof, and providing other information regarding the leases for such units as the Department shall require in such affidavit.

(iii) Subparagraph (i) of this paragraph shall only apply during the term of such multiple dwelling's HAP Contract.

§ 3. Subparagraph (ii) of paragraph (3) of subdivision (b) 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:

(ii) when filing an application for a Preliminary Certificate of Eligibility pursuant to §6-05(b) 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, and (3) if applicable, comply with the provisions of paragraph 2-a of this subdivision.