

## DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

### **Notice of Adoption**

**Notice is hereby given that** the Department of Housing Preservation and Development (HPD) is adopting amendments to Chapter 51 of Title 28 of the Rules of the City of New York to revise certain requirements for buildings applying for tax benefits under New York State Real Property Tax Law (RPTL) Section 421-a(16).

A notice of proposed rulemaking was published in the City Record on September 30, 2021. A public hearing was held on November 9, 2021.

### **Statement of Basis and Purpose**

Section 421-a(16) of the Real Property Tax Law (RPTL) was enacted by the State Legislature in Chapter 20 of the Laws of 2015, as further amended by Chapter 59 of the Laws of 2017. RPTL Section 421-a(16) provides real property tax exemptions for eligible new multiple dwellings. In New York City, HPD determines eligibility for these exemptions and is responsible for ensuring that applicants for the exemption comply with eligibility requirements.

HPD adopted rule amendments that took effect on February 6, 2021 which permit an applicant to amend its Workbook until the project files its Notice of Intent to begin marketing the Affordable Housing Units. However, the February 2021 rule amendments prohibit changes to the Utility Allowance and Multifamily Tax Subsidy Project Income Limits for the New York, New York HUD FMR Area (hereafter, "Utility Allowance and Income Limits") after the first Workbook for such project is submitted, which is consistent with HPD's long-standing practice. HPD is now adopting new rule amendments that permit changes to the Utility Allowance and Income Limits after the first Workbook is submitted for two categories of projects in certain prescribed circumstances. This will assist with the financial underwriting for both of these categories of projects and thereby better enable them to maintain their Affordable Housing Units.

First, the new rule amendments allow such changes where a multibuilding project opts to initially file its Application after the Completion Date of the first Eligible Multiple Dwelling in such multibuilding project that meets all of the eligibility requirements for the tax benefit. Such project already would have filed and received approval for a Workbook including all of the buildings in the project, reflecting HPD's determination that the unit mix and distribution requirements will be met. Nonetheless, some of the Affordable Housing Units in such project may complete construction well after the Completion Date of the first Eligible Multiple Dwelling that triggered the filing of the Application; those units will be marketed at a later time and should not be bound by the Utility Allowance and Income Limits reflected in the Workbook at the time of its initial submission.

The new rule amendments therefore allow changes to the Utility Allowance and Income Limits for any Eligible Multiple Dwelling in such multibuilding project with a Completion Date that is three or more years after the Completion Date of the first Eligible Multiple Dwelling in the multibuilding project that triggered the Application filing. A Notice of Intent to begin marketing Affordable Housing Units in such multibuilding project will cover units that will be completed within three years from when such notice is filed with HPD, and any units to be completed later will require the filing of an additional Notice of Intent.

The new rule amendments also authorize changes to the Utility Allowance and Income Limits for tax credit projects after the Workbook is initially submitted. First, such changes are allowed with respect to the actual rents to be paid by tenants of the Affordable Housing Units until the publication of the advertisement for the marketing of such units. Second, such changes are allowed with respect to the legal rents for the Affordable Housing Units until the date of Permanent Conversion, provided that the changes do not alter the initial actual rents to be paid by tenants in the Affordable Housing Units that were published in the advertisement for the marketing of such units. In both instances, this flexibility will provide the best financing for such projects and maximize their financial health.

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. Section 51-01 of chapter 51 of title 28 of the Rules of the City of New York is amended by adding new definitions for “Actual Rents” and “Permanent Conversion” in alphabetical order to read as follows:

“Actual Rents” means the proposed initial monthly actual rents listed in the Workbook for the Affordable Housing Units.

“Permanent Conversion” has the same meaning as set forth in an Eligible Multiple Dwelling’s regulatory agreement with the tax credit monitoring agency.

§ 2. Subdivisions a-1 and b of section 51-02 of chapter 51 of title 28 of the Rules of the City of New York are amended to read as follows:

a-1. Where a Rental Project is composed of two or more Eligible Multiple Dwellings on the same zoning lot that are part of a single Application, an Application shall be filed no later than one year after the last Completion Date of such Eligible Multiple Dwellings; provided, however, that (1) an Application may be filed for the first Eligible Multiple Dwelling in such Application that meets all of the eligibility requirements for Affordable New York Housing Program Benefits after the Completion Date of such Eligible Multiple Dwelling and

such Application may be amended after the Completion Date of each other Eligible Multiple Dwelling in such Rental Project, (2) the Notice of Intent filed with the Application shall include the Affordable Housing Units in such first Eligible Multiple Dwelling as well as any Affordable Housing Units in each other Eligible Multiple Dwelling in such Rental Project with a Completion Date that will be less than three years after such first Eligible Multiple Dwelling's Completion Date, and any Eligible Multiple Dwellings in such Rental Project with a Completion Date that will be three years or more after such first Eligible Multiple Dwelling's Completion Date shall be required to file separate Notices of Intent and provide proof thereof at the time such Application is amended, and [(2)] (3) no Affordable New York Housing Program Benefits shall be granted to any Eligible Multiple Dwelling that is part of such Application unless all of the Eligible Multiple Dwellings in such Application that were previously granted such benefits remain in full compliance with all of the eligibility requirements for such benefits.

b. (1) The Agency may authorize changes to any information provided in the Workbook after the Agency has provided an initial approval thereof until the Notice of Intent has been filed[. Notwithstanding the foregoing,]; provided, however, that the Agency shall not authorize any changes to the Utility Allowance and Multifamily Tax Subsidy Project Income Limits for the New York, New York HUD FMR Area after the first Workbook is submitted.

(2) Notwithstanding paragraph (1) of this subdivision, where, in accordance with paragraph (1) of subdivision (a-1) of this section, an Application has been filed for a Rental Project composed of two or more Eligible Multiple Dwellings on the same zoning lot after the Completion Date of the first Eligible Multiple Dwelling that meets all of the eligibility requirements of Affordable New York Housing Program Benefits and before the Completion Date of all of the Eligible Multiple Dwellings in such Rental Project, the Agency may authorize changes to the Utility Allowance and Multifamily Tax Subsidy Project Income Limits for the New York, New York HUD FMR Area after the Workbook is submitted solely with respect to any Eligible Multiple Dwelling in such Rental Project whose Completion Date is three or more years after the Completion Date of the Eligible Multiple Dwelling for which the Application was first filed for such Rental Project in accordance with paragraph (1) of subdivision (a-1) of this section, and provided further, in accordance with paragraph (2) of subdivision (a-1) of this section, that such changes shall only be authorized until a Notice of Intent has been filed for any such Eligible Multiple Dwelling in such Rental Project whose Completion Date is three or more years after the Completion Date of the Eligible Multiple Dwelling for which such Application was first filed.

(3) Notwithstanding paragraph (1) of this subdivision and the definition of "Permitted Rent" in section 51-01 of this chapter, where an Eligible Multiple Dwelling is receiving tax exempt bond proceeds or tax credits, the Agency may authorize the following changes to the information in the Workbook concerning the Affordable Housing Units in such Eligible Multiple Dwelling after the Agency has provided an initial approval thereof:

(i) with respect to the Actual Rents listed in such Workbook, the Agency may authorize changes to the Utility Allowance and Multifamily Tax Subsidy Project Income Limits for the New York, New York HUD FMR Area until the marketing advertisement for

such Affordable Housing Units has been published through Housing Connect, provided that the tax credit monitoring agency for such Eligible Multiple Dwelling has approved such changes; and

(ii) with respect to the Legal Rents listed in such Workbook, the Agency may authorize changes to the Utility Allowance and Multifamily Tax Subsidy Project Income Limits for the New York, New York HUD FMR Area until Permanent Conversion, provided that such changes do not alter the Actual Rents for such Affordable Housing Units published in the marketing advertisement through Housing Connect.

§ 3. Subparagraph (ii) of paragraph (2) of subdivision d of section 51-02 of chapter 51 of title 28 of the Rules of the City of New York is amended to read as follows:

(ii) the Notice of Intent to begin marketing the Affordable Housing Units was filed with the Agency or, with respect to any Application filed in accordance with subdivision (a-1) of this section, one or more Notices of Intent were filed in accordance with paragraph (2) of subdivision (a-1) with such Application and any amendment thereto.

Commissioner Louise Carroll  
December 22, 2021