

## DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

### **Notice of Adoption of Rules Governing Benefits Pursuant to RPTL Section 421-a(16)**

**Notice is hereby given that pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development ("HPD")** by Section 1802 of the New York City Charter and Section 421-a(16)(q) of the Real Property Tax Law, and in accordance with Section 1043 of the City Charter, HPD is amending its rules governing tax exemption benefits pursuant to the Affordable New York Housing Program.

A notice of proposed rulemaking was published in the City Record on June 13, 2017. A public hearing was held on July 17, 2017.

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

New York State Real Property Tax Law §421-a provides real property tax exemptions for eligible, new multiple dwellings. Chapter 59 of the Laws of 2017 renamed this tax exemption benefit program the Affordable New York Housing Program. HPD determines eligibility for real property tax exemptions granted pursuant to New York State Real Property Tax Law §421-a. HPD is adopting a new Chapter 51 of Title 28 of the Rules of the City of New York (to be titled the "Affordable New York Housing Program Rules") to implement Subdivision 16 of Real Property Tax Law §421-a.

Subdivision 16 of Real Property Tax Law §421-a provides eligible rental projects with a 100% exemption from real property taxation for a maximum of three years of construction and either thirty-five or twenty-five years after completion. Eligible rental projects with three hundred or more dwelling units that meet the minimum average hourly wage requirements for construction workers are eligible for thirty-five years of a 100% exemption from real property taxation after completion. Other eligible rental projects can receive a 100% exemption from real property taxation for the first twenty-five years after completion and an exemption equal to the affordability percentage (ratio of affordable units to total dwelling units in an eligible site) for the final ten years of this tax exemption benefit. This tax exemption benefit is available to rental multiple dwellings containing six or more dwelling units that commenced construction after December 31, 2015, and on or before June 15, 2022, provided construction is completed on or before June 15, 2026.

There also is a more limited twenty-year tax exemption benefit available to cooperatives or condominiums outside Manhattan with no more than thirty-five units and in which all of the units have an average assessed value not to exceed \$65,000 upon the first assessment following completion (Affordability Option D). Both rental and homeownership buildings that commenced construction prior to December 31, 2015 and that did not receive 421-a benefits on or before June 15, 2015 according to their property tax bill may opt to comply with this program.

To receive the tax exemption benefit under the Affordable New York Housing Program, a rental project that is not required to meet the minimum average hourly wage requirements must elect one of the available affordability options provided in the statute: Affordability Option A, B, or C, each of which demands a requisite affordability percentage ranging from 25% to 30% of all of the dwelling units at prescribed levels of Area Median Income ("AMI"), ranging from 40% to 130% of AMI. Rental projects in designated enhanced affordability areas (portions of

Manhattan, Brooklyn and Queens) that are required to meet the construction workers minimum average hourly wage requirements or those that choose to do so must elect other affordability options in the statute – Affordability Option E, F, or G, each of which also demand a requisite affordability percentage ranging from 25% to 30% of all of the dwelling units at prescribed levels ranging from 40% to 130% AMI. Eligible rental projects receiving the enhanced thirty-five year benefits are also subject to an extended restriction period of forty years from completion whereas all other projects would only be subject to a restriction period of thirty-five years.

Applicants may not apply for this tax exemption benefit until after construction is completed, though the construction period benefit is retroactive. All Affordable Housing Units must be rent stabilized and Market Units below the vacancy decontrol threshold also must be rent stabilized. Building service employees must receive prevailing wages unless their building meets the prescribed exceptions to this requirement.

The adopted rules:

- Provide that no application for benefits can be filed before the Completion Date, provided, however, that
  - (1) the Application deadline for Rental Projects composed of two or more Eligible Multiple Dwellings on the same zoning lot is one year after the last Completion Date for such Eligible Multiple Dwellings; provided, however, that
    - (a) after completion of the first Eligible Multiple Dwelling to be included in such Application meeting all of the eligibility requirements for Affordable New York Housing Program Benefits, an applicant may file an Application and such Application may be amended after the Completion Date of each other Eligible Multiple Dwelling in such Rental Project, and
    - (b) 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; and
  - (2) Homeownership Projects cannot submit an application before (a) the first assessment following the Completion Date, and (b) there are executed purchase contracts for each unit in such Homeownership Project.
- Require the non-refundable filing fee to be submitted with the application for benefits.
- Establish the documentation applicants must submit with their applications for the Affordable New York Housing Program Benefits, including:
  - 1) Evidence satisfactory to HPD that the applicant has recorded a restrictive declaration that, with respect to Rental Projects, identifies each Affordable Housing Unit, including its AMI limit and number of bedrooms, and requiring that the rents of such units shall be set in accordance with these rules. This restrictive declaration for Rental Projects must also provide that all of the Affordable Housing Units must, for the Restriction Period or the Extended Restriction Period, as applicable, be rented to eligible tenants at or below the rent ceiling established by such rules and be subject to rent stabilization. The restrictive declaration for Homeownership Projects must provide the requirements for building size, post-completion assessment and primary residency.

- 2) For Rental Projects only, an executed Monitoring Contract with an approved marketing monitor.
  - 3) For Rental Projects only, a copy of a Notice of Intent to begin marketing the Affordable Housing Units through the New York City Housing Connect lottery system, as well as satisfactory evidence that such Notice of Intent was filed with HPD at least nine months prior to the Completion Date so that marketing can commence seven months prior to the Completion Date.
  - 4) A licensed architect or professional engineer's affidavit that, among other things, calculates Floor Area for purposes of determining the limitations on benefits for non-residential space.
- Establish the rent and income restrictions that apply to the Affordable Housing Units during the Restriction Period or the Extended Restriction Period, as applicable.
  - Require the tenants of Affordable Housing Units be offered either a one or two year rent stabilized lease, at their option.
  - Prohibit Affordable Housing Units from being operated as a hotel or rented to corporations, partnerships or other entities.
  - Establish that in any story containing one or more Affordable Housing Units not less than 30% of the dwelling units on such story must be Market Units, but authorizes HPD to waive this requirement if the Affordable Housing Units comprise more than 50% of the units in the Eligible Multiple Dwelling or where there is only one dwelling unit per story.
  - Establish that every building segment in an Eligible Multiple Dwelling in a Rental Project must contain one or more Affordable Housing Units.
  - Establish that all rental dwelling units, including Affordable Housing Units, must share common areas.

HPD's authority for these rules is found in sections 1043 and 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. The title of Chapter 6 of Title 28 of the Rules of the City of New York is amended to read as follows:

TAX EXEMPTION PURSUANT TO SECTION 421-A(1) THROUGH SECTION 421-A(15) OF THE REAL PROPERTY TAX LAW AND SECTIONS 11-245, 11-245.1 and 11.245.1-b<sup>1</sup> OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK.

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<sup>1</sup> New York City Administrative Code Section 11-245.1-b was effective from December 28, 2007, to December 28, 2010.

THIS CHAPTER COVERS APPLICATIONS FOR TAX EXEMPTION PURSUANT TO SECTION 421-A OF THE REAL PROPERTY TAX LAW BY MULTIPLE DWELLINGS THAT (1) COMMENCE CONSTRUCTION ON OR BEFORE JUNE 15, 2015, (2) COMMENCE CONSTRUCTION AFTER JUNE 15, 2015 AND ON OR BEFORE DECEMBER 31, 2015 THAT RECEIVE THEIR FIRST TEMPORARY OR PERMANENT CERTIFICATE OF OCCUPANCY COVERING ALL RESIDENTIAL AREAS ON OR BEFORE DECEMBER 31, 2019, AND (3) FOR EITHER (1) OR (2) ABOVE, DO NOT MAKE AN ELECTION PURSUANT TO REAL PROPERTY TAX LAW SECTION 421-A(16)(r).

FOR ALL OTHER APPLICATIONS FOR TAX EXEMPTION FOR NEW CONSTRUCTION OR ELIGIBLE CONVERSION PURSUANT TO SECTION 421-A OF THE REAL PROPERTY TAX LAW, SEE CHAPTER 51 OF THIS TITLE.

FOR APPLICATIONS FOR EXTENDED BENEFIT TAX EXEMPTION PURSUANT TO SECTION 421-A(17) OF THE REAL PROPERTY TAX LAW, SEE CHAPTER 49 OF THIS TITLE.

Section 2. Title 28 of the Rules of the City of New York is amended by adding a new Chapter 51 to read as follows:

Chapter 51  
AFFORDABLE NEW YORK HOUSING PROGRAM RULES AND  
ELIGIBILITY REQUIREMENTS PURSUANT TO REAL PROPERTY TAX LAW  
SECTION 421-A(16)

§ 51-01 Definitions. As used in this chapter, the following terms shall have the following meanings. Capitalized terms not specifically defined in this chapter shall have the meanings set forth in the Act.

Act. "Act" means subdivision sixteen of section four hundred-twenty-one-a of the real property tax law, as amended.

Aggregate Floor Area of Eligible Multiple Dwellings in the Eligible Site. "Aggregate Floor Area of Eligible Multiple Dwellings in the Eligible Site" means the sum of the Floor Area in the Eligible Multiple Dwellings in the Eligible Site.

Aggregate Floor Area of Ineligible Space in Eligible Multiple Dwellings in the Eligible Site. "Aggregate Floor Area of Ineligible Space in Eligible Multiple Dwellings in the Eligible Site" means the sum of the Floor Area of Ineligible Space in the Eligible Multiple Dwellings in the Eligible Site.

Area Median Income. "Area Median Income" means the area median income for the primary metropolitan statistical area as determined by the United States Department of Housing and Urban Development or its successors from time to time for a family of four, as adjusted for family size.

Building Segment. "Building Segment" shall have the meaning set forth in Section 12-10 of the Zoning Resolution.

Building Size Requirement. "Building Size Requirement" means the requirement that a multiple dwelling have a minimum of six units and maximum of thirty-five units.

Commercial Space. “Commercial Space” means any space within an Eligible Multiple Dwelling that is devoted to commercial, community facility, or other non-residential use.

Common Area. “Common Area” means any space within an Eligible Multiple Dwelling to which the residents of two or more rental dwelling units have access without paying a usage fee and that is not located in a rental dwelling unit, in a Commercial Space or in a Service Area.

Contract Rents. “Contract Rents” means the rent approved by the United States Department of Housing and Urban Development for Affordable Housing Units in an Eligible Multiple Dwelling with a HAP Contract.

Department of Finance. “Department of Finance” means the Department of Finance of the City of New York or any successor agency or department thereto.

HAP Contract. “HAP Contract” means 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 Affordable Housing Units in an Eligible Multiple Dwelling, as may be amended or renewed.

Hotel. “Hotel” means (i) any Class B multiple dwelling, as such term is defined in the Multiple Dwelling Law, (ii) any structure or part thereof containing living or sleeping accommodations which is used or intended to be used for transient occupancy, (iii) any apartment hotel or transient hotel as defined in the Zoning Resolution, or (iv) any structure or part thereof which is used to provide short term rentals or owned or leased by an entity engaged in the business of providing short term rentals. For purposes of this definition, a lease, sublease, license or any other form of rental agreement for a period of less than one year shall be deemed to be a short term rental. Notwithstanding the foregoing, Market Units owned or leased by a not-for-profit corporation for the purpose of providing governmentally funded emergency housing shall not be considered a hotel for purposes of this chapter.

Housing Connect. “Housing Connect” means the New York City Housing Connect lottery system or any successor program administered by the Agency to market vacant Affordable Housing Units.

Ineligible Space. “Ineligible Space” means commercial, community facility, and accessory use space, other than parking which is located not more than twenty-three feet above the curb level.

Legal Rent. “Legal Rent” means the maximum rent permitted under Rent Stabilization; provided, however, that no exemption or exclusion from any requirement of Rent Stabilization shall be applied to any Affordable Housing Unit during the Restriction Period or Extended Restriction Period, as applicable, including, but not limited to, any exemption or exclusion from the rent limits, renewal lease requirements, registration requirements, or other provisions of Rent Stabilization due to the vacancy of an Affordable Housing Unit where the rent exceeds a prescribed maximum amount, the fact that tenant income and/or unit rent exceed prescribed maximum amounts, the nature of the tenant, or any other factor.

Marketing Monitor. “Marketing Monitor” means an organization approved by the Agency and retained by the applicant for Affordable New York Housing Program Benefits to monitor compliance with the requirements, established by the Act and this chapter, relating to the leasing, subleasing, and occupancy of Affordable Housing Units, including, but not limited to, ensuring that each Affordable Housing Unit is leased at a rent not exceeding the Permitted

Rent and is occupied by a household approved by the Agency whose income at the time of initial occupancy of such Affordable Housing Unit is not more than the maximum percentage of the Area Median Income specified for such Affordable Housing Unit pursuant to the Act. Such Marketing Monitor may be an in-house department of the applicant, a subsidiary or affiliate of the applicant, or a third-party marketing, leasing, managing, or monitoring administering agent.

Monitoring Contract. "Monitoring Contract" means a contract between the applicant and the Marketing Monitor that is approved in form and substance by the Agency and that:

(i) requires the fee owner to provide monthly rent rolls for all Affordable Housing Units to the Marketing Monitor and to notify the Marketing Monitor no more than seven business days after an Affordable Housing Unit becomes vacant;

(ii) requires the Marketing Monitor to ensure that any Affordable Housing Unit which becomes vacant during the Restriction Period or Extended Restriction Period, as applicable, (a) is not held off the market for a period that is longer than is reasonably necessary to perform needed repairs, (b) is promptly marketed pursuant to such requirements as are established by the Agency, (c) is rented to a household that meets the applicable income and occupancy requirements for such Affordable Housing Unit and that has been approved by the Agency prior to execution of a lease, (d) is not offered to or rented by a corporation, partnership or other entity, and (e) is offered for occupancy pursuant to a rent stabilized lease for a term of one or two years, at the option of the tenant; and

(iii) requires the Marketing Monitor to submit quarterly rent rolls for all Affordable Housing Units in the Eligible Multiple Dwelling to the Agency.

Multiple Dwelling Law. "Multiple Dwelling Law" means the Multiple Dwelling Law of the State of New York.

Notice of Intent. "Notice of Intent" means a notice of intent to begin marketing the Affordable Housing Units through Housing Connect seven months prior to the Completion Date and that, in addition to any other documentation required in the Notice of Intent, includes as exhibits: (i) the affordability option elected pursuant to the Act, (ii) the unit mix proposed to satisfy subparagraph (ii) of paragraph (g) of the Act or, in accordance with such subparagraph, the claimed exemption from such unit mix requirements, and (iii) the unit distribution proposed to satisfy subparagraph (i) of paragraph (g) of the Act and Section 51-03 of this chapter.

Offering Plan. "Offering Plan" means a plan governing the offering and sale of condominium or cooperative units in a Homeownership Project that (i) complies with Article 23-A of the General Business Law ("Martin Act"), the Act and this chapter, and (ii) discloses the Building Size Requirement, Primary Residence Requirement and Post-Completion Assessment Cap Requirement.

Permitted Rent. "Permitted Rent" means a rent for any lease or lease renewal at any time during the Restriction Period or Extended Restriction Period, as applicable, that does not exceed the lesser of (i) the Legal Rent, or (ii) either (1) for Affordable Housing Units in an Eligible Multiple Dwelling that is not subject to a HAP Contract, thirty percent of the applicable percentage of Area Median Income, minus the amount of any applicable Utility Allowance, provided, however, that solely for purposes of establishing the initial rent for each Affordable Housing Unit, the Area Median Income in effect as of the earlier to occur of the (A) date of any regulatory agreement between the fee owner and a federal, state or local agency or instrumentality, or (B) date of filing of the Notice of Intent, shall be utilized, or (2) for Affordable

Housing Units in an Eligible Multiple Dwelling that is subject to a HAP Contract and only during the term of such HAP Contract, 120% of the Contract Rents for such Affordable Housing Units, provided, however, that such rents, less any Section 8 rent subsidies, do not exceed the lesser of (A) thirty percent of the applicable percentage of Area Median Income minus the applicable Utility Allowance or (B) the tenant's maximum payment under the HAP Contract.

Post-Completion Assessment Cap Requirement. "Post-Completion Assessment Cap Requirement" means the requirement that one hundred percent of the units in a Homeownership Project must have an average assessed value at or below \$65,000 upon the first assessment following the Completion Date.

Primary Residence Requirement. "Primary Residence Requirement" means the requirement that the owner of a dwelling unit in a Homeownership Project must for no less than five years from acquisition of such unit occupy it in accordance with the criteria set forth for rental dwelling units in Section 2520.6(u) of the Rent Stabilization Code. Notwithstanding the foregoing, the minimum five year period of occupancy necessary to establish whether such unit is an owner's primary residence shall not be deemed to be interrupted by any period during which such owner temporarily relocates because he or she: (i) is engaged in military duty; (ii) is enrolled as a full-time student; (iii) is not in residence at the apartment pursuant to a court order not involving any terms or provisions of the lease/occupancy agreement, and not involving any grounds specified in the Real Property Actions and Proceedings Law; (iv) is engaged in employment requiring temporary relocation from such unit; (v) is hospitalized temporarily for medical treatment; or (vi) has other reasonable grounds that shall be determined by the Agency.

Purchase Contract. "Purchase Contract" means a contract to purchase a dwelling unit in a Homeownership Project that contains the Building Size Requirement, the Primary Residence Requirement and the Post-Completion Assessment Cap Requirement.

Section 8. "Section 8" means a federal rent 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.

Service Area. "Service Area" means any space within an Eligible Multiple Dwelling that is utilized by the owner or manager of such Eligible Multiple Dwelling and their respective employees for purposes of building administration and to which residential tenants do not normally have access.

Story. "Story" shall have the meaning set forth in Section 12-10 of the Zoning Resolution.

Utility Allowance. "Utility Allowance" means an allowance established by the Agency for the payment of utilities where the tenant of an Affordable Housing Unit is required to pay all or a portion of the utility costs with respect to such unit in addition to any payments of rent.

Zoning Resolution. "Zoning Resolution" means the Zoning Resolution of the City of New York, as amended.

§ 51-02 Application Procedure and Documentation.

a. No Application shall be filed with respect to any Rental Project before the Completion Date of such Rental Project.

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, and (2) 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..

a-2. No Application shall be filed with respect to any Homeownership Project before (1) the first assessment following the Completion Date, and (2) there are executed Purchase Contracts for each unit in such Homeownership Project.

b. No affordability election can be changed after the filing of a Notice of Intent and no unit mix or unit distribution proposed in such Notice of Intent can be changed after it has been approved by the Agency.

c. The Application must be submitted with the non-refundable filing fee established by the Act.

d. Each Application shall include:

(1) Evidence satisfactory to the Agency that a restrictive declaration in a form satisfactory to the Agency:

(A) has been executed by the fee owner and any ground lessee of the Eligible Multiple Dwelling;

(B) has been recorded against the real property containing the Eligible Multiple Dwelling;

(C) with respect to a Rental Project, (i) identifies each Affordable Housing Unit in the Eligible Multiple Dwelling, the number of bedrooms in such Affordable Housing Unit, whether such Affordable Housing Unit is an Affordable Housing Forty Percent Unit, Affordable Housing Sixty Percent Unit, Affordable Housing Seventy Percent Unit, Affordable Housing One Hundred Twenty Percent Unit, or Affordable Housing One Hundred Thirty Percent Unit, and provides that the rents to be charged to the tenants of each such Affordable Housing Unit shall be established pursuant to this chapter, and (ii) provides that the Affordable Housing Units in such Eligible Multiple Dwelling shall for the Restriction Period or the Extended Restriction Period, as applicable, be (a) rented to eligible tenants at or below the Permitted Rent, and (b) subject to Rent Stabilization, allowing tenants holding a lease and in occupancy at the expiration of such Restriction Period or Extended Restriction Period, as applicable, to continue to be protected by Rent Stabilization for the duration of their occupancy;

(D) with respect to a Homeownership Project, provides the Building Size Requirement, the Post-Completion Assessment Cap Requirement and the Primary Residence Requirement; and



(E) provides that such Eligible Multiple Dwelling must comply with all of the requirements for Affordable New York Housing Program Benefits during the Restriction Period or the Extended Restriction Period, as applicable.

- (2) Unless the Agency waives this requirement in accordance with Section 51-06(c) of this chapter, satisfactory evidence that the Notice of Intent to begin marketing the Affordable Housing Units was filed with the Agency no later than nine months prior to the Completion Date.
- (3) Proof that prior to the Completion Date, the Agency determined that (i) an Eligible Site will meet the unit mix requirements for Affordable Housing Units established pursuant to subparagraph (ii) of paragraph (g) of the Act or, in accordance with such subparagraph, is exempt from such unit mix requirements, and (ii) an Eligible Multiple Dwelling will meet the distribution requirements for rental dwelling units established pursuant to subparagraph (i) of paragraph (g) of the Act and Section 51-03 of this chapter.
- (4) An executed Monitoring Contract for a Rental Project.
- (5) An affidavit from a registered architect or professional engineer licensed to practice and in good standing with the New York State Department of Education that, among other things, calculates the Aggregate Floor Area of the Eligible Multiple Dwellings in the Eligible Site and the Aggregate Floor Area of Ineligible Space in the Eligible Multiple Dwellings in the Eligible Site.
- (6) With respect to a Homeownership Project, each executed Purchase Contract and the Offering Plan.

#### § 51-03 Distribution Requirements.

a. If a Story contains one or more Affordable Housing Units, not less than thirty percent of the dwelling units on such Story shall be Market Units, provided, however, that the Agency may waive such requirement where either (1) the Affordable Housing Units comprise more than fifty percent of the units in an Eligible Multiple Dwelling, or (2) there is only one dwelling unit on a Story in an Eligible Multiple Dwelling;

b. Every Building Segment in an Eligible Multiple Dwelling in a Rental Project must contain one or more Affordable Housing Units; and

c. All Common Areas in an Eligible Multiple Dwelling in a Rental Project shall be open and accessible to the residents of all of the rental dwelling units in such Eligible Multiple Dwelling, including the residents of any Affordable Housing Units.

#### § 51-04 Rent and Income. During the Restriction Period:

a. The rent for an Affordable Housing Unit shall not exceed the Permitted Rent;

b. Each Affordable Housing Unit shall be occupied by a household whose income at the time that such household initially occupies such Affordable Housing Unit is not more than the

maximum percentage of the Area Median Income specified for such Affordable Housing Unit pursuant to the Act;

c. An Affordable Housing Unit shall be leased, both upon initial rent-up and upon any subsequent vacancy, pursuant to such marketing guidelines as may be published by the Agency;

d. No Affordable Housing Unit shall be held off the market for a period that is longer than is reasonably necessary;

e. No Affordable Housing Unit shall be offered to a corporation, partnership or other entity;

f. No lease for an Affordable Housing Unit can be executed until the Agency verifies the eligibility of the proposed tenants; and

g. Each tenant of an Affordable Housing Unit shall be offered a rent stabilized lease for a term of either one or two years, at such tenant's option.

§ 51-05 Hotel Prohibition. No Eligible Multiple Dwelling that is operated as a Hotel shall be eligible for Affordable New York Housing Program Benefits.

§ 51-06 Election Eligibility. For purposes of paragraph (r) of the Act:

a. Whether a Rental Project or Homeownership Project has received benefits pursuant to section four hundred twenty-one-a of the real property tax law shall be determined by whether a property tax bill quarterly statement issued for such Rental Project or Homeownership Project by the Department of Finance indicates such benefits.

b. Except with respect to dwelling units that will be rented through referrals from the City for homeless households who meet the applicable income requirements and other eligibility criteria permitted by the Agency's marketing guidelines, any Rental Project or Homeownership Project that previously applied to receive benefits pursuant to section four hundred twenty-one-a of the real property tax law and thereafter elects to receive benefits pursuant to paragraph (r) of the Act, shall not be allowed to change the affordability designation of any dwelling units for which the Agency commenced processing households for occupancy on or before the date upon which such Rental Project or Homeownership Project makes such election.

c. The Agency may waive the rule regarding the deadline by which to file a Notice of Intent if such waiver is appropriate based upon the Completion Date of any Rental Project that elects to receive Affordable New York Housing Program Benefits.

Commissioner Maria Torres-Springer  
September 26, 2017