

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Housing Preservation and Development (HPD) is proposing amendments to chapter 50 of title 28 of the Rules of the City of New York regarding the affordability exception to the prevailing wage requirement for building service workers in projects receiving Real Property Tax Law Section 421-a benefits.

When and where is the Hearing? HPD will hold a public hearing on the proposed rules. The public hearing will take place from 10:00 AM to 11:30 AM on Tuesday, January 15, 2019. The hearing will be in HPD's offices at 100 Gold Street, 9th Floor, Room 9P-10, New York, New York 10038.

The location has the following accessibility options available: The building and hearing room are wheelchair accessible.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to HPD through the NYC rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to rules@hpd.nyc.gov.
- **Mail.** You can mail written comments to Meilan Chiu, Director of Operations and Policy Analysis, 100 Gold Street, Room 9Z-2, New York, New York 10038.
- **Fax.** You can fax written comments to HPD, 212 863-7156, ATTN: Meilan Chiu.
- **Hearing.** You can speak at the public hearing. Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 863-6494. You can also sign up in the hearing room before the hearing begins on January 15, 2019. You can speak for up to three minutes.

Is there a deadline to submit written comments? All written comments must be submitted before the close of business on January 15, 2019.

What if I need assistance to participate in the hearing? If you need a sign language interpreter or other reasonable accommodation of a disability at the hearing, you must tell us no later than January 2, 2019 either by email at accessibility@hpd.nyc.gov, by telephone at 212-863-6494, or by mail at the address given above.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and an audiotape of oral comments concerning the proposed rules will be available to the public at 421-a Customer Service Conference Room No. 8-CO9, 8th Floor, 100 Gold Street, between 10:00 am – 4:00 pm on weekdays.

What authorizes HPD to make this rule? Sections 1043 and 1802 of the City Charter and Section 421-a of the New York State Real Property Tax Law authorize HPD to make these proposed rules. The proposed rules were included in HPD's regulatory agenda.

Where can I find the HPD rules? The HPD rules are in title 28 of the Rules of the City of New York.

What laws govern the rulemaking process? HPD must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose

Section 421-a of the Real Property Tax Law (RPTL) 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, including the requirement that the applicant's building service employees receive a prevailing wage.

Chapter 20 of the Laws of 2015 amended the 421-a Statute to add enforcement oversight over the building service employees' prevailing wage requirements by designating enforcement authority to the fiscal officer, which, in New York City, is the Comptroller. Chapter 20 of the Laws of 2015 also articulated the fiscal officer's enforcement powers, which include conducting investigations to determine the prevailing wage for building service employees, holding related hearings, and issuing rules necessary for the proper execution of the duties, responsibilities, and powers conferred upon the fiscal officer by Chapter 20.

Chapter 20 additionally adopted a new extended benefit, provided in subdivision 17 of RPTL 421-a, that is available to multiple dwellings that commenced construction prior to July 1, 2008, and that had been granted either 25 or 20 years of Section 421-a benefits prior to June 15, 2015, for making at least 20% of their dwelling units affordable to persons or families of low income. The Comptroller is also the designated enforcement authority over the building service employees' prevailing wage requirements for buildings receiving the Section 421-a (17) extended benefits.

Chapter 59 of the Laws of 2017 amended RPTL Section 421-a(16) and provided for Affordable New York Housing Program tax exemption benefits for buildings that commenced construction after December 31, 2015, and on or before June 15, 2022, and who completed construction no later than June 15, 2026. Chapter 59 of the Laws of 2017 requires compliance with the prevailing wage requirements for building service workers and also provides enforcement authority to the Comptroller.

Certain buildings are exempt from the prevailing wage requirement for building service workers based upon a designated percentage of affordable units at a prescribed Area Median Income and, in the situation of a rental building, the maintenance of the affordability of such units for the duration of the respective restriction period ("Affordability Exception"). By statutory fiat, HPD must decide whether or not a building is eligible for the Affordability Exception.

HPD's proposed rule amendments clarify that any decision that HPD renders regarding the Affordability Exception is not a final determination until HPD either (a) issues an Order pursuant to this Chapter 50, or (b) issues an Applicant a letter indicating that such Applicant is ineligible

for the real property tax exemption associated with such prevailing wage for building service workers requirement. The proposed rule amendments also make some technical corrections to Chapter 50.

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 following definition of “Benefits Ineligibility Letter” is added in alphabetical order to Section 50-01 of chapter 50 of title 28 of the Rules of the City of New York, and the definitions of “Final Certificate of Eligibility”, “Order” and “Prevailing Wage Requirement” contained therein are amended, to read as follows:

Benefits Ineligibility Letter. “Benefits Ineligibility Letter” shall mean the letter that the Agency issues to the Applicant indicating that such Applicant is ineligible for any real property tax exemption benefits pursuant to the Act, the new 421-a Act, or the Extended Affordability Act, as applicable.

Final Certificate of Eligibility. "Final Certificate of Eligibility" shall mean either (a) the document issued by the Agency in accordance with chapter six of this title that provides for Post-Construction Benefits; [or] (b) the document issued by the Agency in accordance with chapter 49 of this title which provides the Extended Benefit; or (c) the document issued by the Agency in accordance with chapter 51 of this title that provides for Affordable New York Housing Program Benefits.

Order. "Order" shall mean an order issued by the Agency pursuant to paragraph [(f)] (d) of the Act [or], subparagraph (iv) of the New 421-a Act or subparagraph (iv) of the Extended Affordability Act, respectively, that either (a) adopts, in whole or in part, or rejects a Report and Recommendation, or (b) approves any Stipulation of Settlement between the Comptroller and the Applicant.

Prevailing Wage Requirement. “Prevailing Wage Requirement” shall mean the requirements under the Act [or], the New 421-a Act or the Extended Affordability Act, respectively, and this chapter that are applicable, with respect to the Act or the New 421-a Act, to any Multiple Dwelling whose construction began on or after December 28, 2007, and with respect to the Extended Affordability Act, to any Extended Affordability Property, except as otherwise provided in paragraph (e) of the Act [or], subparagraph (v) of the New 421-a Act, or subparagraph (v) of the Extended Affordability Act, as applicable, that all Building Service Employees receive the Prevailing Wage for the duration of the applicable Benefits period.

§ 2. Subdivision (c) of Section 50-04 of title 28 of the Rules of the City of New York is amended to read as follows:

c. An Owner shall be jointly liable for any violation of the Act [or], the New 421-a Act or the Extended Affordability Act, as applicable, at the property receiving Benefits without regard to whether the Building Service Employees were directly employed by such Owner.

§ 3. Section 50-06 of chapter 50 of title 28 of the Rules of the City of New York is amended to read as follows:

§ 50-06 Agency Determination of Prevailing Wage Exemption. 1. An Applicant who requests a determination of exemption from the Prevailing Wage Requirement pursuant to the Act, the New 421-a Act, or the Extended Affordability Act, as applicable, must submit all of the documentation necessary to prove that:

(a) with respect to a multiple dwelling that is not receiving benefits pursuant to subdivisions sixteen or seventeen of Real Property Tax Law § 421-a, at least fifty percent of the dwelling units in such Applicant's building are 125% Units, including, but not limited to, (i) with respect to a multiple dwelling owned and operated as a rental, the initial rents for such 125% Units, the income certifications for the initial occupants of such 125% Units, and proof that the building is required to maintain such 125% Units during the entire period of Post-Construction Benefits, and, (ii) with respect to 125% Units in a multiple dwelling owned and operated as a condominium or cooperative development by individual condominium unit owners or shareholders, the initial unit sale prices and the income certifications for all of the initial purchasers of such 125% Units;

(b) with respect to an Eligible Multiple Dwelling that is receiving benefits pursuant to subdivision sixteen of Real Property Tax Law § 421-a, all of the dwelling units in such Eligible Multiple Dwelling are Affordable Housing Units, and at least fifty percent of the Affordable Housing Units, upon initial rental and upon each subsequent rental after a vacancy during the Restriction Period or the Extended Restriction Period, are 125% Units, including, but not limited to, the initial rents for such Affordable Housing Units and 125% Units, the income certifications for the initial occupants of such Affordable Housing Units and 125% Units, and proof that the Eligible Multiple Dwelling is required to maintain such Affordable Housing Units and 125% Units during the entire Restriction Period or Extended Restriction Period, as applicable; or

(c) with respect to an Extended Affordability Property that is receiving benefits pursuant to subdivision seventeen of Real Property Tax Law § 421-a, all of the dwelling units in such Extended Affordability Property are Affordable Housing Units, and at least fifty percent of the Affordable Housing Units, upon initial rental and upon each subsequent rental after a vacancy during the Extended Affordability Period, are 125% Units, including, but not limited to, the initial rents for such Affordable Housing Units and 125% Units, the income certifications for the initial occupants of such Affordable Housing Units and 125% Units, and proof that the Extended Affordability Property is required to maintain such Affordable Housing Units and 125% Units during the entire Extended Affordability Period.

2. An Agency determination of ineligibility for an exemption from the Prevailing Wage Requirement is deemed a final determination when the Agency issues either an Order or a Benefits Ineligibility Letter, after which the only review available to the Applicant is pursuant to Article 78 of the Civil Practice Law and Rules.

Commissioner Maria Torres-Springer
December 3, 2019

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Prevailing Wage Requirement for Projects Receiving 421-a Benefits

REFERENCE NUMBER: 2018 RG 093

RULEMAKING AGENCY: Department of Housing Preservation and Development

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
ACTING CORPORATION COUNSEL

Date: November 12, 2018

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Prevailing Wage Requirement for Projects Receiving 421-a Benefits

REFERENCE NUMBER: HPD - 58

RULEMAKING AGENCY: Department of Housing Preservation and Development

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Erin Kuller
Mayor's Office of Operations

November 16, 2018
Date