

## 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) proposes amendments to chapter 50 to title 28 of the Rules of the City of New York to implement changes to the prevailing wage requirements for building service employees in buildings receiving tax benefits under New York State Real Property Tax Law section 421-a (the "421-a Statute") enacted by Chapter 20 of the Laws of 2015 and Chapter 59 of the Laws of 2017. HPD's proposed rule amendments extend chapter 50 to include the Comptroller's enforcement authority under subdivision 16 of the 421-a Statute, and adds requirements for the Comptroller's enforcement of minimum average hourly wage requirements for construction workers for certain projects.

**When and where is the Hearing?** HPD will hold a public hearing on the proposed rules. The public hearing will take place from 11:30 AM to 1:00 PM on Monday, July 17, 2017. The hearing will be in HPD's offices at 100 Gold Street, 9th Floor, Room 9-V6, 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](mailto:rules@hpd.nyc.gov).
- **Mail.** You can mail written comments to Elaine R. Toribio, TIP Director, 100 Gold Street, Room 8-D09, New York, New York 10038.
- **Fax.** You can fax written comments to HPD, 212 863-5899, ATTN: Elaine R. Toribio.
- **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) 863-7698. You can also sign up in the hearing room before the hearing begins on July 17, 2017. 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 July 17, 2017.

**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 July 3, 2017 either by email at [accessibility@hpd.nyc.gov](mailto:accessibility@hpd.nyc.gov), by telephone at 212-863-7698, 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, 8<sup>th</sup> 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 rules 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 of Proposed Rule**

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 the exemption's 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 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 provides enforcement authority to the New York City Comptroller. RPTL Section 421-a(16) provides that eligible multiple dwellings containing less than thirty dwelling units are exempt from the requirement. For an eligible multiple dwelling receiving benefits pursuant to RPTL Section 421-a(16) to meet the affordability exemption from the building service workers prevailing wage requirements, all of the dwelling units must be affordable housing units and at least 50%, upon initial rental and subsequent rentals following a vacancy, must be affordable to and restricted to occupancy by individuals or families at or below 125% of Area Median Income.

Chapter 59 of the Laws of 2017 also provided that in addition to the other requirements provided in subdivision 16 of the 421-a Statute, rental projects with 300 or more dwelling units that are located in portions of Manhattan, Queens and Brooklyn must pay construction workers a

minimum average hourly wage. The Comptroller also was given enforcement authority with respect to these minimum average hourly wage requirements for construction workers.

Chapter 50 of Title 28 of the Rules of the City of New York, which took effect on October 23, 2016, addresses the prevailing wage requirement in buildings receiving this tax exemption benefit that commenced construction on or before December 31, 2015.

HPD's proposed rule amendments extend Chapter 50 of the Rules of the City of New York to include rules relating to the Comptroller's enforcement authority under RPTL Section 421-a(16)(h). The proposed rule amendments also add the requirements for the Comptroller's enforcement of the minimum average hourly wage requirement for construction workers in the relevant projects. The Comptroller's hearing practice and procedure are covered by existing rules codified at Chapter 2 of Title 44 of the Rules of the City of New York. HPD's authority for these rules is found in sections 1043 and 1802 of the New York City Charter and RPTL Section 421-a.

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 50 of Title 28 of the Rules of the City of New York is amended to read as follows:**

#### Chapter 50

Building Service Employees Prevailing Wage Requirements and Construction Workers  
Minimum Average Hourly Wage Requirements in Certain Buildings Receiving Benefits  
Pursuant to Real Property Tax Law Section 421-a

**Section 2. The first paragraph of Section 50-01 of Chapter 50 of Title 28 of the Rules of the City of New York and three definitions therein are amended, and new definitions of "Minimum Average Hourly Wage Act" and "New 421-a Act" are added in alphabetical order, to read as follows:**

Definitions: As used in this chapter, the following terms shall have the following meanings. Capitalized terms that are not specifically defined in this chapter shall have the meanings set forth in the Act or in the Minimum Average Hourly Wage Act, as relevant.

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 51 of this title that provides for Affordable New York Housing Program Benefits.

Minimum Average Hourly Wage Act. "Minimum Average Hourly Wage Act" shall mean subdivision 16(c) of Section 421-a of the Real Property Tax Law.

New 421-a Act. "New 421-a Act" shall mean paragraph (h) of subdivision 16 of Section 421-a of the Real Property Tax Law.

Order. "Order" shall mean an order issued by the Agency pursuant to [subdivision] paragraph (f) of the Act or subparagraph (iv) of the New 421-a 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, respectively, and this chapter that are applicable to any Multiple Dwelling whose construction began on or after December 28, 2007, except as otherwise provided in paragraph (e) of the Act or subparagraph (ii) of the New 421-a Act, as applicable, that all Building Service Employees receive the Prevailing Wage for the duration of the applicable Benefits period.

**Section 3. Subdivision (c) of Section 50-04 of Chapter 50 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, as applicable, at the property receiving Benefits without regard to whether the Building Service Employees were directly employed by such Owner.

**Section 4. 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 [Certification] Determination of Prevailing Wage Exemption. An Applicant who requests a [certification] determination of exemption from the Prevailing Wage Requirement pursuant to [paragraph (e) of] the Act or the New 421-a 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 subdivision sixteen of Real Property Tax Law § 421-a, that at least fifty percent of the dwelling units in such Applicant's building are 125% Units, including, but not limited to, [(a)] (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, [(b)] (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, or (b) with respect to an Eligible Multiple Dwelling that is receiving benefits pursuant to subdivision sixteen of Real Property Tax Law § 421-a, (i) all of the dwelling units in such Eligible Multiple Dwelling are Affordable Housing Units, (ii) 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, and (iii) with respect to both (i) and (ii) of this subdivision (b), 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.

**Section 5. Chapter 50 of Title 28 of the Rules of the City of New York is amended by adding a new Section 50-07 and a new Section 50-08 to read, respectively, as follows:**

§ 50-07. Contractor Certified Payroll Report. Eligible Multiple Dwellings that are required to submit a Contractor Certified Payroll Report pursuant to paragraph (vi) of the Minimum Average

Hourly Wage Act shall use the form provided on the Comptroller's website at [www.comptroller.nyc.gov/prevailingwage](http://www.comptroller.nyc.gov/prevailingwage), and shall identify all Construction Workers employed by the contractor or subcontractor and set forth the dates for all hours worked, the hourly wage and benefit rates, and the weekly gross and net pay amounts for each such Construction Worker. The Contractor Certified Payroll Report shall be accompanied by employee daily sign-in logs in the form provided on the Comptroller's website at [www.comptroller.nyc.gov/prevailingwage](http://www.comptroller.nyc.gov/prevailingwage), and shall identify all Construction Workers employed by the contractor or subcontractor, set forth the daily start and end times of work for each such Construction Worker, and include each such Construction Worker's original signature.

§ 50-08. Failure to Submit Required Reports, Failure to Submit Accurate Reports or Failure to Pay Minimum Average Hourly Wages in Accordance with the Minimum Average Hourly Wage Act.

a. The Comptroller shall only approve a plan submitted by the Third Party Fund Administrator pursuant to paragraph (vii) of the Minimum Average Hourly Wage Act if distribution of the deficiency is limited to all Construction Workers whose wages equal less than the minimum average hourly wage applicable to such Eligible Site.

b. In the event that the Third Party Fund Administrator cannot distribute funds to any Construction Workers within one year of receiving the Comptroller's approval of such Third Party Fund Administrator's plan, the Third Party Fund Administrator shall pay the unclaimed funds to the Comptroller and the Comptroller shall hold such funds for such Construction Workers until they claim their awards.

c. In the event that any contractor or subcontractor does not submit the Contractor Certified Payroll Report, or if it appears to the Comptroller that any Contractor Certified Payroll Report is inaccurate, the Comptroller shall conduct an investigation to determine: (i) the actual wages paid to all Construction Workers employed by the contractor or subcontractor that did not submit the Contractor Certified Payroll Report or that submitted an inaccurate Contractor Certified Payroll Report, and, if relevant, (ii) the difference between the actual wages paid and the wages set forth in the inaccurate Contractor Certified Payroll Report.

d. The Comptroller shall provide the Independent Monitor with a statement of actual wages paid to all Construction Workers employed by a contractor or subcontractor that did not submit the Contractor Certified Payroll Report, and the Independent Monitor shall use such statement to complete the Project-Wide Certified Payroll Report.

e. A contractor or subcontractor who submits an inaccurate Contractor Certified Payroll Report shall be liable for the difference between the wages set forth in such Contractor Certified Payroll Report and the actual wages paid, with interest at the rate of interest then in effect as prescribed by the superintendent of financial services pursuant to Section 14-a of the Banking Law per annum from the date of the underpayment to the date of the payment of such difference.

Commissioner Maria Torres-Springer  
June 13, 2017

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 Requirements for  
Certain Building Service Workers

**REFERENCE NUMBER:** 2017 RG 038

**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: May 19, 2017

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

CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)

**RULE TITLE: Amendment of Prevailing Wage Requirements for Certain Building Service Workers**

**REFERENCE NUMBER: HPD-39**

**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/ Jennifer J. Baek  
Mayor's Office of Operations

May 19, 2017  
Date

**Batterman, Nancy (HPD)**

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**From:** CROUpdates@dcas.nyc.gov  
**Sent:** Tuesday, June 06, 2017 4:35 PM  
**To:** Batterman, Nancy (HPD)  
**Subject:** Your Notice Confirmation Number 20170607104 has been approved.

**To:** Housing Preservation and Development

**Attention:** Nancy Batterman

**First Date of Publication:** 06/13/2017

The Notice Confirmation Number 20170607104 has been approved.

**Approved by:** Eli Blachman

Please direct any questions to the City Record office by phone 212-386-0055 or by email

[crolupdates@dcas.nyc.gov](mailto:crolupdates@dcas.nyc.gov).



**City Record Office Tracking Number: n/a****Confirmation Number: 20170607104**

1. **Date of First Publication:** *Tuesday, June 13, 2017*
2. **Date of Last Publication:** *Tuesday, June 13, 2017*
3. **Agency:** *Housing Preservation and Development*
4. **Division:** *Legal Affairs*
5. **Notice Information:** *Type: Notice  
Reason: New Ad*

**17. Additional Description:**

The proposed rules add a new Chapter 51 to Title 28 of the Rules of the City of New York to implement the Affordable New York Housing Program adopted by the State Legislature in Chapter 20 of the Laws of 2015 and amended by Chapter 59 of the Laws of 2017. The Affordable New York Housing Program provides a tax exemption similar to the prior Real Property Tax Law Section 421-a exemption for buildings that commenced construction after December 31, 2015.

**Accessibility**Accessibility Status: ApplicableAccessibility Options:  Wheelchair AccessibleAccessibility Contact Info: [accessibility@hpd.nyc.gov](mailto:accessibility@hpd.nyc.gov)

Accessibility Contact Deadline: Monday, July 03, 2017 4:00 PM

**23. Requested By****Name:** *Nancy Batterman***Phone:** *(212) 863-8384*

City Record Office Tracking Number: n/a

Confirmation Number: 20170607103

1. **Date of First Publication:** *Tuesday, June 13, 2017*
2. **Date of Last Publication:** *Tuesday, June 13, 2017*
3. **Agency:** *Housing Preservation and Development*
4. **Division:** *Legal Affairs*
5. **Notice Information:** *Type: Notice*  
*Reason: New Ad*

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**Accessibility**

Accessibility Status: Applicable

Accessibility Options:  Wheelchair AccessibleAccessibility Contact Info: [accessibility@hpd.nyc.gov](mailto:accessibility@hpd.nyc.gov)

Accessibility Contact Deadline: Monday, July 03, 2017 4:00 PM

**23. Requested By****Name:** *Nancy Batterman***Phone:** *(212) 863-8384*