

## 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 the rules governing fees for administration of loan programs and other municipality-aided projects. Specifically, HPD proposes establishing a fee for monitoring compliance with Executive Order 50 of 1980 (as amended by Executive Order 94 of 1986, Executive Order 108 of 1986, and Executive Order 159 of 2011) which requires equal employment opportunity in New York City contracting. HPD also proposes to establish a fee for monitoring compliance with the Federal Davis Bacon Act (40 U.S.C. §3141 et seq.), State Labor Law §§220 and 230, Real Property Tax Law §421-a(8), and New York City Administrative Code §6-109 which require the payment of prevailing wages and compliance with labor standards..

**When and where is the hearing?** The Department of Housing Preservation and Development will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 AM-11:00 AM on April 9, 2015. The hearing will be in room 5R1 at 100 Gold Street, New York, N.Y. 10038.

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

- **Website.** You can submit comments to the Department of Housing Preservation and Development through the NYC rules website: <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 Eva Trimble, Deputy Commissioner, at the Department of Housing Preservation and Development, 100 Gold Street, Room 5-05, New York, N.Y. 10038.
- **Fax.** You can fax written comments to the Department of Housing Preservation and Development, Att: Deputy Commissioner Eva Trimble, at: 212 863-6302.
- **Public Hearing.** You can speak at the public hearing. Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 212 863-5153, or you can sign up in the hearing room before the hearing begins on April 9, 2015. You can speak for up to three minutes.

**Is there a deadline to submit written comments?** Comments must be submitted before the close of business on April 9, 2015.

**What if I need assistance to participate in the hearing?** You must tell the Department if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212 863-5153. You must tell us by March 26, 2015.

**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 a summary of oral comments concerning the proposed rule will be available to the public at 100 Gold Street, Office of Legal Affairs, Department of Housing Preservation and Development, New York, N.Y. 10038.

**What authorizes the Department of Housing Preservation and Development to make this rule?** Sections 1043 and 1802 of the New York City Charter, Executive Order 50 of 1980 (as amended by Executive Order 94 of 1986, Executive Order 108 of 1986, and Executive Order 159 of 2011), Title 66, section 10-11 of the Rules of the City of New York, and the delegation agreement between the Department of Housing Preservation and Development and the Director of the Bureau of Labor Services of February 22, 1982 authorize the monitoring of equal employment requirements in contracts. The Federal Davis Bacon Act (40 U.S.C. §3141 et seq.), State Labor Law §§220 and 230, Real Property Tax Law §421-a(8), and New York City Administrative Code §6-109 authorize the monitoring of prevailing wage and labor standards compliance on City contracts. This proposed rule was not anticipated and so was not included in the Department of Housing Preservation and Development's regulatory agenda for this fiscal year.

**Where can I find the Department of Housing Preservation and Development's rules?** The Department of Housing Preservation and Development's rules are located in Title 28 of the Rules of the City of New York.

**What rules govern the rulemaking process?** The Department of Housing Preservation and Development must meet the requirements of City Charter §1043 when creating or changing rules. This notice is made according to the requirements of City Charter § 1043(b). This rulemaking is exempt from the requirements of Local Law 46 of 2010, because it only proposes the establishment or modification of the amount of a fee or fees.

### **Statement of Basis and Purpose of Proposed Rule**

The proposed rule amends certain provisions of the Department of Housing Preservation and Development's (HPD) rules governing fees for administration of loan programs and certain other municipality-aided projects. The rule provides for a fee to be collected by HPD for monitoring contracts for compliance with equal employment opportunity and prevailing wage and labor standards.

EO 50 of 1980 (as amended by Executive Order 94 of 1986, Executive Order 108 of 1986, and Executive Order 159 of 2011) prohibits entities doing business with New York City from discriminating against any employee, applicant, or supplier. It requires an entity that receives City funding to submit an employment report prior to contract award. For HPD housing construction contracts, the project sponsor and prime contractors are among the entities required to submit construction employment reports to HPD's Labor Monitoring Unit for compliance review. The \$1,400 fee will cover the agency's costs in processing and reviewing the two submitted reports.

The Federal Davis Bacon Act (40 U.S.C. §3141 et seq.), State Labor Law §§220 and 230, Real Property Tax Law §421-a(8), and New York City Administrative Code §6-109 require payment of prevailing wages and compliance with labor standards by contractors. HPD's Labor Monitoring Unit reviews payrolls and associated documentation, conducts site visits to gather data on wages, hours of work and other employment conditions, investigates complaints, and

cooperates with other labor investigatory agencies like the U.S. Department of Labor. The \$30,000 fee will cover the required cost related to ongoing monitoring and enforcement of these requirements.

HPD has determined that certain programs covered by the equal employment opportunity and prevailing wage laws should be exempt from payment of fees for compliance monitoring. The exempt programs provide loans or grants to projects for small buildings, buildings that were impacted by Super Storm Sandy, formerly City-owned buildings, or buildings that are under court-ordered administration. All of these projects have limited financial resources and imposition of the fee is a hardship and impractical. Therefore, HPD has determined that these programs should be exempt from the proposed compliance monitoring fees.

“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.

New material in the following rule is underlined, deleted material is in [brackets].

Section one. Section 37-02 of chapter 37 of title 28 of the rules of the city of New York is amended to read as follows:

#### §37-02 Definitions.

For purposes of this chapter:

(a) Appraisal Fee. "Appraisal Fee" shall mean the amount charged to a grantee, borrower, or recipient for HPD's administrative costs in connection with a Simple Appraisal or a Complex Appraisal.

(b) Certificate of Incorporation Fee. "Certificate of Incorporation Fee" shall mean the amount charged to an applicant for HPD's administrative costs in connection with the review of the formation or dissolution of a housing development fund corporation pursuant to Article XI of the Private Housing Finance Law or any amendment to the certificate of incorporation of a housing development fund corporation.

(c) City-owned Property. "City-owned Property" shall mean real property title to which is held by the City of New York.

(d) Complex Appraisal. "Complex Appraisal" shall mean an investigation by an appraiser to estimate the value of a property that is the basis of underwriting of a loan or grant or that will be conveyed from City to private ownership where such property consists of:

(1) six or more tax lots consisting entirely of vacant land, for which the valuation can be made solely based upon available comparable sales data; or

(2) any improved residential property consisting of four or more class A units; or

(3) any improved property consisting of a combination of commercial and residential uses; or

(4) any property consisting of a combination of vacant and improved land; or

(5) any other complex development project consisting of a combination of uses.

(e) Equal Employment Compliance Fee. "Equal Employment Compliance Fee" shall mean the amount charged to both a project sponsor and to a prime contractor for HPD's administrative costs in processing and reviewing employment reports required to be submitted pursuant to Executive Order 50 of 1980.

[(e)] (f) HPD. "HPD" shall mean the Department of Housing Preservation and Development of the City of New York.

(g) Labor and Prevailing Wage Compliance Fee. "Labor and Prevailing Wage Compliance Fee" shall mean the amount charged to a project sponsor for each project for HPD's administrative costs in processing and reviewing compliance with the Federal Davis Bacon Act (40 U.S.C. §3141 et seq.), State Labor Law §§220 and 230, Real Property Tax Law §421-a(8), and New York City Administrative Code §6-109 labor and prevailing wage requirements.

[(f)] (h) License Agreement Fee. "License Agreement Fee" shall mean the amount charged to an applicant for HPD's administrative costs in connection with preparing each license agreement or renewal thereof for short-term use of City-owned property. Such fee shall not be deemed to be a rental or use and occupancy charge.

[(g)] (i) Mortgage Refinance Fee. "Mortgage Refinance Fee" shall mean the amount charged to a grantee, borrower, or recipient for HPD's administrative costs in connection with processing requests to subordinate, satisfy or otherwise modify HPD debt.

[(h)] (i) Simple Appraisal. "Simple Appraisal" shall mean an investigation by an appraiser to estimate the value of a property that is the basis of underwriting of a loan or grant or that will be conveyed from City to private ownership where such property consists of:

(1) five or fewer tax lots consisting entirely of vacant land, for which the valuation can be made solely based upon available comparable sales data; or

(2) any improved residential property consisting of not more than three class A residential units for which the valuation can be made solely based upon available comparable sales data.

§2. Section 37-03 of chapter 37 of title 28 of the rules of the city of New York is amended to read as follows:

§37-03 Amount of Fee.

The amount of each fee authorized under this chapter shall be as follows:

(a) Appraisal Fee. HPD may charge an Appraisal Fee in the amount of two thousand five hundred dollars (\$2,500) for each Simple Appraisal, and in the amount of three thousand dollars (\$3,000) for each Complex Appraisal.

(b) Certificate of Incorporation Fee. HPD may charge a Certificate of Incorporation fee in the amount of two hundred and fifty dollars (\$250).

(c) Equal Employment Compliance Fee. HPD may charge an Equal Employment Compliance Fee in the amount of seven hundred dollars (\$700) for each employment report it reviews for compliance, not to exceed one thousand four hundred dollars (\$1,400) per project unless such project is exempt under subdivision b of section 37-04 of these rules .

(d) Labor and Prevailing Wage Compliance Fee. HPD may charge a Labor and Prevailing Wage Compliance Fee in the amount of thirty thousand dollars (\$30,000) for each project it reviews for compliance unless such project is exempt under subdivision b of section 37-04 of these rules.

(e) License Agreement Fee. HPD may charge a License Agreement Fee in the amount of one hundred dollars (\$100).

[(d)] (f) Mortgage Refinance Fee. HPD may charge a Mortgage Refinance Fee in the amount of four hundred dollars (\$400).

§3. Section 37-04 of chapter 37 of title 28 of the rules of the city of New York is amended to read as follows:

§37-04 (a) All fees authorized pursuant to this chapter shall be due and payable as directed by HPD. The fees set forth in this chapter shall be in addition to any other fees authorized under any other law or rules.

(b) The following loan or grant programs are exempt from the Equal Employment Compliance Fee and the Labor and Prevailing Wage Compliance Fee:

(1) One- to Four-Family Programs. Loans or grants made to owners of one- to four-family buildings for rehabilitation and repairs.

(2) Super Storm Sandy Disaster Recovery Programs. Community Development Block Grant Disaster Recovery Fund loans or grants made to owners for construction, rehabilitation, repair, or improvement of buildings impacted by Super Storm Sandy.

(3) Lead Paint Primary Prevention Program. Loans or grants made to building owners to treat lead-based paint hazards.

(4) Article 7A Financial Assistance. Loans made to administrators appointed under Real Property Actions and Proceedings Law Article 7A for the repair or rehabilitation of a subject building.

(5) Neighborhood Entrepreneurs Program. Loans made to neighborhood-based private property managers to own and manage occupied and vacant City-owned buildings.

(6) Neighborhood Redevelopment Program. Loans made to community-based, not-for-profit organizations for rehabilitation and operation of rental housing.