

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 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).

When and where is the Hearing? HPD will hold a public hearing on the proposed rules online. The public hearing will take place from 11:00 AM to 12:00 PM on Tuesday, November 9, 2021. To participate in the public hearing, enter the Webex URL: <https://nychpd.webex.com/nychpd/j.php?MTID=mbd7de43fcc3bde86f66aab2bc2e10199>

If prompted to provide a password or number, please enter the following:

Meeting Number: 2346 690 2332

Password: 421a16_Rule

You may also join the hearing via device audio or dial-in via phone.

To join by video system:

Dial 23466902332@webex.com

You can also dial 173.243.2.68 and enter your meeting number.

To dial-in via phone, please use the following dial in number and participant code:

Phone Number: (646) 992-2010

Access Code: 2346 690 2332

If you have low bandwidth or inconsistent internet connection, use the dial-in option for the hearing. This will reduce the possibility of dropped audio and stutters.

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.

- **By Speaking at the 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 or by emailing HPD at chium@hpd.nyc.gov by November 8, 2021 at 5:00 PM. For those who do not sign up in advance, there will be an opportunity during the hearing to indicate that you would like to provide comments, but we request that you sign-up in advance. 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 November 9, 2021.

What if I need assistance to participate in the Hearing? You must tell HPD if you need a reasonable accommodation of a disability at the hearing. You can tell us by mail at the address given above or by email at chium@hpd.nyc.gov. You may also tell us by telephone at (212) 863-6494. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by November 1, 2021.

This hearing has the following accessibility option(s) available: Simultaneous transcription for people who are deaf or hard of hearing and audio-only access for persons with vision impairments.

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 rule will be available to the public.

What authorizes HPD to make this rule? Sections 1043 and 1802 of the City Charter and Section 421-a of the RPTL 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

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 permitted an applicant to amend its Workbook until the project files its Notice of Intent to begin marketing the Affordable Housing Units. However, the adopted 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. The proposed rule amendments would 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 would 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 proposed rule amendments would 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 proposed rule amendment would 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 proposed rule amendments will also authorize changes to the Utility Allowance and Income Limits for tax credit projects after the Workbook is initially submitted. First, it will allow such changes 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, it will allow such changes 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” shall have the meaning set forth in an Eligible Multiple Dwelling’s regulatory agreement with the tax credit monitoring agency.

Section 2. Subdivision a-1, subdivision b and 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 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. Notwithstanding the foregoing:

(2) 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 such paragraph, 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 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) 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.

(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
September 30, 2021

**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 421-a Tax Abatement Rules

REFERENCE NUMBER: 2021 RG 064

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: August 30, 2021

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 421-a Tax Abatement Rules

REFERENCE NUMBER: HPD-83

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/ Francisco X. Navarro
Mayor's Office of Operations

August 30, 2021
Date