

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Adoption

Notice is hereby given that pursuant to Section 32(3) of the Private Housing Finance Law and in accordance with Sections 1043 and 1802 of the City Charter, the Department of Housing Preservation and Development (“HPD”) is adopting amendments to Chapter 3 of Title 28 of the Rules of the City of New York, which governs City-aided limited profit housing company developments (also known as Mitchell-Lama developments).

A notice of proposed rulemaking was published in the City Record on October 6, 2023. A public hearing was held on November 8, 2023.

Commissioner Adolfo Carrión, Jr.

January 16, 2024

Statement of Basis and Purpose

Consistent with HPD’s authority under section 32 of the Private Housing Finance Law (“PHFL”), HPD, the supervising agency for City-aided Mitchell-Lama developments, is adopting rules that set forth a separate, streamlined process for rent increases in units occupied by tenants whose rent is paid in whole or in part with a rental assistance subsidy. For these tenants, an increase in the monthly rent will not result in a greater cost to the tenant because the rent increase is borne by the rental assistance program.

The budget-based analysis currently set forth in 28 RCNY 3-10, as well as the public hearing requirement, applies only to units where the rent increase results in the tenant paying more rent or carrying charges. HPD’s rule amendment applies different procedures to rent increases for units occupied by tenants with a rental assistance subsidy. This will be more efficient because such increases will not require a hearing or tenant notification. This procedure does not apply where such increase would result in a larger tenant contribution towards rent. Accordingly, a tenant who currently pays less than 30% of income towards rent would not be required to raise their current tenant contribution as a result of any rent increase.

The adopted rule amendment authorizes the housing company or HPD itself to seek rent increases for tenants whose rent is paid by a rental assistance subsidy, pursuant to an application from the Mitchell-Lama housing company that includes, among other things, a three-year projection of operations on a cash flow basis and the most recent annual audited financial statement. The implementation of rent increases for subsidized tenants can occur more often than every two years. Housing companies, which benefit from the additional cash flow available through the rental assistance subsidy programs without imposing any increased rental burden on the residents, can thus achieve this result on an expedited, more frequent basis.

RULE AMENDMENT

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 3-10 of chapter 3 of title 28 of the Rules of the City of New York is amended by adding a new subdivision (i), to read as follows:

- (i) (1) Notwithstanding anything to the contrary contained in this section, a housing company may submit an application for an increase in the maximum rental or carrying charges per dwelling unit paid solely by a tenant/cooperator who pays for such rent or carrying charge, in whole or in part, with a rental assistance subsidy. Where the housing company does not submit such an application, HPD, upon its determination of the need for an increase in rents or carrying charges, may request that such housing company submit the information set forth in paragraph two of this subdivision. For the purposes of this subdivision, the term “rental assistance subsidy” means payments made by a federal, state or local governmental agency or instrumentality for the payment of monthly rent or carrying charges up to an enumerated payment standard, provided that an increase in such payment standard does not result in a higher rent or carrying charge contribution for the tenant/cooperator in receipt of such rental assistance subsidy.

(2) Such application need not be in the same form as provided in subdivision (c) of this section, but must contain such information and documentation as required by HPD, which may include:

(i) Name of housing company, location of development, date of organization and number of rental rooms.

(ii) Dates of completion and of occupancy of the housing development.

(iii) Status with respect to tax exemption.

(iv) Present average room rent.

(v) Present income from non-dwelling spaces.

(vi) Assessed valuation of land and land improvements.

(vii) Such other information and data as may be pertinent.

(viii) Request for a specific rent increase to the applicable rental assistance subsidy payment standard.

(ix) The following exhibits and schedules, using a format for such exhibits and schedules available from HPD:

Exhibit I. A three-year projection of operations on a cash flow basis, complete with applicable schedules. In addition to the three-year projection, an actual base year must be used as a starting point, reflecting the information in the latest certified statement of financial condition prepared by a certified public accountant.

Exhibit II. A calculation of the monthly rental or carrying charge increase required up to the maximum payment standard for the applicable rental assistance subsidy program, detailing the number of tenants/cooperators receiving a rental assistance subsidy and their monthly rents or carrying charges on a per room basis in a format approved by HPD. This calculation must include beginning working capital or deficit working capital as of the beginning of the projection. This calculation must also include total deficits projected for the length of the projection and one month's working capital to be left at the end of the period.

Exhibit III. A three-year projection of operations on a cash flow basis after reflecting the increase calculated in Exhibit II above. All applicable schedules will be provided as required in Exhibit I.

Exhibit IV. The most recent annual audited financial statement for the housing company. Working capital or negative working capital resulting from prior years' operations, as well as required reserves that were not funded, must be considered in the calculation of the required increase in the petition.

(x) Such further information on any of the matters listed above or on any other matters as HPD may require. Such additional information shall be verified and filed within the time stated by HPD. HPD may also request an amended or superseding application.

(3) Notwithstanding subdivision (b) of this section, no public hearing is required before HPD may act upon an application filed pursuant to this subdivision, and HPD may grant such an application more frequently than every two years. The provisions of subdivisions (e), (f) and (h) of this section do not apply to such application. Notwithstanding subdivision (c) or (d) of this section, there is no requirement to deliver notices regarding such pending application to the subsidized tenant/cooperators.

(4) Once HPD determines to grant such an increase request, the Assistant Commissioner of Housing Supervision shall issue an Order specifying the amount of the increase and the date(s) of its implementation.

(5) The rent or carrying charge for any dwelling unit for which a rent/carrying charge increase has been granted pursuant to this subdivision shall be reduced to the amount that has been approved for such unit in accordance with the subdivisions of this section other than this subdivision if either (i) the tenant/cooperator occupying such dwelling unit is no longer receiving the rental assistance subsidy, or (ii) the tenant/cooperator vacates the dwelling unit and the new tenant/cooperator for such unit is ineligible for or does not receive a rental assistance subsidy for which such increase was granted.