

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Adoption

Notice is hereby given that pursuant to sections 467-m and 485-x of the Real Property Tax Law, and in accordance with sections 1043 and 1802 of the City Charter, the Department of Housing Preservation and Development (HPD) is amending chapter 50 of Title 28 of the Rules of the City of New York to implement the prevailing wage requirements for building service employees for the Affordable Neighborhoods for New Yorkers Tax Incentive Benefits program and for the Affordable Housing from Commercial Conversions Tax Incentive Benefits program, both established by the New York State Legislature in Chapter 56 of the Laws of 2024.

A notice of proposed rulemaking was published in the City Record on December 5, 2024. A public hearing was held on January 10, 2025.

Commissioner Adolfo Carrion, Jr.

March 3, 2025.

Statement of Basis and Purpose

In 2024, the Legislature amended the New York State Real Property Tax Law (“RPTL”) to add a new section 467-m, which established the Affordable Housing from Commercial Conversions Tax Incentive Benefits program (“AHCC Program Benefits”) to provide real property tax exemptions for the conversions of non-residential buildings, other than a hotel or other class B multiple dwelling, to residential use. AHCC Program Benefits are available to eligible multiple dwellings, as that term is defined at section 467-m(1)(m), that contain six or more dwelling units, where the conversion commenced after December 31, 2022, and on or before June 30, 2031, and completed on or before December 31, 2039. Eligible multiple dwellings must be operated as rental housing to receive AHCC Program Benefits. Also in 2024, the Legislature amended the RPTL by adding a new section 485-x to provide exemptions from real property taxes to housing developments that meet certain affordability thresholds. That legislation created the Affordable Neighborhoods for New Yorkers Tax Incentive Benefits program (“ANNY Program Benefits”). ANNY Program Benefits are available to housing created from the construction of new buildings or certain eligible conversions. ANNY Program Benefits are not available to properties that are used as hotels. To receive ANNY Program Benefits, an eligible multiple dwelling, as that term is defined at section 485-x(1)(r), must contain six or more dwelling units and construction must have started after June 15, 2022, and on or before June 15, 2034, and be completed on or before June 15, 2038.

Both AHCC Program Benefits and ANNY Program Benefits require the payment of prevailing wages to building service employees unless the eligible multiple dwelling contains less than 30 dwelling units. (Sections 467-m and 485-x each define the term “building service employee.” The definitions are largely identical.) AHCC Program Benefits exempt eligible multiple dwellings that

are created with the substantial assistance of grants, loans or subsidies provided by a federal, state or local governmental agency or instrumentality pursuant to a program for the development of affordable housing. ANNY Program Benefits exempt eligible multiple dwellings in which all of the dwelling units are affordable housing units, as that term is defined at section 485-x(1)(g), and where not less than 50% of such affordable housing units, upon initial rental and upon each subsequent rental following a vacancy, are affordable to and restricted to occupancy by individuals or families whose household income does not exceed 90% of the area median income, adjusted for family size, at the time that such household initially occupies such dwelling unit.

Both AHCC Program Benefits and ANNY Program Benefits require applicants to submit a sworn affidavit with their application certifying they will ensure compliance with the building service employees prevailing wage requirement or are exempt. Any applicant who is not exempt must annually submit a sworn affidavit to the Comptroller certifying that it will ensure compliance with these requirements. Both sections 467-m and 485-x require HPD to publish a list each year of all buildings subject to these requirements.

HPD may revoke both AHCC Program Benefits and ANNY Program Benefits upon three or more violations as determined by the Comptroller within a five-year period. The Comptroller also must notify applicants after the second such violation that a further violation may result in revocation of real property tax exemption benefits and publish a list of all applicants with two violations on its website.

The adopted rules (1) incorporate the building service employee requirements applicable to AHCC Program Benefits and ANNY Program Benefits recipients into the current regulatory framework, (2) specify the sanctions and revocation procedures that are unique to these new programs for violations of the prevailing wage requirements, and (3) articulate the exemptions from the building service employee requirements for AHCC Program Benefits and ANNY Program Benefits recipients.

HPD's authority for these rules is found in sections 1043 and 1802 of the New York City Charter, and sections 467-m and 485-x of the Real Property Tax Law.

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 one. 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 §§ 421-a, 467-m and 485-x

§ 2. Section 50-01 of chapter 50 of Title 28 of the Rules of the City of New York is amended to read as follows:

§ 50-01 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 any of the [Act (with respect to properties receiving benefits pursuant to such act), the New 421-a Act (with respect to properties receiving benefits pursuant to such act), the Extended Affordability Act (with respect to any properties receiving benefits pursuant to such act), or the Minimum Average Hourly Wage Act,] following provisions with respect to properties receiving benefits pursuant thereto: section 421-a(1-15) of the Real Property Tax Law, section 421-a(16) of the Real Property Tax Law, section 421-a(17) of the Real Property Tax Law, section 467-m of the Real Property Tax Law, or section 485-x of the Real Property Tax Law, as relevant.

90% Limit. “90% Limit” means, with respect to any unit, that the income of the household renting such unit does not exceed ninety percent of the area median income, adjusted for family size, at the time that such household initially occupies such unit, and that the rent at the time of initial rental and upon each subsequent rental following a vacancy does not exceed thirty percent of ninety percent of the area median income, adjusted for family size, minus the amount of any applicable Utility Allowance.

90% Unit. “90% Unit” means a unit that complies with the 90% Limit upon initial rental and upon each subsequent rental following a vacancy.

125% Limit. “125% Limit” [shall mean] means, with respect to any unit, that the income of the household renting or purchasing such unit does not exceed one hundred twenty-five percent of the area median income, adjusted for family size, at the time that such household initially occupies such unit, and that either (a) for a multiple dwelling owned and operated as a rental, the rent at the time of initial rental and upon each subsequent rental following a vacancy does not exceed thirty percent of one hundred twenty-five percent of the area median income, adjusted for family size, minus the amount of any applicable Utility Allowance, or (b) for a multiple dwelling owned and operated as a condominium or cooperative development by individual condominium unit owners or shareholders, the sales price at the time of initial sale results in mortgage payments (including both interest and principal calculated at the Mortgage Rate and assuming the mortgage constitutes 90% of the purchase price) and common charges or carrying charges, respectively, that, collectively, do not exceed thirty percent of one hundred twenty-five percent of the area median income, adjusted for family size.

125% Unit. “125% Unit” [shall mean] means (a) if a multiple dwelling is owned and operated as a rental, a unit that complies with the 125% Limit upon initial rental and upon each subsequent rental following a vacancy, or (b) if the multiple dwelling is owned and operated as a condominium or cooperative development by individual condominium unit owners or shareholders, a unit that complies with the 125% Limit upon the initial sale of such unit.

421-a Act. “421-a Act” [shall mean] means subdivision 8 of [Section] section 421-a of the Real Property Tax Law.

Agency. “Agency” [shall mean] means the department of housing preservation and development.

AHCC Act. “AHCC Act” means subdivision 7 of section 467-m of the Real Property Tax Law.

ANNY Act. “ANNY Act” means subdivision 9 of section 485-x of the Real Property Tax Law.

Applicant. “Applicant” [shall mean] means an applicant for Benefits and any successor to such applicant, including, but not limited to, any Owner, or any employer of Building Service Employees for such applicant, successor or Owner, including, but not limited to, a property management company or contractor.

Apprenticeship Program. “Apprenticeship Program” [shall mean] means an apprenticeship program registered with the New York State Department of Labor in conformity with the provisions of Article 23 of the Labor Law.

Benefits. “Benefits” [shall mean] means real property tax exemption benefits pursuant to [Section] section 421-a of the Real Property Tax Law, section 467-m of the Real Property Tax Law or section 485-x of the Real Property Tax Law, as applicable.

Benefits Ineligibility Letter. “Benefits Ineligibility Letter” [shall mean] means 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] Benefits.

Comptroller. “Comptroller” [shall mean] means the comptroller of the city of New York or his or her designee.

Comptroller Schedule. “Comptroller Schedule” [shall mean] means the annual Building Service Employee Prevailing Wage Schedule published by the Comptroller that is in effect at the time the relevant Building Service Employee performs the work and that is published at www.comptroller.nyc.gov/wages.

Construction Benefits. “Construction Benefits” [shall mean] means Benefits for the period before issuance of either a permanent certificate of occupancy for the entire building or a temporary certificate of occupancy for all of the residential areas contained therein.

Extended Affordability Act. “Extended Affordability Act” [shall mean] means paragraph (g) of [Subdivision] subdivision 17 of [Section] section 421-a of the Real Property Tax Law.

Final Certificate of Eligibility. “Final Certificate of Eligibility” [shall mean either] means (a) the document issued by the Agency in accordance with [28 RCNY Chapter 6] chapter six of this title that provides for Post-Construction Benefits[.]; (b) the document issued by the Agency in accordance with [28 RCNY Chapter 49] chapter 49 of this title which provides the Extended Benefit; [or] (c) the document issued by the Agency in accordance with [28 RCNY Chapter 51] chapter 51 of this title that provides for Affordable New York Housing Program Benefits; (d) the document issued by the Agency in accordance with chapter 63 of this title that provides for ANNY Program Benefits; or (e) the document issued by the Agency in accordance with chapter 64 of this title that provides for AHCC Program Benefits.

Minimum Average Hourly Wage Act. “Minimum Average Hourly Wage Act” [shall mean] means paragraph (c) of subdivision [16(c)] 16 of [Section] section 421-a of the Real Property Tax Law.

Mortgage Rate. “Mortgage Rate” [shall mean] means the single family mortgage rate for a thirty-year fixed rate loan established by the Federal Home Loan Mortgage Association and the Federal National Mortgage Association plus 150 basis points that is either (a) for purposes of the application for a Preliminary Certificate of Eligibility, quoted for the month in which the construction of such multiple dwelling commences, or (b) for purposes of the application for a Final Certificate of Eligibility, quoted for the month in which the first certificate of occupancy or temporary certificate of occupancy for the first unit in such multiple dwelling that is owned and operated as a condominium or cooperative development by individual condominium unit owners or shareholders, is issued.

New 421-a Act. “New 421-a Act” [shall mean] means paragraph (h) of subdivision 16 of [Section] section 421-a of the Real Property Tax Law.

Order. “Order” [shall mean] means an order issued by the Agency pursuant to paragraph (d) of the 421-a Act, subparagraph (iv) of the New 421-a Act, [or] subparagraph (iv) of the Extended Affordability Act, subparagraph (ix) of paragraph (c) of the ANNY Act, or subparagraph (ix) of paragraph (c) of the AHCC 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.

Owner. “Owner” [shall mean] means the fee owner of the real property receiving Benefits and any ground lessee, master lessee, sublessor or sublessee of such real property.

Post-Construction Benefits. “Post-Construction Benefits” [shall mean] means Benefits for the period after issuance of either a permanent certificate of occupancy for the entire building or a temporary certificate of occupancy for all of the residential areas contained therein.

Preliminary Certificate of Eligibility. “Preliminary Certificate of Eligibility” [shall mean] means the document issued by the Agency in accordance with [28 RCNY Chapter 6] chapter 6 of this title that provides for Construction Benefits.

Prevailing Wage. “Prevailing Wage” [shall mean] means the prevailing wage and supplement rates for the various classifications set forth in the Comptroller Schedule.

Prevailing Wage Requirement. “Prevailing Wage Requirement” [shall mean] means the requirements that all Building Service Employees receive the Prevailing Wage as such requirements are established (i) under the 421-a Act, the New 421-a Act, [or] the Extended Affordability Act, the ANNY Act, or the AHCC Act, [respectively,] and (ii) this chapter, that are applicable[,]; (a) with respect to the 421-a Act [or the New 421-a Act], to any Multiple Dwelling whose construction began on or after December 28, 2007 for the duration of Benefits, [and] (b) with respect to the New 421-a Act, to any Eligible Site for the entire Restriction Period or Extended Restriction Period, as applicable, (c) with respect to the Extended Affordability Act, to any Extended Affordability Property for the entire Extended Affordability Period, (d) with respect to the ANNY Act, to any Eligible Site for the duration of the applicable Benefits period, regardless of whether Benefits are revoked or terminated, and (e) with respect to the AHCC Act, to any Eligible Multiple Dwelling for the duration of the applicable Benefits period, regardless of whether Benefits are revoked or terminated, except as otherwise provided in paragraph (e) of the 421-a Act, subparagraph (v) of the New 421-a Act, [or] subparagraph (v) of the Extended Affordability Act, paragraph (d) of the ANNY Act, or paragraph (d) of the AHCC Act, as applicable[, that all Building Service Employees receive the Prevailing Wage, for the duration of the applicable Benefits period]. Notwithstanding anything to the contrary contained herein or in the 421-a Act, the New 421-a Act, [or] the Extended Affordability Act, the ANNY Act or the AHCC Act, such requirements shall only be applicable to persons who are employed at a building, Eligible Multiple Dwelling, [eligible site] Eligible Site or [extended affordability property] Extended Affordability Property, as applicable, for at least a ninety day period.

Report and Recommendation. “Report and Recommendation” [shall mean] means a report and recommendation issued by the Comptroller or the Comptroller's designee after a hearing is conducted regarding an alleged violation of the Prevailing Wage Requirement.

Stipulation of Settlement. “Stipulation of Settlement” [shall mean] means a stipulation of settlement executed by the Comptroller and an Applicant regarding an alleged violation of the Prevailing Wage Requirement.

Utility Allowance. “Utility Allowance” [shall mean] means an allowance set forth by the Agency for the payment of utilities where the tenant of a 90% Unit or a 125% Unit, as applicable, is required to pay all or a portion of the utility costs with respect to such unit in addition to any payments of rent.

§ 3. Section 50-03 of chapter 50 of Title 28 of the Rules of the City of New York is amended to read as follows:

§50-03 Compliance with Requirement to Pay Supplements.

The obligation to pay prevailing supplements may be discharged by either the provision of (a) bona fide fringe benefits that cost no less than the prevailing supplement rate in the Comptroller Schedule, (b) a supplement to the hourly wage in an amount no less than such prevailing supplement rate, or (c) a combination of bona fide fringe benefits and wage supplements that, collectively, costs no less than such prevailing supplement rate. [The provision of a dwelling unit free of charge to a Building Service Employee shall be considered a bona fide fringe benefit with a cost of no more than the value of prevailing rentals in the locality for comparable dwelling units.] Notwithstanding the foregoing, the obligation to pay prevailing wages cannot be reduced or discharged through the provision of bona fide fringe benefits that cost more than the prevailing supplement rate in the Comptroller Schedule.

§ 4. Section 50-04 of chapter 50 of Title 28 of the Rules of the City of New York is amended by relettering subdivision d as subdivision e and adding a new subdivision d, to read as follows:

d. An Applicant for AHCC Program Benefits or ANNY Program Benefits may be subject to additional sanctions recommended by the Comptroller pursuant to subparagraph (ix) of paragraph (c) of the AHCC Act or subparagraph (ix) of paragraph (c) of the ANNY Act, as applicable. These include, but are not limited to, liquidated damages up to three times the amount of back wages and fringe benefits for willful violations and/or reasonable attorneys' fees.

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

§ 5. Subdivision a of section 50-05 of chapter 50 of Title 28 of the Rules of the City of New York is amended to read as follows:

a. After receiving from the Comptroller a Report and Recommendation with a summary of the underpayment setting forth the respective amounts of Prevailing Wage underpayment and interest due to each Building Service Employee, the proposed civil penalty, liquidated damages, attorneys fees, and any additional sanctions, as applicable, and the complete hearing record, the Agency shall issue an Order, which shall include instructions for payment of any such respective amounts of Prevailing Wage underpayment, interest [and], civil penalty, liquidated damages, attorneys' fees, and any additional sanctions, as applicable, to the Comptroller.

§ 6. 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 Benefit Revocation.

a. [The] Pursuant to chapter 39 of this title, the Agency shall commence benefit revocation proceedings [pursuant to 28 RCNY chapter 39] for noncompliance with the Prevailing Wage Requirements of the 421-a Act, the New 421-a Act, and the Extended Affordability Act if: [(a)]

(i) an Applicant fails to make the payments to the Comptroller required by an Order within 120 calendar days of receiving the Order, in which the sole cause for such revocation shall be the failure to make such payments on or before the prescribed deadline, [(b)] (ii) two Orders determining a willful failure to pay the Prevailing Wage for the same multiple dwelling have been issued within a six-year period, or [(c)] (iii) an Order determines a willful failure to pay the Prevailing Wage that involves a falsification of payroll records or the kickback of wages or supplements.

b. The Agency may commence benefit revocation proceedings for ANNY Program Benefits or AHCC Program Benefits pursuant to chapter 39 of this title, if a Covered Building Service Employer has committed three violations of the ANNY Act or AHCC Act, respectively, within a five-year period, in accordance with the provisions of subdivision thirteen of section 485-x of the Real Property Tax Law, or paragraph (g) of the AHCC Act, as applicable.

§ 7. Subdivision 1 of section 50-07 of chapter 50 of Title 28 of the Rules of the City of New York is amended to read as follows:

1. An Applicant who requests a determination of exemption from the Prevailing Wage Requirement pursuant to the 421-a Act, the New 421-a Act, [or] the Extended Affordability Act, the ANNY Act, or the AHCC Act, as applicable, must submit all of the documentation necessary to prove that:

(a) with respect to a multiple dwelling that is not receiving AHCC Program Benefits, ANNY Program Benefits, or benefits pursuant to subdivisions sixteen or seventeen of Real Property Tax Law Section 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 section 421-a of the 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 section 421-a of the 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[.];

(d) with respect to an Eligible Multiple Dwelling that is receiving AHCC Program Benefits, the Eligible Conversion is carried out with the substantial assistance of grants, loans or subsidies provided by a federal, state or local governmental agency or instrumentality pursuant to a program for the development of affordable housing; or

(e) with respect to an Eligible Site that is receiving ANNY Program Benefits, all of the dwelling units in an Eligible Multiple Dwelling are Affordable Housing Units and at least fifty percent of such Affordable Housing Units, upon initial rental and upon each subsequent rental after a vacancy, are 90% Units, including, but not limited to, the initial rents for such Affordable Housing Units and 90% Units, the income certifications for the initial occupants of such Affordable Housing Units and 90% Units, and proof that the Eligible Multiple Dwelling is required to maintain such Affordable Housing Units and 90% Units during the Restriction Period.

§ 8. Section 50-08 of chapter 50 of Title 28 of the Rules of the City of New York is amended to read as follows:

§50-08 Contractor Certified Payroll Report.

a. [Eligible Multiple Dwellings] Contractors and subcontractors that are required to [submit] maintain a Contractor Certified Payroll Report pursuant to [paragraph] subparagraph (vi) of the Minimum Average Hourly Wage Act or to maintain payroll records in accordance with section 220 of the Labor Law pursuant to subparagraph (e) of paragraph (3) of section 485-x of the Real Property Tax Law shall use the form provided on the Comptroller's website at www.comptroller.nyc.gov/prevailingwage[, and]. These forms 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 pursuant to subparagraph (vi) of the Minimum Average Hourly Wage Act and the payroll records in accordance with section 220 of the Labor Law pursuant to subparagraph (e) of paragraph (3) of section 485-x of the Real Property Tax Law shall be accompanied by employee daily sign-in logs in the form provided on the Comptroller's website at 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.

b. [Notwithstanding anything to the contrary contained in subdivision a of this section, the requirement for employee daily sign-in logs shall be waived for any Construction Work that took place on any days prior to the effective date of this subdivision] Within 30 days of the Comptroller establishing an online system for Contractor Certified Payroll Report and payroll record submission, the records set forth in subdivision (a) of this section shall be submitted electronically in accordance with the instructions made available on the Comptroller's website.

§ 8. Section 50-09 of chapter 50 of Title 28 of the Rules of the City of New York is amended by relettering subdivision a as subdivision a-2 and adding a new subdivision a-1, to read as follows:

a-1. In the event that the minimum average hourly wage as required by the Minimum Average Hourly Wage Act was not paid, the Applicant is responsible for the payment of the fees and expenses of the Third Party Fund Administrator, which must be approved by the Comptroller.

a-2. 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.