

March 25, 2025

NYC Department of Housing Preservation and Development
Attn: John Leonard, TIP Executive Director
100 Gold Street, Room 8D-09
New York, New York 10038

Re: Comments to Proposed Rules to the J-51 Reform Program

Dear Mr. Leonard,

On behalf of Rosenberg & Estis, P.C., and our property-owner and tax-paying clients, we respectfully submit these comments regarding HPD's proposed Chapter 62 Rules to implement Administrative Code § 11-243.2 (the new "J-51 Reform" program). We appreciate HPD's efforts to provide clarity and structure to the program; however, we urge several revisions to ensure the regulations remain within the bounds of the enabling City law and remain administrable for property owners who are trying to preserve affordable housing stock in New York City. Below is a summary of our key points:

1. Eliminate "Strict Construction Against the Applicant" (28 RCNY § 62-01(b))

Issue

The Proposed Rule states that tax benefit statutes "are strictly construed against the taxpayer." However, Real Property Tax Law § 489(21) and Local Law 122 were enacted precisely to encourage residential rehabilitation. Strict interpretation "against" owners runs counter to this legislative intent.

Concern

Using a strict-construction principle creates uncertainty for owners wishing to invest in needed renovations. It also undermines the stated policy of incentivizing building improvements and the preservation of affordable housing.

Requested Revision

Revise § 62-01(b) to remove or soften the "strict construction" clause. For example:

"This chapter shall be construed to effectuate the legislative purpose of preserving habitability in affordable housing, consistent with the enabling statutory authority."

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2. Overly Restrictive Definition of “Commencement Date” (28 RCNY § 62-03(b)(2)(i))

Issue

The Proposed Rule ties the “Commencement Date” to the date of the Department of Buildings (DOB) permit issuance if a permit is required, rather than the date of actual on-site construction.

Concern

Admin. Code § 11-243.2(a) (and RPTL § 489(21)(a)) defines “Commencement Date” as the date on which physical operations for eligible construction lawfully begin. Many owners obtain DOB permits weeks or months before starting actual construction, either due to scheduling, financing, or lead time for contractors. Tying the 30-month completion deadline to the permit date penalizes owners by effectively shrinking the time they have to complete the work.

Requested Revision

Allow the “Commencement Date” to be whichever is earlier or more appropriate:

1. The date of actual physical work as certified by an architect/engineer affidavit; **or**
2. The date of DOB permit issuance, at the owner’s discretion.
This aligns the rule with the Admin. Code’s emphasis on the actual date construction begins.

3. Tenant Notification Requirements (28 RCNY § 62-03(e))

Issue

The Proposed Rule requires owners to send a “Tenant Notice” 30 to 180 days before starting work, post the notice in the lobby, mail by certified/registered mail, and repeat the process if 180 days lapse.

Concern

- **No Statutory Requirement for Extended 30-Day Wait:** The Admin. Code requires notice but does not specify a 30-day waiting period before starting. Imposing a hard 30-day wait can needlessly delay urgent repairs or prolong building disruption.
- **Redundancy of Lobby Posting:** If owners must already mail notices, lobby posting is duplicative.
- **Re-mailing After 180 Days:** If, for any reason, commencement is delayed beyond 180 days, re-mailing and reposting add cost and administrative burdens, with little tenant benefit.
- **Applicability to Homeownership Buildings:** Co-op/condo owners and boards face confusion when trying to locate or identify “tenants,” especially if some units are sublet. Admin. Code § 11-243.2(g) appears aimed at rental buildings.

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- **Excluding Commercial Tenants:** The rule does not distinguish between residential and commercial tenancies.

Requested Revision

1. **Shorten or eliminate the 30-day pre-commencement wait** to allow immediate or near-immediate commencement after notice, especially for urgent work.
2. **Eliminate the 180-day re-notice requirement**, or allow a longer window (e.g., 365 days).
3. **Allow alternate forms of notice** (e.g., email or door-drop) rather than expensive certified mail, especially if building rules already require tenant contact info.
4. **Clarify that homeownership buildings (co-ops/condos) are exempt** from tenant notice requirements, or that only rental units in such buildings require notice.
5. **Clarify that commercial tenants do not require notice** if the intent is to safeguard residential tenants.

4. Notice of Intent Requirements (28 RCNY § 62-05(b))

Issue

The Proposed Rule requires owners to file a Notice of Intent (Form D4a) with HPD at least 15 days before the Commencement Date, or face an automatic penalty of 100% of the application fee.

Concern

The Admin. Code § 11-243.2(h) does not mandate a 15-day buffer. The penalty (doubling the application fee) is harsh. Some owners learn of the J-51R Program only after they finalize construction financing or begin work.

Requested Revision

- **Eliminate or reduce the 15-day lead time** to “on or before the date of commencement.”
 - **Lower the default penalty** (e.g., to 25% of the application fee) or allow waivers for good cause (e.g., emergency repairs, honest mistake, etc.).
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5. Completion Date Flexibility (28 RCNY § 62-03(b)(2)(ii))

Issue

The Proposed Rule dictates a single method for determining Completion Date (e.g., Temporary or Permanent Certificate of Occupancy, sign-off, or affidavit). Owners may face DOB sign-off delays unrelated to actual construction completion.

Concern

Delays in final DOB sign-off or issuance of a certificate of occupancy—especially for non-residential areas—should not reduce the 30-month window for finalizing eligible work.

Requested Revision

- **Permit the owner to certify completion via either** (a) DOB sign-off / new C of O, **or** (b) the date the architect/engineer certifies all rehab work is physically complete and code-compliant for the residential portion.
- **Exclude Non-Residential Delays:** If only commercial or community space is left unfinished, treat the Completion Date as the date the residential work was finished.

6. Certified Reasonable Cost (“CRC”) Schedules (28 RCNY § 62-06)

Issue

The Proposed Rule and HPD’s website rely on a rigid schedule of maximum reimbursable costs. Real-world rehab can exceed these line items, especially for older or unique buildings, or if labor/material costs spike.

Concern

If a project’s legitimate costs exceed the tabulated CRC, owners may see benefits arbitrarily capped below actual outlay. This may undermine the affordability or feasibility of needed renovations.

Requested Revision

- **Add a Discretionary Override or Appeal Process** if owners can document that actual costs are reasonable for their building’s specific circumstances, based on multiple bids or unique structural conditions.
 - **Publish Interim or Regional Cost Variances** to better capture labor/material differences and allow flexibility in awarding the full scope of the benefit that the statute contemplates.
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7. Co-op/Condo Assessed Valuation Limits (28 RCNY § 62-02 & § 62-05(e)(3))

Issue

The Proposed Rule references an “Actual Assessed Value” definition. For co-ops and condos, the J-51R program imposes a per-dwelling-unit assessed valuation cap (e.g., \$45,000 per unit).

Concern

- **AV Definition:** Relying on the highest “Actual” AV instead of the “Transitional” AV (or “Billable” AV) can be misleading—especially if that AV was inflated or subject to future Tax Commission review.
- **Mixed-Use Apportionment:** If the building has commercial space, the entire AV should be prorated to isolate the residential portion.
- **Reduction After Final Assessment:** The rule should clarify how to handle post-filing AV reductions via certiorari or administrative review.

Requested Revision

- **Use the lower of Actual or Transitional AV** and clarify that the final, stabilized AV after any successful challenges is the figure for J-51R qualification.
- **Define a proportionate approach** to exclude non-residential AV where the building is mixed-use.
- **Allow re-filing or adjustment** if the AV is lowered on appeal.

8. Penalties and Revocations (28 RCNY §§ 62-05(b), 62-07)

Issue

The Proposed Rule imposes harsh penalties (e.g., doubling filing fees for late Notice of Intent) and allows HPD to revoke benefits entirely if an applicant’s cost documentation is missing or flawed.

Concern

A small oversight—like missing receipts or an innocent mistake—can lead to total denial, revocation, or huge fee surcharges. This is disproportionate and can deter participation.

Requested Revision

- **Institute a “cure period”** or grace period for owners to correct or supplement filings before imposing harsh penalties.
 - **Taper Penalties** to escalate only for willful or repeated violations.
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9. Overlapping or Phased Work

Issue

Many buildings proceed with rehab in phases. The Proposed Rule does not clarify whether a single building can file multiple J-51R applications for discrete stages.

Concern

Owners may prefer to do heating upgrades first, then facade or plumbing improvements later, each with a separate 30-month clock.

Requested Revision

- **Explicitly allow multiple filings** so long as each scope meets the \$1,500/unit threshold, subject to the 30-month limit per scope.
 - **Confirm owners can combine separate scopes** if performed in overlapping time frames, as the Admin. Code does not prohibit multiple applications for separate improvements.
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10. Proof of Cost Documentation (28 RCNY § 62-05(c)(2))

Issue

The Proposed Rule often requires a CPA's statement or "Disposition of Funds" for all projects.

Concern

This may be cost-prohibitive for smaller buildings or modest rehab costs. Also, "in the discretion of HPD" is undefined, leading to unpredictability.

Requested Revision

- **Establish a cost or size threshold** below which owners may simply submit contractor invoices, cancelled checks, or standard affidavits, rather than a formal CPA report.
 - **Publish clearer guidelines** on acceptable "work contract" or "final requisition" documentation to reduce discretion and subjective decisions.
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11. Website vs. Rules: Mailed Originals vs. E-Filing

Issue

HPD’s website instructions require physically mailing notarized affidavits; however, the Proposed Rule strongly encourages or requires electronic filing.

Concern

The Admin. Code does not necessarily require owners to mail original papers if e-filing is possible. Mandating both can be burdensome.

Requested Revision

- **Allow fully electronic submission** of final affidavits, or accept e-signatures under penalty of perjury.
 - If HPD insists on “wet” signatures, do not require duplicates and repeated mailings—accept a single official hard copy.
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12. Emergency Repairs and Notice Relief

Issue

Owners often face emergencies (e.g., failed boiler in mid-winter) and cannot wait 15 or 30 days to commence.

Concern

Mandatory wait periods under the Proposed Rule hamper urgent repairs and can place tenants in unsafe conditions.

Requested Revision

- **Add a carve-out for emergencies** (e.g., risk to life, health, or property) allowing owners to begin immediately while still ensuring timely notice to tenants and HPD as soon as practicable.
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13. Removing Unused Definitions (28 RCNY § 62-02)

Issue

Certain definitions—e.g., “Actual Assessed Value,” “Department of Environmental Protection,” “HDFC,” and “Non-Residential Space”—appear in the Proposed Rule but do not reappear or affect any operative section.

Concern

Extraneous terms create confusion and may lead to interpretive errors.

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Requested Revision

- Remove any definitions not actually used in these rules, or clarify their usage if needed for future provisions.

14. Clarify that Prior J-51 Participation Does Not Foreclose New J-51R Benefits

Issue

The Proposed Rule (e.g., § 62-04(b)(3)) states that no building item is eligible for J-51R if it is still receiving any other tax benefit for “the same or similar item of work.”

Concern

This might be read as excluding a building from *all* J-51R if it ever had older J-51 benefits. However, many owners have new scopes of work on older buildings.

Requested Revision

- **Confirm partial eligibility** for new work items distinct from the prior scope, or where the new work fully replaces the older item.
- **Allow concurrency** of old J-51 and J-51R as long as the owner does not “double-dip” for the identical item.

Conclusion

We respectfully urge HPD to adopt the above-requested revisions in order to make the J-51R program workable, fair, and aligned with the legislative intent of promoting safe, affordable housing through vital building improvements. We appreciate the opportunity to submit these comments and look forward to continued collaboration

Sincerely,

Benjamin M. Williams
Member

Daniel M. Bernstein
Member