

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Adoption

NOTICE IS HEREBY GIVEN that pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development (“HPD”) by Section 1802 of the New York City Charter, Section 489 of the New York State Real Property Law, and Section 11-243.2 of the Administrative Code of the City of New York, and in accordance with Section 1043 of the City Charter, HPD is adding a new Chapter 62 to Title 28 of the Rules of the City of New York to implement the real property tax incentive program adopted by the City Council in Local Law 122 of 2024.

A notice of proposed rulemaking was published in the City Record on February 18, 2025. A public hearing was held on March 25, 2025. HPD received forty-three comments during the comment period, either in writing or orally. In response to the comments, HPD made the following changes from the proposed rules:

- reduced the penalty for failing to timely file a notice of intent because it was too high;
- changed the term “lobby” for the tenant notice posting requirement to more general language to allow for posting in any public spaces because some housing developments do not have lobbies;
- removed the certified mail requirement for tenant notices because certified mail is too costly; and
- added a definition of “emergency work” and gave such emergency work special consideration with respect to the timing of the notice of intent and tenant notice requirements because emergency repairs should not be delayed in order to meet those requirements.

Statement of Basis and Purpose of Rule

New York State Real Property Tax Law (“RPTL”) § 489 enables any city to which the Multiple Dwelling Law is applicable to provide real property tax benefits for alterations and improvements to eligible, existing multiple dwellings. New York City previously provided such benefits through a program known as the J-51 Program, codified at Section 11-243 of the Administrative Code of the City of New York (“Administrative Code”). Chapter 536 of the Laws of 2023 added a new subdivision to RPTL § 489 that enables the creation of a new real property tax benefit program to replace the former J-51 Program,¹ and New York City enacted Local Law 122 of 2024 to implement the new program, codified in Administrative Code § 11-243.2. HPD is adopting a new Chapter 62 of Title 28 of the Rules of the City of New York to implement Local Law 122.

¹ Over the years, participation in the former J-51 Program declined, and its benefits have not been well targeted to buildings where alterations and improvements are necessary to preserve habitability in affordable housing. At the same time, given the complexities of the former J-51 Program, owners performed work on their buildings with little understanding of the benefit they would ultimately receive. Chapter 536 of the Laws of 2023 and Local Law 122 of 2024 were enacted to implement improvements to the prior program.

Local Law 122 provides a tax abatement for eligible construction completed after June 29, 2022 and before June 30, 2026 in:

- (1) rental buildings in which no less than 50% of the dwelling units charge rents that are affordable to individuals or families whose household income does not exceed 80% of Area Median Income, adjusted for family size, at the time of application;
- (2) rental buildings receiving substantial governmental assistance in furtherance of a program for the development of affordable housing provided in accordance with a regulatory agreement with the entity providing such assistance;
- (3) homeownership buildings that are at or below a \$45,000 per dwelling unit average assessed valuation limitation;
- (4) limited-profit housing company rental and cooperative developments under Article II of the Private Housing Finance Law (“PHFL”); and
- (5) redevelopment company cooperative developments under Article V of the PHFL.

Abatement benefits cannot exceed 70% of the certified reasonable cost of the eligible construction, capped at a maximum of 8 1/3% per year for no more than 20 years, and with respect to those buildings described in clauses (3)-(5) in the preceding sentence, the annual abatement may not exceed 50% of the amount of taxes payable in such twelve-month period.

Consistent with Local Law 122, the rules:

- specify particular eligibility requirements;
- set forth application procedures;
- provide for publication of the Certified Reasonable Cost Schedule;
- establish certain enforcement protocols; and
- differentiate requirements for tenant notification and the notice of intent in the context of Emergency Work.

HPD’s authority for these rules is found in sections 1043 and 1802 of the New York City Charter, section 489 of the Real Property Tax Law, and section 11-243.2 of the Administrative Code.

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. Title 28 of the Rules of the City of New York is amended by adding a new Chapter 62 to read as follows:

Chapter 62

TAX ABATEMENT PURSUANT TO ADMINISTRATIVE CODE SECTION 11-243.2

§ 62-01 Scope and Construction.

(a) Scope. This chapter governs the granting of tax abatement pursuant to § 489(21) of the Real Property Tax Law of the State of New York, § 11-243.2 of the Administrative Code of the City of New York, and Chapter 61 of the Charter, including the procedure for filing an application for tax abatement and the issuance of Certificates of Eligibility and Reasonable Cost by the Department of Housing Preservation and Development.

(b) Construction. This chapter is to be construed to secure the effectuation of the purposes of § 489(21) of the Real Property Tax Law and § 11-243.2 of the Administrative Code and in accordance with the general principle of law that tax benefit statutes are strictly construed against the taxpayer applying for the tax benefit. Except as hereinafter provided, this chapter, as amended, applies to all applications pending on or submitted after the effective date of this chapter.

§ 62-02 Definitions. As used in this chapter, the following terms shall have the following meanings. Capitalized terms not specifically defined in this chapter shall have the meanings set forth in the Act.

Act. "Act" means § 11-243.2 of the Administrative Code, as amended.

Actual Assessed Value. "Actual Assessed Value" means the value of a property for real property tax purposes as determined by assessors as that term is defined in Real Property Tax Law § 102(1).

Administrative Code. "Administrative Code" means the Administrative Code of the City of New York, as amended.

Attorney General. "Attorney General" means the Attorney General of the State of New York.

Bedroom. "Bedroom" means any living room as defined in § 27-2004 of the Housing Maintenance Code and § 4 of the Multiple Dwelling Law, after excluding the primary living room and the kitchen, except that Dwelling Units which contain a combined living/dining/kitchen space in excess of three hundred twenty-five square feet may be deemed to include both a kitchen and living room, so that any additional rooms may be considered Bedrooms under subdivision f of the Act.

BLDS. "BLDS" means HPD's Division of Building and Land Development Services or any successor unit.

Building Permit. "Building Permit" means a permit that is issued by the Department of Buildings to authorize work on Eligible Construction.

Certificate of Occupancy. "Certificate of Occupancy" means a Temporary Certificate of Occupancy or a Permanent Certificate of Occupancy.

Certified reasonable cost or CRC. "Certified reasonable cost" or "CRC" means the cost of Eligible Construction certified by HPD to be eligible for Rehabilitation Program Benefits pursuant to the procedures set forth in this chapter, as evidenced by the issuance by HPD of a Certificate of Eligibility and Reasonable Cost.

City. "City" means the City of New York.

Class A multiple dwelling. "Class A multiple dwelling" means a Class A multiple dwelling as defined in § 4 of the Multiple Dwelling Law.

Class B multiple dwelling. "Class B multiple dwelling" means a Class B multiple dwelling as defined in § 4 of the Multiple Dwelling Law.

Commissioner. "Commissioner" means the Commissioner of the Department of Housing Preservation and Development or his or her designee.

Condominium. "Condominium" means any Dwelling Unit that is owned pursuant to Article IX-B of the Real Property Law and is situated in a Class A Multiple Dwelling that either (a) has had an Offering Plan accepted for filing by the Attorney General, (b) has received a "no action" letter from the Attorney General, or (c) has demonstrated that it is not subject to the requirements of § 352(e) of the General Business Law.

Cooperative. "Cooperative" means any Existing Building which is operated exclusively for the benefit of persons or families who are entitled to occupancy in Dwelling Units by reason of ownership of stock, membership, or other evidence of ownership in the corporate owner of the building, or for the benefit of such persons or families entitled to occupancy in Dwelling Units in such building under applicable provisions of law without ownership of stock, membership, or other evidence of ownership in the corporate owner of the Building, where such Building either (a) has had an Offering Plan accepted for filing by the Attorney General, (b) has received a "no action" letter from the Attorney General or (c) has demonstrated that it is not subject to the requirements of § 352(e) of the General Business Law.

Department of Buildings. "Department of Buildings" means the Department of Buildings of the City.

Department of Environmental Protection. "Department of Environmental Protection" means the Department of Environmental Protection of the City.

Department of Finance. "Department of Finance" means the Department of Finance of the City.

DHCR. "DHCR" means the New York State Division of Housing and Community Renewal.

Disposition of Funds Statement. "Disposition of Funds Statement" means written confirmation of funds actually advanced for Eligible Construction under a building loan agreement made pursuant to Article 8, 8-a, 11, 12, 15 or 22 of the Private Housing Finance Law, or § 312 of the United States Housing Act of 1964 (42 U.S.C. § 1452b), or the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§ 12701 et seq.), or § 696-a or § 99(h) of the General Municipal Law or § 309(11)(b) of the Multiple Dwelling Law, or any other City-supervised housing program, or, in the discretion of HPD, other governmentally supervised housing programs.

Emergency Work. "Emergency Work" has the same meaning as set forth in Administrative Code § 28-105.4.1.

Energy Star. "Energy Star" means a designation from the United States Environmental Protection Agency or Department of Energy indicating that a product meets the energy efficiency standards set forth by such agency for compliance with the Energy Star program.

Department of Finance. "Department of Finance" means the Department of Finance of the City of New York or any successor agency or department thereto.

General Business Law. "General Business Law" means the General Business Law of the State of New York.

Gross cubic content. "Gross cubic content" of a building means the volume within the exterior faces of the perimeter walls (or center line of party walls), above legal grade, and below the roof level, plus any legal residential space below grade level. Roof bulkheads or roof penthouses used exclusively for machinery or equipment shall not be included. New exterior stair towers or elevator shafts shall not be included, unless they substitute for existing stair or elevator space which is converted to residential space.

HDFC. "HDFC" means a housing development fund company organized pursuant to Article XI of the Private Housing Finance Law.

Hotel. "Hotel" means (a) any Class B Multiple Dwelling, as such term is defined in the Multiple Dwelling Law, (b) any structure or part thereof containing living or sleeping accommodations which is used or intended to be used for transient occupancy, (c) any apartment hotel or transient hotel as defined in the Zoning Resolution, or (d) any structure or part thereof which is used to provide short term rentals or owned or leased by an entity engaged in the business of providing short term rentals. For purposes of this definition, a lease, sublease, license or any other form of rental agreement for a period of less than six months shall be deemed to be a short term rental. Notwithstanding the foregoing, Market Rental Units owned or leased by a not-for-profit corporation for the purpose of providing governmentally funded emergency housing shall not be considered a Hotel for purposes of this chapter.

Household Appliance. "Household appliance" means any refrigerator, room air conditioner, dishwasher or clothes washer, within a Dwelling Unit in the Multiple Dwelling that is provided by the owner, and any boiler or furnace that provides heat or hot water for any Dwelling Unit in the Multiple Dwelling.

Housing Maintenance Code. "Housing Maintenance Code" means the Housing Maintenance Code of the City, constituting §§ 27-2001 et seq. of the Administrative Code, as amended.

HPD. "HPD" means the Department of Housing Preservation and Development of the City.

Increase in gross cubic content. "Increase in gross cubic content" means any portion of a building that results from new construction as distinguished from alterations or improvements to the gross cubic content in existence immediately prior to the Commencement Date.

Multiple Dwelling Law. "Multiple Dwelling Law" means the Multiple Dwelling Law of the State of New York.

Non-Residential Space. "Non-Residential Space" means any space within an Eligible Building that is devoted to commercial, community facility, or other non-residential use.

Offering Plan. "Offering Plan" means an offering statement or plan with respect to a Condominium or Cooperative as required by § 352-e of the General Business Law.

Permanent Certificate of Occupancy. "Permanent Certificate of Occupancy" means a permanent certificate of occupancy that is issued by the Department of Buildings with respect to a Class A Multiple Dwelling for all Dwelling Units contained therein.

Private Housing Finance Law. "Private Housing Finance Law" means the Private Housing Finance Law of the State of New York.

Reasonable cost. "Reasonable cost" means the cost of Eligible Construction as conclusively determined and certified by HPD pursuant to this chapter.

Rules. "Rules" means this chapter of the Rules of the City of New York.

Supervising agency. "Supervising agency" has the same meaning as set forth in section two of the Private Housing Finance Law.

Temporary Certificate of Occupancy. "Temporary Certificate of Occupancy" means a temporary certificate of occupancy that is issued by the Department of Buildings for all Dwelling Units contained within a Class A Multiple Dwelling.

Utility Allowance. "Utility Allowance" means an allowance established by HPD for the payment of utilities where the tenant of a Qualifying Rental Unit is required to pay all or a portion of the utility costs with respect to such unit in addition to any payments of rent.

Zoning Resolution. “Zoning Resolution” means the Zoning Resolution of the City of New York, as amended.

§ 62-03 Eligibility Requirements.

(a) Minimum scope of work threshold. The scope of work must have an average Certified Reasonable Cost of not less than one thousand five hundred dollars (\$1,500) for each Dwelling Unit in existence as of the Completion Date.

(b) Time Requirements.

(1) In order to receive Rehabilitation Program Benefits, Eligible Construction must be completed no more than thirty months after the Commencement Date.

(2) Commencement and Completion of Construction.

(i) Establishing the Commencement Date.

(A) For work requiring a Building Permit, the Commencement Date for Eligible Construction is the date of issuance of a Building Permit.

(B) If the issuance of a Building Permit is not required by law, the Commencement Date for Eligible Construction is the date any physical operation has commenced solely for the purpose of performing Eligible Construction. HPD shall require that the Commencement Date be confirmed by an affidavit of a registered architect or licensed professional engineer, along with such other information as HPD may require to substantiate such date, including, but not limited to, an affidavit from the owner, a copy of the work contract, invoices, cancelled checks and a contractor's affidavit. If an application contains a series of Eligible Construction work items, the Commencement Date is that of the first Eligible Construction work item for which Rehabilitation Program Benefits are claimed.

(ii) Establishing the Completion Date.

(A) The Completion Date for Eligible Construction is the earlier of:

(I) the date of issuance or reissuance of a Permanent Certificate of Occupancy;

(II) the date of issuance of a Temporary Certificate of Occupancy, provided the only work remaining to secure a Permanent Certificate of Occupancy is work to be performed or completed in space to be used exclusively for non-residential purposes; or

(III) the date of the issuance of a sign-off by the Department of Buildings as evidenced by the Department of Buildings certification form, a computer printout or such other official documentation as may be required by the Department of Buildings and is acceptable to HPD if issued in connection with Eligible Construction.

(B) If none of the documents set forth above in clause (A) are required by law, the Completion Date for Eligible Construction is that date on which physical operations to undertake Eligible Construction are concluded as confirmed by the submission of an affidavit of a registered architect or licensed professional engineer, along with such other information as HPD may require to substantiate such date, including, but not limited to, an affidavit from the owner, a copy of the work contract, invoices, cancelled checks and a contractor's affidavit; and

(C) If an Alteration Type-1 Permit or analogous successor permit was issued to an applicant, the only acceptable evidence of the Completion Date shall be a Certificate of Occupancy.

(iii) If Eligible Construction for all Existing Buildings in a project is not completed in thirty months or less from the Commencement Date, applications for Rehabilitation Program Benefits may be filed for separate Existing Buildings or separate groups of Existing Buildings which are on the same tax block and lot and are completed within the requisite time period, provided that separate Building Permits were in effect for each such filing.

(3) In order to receive Rehabilitation Program Benefits, an application for a Certificate of Eligibility and Reasonable Cost must be filed with HPD after the Completion Date and (i) for Eligible Construction with a Completion Date before December 31, 2024, not later than April 30, 2025, (ii) for Eligible Construction with a Completion Date on or after December 31, 2024, not later than four months following the Completion Date.

(c) Bedroom Count Requirement.

(1) In order to be eligible for Rehabilitation Program Benefits, an Eligible Building must contain the minimum number of Bedrooms required by the Act.

(d) Rent requirements.

(1) Qualifying Rental Unit requirements.

(i) Dwelling Units in portions of an Eligible Rental Building that are ineligible for Rehabilitation Program Benefits shall not be used for purposes of the calculation provided for in § 11-243.2(d)(2)(a) of the Act.

(ii) Only Dwelling Units that are leased to natural persons, and registered with DHCR as such, may be designated as Qualifying Rental Units.

(iii) The rent for a Qualifying Rental Unit as of the date of filing of an application for a Certificate of Eligibility and Reasonable Cost shall not exceed the lesser of (i) thirty percent of eighty percent of the Area Median Income in effect as of the date of filing of an application for a Certificate of Eligibility and Reasonable Cost, minus the amount of any applicable Utility Allowance, or (ii) the maximum rent permitted under Rent Regulation, provided, however, that no exemption or exclusion from any requirement of Rent Regulation shall be applied to any Dwelling Unit subject to Rent Regulation during the Restriction Period, including, but not

limited to, any exemption or exclusion from the rent limits, renewal lease requirements, registration requirements or other requirements of Rent Regulation due to a vacancy of a Dwelling Unit subject to Rent Regulation where the rent exceeds a prescribed maximum amount, the fact that the tenant income and/or unit rent exceeds prescribed maximum amounts, the nature of the tenant, or any other factor.

(2) Rent Regulation generally mandatory. In order to be eligible to receive Rehabilitation Program Benefits and for at least so long as the Restriction Period, except for Dwelling Units which are exempt from such requirement pursuant to paragraph (3) below, all Dwelling Units in an Eligible Building shall be subject to Rent Regulation or have rents regulated pursuant to Substantial Governmental Assistance.

(3) Exemption from Rent Regulation. Notwithstanding paragraph (2) above, the following shall not be required to be subject to Rent Regulation:

(i) Dwelling units in an Eligible Homeownership Building or Eligible Regulated Homeownership Building.

(ii) A Market Rental Unit which was not subject to Rent Regulation as of the filing date of the application for a Certificate of Eligibility and Reasonable Cost.

(iii) A Dwelling Unit in an Eligible Rental Building owned and operated by a Limited-Profit Housing Company.

(4) Hotel Prohibition. No Eligible Rental Building that is operated as a Hotel shall be eligible for Rehabilitation Program Benefits.

(5) Waiver of rent adjustments attributable to major capital improvements. A copy of the declaration required under paragraph 3 of subdivision d of the Act must be filed with HPD on the date any application for a Certificate of Eligibility and Reasonable Cost is made. In calculating rental adjustments pursuant to Rent Guidelines Board orders, the amount of the waived rent shall not be included in the base rent. Such declaration shall be binding upon such owner, and his or her successors and assigns.

(e) Tenant notification. Pursuant to subdivision g of the Act, an applicant must complete the notice to tenants, in a form prescribed by HPD, and, not more than one hundred eighty days nor less than thirty days prior to the Commencement Date of such Eligible Construction, deliver such notice to all tenants residing in the Multiple Dwelling to be rehabilitated and post a copy conspicuously in a prominent place or places within the public part of the Multiple Dwelling; if more than one hundred eighty days elapse between the date the form notice to tenants is delivered to any tenant and the date rehabilitation actually commences, a new form notice to tenants must be completed and delivered to all tenants residing in such Multiple Dwelling and posted in the same prominent place or places in which the original notice was posted; provided that, in the case of a loan program supervised by HPD, HPD may itself deliver and/or post the required notice to the tenants instead of the applicant. Notwithstanding anything to the contrary contained herein, the required notice to the tenants may be delivered and posted less than thirty

days prior to the Commencement Date where Eligible Construction constitutes Emergency Work, provided that such notice shall be delivered and posted as soon as possible.

§ 62-04 Ineligible Projects, Items of Work.

(a) In order for a building to be characterized as rehabilitated and not characterized as newly constructed, one of the following conditions must be met before, during and after construction:

(i) At least seventy-five percent (75%) of the total area of the original perimeter walls, but in any event at least fifty percent (50%) of the total area of the original non-party perimeter walls, must remain in place as perimeter walls in the building for which benefits are claimed; or

(ii) At least eighty percent (80%) of the original structural floor area of the building must remain in place as structural floor in the building for which benefits are claimed.

(b) Ineligible items of work. Rehabilitation Program Benefits are not available for:

(1) Any portion of a building that results from new construction as distinguished from alterations or improvements or which represents an increase in the gross cubic content of a building from the gross cubic content in existence as of the day immediately preceding the Commencement Date.

(2) Any portion of a building occupied by stores, professional offices, community facilities or otherwise used for commercial or non-residential purposes pursuant to the classifications set forth in the Zoning Resolution.

(3) Any item of work if a building is receiving tax exemption or abatement for the same or a similar item of work as of the December 31 preceding the date of application for a Certificate of Eligibility and Reasonable Cost, provided, however, that if an item or a system which was previously repaired is replaced in its entirety while the building is still receiving Rehabilitation Program Benefits for such repair, Rehabilitation Program Benefits for the replacement shall be granted only to the extent that the Certified Reasonable Cost of the replacement exceeds the amount of the previously granted Certified Reasonable Cost attributable to the repair.

§ 62-05 Application Procedure and Documentation.

(a) Application forms and filing; mandatory electronic filing. Prescribed forms and applications are available online on the HPD website. All applications must be submitted to HPD electronically on forms approved by HPD. Only applications complete in all detail will be considered for certification of eligibility and reasonable cost. All forms must be filled out fully by the applicant. Applications and supporting documentation may only be submitted to HPD for review and approval after the Completion Date.

(b) Notice of intent. The notice of intent form required under subdivision h of the Act must be filed not less than fifteen days prior to the Commencement Date. If the scope of the work or the estimated cost changes materially, applicants must file a revised notice of intent. Applicants who fail to comply with the provisions of this subdivision (b) must pay a penalty at the time of issuance of a Certificate of Eligibility and Reasonable Cost of the greater of five hundred dollars (\$500) or ten percent (10%) of the filing fee otherwise payable pursuant to subdivision (c) of this section, provided that HPD may waive the penalty for projects receiving Substantial Governmental Assistance or for Eligible Construction that constitutes Emergency Work, provided that such notice of intent shall be filed no later than the date of the filing of the application. The penalty prescribed by this subdivision (b) is in addition to the normal filing fees prescribed in 28 RCNY § 62-05(c).

(c) Documentation required of all applicants. All applicants must maintain documents relating to claimed costs as specified in 28 RCNY § 39-06(a), and all completed applications for Rehabilitation Program Benefits must include the following documentation of the applicant's actual expenditures properly organized and collated in time sequence:

(1) The application form; and

(2) One of the following:

(i) a report by an independent certified public accountant on the cost of the Eligible Construction in a form prescribed by HPD and in accordance with standards approved by HPD and based upon the books and records of the owner provided that the original records are retained as set forth in 28 RCNY § 62-08(a)(2)(iv) and 28 RCNY § 39-06(a) and are available for audit purposes; or

(ii) A Disposition of Funds Statement or certification by the Commissioner of the cost of the work based upon other program records, where applicable; or

(iii) In the discretion of HPD, paid bills, cancelled checks, installment agreements, and the work contract and any change orders, indicating work, location of building, and quantity in appropriate unit of measurement all in a form corresponding to the individual items on the Certified Reasonable Cost Schedule so that the claimed costs can be audited by HPD against the specific items and allowances contained in such schedule; and

(3) Plans and amendments, if any, approved by the Department of Buildings; and

(4) Proof of Commencement Date:

(i) Copy of a Building Permit; or

(ii) HPD shall require that the Commencement Date be confirmed by an affidavit from a registered architect or licensed professional engineer, together with, at the discretion of HPD, such other information as HPD may require to substantiate such date, including, but not limited to, an affidavit from the owner, a copy of the work contract, invoices, cancelled checks or such

other proof of payment as HPD shall require, and a contractor's affidavit. If an application contains a series of work items, the Commencement of Construction date is that of the first work item for which Rehabilitation Program Benefits are claimed; and

(5) Proof of Completion Date:

(i) A Permanent Certificate of Occupancy; or

(ii) A Temporary Certificate of Occupancy, and an affidavit from a registered architect or licensed professional engineer and the owner that the only work remaining to secure a Permanent Certificate of Occupancy is work to be performed or completed in space to be used exclusively for non-residential purposes; or

(iii) A sign-off by the Department of Buildings as evidenced by the Department of Buildings certification form, a computer printout or such other official documentation as may be required by the Department of Buildings and is acceptable to HPD if issued in connection with Eligible Construction; or

(iv) If none of the above are required by law, Completion Date must be confirmed by the submission of an affidavit of a registered architect or a licensed professional engineer, along with such other information as may be required by HPD, including, but not limited to, an affidavit from the owner, a copy of the work contract, invoices, cancelled checks or such other proof of payment as HPD shall require, Disposition of Funds Statements, certification by the Commissioner based on program records or inspection, and a contractor's affidavit which confirm such Completion Date to the satisfaction of HPD.

(6) Proof of Compliance with the Housing Maintenance Code. For applications for which a Certificate of Occupancy has not been issued within one year of the date of submission of such application for all units for which benefits are claimed, if there are any violations of record which are classified as hazardous or immediately hazardous prior to the issuance of a Certificate of Eligibility and Reasonable Cost, the applicant must either clear the violations of record or submit affidavits:

(i) from a registered architect, or a licensed professional engineer, certifying that the architect or engineer has inspected the premises and that work necessary to remove any hazardous or immediately hazardous violations has been completed. If a violation classified as hazardous or immediately hazardous was caused by a tenant and the tenant refuses to grant access to the applicant to correct the tenant-related violation, such violation will not preclude eligibility provided the applicant can establish these facts with clear and convincing evidence; and

(ii) from the owner, certifying that the architect or engineer has inspected the premises and that work necessary to remove any hazardous or immediately hazardous violations has been completed. If a violation classified as hazardous or immediately hazardous was caused by a tenant and the tenant refuses to grant access to the applicant to correct the tenant-related violation, such violation will not preclude eligibility provided the applicant can establish these facts with clear and convincing evidence.

(7) Department of Buildings certification form or, if no permits from the Department of Buildings are required, at the option of HPD, alternative documentation to prove absence of Building Code violations.

(8) Proof that the building has been registered with HPD in accordance with the provisions of article two of subchapter four of the Housing Maintenance Code.

(9) An affidavit from the owner certifying that whenever any Household Appliance is installed or replaced with a new Household Appliance, such new appliance shall be certified as Energy Star. If applicable, such affidavit may instead certify that (i) an appropriately-sized Energy Star certified Household Appliance is not manufactured, such that movement of walls or fixtures would be necessary to create sufficient space for such appliance, and/or (ii) an Energy Star certified boiler or furnace of sufficient capacity is not manufactured.

(10) An affidavit of no harassment as provided for in paragraph 6 of subdivision c of the Act.

(d) Additional documentation for certain Eligible Construction. Certain Eligible Construction requires the approval of designated agencies and such additional documentation as HPD shall require. The "Schedule of Required Information, Permits and Sign-offs" set forth on the HPD website contains a list of the documentation from designated agencies that HPD requires for specific Eligible Construction.

(e) Additional documentation for buildings owned as Cooperatives or as Condominiums. Buildings owned as Cooperatives or Condominiums must submit the following additional documentation:

(1) An opinion of counsel which states that the building is a legal Cooperative or Condominium and which has a prospectus accepted for filing by the Attorney General, or was formed prior to the date a prospectus was required by law, or is exempt for other reasons from the filing requirements; and

(2) As applicable, (A) a copy of the prospectus or offering plan which has been accepted for filing by the Attorney General, and all subsequent amendments which become effective prior to the time HPD issues a Certificate of Eligibility and Reasonable Cost for any Cooperative or Condominium eligible for Rehabilitation Program Benefits, or (B) a copy of the "no action" letter received from the Attorney General, or (C) documentation demonstrating that the building is not subject to the requirements of § 352(e) of the General Business Law.

(3) Evidence with respect to assessed valuation per dwelling unit as of the Commencement Date in a form prescribed by HPD.

(f) BLDS Inspections. The filing of an application for a Certificate of Eligibility and Reasonable Cost is deemed a representation by such applicant that all Eligible Construction claimed in such application has been completed. All such claimed items of Eligible Construction are subject to a BLDS inspection prior to HPD's issuance of a Certificate of Eligibility and Reasonable Cost.

Any Certificate of Eligibility and Reasonable Cost issued with respect to such application shall not include items of Eligible Construction claimed therein which, as determined by such BLDS Inspection, have not been completed or where the construction thereof was not carried out in conformity with all applicable provisions of law. If any claimed item of Eligible Construction cannot be verified upon the first inspection or attempted inspection by BLDS, such applicant must pay ten times the actual cost of any additional inspection needed to verify such claimed item of work.

(g) Voluntary Withdrawal of Application. At any time prior to the issuance of a Certificate of Eligibility and Reasonable Cost pursuant to subdivision h of this section, an applicant may notify HPD that the applicant is withdrawing its application from consideration. Such withdrawal shall preclude any further applications for the Eligible Construction claimed in such application.

(h) Issuance of a Certificate of Eligibility and Reasonable Cost.

(1) HPD shall review each application to determine if it is eligible for Rehabilitation Program Benefits.

(2) The Certified Reasonable Cost for all Eligible Construction shall be calculated as follows:

(i) The Certified Reasonable Cost for all Eligible Construction shall be the lesser of the applicant's actual cost, or the allowance set forth in the Certified Reasonable Cost Schedule.

(ii) The Certified Reasonable Cost for all eligible items of work shall be reduced where such items are allocable in whole or part to, or service, ineligible portions of the building, if any, in the same ratio as the ineligible space bears to the aggregate floor area of the building.

(3) HPD shall issue a Certificate of Eligibility and Reasonable Cost for all approved applications.

(i) Filing procedure with the Department of Finance.

(1) After HPD issues the Certificate of Eligibility and Reasonable Cost, the applicant must file the Certificate of Eligibility and Reasonable Cost with the appropriate borough Office of the Real Property Assessment Bureau of the Department of Finance.

(2) The following documents must be filed with the Certificate of Eligibility and Reasonable Cost:

(i) Department of Buildings certification form, except that if no permits from the Department of Buildings are required, at the option of HPD, alternative documentation to prove absence of Building Code violations;

(ii) certified tax search or copy of installment agreement;

(iii) Department of Finance Application for Tax Exemption and Tax Abatement.

§ 62-06 Certified Reasonable Cost Schedule. HPD will publish a Certified Reasonable Cost Schedule on its website, setting forth the maximum reimbursement limits for Eligible Construction based on analysis of the RSMMeans database or similar database of construction costs.

§ 62-07 Enforcement.

(a) Rehabilitation Program Benefits may be revoked retroactive to the commencement thereof, as provided in chapter thirty-nine of this title.

(b) Rehabilitation Program Benefits also are subject to revocation or reduction for failure to substantiate claimed costs.

(1) All applications are subject to audit by HPD at any time after the issuance of a Certificate of Eligibility and Reasonable Cost.

(2) In addition to the bases for revocation of tax benefits provided in chapter thirty-nine of this title, the Commissioner may reduce or revoke past or future Rehabilitation Program Benefits if he or she finds that the application for a Certificate of Eligibility and Reasonable Cost, including all affidavits submitted in connection with the application, contains a false statement or false information as to a material matter or omits a material matter relating to claimed costs. It is the responsibility of the recipient of the benefits, whether the original applicant or any subsequent owner, including any Eligible Homeownership Building, to document all claimed costs in a manner acceptable to HPD and in accordance with generally accepted auditing standards so that original checks or such other proof of payment as HPD shall require can be properly matched against the items on the Certified Reasonable Cost Schedule and so that the auditors may examine original documentation for the cost of all supplies and the cost of all subcontracts. If a recipient of Rehabilitation Program Benefits hereunder fails to substantiate claimed costs to the satisfaction of HPD, the CRC shall be reduced or revoked as applicable. If HPD determines on the basis of the total available evidence that the application contains a false statement or false information as to a material matter, or omits a material matter, relating to claimed costs, all benefits hereunder shall be revoked in accordance with subdivision p of the Act.

(3) All books, records and documents, which in accordance with generally accepted auditing standards, may be used to substantiate entries in the applicant's books and records relating to claimed costs, must be kept at all times available for inspection by HPD and must be retained for a period of at least six years from the later of the date of the approval of the Certificate of Eligibility and Reasonable Cost as stated therein or the date upon which the tax benefits commence except that (A) where an audit has been initiated and a final determination has not been rendered, such records must be retained until such determination has been made and (B) where an applicant has entered into an installment arrangement with respect to payment for work comprising all or a part of the project, such records must be retained until the later of (I) three years from the date on which the applicant collects the Certificate of Eligibility and

Reasonable Cost, and (II) one year following payment in full for the work comprising the project.

(4) If an institutional lender has become a successor in interest to the original owner of a building or structure receiving Rehabilitation Program Benefits, and, after diligent efforts to obtain original contracts, checks and other records normally reviewed by HPD to verify claimed costs, is unable to obtain part or all of such records, HPD shall permit the substitution, in whole or in part, of documentation certified by the institutional lender showing the amounts advanced by the institutional lender pursuant to the mortgage loan to finance such Eligible Construction along with such other documentation as HPD may require.

(5) The revocation of Rehabilitation Program Benefits for failure to substantiate claimed costs hereunder shall be conducted in accordance with the procedures established pursuant to chapter thirty-nine of this title. Notwithstanding the foregoing, if, after HPD delivers an Initial Notice in accordance with chapter thirty-nine of this title, the Taxpayer fails to submit documentation to substantiate claimed costs during the Comment Period as defined in such Initial Notice, HPD shall deliver a Determination Notice to the Taxpayer in accordance with such chapter.

Acting Commissioner Ahmed Tigani
May 21, 2025