

# NOW & NEXT

## Affordable Housing Alert

OCTOBER 12, 2023

### HPD proposes Mitchell-Lama Rule Amendment to streamline rent increases for rental assistance units

By Abigail Patterson, Meghan Altidor, and Deborah VanAmerongen

New rule would establish separate, more flexible process for rent increases for City-regulated Mitchell-Lama units benefiting from rental assistance.



#### What's the Impact

- / HPD's proposed new rule promises to bring greater speed and efficiency to the effectuation of rent increases for City-regulated Mitchell-Lama rental assistance units, without imposing greater rent burden on tenants.
- / A public comment period runs through November 8, 2023.

Article II of the Private Housing Finance Law of the State of New York (the PHFL), also known as the Mitchell-Lama Law, establishes the Department of Housing Preservation and Development (HPD) as the supervising agency for City-aided projects which were created under the Mitchell-Lama Law. The PHFL and the New York City Charter further authorize HPD to promulgate rules related to the regulation of Mitchell-Lama projects, which are codified at 28 RCNY Chapter 3 (the Mitchell-Lama Rules).

The Mitchell-Lama Rules currently requires that owners (Housing Companies) seeking rent increases undergo a rigorous budget-based analysis and demonstrate strict compliance with proscribed public hearing and notice requirements, as well as limiting any such requests to no more frequently than every two years. These procedures reflect the important public policy considerations implicated when tenants bear responsibility for allowable increases in rent.

However, a subset of Mitchell-Lama units benefit from rental assistance subsidies from federal, state, or local sources, up to a payment standard established by such source; for these units, rent increases will not affect the tenant portion of the rent paid to the owner because the subsidy source, rather than the tenant, covers the increase. The most common form of rental assistance is Section 8 vouchers, but there are numerous forms of rental assistance and the rents under any of these programs may exceed the approved Mitchell-Lama rents.

On October 6, 2023, HPD proposed an [amendment to the Mitchell-Lama Rules](#) (the Amendment) which recognizes that requests for rent increases for rental assistance units trigger a different set of considerations than those which may result in additional tenant responsibility. The Amendment establishes an expedited procedure which may be employed more frequently than once every two years and does not require public hearings. Housing Companies will seek increases by substantiating the need for increases with documentation including cash flow projections and audited financial statements. Housing Companies should note that if the tenant qualifying for rental assistance vacates a unit which has been the subject of an increase granted pursuant to the Amendment, and the new tenant does not qualify for such rental assistance, the rent for that unit will revert to the amount approved prior to the increase authorized by the Amendment.

## What's next?

HPD has announced a public comment period through November 8, 2023. Comments may be provided in accordance with the instructions posted [here](#). Nixon Peabody will monitor the Amendment through its anticipated adoption.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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