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Affordable Housing Alert

November 6, 2023

Governor signs Affordable Housing Rehabilitation Program / J-51 replacement

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The Affordable Housing Rehabilitation Program aims to combat the rising cost of maintenance for rentals and some homeownership projects.



What's the impact?

- This program replaces the prior rehabilitation tax benefit and grants New York City the authority to implement a new tax benefit program.
- Eligibility is contingent on having at least 50% affordable units or receiving other government assistance.
- Some condominium and cooperative units may be eligible if they meet certain conditions.

Governor Kathy Hochul of New York signed legislation recently to create the Affordable Housing Rehabilitation Program, granting New York City the authority to implement a new tax benefit program. The new tax break applies to qualifying renovation work completed after June 29, 2022, and before June 30, 2026.

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This new program replaces the prior rehabilitation tax benefit known as J-51, which expired on June 30, 2022.

Since the new benefit is an abatement, not an exemption, there is some question whether it will provide adequate incentive to owners to undertake rehabilitation work on their property.

Under the new Affordable Housing Rehabilitation Program, the tax abatement is capped at 70% of the certified reasonable cost of the eligible construction over the life of the tax break, as determined by New York City's Department of Housing Preservation and Development (HPD). The potential tax abatement is capped at 8.3% each year for up to 20 years.

To be eligible, rental buildings must be owned and operated by a limited-profit or limited-dividend housing company incorporated pursuant to the New York State Private Housing Finance Law (PHFL) or have at least 50% affordable units or receive substantial governmental assistance.

Buildings without regulatory agreements are only eligible if at least 50% of the building's units are affordable to households earning no more than 80% of the area median income (AMI), as determined by HUD, and such units are regulated for 15 years.

Owners of buildings participating in the Program will be required to record a 15-year binding restrictive declaration, which will require them to keep the units rent-stabilized or rent-controlled for 15 years (even if the term of the abatement is less than 15 years). Property owners must not have harassed or unlawfully evicted tenants in the past five years. Property owners must not keep affordable units off the market "for a period that is longer than reasonably necessary." Rental property owners who receive Program benefits will be prohibited from converting to cooperative or condominium status while the benefits are in effect.

In addition, units do not simultaneously qualify for rent increases through the major capital improvements program. Owners must waive collection of any rent increase granted for major capital improvements over the duration of the Program benefit period. Owners will be able to apply for the abatement through HPD.

Owners can apply on or before the later of (i) four months from the effective date of such local law or ordinance or (ii) four months from the completion date. The application must include evidence of eligibility for rehabilitation program benefits and evidence of reasonable cost, including, but not limited to, evidence showing the cost of eligible construction. The application must be accompanied by a non-refundable filing fee based on the number of dwelling units. Each building may only apply and receive one Program abatement and may not re-apply if such application is denied.

Impact of the AHRP

One of the main goals of the Program is to combat the rising cost of maintenance. Owners of older multifamily properties now in poor condition face financial challenges when updating their buildings to conform to industry standards. Because many owners do not have sufficient financial reserves to keep up their buildings, owners may have to pass the cost down to the residents. The Program, if successful, will start to lower costs for owners and tenants alike.

Benefits for Existing Condominiums and Cooperatives

There is also some good news for existing cooperatives and condominiums under the new Affordable Housing Rehabilitation Program. Condominium and cooperative units with an assessed value not to exceed \$45,000 per dwelling unit are eligible to receive tax abatements. The Program also allows for eligible regulated homeownership buildings to apply as well, including Mitchell Lamas and redevelopment companies. Generally, the annual abatement of taxes cannot exceed the full amount of annual taxes payable on an eligible property; however, for eligible condominiums or cooperatives, the abatement cannot exceed **50%** of the property taxes payable on the property. Even so, the Program will provide much-needed relief for many affordable and middle-income cooperatives and condominiums throughout New York City.

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