

*Disclaimer: This document is provided for purposes of interim guidance to prospective AHCC projects until HPD adopts rules in accordance with the requirements of RPTL § 467-m and New York City Charter § 1043, and all applications submitted for AHCC Program Benefits shall be governed by such adopted rules.*

### **Program Background:**

New York State Real Property Tax Law (“RPTL”) § 467-m (“Act”) adopted the Affordable Housing from Commercial Conversions Tax Incentive Benefits (“AHCC Program Benefits”) program in order to provide real property tax exemptions for the conversions of non-residential buildings, except a hotel or other class B multiple dwelling, to Eligible Multiple Dwellings. These AHCC Program Benefits are available to Eligible Multiple Dwellings that contain six or more dwelling units, where the Eligible Conversions commenced after December 31, 2022, and on or before June 30, 2031, and where the Eligible Conversions are completed on or before December 31, 2039. Eligible Multiple Dwellings must be operated as rental housing.

Capitalized terms not specifically defined herein are defined in New York State Real Property Tax Law Section 467-m.

### **Commencement:**

- 1. What DOB permits will be required by HPD to establish an Eligible Conversion’s Commencement Date?**

HPD released information [here](#) that describes the permits required to establish the Commencement Date.

- 2. If the Department of Buildings issues an Alteration permit for a change of use of a portion of a Non-residential building and such Alteration permit is later amended to expand the area of work, how will the Eligible Multiple Dwelling’s Commencement Date be determined?**

HPD intends to establish the Commencement Date for the Eligible Multiple Dwelling by utilizing the issuance date of the initial qualifying commencement of construction permit for the project included in the Application.

- 3. I have an Alteration Type 1 permit issued through DOB which did not allow for me to start residential conversion work. Can I file a post-approval amendment (PAA) to that permit to now allow that same job to be used to start residential conversion work?**



HPD intends to review proposed, qualifying commencement of construction permits issued by the Department of Buildings for information including, but not limited to, any changes to the occupancy or use, number of dwelling units, or other changes inconsistent with the building's current certificate of occupancy to determine whether such permit can establish the Commencement Date of the Eligible Conversion.

- 4. If my conversion is being done with multiple phases under separate Alteration permits, can I qualify each phase with a separate Application? What does this mean for my eligibility for the different benefit periods?**

Eligibility is determined based upon how the project is defined in the Application and what such Application proposes to be the Eligible Multiple Dwelling. There cannot be more than one type of post-construction benefit period for an Eligible Multiple Dwelling. Furthermore, HPD anticipates that an Eligible Multiple Dwelling will be defined in the AHCC Program Benefits unit mix and distribution documentation which must be approved by HPD, and that adjustments to unit mix and distribution will be disallowed after the HPD marketing process is initiated with a notice of intent to begin marketing. It is anticipated that these requirements will mirror existing requirements within the 421-a(16) Program as codified in 28 RCNY § 51-02.

- 5. Is there any scenario where an Alteration Type 2 permit can serve as the basis for the Commencement Date.**

HPD has published an [interim commencement guidance bulletin](#) about the types of permits that may serve as the basis for establishing the Commencement Date. This interim bulletin should be consulted for guidance until the adoption of rules by HPD in accordance with the requirements of RPTL § 467-m(6)(j)(iv) and New York City Charter § 1043. All Applications shall be governed by such rules.

### **Benefits:**

- 1. When can the AHCC Program Benefits be expected to be reflected on the tax bill? How will the initial tax bill be calculated after eligibility for AHCC Program Benefits is certified by HPD?**

Once the property has been found eligible for AHCC Program Benefits, the property can anticipate that the exemption will be applied for the following tax year. The tentative tax roll is released at the beginning of January each year, followed by the final tax roll, which is released by the end of May each year. For the exemption benefit covering the construction period, the benefit will be applied retroactively once the Department of Finance (DOF) receives an AHCC Program Benefits certificate of eligibility issued by HPD.



**2. How will Construction Period benefits be implemented?**

Construction Period benefits will be applied retroactively after all the conditions of eligibility have been met and HPD issues a certificate of eligibility. Property owners may file an Application no earlier than the Completion Date and no later than one year after the Completion Date.

**3. Will property taxes need to be paid during the Construction Period? If so, will these taxes be refunded after the Completion Date?**

A property must pay all tax bills it receives prior to the implementation of AHCC Program Benefits. A property applying for AHCC Program Benefits cannot be eligible for such benefits if it has outstanding tax liability or is not in an active payment plan for outstanding taxes, water or sewer charges, or any other related charges.

**4. Can a pre-existing ICAP benefit on the pre-conversion Non-residential building be counted on to mitigate the property tax liability during conversion if it is assumed property taxes will be due during construction?**

A property receiving AHCC Program Benefits cannot receive any exemption from or abatement of real property taxes under any other law during a period in which it receives AHCC Program Benefits. As AHCC Program Benefits are provided for the Construction Period, a property could not concurrently receive ICAP benefits during such period.

**Eligible Multiple Dwellings:**

**1. Can a conversion which includes an expansion of new floor area constitute an Eligible Conversion?**

HPD anticipates requiring that at least fifty-one percent of the floor area of a completed Eligible Multiple Dwelling consist of the Non-residential building that was the subject of the Eligible Conversion.

**2. If only a portion of a building is non-residential and that portion is being converted to residential housing, will such portion of the building be eligible for AHCC Program Benefits provided it is contained within a separate condominium tax lot?**

An Eligible Conversion may consist of a portion of a building that was non-residential even if the rest of the building does not qualify provided that said non-residential portion is contained in a separate condominium tax lot. An Eligible Conversion is defined to mean a conversion of a Non-residential building, except a hotel or other class B multiple dwelling, to an Eligible Multiple Dwelling. A Non-residential building is defined to mean a structure or portion of a structure, except a hotel or other class B multiple dwelling, having at least one floor, a roof and at least three walls enclosing all or most of the space used in connection with the structure or portion of the structure, which has a certificate of occupancy for commercial, manufacturing or other non-



residential use for not less than ninety percent of the aggregate floor area of such structure or portion of such structure, or other proof of such non-residential use as is acceptable to the agency.

**3. Am I required to include all of the newly created residential space from a conversion project in an Application?**

If a portion of a conversion project meets the definition of an Eligible Conversion and consists of a separate condominium tax lot, an Application can be submitted for that portion of the conversion once the entire permitted conversion has been completed.

**4. Can my Eligible Conversion project contain both residential and non-residential space, such as commercial or community facility space?**

Yes, the AHCC Program extends the tax benefit to commercial, community facility and non-residential space that constitutes no more than 12% of the total floor area of the Eligible Multiple Dwelling.

**5. How will the 12% limitation on ineligible commercial, community facility and accessory use space be computed?**

As part of the Application, HPD anticipates the project architect or engineer of record will be required to provide an affidavit establishing the floor area use calculations within the completed Eligible Multiple Dwelling. HPD anticipates this affidavit to provide the calculation of “Residential Aggregate Floor Area”, “Non-Residential Aggregate Floor Area” and “Ineligible Residential Aggregate Floor Area”. These categories will be used to determine whether the Eligible Multiple Dwelling exceeds the 12% limitation on non-residential space. “Non-Residential Aggregate Floor Area” and “Ineligible Residential Aggregate Floor Area” include all non-residential space and residential accessory space that is not required in order to secure a permanent certificate of occupancy for a Class A multiple dwelling.

**6. There is intended to be an apartment in this building specifically allocated for a superintendent. Is this apartment space included in the Aggregate Floor Area calculation?**

Yes, regardless of location within the Eligible Multiple Dwelling, the living quarters of the building superintendent and other employees servicing the building are included in the “Residential Aggregate Floor Area” calculation.

**7. While the law itself is silent with regards to construction wage requirements, the Labor Law indicates that a prevailing construction wage would apply. However, the relevant section of the Labor Law also exempts multiple residences. Does the prevailing construction wage apply?**

Labor Law Section 224-a, which codifies this construction prevailing wage requirement for “covered projects”, excludes from the definition of “covered project” “[c]onstruction work performed on a multiple residence and/or ancillary amenities or installations that is wholly privately owned ... where no less than twenty-five percent of the residential units are affordable and shall be retained subject to an anticipated regulatory agreement with a local, state, or



federal governmental entity, or a not-for-profit entity with an anticipated formal agreement with a local, state, or federal governmental entity for purposes of providing affordable housing in a given locality or region provided that the period of affordability for a residential unit deemed affordable under the provisions of this paragraph shall be for no less than fifteen years from the date of construction.” Labor Law § 224-a(4)(c)(i). The Affordability Requirement for Eligible Multiple Dwellings for AHCC Program Benefits meets the minimum affordability threshold required by this exclusion from the definition of “covered project”. Furthermore, RPTL § 467-m (15) provides that “[a] non-residential building undergoing an eligible conversion shall be considered a multiple residence during the construction period, “ and RPTL § 467-m(6)(j)(v) authorizes HPD to promulgate rules “specifying the legal instrument by which the marketing, affordability, rent stabilization, permitted rent, and any other requirement associated with this benefit will be recorded and enforced.” In accordance with the latter provision, HPD anticipates adopting rules that will provide for a restrictive declaration, which will constitute the required regulatory agreement for purposes of Labor Law Section 224-a(4)(c)(i).

8. **Are there prohibitions on accessing historic tax credits or other affordable housing development programs through, for example, HPD or New York City’s Housing Development Corporation (HDC), that offset the costs of the project?**

An Eligible Multiple Dwelling may consider any additional sources or programs to facilitate the AHCC project provided it does not receive any exemption or abatement from real property taxation while it is receiving AHCC Program Benefits. If an Eligible Multiple Dwelling participates in additional affordable housing development programs and any such program imposes overlapping regulatory provisions, the most restrictive provisions will govern.

9. **What are the design or distribution requirements that will pertain to the selection of units for affordable housing?**

RPTL § 467-m(6)(b) requires that each Eligible Multiple Dwelling either achieve, based on the number of legal bedrooms in a dwelling unit, proportionality between market and affordable units or have at least fifty percent of all Affordable Housing Units contain two-bedrooms or more and no more than twenty-five percent of all Affordable Housing Units containing less than one-bedroom. The AHCC Program also requires all Affordable Housing Units in an Eligible Multiple Dwelling to share the same common entrances and common areas as rental market rate units in such Eligible Multiple Dwelling and not to be isolated to a specific floor or area of an Eligible Multiple Dwelling. HPD anticipates adopting rules that will further clarify common area and distribution requirements.



## **Application Process:**

### **1. How does one submit an Application?**

Currently, HPD is not receiving Applications. Please check the [467-m webpage](#) for future updates. HPD expects to begin accepting Applications after the proposed program rules are published by the Agency but cannot review or approve such Applications until after such rules are adopted.

Once available, Applications can be submitted electronically to [467-m\\_AHCC@hpd.nyc.gov](mailto:467-m_AHCC@hpd.nyc.gov) or physically to the below address. HPD prefers to receive Applications electronically.

Attn: Division of Housing Incentives  
New York City Department of Housing Preservation and Development  
100 Gold Street, New York, NY, 10038

### **2. Please clarify the timeline that should be expected for HPD package/application, marketing, lottery, HPD application approvals and move-ins.**

HPD anticipates that AHCC projects should expect to file documents akin to the Affordable New York Housing Program Workbook (“421-a(16) Workbook”) and owner’s affidavit approximately twelve months before the anticipated Completion Date of the Eligible Multiple Dwelling. After HPD approves this document, the project would initiate the HPD marketing process by submitting a notice of intent to begin marketing.

The HPD marketing process is anticipated to take seven to eight months beginning with HPD’s approval of the project documents submitted by the selected marketing agent and ending with the affordable unit(s) lease-up. The lease up time may be highly dependent on the size of the conversion project, the experience of the marketing agent and the desirability of the units.

Applications should not be submitted to HPD earlier than the Completion Date of the Eligible Multiple Dwelling and cannot be submitted later than one year after the Completion Date of the Eligible Multiple Dwelling. The Completion Date is defined as “the date upon which the local department of buildings issues the first temporary or permanent certificate of occupancy covering all residential areas of an eligible multiple dwelling.”

Projects should submit all of the documentation requested within the Application and submit via email to [467-m\\_AHCC@hpd.nyc.gov](mailto:467-m_AHCC@hpd.nyc.gov).

Once Applications are received, a reviewer is assigned and reviews the Application. The reviewer will request additional information or ask additional questions as they arise within the Application and provide a formal checklist for any missing, incomplete, or insufficient information.



3. **Where can I find more resources to better understand the marketing and lease up process?**

HPD has additional resources about the affordable housing lottery and marketing process located [here](#). Marketing of Affordable Housing Units will follow all of the existing requirements and protocols established through the [Marketing Handbook](#).

If there are additional questions, please feel free to reach out to [housingopportunity@hpd.nyc.gov](mailto:housingopportunity@hpd.nyc.gov) or [467-m\\_AHCC@hpd.nyc.gov](mailto:467-m_AHCC@hpd.nyc.gov).

4. **Are the dwelling units that are proposed as Affordable Housing Units allowed to be rented by market-rate households prior to the first occupancy of a qualified (i.e., HPD Marketing approved) household?**

No. An Affordable Housing Unit is defined by RPTL § 467-m as a dwelling unit that meets the Affordability Requirement upon initial rental and upon each subsequent rental following a vacancy during the Restriction Period and is affordable to and restricted to occupancy by individuals or families whose household income does not exceed the income bands established in conjunction with such affordability requirement.

5. **Will there be a mechanism to notify the City of a project's intent to pursue AHCC Program Benefits before they commence the Application process?**

Though not a requirement for participation in the AHCC Program, property owners may submit to HPD an [AHCC Interest Form](#) available on HPD's website. Interested parties are encouraged to reach out to HPD via [467-m\\_AHCC@hpd.nyc.gov](mailto:467-m_AHCC@hpd.nyc.gov) for more information or to ask additional questions.

6. **After providing a workbook and initiating the affordable housing lottery, what is the process to apply for AHCC Program Benefits? Will there be an Application fee?**

HPD anticipates that there will be an Application fee that will be \$3,000 per dwelling unit included in the Eligible Multiple Dwelling. It is anticipated that payment of 25% of the Application fee will be required at the submission of the documentation used to approve the Eligible Multiple Dwelling's unit mix and distribution and that payment of the remaining 75% will be required upon the Application submission, which may occur no earlier than the Completion Date and no later than one year from the Completion Date.

7. **How will HPD apply the proportionality test if the project seeks to receive unit mix approval using such test?**

HPD anticipates that Applications will be submitted to HPD with an HPD-approved document similar to the [421-a\(16\) Workbook](#). This document will contain executed affidavits from both authorized signatories of the applicant ownership and the project architect or engineer of record, which certify the aggregate floor area use of the Eligible Multiple Dwelling consistent with the as-built Department of Buildings approved plans, including all post-approval amendments thereof.



## **Affordability:**

### **1. How do I ensure my project meets the affordability restrictions?**

Similar to the process for the Affordable New York Housing Program process within the 421-a(16) Program as codified in 28 RCNY § 51-02, HPD anticipates AHCC projects will submit documentation for HPD review identifying which dwelling units will be Affordable Housing Units, along with the proposed initial monthly rent amounts, number of bedrooms, proposed AMI bands and tenant-paid utility types. This documentation will be reviewed and approved by HPD prior to an AHCC project submitting a notice of intent to market these Affordable Housing Units through the HPD marketing process.

### **2. How do I select income restrictions that meet the Weighted Average Area Median Income (“WAAMI”) requirements?**

HPD anticipates AHCC projects will choose an initial monthly rent amount for specific Area Median Income (AMI) bands within the document akin to the 421-a(16) Workbook. HPD intends to have this document demonstrate that (1) not less than 25% of the dwelling units are restricted as Affordable Housing Units (2) the WAAMI of all Affordable Housing Units does not exceed 80% AMI, (3) there are no more than three AMI bands, (4) no AMI band exceeds 100% AMI, (5) a minimum of 5% of the Affordable Housing Units is restricted at or below 40% AMI, and (6) AMI bands are selected at increments of 10 from 0% AMI to 100% AMI.

### **3. How will the affordability and Rent Stabilization obligations be memorialized?**

HPD anticipates requiring that AHCC projects be restricted through a restrictive declaration recorded on the property. HPD intends to provide a draft restrictive declaration form that will be filled out by applicant’s counsel, reviewed and approved by HPD staff, and executed and submitted for recording by the Applicant against the property and included in the Application. The restrictive declaration will include, among other things, the designations of Affordable Housing Units, requisite number of bedrooms in each such unit and the applicable AMI band.

## **Former Use Guidance:**

### **1. In the absence of a Temporary (“TCO”) or Final Certificate of Occupancy (“FCO”), what proof will HPD accept to establish non-residential use prior to the commencement of construction?**

HPD will review the administrative record of the proposed Non-residential building including, but not limited to, registrations with and representations made to New York City and New York State agencies regarding the use and occupancy of the existing structure prior to the Commencement Date of the Eligible Conversion.





2. **What qualifies as a “Non-residential building”? Do community facilities such as universities, colleges, monasteries, and convents that are in zoning Use Groups 3 and 4 qualify?**

HPD is not limited to reviewing “Non-residential buildings” by use groups.

The statute defines "Non-residential building" as a structure or portion of a structure, except a hotel or other class B multiple dwelling, having at least one floor, a roof and at least three walls enclosing all or most of the space used in connection with the structure or portion of the structure, which has a certificate of occupancy for commercial, manufacturing or other non-residential use for not less than ninety percent of the aggregate floor area of such structure or portion of such structure, or other proof of such non-residential use as is acceptable to the HPD. It further defines "Non-residential tax lot" as a tax lot that does not contain any dwelling units.

**Other:**

1. **I am a prospective tenant and am interested in living in a commercial conversion. How do I apply for an Affordable Housing Unit?**

Affordable Housing Units created through the AHCC Program will be marketed through HPD Marketing. Advertisements will be available on Housing Connect in the section entitled “Open Lotteries”. Each advertisement includes a description of the HPD program(s) that restrict the project and dictate the terms of the affordability requirements.

Additional information on how to apply for open lotteries is available [here](#) and in the [Housing Connect FAQ](#).

2. **When will the Community Board be notified of a commercial conversion in its district?**

The AHCC Program is an as-of right tax benefit program that does not require Community Board notification. However, HPD highly encourages all owners and developers to provide notice to their respective Community Boards of all upcoming affordable housing projects. Additionally, it is a requirement to provide the Housing Connect lottery advertisement to the respective Community Board when the advertisement becomes live on Housing Connect.

