LENOX HILL NEIGHBORHOOD HOUSE

331 East 70th Street
New York, NY 10021
212 744 5022

www.lenoxhill.org

October 20, 2020

Attn: Brittany Fishman
New York City Department of Finance
Legal Affairs Division
375 Pearl St., 30th Fl.
New York, N.Y. 10038
fishmanb@finance.nyc.gov

Re: Proposed Changes to SCRIE/DRIE Rules,
Chapter 52 of Title 19, RCNY

To the NYC Department of Finance:

We write regarding the New York City Department of Finance's ("DOF") proposed amendments ("proposed amendments") to Chapter 52 of Title 19 of the Rules of the City of New York regarding the Senior Citizen Rent Increase Exemption & Disabled Rent Increase Exemption programs ("SCRIE/DRIE"). We previously submitted comments regarding the proposed amendments (copy attached) and we appreciate that many of our comments were addressed by DOF.

We have identified several aspects of the proposed amendments that would make it more difficult for tenants to obtain or maintain their SCRIE/DRIE and we will address them below.

1. Applications and Renewals §52-02

- §§52-02(a)(1)(i), 52-02(a)(1)(ii), & 52-02(f) require a lease, signed by the tenant and the landlord. This is problematic because many rent stabilized tenants do not receive leases or fully executed leases from their landlords. Moreover, many rent controlled tenants never had a lease and could not fulfill this requirement. Even if tenants had previously had a lease, trying to get a current lease could require litigation—which could take years—and would undermine a tenant's SCRIE/DRIE eligibility. The rules should allow for rent controlled tenants to apply without a lease and for rent stabilized tenants to use the DOF Form "Certification of No Lease Renewal" along with another proof of tenancy.
- §52-02(a)(1)(i): the tenant must submit the "current and most recent prior SCRIE or DRIE rent exemption order." This is an impossible requirement for most initial applicants, as they have never previously had SCRIE. Further, for applicants who have previously had SCRIE/DRIE that expired, this is unnecessarily burdensome as DOF has copies of all prior SCRIE/DRIE rent exemption orders. As these are programs for older adults and those living

with disabilities, this added requirement is misplaced and unnecessary for DOF to make appropriate determinations. Accordingly, this requirement should not be included in the proposed amendments.

- §52-02(a)(1)(i): the tenant must submit "documentary proof that the applicant has been granted succession rights." This requirement fails to consider that it can take years for household members to be officially recognized as a successor by the landlord, a Court of competent jurisdiction or New York State Homes and Community Renewal ("HCR"). Additionally, while some tenants are entitled to succession as a matter of law, their tenancy has been never been formally acknowledged by their landlord, a court, or HCR. Therefore, although the law entitles the tenant to the apartment and they may be entitled to SCRIE, they would not be eligible to apply because they have no formal acknowledgment of their tenancy. For example, our client, Mr. T., lived with his mother, who was a SCRIE beneficiary. He was listed on her household composition on her SCRIE renewals, and when she passed away in 2017, he was able to take over her benefit, as he is eligible for SCRIE in his own right. The SCRIE benefit is significant and allows Mr. T. to afford the apartment. The landlord, however, has refused to acknowledge his right to the apartment, and we have been litigating his succession case for over three years in Housing Court. Under this proposed amendment, Mr. T. would not have a lease or a succession order necessary to receive a SCRIE benefit, the rent without SCRIE would exceed his income, and he would not be able to remain in the apartment, regardless of his right to it and his eligibility for SCRIE.
- §52-02(a)(1)(ii) states that "[a]pplications or corresponding documents may be submitted by the applicant, tenant representative or agent" and §52-02(a)(2) states that "such application may be submitted by either the applicant or his or her agent or designated tenant representative unless otherwise stated on the initial application." Proposed amendment § 52-01 defines agent as "a person who is either a court appointed guardian for the SCRIE or DRIE applicant, or a person who has been granted power of attorney authorization for SCRIE/DRIE applications." The SCRIE/DRIE application forms allow the applicant to designate a "tenant representative" to receive all of their notices. Many older adults and people with disabilities, however, may require the assistance of staff at a senior center or other support person or their family member, who is not a tenant representative or agent, to help them submit an application or additional supporting documents. Particularly during the COVID-19 crisis, many seniors are concerned about going in person to various government agencies to hand in documents and are relying even further on the assistance of social workers, advocates and family and friends

to submit documents. Restricting the submission of these documents to agents and tenant representatives as defined will make it difficult or impossible for many to apply for SCRIE/DRIE benefits.

- §52-02(a)(4) states that "if an initial application is denied…the Department will not approve any additional initial applications submitted during the same calendar year." This unfairly restricts tenant's eligibility to apply for SCRIE/DRIE, especially where their financial circumstances change that would make them eligible later in the year. For example, a tenant who retires during the year and is then eligible for SCRIE/DRIE based on prospective income would be unfairly restricted from the benefit for the remainder of the calendar year. Additionally, a tenant who is improperly denied SCRIE/DRIE benefits and fails to appeal within the allowed timeframe would be unable to reapply within the calendar year, even though they are entitled to benefits. Accordingly, SCRIE/DRIE applicants should be allowed to apply more than once a year.
- §52-02(d)(1) provides the criteria to establish "good cause" for failure to submit timely application, appeal, or documentation. Considering the COVID-19 pandemic, for which all tenant's eligible for SCRIE/DRIE are high-risk, it would be helpful to expand beyond these restrictive requirements to incorporate more circumstances which could reasonably limit a vulnerable population's ability to meet deadlines. Specifically, DOF should proactively define COVID-19 related delays, including belonging to a high-risk population, as "good cause" for failure to submit a timely application, appeal, or documentation.
- §52-02(g) states that if, upon renewal of a SCRIE/DRIE benefit, a tenant cannot provide a lease, they can submit the Certification Without a Renewal Lease form with "acceptable proof of tenancy." We suggest that a tenant renewing their SCRIE/DRIE benefit with a Certification Without a Renewal Lease form not be required to submit additional "proof of tenancy" as that will be unnecessarily burdensome. DOF would have proof from the initial application that the tenant was indeed the tenant at that address and requiring further proof upon renewal for a tenant who cannot control receipt of a lease and may not have any other proof of tenancy would be both unnecessary and difficult.
- §52-02(g)(1) states that the "tenant will be required to pay for any increase in rent for the renewal period until a lease signed by the tenant and other evidence of the rent amount is provided to the Department." It is much more appropriate for the landlord to bear the loss of an increased rent without an increased tax credit when it is the landlord that is failing to provide a signed

lease. Placing the burden of paying a rent increase on the tenant during the period that the landlord withholds the signed lease, runs counter to the very purpose of the Rent Increase Exemption Law and in fact could incentivize landlords to withhold leases, so that they can get more cash from the tenant and fewer tax abatement credits ("TAC").

- §52-02(g)(2) states that a "Certification Without a Renewal Lease form cannot be utilized for more than two consecutive lease periods." As previously noted, the tenant has no control over whether a landlord provides a lease to them and to restrict the tenant's ability to maintain SCRIE/DRIE because of a landlord's actions is unfair to the tenant. The proposed change to this provision is arbitrary and should not be approved.
- §52-02(g)(3) states that tenants "are required to provide a copy of the notice of maximum collectible rent ("MCR"). However, if "the tenant is not able to provide a new MCR for a renewal application, the Department will continue to utilize the most recently submitted MCR." We appreciate that the Department will rely on a previously submitted MCR but we are concerned this will restrict eligibility for tenants who do not have an MCR and would struggle to obtain that documentation. As with leases, tenants do not have control over their landlord's provision of an MCR.
- §52-02(g)(4) states "[a] tenant may submit more than one initial application and, if applicable, more than one renewal application each calendar year." We support this simple guidance regarding the submission of applications and renewals, however, this is contradicted by other sections of the amended rule, §§52-02(a) and 52-02(a)(4), and those should be revised to maintain consistency.
- §52-02(h) discusses the transfer of SCRIE/DRIE benefits to a new dwelling unit stating that the "dollar amount of the benefit being transferred from the previous apartment to the new apartment is the amount of the TAC for the previous apartment." However, this is not what NY Real Property Tax Law ("RPTL") §467-b(3)(d) allows and it is inconsistent with proposed amendment §52-17. Specifically, RPTL §467-b(3)(d) states that the TAC transferred to the new dwelling is the least of the following: (1) the amount by which the rent for the subsequent dwelling unit exceeds the last rent, as reduced, in the original dwelling unit; (2) the last TAC benefit at the original dwelling unit; (3) the amount by which the maximum rent or legal regulated rent of the subsequent dwelling unit exceeds one-third of the household income. The proposed amendments should be revised to be consistent with each other and the prevailing New York statutes.

2. **§52-03 Rent Increase Exemption Orders**
    - §52-03(b)(5) states "[i]f a rent reduction order is canceled, the SCRIE or DRIE TAC Will be adjusted." However, pursuant to NYC Admin. Code §§ 26-405(m)(3)(c) and 26-509(b)(3)(iii), the tenant is always getting the SCRIE/DRIE benefit and the TAC should stay the same regardless of a rent reduction order.
    - §52-03(c)(3) unreasonably restricts the tenant's ability to have a roommate because it states "an increase in the number of occupants who are not members of the immediate family of the tenant and the building owner has not been compensated therefor." This is contrary to Real Property Law ("RPL") §235-f, which allows tenants to take on roommates without permission from their landlords. Moreover, tenants are not obligated to notify landlords of roommates and landlords cannot charge additional rent when there are roommates. This is particularly problematic for SCRIE/DRIE participants who frequently rely on roommates to help them afford their apartments on a fixed income.

3. **§52-05 Eligibility Requirements for SCRIE and DRIE**
    - §52-05(b)(3) states that a SCRIE/DRIE "applicant must be named on the lease or rent order or have been granted succession rights to the apartment." This requirement fails to consider that it can take years for household members to be officially recognized as a successor by the landlord or a court, as previously discussed in §52-02(a)(1)(i).

4. **§52-08 Member of the Household**
    - §52-08 states "[a]ll relatives of the head of the household residing in the apartment are members of the household." This unreasonably assumes that any relatives are members of the households. In many situations SCRIE/DRIE recipients may have relatives living with them who are more akin to a boarder than a member of the household because of how they contribute to the household expenses and share household responsibilities. Relatives may not mingle finances or be included on public assistance budgets. Accordingly, the proposed amendments should allow for tenants to clarify how any family members relate to them, and therefore whether they are akin to a household member or a boarder.

5. **§52-09 Income Eligibility Requirements**
    - §52-09(b) states "[a]nything that is considered to be income by the Internal Revenue Service will be included in total aggregate household disposable

income." Similarly, §52-09(j) states "total aggregate household disposable income." However, while SCRIE/DRIE currently counts IRA earnings as income, it exempts IRA withdrawals from income and that exemption should be clarified in the amended rules.

6. **§52-10 Rent as a Percentage of Total Aggregate Disposable Income**
   - §52-10 states that upon renewal, where "the rent set forth in the rent exemption order does not exceed one-third of the total aggregate household disposable income of all members of the household, the rent the head of household will be required to pay will be increased to one-third of the total aggregate household disposable income." This is contrary to RPTL §467-b(d)(1), which contemplates ineligibility for a SCRIE renewal where the "maximum rent or legal regulated rent", as opposed to frozen rent, is not one-third of the household income. The Real Property Tax Law and Administrative Code do not provide for adjustments based on the frozen rent not being one-third of the household income.

7. **§52-14 Benefit Takeover**
   - §52-14(b)(1) states that a surviving household member can assume the SCRIE/DRIE benefit by providing "written proof that he or she resides in the apartment." It would be helpful for the proper administration of the programs to have a definition or examples of acceptable forms of written proof, such as a utility bill, state identification, or affidavit.

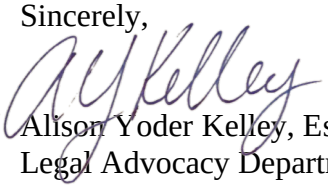
8. **§52-15 Rent Redetermination**
   - §52-15(a)(2)(b) states "[a]pplications cannot be submitted for rent redeterminations during the first twelve months the head of household is receiving benefits except when a remaining member of the household is determined to be a head of household." As unexpected deaths or permanent vacatur of family members can occur at any time, resulting in a permanent loss of income, applicants should be permitted to submit rent redeterminations during the first twelve months.

Conclusion

Thank you again for the opportunity to testify today regarding DOF's amended rule. As housing advocates, we applaud any efforts to improve access to, and eligibility for, SCRIE/DRIE. SCRIE/DRIE is a true lifeline for low-income seniors and people with disabilities throughout New York City and we look forward to its continued improvement. We encourage you to continue the examination of this topic in support

of better government and better services for all those New Yorkers who depend on SCRIE/DRIE. If we can help DOF revise the proposed rules, please contact me at 212-218-0539 or akelley@lenoxhill.org.

Sincerely,



Alison Yoder Kelley, Esq.
Legal Advocacy Department