



RENT STABILIZATION ASSOCIATION COMMENTS ON SCRIE AND DRIE RULE AMENDMENTS

October 22, 2020

The Rent Stabilization Association represents 25,000 owners and managers who collectively own and manage over one million units of housing. The RSA strongly supports the SCRIE/DRIE programs and the Department's effort to enact rules to ensure that the process is as streamlined and straightforward as possible for both tenants and landlords. These comments are being provided in response to the request for comments by the Department of Finance relating to proposed regulations of the SCRIE/DRIE programs.

The SCRIE/DRIE program is an important benefit to lower-income seniors and those with disabilities as it preserves access to affordable housing by freezing rent at a fixed level and providing the difference between the frozen and actual rent through a corresponding tax credit to the owner.

The RSA supports the development of rules to provide greater clarity for applicants and owners alike. We support the provisions that facilitate these aims and attempt to reduce obstacles for qualified beneficiaries to gain access to the program. There are certain omissions, however, in the proposed rules that fail to incorporate important components of the current process

In existing practice, there is a DOF form entitled "SCRIE Landlord/Managing Agent Notification of Tenant's Ineligibility for SCRIE" available among the landlord forms. This form allows a landlord to timely report a situation that triggers the cessation of the Tax Abatement Credit (TAC). Four conditions are set forth for which the landlord can request revocation: tenant's death, tenant's move, tenant's approval for other housing benefits and, finally, a catch-all of non-eligibility that requires the landlord to provide a letter and any supporting documents explaining why the landlord believes a tenant is not eligible for SCRIE.

This form serves a valuable function and the regulators should specifically keep this notification option available to the landlord. Most always used upon a tenant's death, this reporting allows the TAC to be terminated in a timely manner as the landlord knows well before the Department that the apartment is no longer eligible for the TAC. It can take the Department up to six months to reconcile TAC benefits through adjustments to the tax roll. Adjustments can be made without notification to the landlord that a benefit has been discontinued or any specifics of such changes, such as the time period or unit impacted. This is problematic for owners.

There are also situations in which a tenant has been provided other housing benefits, such as Section 8, that render the tenant ineligible to receive SCRIE. In these cases, the Department would continue to apply the TAC until the next renewal, when it would become apparent that the recipient was no longer eligible. The Department would then recoup the TAC without notification to the landlord. This, too, is problematic for owners.

Courts have held that the landlord must repay the funds and the landlord's only recourse is to attempt to recoup those funds from the tenant or their estate. Ultimately, the landlord is then left in the unenviable position of trying to collect money owed from a low-income senior or the low-income senior's estate, so, in reality, there is no meaningful way for a landlord to be made whole.

While the tenets of this form had been captured in the December 2019 proposed rules, it has been eliminated from this most current version. We urge the Department to reconsider this omission and provide for this notification mechanism in the rules as it serves a valuable function for both the Department and the landlord for accurate and timely benefits review.

A second reporting form, "SCRIE Tax Abatement Credit (TAC) Adjustment Application for Owners/Agents," should be memorialized as well. Landlords are given a mechanism to request adjustments when there are exemptible increases like MCI, MCR and J-51. Along with the form, landlords are required to submit DHCR Order/Increase documents to the portal to correct the TAC.

One area in which this is commonly utilized is in the tracking of approved MCI increases. The Department is notified of increases but often there is a delay in the increase being acknowledged so that they are not processed as part of the SCRIE renewal application approvals. As a result, a correction may be required. This is not easy; using the portals can be a cumbersome process in that there are no docket numbers, there is a size limit to documents so correspondence has to be broken up into multiple files without case number identifiers, there is no tracking to prove documents have been sent, and there is no way to check the status of a file. In addition, correspondence from the Department is via regular mail and is subject to the vagaries of that service. We urge the Department to consider ways to facilitate this process going forward.

Again, timely adjustments are crucial because delays by the Department can leave landlords in a situation where they are reluctant to bill tenants for full amount due or remove an expired benefit for fear it can leave them vulnerable to overcharge complaints. Further, once a tenant is deemed ineligible or was never eligible and a TAC recouped, the landlord has no real mechanism to collect the difference owed by the tenant.

In conclusion, RSA respectfully requests that the proposed regulations be attended in accordance with the comments set forth above.