

## New York City Department of Finance

### **Notice of Public Hearing and Opportunity to Comment on Proposed Rule**

**What are we proposing?** The Department of Finance proposes amendments to the rules for the Senior Citizen Rent Increase Exemption (“SCRIE”) and Disability Rent Increase Exemption (“DRIE”) Programs, which provide eligible senior citizens and persons with disabilities with exemptions from certain rent increases and property owners with a corresponding abatement of real property taxes.

**When and where is the hearing?** The Department of Finance will hold a public hearing on the proposed rule. The public hearing will take place at 11:00am on October 22, 2020. The hearing will be conducted remotely through Webex Event Center. To participate in the public hearing, enter the Webex URL <https://nycdof.webex.com>. If prompted to provide a password or number, please enter the following: *RpfqnxAN588*. You can also participate in the hearing via phone by calling 408-418-9388. The meeting access code is 173 684 2069.

**How do I comment on the proposed rule?** Anyone can comment on the proposed rule by:

- **Website.** You can submit comments to the Department of Finance through the NYC rules website: <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to [fishmanb@finance.nyc.gov](mailto:fishmanb@finance.nyc.gov).
- **Mail.** You can mail written comments to NYC Department of Finance, Legal Affairs Division, 375 Pearl Street, 30<sup>th</sup> Floor, New York, NY 10038, Attn: Brittany Fishman.
- **Fax.** You can fax written comments to NYC Department of Finance, Attn: Brittany Fishman, at (212) 748-6982.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling Joan Best at (212) 748-7214. You can speak for up to three minutes.

**Is there a deadline to submit written comments?** The deadline to submit written comments is October 22, 2020.

**What if I need assistance to participate in the hearing?** Please contact DOF’s Office of Legal Affairs if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can make any accommodation request by mail at the address given above. You may also make such request by contacting Joan Best; by telephone, by calling (212) 748-7214; TTY (212) 504-4115 or by e-mail at [bestj@finance.nyc.gov](mailto:bestj@finance.nyc.gov). Advance notice is requested to allow sufficient time to arrange the accommodation. Please provide at least five business days’ notice prior to the hearing to ensure availability.

This hearing has the following accessibility options available: Simultaneous transcriptions for people who are deaf or hard of hearing and audio-only access; American Sign Language

interpretation on video. For audio-only access, call 408-418-9388. The meeting access code is 173 684 2069.

**Can I review the comments made on the proposed rule?** You can review the comments that have been submitted online by visiting the NYC rules website: <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at NYC Department of Finance, Legal Affairs Division, 375 Pearl Street, 30<sup>th</sup> Floor, New York , N.Y. 10038.

**What authorizes Department of Finance to adopt this rule?** New York City Charter (“Charter”) sections 1043 and 1504 authorize the Department of Finance to adopt this proposed rule amendment. This proposed rule was included in the Department of Finance’s fiscal year 2020 regulatory agenda.

**Where can I find the Department of Finance’s rules?** The Department of Finance’s rules can be found in Title 19 of the Rules of the City of New York.

**What laws govern the rulemaking process?** The Department of Finance must meet the requirements of Section 1043 of the Charter when creating or amending rules. This notice is made according to the requirements of Section 1043 of the Charter.

## **STATEMENT OF BASIS AND PURPOSE**

The New York City Department of Finance is amending the rules for the Senior Citizen Rent Increase Exemption (“SCRIE”) and Disability Rent Increase Exemption (“DRIE”) Programs. The SCRIE and DRIE Programs are authorized by sections 467-b and 467-c of the New York State Real Property Tax Law and established by Chapter 3 (Section 26-401 et seq.), Chapter 4 (Section 26-501 et seq.) and Chapter 7 (Section 26-601 et seq.) of Title 26 of the Administrative Code of the City of New York. These programs provide eligible senior citizens and persons with disabilities with exemptions from certain rent increases. Covered property owners receive a corresponding abatement of real property taxes.

The proposed rules would amend Chapter 52 of Title 19 of the Rules of the City of New York to:

- Establish requirements for eligibility for SCRIE and DRIE benefits based on the applicant’s status and household income;
- Establish criteria for the types of apartments which are eligible for SCRIE and DRIE benefits;
- Establish criteria for the determination of SCRIE and DRIE abatement amounts set forth in Rent Increase Exemption Orders; and
- Establish an application process, including deadlines.

In addition, the proposed rules would provide definitions for relevant terms in Section 52-01 and move the current Rent Increase Exemption Orders provisions from Section 52-01 to new Sections 52-02 and 52-03.

New material is underlined

[Deleted material is bracketed]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Section 52-01 of title 19 of the rules of the city of New York is REPEALED, and a new section 52-01 is added to read as follows:

**§ 52-01 Definitions.**

467-c apartment. The term “467-c apartment” means a dwelling unit, as defined by section 467-c of the real property tax law, that is owned by a limited dividend housing company, a redevelopment company or a housing development fund company incorporated under the private housing finance law, or a section 213 cooperative housing company or a mitchell lama apartment or co-op.

Agent. The term “agent” means 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.

Current rent. The term “current rent” means the monthly rent a SCRIE or DRIE beneficiary would have been required to pay if he or she did not receive such benefits.

Department. The term “department” means the department of finance of the city of New York.

DRIE. The term “DRIE” means the Disability Rent Increase Exemption Program.

Dwelling unit. The term “dwelling unit” means the part of a dwelling in which the head of the household resides and which is subject to either: (i) the emergency housing rent control law, (ii) the rent and rehabilitation law of the city of New York as provided in section 26-401 et seq. of the administrative code of the city of New York, (iii) article II, IV, V or XI of the private housing finance law, or (iv) a mortgage insured or initially insured by the federal government pursuant to section two hundred thirteen of the National Housing Act, as amended.

Eligible apartment. The term “eligible apartment” means any apartment eligible for SCRIE or DRIE benefits as that term is defined in section 52-06 of this chapter.

Family member. The term “family member” means a person meeting the definition of a family member set forth in subdivision (o) of section 2520.6 of the New York codes, rules, and regulations.

Frozen rent. The term “frozen rent” means the monthly rent a SCRIE or DRIE beneficiary is required to pay pursuant to a rent increase exemption approval order.

Fuel cost adjustment. The term “fuel cost adjustment” means the monthly amount a landlord of a rent controlled apartment may charge a tenant of such apartment for the cost of fuel. The tenant, however, will not be subject to a fuel cost adjustment or pass-along increase in rent as of June 14, 2019.

Head of the Household. The term “head of the household” means a person who is 62 years of age or older, or a person with a disability who is 18 years of age or older with tenancy rights to an eligible apartment who is otherwise eligible for SCRIE or DRIE benefits. If a head of the

household is either married or a member of a registered domestic partnership, both spouses or partners shall be deemed to be the co-head of the household if they meet the eligibility requirements set forth in section 52-07(b).

HCR. The term “HCR” means the New York State Homes and Community Renewal.

Housing company. The term “housing company” means any limited-profit housing company, limited dividend housing company, redevelopment company or housing development fund company incorporated pursuant to the private housing finance law and operated exclusively for the benefit of persons or families of low income, or any corporate owner of a dwelling which is or was subject to a mortgage insured or initially insured by the federal government pursuant to section two hundred thirteen of the national housing act, as amended.

HPD. The term “HPD” means the New York city department of housing preservation and Development.

Initial eligibility date. For rent controlled and rent stabilized units, the term “initial eligibility date” means the first day of the first month after receipt of an application which is subsequently approved by the Department. For 467-c apartments, the term “initial eligibility date” means the last day of the month in which a person became an eligible head of a household in the dwelling unit where such person resides at the time of filing the most recent application for SCRIE or DRIE benefits.

Legal regulated rent. The term “legal regulated rent” means the amount in rent that a landlord can charge a tenant for a rent stabilized unit.

Major capital improvement increase. The terms “major capital improvement increase” or “MCI” means the amount in additional rent a landlord may collect as a result of a building-wide improvement or installation to a building with rent controlled and/or rent stabilized units for which HCR has granted approval for a rent increase to the legal regulated rents. MCIs increases are for building-wide improvements, not for improvements to individual apartments. Major capital improvements effective prior to June 14, 2019 are permanent rent increases. Major capital improvements effective on or after June 14, 2019 are temporary major capital improvements and shall be removed 30 years after effective date.

Maximum collectible rent. The term “maximum collectible rent” means the monthly rent a rent controlled tenant is required to pay.

Maximum rent. For rent controlled apartments, the term “maximum rent” means the maximum legal regulated rent that a landlord may charge for the use of such an apartment pursuant to the rent control law set forth in chapter 3 of title 26 of the administrative code of the city of New York. For 467-c apartments, the term “maximum rent” means the maximum rent, excluding gas and electric utility charges, which has been authorized or approved by the HCR or HPD or the legal regulated rent established for the dwelling unit pursuant to the provisions of either article II, IV, V or XI of the private housing finance law, or the rent established for a cooperatively owned dwelling unit previously regulated pursuant to the provisions of article II, IV, V or XI of the private housing finance law, or the rent established for a dwelling unit, in a dwelling subject to a mortgage insured or initially insured by the federal government pursuant to section 213 of the national housing act, as amended.

Person with a disability. The term “person with a disability” has the following meanings. For rent controlled and rent stabilized apartments, such term means an individual who is currently receiving social security disability insurance (SSDI) or supplemental security income (SSI) benefits under the federal social security act, disability pension or disability compensation benefits provided by the United States Department of Veterans Affairs, or disability pension or disability compensation benefits provided by the United States Postal Service, or an individual who was previously eligible by virtue of receiving disability benefits under the SSI program or the SSDI program and is currently receiving medical assistance benefits based on a determination of disability as provided in section 366 of the social services law. For 467-c apartments for the benefit period ending June 30, 2020, such term means an individual who is currently receiving social security disability insurance (SSDI) or supplemental security income (SSI) benefits under the federal social security act, disability pension or disability compensation benefits provided by the United States Department of Veterans Affairs, or an individual who was previously eligible by virtue of receiving disability benefits under the SSI program or the SSDI program and is currently receiving medical assistance benefits based upon a determination of disability as provided by section 366 of the social services law. For 467-c apartments for the benefit period commencing June 30, 2020, such term means an individual who is currently receiving social security disability insurance (SSDI) or supplemental security income (SSI) benefits under the federal social security act, disability pension or disability compensation benefits provided by the United States Department of Veterans Affairs, or an individual who was previously eligible by virtue of receiving disability benefits under the SSI program or the SSDI program and is currently receiving medical assistance benefits based upon a determination of disability as provided by section 366 of the social services law and whose income for the current income tax year, together with the income of all members of such individual’s household, does not exceed the maximum income at which such individual would be eligible to receive cash supplemental security income benefits under federal law during such tax year.

Rent controlled apartment. The term “rent controlled apartment” means a dwelling unit subject to the rent and rehabilitation law of the city of New York.

Rent increase exemption approval order. The term “rent increase exemption approval order” means an order issued by the Department or HPD to a SCRIE or DRIE beneficiary and the building owner that sets forth the SCRIE or DRIE beneficiary’s benefit period, frozen rent, current rent and the building owner’s monthly tax abatement and benefit period.

Rent stabilized apartment. The term “rent stabilized apartment” means a dwelling unit subject to the emergency tenant protection act of 1974.

Rent guidelines board rent increases. The term “rent guidelines board rent increases” means the annual rent increases promulgated by the New York City Rent Guidelines Board for rent stabilized apartments.

Senior citizen. The term “senior citizen” means a person 62 years of age or older.

Surviving member of the household. The term “surviving member of the household” means a member of the household who continues to live in, an apartment after the head(s) of the household who held a current, valid tax abatement certificate either dies or permanently leaves the household.

SCRIE. The term “SCRIE” means the Senior Citizen Rent Increase Exemption Program.

Tax abatement credit (TAC). The term “tax abatement credit” or “TAC” means the credit against real estate taxes that building owners receive in lieu of rent increases. The calculation for such credit for rent controlled units is determined in accordance with subdivision b of section 26-406 of the administrative code of the city of New York. The calculation for such credit for rent stabilized units is determined in accordance with subdivision c of section 26-509 of the administrative code of the city of New York. The calculation for such credit for section 467-c apartments is determined in accordance with subdivisions 3, 4 and 4-a of section 467-c of the real property tax law.

Tenant representative. The term “tenant representative” means a person who is designated to receive notices from the Department in addition to the tenant and assists SCRIE and DRIE applicants in completing SCRIE and DRIE renewal applications in a timely manner.

§ 2. Chapter 52 of title 19 of the rules of the city of New York is amended by adding a new section 52-02 to read as follows:

**§ 52-02 Applications for SCRIE or DRIE Benefits.**

All SCRIE and DRIE applications are available on the Department’s website or can be requested by dialing 311 or visiting the Department’s SCRIE/DRIE walk-in center. The list of current tenant and building owner applications are set forth below:

(a) Initial Applications.

If a tenant wishes to apply to receive SCRIE or DRIE benefits, he or she must fully complete and submit to the Department a SCRIE or DRIE initial application. Such application can be submitted at any time as long as the applicant meets all qualification requirements for the program for which they are applying at the time of submission.

(1) Supporting Documentation.

(i) A DRIE initial applicant must provide, together with his or her application, documentary proof that the applicant is at least 18 years of age, a copy of the applicant’s current and most recent prior SCRIE or DRIE rent exemption order and, if applicable, (i) either the current and most recent prior apartment lease(s) signed by both the applicant or the applicant’s designated agent and the building owner or the building owner’s designated representative or, documentary proof that the applicant has been granted succession rights to the apartment, and (ii) documentation for all income for all members of the household for the previous calendar year and documentation that they qualify as a person with a disability. The DRIE initial applicant must also provide, if applicable, a copy of any recent MCI order(s) issued by HCR.

(ii) A SCRIE initial applicant must provide together with his or her application documentary proof that the applicant is at least 62 years of age, a copy of the applicant’s current and most recent prior SCRIE or DRIE rent exemption order and the current and most recent prior, if applicable, apartment lease signed by both the applicant or designated agent and the building owner or designated representative and documentation for all income for all members of the household for the previous calendar year. The SCRIE applicant must also provide, if applicable, a copy of any recent MCI order(s) issued by DHR. Applications and corresponding documents may be submitted by the applicant, tenant representative or agent.

(iii) An initial application for SCRIE or DRIE benefits will not be approved by the Department if the tenant, tenant representative, or agent does not provide a lease or other documentation which proves that the tenant has the right to reside in such apartment, except that the Department will accept a HCR order or court order which proves that the tenant has a right to live in the apartment and such order specifies the rent to be paid.

(iv) A SCRIE or DRIE applicant who submits an initial application to the Department prior to April 1st in any given year may submit income information from two calendar years prior to the application submission date if income information for the previous calendar year is not available.

(2) Signature and designated agents. SCRIE and DRIE initial and renewal applications must be signed by the applicant or his or her designated agent if such agent has either been court appointed or is acting pursuant to a power of attorney. 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. A designation of a tenant representative on an initial application by a tenant will remain in effect until the designation is withdrawn by the applicant or the representative requests that the designation be removed. Any designation of a tenant representative must include the mailing address of such representative.

(3) Effective date. If a tenant initial application for a rent stabilized or rent controlled apartment is approved by the Department, the SCRIE or DRIE order will take effect on the initial eligibility date. If a tenant initial application for a 467-c apartment is approved by the Department, the effective date shall be the date of the first increase in maximum rent becoming effective after the applicant's initial eligibility date.

(4) Denial on the basis of income eligibility. If an initial application is denied for not meeting either the income eligibility requirements set forth in section 52-10 of this chapter or the rent as a percentage of total aggregate household disposable income requirement set forth in section 52-11 of this chapter, the Department will not approve any additional initial applications submitted during the same calendar year. The SCRIE or DRIE applicant, however, may appeal such denial in accordance with the appeal procedures set forth in section 52-19 of this chapter.

(b)Renewal Application. A fully completed application to renew a SCRIE or DRIE order must be submitted by or on behalf of the tenant and approved by the Department. Any tenant that has been issued a tax abatement certificate for five consecutive benefit periods, and who meets the income eligibility requirements set forth in section 52-09 of this chapter, and whose residence has not changed since the most recently approved renewal application, shall be eligible to file the Department's short form renewal application. If such tenant is found eligible, the renewal order will be deemed to have taken effect upon expiration of the prior rent increase exemption order. The tenant may designate a representative to receive notices sent to the tenant and assist in the completion of a renewal application on his or her behalf so that the renewal application is filed in a timely manner as provided in subdivisions (c) and (d) of this section. If a tenant desires to designate a representative, he or she may do so in a renewal application. A designation of a tenant representative submitted to the Department by a tenant will continue until the designation is withdrawn or the representative requests that the designation be removed. Any designation of a representative must include the mailing address of such representative.

(c) Time to File Renewal Applications. Except as provided in subdivision (d) and (e) of this section, renewal applications must be filed no later than six months after the expiration of a rent increase exemption order.

(d) Extension of Time to File Renewal, Other Tenant Applications, Appeals, And Requested Documentation. Under certain circumstances, the time to file the following applications, appeals, and other documentation will be extended:

(i) a renewal application provided in subdivision (c) of this section;

(ii) any other tenant application;

(iii) an appeal relating to SCRIE or DRIE benefits; or

(iv) any documentation requested by the Department pursuant to section 52-04 of this chapter. The time to file such applications, appeals, and requested documentation may be extended under the following circumstances:

(1) Upon a showing of good cause, the time to file any application, appeals, and requested documentation will be extended for an additional period of six months. The tenant or his or her representative must submit sufficient documentary evidence acceptable to the Department demonstrating good cause. Upon approval of the extension of the time to file and of the renewal application, such rent increase exemption order will be renewed retroactive to the date of expiration of the prior rent increase exemption. For purposes of this paragraph, good cause exists when:

(i) the tenant requires hospitalization for a documented illness or medical condition during the six-month period following expiration of the rent increase exemption order, which prevents the tenant from filing a timely renewal application; or

(ii) the tenant's dwelling unit is damaged by fire or flood or a natural catastrophe during the six-month period following expiration of the rent increase exemption order, which prevents the tenant from filing a timely renewal application; or

(iii) the tenant demonstrates other exceptional circumstances.

(2) Upon a showing of need for more time as a reasonable accommodation for a tenant's disability consistent with the requirements of the Americans with Disability Act (42 U.S.C §12101 et seq.) (ADA) or the New York City Human Rights Law (§8-101 et seq. of the Administrative Code of the City of New York (NYCHRL), the time to file any application, appeals, and requested documentation will be extended for an additional period of time to be determined by the agency, which may exceed six months if the agency determines more time would be a reasonable modification of its procedure necessary to avoid discrimination on the basis of disability. To obtain an extension of time as a reasonable accommodation, the tenant or a representative of the tenant must provide or assist with the provision of medical documentation from an appropriate health care professional showing that the tenant had a disability as defined by the ADA or the NYCHRL, and that because of this disability the tenant needed more time to file an application or appeal. For purposes of this paragraph, appropriate health care professionals include, but are not limited to, doctors (including psychiatrists), psychologists and licensed health professionals. If the tenant cannot secure medical documentation from an appropriate health care professional with reasonable efforts, an extension of time may be granted if other reliable documentation is provided as may be determined by the Department.

(e) Extension of rent increase exemption order when there is a showing of good cause or need for disability related reasonable accommodation. If a tenant is granted an extension of time to file pursuant to subdivision (d) of this section, the tenant or the tenant's representative must file

a renewal application and all supporting documents for the period commencing on the expiration of the prior rent increase exemption order as well as for any succeeding renewal period which commenced prior to the date such extension of time to file was granted within the time period of the extension. Upon approval of the extension of time to file and of the renewal application where seeking additional time to file a renewal application or other application, such rent increase exemption order will be renewed retroactive to the date of expiration of the prior rent increase exemption.

(f) Apartment lease renewal documentation. The tenant in a rent stabilized apartment or an apartment owned by a limited dividend housing company, redevelopment company or housing development fund company incorporated under the private finance housing law, section 213 Cooperative Housing Companies or a Mitchell Lama apartment or co-op, is required to submit a copy of a written lease signed by both parties, except as set forth in this subdivision, which proves that the tenant has the right to reside in such apartment. A copy of a written lease signed by both parties must be submitted for renewal applications; provided that if a tenant cannot provide a lease signed by both parties, such tenant may instead provide a lease signed by the tenant and other evidence of the rent amount. All correspondence from the Department concerning an application will be sent to both the tenant and, if applicable, the tenant's representative or agent.

(g) Renewal applications without lease renewal documentation. If the tenant is not able to provide a lease for the renewal period, the tenant will be able to satisfy the lease eligibility requirement for a SCRIE or DRIE renewal application if they submit the Department's Certification Without A Renewal Lease form with their SCRIE or DRIE renewal application and explain why he or she is not able to provide a renewal lease. The completed and signed form must be submitted with acceptable proof of tenancy for the apartment.

(1) When a tenant's renewal application without lease renewal documentation form is approved the tenant will continue to receive the same monthly benefit and the building owner will receive the same tax abatement credit for the renewal period. 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. If the tenant is subsequently able to provide a copy of a lease signed by the tenant and other evidence of the rent amount during such renewal period, the tenant will receive retroactive monthly benefits so that the tenant will receive the same benefits he or she would have received if such signed lease and rental evidence had been provided in a timely manner. The tax abatement credit due to the building owner for the renewal period will be adjusted.

For example:

The legal regulated rent for an apartment for the previous lease was \$1,000 per month and the frozen monthly rent was \$800. If the legal regulated rent is increased by two percent, the legal regulated monthly rent will be increased to \$1,020. If the tenant is unable to provide a lease signed by the tenant and other evidence of the rent amount to the Department, the tenant will be required to pay the \$20 rent increase and pay a monthly rent of \$820 until such a lease is provided by such tenant. If the tenant is able to provide such signed lease and rental evidence during this renewal period, the monthly frozen rent the tenant will be required to pay will be reduced to \$800 for the entire term of the renewal period and the tenant will receive retroactive benefits of \$20 for each month they paid a monthly rent of \$820.

(2) A Certification Without a Renewal Lease form cannot be utilized for more than two consecutive lease periods.

(3) Tenants living in rent controlled apartments are required to provide a copy of the notice of maximum collectible rent ("MCR") for the prior and current year with his or her initial and renewal applications. 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.

(4) A tenant may submit more than one initial application and, if applicable, more than one renewal application each calendar year.

(h) SCRIE or DRIE Apartment Benefit Transfer Application. If a current SCRIE or DRIE beneficiary has moved out of the apartment currently associated with his or her SCRIE or DRIE benefits, such beneficiary may transfer such benefits to a new apartment by submitting a fully completed SCRIE or DRIE apartment benefit transfer application to the Department. 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.

For example:

If the monthly legal regulated rent for the previous apartment is \$800 and the monthly TAC is \$200, the SCRIE or DRIE beneficiary would have paid a frozen rent of \$600 per month. If the rent for the new eligible apartment is \$1,000, the TAC is still \$200 and the SCRIE or DRIE beneficiary would be required to pay a frozen rent of \$800 per month (i.e. \$1,000 minus \$200).

(i) SCRIE or DRIE Redetermination Application. If a current SCRIE or DRIE beneficiary has experienced a permanent decrease, as defined in section 52-15 of this chapter, of 20% or more of his or her total combined household income as compared to the income that was reported in his or her last approved SCRIE or DRIE application, then such beneficiary may submit a fully completed SCRIE or DRIE redetermination application in order to adjust the beneficiary's frozen rent.

(j) SCRIE or DRIE Application for Benefit Takeover. If a current SCRIE or DRIE beneficiary has permanently vacated the household or has died, a remaining or surviving member of the household may assume the SCRIE or DRIE benefit by submitting a fully completed SCRIE or DRIE application for benefit takeover to the Department.

(k) SCRIE to DRIE or DRIE to SCRIE Transfer Application. A current SCRIE or DRIE beneficiary may transfer his or her current SCRIE benefit to a DRIE benefit or current DRIE benefit to a SCRIE benefit by submitting a fully completed SCRIE to DRIE or DRIE to SCRIE transfer application to the Department provided that a tenant may not receive both SCRIE and DRIE benefits simultaneously. Transferring from one benefit to another will not affect the frozen rent.

(l) SCRIE or DRIE Tax Abatement Credit (TAC) Adjustment Application for Tenants. A current SCRIE or DRIE beneficiary may apply for an adjustment to the TAC amount by submitting a fully completed SCRIE or DRIE tax abatement credit adjustment application.

(m) SCRIE and DRIE Application for Appeal. A SCRIE or DRIE tenant or agent may appeal a SCRIE or DRIE determination by submitting a SCRIE and DRIE Application for Appeal.

§ 3. Chapter 52 of title 19 of the rules of the city of New York is amended by adding a new section 52-03 to read as follows:

**§ 52-03 Rent Increase Exemption Orders.**

(a) Effective Date and Duration.

(1) A rent increase exemption order will be issued to each tenant who applies to the Department and is found to be eligible for SCRIE or DRIE benefits, except that SCRIE benefits for 467-c apartments are administered by the Department of Housing Preservation and Development (HPD) and are not governed by this rule. The effective date of a new rent increase exemption order for rent controlled and rent stabilized apartments is the first day of the first month after receipt of an initial application for SCRIE or DRIE benefits. The tenant's order will set forth the benefit period, tenant's frozen rent, tenant's current rent, building owner's monthly TAC (i.e. SCRIE or DRIE Credit) and the total number of months the order will be in effect. The building owner's order will set forth the benefit period, tenant's frozen rent, tenant's current rent, owner's monthly TAC, total number of months the order will be in effect and total TAC for benefit period.

(2) A new rent increase exemption order for a rent controlled apartment will be for a term of two years. A new rent increase exemption order for a rent stabilized apartment will be for the duration of the lease in effect on the first day of the first month after receipt of the initial application. The effective date of a new DRIE rent increase exemption order for a 467-c apartment will be the date of the first increase in maximum rent that takes effect after the tenant is first determined to be eligible for DRIE benefits, and will be for a term of one year.

(b) The tenant will be required to pay the building owner the rent set forth in the rent exemption order.

(1) The rent the tenant will be required to pay for a rent stabilized apartment, pursuant to an initial or renewal application, will be the legal regulated rent in effect for the rental period immediately preceding the initial eligibility date, except as set forth herein.

For example:

If a tenant has a legal regulated rent of \$700 as of the initial eligibility date, and the legal regulated rent for the immediately preceding rental period was \$650, the tenant's frozen rent will be \$650.

(2) The rent the tenant will be required to pay for a rent controlled apartment, pursuant to an initial or renewal application, will be the maximum rent in effect as of December 31st of the year preceding the effective date of the initial rent exemption order, except as set forth herein.

(3) The rent the tenant will be required to pay for a 467-c apartment, pursuant to an initial or renewal application, will be the maximum rent in effect on the tenant's initial DRIE eligibility date, except as set forth herein. The tenant will continue to pay the same maximum rent for subsequent DRIE renewals except as set forth in these rules.

(4) The rent the tenant will be required to pay for a rent stabilized apartment may be increased based upon an electrical inclusion adjustment or an increase in dwelling space, services or equipment.

(5) If a rent stabilized apartment is subject to a rent reduction order the amount of the rent reduction shall be subtracted from the rent payable by the tenant specified in the rent exemption order and the TAC amount will remain the same. If the rent reduction order is canceled, the SCRIE or DRIE TAC will be adjusted to reflect the difference between the frozen rent and the legal regulated rent. If a rent reduction order is issued after the initial SCRIE or DRIE approval order the amount of the reduction shall be subtracted from the rent payable by the tenant specified in the rent exemption order and the TAC amount will remain the same.

(c) The rent the tenant will be required to pay for a rent controlled apartment may be adjusted under the following circumstances:

(1) The building owner and the tenant in occupancy voluntarily enter into a valid written lease in good faith with respect to any housing accommodation that provides for an increase in the maximum rent on the basis of specified increased services, furniture, furnishings, or equipment and such increases are approved by HCR.

(2) The building owner and the tenant in occupancy by mutual voluntary written agreement, agree to a substantial increase or decrease in dwelling space or a change in the services, furniture, furnishings or equipment provided in the housing accommodations.

(3) There has been a subletting without written consent from the landlord or an increase in the number of adult occupants who are not members of the immediate family of the tenant and the building owner has not been compensated therefor by adjustment of the maximum rent by lease or order of HCR or pursuant to the state rent act or the federal rent act.

Some charges that result in rent increases are not eligible for SCRIE or DRIE benefits. This includes, but is not limited to rent increases for the following:

(i) Door attendant

(ii) Cleaning service

(iii) Air conditioning

(iv) Painting

(v) Garages

(vi) Parking

(vii) Storage facility

(viii) Security deposits

(ix) New appliances (e.g. stove, refrigerator, etc.)

(x) Any other increase for an individual apartment improvement, other than a building wide improvement.

(xi) Vacancy increases

(xii) Changes in household (i.e. an increase in the number of people living in the apartment).

§ 4. Chapter 52 of title 19 of the rules of the city of New York is amended by adding a new section 52-04 to read as follows:

#### **§ 52-04 Department Document Requests**

The tenant, designated tenant representative or agent must submit all documentation and information requested by the Department pertaining to any application for SCRIE or DRIE benefits within 120 days of the written request by the Department unless the tenant has a good cause reason for a late filing or disability based need for additional time to submit documents as

set forth in section 52-02(d). Failure to provide the documentation and/or information requested by the Department will result in the denial of an application.

§ 5. Chapter 52 of title 19 of the rules of the city of New York is amended by adding a new section 52-05 to read as follows:

**§ 52-05 Eligibility Requirements for SCRIE and DRIE Benefits**

(a) In order to qualify for SCRIE benefits the applicant must be 62 years of age or older. In order to qualify for DRIE benefits the applicant must be a person with a disability who is 18 years of age or older. In addition, an applicant for SCRIE or DRIE benefits must also meet all eligibility requirements set forth in subdivision (b) of this section. If the applicant does not meet such criteria, the application will be denied.

(b) Eligibility Requirements.

(1) The applicant must reside in an eligible apartment as set forth in section 52-06 of this chapter, provided that an applicant who is temporarily residing in a hospital or rehabilitation facility will be deemed to be residing in an eligible apartment.

(2) The applicant must meet the eligibility requirements for head of the household as defined in this chapter.

(3) The applicant must be named on the lease or rent order or have been granted succession rights to the apartment.

(4) The applicant's apartment must have a maximum rent or legal regulated rent exceeding one-third of the applicant's total aggregate household disposable income, except for SCRIE or DRIE renewals which have been in effect since January 1, 2015 or took effect on or before July 1, 2015.

(5) The applicant's total aggregate household disposable income cannot exceed \$50,000.

§ 6. Chapter 52 of title 19 of the rules of the city of New York is amended by adding a new section 52-06 to read as follows:

**§ 52-06 Eligible Apartment**

An "eligible apartment" is a rent controlled or rent stabilized apartment that is eligible for either SCRIE or DRIE benefits. 467-c apartments are eligible apartments for SCRIE or DRIE benefits, provided that applications for SCRIE benefits for 467-c apartments must be submitted to HPD, the agency that administers the SCRIE program for such apartments. Other types of housing are not eligible for SCRIE or DRIE benefits.

§ 7. Chapter 52 of title 19 of the rules of the city of New York is amended by adding a new section 52-07 to read as follows:

**§ 52-07 Head of the Household Benefit Takeover Procedures**

(a) If a head of the household has died or permanently vacated the household, a tenant remaining in the eligible apartment will be deemed eligible to become the head of the household

if such tenant receives approval from the Department for a benefit takeover as defined in section 52-15 of this chapter.

(b) If a head of the household is either married or a member of a registered domestic partnership at the time of his or her most recently approved initial or renewal application was filed, then such spouse or partner will be deemed to be the new head of the household, when the previous head of the household has either died or permanently vacated the household, if he or she: (i) met the eligibility requirements for SCRIE or DRIE benefits at the time such approved initial or renewal application was submitted to the Department; and (ii) was included in such application as a member of the household.

(1) The head of the household's spouse or registered domestic partner does not need to be named on the lease or rent increase exemption order to be eligible to become the head of household.

#### (2) Benefit Takeover Applications.

(i) If the current head of the household in the marriage or registered domestic partnership dies or otherwise permanently leaves the apartment then the other spouse or domestic partner residing in the apartment at the time such event occurs, will not be required to submit a benefit takeover application.

(ii) If a head of the household's spouse or registered domestic partner does not meet the requirements set forth in subdivision (b) of this section at the time of the approval of the most recent SCRIE or DRIE application, but he or she meets the SCRIE or DRIE eligibility requirements at the time a head of the household either died or permanently vacated the household, he or she must submit a benefit takeover application as defined in section 52-14 of this chapter.

(c) If the surviving head of the household has incurred a permanent decrease in aggregate disposable income in an amount that exceeds 20 percent of aggregate household disposable income since the last approved application, it will be necessary for the surviving head of the household to submit a benefit takeover application to the Department for approval in order to request that the rent payable by the surviving head of the household be reduced as set forth in section 52-15 of this chapter. For DRIE applicants residing in an apartment in a building which was subject to a mortgage insured, or initially insured by the federal government pursuant to section 213 of the national housing act, as amended, "head of the household" is limited to that person or his or her spouse who was entitled to possession and occupancy of such apartment at the time of termination of such mortgage. The DRIE benefit for this type of apartment cannot be transferred to any other person except such beneficiary's spouse.

§ 8. Chapter 52 of title 19 of the rules of the city of New York is amended by adding a new section 52-08 to read as follows:

#### **§ 52-08 Member of the Household**

A member of the household includes the head of the household and all persons permanently residing in the apartment except for roomers, boarders, or subtenants. All relatives of the head of the household residing in the apartment are members of the household. Roomers, boarders or subtenants are persons who are non-family members who pay rent to reside in the apartment.

§ 9. Chapter 52 of title 19 of the rules of the city of New York is amended by adding a new section 52-09 to read as follows:

**§ 52-09 Income Eligibility Requirements**

(a) Except as provided in section 52-10 of this chapter, the total aggregate disposable income of all members of the household residing in the apartment cannot exceed 50,000 dollars in the calendar year preceding the date of filing of the initial or renewal application with the Department. SCRIE and DRIE applicants who submit initial or renewal applications to the Department during the period January to March may submit income information from two calendar years prior to the application submission date if income information for the previous calendar year is not available. However, if a household member deceases or permanently leaves the apartment prior to the date of filing of such application with the Department, his or her aggregate disposable income will not be included in the calculation of aggregate disposable income.

(b) Total aggregate household disposable income is income from all sources, except as provided herein, for all members of the household after deduction of all income and social security taxes. Medicare taxes are not deductible in determining total aggregate household disposable income. Sources of income include, but are not limited to:

- (1) social security and retirement benefits;
- (2) supplemental security income and additional state payments;
- (3) public assistance cash award benefits;
- (4) interest income;
- (5) dividends;
- (6) net rental income;
- (7) salary and earnings;
- (8) net income from self-employment;
- (9) capital gains;
- (10) annuity or Individual Retirement Account earnings;
- (11) rent payments received from bona fide roomers, boarders or subtenants;
- (12) unemployment benefits;
- (13) income from a pooled income trust as defined in 26 U.S.C. §642.

Anything that is considered to be income by the Internal Revenue Service will be included in total aggregate household disposable income.

Total aggregate household disposable income includes both taxable and tax exempt income.

(c) The following items are not included in total aggregate household disposable income:

- (1) gifts or inheritances;
- (2) payments made to individuals because of their status as victims of Nazi persecution as defined in Victims of Nazi Persecution Act of 1994;
- (3) increases in benefits accorded pursuant to the Social Security Act or a public or private pension paid to any member of the household which increase, in any given year, does not exceed annual average (i.e. December of one year to December of the next year) consumer price index (all items United States city average) ("CPI") for such year which take effect after the

date of eligibility of a head of the household receiving benefits hereunder whether received by the head of the household or any other member of the household.

The Department will post information on its website the years in which such increases in social security benefits will not be included in aggregate disposable income. The annual CPI increases will also be posted on the website. Three examples are set forth below:

<u>Year</u>	<u>Social Security Increase</u>	<u>CPI Increase</u>
<u>2016</u>	<u>0.3%</u>	<u>2.1%</u>
<u>2017</u>	<u>2.0%</u>	<u>2.1%</u>
<u>2018</u>	<u>2.8%</u>	<u>1.9%</u>
<u>2019</u>	<u>1.6%</u>	<u>2.3%</u>

In calendar year 2016 the social security increase in benefits was 0.3%. The CPI increase in calendar year 2016 was 2.1%. Since the increase in social security benefits for calendar year 2016 did not exceed the CPI, the increase in social security benefits for calendar year 2016 will not be included in total aggregate household disposable income.

In calendar year 2017 the social security increase in benefits was 2.0%. The CPI increase in calendar year 2017 was 2.1%. Since the increase in social security benefits for calendar year 2017 did not exceed the CPI, the increase in social security benefits for calendar year 2017 will not be included in total aggregate household disposable income.

In calendar year 2018 the social security increase in benefits was 2.8%. The CPI increase in calendar year 2018 was 1.9%. The increase in social security benefits for calendar year 2018 exceeded the increase in CPI and will be included in total aggregate household disposable income.

In calendar year 2019 the social security increase in benefits was 1.6%. The CPI increase in calendar year 2019 was 2.3%. Since the increase in social security benefits for calendar year 2019 did not exceed the CPI, the increase in social security benefits for calendar year 2019 will not be included in total aggregate household disposable income.

(d) Disbursements from a Supplemental Needs Trust (also known as a Special Needs Trust) can be counted as income depending on what the disbursements are used for.

- (1) Disbursements for food or shelter for a member of the household will be counted as income.
- (2) Disbursements to a third party for items other than food and shelter for a member of the household are not counted as income. Examples of such disbursements are education expenses, cable television bills, computer related expenses, phone bills and recreation and entertainment expenses.

(e) For apartments owned by a limited dividend housing company, redevelopment company or housing development fund company incorporated under the private finance housing law, section 213 Cooperative Housing Companies or a Mitchell Lama apartment or co-op, if the head of the household has retired on or after the commencement of the taxable period and prior to the date of making an application for a rent increase exemption order/tax abatement certificate, such

person's income shall be adjusted by excluding salary or earnings and projecting such person's retirement income over the entire taxable period.

(f) If a person residing in the apartment is a roomer, boarder or subtenant, his or her income is not included in the total aggregate household disposable income. Rent paid by the roomer, boarder or subtenant will be included in the total aggregate household disposable income.

(g) The head of the household must provide documentation for all income for all members of the household for the calendar year preceding the date the initial application or renewal application was filed. If the renewal application is denied because it was not filed timely, the head of the household will be required to submit a new initial application.

Documentary proof for sources of income include, but are not limited to, the following:

- (1) income tax returns, federal and state (if filed);
- (2) Social Security benefit statement or copy of check or direct deposit bank statement indicating amount of Social Security benefits received during applicable year;
- (3) pension/annuity statement;
- (4) W-2 form(s);
- (5) signed letter from roomer, boarder or subtenant stating amount of total monthly rental payments;
- (6) 1099 form(s);
- (7) IRA end of year earnings statement(s), if such earnings statement is not provided the taxable distribution may be utilized;
- (8) public assistance budget statement;
- (9) signed letter from friend(s) or family member(s) stating amount of monetary assistance.

(h) The amount of income taxes to be deducted from the total aggregate household disposable income will be the greater of the total amount of income taxes withheld or the total amount of income taxes due for the applicable calendar year for all members of the household.

(i) Total Aggregate Household Income will not be reduced due to claimed losses for any category of income, i.e. capital gains, net rental income or for any type of depreciation.

(j) The head of the household must provide documentation acceptable to the Department concerning the total aggregate household disposable income as well as the items not included in total aggregate household disposable income for all members of his or her household.

(k) When the head of the household retires before the commencement of such income tax year and the date of filing the application, the income for such year for such head of the household may be adjusted by excluding salary or earnings and projecting his or her retirement income over the entire period of such year.

§ 10. Chapter 52 of title 19 of the rules of the city of New York is amended by adding a new section 52-10 to read as follows:

**§ 52-10 Rent as a Percentage of Total Aggregate Household Disposable Income Requirement and Total Aggregate Household Disposable Income Limit**

(a) For an initial SCRIE or DRIE application, the rent for the apartment must exceed one-third of the total aggregate household disposable income of all members of the household to be

eligible for benefits. For renewal applications, redetermination applications and apartment benefit transfer applications, if 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 the household will be required to pay will be increased to one-third of the total aggregate household disposable income of all members of the household for those whose benefits are effective as of July 2, 2015 or later. However, this one-third of the total aggregate disposable income of all members of the household eligibility requirement does not apply to a head of the household to whom a rent exemption order took effect on or before July 1, 2015.

(b) For renewal applications for the period commencing immediately after the expiration of a rent increase exemption order where it is determined that the head of the household is ineligible for a rent increase exemption order because the total aggregate household income exceeds \$50,000 or because the maximum rent or legal regulated rent does not exceed one-third of the total aggregate household disposable income, such head of the household may submit a new application during the following calendar year and if such head of the household receives a rent increase exemption order that commences during such calendar year, the frozen rent amount and tax abatement amount for such order shall be calculated as if such prior rent increase exemption order had not expired. However, the frozen rent amount may be adjusted higher or lower to maintain the one-third ratio based upon the renewal total aggregate disposable income. However, no rent increase exemption benefits or tax abatement benefits will be provided for the period of ineligibility. No head of the household may receive more than three such rent increase exemption orders in accordance with this subdivision.

§ 11. Chapter 52 of title 19 of the rules of the city of New York is amended by adding a new section 52-11 to read as follows:

#### **§ 52-11 Treatment of Major Capital Improvements (“MCI”)**

Tenants who receive SCRIE or DRIE benefits will not be required to pay for an MCI which is issued by HCR either after or no more than 90 days before the date of the Department’s receipt of an application. The tax abatement credit for a building owner for an eligible MCI increase will be retroactive to the effective date of the MCI order. If applicable, it will include any collectible portion of such increase which covers a period prior to the effective date of the SCRIE or DRIE rent exemption order. If an MCI is issued more than 90 days prior to the date of the Department’s receipt of an application, the tenant will be required to pay for the MCI increase and it will not be included in the tax abatement credit for the building owner.

§ 12. Chapter 52 of title 19 of the rules of the city of New York is amended by adding a new section 52-12 to read as follows:

#### **§ 52-12 Preferential Rent**

(a) A preferential rent, which is lower than the legal regulated rent, will be established as the frozen rent except as set forth in subdivision (c) of this section. The tax abatement credit for such preferential rents will be the difference between the frozen preferential rent and the current preferential rent.

(b) A preferential rent, which is lower than the legal regulated rent, will be established as the frozen rent if the tenant lives in a low income housing tax credit apartment in a low income tax credit building pursuant to section 42 of the Internal Revenue Code.

(c) A preferential rent, which is lower than the legal regulated rent, may not be the frozen rent for buildings subject to paragraph 14 of subdivision c of section 26-511 of the administrative code of the city of New York.

§ 13. Chapter 52 of title 19 of the rules of the city of New York is amended by adding a new section 52-13 to read as follows:

**§ 52-13 Capital Assessments and Voluntary Capital Contributions for Certain DRIE Beneficiaries**

(a) Capital Assessments.

(1) A DRIE beneficiary who resides in a 467-c apartment has an exemption from an increase in maximum rent attributable to a capital assessment or voluntary capital contribution.

(2) A DRIE beneficiary is responsible for paying gas and electric charges if his or her apartment is a 467-c apartment.

(3) A DRIE beneficiary is responsible for paying increases in capital assessments or voluntary capital contributions if he or she resides in an apartment in a building which is or was subject to a mortgage insured or initially insured by the federal government pursuant to section 213 of the National Housing Act.

(b) Transfer of Shares. If A person receiving DRIE benefits who resides in a 467-c apartment later transfers his or her shares in such housing company he or she is required to pay over to such housing company, or such housing company shall be entitled to deduct from the amount to be paid to such person for the sale of such shares, all amounts covered by such rent increase exemption order/tax abatement certificate which are attributable to such capital assessment or voluntary capital contribution. Such housing company shall not approve the transfer of shares unless it has received the payment required by the preceding sentence or made the authorized deduction. Such housing company shall remit such amount to the commissioner of finance within 90 days of the collection thereof. Payments due to the city in accordance with this section shall be deemed a tax lien and may be enforced in any manner authorized for the collection of delinquent taxes on real property. Notification and documentation of any transfer of shares by an eligible head of household who has received a DRIE subsidy under this chapter shall be provided in writing to the Department by the affected housing company immediately upon the closing date of such transfer except in cases involving a succession of rights claim, in which case, notification shall be made in writing within 5 days of approval of the succession claim. The housing company shall be entitled to deduct from the amount to be paid to the head of household for the sale of such shares all amounts previously covered by a DRIE subsidy which are attributable to a capital assessment or voluntary capital contribution. Where there is a transfer of shares through succession rights and where the successor is not entitled to a DRIE subsidy under this chapter, the affected housing company shall be entitled to receive a payment from the successor in an amount equal to all DRIE subsidies attributable to a capital assessment or voluntary capital contribution.

(c) DRIE Subsidy Notice. A housing company which imposes a capital assessment or voluntary capital contribution shall provide notice to all persons affected by such capital assessment or voluntary capital contribution of the potential availability of a DRIE subsidy pursuant to these

rules. Such notice shall be included in the notice to such person of the imposition of such capital assessment or capital contribution.

§ 14. Chapter 52 of title 19 of the rules of the city of New York is amended by adding a new section 52-14 to read as follows:

**§ 52-14 Benefit Takeover**

(a) A surviving member of the household, who has not already been determined to be an eligible head of the household as described in section 52-07 of this chapter will be required to submit a benefit takeover application if a head of the household who holds a current valid rent exemption order dies or permanently leaves a household, in order to transfer SCRIE or DRIE benefits into the name of such surviving head of the household. Such benefits will continue on an uninterrupted basis if the surviving member of the household applying for a benefit takeover meets all of the requirements, set forth below, on the date a head of the household either died or permanently vacated the household. A surviving member of the household will not need to submit a benefit takeover application to continue to receive SCRIE or DRIE benefits on an uninterrupted basis if they have already been determined to be a head of the household in accordance with the requirements set forth in section 52-07 of this chapter.

(1) The surviving member of the household who is eligible for SCRIE or DRIE benefits or his or her representative must submit an application for benefit takeover, unless determined to be a head of the household pursuant to section 52-07 of this chapter, to the Department within 6 months of the death or permanent departure from the home of the head of the household or within 90 days from the date of the notice from the Department concerning the head of the household's death, whichever is later. Such notice shall include an explanation of the process to transfer the exemption to a surviving eligible member of the household and the time period to do so, accompanied by the form which must be completed and submitted to transfer the exemption. The deadline for submission will be extended upon a showing of good cause or need for more time as a reasonable accommodation for a tenant's disability as defined in section 52-02 of this chapter.

(2) If the surviving member of the household was not listed as a household member and moved into the apartment after the most recent Department SCRIE or DRIE benefits approval, such member of the household may submit an application for SCRIE or DRIE benefits if inclusion of their income in the total aggregate household income meets the income eligibility requirements.

(b) A surviving member of the household that wishes to assume the SCRIE or DRIE benefits of a head of the household who has died or permanently vacated the household must meet the following criteria. Such member must:

(1) be named on the lease or rent order (or provide written proof that he or she resides in the apartment;

(2) be at least 18 years old for DRIE and 62 years old for SCRIE benefits;

(3) meet the eligibility requirements for SCRIE or DRIE benefits;

(4) have a combined aggregate disposable income less than or equal to 50,000 dollars for all members of the household for the income tax year immediately preceding the date of submitting the benefits takeover application to the Department, beginning July 1, 2014;

(5) provide documentary evidence acceptable to the Department that a head of the household to whom a rent exemption order is currently in effect has died or has permanently vacated the household. Such documentary evidence will include, but is not limited to the following:

(i) A death certificate for such head of the household.

(ii) A letter from nursing home stating that such head of the household has permanently vacated the household and is a resident of the nursing home.

(iii) A court order showing that such head of the household has permanently vacated the household due to legal separation, a divorce decree or an order of protection.

(iv) An affidavit or notarized letter from either the surviving member of the household or the former head of the household attesting to the fact that such head of the household has permanently vacated the household along with documented evidence of residency for his or her new dwelling. Such documentary evidence will include, but not be limited to; written signed lease for new dwelling, New York State or New York City identification card or utility bill.

(v) A letter from the landlord stating that such head of the household has died or permanently vacated the household.

(vi) If the documentary evidence set forth in subparagraphs (i) through (v) of this paragraph cannot be provided, a head of the household will be considered to have permanently vacated the household if such head of the household has vacated the household on an uninterrupted basis for a period of two years.

(b) If a benefit takeover application is approved, the new head of the household will continue to pay the same frozen rent and will receive a rent exemption order for the remainder of the tax abatement approval period except as otherwise provided by these rules. If a benefit takeover application is denied, the rent exemption order and corresponding TAC will be canceled as of the first day of the month following the date the former head of the household either died or permanently vacated the household and the tenant will be required to pay the rent that would have otherwise been in effect in the absence of such rent exemption order.

(c) A benefit takeover applicant must indicate on the application if he or she wants to request that the frozen rent be adjusted because a head of the household has died or permanently vacated the household as required by section 52-15 of this chapter.

§ 15. Chapter 52 of title 19 of the rules of the city of New York is amended by adding a new section 52-15 to read as follows:

#### **§ 52-15 Rent Redetermination**

If a SCRIE or DRIE beneficiary has had a permanent decrease in his or her income, such beneficiary may apply to the Department for rent redetermination.

(a) In order for a decrease in income to be considered a permanent decrease in income, the head of the household or his or her representative must submit documentary evidence acceptable to the Department.

(1) The following events constitute a permanent decrease in income:

(i) a member of the household has died;

(ii) a member of the household has permanently moved to a nursing home;

(iii) a member of the household has permanently retired or has a permanent disability;

(iv) a member of the household is no longer receiving social security disability income benefits.

(2) Such documentary evidence shall include, but not be limited to, a long term lease or letter of employment for the member of the household that has permanently vacated. A letter stating that a member of the household has permanently vacated the household will not be sufficient documentary proof. Any decrease of income from a roomer, boarder or subtenant will not be eligible for consideration as a permanent decrease in income. The loss of a job for a member of the household will in itself not constitute a permanent decrease of income.

(b) Applications cannot be submitted for rent redeterminations during the first twelve months the head of the household is receiving benefits except when a remaining member of the household is determined to be a head of the household pursuant to either section 52-07 or 52-14 of this chapter.

(c) If there is a permanent decrease in total aggregate household disposable income in an amount that exceeds 20 percent of such total aggregate household disposable income as represented in the head of the household's last approved SCRIE or DRIE application for a rent exemption order or for renewal thereof, the head of the household or the head of the household's representative must submit a Department rent redetermination application within six months of the date that the tenant sustained a permanent decrease in total aggregate household disposable income. The deadline for submission will be extended upon a showing of good cause or need for more time as a reasonable accommodation for a tenant's disability as defined in section 52-02 of this chapter.

(d) If the permanent decrease in total aggregate household disposable income is a result of a benefit takeover, the tenant or the tenant's representative submitting the benefit takeover application will also have to complete the redetermination section of the benefit takeover application and provide required household disposable income documentation in order to have the rent he or she is required to pay redetermined by the Department.

(e) Upon approval of a Department redetermination application, the rent will be redetermined so as to reestablish the ratio of adjusted rent to total aggregate household disposable income which existed at the time of such head of the household's last approved application, initial or renewal, except that in no event shall the amount of adjusted rent be redetermined to be less than one third of disposable income except:

(1) if the head of the household does not receive a monthly allowance for shelter pursuant to the social services law and has been granted a rent exemption order that takes effect on or before July 1, 2015; or

(2) in the case of a head of the household who receives a monthly allowance for shelter pursuant to such law, less than the maximum allowance for shelter which such head of the household is entitled to pursuant to the social services law.

Example:

Total aggregate household monthly income was \$2,000. One of the members of the household dies and the total aggregate monthly income is now \$1,200. The frozen rent the tenant was required to pay was \$800. The new frozen rent is \$480. The calculation is as follows:

Old income: (\$2,000) minus new income (\$1,200) = change in income (\$800)

Percentage of reduction in income:  $\$800/\$2000 = 40\%$

The equivalent corresponding 40% reduction in rent is calculated as follow:

Old rent (\$800) times 40% = (\$320)

New Reduced Rent (\$800 - 40% rent reduction (\$320) = \$480

For rent controlled or rent stabilized apartments, a decrease in total aggregate household disposable income shall not include any decrease in such income resulting from the manner in which such income is calculated pursuant to amendment to the definition of income in real property tax law section 467-b. For 467-c apartments, a decrease in total aggregate household disposable income shall not include any decrease in such income resulting from the manner in which such income is calculated pursuant to amendment to the definition of income in real property tax law section 467-c.

§ 16. Chapter 52 of title 19 of the rules of the city of New York is amended by adding a new section 52-16 to read as follows:

#### **§ 52-16 Reclassification of an Apartment**

(a) If a DRIE order is in effect, the benefits will continue to be in effect on an uninterrupted basis if the apartment is reclassified as set forth below:

- (1) From rent controlled to rent stabilized;
- (2) From rent stabilized to rent controlled;
- (3) From rent stabilized to an apartment owned by a limited dividend housing company, redevelopment company or housing development fund company incorporated under the private finance housing law, section 213 Cooperative Housing Companies or a Mitchell Lama apartment or co-op;
- (4) From an apartment owned by a limited dividend housing company, redevelopment company or housing development fund company incorporated under the private finance housing law, section 213 Cooperative Housing Companies or a Mitchell Lama apartment or co-op to rent stabilized.

(b) If a SCRIE order is in effect, the benefits will continue to be in effect on an uninterrupted basis if the apartment is reclassified as set forth below:

- (1) from rent controlled to rent stabilized;
- (2) from rent stabilized to rent controlled.

(c) If an apartment is reclassified from rent controlled or rent stabilized to an apartment owned by a limited dividend housing company, redevelopment company or housing development fund company incorporated under the private finance housing law, section 213 Cooperative Housing Companies or a Mitchell Lama apartment or co-op, it will be necessary for the tenant to contact HPD. SCRIE benefits for apartments owned by a limited dividend housing company,

redevelopment company or housing development fund company incorporated under the private finance housing law, section 213 Cooperative Housing Companies or a Mitchell Lama apartment or co-op are administered by HPD.

(d) If an apartment is reclassified from an apartment owned by a limited dividend housing company, redevelopment company or housing development fund company incorporated under the private finance housing law, section 213 Cooperative Housing Companies or a Mitchell Lama apartment or co-op, to rent controlled or rent stabilized, it will be necessary for the tenant to submit the current SCRIE rent exemption order issued by HPD to the Department and request that a new SCRIE rent exemption order be issued.

(e) If a SCRIE or DRIE order is in effect, the benefits will be terminated if an apartment is reclassified so that it no longer meets the definition of an eligible apartment as set forth in section 52-06 of this chapter.

§ 17. Chapter 52 of title 19 of the rules of the city of New York is amended by adding a new section 52-17 to read as follows:

#### **§ 52-17 Move or Transfer (Portability) to New Apartment**

(a) If a DRIE beneficiary moves from one eligible apartment to another eligible apartment, whether the new apartment is in the same building or in a different building, and the tenant otherwise remains eligible for DRIE benefits, such beneficiary's DRIE order can be continued for the new apartment without interruption but the tenant must submit an Apartment Benefit Transfer Application for approval by the Department. Provided that the rent that the tenant will be required to pay may change. The DRIE TAC will be the least of the following:

(1) the difference between the monthly frozen rent set forth in the current rent exemption order for the old apartment and the monthly legal regulated rent for the new apartment (this amount cannot be less than zero);

(2) the monthly TAC for the old apartment; or

(3) the difference between one-third of the monthly total aggregate household disposable income and the new monthly rent in the new apartment.

(b) If a SCRIE beneficiary moves from a rent controlled apartment to a rent stabilized apartment or from a rent stabilized apartment to a rent controlled apartment, whether the new apartment is in the same building or in a different building, and the tenant otherwise remains eligible for SCRIE benefits, such beneficiary's SCRIE order can be continued for the new apartment without interruption. Provided that the rent that the tenant will be required to pay may change.

(1) The SCRIE TAC will be the least of the following:

(i) the difference between the monthly frozen rent amount set forth in the current rent exemption order for the old apartment and the monthly legal regulated rent in the new apartment (this amount cannot be less than zero).

(ii) the monthly tax abatement credit for the old apartment.

(iii) the difference between one-third of the monthly total aggregate household disposable income and the new monthly legal regulated rent in the new apartment.

This calculation method will not be utilized for SCRIE or DRIE renewals which have been in effect since January 1, 2016 or took effect on or before July 1, 2015.

For example:

The frozen rent the tenant is required to pay pursuant to the rent exemption order is \$550. The legal regulated rent for the old apartment is \$650. The legal regulated rent for the tenant's new apartment is \$750. The tenant's annual total aggregate household disposable income is \$18,000 (\$1,500 per month).

The TAC for the new apartment will be the lowest of the three calculations set forth below:

- (i) \$200 (\$750 (legal regulated rent for the new apartment)) minus (\$550 (frozen rent for the old apartment)).
- (ii) \$100 (\$650 (legal regulated rent for the old apartment)) minus (\$550 (frozen rent for the old apartment)).
- (iii) \$250 (\$750 (legal regulated rent for new apartment)) minus (\$500 1/3 of monthly income)).

In the above example, the TAC for the new apartment will be \$100. This is the lesser of the three calculated tax abatement credits for the old and new apartment. The tenant will be required to pay a frozen rent of \$650 for the new apartment.

The same formula is utilized to determine the frozen rent increase the tenant will be required to pay for his or her new apartment. For example:

The rent the tenant is required to pay pursuant to the rent exemption order is \$700. The legal regulated rent for the old apartment is \$750. The legal regulated rent for the tenant's new apartment is \$650. The tenant's annual total aggregate household disposable income is \$18,000 (\$1,500 per month).

- (i) \$0 (\$650 (legal regulated rent for the new apartment) minus (\$700 (frozen rent for the old apartment))
- (ii) \$50 (\$750 (legal regulated rent for the old apartment) minus (\$700 (frozen rent for the old apartment))
- (iii) \$250 (\$750 (legal regulated rent for new apartment) minus (\$500 (1/3 of \$1,500 monthly income)).

The lowest increase amount is \$0. The frozen rent the tenant will be required to pay pursuant to the amended rent exemption order, therefore, is \$650.

(2) If a SCRIE beneficiary moves from a 467-c apartment it will be necessary for the tenant to submit a SCRIE Apartment Benefit Transfer application to the Department since the SCRIE tenant's benefits are administered by HPD. The tenant must include in the application a copy of the SCRIE order issued by HPD.

(3) If a SCRIE beneficiary moves from a rent controlled or rent stabilized apartment to an apartment owned by a limited dividend housing company, redevelopment company or housing development fund company incorporated under the private finance housing law, section 213 Cooperative Housing Companies or a Mitchell Lama apartment or co-op, it will be necessary for the tenant to contact HPD and comply with their apartment portability procedures.

(c) The portability application must be submitted within 120 days from the date the tenant moved into the new apartment. The deadline for submission will be extended upon a showing of

good cause or for need for more time as a reasonable accommodation for a tenant's disability as defined in section 52-02 of this chapter.

§ 18. Chapter 52 of title 19 of the rules of the city of New York is amended by adding a new section 52-18 to read as follows:

#### **§ 52-18 Electrical Metering Conversion**

(a) The cost of electricity for a current SCRIE or DRIE beneficiary's rent stabilized or rent controlled apartment is included in the frozen rent and may not be adjusted due to a change from master metering to individual metering of electricity.

(b) If a tenant is already receiving SCRIE or DRIE benefits when a SCRIE or DRIE beneficiary's building experiences a conversion from master metering of electricity to individual metering of electricity (also known as direct metering or sub-metering) and subsequently vacates the rent stabilized or rent controlled apartment associated with his or her benefits, then such building's owner is required to reduce the legal rent/maximum rent according to the rent reduction schedule in effect at the time of the vacancy. The new tenant is responsible for his or her legal rent as reduced, including any applicable major capital improvement rent increase based upon the cost of work done to effectuate the electrical conversion and their electric bill.

(c) If a tenant's SCRIE or DRIE benefits cease and the building's owner subsequently converts such tenant's apartment from master metering to individual metering of electricity (also known as direct metering or sub-metering), such owner may reduce the rent in accordance with the schedule of rent reductions and such tenant is responsible for his or her reduced legal rent and electric bills.

(d) If the tenant's SCRIE or DRIE benefits are reinstated, the building owner is required to eliminate the rent reduction and resume responsibility for the tenant's electricity costs.

§ 19. Chapter 52 of title 19 of the rules of the city of New York is amended by adding a new section 52-19 to read as follows:

#### **§ 52-19 Appeal Process**

The tenant has the right to appeal a SCRIE or DRIE determination rendered by the Department, such determination will stand until and unless it is reversed on appeal. An appeal must be submitted on the Department's form no later than 120 days after the date on the Department's determination letter except that the time period to submit an appeal may be extended for a tenant, upon a showing of good cause or a need for more time as a reasonable accommodation for a tenant's disability as defined in section 52-02 of this chapter. A tenant cannot appeal the same determination more than once. The final determination of the Department is also reviewable under Article 78 of the New York Civil Practice Law and Rules.

§ 20. Chapter 52 of title 19 of the rules of the city of New York is amended by adding a new section 52-20 to read as follows:

#### **§ 52-20 Tenant's Ineligibility for SCRIE or DRIE Benefits**

(a) If it is determined that a tax abatement credit has been issued to the building owner's property after the date the head of the household is no longer eligible for SCRIE or DRIE

benefits, the Department will reinstate property tax charges against the building owner from the first day of the first month following such determination.

(b) The Department must notify a tenant in writing if his or her SCRIE or DRIE benefits are terminated and provide the reason for such termination. Such tenant may appeal such termination in accordance with the procedures set forth in section 52-19 of this chapter.

§ 21. Chapter 52 of title 19 of the rules of the city of New York is amended by adding a new section 52-21 to read as follows:

**§ 52-21 Tax Abatement Credit Adjustment Application**

A building owner or his or her designated representative may submit a tax abatement credit adjustment application if he or she has updated FCA or MCR documentation or if such owner wants to apply for an adjustment to the SCRIE or DRIE recipients TAC amount due to an MCI increase, J-51 tax abatement reduction or a rent discrepancy.

An innocent subsequent purchaser of a building or his or her designated representative may also submit an application if the TAC for the building was reduced after such purchase for a time period prior to such purchaser's acquisition of the building and the purchaser was unaware that an adjustment was appropriate. The TAC amount will be adjusted if such application is approved by the Department.

**NEW YORK CITY LAW DEPARTMENT  
DIVISION OF LEGAL COUNSEL  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-356-4028**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE:** Amendments to SCRIE and DRIE rules

**REFERENCE NUMBER:** 2019 RG 036

**RULEMAKING AGENCY:** Department of Finance

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;

- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Acting Corporation Counsel

Date: 3/3/2020

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Amendment of SCRIE and DRIE Rules**

**REFERENCE NUMBER: DOF-44**

**RULEMAKING AGENCY: Department of Finance**

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

Francisco Navarro  
Mayor's Office of Operations

March 3, 2020  
Date