

# NOW & NEXT

## Affordable Housing Alert

DECEMBER 16, 2022

### New York legislation resolves rent stabilization and rental subsidy long-standing conflict

By Meghan Altidor, Deborah VanAmerongen, Aaron Yowell and Jeremy Busch<sup>1</sup>

Governor Hochul signs rental assistance legislation aimed at increasing cash flow for building owners while preserving long-term affordability.



#### What's the Impact?

- / Allows owners to collect up to the maximum contract rent that a rental subsidy may provide instead of a lower legal regulated rent
- / Mandates audits from regulatory oversight agencies every three years

Governor Hochul signed legislation that amends sections of the Private Housing Finance Law regarding the amount of rent that can be collected on properties with rental assistance contracts. This legislation was previously discussed in our June 7, 2022, alert, "[New York affordable housing legislative updates.](#)"

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<sup>1</sup> Jeremy Busch, a law clerk in Nixon Peabody's Affordable Housing & Real Estate practice, assisted with the preparation of this alert.

Here are the highlights:

## Rental assistance

Governor Kathy Hochul signed a bill on December 16, 2022 ([S7235](#)) that amends the Private Housing Finance Law (PHFL) to allow owners of affordable housing properties to collect the full rental subsidy contract rent, even when the property is subject to rent stabilization. The legislation is effective immediately and requires that the property be subject to a regulatory agreement with a state or municipal agency or public benefit corporation or a political subdivision of the state, which would include the New York State Housing Finance Agency, the New York City Housing Development Corporation, and the New York City Department of Housing Preservation and Development, among other agencies, each of which have required most affordable housing projects to register rents under rent stabilization even when the property benefits from rental assistance.

## Compliance mandate

This rental subsidy and rent stabilization conflict has confounded affordable housing owners seeking clarity in their project documents that they could collect full subsidies under the Section 8 program and local rental assistance programs such as New York City's "NYC 15/15" program. Owners will now be able to collect the maximum payment standard or contract rent that a rental subsidy program allows without affecting what will be the legal regulated rent after the subsidy expires. The law mandates that the regulatory agency must audit the owner's records once every three years for compliance and also specifies new notice and disclosure requirements, as well as liability for rent overcharges if the rental subsidy terminates and the owner fails to default to the legal regulated rent.

## What's next?

For properties that already have an existing regulatory agreement, the law will require an amendment to that regulatory agreement that expressly permits the owner to collect the full subsidy rent. For these existing regulatory agreements, we expect the agencies will prioritize projects where the conflict presents a programmatic challenge. Nixon Peabody is monitoring implementation of these amendments and can assist you with making certain your property maximizes its rent potential.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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