

OFFICE OF THE NEW YORK CITY COMPTROLLER

Notice of Adoption of Rules of the City of New York

In compliance with section 1043(b) of the New York City Charter (“Charter”) and pursuant to the authority granted to the New York City Office of the Comptroller (“Comptroller”) by section 1043 of the Charter, a notice of public hearing and opportunity to comment on the proposed addition of a new Chapter 6 to Title 24 of the Rules of the City of New York (“Chapter 6” of the “RCNY”) was published in the City Record on December 23, 2025 and a public hearing was held on January 28, 2026. The comment period was subsequently extended to May 15, 2026. No oral testimony was provided at the hearing, but sixteen written comments were submitted on the proposed rules. Meetings were also held with trade unions and organizations representing developers and construction contractors upon their request.

Comments from trade unions and a legal advocacy organization were supportive of the rules, writing that the tax incentive program authorized by section 485-x of the Real Property Tax Law advanced both worker protections and affordable housing objectives by balancing substantial tax benefits with robust compliance requirements. Other comments expressed concerns about potential logistical and financial burdens developers and contractors might face because of requirements and penalties imposed by the rules.

Many of the comments asked for clarification of various aspects of the proposed rules. The rules have been revised to provide clarification of these matters. The Bureau of Labor Law will also issue a Frequently Asked Questions document, setting forth additional clarification. The Office of the Comptroller has made the following changes to the rules based on comments received from the public:

- Section 6-02: In response to concerns that liability under section 485-x of the Real Property Tax Law (“RPTL”) could extend to law firms or consulting firms that assisted with an application for program benefits, the Comptroller revised the definition of the term “Applicant” to clarify that it does not include entities retained solely for submitting the application for Affordable Neighborhoods for New Yorkers (“ANNY”) Program benefits.
- Section 6-03: The Comptroller added language to subdivision (d) to clarify that this provision does not apply to employers who are exempt from the Construction Wage Requirement pursuant to Section 6-03(k). In response to concerns that section 220 of the Labor Law would prevent Construction Employees from working more than eight hours per day, the Comptroller added language to subdivision (i) indicating that such work is not precluded. The Comptroller added a new subdivision (j) that sets forth factors to be used to determine whether delivery and hauling performed on a Covered Site constitutes Construction Work, and revised the language in subdivision (k) to clarify the scope of exemptions from the Construction Wage Requirement.

- Section 6-04: In response to comments, the Comptroller changed the notice procedure for a Covered Site that is exempt from the Construction Wage Requirement. Specifically, rather than submitting a request for exemption from the Construction Wage Requirement to the Comptroller five months before the Commencement Date, such a site must now provide notice that it is exempt three months before the Commencement Date. In addition, the party submitting the Notice of Exclusion need only state the existence of a project labor agreement, rather than providing a copy of the agreement.
- Section 6-05: In response to comments related to recordkeeping burdens, the Comptroller added a distinction between the recordkeeping requirements applicable to Covered Sites that are subject to the Construction Wage Requirement and those that are not. The Comptroller also added language in section 6-05(c)(5) indicating that Owners are not responsible for maintaining or producing the tax documents of their contractors. The Comptroller also changed the reference to “Applicant” in section 6-05(f) to “Owner.”
- Section 6-06(c): The Comptroller replaced “each” with “such” to clarify that individual workers may consent to disclosure of their own name or identity where necessary for settlement or hearing.
- Section 6-07: The Comptroller added a reference to the Office of Administrative Trials and Hearings Rules of Practice.
- Section 6-08(c): The Comptroller corrected a typographical error that referred to “Order” in place of “Owner.”
- Section 6-09(b): The Comptroller revised the language to clarify that the Comptroller would publish a list of all Persons that have committed two or more violations under section 485-x.
- Section 6-10(b): In response to a comment pointing out that the original wording limited the Comptroller to recapturing benefits that had accrued after the date of the third violation, the Comptroller revised the language to clarify that all benefits could be recaptured after a third violation.

The Comptroller considered all comments it received on the proposed rules. In addition to the suggestions adopted in the final rules, these comments included suggestions for adding language relating to the meaning of “Covered Site” and “Greatest Prevailing Rate.” In finalizing these proposed rules, the Comptroller focused on clarifying employer obligations while staying within the scope of the enacted law.

Statement of Basis and Purpose of Final Rule

The Comptroller is adopting rules to implement New York State Real Property Tax Law (“RPTL”) section 485-x, which was enacted in 2024. RPTL section 485-x, also known as the Affordable Neighborhoods for New Yorkers (“ANNY”) tax incentive program (“ANNY benefits”), provides an exemption from real property taxes to housing developments that meet certain affordability requirements (herein “the Law”). Subdivision (3) of the Law establishes wage requirements for construction employees on certain eligible sites that are enforced by the

Comptroller. The rules implement the construction wage requirements set forth in subdivision (3) of the Law as well as the requirement that owners of eligible sites with 100 or more dwelling units provide notice to the Comptroller at least three months prior to commencement of construction work. The rules use terms that are defined in the Law, and define certain additional terms. The rules define the term “applicant” as a person that files an application for such exemption from real property taxes, their agent, and any successor to such benefits.

Paragraphs (a), (b) and (c) of subdivision (3) of the Law require that construction employees on an eligible site with 100 units or more be paid a minimum hourly rate. More specifically, construction employees on an eligible site with 100 units or more must be paid at least \$40 per hour. This \$40 per hour rate is subject to an annual escalator. Construction employees on eligible sites with 150 units or more in areas that have been designated as Zone A must be paid the lesser of \$72.45 per hour, or 65% of the greatest rate of prevailing wages and supplements within the employee’s classification; in areas designated as Zone B, construction employees must be paid the lesser of \$63.00 per hour, or 60% of the greatest rate of prevailing wages and supplements within the employee’s classification. The minimum hourly pay rate for construction work performed in Zones A and B was subject to an annual escalator of 2.5% on July 1, 2025 and will continue to be every year thereafter. With the annual escalator of 2.5% required by paragraphs (b) and (c) of subdivision (3), as of July 1, 2025, the minimum hourly pay rate for construction work performed in Zones A and B is \$74.26 and \$64.58, respectively. The Law authorizes the Comptroller to investigate violations of the construction wage requirement, to issue determinations and orders related to violations of those requirements, and to terminate and recapture tax benefits based on such violations.

Paragraph (h) of subdivision (3) of the Law provides that an eligible site that is covered by a project labor agreement is excluded from the construction wage and notice requirements. Paragraph (i) of subdivision (3) of the Law provides that a contractor may be excluded from the construction wage requirement with respect to construction employees that are performing construction work on a site under a collective bargaining agreement or a jobsite agreement that has expressly waived the requirements of paragraphs (a), (b), and (c) of subdivision (3) of the Law. This paragraph also provides for an exclusion from the notice requirements set forth in paragraph (d) of subdivision (3) for such a site. These rules establish a process for notification to the Comptroller of such an exclusion.

Pursuant to paragraph (d) of subdivision (3) of the Law, an owner of an eligible site must provide notice to the Comptroller about the location of the project, its anticipated start date and the existence of a project labor agreement at least three months prior to the commencement of construction on the eligible site and may be subject to penalties and forfeiture of the tax benefit for failure to do so. These rules construe this notice requirement to apply to owners of eligible sites with 100 units or more.

Pursuant to paragraph (g) of subdivision (3) of the Law, if an applicant or any person acting on behalf of, or as an agent of, such applicant commits three or more violations of the construction wage requirement within a five-year period, the Comptroller may terminate such applicant’s ANNY benefits and/or recapture ANNY benefits already received by such applicant, provided that the Comptroller must notify applicants found to have committed two such violations within

a five-year period that a further violation may result in revocation of ANNY benefits and must publish on its website a list of applicants with at least two violations.

The rules:

- Implement the requirement set forth in subdivision (3) of the Law that employees on an eligible site with 100 or more units (a covered site) be paid wages in accordance with sections 220 and 220-b of the Labor Law unless the site is exempted from the wage requirement, and provide guidance related to the definition of wages;
- Provide guidance to construction employers as to how to determine the correct rates of wages and benefits to be paid to construction employees using the rates set forth in the Comptroller's prevailing wage schedules. Specifically, the rules provide examples illustrating which rate is "the greatest rate of prevailing wages and supplements within a classification," as well as how to compute overtime rates of pay for construction employees based on their classifications;
- Establish procedures for an owner of an eligible site with 100 or more units (a covered site) to submit either the notice required by paragraph (d) of subdivision (3) of the Law or a notice of exclusion;
- Establish recordkeeping requirements that describe the types of documents to be retained by construction employers and how long records must be retained;
- Establish procedures for the Comptroller's investigation of compliance with the construction wage requirements that mirror the Comptroller's existing procedures for investigating prevailing wage violations, including establishing procedures for the Comptroller to commence a proceeding at the Office of Administrative Trials and Hearings (OATH) to impose penalties for failure to produce documents in a Comptroller investigation, and establishing safeguards to protect workers from unlawful interference in a Comptroller investigation;
- Establish procedures for conducting hearings and issuing orders that mirror the Comptroller's existing procedures for prevailing wage enforcement; and
- Specify the circumstances when the Comptroller may order the termination and/or recapture of tax benefits received by an applicant.

The rules are as follows. New material is underlined. "Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this office, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Title 44 of the Rules of the City of New York is amended by adding a new Chapter 6 to read as follows:

Chapter 6: Affordable Neighborhoods for New Yorkers Construction Wage Regulations

§6-01 Applicability

These regulations apply to Comptroller investigations, determinations, hearings, reports and recommendations, and orders under New York State Real Property Tax Law (RPTL) § 485-x(3).

§6-02 Definitions

As used in this chapter, the following terms have the following meanings. Capitalized terms that are not specifically defined in this chapter have the meanings set forth in Real Property Tax Law § 485-x:

“ANNY Program Benefits” means Affordable Neighborhoods for New Yorkers tax incentive benefits, as defined in RPTL § 485-x(1)(f).

“Applicant” means a Person that applies for ANNY Program benefits, and any Person acting on behalf of, or as an agent of, such Person and any successor to such Person; provided, however, that an applicant does not include a person that is retained solely for the purpose of submitting an application and corresponding materials.

“Apprentice” means a Construction Employee registered in an apprenticeship program with the New York State Department of Labor.

“Bona Fide Fringe Benefits” means any payment, other than Wages, that directly benefits the Construction Employee. Bona Fide Fringe Benefits include, but are not limited to, paid vacation or sick leave; medical, vision, or dental insurance; life insurance; retirement accounts or annuities; and apprenticeship training. Bona Fide Fringe Benefits do not include payroll taxes paid by the Construction Employer, or payments or benefits that are required by federal, state, or local law, such as workers’ compensation insurance, New York State unemployment insurance, New York State disability insurance, metropolitan commuter transportation mobility tax, federal unemployment insurance, and payments and benefits pursuant to the Federal Insurance Contributions Act.

“Bureau” means the Comptroller’s Bureau of Labor Law.

“Certified Payroll Report” means a weekly payroll record in the format provided on the Comptroller’s website.

“Complaining Worker” means a worker who has filed a written or electronic complaint for the underpayment of Wages and Supplements with the Bureau.

“Comptroller” means the Comptroller of the City of New York or his or her designee.

“Construction Apprentice Schedule” means the annual Construction Apprentice Worker Wage Schedule published on the Comptroller’s website that is in effect when the relevant Construction Employee performs Construction Work.

“Construction Employee” means any person performing Construction Work as a laborer, worker, or mechanic on a Covered Site.

“Construction Employer” means any Person that employs a Construction Employee on a Covered Site.

“Construction Wage Requirement” means the requirement to pay Wages and Supplements to Construction Employees, as set forth in paragraphs (a), (b) and (c) of subdivision 3 of § 485-x of the RPTL.

“Construction Work” has the meaning set forth in RPTL § 485-x(1)(p).

“Construction Worker Schedule” means the annual Construction Worker Wage Schedule published on the Comptroller’s website that is in effect when the relevant Construction Employee performs the Construction Work.

“Covered Site” means an Eligible Site within the city of New York that contains 100 units or more.

“Daily Sign-In Log” means a daily attendance record format provided on the Comptroller’s website.

“Documents” means records in any form, including writings, graphs, charts, and other data or data compilations stored in any medium, including electronically stored information.

“Eligible Site” has the meaning set forth in RPTL § 485-x(1)(s).

“OATH” means the New York City Office of Administrative Trials and Hearings.

“Owner” means the owner of a Covered Site and a successor to such owner.

“Person” means a natural person, co-partnership, firm, company, association, joint stock association, corporation or other like organization.

“Prevailing Supplemental Benefits Rate” means the Supplemental Benefit rate set forth in the Construction Worker Schedule or Construction Apprentice Schedule for a particular classification, as modified by paragraphs (a), (b) or (c) of subdivision 3 of § 485-x of the RPTL.

“Recapture” means to restore the amount of taxes exempted from the statement of account of the Eligible Multiple Dwelling to such statement of account.

“Supplemental Benefit(s)” or “Supplements” has the meaning set forth in Labor Law § 220(5)(b).

“Violation” has the meaning set forth in RPTL § 485-x(3)(g)(ii).

“Wages” means the hourly wages paid to a Construction Employee pursuant to the Construction Wage Requirement and in accordance with Labor Law §§ 220 and 220-b and does not include amounts paid for New York State unemployment insurance, New York State disability insurance, metropolitan commuter transportation mobility tax, federal unemployment insurance, or pursuant to the Federal Insurance Contributions Act or any other payroll tax that is paid by the Construction Employer.

“Wages and Supplements” means the Wages and Supplemental Benefits paid to, or on behalf of, a Construction Employee pursuant to the Construction Wage Requirement and in accordance with Labor Law §§ 220 and 220-b.

“Worker Notice Poster” means a poster in the form provided on the Comptroller’s website containing information about Construction Employees’ rights to Wages and Supplements under RPTL § 485-x(3) and contact information for the Bureau.

§6-03 Wages and Supplements To Be Paid

(a) A Construction Employer must pay each Construction Employee no less than the applicable minimum hourly rate of Wages and Supplements set forth in paragraph (a), (b) or (c) of subdivision 3 of § 485-x of the RPTL, as applicable, for Construction Work unless such employer is exempt from such obligation as to such employee pursuant to subdivision (k) of this section.

(b) An Applicant, an Owner, and a Construction Employer shall be jointly liable for any violation of the Construction Wage Requirement with respect to a Construction Employee, without regard to whether such Construction Employee was employed by such Applicant or Owner.

(c) The Wages and Supplements required to be paid in accordance with the Construction Wage Requirement shall be based on the rates set forth in the Construction Worker Schedule or Construction Apprentice Schedule for the craft, trade or occupation of the Construction Employee, as modified by paragraphs (a), (b) or (c) of subdivision 3 of § 485-x of the RPTL.

(d) Where a Construction Employee’s rate of pay is the specified dollar amount required by paragraphs (a), (b) or (c) of subdivision 3 of § 485-x of the RPTL, the Prevailing Supplemental Benefits Rate may not exceed 50% of the total Wages and Supplements required to be paid to such employee, unless such employer is exempt from such obligation as to such employee pursuant to subdivision (k) of this section.

(e) The obligation to provide Supplemental Benefits may be discharged or reduced by:

(1) providing Bona Fide Fringe Benefits for which the hourly cost to the Construction Employer is equal to or higher than the Prevailing Supplemental Benefits Rate; or

(2) increasing the Construction Employee’s Wages by an amount equal to or higher than the Prevailing Supplemental Benefits Rate; or

(3) providing a combination of Bona Fide Fringe Benefits and hourly wages which collectively cost the Construction Employer no less per hour than the Prevailing Supplemental Benefits Rate.

(f) The hourly cost of Bona Fide Fringe Benefits provided by a Construction Employer to a Construction Employee is calculated by dividing the total cost or contribution for providing such Bona Fide Fringe Benefits, on an annual basis, by the total hours of Construction Work and all other work performed by such Construction Employee for such Construction

Employer for the year at issue. However, a Construction Employer that provides an hourly contribution for Construction Work to an individual retirement account for a Construction Employee is credited for such hourly contribution.

(g) The Construction Wage Requirement cannot be reduced or discharged by the provision of Bona Fide Fringe Benefits that cost more than the Prevailing Supplemental Benefits Rate for a classification, or by the payment of any payroll taxes by the Construction Employer or payments and benefits that are required by federal, state or local law, such as workers' compensation insurances, New York State unemployment insurance, New York State disability insurance, metropolitan commuter transportation mobility tax, federal unemployment insurance and payments and benefits pursuant to the Federal Insurance Contributions Act.

(h) The greatest prevailing rate of Wages and Supplements within a classification, as referenced in paragraphs (b) and (c) of subdivision 3 of § 485-x of the RPTL, means the highest rate of Wages and Supplements listed for a specific job classification in the Construction Worker Schedule or Construction Apprentice Schedule, as applicable. When a classification provides for varying rates of Wages and Supplements based on the number of years of employment in the industry, the highest rate of pay must be used, regardless of a particular worker's actual years of experience in the industry. Where there is only one rate of Wages and Supplements within a title in the Construction Worker Schedule or Construction Apprentice Schedule, as applicable, such rate shall be the greatest prevailing rate of Wages and Supplements within a classification, as illustrated in Example 1 below. Where a title contains multiple classifications that reflect different work duties, the greatest prevailing rate of Wages and Supplements within a classification refers only to the particular classification, and not to other classifications within the same title, as illustrated in Example 2 below.

Example 1: The Core Driller Helper classification in the Construction Worker Schedule provides four different rates for employees with one (1), two (2), three (3), and more than three (3) years of employment in the industry. The greatest prevailing rate of Wages and Supplements for this classification refers to the rate for workers with more than three (3) years of employment in the industry. Accordingly, the rate of Wages and Supplements required to be paid to a Construction Employee performing Core Driller Helper work on a Covered Site must be calculated based on the rate of Wages and Supplements for a Core Driller Helper with more than three (3) years of employment in the industry, regardless of the particular Construction Employee's actual years of experience in the industry.

Example 2: The Driver: Truck title contains three classifications, Driver–Dump Truck; Driver–Tractor Trailer; and Driver–Euclid & Turnapull Operator. Although all three classifications fall under the title of Driver: Truck, they are independent classifications reflecting different work duties. Accordingly, the rate of Wages and Supplements required to be paid to a Construction Employee working in the Driver–Dump Truck classification must be calculated based on the rate of Wages and Supplements listed in the Driver–

Dump Truck classification. The rates of Wages and Supplements for the Driver–Tractor Trailer and Driver–Euclid & Turnapull Operator classifications are not relevant for this calculation.

Example 3: The Cement and Concrete Worker title in the Construction Apprentice Schedule has varying rates for the first 1333 hours, second 1333 hours, and last 1334 hours of work performed in that title. Accordingly, the rate of Wages and Supplements required to be paid to an Apprentice performing Cement and Concrete work on a Covered Site must be calculated based on the rate of Wages and Supplements for the last 1334 hours of work performed in that title by an Apprentice, regardless of the actual number of Cement and Concrete work hours completed by the individual Apprentice.

(i) Overtime, weekend and holiday hours pay

(1) A Construction Employee may work more than eight hours per day or forty hours per week; provided that where the Construction Employee’s rate of pay is based on a percentage of the greatest prevailing rate of Wages and Supplements in a classification, the pay for overtime, weekend, and holiday hours must be based on the overtime, weekend, and holiday rates set forth in the Construction Worker Schedule or Construction Apprentice Schedule, as applicable, for such employee’s classification.

(2) Where the Construction Employee’s rate of pay is the specified dollar amount required by paragraphs (a), (b) or (c) of subdivision 3 of § 485-x of the RPTL, the rate of pay for overtime, weekend, and holiday hours must be calculated by multiplying the rate of pay for the corresponding rates and hour thresholds set forth in the Construction Worker Schedule or Construction Apprentice Schedule, as applicable, for such employee’s classification. For example, where a Construction Employee earns \$40.00 per regular hour in a classification for which Sunday pay is double the regular rate of pay, such Construction Employee must be paid \$80.00 per hour for each hour worked on a Sunday.

(j) Delivery and Hauling

(1) When delivery or hauling is performed on a Covered Site, the Bureau will evaluate a combination of factors to determine whether such delivery or hauling constitutes Construction Work, including the length of time physically spent by the driver or delivery person on the Covered Site; the extent and nature of the driver or delivery person’s involvement with the overall construction project; the location of the delivery; whether there are single or multiple deliveries; and the type of materials delivered.

Example 1: A truck driver makes a single delivery of bathroom fixtures to the Covered Site, leaving the fixtures at the entry of the Covered Site and spending less than ten minutes on the Covered Site. Such work would not be covered by the

Construction Wage Requirement because the time spent and level of involvement are limited, and the fixtures are not part of the initial forming, making or building of the Eligible Multiple Dwelling.

Example 2: A truck driver delivers cement to the Covered Site to be used to form parts of the building, spending approximately one hour on the Covered Site pouring the cement. Such work would be covered by the Construction Wage Requirement because the driver spent a substantial amount of time on the site and the cement is part of the initial forming, making or building of the Eligible Multiple Dwelling.

(k) Exclusions from Construction Wage Requirement

(1) A Covered Site shall be excluded from the Construction Wage Requirement where the performance of all Construction Work on such site is regulated by a Project Labor Agreement.

(2) An Applicant, Owner and Construction Employer shall be excluded from the Construction Wage Requirement with respect to Construction Employees performing Construction Work on a Covered Site, where such work is regulated by a Collective Bargaining Agreement or Jobsite Agreement that expressly waives the requirements of paragraphs (a), (b), (c) and (d) of subdivision (3) of RTPL § 485-x. Any exclusion pursuant to this paragraph shall apply only to the Construction Work performed by the Construction Employees covered by the Collective Bargaining Agreement or Jobsite Agreement containing such waiver, as applicable.

§ 6-04 Submissions to the Comptroller

(a) Unless a Covered Site is excluded from the Construction Wage Requirement pursuant to subdivision (k) of section 6-03, the Owner of the Covered Site must provide notice to the Comptroller and the New York City Department of Housing Preservation and Development at least three (3) months prior to the Commencement Date of the following information with respect to the Covered Site:

(1) the location of the Eligible Multiple Dwelling;

(2) the anticipated Commencement Date;

(3) the anticipated Completion Date; and

(4) the existence of any Project Labor Agreement regulating Construction Work on the Covered Site.

(b) Notwithstanding subdivision (a) of this section, a Covered Site with a Commencement Date prior to the effective date of these Rules must submit the notice on or before thirty (30) days from the effective date of these Rules.

(c) The notice required pursuant to subdivision (a) of this section must be submitted electronically using the form provided on the Comptroller's website, provided, however, that notices submitted on or before the effective date of these rules may be submitted in writing via United States mail addressed to Bureau of Labor Law, Office of the Comptroller, 1 Centre Street, Room 651, New York, NY 10007 or via email addressed to laborlaw@comptroller.nyc.gov.

(d) If there is any change to the information contained in the notice required pursuant to subdivision (a) of this section, including, but not limited to, the ownership of the Covered Site, the anticipated Commencement Date or Completion Date, or the existence of any Project Labor Agreement, the Owner must notify the Comptroller and the New York City Department of Housing Preservation and Development in writing within thirty (30) days of such change in the manner set forth in subdivision (c) of this section.

(e) Notice of Exclusion

(1) The Owner of a Covered Site that is excluded from the Construction Wage Requirement pursuant to subdivision (k) of section 6-03 must provide a notice of exclusion to the Comptroller by submitting the following information:

- (i) the location of the Eligible Multiple Dwelling;
- (ii) the anticipated Commencement Date;
- (iii) the anticipated Completion Date;
- (iv) a statement that the Covered Site is governed by a Project Labor Agreement or a Collective Bargaining Agreement or Jobsite Agreement that expressly waives the requirements of paragraphs (a), (b), (c) and (d) of subdivision (3) of RTPL § 485-x, as applicable.

(2) Such notice must be submitted to the Comptroller electronically using the form provided on the Comptroller's website at least three months prior to the Commencement Date, provided, however, that notices submitted on or before the effective date of these rules may be submitted in writing via United States mail addressed to Bureau of Labor Law, Office of the Comptroller, 1 Centre Street, Room 651, New York, NY 10007 or via email addressed to laborlaw@comptroller.nyc.gov.

(3) If there is any change to the information contained in the notice required pursuant to subdivision (e)(1) of this section, including, but not limited to, the ownership of the Covered Site, the anticipated Commencement Date or Completion Date, or the existence of any Project Labor Agreement, Collective Bargaining Agreement, or Jobsite Agreement, the Owner must notify the Comptroller and the New York City Department of Housing Preservation and Development in writing within thirty (30) days of such change in the manner set forth in subdivision (c) of this section

§ 6-05 Record Keeping

(a) With regard to the Documents required to be maintained pursuant to this section, an Owner must:

(1) maintain such Documents for six years after the Completion Date of the Covered Site;

(2) preserve such Documents, upon notification by the Bureau of a compliance investigation and until the later of (A) the date of the Bureau's notification of the completion of such investigation or (B) six years from the date of completion of all Construction Work on the Covered Site; and

(3) produce true copies of all such Documents within the time requested by the Bureau after notice of the right to counsel described in subdivision (d) of section 6-06 of this chapter.

(b) For each Covered Site, a Certified Payroll Report must be maintained pursuant to subdivision (a) of this section. Such report must set forth the names, addresses and trade classifications for all Construction Employees employed on a particular project or contract on the Covered Site, as well as the hours and days of Construction Work, the hourly rates of Wages and Supplements, and the weekly gross and net pay amounts for each Construction Employee. The Certified Payroll Report must be signed and affirmed to be true under penalties of perjury by an officer or principal of the Owner; provided, however, that such Owner may authorize the prime contractor on the Covered Site or the Construction Employer to sign and affirm on behalf of such Owner. Upon the establishment of an online portal for submission of Certified Payroll Reports, an Owner must comply with instructions set forth on the Comptroller's website and any corresponding regulations.

(c) For each Covered Site that is subject to the Construction Wage Requirement, the following additional Documents must be maintained, preserved and produced pursuant to subdivision (a) of this section:

(1) Contracts and subcontracts for Construction Work on the Covered Site;

(2) List of all Construction Employees and their last known addresses, telephone numbers, and, where available, e-mail addresses;

(3) Daily Sign-In Logs for each construction project or contract performed on the Covered Site. The Daily Sign-In Log must set forth the names, trade classifications, daily start and end times of Construction Work for each Construction Employee employed by the Construction Employer on the Covered Site and must be signed by each such Construction Employee. An Owner may authorize the prime contractor on the Covered Site or the Construction Employer to maintain a Daily Sign-In Log on behalf of such Owner. An Owner may use electronic Daily Sign-In Logs with verified electronic signatures only with the Bureau's written approval or where the Comptroller has made this option available via instructions on its website. Upon the establishment of an online

portal for submission of Daily Sign-In Logs, the Owner must comply with instructions set forth on the Comptroller's website and any corresponding regulations.

(4) Weekly payroll records, registers or journals as required by Labor Law § 195;

(5) All Documents concerning the cost of Bona Fide Fringe Benefits provided to Construction Employees, including, but not limited to, invoices, account statements, benefits remittance reports and benefits plan descriptions; and

(6) All federal and state employment tax returns and filings, including, but not limited to, quarterly combined withholding, wage reporting, and unemployment insurance form NYS-45 returns; employers' quarterly Federal tax form 941 returns; wage and tax form W-2 statements; and miscellaneous income form 1099 statements; provided, however, that an Owner is not responsible for maintaining, preserving, or producing the tax returns or other tax documents filed by any Construction Employer on the Covered Site.

(d) An Owner may authorize the prime contractor on the Covered Site to be responsible for the retention and maintenance of Documents required pursuant to this section, provided that such Owner shall be jointly and severally liable for any violations committed by such prime contractor. Such prime contractor is required to cooperate with any Comptroller investigation and is also subject to the requirements set forth in section 6-06 of this chapter.

(e) To the extent the Owner authorizes the Construction Employer to be responsible for the retention and maintenance of Documents required by this section, such Construction Employer shall submit any records required to be maintained pursuant to this section to the Owner or prime contractor. Such records must be submitted no later than thirty (30) days after issuance of the first payroll, and no later than thirty (30) days thereafter, as prescribed by the Owner or the prime contractor. The Owner may not rely upon this provision to discharge its obligation to maintain Documents in accordance with paragraph (e) of subdivision 3 of § 485-x of the RPTL.

(f) The Owner must post a Worker Notice Poster in a prominent and accessible place for Construction Employees at the Covered Site. Such poster must (i) be in the form provided on the Comptroller's website, (ii) provide information about Construction Employees' rights to Wages and Supplements under RPTL § 485-x(3) on the Covered Site, (iii) provide contact information for the Bureau, and (iv) be at least two feet in height and two feet in width and constructed of materials capable of withstanding adverse weather conditions.

§ 6-06 Compliance Investigations, Compliance Determinations, Settlements

(a) The Bureau may investigate and determine liability for underpayments for Construction Work on its own initiative; upon the filing of a written complaint with the Bureau by a Complaining Worker or their representative; or upon a referral from the New York State Department of Labor, the United States Department of Labor, a labor union, or any other government or labor enforcement agency with an interest in the Construction Work at issue.

(b) The Bureau may decline to investigate and determine underpayments of Wages and Supplements if a Complaining Worker or Complaining Worker's representative has participated in any other legal proceeding to recover the same unpaid Wages and Supplements that are the subject of the complaint.

(c) The Bureau will not disclose the name or identity of a Complaining Worker unless necessary for settlement or hearing and only with the consent of such Complaining Worker.

(d) Any Person under investigation by the Bureau has the right to be represented by counsel at their own expense. The Bureau must notify such Person of the right to counsel at the commencement of a compliance investigation in which Documents may be demanded. Counsel must file a written notice of appearance with the Bureau. All notices, Documents or other communications will be sent to such counsel subsequent to such filing and shall be deemed to constitute service upon such Person.

(e) During a compliance investigation, all relevant information and Documents must be provided to the Bureau within the time requested by the Bureau including, but not limited to, the Documents specified in section 6-05 of this chapter. All Documents produced to the Bureau must be in machine-readable format.

(f) The Bureau may commence a proceeding at OATH against any Person under investigation who fails to provide true and accurate information and Documents within the time requested by the Bureau in connection with such investigation.

(g) The Bureau may impose a penalty of five hundred dollars (\$500) on any Person under investigation for each request for information or Documents such Person has failed to timely produce on or before the first scheduled appearance date, in addition to any other monetary liability OATH may impose as a result of the Bureau's investigation.

(h) The Bureau must send a written notice to any Person under investigation indicating that it will begin to calculate the amount of underpayments of Wages and Supplements and that such amounts will be set forth in a determination. In preparing a determination, the Bureau will not consider any information or Documents requested by the Bureau that were not provided within the time period specified in such written notice.

(i) If an Owner, prime contractor, or Construction Employer failed to keep or timely provide the Bureau with accurate records as required by section 6-05 of this chapter, the Bureau is permitted to calculate underpayments of Wages and/or Supplements due to Construction Employees by using the best available evidence, and the burden shifts to the Owner, prime contractor, or Construction Employer to negate the reasonableness of the Bureau's calculations. In such case, the amount and extent of underpayment is a matter of reasonable inference and may be based upon the statements of Construction Employees.

(j) No Person may interfere with any compliance investigation, proceeding, or hearing undertaken by the Bureau. An adverse action or coercive statement made against any Complaining Worker or Construction Employee that penalizes or is reasonably likely to deter

the Complaining Worker or Construction Employee from exercising or attempting to exercise their right to receive Wages and Supplements may be deemed impermissible interference with a compliance investigation under this section. The exercise of rights includes, but is not limited to, filing a complaint with the Bureau, participating in a compliance investigation, and testifying at a hearing conducted by the Bureau. An Owner or Construction Employer may not avoid its obligation to comply with the Construction Wage Requirement through its own misconduct.

(k) The proximity in time between the exercise of rights and the adverse action may be considered evidence of a causal connection and an intent to interfere with an investigation.

(l) The Bureau may assess an underpayment of Wages and Supplements on behalf of a Construction Employee who has been the subject of an interference. Such assessment may include: (i) the amount that such Construction Employee would have earned but for the interference; (ii) interest on such amount; and (iii) civil penalties of up to twenty-five percent (25%) of the total amount found to be due.

(m) The Bureau will utilize the best available evidence, including, but not limited to, an average of the hours worked in the four (4) pay periods prior to an impermissible interference with a compliance investigation, to calculate the amount a Construction Employee would have earned but for such interference.

(n) The Bureau may resolve a compliance investigation by stipulation of settlement, which includes: (i) findings and assessments as to the underpayment of Wages and Supplements, (ii) findings as to the willfulness of the Violation, (iii) assessments of interest, (iv) civil penalties, and (v) compliance measures reasonably calculated to deter future Violations.

(o) Stipulations of settlement resolving compliance investigations under RPTL § 485-x(3) are endorsed by the Comptroller and have the effect of an order of the Fiscal Officer under Labor Law §§ 220 and 220-b.

(p) A private settlement between a Construction Employee and an Owner, Applicant or Construction Employer, or the execution of a release by a Construction Employee in favor of an Owner, Applicant or Construction Employer, does not preclude investigation by the Bureau and a determination as to an underpayment of Wages and Supplements for such Construction Employee or a finding of impermissible interference with the Bureau's investigation.

(q) Interest

(1) The Bureau assesses interest due on the underpayment of Wages and Supplements from the date of underpayment at the rate of interest then in effect as prescribed by the Superintendent of Banks under § 14-a of the Banking Law per annum, and such interest cannot be waived by stipulation of settlement.

(2) Upon resolution of a compliance investigation by stipulation of settlement, the Bureau may reduce the rate of interest on the underpayment of Wages and Supplements to a rate of interest not less than six percent (6%), based upon due consideration of the size of the business of an Owner, Applicant or Construction Employer, the good faith of such Owner, Applicant or Construction Employer, the gravity of the Violation, the history of previous Violations and the failure to comply with recordkeeping or other non-wage requirements.

(r) Civil Penalty

(1) The Bureau may assess civil penalties for failure to comply with the Construction Wage Requirement in accordance with the criteria set forth in Labor Law §§ 220(8) and 220-b(2)(d).

(2) An Owner, Applicant, or Construction Employer, that is found to have violated the Construction Wage Requirement shall be subject to a civil penalty in an amount not exceeding twenty-five percent (25%) of the underpayment of the Construction Wage and the interest found to be due.

(3) In assessing the amount of the civil penalty, due consideration shall be given to the size of the Owner, Applicant or Construction Employer, the severity of the Violation, the history of previous Violations, good faith cooperation with the Comptroller's investigation, and the failure to comply with recordkeeping or other non-wage requirements. The civil penalty shall be paid to the Comptroller for deposit in the city treasury.

(s) The Bureau will send written notice to a Construction Employee or the Construction Employee's representative upon closure of a compliance investigation without a finding of Violation. This notice of a final determination is binding on such Construction Employee, and its issuance commences any applicable time limits under article 78 of the New York State Civil Practice Law and Rules. If the Applicant or Construction Employer under investigation has been notified of the compliance investigation, the Bureau will send written notice of closure without a finding of Violation to such Applicant or Construction Employer.

§ 6-07 Hearings, Reports and Recommendations and Orders

(a) All hearings required by RPTL § 485-x(3), including proceedings to recapture or terminate ANNY Program Benefits, will be held by OATH and will proceed pursuant to the Rules of Practice Applicable to Cases at the OATH Trials Division, set forth at 48 RCNY section 1-01 *et seq.* except to the extent such rules conflict with this section.

(b) Each party must provide to all other parties, no later than ten business days before a hearing (i) the names of all witnesses the party expects to present at the hearing, (ii) copies of all Documents or other exhibits the party expects to introduce at the hearing, (iii) copies of all Documents provided by each Complaining Worker and (iv) copies of all written statements provided by such party.

(c) Preclusion

(1) Failure of a party to provide any information or Document requested by the Bureau in a timely manner as set forth in section 6-06(e) of this chapter may be grounds for preclusion of such information or Document or for the drawing of an adverse inference at the hearing upon motion to the OATH administrative law judge.

(2) No party may seek to introduce any testimonial, documentary or other evidence concerning the immigration status of any Construction Employee at the hearing, including, but not limited to, information about their social security or individual taxpayer identification numbers, except upon motion to the OATH administrative law judge for good cause shown.

(d) Report and recommendation

(1) Within a reasonable time after the conclusion of the hearing, the OATH administrative law judge shall issue a written report, including proposed findings of fact and conclusions of law, and a recommendation as to the order.

(2) The OATH administrative law judge shall forward the report and recommendation to the Comptroller for consideration and the Comptroller shall issue a final determination and order.

(e) Orders under RPTL § 485-x(3)

(1) The Comptroller may, on his or her own initiative or on application duly made, on notice to all parties: (i) request further information or briefing on any relevant issue or (ii) provide copies of any recalculation of Wages and Supplements underpayment and interest, and request comments from the parties to the hearing before issuing an order. Any such request and any responses thereto will be part of the record.

(2) The Comptroller may adopt, reject or modify the OATH administrative law judge's report and recommendation when issuing a final determination and order; such final determination and order is to be based exclusively upon the record as a whole, including facts of which official notice has been taken.

(3) The Bureau must file the final determination and serve a notice of filing, with copy of the final determination, on every party.

§ 6-08 Failure to Cure Violation

For purposes of RPTL § 485-x(3)(g)(ii), the Comptroller may find that an Applicant, Owner, or any Person acting on behalf of or as an agent of such Applicant or Owner has failed to cure a Violation where:

(a) such Applicant, Owner or Person has failed to pay the sums set forth in a stipulation of settlement or final order and determination issued by the Comptroller within three (3) months of the date provided in such stipulation of settlement or final order and determination for payment, unless such final order and determination is the subject of a proceeding pursuant to article 78 of the New York Civil Practice Law and Rules or other legal action;

(b) such Applicant, Owner or Person has failed to institute measures to ensure compliance with the Construction Wage Requirement three (3) months from the effective date of a stipulation of settlement or final order and determination; or

(c) the Bureau receives credible information that Violations by such Applicant, Owner or Person have continued three (3) months after the effective date of a stipulation of settlement or final order and determination.

§ 6-09 Notice of Repeat Violations

(a) When an Applicant has committed two Violations of paragraphs (a), (b), or (c) of subdivision 3 of § 485-x of the RPTL within a five-year period and the Comptroller has found a failure to cure such Violations as set forth in section 6-08 of this chapter, the Comptroller must send a written notice by mail to such Applicant's last known mailing address and, if applicable, by e-mail to such Applicant's last known e-mail address, indicating that any further Violation by such Applicant or any Person acting on behalf of or as an agent of such Applicant may result in the termination of prospective ANNY Program Benefits and/or the recapture of ANNY Program Benefits already received by such Applicant, Person or agent.

(b) The Comptroller will publish on its website a list of all Persons that have committed two or more Violations as described in subdivision (a) of this section.

§ 6-10 Termination or Recapture of Tax Benefits

(a) The Comptroller may commence a proceeding to terminate prospective ANNY Program benefits and/or recapture ANNY Program benefits when an Applicant has committed three Violations of paragraphs (a), (b), or (c) of subdivision (3) of § 485-x of the RPTL within a five-year period and the Comptroller has found a failure to cure such Violations as set forth in section 6-08 of this chapter, provided that the Comptroller has provided the notice required under section 6-09 of this chapter.

(b) On or after the date of the third Violation, the Comptroller may seek to recapture all ANNY Program benefits received by an Applicant or Owner.

(c) Amounts subject to recapture will be:

(1) for each year in which taxes on an Eligible Multiple Dwelling were exempt from taxation pursuant to subdivision (2) of § 485-x, the amount exempted from real property taxation on an Eligible Multiple Dwelling; and

(2) interest on such amount as of the date the real property taxes on such Eligible Multiple Dwelling were due and payable, had such Eligible Multiple Dwelling not been exempt from real property taxes, until the date on which such taxes are paid.

(d) If the Comptroller determines to recapture ANNY Program benefits pursuant to this subdivision, the Comptroller will notify the Commissioner of Finance of the determination to recapture ANNY Program benefits, the date of such determination, and any other information needed by the Commissioner of Finance to transmit statements of account in accordance with section 11-129 of the Administrative Code, including the amount of real property taxes restored pursuant to this section and, if applicable, revised notices of value in accordance with section 1511 of the Charter.