

Part 2

421-a at 50: Unaffordable New York

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DEDICATION

This work builds on the research and advocacy of Tom Waters, CSS housing policy analyst from 2005 to 2020, and is dedicated to his memory and legacy.

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Summary of Key Conclusions

- “Affordable New York” – the iteration of 421-a that covers buildings built since 2016 – has produced 2,564 income-targeted apartments since 2016 at a cost of \$1.6 million per affordable unit.
- With the same amount of public dollars, New York City could support 11 times more affordable housing construction through direct subsidies than through 421-a tax expenditures, and could do so for people making far lower incomes.
- Three quarters of 421-a’s affordable units were targeted toward households earning up to 130 percent of the Area Median Income. These households, whose incomes are in the top 25 percent of New York City residents, are more likely to be white, highly educated, and less rent-burdened than most tenants. The lowest-income New Yorkers get no housing from 421-a unless they access it through a voucher.
- Developers are regularly receiving 421-a tax exemption benefits to build “affordable housing” that is priced above the median asking rents for vacant apartments nearby and well beyond the means of most neighborhood residents.
- The tax revenue lost to 421-a over the last three decades, \$22 billion when adjusted for inflation, could have been used to close NYCHA’s budget gap, provide enough vouchers to cover every homeless household, or subsidize the construction of 160,000 units of deeply affordable housing.
- The rules relating to rent stabilization for 421-a tenants are messy and have allowed landlords to undermine tenant protections through overcharges, deregulation, and scare tactics aimed to spark self-evictions.
- Over the past several decades, 421-a has contributed to rising land prices, resulting in windfall profits for speculators and increased housing costs for developers and residents alike.
- While Governor Hochul’s proposal to replace 421-a makes some strides toward deepening affordability, it maintains the core structure of the program and adds new concerning layers, particularly in its proposal to support condominiums for buyers earning 130 percent of the Area Median Income.



Policy Recommendations

- **END 421-A:** Allow 421-a to expire on June 15th, 2022 or pass S2601A (Myrie)/A1931A (Rosenthal) to repeal it now.
- **REINVENT:** Future incentive programs should provide developers benefits in direct proportion to social benefits they provide the city—i.e., the amount and cost of the affordable housing they produce. In the meantime, the city needs comprehensive property tax reform to balance the burden between coops, condominiums, small homes and rentals, and between lower- and higher-income property owners.
- **AUDIT RECIPIENTS:** Pass S6384 (Hoylman)/A7265 (Gallagher), which mandates that the state conduct an annual audit of previous 421-a exemptions to ensure compliance from past recipients on affordability, rent stabilization, labor law and other provisions of the program. Improve public reporting on 421-a to provide a clearer annual account of projects and units that receive the benefit, the number of affordable units per building, and other relevant data.
- **PROTECT TENANTS:** Pass S76 (Hoylman)/A641 (Rosenthal) to prohibit landlords from sending inaccurate lease riders to tenants in income-targeted 421-a apartments that falsely state their homes will be removed from rent stabilization when the tax break expires. Pass A8899 (Rosenthal) to ensure that all 421-a income-targeted apartments remain rent stabilized in perpetuity.



Introduction

For the last 50 years, New York State has allowed New York City developers to access an enormous tax break known as 421-a, New York's largest real estate tax expenditure program. Every few years, the program would sunset and the legislature would renew it, sometimes inserting tweaks to the program's affordability requirements, geographic targeting, or duration. For one year, in 2016, the program expired when the legislature and then Governor could not agree on key language regarding wage standards for construction workers on sites that received the tax exemption.

After months of negotiations, in 2017, Governor Cuomo and the state legislature passed a revised version of 421-a and dubbed it "Affordable New York." Its proponents described this as a win for tenants, a win for workers, and – of course – a win for real estate developers. Whereas the previous version of 421-a allowed affordable units to be built off-site and the tenure of tax exemption maxed out at 25-years, the new version of the program allowed developers to get a full tax exemption on new buildings for up to 35 years if they included a certain degree of income-targeted affordable housing and, for some projects, paid construction workers a set wage. What we have seen in the years since, however, is that one side of this equation has benefited far more than any other: the program remains tremendously beneficial to real estate developers while producing little genuinely affordable housing.

In this report, we take a close look at 421-a's performance as an affordability program. Whereas our last report on 421-a delved into the program's history in order to explain its exploding costs, this report focuses primarily on the program's latest iteration, Affordable

New York, which is set to expire in June, 2022. We demonstrate that Affordable New York has been used to build a large amount of high-end housing, including income-targeted "affordable housing" units that are at or above market rents. What income-targeted apartments it has produced have largely been to tenants who are relatively well served by the current housing market: those earning up to 130 percent of the Area Median Income (AMI), an amount larger than the household incomes of three quarters of the city's residents. The result is "affordable" housing that, in many neighborhoods, is both too expensive for most neighborhood residents and more expensive than market-rate units for rent nearby.

In addition to supporting housing that is far too expensive for most New Yorkers, we find that 421-a also allows landlords – through both loopholes in the law and lax enforcement – to undermine rent stabilization and either overcharge tenants or take units out of rent regulation altogether. The program has also contributed to rising land prices, the effects of which spiral throughout the housing market and contribute to rising overall housing prices.

While we recognize that Governor Hochul's 421-a replacement plan, known as "Affordable Neighborhoods for New Yorkers," seeks to deepen the program's affordability requirements, it maintains the core logic of 421-a as it has been operating for the last 50 years. For this reason, the Community Service Society continues to insist that the best way to rethink real estate taxes and affordable housing subsidies would be to let this program expire, rebalance the property tax code, and create new incentives to support the kinds of housing everyday New Yorkers need.

“Affordable New York” Did Not Produce Much Affordable Housing

The 421-a tax exemption program was designed as one type of housing policy – a general housing supply booster – but is now defended primarily as an affordable housing program, to the extent that in 2017, then-Governor Cuomo renamed the current iteration of the tax break the “Affordable New York” program. But 421-a is uniquely bad at producing affordable housing.

According to figures from the Department of Housing Preservation and Development (HPD), the current iteration of 421-a provided a tax exemption for 8,466 apartments between 2017

and 2021. Of those, 5,059 were in Brooklyn, 2,065 were in Manhattan, 588 were in Queens, 746 were in the Bronx and 8 were in Staten Island. 70 percent of these units – or nearly 8,500 apartments – were market-rate, with no affordability criteria or income targeting. Only 2,564 units were income-targeted, This includes apartments that were double-counted toward other programs in addition to 421-a, as well as “affordable” units rented at or above market rates, as discussed below. (See Table 1 and Figure 1.)

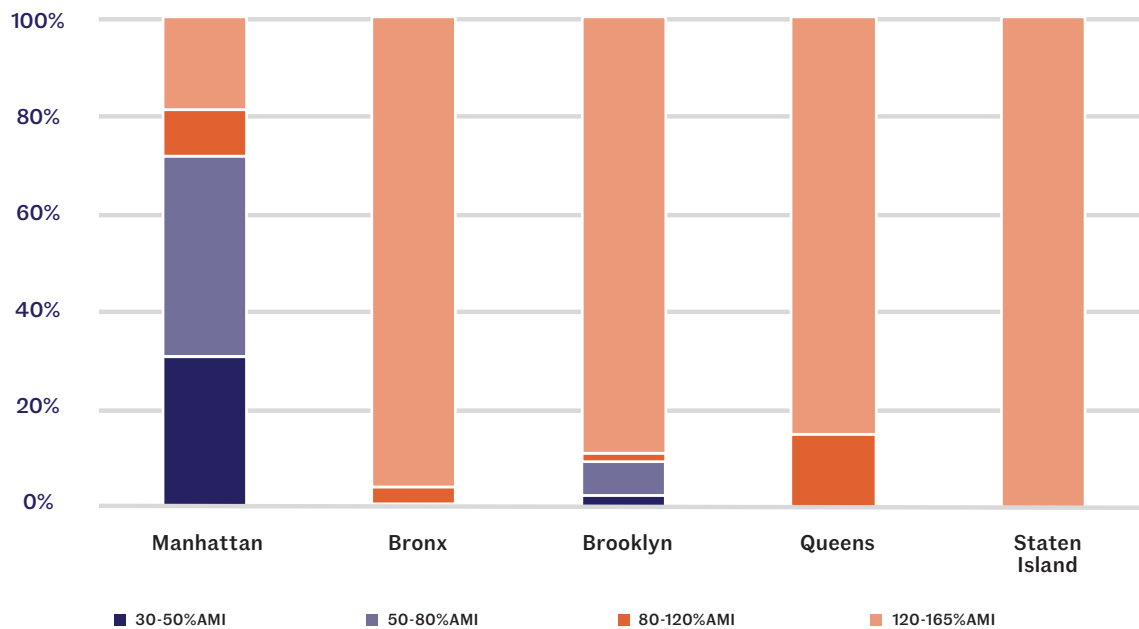
Table 1: Market Rate and Income-Targeted Units in Buildings with 421-a, 2017-2021

Borough	Residential Units	Income-targeted units	30-50% AMI	50-80% AMI	80-120% AMI	120-165% AMI
Manhattan	2,065	555	173	226	52	104
Bronx	746	239	1	1	9	228
Brooklyn	5,059	1,581	41	112	24	1,404
Queens	588	186	-	-	28	158
Staten Island	8	3	-	-	-	3
Total	8,466	2,564	215	339	113	1,897
% of Affordable Units	-	-	8%	13%	4%	74%
% of Total Units	-	30%	3%	4%	1%	22%

Sources: NYC Department of Finance property exemption microdata; NYC Housing Preservation and Development “Housing New York” data

Figure 1: Most of the units constructed using Affordable New York exemption were built for households earning 130% of AMI and more.

421-a Construction by Borough and Income Level, 2017-2021



Sources: NYC Department of Finance property exemption microdata; NYC Housing Preservation and Development "Housing New York" data.

It is unclear from this data how many of the affordable units built with 421-a were also financed with other programs or were counted toward zoning requirements like Mandatory Inclusionary Housing (MIH). Historically, developers have been known to use the exact same affordable units to justify more than one form of public subsidy, a practice known as “double dipping.” In these cases, a developer may receive both the 421-a tax break and tax-exempt bond financing (or another subsidy) and justify both with the same units of income-targeted housing.¹ The current form of 421-a was also designed to be used in combination with MIH, a requirement that new residential development in upzoned areas include a percentage of affordable housing. But while MIH

was described to the public as revenue neutral, with the building’s market-rate units cross-subsidizing its income-targeted apartments, 421-a allows developers to receive a tax exemption for producing the very same income-targeted units they would already be required to build with Mandatory Inclusionary Housing.

The cost to the City in terms of foregone revenue from the projects that receive 421-a exemption under the Affordable New York plan is approximately \$177 million for the Fiscal Year 2021-22. The tab, including all properties that receive 421-a, is higher at \$1.7 billion.² A majority, 60 percent, of the cost from Affordable New York exemption is from developments that enjoy full-exemption for 35 years. Even if no new units are built,

extrapolating the cost of the exemptions for their entire duration we estimate that the cost of the Affordable New York program would be over \$4 billion when discounted to present dollars.³ In other words, the City would be paying \$1.6 million for each of the 2,564 subsidized units built through Affordable New York. If we instead focus on the total number of new rental units generated—8,466 per data from HPD’s Housing New York database—the cost per unit is around \$484,000. Meanwhile, according to HPD, the average city subsidy per unit of newly constructed, deeply affordable housing is \$137,500 (on top of tax credit financing and other non-city subsidies).⁴ With the same amount of city dollars, the city could therefore support eleven times more affordable housing construction through direct subsidies than through 421-a tax expenditures, and could do so for people making far lower incomes.⁵

While 421-a remains a staple of market rate construction in New York City, with 68 percent of buildings larger than three units accessing the tax break,⁶ 421-a is not central to the way this city produces genuinely affordable housing. Despite its rebranding as “Affordable New York,” Churches United for Fair Housing (CUFFH) reports that between 2016 and 2020, 421-a was used in just 11.6 percent of units developed under Housing New York, the de Blasio administration’s affordable housing plan. But even this number is smaller than it appears. Because all the 421-a options that produce units renting to people making less than 130 percent of AMI can be used in combination with other subsidies, the only new “affordable” units that can be *solely* attributed to 421-a are the least affordable apartments the program produces – those targeted to households earning up to 130% of AMI.⁷

Note

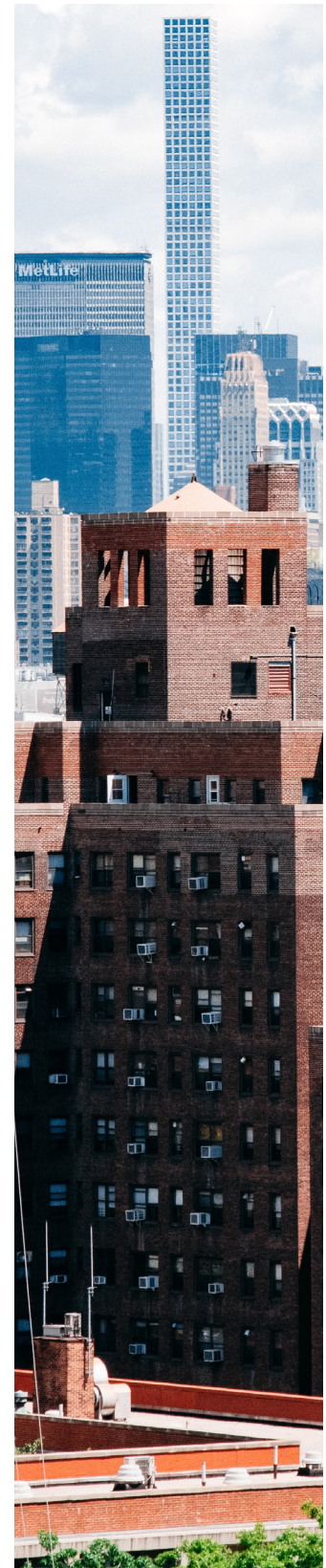
The primary public document explaining how 421-a benefits were granted across the city in a given year, the Department of Finance’s Annual Report on Tax Expenditures, offers no data on affordability numbers or AMI rates. Analysts must instead sift and sort through thousands of individual Department of Finance (DOF), Department of Buildings, Department of City Planning and Department of Housing Preservation and Development (HPD) records to compile an estimate of how much affordable housing was produced, where, at what rents, and for what length of time. This results in disparate counts between sources based on different interpretations

of incomplete data. Furthermore, the DOF microdata on individual buildings does not tell the public exactly which option within 421-a a developer used. Such data can be intuited from HPD affordable housing data, but not perfectly. In a sense, this opacity is a feature rather than a bug of tax expenditure programs like 421-a: part of what makes them appealing to both the real estate industry and to the government is the fact that as-of-right tax expenditures are far harder to trace than direct public subsidies. Whether or not 421-a is renewed by the state government, the city and state must provide a clearer accounting of the public cost and benefit of this program for all past tax exemptions.

What Else Could We Have Done With 421-a's Lost Billions?

Imagine an alternate timeline where New York City's real estate market recovered after the fiscal crisis of the 1970s, New York repealed 421-a, and the developers who built up the city's new building stock paid their full property taxes. In that scenario, we would not be spending \$1.7 billion on tax exemptions for largely luxury housing today, and we would have brought in an additional \$22.2 billion (adjusted for inflation to 2020 dollars) over the past 30 years. What could we have done with that money?

- We could have invested more city funds into public housing, thus preventing buildings from falling into disrepair and keeping the capital budget deficit from ballooning out of control.
 - While NYCHA's current capital budget deficit is estimated at roughly \$40 billion – far more than we have lost to 421-a since 1990 – it has been growing at a rapid pace because of deferred maintenance. A decade ago, the capital deficit was well below \$10 billion. If regular city investments had been made to counteract federal cuts, NYCHA would not face the fiscal and physical crises it faces today.
- We could have subsidized the construction of 160,000 new units of deeply affordable housing throughout the city.⁸
- At the program's current annual cost – \$1.7 billion – we could offer 144,980 vouchers similar to Section 8 – more than enough to house every homeless New Yorker and tens of thousands living in overcrowded conditions or at risk of homelessness because of rising rents and stagnant wages. The current waiting list for Section 8 vouchers in New York City contains approximately 30,000 households, and there are more than 45,000 people living in New York City's shelter systems.



“Affordable Housing” for whom?

While the post-2017 iteration of 421-a is designed to produce a larger quantity of income-targeted units, an increasingly high proportion of those units are targeted to households making 130 percent of AMI. This corresponds with incomes of approximately \$109,000 for a single person, \$124,000 for a couple, \$140,000 for household of three or \$155,000 for a family of four (see Table 2, panels (a) and (b)).



Table 2, panel (a): AMI for the Income Levels Discussed in This Report

Family Size	30% AMI	40% AMI	80% AMI	90% AMI	120% AMI	130% AMI
1	\$25,080	\$33,440	\$66,880	\$75,240	\$100,320	\$108,680
2	\$28,650	\$38,200	\$76,400	\$85,950	\$114,600	\$124,150
3	\$32,220	\$42,960	\$85,920	\$96,600	\$128,880	\$139,620
4	\$35,790	\$47,720	\$95,440	\$107,370	\$143,160	\$155,090
5	\$38,670	\$51,560	\$103,120	\$116,010	\$154,680	\$167,570

Table 2, panel (b): Approximate Rents by AMI level and Apartment Size

Unit Size	30% AMI	40% AMI	80% AMI	90% AMI	120% AMI	130% AMI
Studio	\$419	\$598	\$1,314	\$1,547	\$2,084	\$2,263
1-bedroom	\$532	\$756	\$1,651	\$1,942	\$2,614	\$2,838
2-bedroom	\$631	\$900	\$1,974	\$2,323	\$3,129	\$3,397
3-bedroom	\$722	\$1,032	\$2,273	\$2,677	\$3,608	\$3,918

Source: NYC Department of Housing Preservation and Development

Between 2017 and 2021, 74 percent of the “affordable” apartments in buildings that received 421-a went to moderate- and middle-income households. The vast majority of that housing was available to households making as much as 130 percent of the area median income. This is “affordable housing” designed for people making roughly two and a half times the income of the median New York City renter household.⁹ Meanwhile, just 21 percent of affordable units were targeted to low- and very low-income households (those making between 30 and 80 percent of AMI), and no homes were produced for extremely low-income New Yorkers, who make up more than a quarter of the city’s population. (See Table 3 and Figure 2.)

Table 3: Market Rate and Income-Targeted Units in Buildings with 421-a, 2017-2021

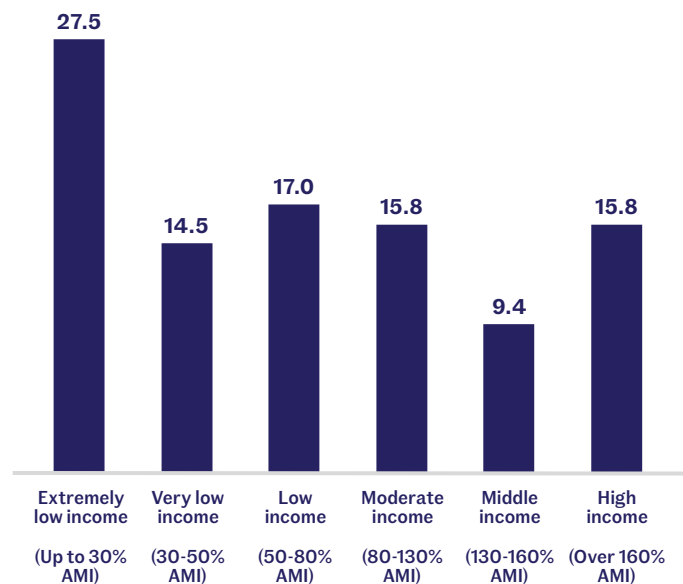
	Total units	Market-rate units	Income-targeted units*	0-30% AMI	30-50% AMI	50-80% AMI	80-120% AMI	120-165% AMI
Affordable NY units, 2017-2021	8,466	5,902	2,564	-	215	339	113	1,897
Percent of income-targeted units			100%	0%	8%	13%	4%	74%
Percent of total units			30%	0%	3%	4%	1%	22%

Sources: NYC Department of Finance property exemption microdata; NYC Housing Preservation and Development "Housing New York" data
 *Note: some of the income-targeted units created under 421-a are also counted toward other affordable housing programs, like Mandatory Inclusionary Housing and Tax Exempt Bonds

The types of apartments created under Affordable New York have not been evenly distributed among income groups. Instead, larger apartments have disproportionately gone to higher-income tenants, leaving a larger share of 421-a studios for lower-income groups. According to the NYU Furman Center, whereas half of all affordable studios were targeted toward low-income tenants, three quarters of “affordable” 2-bedroom apartments were made available to tenants making up to 130 percent of AMI.¹⁰

Households making 130 percent of AMI are usually classified as being on the high end of “moderate income” or the low end of “middle income,” terms of art used by housing agencies to describe the kinds of people who are eligible for various housing programs. As Figure 2 shows, they comprise about 16 percent of all households in the city. Households making 130 percent of AMI have incomes than almost three quarters of New York City residents.¹¹

Figure 2: A majority of households in the city make less than 80% of the AMI.



Source: CSS analysis of 2014-2018 5-year American Community Survey Public Use Microdata Sample.
 Note: For purposes of comparison, we have adjusted 2018 household income figures by the same inflation adjustment factor as used by HUD to arrive at the median family income values. The latter are then used to calculate the AMI values.

According to HPD data, eight of the city’s 59 community districts accounted for nearly three quarters of the apartments produced with 421-a between 2017 and 2021. In only one out of those eight areas, however – Manhattan Community District 4, comprising Hudson Yards, Chelsea, and Hell’s Kitchen – was most of the income-targeted housing produced with 421-a affordable to most neighborhood renters. In fact, much of the time, none of the housing produced under 421-a was locally affordable. (See Table 4.) In all but three neighborhoods in New York City (Stuyvesant Town/Turtle Bay, Greenwich Village/Financial District and Park Slope/Carrol Gardens), the median renter household makes far less than 130 percent of AMI.¹²

The primary beneficiaries of 421-a’s affordable units look quite different than most New York City renters, and are generally faring far

better in today’s rental market – both because they can afford to pay more than most other tenants, and because there is more available on the market that is within their budgets.¹³

On average, moderate-income tenants (with incomes between 80 and 130 percent of AMI) are more often white, highly educated, and less rent-burdened than New York City tenants as a whole. Moderate-income tenants are 41 percent white (compared to 33 percent for all renters) and 54 percent college educated or higher (compared to 38 percent for all renters). Twenty percent of moderate-income tenants are rent burdened (or paying more than thirty percent of their income in rent) compared to 52 percent of tenants overall. They are certainly not “the 1 percent” or the billionaire class, but they are also not the group many would consider their top priority when designing the city’s single most costly housing subsidy program.¹⁴

Table 4: Local Affordability in Neighborhoods with High Levels of 421-a Development

Community District	Neighborhoods	Residential units	Income targeted units	Percent affordable to median renter household*
MN-04	Chelsea/ Hell's Kitchen/ Hudson Yards	1443	367	24%
BK-17	East Flatbush	1104	351	0%
BK-01	Williamsburg/ Greenpoint	906	272	11%
BK-04	Bushwick	824	266	4%
BK-09	Crown Heights/ Prospect Lefferts Gardens	505	170	0%
BK-03	Bedford-Stuyvesant	498	171	2%
BK-14	Flatbush/Ditmas Park	484	148	0%
QN-02	Long Island City/ Sunnyside/ Woodside	194	59	0%

*Median renter household income data from 2019, then adjusted for inflation to 2022 dollars and compared to AMI for a household of three.

Sources: HPD’s “Housing New York” database; coredata.nyc

Just 2 percent of moderate-income tenants are severely rent burdened (or paying more than half of their income in rent) compared to 28 percent of all New York City renters. Meanwhile, more than three quarters of extremely low-income tenants live in housing they can't afford, and two thirds are severely rent burdened (see Table 5). The small number of moderate-income tenants who are severely rent burdened tend to be highly educated (90 percent), white (70 percent), US-born (67 percent) Manhattanites (79 percent), a demographic profile that suggests that such a population may have familial support in paying their rent or might be temporarily enduring unaffordable rents in order to enjoy luxury New York City living for a limited time.

Table 5: Rent burdens are far lower for tenants making up to 130 percent of AMI than lower-income tenants

Share of Income Spent on Rent

	Severely Rent-burdened (> 50%)	Moderately Rent Burdened (30-50%)	Not Rent-Burdened (<30%)
Extremely low income (up to 30% AMI)	67%	19%	14%
Very low income (30-50% AMI)	26%	47%	27%
Low income (50-80% AMI)	7%	32%	62%
Moderate income (80-130% AMI)	2%	17%	81%

Source: CSS analysis of 2014-2018 5-year American Community Survey Public Use Microdata sample.
 Note: Rows may not add to 100 percent because of rounding.

While non-profit affordable housing developers may also include some upper-income units in their projects, they generally do so to cross-subsidize much lower-income units. For example, a non-profit developer might include 10 units aimed at tenants making 130 percent of AMI in order to cover the costs of 10 tenants earning 30 percent of AMI, who pay much less in rent. When for-profit developers produce income-targeted housing for households making 130 percent AMI, they are not necessarily enabling anyone with lower incomes to live in the building. This is the case in many 421-a buildings, where 30 percent of units are set aside for these moderate-income households and other 70 percent goes to even wealthier residents paying market rates (though, as we will show later in this report, the difference between the two is sometimes non-existent).

According to the Association for Neighborhood Housing and Development, during the first six years of the de Blasio administration's Housing New York plan, 19 percent of affordable units built by for-profit corporations went to households making more than 80 percent of AMI, compared to just 6 percent for non-profit developers. Meanwhile, 18 percent of Housing New York units built by for-profit developers went to households making less than 30 percent of AMI, while 35 percent of units built by non-profit developers went to such households.¹⁵

“Affordable Housing” That Costs More Than What Surrounds It

A landlord getting a multi-million dollar 421-a tax exemption is allowed to price a two-bedroom apartment at \$3,397, rent it to a family of 3 making \$139,620, and call it “affordable housing.” Not only would such “affordable housing” exclude three quarters of New Yorkers, but in many neighborhoods, it would be more expensive than most other apartments on the market nearby. According to November 2021 data from StreetEasy, such an apartment would cost more than the median asking rent for vacant two-bedroom apartments in two thirds of New York City neighborhoods.¹⁶ This allows for the absurd scenario of public tax subsidies going toward new “affordable housing” that is more expensive than what is already on the market in the same neighborhood.

While this might seem unlikely – why would landlords set prices for affordable units at rents that are higher than the neighborhood average? – it is, in fact, unsettlingly ordinary. According to sources who have worked for HPD, only since 2019 has the agency enforced provisions that prevent building owners from setting the rents for their 130 percent AMI “affordable” units higher than the rents of market rate apartments in the very same building.

In Table 6, we supply a few recent examples of this phenomenon, where the 421-a affordable housing was being offered for as much as 35 percent more than nearby vacant apartments on the market at the end of 2021.

Table 6: 10 Recent 421-a Projects Where the 130% AMI “Affordable Housing” Was Priced Above Typical Neighborhood Asking Rents

Building	Neighborhood	“Affordable” Rent for 2-bedroom to 130% AMI tenants	Median neighborhood asking rent for 2-bedroom	Percent 421-a rent exceeds local median	Annual cost difference
1225 42nd St	Borough Park	\$2,710	\$ 2,000	35.50%	\$ 8,520
18-81 Starr	Ridgewood	\$ 3,044	\$ 2,445	24.50%	\$ 7,188
230 West 126 St	Central Harlem	\$ 3,043	\$ 2,500	21.72%	\$ 6,516
312 97th street	Bay Ridge	\$ 2,650	\$ 2,200	20.45%	\$ 5,400
2269 1st Ave	East Harlem	\$ 2,800	\$ 2,387	17.30%	\$ 4,956
1405 Herkimer St	Brownsville	\$ 2,100	\$ 1,950	7.69%	\$ 1,800
1111 Fulton St	Bedford-Stuyvesant	\$ 2,700	\$ 2,511	7.53%	\$ 2,268
336 Himrod St	Bushwick	\$ 2,715	\$ 2,600	4.42%	\$ 1,380
885 Rogers Plaza	East Flatbush	\$ 2,400	\$ 2,300	4.35%	\$ 1,200
1559 White Plains Rd	Parkchester	\$ 2,100	\$ 2,035	3.19%	\$ 780

Sources: NYC Housing Connect; StreetEasy Data Dashboard.

Finding tenants for “affordable housing” that costs more than what’s already on the market nearby is a difficult challenge. The burden for filling such units falls on HPD. The agency must list the apartments on the Housing Connect dashboard and hope that a very specific kind of person finds these listings appealing: relatively upper-income households who may not look at StreetEasy or any other apartment listing service, and therefore would not know the true cost of housing in their neighborhood compared to what they are being offered via 421-a. This puts an undue burden on HPD staff, who must devote time to filling these apartments with relatively well-off but perhaps uninformed consumers, instead of focusing on developing and leasing-up truly affordable housing.

According to sources who have worked on 421-a in city government, these above-market “affordable” units sometimes go to people exiting shelters with vouchers. This, in many ways, is an excellent outcome for the city: rather than benefitting higher-income households, the new housing is being used to directly address the homelessness crisis. But it is worth noting that when this happens, the developer is double subsidized for the same unit: first through 421-a (and potentially other programs) during and after development, and then through the voucher. The formerly homeless households did not need 421-a to access the unit; their voucher would have paid for them to live in any market-rate housing priced at or around the city’s Fair Market Rent. In these cases, rather than adding affordability, 421-a is simply subsidizing market-rate housing, some of which is being paid for with the help of a government voucher.

In neighborhoods where average rents are priced well below what 421-a AMI produces, developers may use 421-a to build apartment units then contract with the city and a non-profit to convert them into homeless shelter units. For example, developer Stagg Group – one of the city’s most prolific evictors¹⁷ – got a 421-a tax exemption to build market-rate housing at 5731 Broadway in the Kingsbridge section of The Bronx. When the developer had trouble finding tenants willing to pay high enough rents to live in their building, they turned the building into a shelter.¹⁸

Advocates could reasonably point to this as a win for low-income people: instead of subsidizing expensive housing, the city subsidized shelter for the poor. But while it is of course important to provide temporary beds for homeless households, these units do not serve as permanent housing for people experiencing homelessness and are instead another part of the city’s shelter archipelago. The tax revenue lost to 421-a could have gone instead to mission-driven non-profits to produce deeply affordable units targeted to households in shelters. This incident demonstrates the deep mismatch between the kinds of housing the city supports through 421-a (largely expensive new construction, which rents at levels that are above asking rents for large swaths of the city) versus the kinds of housing New York truly needs to end its homelessness crisis (deeply affordable housing, as well as supportive services for those who need them).

Unstable Rent Stabilization

Affordable New York is also supposed to produce new rent regulated housing, which, although too expensive for many New Yorkers, should at least provide renters a degree of stability and tenants' rights.

This, however, is not always the case for two reasons: in some cases, owners legally deregulate apartments; and in many cases, landlords illegally deregulate or overcharge tenants.¹⁹

Table 7: Local Affordability in Neighborhoods with High Levels of 421-a Development

Tenancy Type	Built before 7/1/2008	Built between 2008 and 2015	Built after 2015
Non-Income Qualified Renter	Rent stabilized during the duration of the tax benefit. When 421-a expires, the landlord can take the market-rate units out of rent stabilization (as long as the tenants' lease contained a rider explaining that this would happen at every renewal).	Rent stabilized during the duration of the tax benefit. When 421-a expires, the landlord can take the market-rate units out of rent stabilization (as long as the tenants lease contained a rider explaining that this would happen at every renewal).	Only rent stabilized if their rents fall below the "vacancy decontrol threshold" (\$2,800) and can be deregulated upon vacancy even during 421-a exemption.
Income Qualified Renter	Can only deregulate after the apartment becomes vacant. If there's another subsidy in place with a regulatory agreement, the unit stays rent stabilized as long as the agreement period.	Must stay rent stabilized for 35 years, then as long as the tenancy continues.	Must stay rent stabilized for 35 years. In buildings 300+ units in the "Enhanced Affordability Areas," stabilization lasts 40 years, then as long as the tenancy continues.

Source: NYC HPD 421-a & Rent Stabilization Tenant Fact Sheet.

There are several ways landlords who receive 421-a undercut rent-stabilization.

- **Regulatory decontrol:** 421-a tenants might reasonably ask why their landlords are allowed to decontrol their apartments at all, given that the 2019 Housing Stability and Tenant Protection Act ended all other rent stabilized landlords' ability to take their units out of rent regulation.²⁰ Tenants in developments that receive 421-a exemption thus exist in a state of exception to that rule, in which their homes are uniquely vulnerable to decontrol in ways that would be illegal in any other rent stabilized building.
- **Harassment and eviction tactics:** Many landlords threaten income-restricted tenants in 421-a units with illegal deregulation. For example, income-qualifying tenants in 421-a buildings built before 2008 report that their landlords attach the same 421-a expiration riders that are meant for market-rate tenants to their affordable apartment lease renewals.²¹ These riders state that the landlord may deregulate their affordable unit and jack up the rents when their 421-a benefits expire. Such an action should be illegal under the version of 421-a that their landlord receives.²² This threat, however, is enough to scare some income-qualified tenants into leaving, which can then allow the landlord to claim that the unit has become vacant and initiate the decontrol process.
- **Immediate vacancy decontrol:** The way HPD interprets the current version of 421-a allows landlords to deregulate the vast majority of new 421-a market-rate apartments before they are even rented. When first rents are set above the "vacancy decontrol threshold" of \$2,800, HPD classifies them as decontrolled on day one, before the first tenant steps foot in the apartment.²³ This gives landlords sole discretion over rent setting and, in the absence of Good Cause eviction protections, over whether or not to offer a market-rate tenant a renewal lease. The landlord gets all of the tax benefit afforded by 421-a and the market-rate tenant gets none of the protections afforded by rent stabilization.

"Good Cause" eviction protections would protect tenants from no-fault evictions, or evictions that result simply because a landlord wants to replace a tenant, rather than anything the tenant did. Tenants in good standing could expect to receive a lease renewal at the end of their lease term, and unconscionable rent hikes would be barred. Many tenants in New York State already have protections equivalent to or greater than Good Cause provides, including rent stabilized, public housing and project-based Section 8 tenants. Excluding these types of tenancies, CSS estimates that Good Cause would offer important protections to 1.6 million tenants across the state – including market-rate tenants in post-2017 421-a buildings. For more on Good Cause, see the Community Service Society's recent briefs: "Good Cause Legislation Would Protect 1.6 Million Households, Nearly 50% of Tenants Statewide;" "The Right to Remain;" and "Racial Justice and the Right to Remain."

- Rent increases during “phase-out”:**
 During the final years of a 421-a exemption, when the owner begins paying property taxes again at a reduced rate (“gradual diminution”) the rules allow 421-a owners to charge an additional 2.2% increase on top of the annual Rent Guidelines Board-approved rent increase. This can apply to both “affordable” and market-rate tenants, further disadvantaging tenants whose rent stabilization is tied to 421-a over all other rent stabilized tenants.²⁴
- Overcharges and Failure to Register:**
 Finally, even in rent stabilized market-rate units, tenants, advocates, and reporters have uncovered a pattern of overcharges in rent that amounts to millions of dollars. Housing Rights Initiative, for example, has identified over 1,500 landlords who received over \$20 million in 421-a benefits while allegedly over-charged their rent stabilized tenants.²⁵ Some landlords simply refused to register their apartments as rent stabilized at all, banking on enforcement confusion between the city (HPD) and the state (HCR). A 2016 ProPublica investigation found that this was the case in two thirds of 421-a rental buildings, with scofflaws tending to be owners of relatively small (3-10 unit) rental buildings in gentrifying neighborhoods outside of Manhattan.²⁶ In other cases, landlords offered tenants initial concessions to move into their buildings,

which were not factored into the initial rent setting. This initial overcharge, though perhaps small in its first year, compounds in the rents across multiple apartments going forward every year thereafter, adding up to millions of dollars in overcharges.²⁷

While 421-a should be adding to the rent stabilized and affordable housing stock, it has tended to provide half-benefits, undercut by scofflaw landlords, deficient enforcement, and a law which gives 421-a landlords a unique ability to bypass one of the most important aspects of the Housing Stability and Tenant Protection Act: the end of vacancy decontrol. This alone is worth millions, on top of the tax benefits 421-a landlords already enjoy.

Unaffordable New York

Not only does 421-a create little meaningfully affordable housing, but it also contributes to the city's rising housing costs by driving up land prices. Landowners are able to charge more for their parcels because buyers (developers) know they will have access to long-term tax savings via 421-a. When developers pay more for land, they take on higher debt levels, which they pass on to tenants in the form of higher

rents, or to condominium owners in the form of higher purchasing prices. According to the New York City Independent Budget Office (IBO), 421-a "is thus contributing to its own existence: advocates argue the program is necessary to make housing more affordable but the program itself likely contributes to higher land prices, therefore making housing more expensive."²⁸ (See Figure 3.)

Figure 3: How 421-a "Contributes to its Own Existence"



Defenders of 421-a sometimes cite land value inflation as part of the program's merits. According to this argument, if land values fall, owners will be less likely to sell to developers, the pace of growth will stall, and housing prices will rise as a result.²⁹ By this logic, however, higher housing costs are certain no matter what: rents will either rise because 421-a inflates land sale prices, or rents will rise because the end of 421-a would depress construction.

The year 2016 – when 421-a lapsed while the Real Estate Board of New York and the New York Building Trades Council ironed out an agreement over wage standards – is the best test available for what could happen if the program is not renewed this year. The Association for Neighborhood and Housing Development (ANHD) produced a study using 2016 as a natural experiment in the city's housing finance and development dynamics. They find that construction permits spiked in 2015, as developers rushed to get 421-a applications in before the program expired. By comparison, 2016 looks like a slower year.

ANHD shows, however, that development levels in 2016 were almost exactly the average of 2012, 2013 and 2014's building permits. Moreover, they find that the increase in land prices slowed dramatically in the absence of 421-a, which made it feasible to build more affordable housing. "The 421-a exemption," ANHD writes, "may have been hindering new development in many neighborhoods by driving up land prices." 2016 – the year without 421-a – turned out to be a landmark year for the number of affordable housing units financed.³⁰

Boon or Bust for Condominium Owners

Though designed to benefit housing developers and thus stimulate housing production, the material benefits of 421-a can accrue largely to condominium owners. The Independent Budget Office found that buyers of Manhattan condominiums with 421-a paid the equivalent of 53 to 61 percent of the value of their tax exemption in the form of an elevated purchase price.³¹ For buyers outside of Manhattan, 42 to 50 percent of their 421-a tax benefit was capitalized into their purchasing price. That higher purchase price ultimately turns into a long-term saving for the household because they are not paying property taxes. These public benefits are accrued to buyers based on where and when they purchased, not any particular quality or set of needs; they apply just as fully to billionaire buyers like CEO Michael Dell (of Dell computers) in the ultra-luxury One57 tower as they might to a moderate-income purchaser of a condominium unit in Queens.³²

Meanwhile, condominium owners who participate in this cycle can fall prey to one of two traps. If their neighborhood has gentrified in the time since they bought their condominium, but their own incomes have not risen comparatively, the owners may find that when their 421-a benefits expire, they cannot afford the full burden of property taxes on their now extremely valuable home, and they must sell and leave. Alternately, if prices have not risen appreciably in the neighborhood where they bought, the owners of 421-a condominiums might have to sell for a loss after their benefit expires, as new buyers will be unwilling to pay the price the property commanded when it came with years of tax breaks. As one economist told the New York Times, in such cases “sellers were essentially overvaluing these units – until the abatement started to expire.”³³

Subsidizing these residences and their residents’ tax bills was, perhaps, never the legislative intention of the program. Unlike programs like the Senior Citizens Rent Increase Exemption or the Veteran’s tax credit, 421-a is supposed to be a tax break for the developer, not the buyer. The IBO calculated the amount of public money “wasted” (in their words) on condo buyers rather than developers at \$2.5 to \$2.8 billion for the years 2005 through 2015.³⁴



Affordable Neighborhoods for New Yorkers?

In her Fiscal Year 2023 executive budget, Governor Kathy Hochul proposed a new framework for 421-a. This plan, which would reside in section 485-w of the tax code and go by the name “Affordable Neighborhoods for New Yorkers,” would preserve the basic framework of 421-a but adjust the options available to developers.³⁵ It makes several notable changes in the terms of the affordable housing and the duration of the benefit.

The most important changes to 421-a in Governor Hochul’s proposal are the following:

- Reducing the number of options available to developers from 7 to 3;
- For rental projects, making the income-targeted housing portion affordable to more New Yorkers (between 40 percent and 80 percent of AMI for projects over 30 units, and up to 90 percent of AMI for projects under 30 units), while requiring slightly less affordable housing overall;
- For ownership (likely condominium) projects, moving from a maximum assessed value formula to an income-based formula, with households making up to 130 percent of AMI eligible;
- Significantly increasing the length of the homeownership option, from 20 to 40 years, while standardizing a 25 year exemption (plus three years during construction) and 10-year phase out for rental buildings;
- Making the affordable apartments permanently affordable (as is often already the case through Mandatory Inclusionary Housing) and rent stabilized, while removing all rent stabilization requirements for market-rate units;
- Slightly increasing the wage standards for large projects built in “Prime Development Areas” (i.e. Manhattan south of 96th street, and parts of Community Boards 1 and 2 in Brooklyn and Queens), but applying those standards only to certain rental developments, and explicitly exempting 421-a recipients from prevailing wage standards for construction workers.

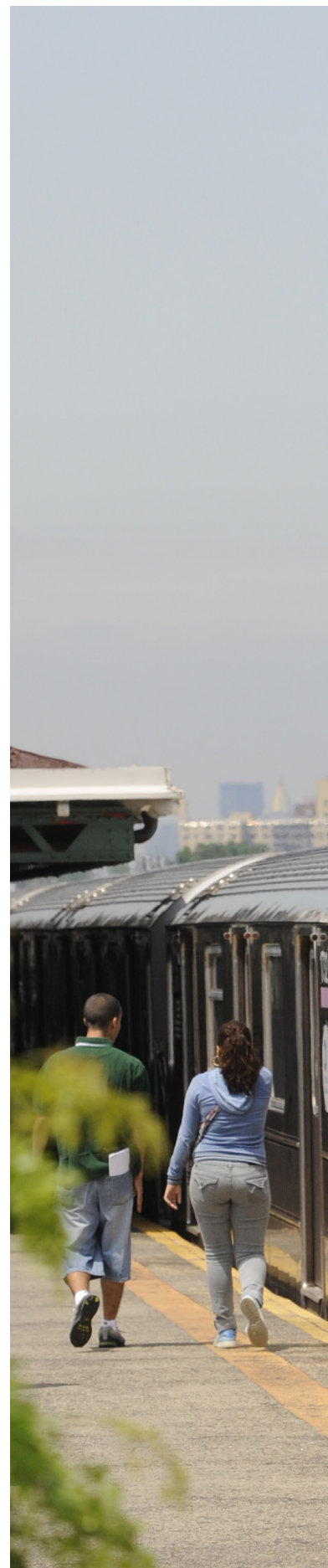


Table 8: Hochul's 485-w ("Affordable Neighborhoods for New Yorkers")

OPTION	RENTAL OR OWNERSHIP?	GEOGRAPHY	# UNITS	% INCOME-TARGETED	AMI RANGES	COMBINABLE WITH OTHER SUBSIDIES?	LENGTH OF AFFORDABILITY	LENGTH OF TAX BREAK	CONSTRUCTION WAGE STANDARDS
A	Rental	Citywide	30+	25%	10% for 40% AMI; 10% for 60% AMI; 5% for 80% AMI	Unknown	35 years, with permanent Rent Stabilization	3 years of construction + 25 years + 25% abatement for 10 years	In "Prime Development Areas" (same as current "Enhanced Affordability Areas"); projects 300+ units pay \$63 in Manhattan, \$47.25 in Bk/Qn; 5% increase for the next 4 years. Voided if projects have Project Labor Agreements (union contracts) or are 50% affordable to under 80% AMI.
B	Rental	Citywide	<30	20%	90% AMI	Unknown	35 years, with permanent Rent Stabilization	3 years of construction + 25 years + 20% abatement for 10 years	In "Prime Development Areas" (same as current "Enhanced Affordability Areas"); projects 300+ units pay \$63 in Manhattan, \$47.25 in Bk/Qn; 5% increase for the next 4 years. Voided if projects have Project Labor Agreements (union contracts) or are 50% affordable to under 80% AMI.
C	Ownership	Citywide	Any #	100%	130% AMI	Unknown	40 years+ (subject to regulatory agreement)	3 years of construction + 40 years	None.

Cuomo's 421-a ("Affordable New York Housing Program")

OPTION	RENTAL OR OWNERSHIP?	GEOGRAPHY	# UNITS	% INCOME-TARGETED	AMI RANGES	COMBINABLE WITH OTHER SUBSIDIES?	LENGTH OF AFFORDABILITY	LENGTH OF TAX BREAK	CONSTRUCTION WAGE STANDARDS
A	Rental	Citywide	6 to 300	25%	10% at 40% AMI; 10% at 60% AMI; 5% at 130% AMI	Combinable with tax-exempt bonds and Low Income Housing Tax Credits	35 years	3 years construction + 25 year exemption + 10-year phase out	None
B	Rental	Citywide	6 to 300	30%	10% at 70% AMI; 20% at 130% AMI	Combinable with all city subsidies	35 years	3 years construction + 25 year exemption + 10-year phase out	None
C	Rental	Citywide except Manhattan below 96th street	6 to 300	30%	130% AMI	No	35 years	3 years construction + 25 year exemption + 10-year phase out	None
D	Ownership	Citywide except Manhattan	6 to 35	Covers the first \$65,000 of assessed value on each unit. Note: the assessed value of a condo is usually 45% of its market value, so the first \$65,000 in assessed value corresponds to the first \$144,444 of sale value.[1]	N/A	Unspecified	N/A	3 years construction + 14 year exemption + 6-year phase out	None
E	Rental	"Enhanced Affordability Area" (Manhattan south of 96th street, Brooklyn CD 1 & 2, Queens CD1 and 2); or elsewhere if they pay BK/QN wages	300+	25%	10% at 40% AMI; 10% at 60% AMI; 5% at 120% AMI	Combinable with tax-exempt bonds and Low Income Housing Tax Credits	Affordable 35 years; Rent Stabilized 40 years	3 years construction + 35-year full exemption	Average construction wages must be at least \$60 an hour in Manhattan and \$4.5 an hour in Brooklyn and Queens.
F	Rental	"Enhanced Affordability Area" (Manhattan south of 96th street, Brooklyn CD 1 & 2, Queens CD1 and 2); or elsewhere if they pay BK/QN wages	300+	30%	10% at 70% AMI; 20% at 130% AMI	Combinable with all city subsidies	Affordable 35 years; Rent Stabilized 40 years	3 years construction + 35-year full exemption	Average construction wages must be at least \$60 an hour in Manhattan and \$4.5 an hour in Brooklyn and Queens.
G	Rental	"Enhanced Affordability Area" (Manhattan south of 96th street, Brooklyn CD 1 & 2, Queens CD1 and 2); or elsewhere if they pay BK/QN wages	300+	30%	130% AMI	No	Affordable 35 years; Rent Stabilized 40 years	3 years construction + 35-year full exemption	Average construction wages must be at least \$60 an hour in Manhattan and \$4.5 an hour in Brooklyn and Queens.

Governor Hochul's proposal would do away with some of the most egregious excesses of the current 421-a program, such as the preponderance of "affordable" rental apartments that cost more than most vacant units nearby. By nudging the AMI rates for affordable rentals downward, her proposal makes the income-targeted units in these new developments available to more households – though her plan also produces slightly fewer affordable apartments in total, since it requires a maximum of 25 percent (rather than 30 percent) set aside for income-qualified tenants. The proposal would also create an income-based standard for access to the homeownership option, and applies those standards to the entire building, rather than just a fraction of it (as with rentals), which in principle is an improvement over the current 421-a condominium option.

But this proposal does not change the fundamental structure of 421-a, in which an enormous tax break is applied to the entirety of rental building, even though 75 to 80 percent of its units are still market-rate. The program would therefore remain a tremendously inefficient way to support the production of affordable housing and could have new secondary effects on the market overall.

Its affordable housing skews toward lower-income renters, which is a welcome change from the current 421-a program's tendency to produce housing affordable to households making up to 130 percent of AMI. It will not, however, create a single unit of housing for the nearly 400,000 extremely low-income New Yorkers who are severely rent burdened, severely crowded, or in long-term shelter.³⁶

While the homeownership option incentivizes buildings that are entirely "affordable," its income target (130 percent of AMI) ensures that in many neighborhoods, this program would subsidize entire new condo buildings for people making significantly more than the neighborhood average. Such buyers would be exempted buyers from property taxes for at least forty years, while allowing them to claim another home as their primary residence in as little as five years. The proposal places no restrictions on the price at which the homeowner can resell their condominium to another buyer, even though such practices are standard in limited-equity homeownership models like Mitchell Lama cooperatives and can be highly effective in preserving long-term affordability.

As a result of this generous option, this new program could spur less rental housing than the current soon-to-expire system, which has,

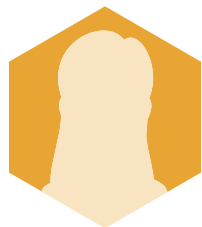
at the very least, shifted the balance of 421-a development from condominiums to rentals over the past two decades. (See our recent report “421-a at 50: Part 1.”) While the vast majority of those rentals are unaffordable to most New Yorkers, supply-side defenders of the program argue that it at least subsidized the creation of new rental housing. This may no longer be the case under the proposed “Affordable Neighborhoods for New Yorkers” plan. According to an analysis by the New York City Comptroller’s office comparing the current 421-a to the proposed 485-w, the new plan would likely produce mostly condominiums and small rental buildings: “the 2022 proposal would likely shift the production of units at 130 percent of AMI from rental to homeownership, while small rental buildings would target 90 percent of AMI and continue to represent the largest share of projects.”³⁷

If this program passes, developers are likely to build mostly rental buildings in neighborhoods where the average sales price for a condominium is more than what most people earning 130 percent of median income can afford, but this is not the case in large swaths of the city. In fact, the city’s gentrifying neighborhoods – where low-income New Yorkers have long lived and high-income earners are now moving in – are likely to be the prime locations for subsidized, relatively high-priced condominium construction. Places like Harlem in Manhattan, Bushwick in Brooklyn, Mott Haven in the Bronx, Jackson Heights in Queens, and St. George in Staten Island are all neighborhoods where most residents earn well under 130 percent of AMI, but where high-income earners are moving in large numbers. It should not be the state’s prerogative – in fact its top budgetary priority, given the amount spent on 421-a relative to all other housing budget lines – to spend billions subsidizing tax-free housing for higher-earning new arrivals. Instead, we should be directly subsidizing new affordable housing for those being priced out.

Meanwhile, while the plan seems likely to spur more condominium construction, it exempts such projects from wage requirements, which, in the bill’s text, seem only to apply to certain very large rental buildings. Furthermore, the bill explicitly exempts construction workers on 485-w buildings from prevailing wage requirements for publicly subsidized buildings. When considering wage standards, the amended bill allows the Department of Labor commissioner to “consider economic indicators [he/she/they] deems relevant to ensuring the economic feasibility of affordable housing development” – language that could serve as an invitation to set wage rates well below union standards.

421-a Points and Counterpoints

421-a still has its defenders, though they are perhaps fewer and farther between than at any other time in the program's history. Here we present some of the most common affordability-based justifications for preserving the state's most expensive and regressive housing program, alongside rebuttals arguing for the state to let the 421-a expire.



“421-a is an affordable housing program. It’s even called “Affordable New York” now! Don’t you support affordable housing?”

Whatever we might call it, 421-a is not an affordable housing program – it is a general subsidy for new development which has had various affordability provisions tacked onto it over the years, none of which have been particularly successful in producing affordable housing in large quantities or at low rents.

If we judge it as first and foremost an affordable housing program and compare the cost of the program to the numbers of below-market units developed, we find that it is a remarkably inefficient program. We would produce at least eleven times more affordable housing by spending the same amount of money we forgo with 421-a on direct cash grants for new affordable housing development. Most of the income-targeted housing produced by 421-a goes toward people making sizable salaries, with the current version of the program mostly producing units affordable to households making up to 130 percent of AMI. While such households need housing too, it would be difficult to claim they should be the primary target of the single largest housing expenditure in the city or state, especially when housing that is affordable to them is far more readily available than housing for people with lower incomes.

In this report we focus on affordability and market dynamics, and thus the arguments below fall under those categories. Our last 421-a report, “421-a at 50, Part 1: Rising Cost, Diminishing Returns,” we focused on the program's history and cost, and rebutted arguments relating to those factors.

If our goal is maximal affordable housing production, it is impossible to make the argument that a program like 421-a is the best way to do it. 421-a persists because it hides a subsidy for market-rate development inside a tax break ostensibly for affordable housing. A direct subsidy for affordable housing will always produce a greater effect, but it will also draw more scrutiny than a hidden tax break for developers.



“Developers need a program like 421-a just to build market-rate apartment buildings, let alone affordable housing. If we end 421-a, they won’t build anything!”

First, it's not necessarily clear that this is the case. In the 50 years that 421-a has been in place, the rate of new housing production has fluctuated based on factors that have little to do with the existence of 421-a or to periodic changes to the policy.³⁸

421-a has been most effective in what the CSS analysts Tom Waters and Victor Bach described as “a narrow band [of the city] where expected rents are high enough that new development

makes sense with the subsidy, but low enough that new development wouldn't make sense without it." Such projects surely exist, but they are the exception, not the rule, in terms of what 421-a has financed. In that sense, Waters and Bach argued 421-a is "just as inefficient as a development subsidy as it is an affordability tool."³⁹

If, however, we take 421-a defenders at their word, and assume that without 421-a no new development would take place, this unveils a

deeper truth about "market-rate" development in this city. If new development is entirely reliant on 421-a or other means of public subsidy, then 421-a's supporters are asserting that virtually all housing in New York is subsidized housing: public housing and Section 8 are subsidized for low-income tenants, while 421-a is subsidized for high-income tenants. It would be perfectly reasonable, then, for the public to question whether the state's number one priority in terms of dollars committed to a single program should be subsidized housing for the well-off.



"If we get rid of the 421-a tax break for rental construction, developers will just build condos instead since they're taxed lower already. Do you really want to see more fancy condos all over the city?"

No, we do not. One of the few demonstrable policy successes of 421-a reform over the past two decades has been in shifting the program from subsidizing condominiums to subsidizing rentals. This is one reason why the new "Affordable Neighborhoods for New Yorkers" proposal is causing some concern. It is worth noting, though, that in 2017, when the legislature revised 421-a to favor rental construction over condominium projects, developers argued the opposite: that no one will build condos anymore if 421-a stops supporting them. This, indeed, was not the case, with plenty of new condominiums built between 2017 and 2022, only the smallest of which (those under 30 units) received a 421-a benefit.

To the extent this is true, though, and developers would opt to build even more condominiums in the absence of a 421-a program that favors

rentals, it is because condominiums are so drastically undertaxed compared to rental buildings. This is a widespread problem with deep and inequitable impacts on renters and owners alike, having to do with other tax breaks that apply to condominiums and cooperatives, and are compounded by highly questionable appraisal and assessment techniques.⁴⁰ In that way, 421-a is a kluge on a broken system: it brings down taxes for rental housing because taxes for condominiums and market-rate cooperatives are already too low.

The best way to address the problems in our tax code would be to actually address the problems in our tax code – wholistically rebalance the tax burden among condo and coop owners, landlords, and single-family homeowners. At the end of Bill de Blasio's mayoralty, after years of fair housing advocacy and litigation, the New York City Advisory Commission on Property Tax Reform offered a report on these inequities and the urgent need for reform.⁴¹ Rather than renew or rebrand 421-a, the state legislature should follow the city's lead and take a comprehensive look at inequities in the property tax system and redress them once and for all.

Conclusion

In our last report, 421-a at 50, Part 1: Rising Cost, Diminishing Returns, we showed that the 421-a program had ballooned over the past five decades into New York's single-largest housing budget item, rising far faster than the pace of construction and surviving long past the point at which developers were reluctant to build multi-family housing in New York City. In 421-a at 50, Part 2: Unaffordable New York, we have shown that as the program grew larger and more expensive, it failed to deliver on its promise to build meaningfully affordable housing throughout the city.

Since 2016, the vast majority of new “affordable” housing that is solely attributable to 421-a – rather than other subsidies or zoning requirements – is targeted to households earning far more than most New Yorkers, most tenants, and certainly those most shut out of the current housing market. Instead, it has been used in ways that undermine its stated purpose as an affordability program: by supporting housing that is more expensive than what is currently available on the market; by allowing developers to opt out of rent stabilization for market-rate units and failing to prevent overcharges and harassment; and by contributing to rising land costs, which are a major contributor to overall housing prices. In short, Affordable New York has contributed to New York's ongoing unaffordability.

As we showed in 421-a at 50, Part 1, these problems are not new. Over the course of the last 50 years, the program has gone through regular revisions described to the public as attempts to make the program less wasteful and more broadly beneficial. These attempts, however, have failed to produce a program that is either less expensive to the public or more effective at producing low-income housing. After 50 years, it is time to end 421-a.

What might come next after the end of this era of entitlements for corporate developers? A new program could subsidize the affordable housing in otherwise market-rate developments, without applying a full tax exemption to the entire building. A program could be designed to differentiate for local housing conditions, ensuring that “affordable housing” is not offered at the equivalent of market rates (or higher). A tax exemption could be offered on merit rather than as of right, with developers proving to the city's housing

agency that they truly need the tax break in order to complete their project, and the agency determining whether offering the tax exemption conforms with the city's housing affordability goals. The state could take bold action to revise the tax code overall, finally undoing decades of inequity that have overtaxed owners of older properties while under-taxing new rentals and condominiums.

All of these actions would be improvements over the status quo of 421-a, a program whose time has long since passed. Today, and for the last several years, New York's single largest housing expenditure has been this as-of-right tax break to corporate developers. We do not need to continue down this path indefinitely. New Yorkers would be better served by rebalancing the property tax code overall, creating a more targeted program for mixed-income development, and making a similarly large investment into the production of social and supportive housing.

Notes

1. Waters, Tom and Vic Bach. 2015. New York's Unaffordable Housing Program: Time to End 421-a. Community Service Society. Two options within the current 421-a framework bar this practice, but the five others do not.
2. New York City Department of Finance Annual Tax expenditure report, Fiscal Year 2021.
3. To estimate the long-term cost of the Affordable New York exemption, we assumed that total assessed values of the developments would grow by an average of 3 percent every year, while the assessed value of land would remain the same. The exempt value of the project would then be its full assessed value for the tenure of full-exemption which, for projects choosing options (A) through (D) would be 25 years with a 10-year phase out, and 35 years for projects who chose options (E) through (G). During the phase-out years, the projects get an exemption equal to the percentage of affordable housing they have (typically 30 percent). To make these exempt values from years in the future comparable to today, we discounted them back at 6 percent, and aggregated to arrive at the final figure.
4. Average HPD subsidies for deeply affordable housing under the ELLA program average.
5. This assumes that there would be sufficient non-city funds (like Low-Income Housing Tax Credits, tax exempt bonds, and other sources) available to support this level of city-subsidized low-income housing construction. It is worth noting, however, that these non-city resources currently support some 421-a projects.
6. Raetz, Hayley and Matthew Murphy. "The Role of 421-a During a Decade of Market Rate and Affordable Housing Development." NYU Furman Center, February 2022.
7. Cabello, Maxwell Sr. The High Cost of Low Affordability: The Case to Repeal 421-A. Churches United for Fair Housing, 2021.
8. HPD subsidies for deeply affordable housing under the ELLA program average \$137,500 per unit. These city subsidies are then combined with Low Income Housing Tax Credits and other funds to cover the total cost of construction.
9. American Community Survey, 2019.
10. Raetz and Murphy, 2022.
11. Association for Neighborhood Housing and Development. The AMI Cheat Sheet. 2019. https://anhd.org/sites/default/files/ami_cheat_sheet_2019_060519.pdf. 130% AMI households make more money than 74.1 percent of their neighbors.
12. Data on median renter incomes by neighborhood comes from CoreData.nyc. The average renter household size is 2.4. This finding applies to households of 2. For households of 3, only two neighborhoods – Stuyvesant Town/Turtle Bay and Greenwich Village/Financial District – have median renter incomes at or above 130 percent of AMI.
13. To better understand the primary beneficiaries of 421-a's "affordable" housing – tenants making as much as 130 percent of AMI – we compiled a demographic profile based on recent census data. We gave the 421-a program the benefit of the doubt by looking at renter households earning between 80 and 130 percent of the Area Median Income, since these units are technically available to households making as much as 130 percent of AMI, and because some versions of the current 421-a program also produce units targeted at households making up to 120 percent of AMI.
14. For more on the 421-a's cost in comparison to other housing expenditures, see: Stein, Samuel and Debipriya Chatterjee. 421-a at 50, part 1: Rising Cost, Diminishing Returns. Community Service Society, February, 2022.
15. Sosa-Kalter, Stephanie. Maximizing the Public Value of New York City-Financed Affordable Housing. Association for Neighborhood Housing and Development, October 10, 2019. For more on the difference between how non-profit and for-profit developers use moderate-rate units to internally cross-subsidize buildings, see Arunabha Uxa-Chakravarty, Celeste Hornbach and Isemene Speliotis's "Case Study: Nonprofit Developers and Deep Affordability" in the Community Service Society's February, 2021 report, Assessing de Blasio's Housing Legacy: Why Hasn't the "Most Ambitious Affordable Housing Program" Produced a More Affordable City?
16. StreetEasy Data Dashboard: 2-bedroom apartment median asking rents as of November, 2021. Median asking rents for two-bedroom apartments are less than \$3,397 in 76 out of the 115 neighborhoods for which they provide current data. This is a conservative estimate; according to the NYU Furman Center's CoreData.NYC, whose asking rent data is slightly older (2018) but takes into account more housing typologies, two-bedroom rents for tenants making 130 percent of AMI are higher than the median asking price for rentals in 55 out of the city's 59 Community District in New York City.
17. COVID Worst Evictors. Right to Counsel NYC Coalition, JustFix.nyc, and Anti-Eviction Mapping Project. 2021. <https://www.worstevictorsnyc.org/list#11>
18. "Stagg Group Had Planned to Build Luxury Housing in Kingsbridge. Now It's Building a Homeless Shelter." The Real Deal, July 26, 2017.

19. There is some degree of confusion over the circumstances under which a landlord who received a 421-a exemption can take their apartments out of rent regulation. This is in part due to legislative language that leaves certain details open to interpretation, but it is also a function of the multiple programs co-existing under the banner “421-a,” which may vary depending on when and where a project was built and which 421-a option the developer selected.
20. Teresa, Benjamin F. “The Financialization of Rent-Regulated Housing in New York City after Rent Reform.” *Metropolitix*, December 4, 2020.
21. According to conversations with tenants in buildings receiving 421-a who are members of the organization Housing Conservation Coordinators.
22. This matter is contested in buildings that also received government assistance (like Low-Income Housing Tax Credits), where landlords are interpreting the law as allowing them to deregulate income-targeted units when their regulatory agreements expire. This, however, is not the clear letter of the law, and tenants are organizing against this interpretation and for legislation (A8899) that would clarify that all such income-targeted units should remain rent stabilized for the duration of tenancy.
23. There is little public review or enforcement, however, to ensure that developers in less expensive neighborhoods do not tell HPD their initial rents will be over \$2,800 and then advertise the apartments to potential renters for less.
24. New York State Homes and Community Renewal. “Fact Sheet #41: Tax Abatements.” <https://hcr.ny.gov/system/files/documents/2020/11/fact-sheet-41-09-2019.pdf>
25. Cabello, 2021.
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