

AN ADVOCATE'S GUIDE to the NYC Senior Citizen Rent Increase Exemption ("SCRIE") PROGRAM

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1. Overview of the SCRIE Program

The New York City SCRIE, or Rent freeze, Program was created pursuant to State enabling legislation with the purpose of ameliorating the adverse impact of ever-increasing rent obligations upon low-income senior citizens. An eligible SCRIE program participant's rent payment is "frozen" prospectively and subsequent legal rent increases are "paid" to the landlord in the form of a dollar-for-dollar real-property tax abatement. Eligibility for the SCRIE Program hinges on there being a head of household who:

1. is aged 62 or over;
2. lives in a rent-regulated apartment;
3. has a household income of no more than \$50,000/year; and
4. has a monthly rent payment of more than one-third of monthly household income.

The SCRIE benefit is an entitlement: Applicants who are found eligible are entitled to receive the benefit. There is no waiting list and landlords cannot opt out. Landlords receive a dollar-for-dollar real-property tax exemption to cover any rent increases, which tenants in the SCRIE Program are exempt from paying.

The SCRIE Program covers tenants residing in:

- Rent Controlled apartments;
- Rent Stabilized apartments;
- Rental or co-op apartments subject to the NYS Private Housing Finance Law (including "Mitchell-Lama") or Section 213 of the National Housing Act; and
- Rent Stabilized hotel rooms.

The SCRIE Program for Rent Controlled and Rent Stabilized tenants is run by the NYC Department of Finance (“DOF”) (59 Maiden Lane, 19th floor, New York, New York 10038), whereas the NYC Department of Housing Preservation and Development (“HPD”) (100 Gold Street, Room 5K, New York, New York 10038) administers SCRIE for Mitchell-Lama tenants.

2. General Eligibility Requirements

- ☞ Head of household is **62 years of age** or older.
- ☞ Apartment is **regulated** under the laws of Rent Control, Rent Stabilization, Private Housing Finance Law Article II, IV, V or XI or National Housing Act § 213.
- ☞ **Rent** is in excess of **one-third** of income.
- ☞ Total **income** of all household members for the tax year preceding the application is no more than **\$50,000 per year**.

INCOME is defined broadly, with the following limited deductions: Federal, State and City income taxes and Social Security taxes; union dues withheld from wages; child/spousal support payments made pursuant to a written agreement or court order to a non-member of the household.

- **Income does not include gifts, inheritances, Nazi victim reparations, or personal injury awards.**
- There are no income deductions for health insurance/Medicare premiums.

An individual living in the apartment who is a **BOARDER** – that is, paying a flat fee for room and board – is not part of the household. Therefore, that individual’s income is not included in total household income. **However, the fee paid by the boarder to the tenant is considered income to the tenant and must be reported.**

☞ Rent increase¹ based upon:

- (1) for Rent Stabilized tenants, a 1- or 2-year lease renewal;
- (2) for Rent Controlled tenants, DHCR Orders for Maximum Base Rent/Maximum Collectible Rent (MBR/MCR) increases and Fuel Cost Adjustments (“FCA”);
- (3) for both Rent Stabilized & Rent Controlled tenants, a Major Capital Improvement (“MCI”) increase or an increase based upon the owner’s economic hardship.
- (4) for PHFL/NHA §213 tenants, any increase in rent excluding increases attributable to gas or electric utility charges; for PHFL (but not NHA §213) tenants, capital assessments and voluntary capital contributions are considered rent increases.

Note: Rent increases due to an increase in dwelling space, services or equipment, including installation of new equipment or other individual apartment improvements, are **not** covered by the SCRIE program.

Therefore, for example, if the landlord of a Rent-Stabilized tenant installs a new stove in the tenant’s apartment, and the tenant agrees to an Individual Apartment Improvement (“IAI”) increase in the rent to cover the cost of the new stove, the SCRIE program will not cover that IAI increase.

3. Application Issues

The Department of Finance accepts SCRIE applications by mail and on-line.

The HPD SCRIE application form must be mailed.

Applications should be mailed by certified mail, return receipt requested, or hand-delivered. Copies of all documents submitted should be made and kept by the senior and the advocate (if any).

¹ But see *Gentile v. City of New York Department for the Aging/SCRIE*, 290 A.D.2d 395, 736 N.Y.S.2d 674 (1st Dep’t 2002), in which the court held that a SCRIE applicant who meets the eligibility criteria is entitled to a SCRIE, even where there has been no recent increase in the tenant’s legal regulated rent.

Applications once processed are effective the first day of the month following the month when received. Delaying the submission of an application could result in the benefit not starting until a later month.

All household members and their income should be listed. If someone lives in the apartment as a bona fide “boarder” and not as a household member, the applicant does not list that person as a member of the household and does not have to count that person’s income towards household income. Instead, the applicant lists the boarder’s payment as income to the applicant. **CAUTIONARY NOTE:** Boarders may *not* take over the SCRIE upon the death or departure of the tenant; it is only people listed as members of the household that can apply to have the SCRIE transferred to their own names if the original SCRIE holder moves out or dies.

Note that a family member living in the apartment of a SCRIE applicant is considered part of the household even if that family member does not contribute any money toward the rent. Therefore, for example, if a tenant receives total annual income of just \$12,000 but lives with her daughter, who receives annual income of \$50,000, the daughter’s total income will be counted as part of the household income, even if she contributes nothing toward the rent. The senior in this scenario would therefore be deemed ineligible for the SCRIE benefit, because the total household income exceeds \$50,000.

→ A further note about boarders: Rent Stabilized tenants are barred from charging a roommate or boarder more than a *pro rata* share of the rent. For example, if the SCRIE applicants are an elderly married couple who have a boarder living in their extra bedroom, they cannot charge that boarder rent at a rate of more than one-third of the rent (one-third because there are three people living in the apartment). If they charge more than the pro rata share, the boarder may be able to sue them for a rent overcharge.

The application asks for last year’s income; however, if the applicant retired between the commencement of the last year and the date of filing the application, the income reported should be adjusted to exclude employment earnings and to project expected annual retirement income.

4. The Amount of the SCRIE Benefit

Under **Rent Control**, the statute specifies that a landlord cannot collect from a SCRIE tenant more than the greater of either: (a) one-third of income; or (b) the maximum collectible **rent in effect on December 31** of the year preceding the effective date of the initial SCRIE order. If the applicant submits a SCRIE application within 90 days of the date the DHCR issues an MBR/MCR/FCA Order, the exemption begins on the Order's effective date.

Under **Rent Stabilization**, the statute specifies that a landlord cannot collect from a SCRIE tenant more than the greater of either (a) one-third of income; or (b) the rent in effect "immediately preceding the tenant's eligibility date." The "eligibility date" is the date of commencement of the lease in effect at the time of application. Therefore, the rent should be frozen at the amount in the lease in effect **prior to** the lease in effect at the time of application.

Example: Senior files application on 11/1/2015

| | |
|--|-----------------------|
| Current renewal lease (1/1/2014-12/31/2015): | Rent of \$ 858.00/mo. |
| Prior lease (1/1/2012-12/31/2013): | Rent of \$ 800.00/mo. |
| Future lease (1/1/2016-12/31/17): | Rent of \$ 924.50/mo. |

➔ Tenant's share of rent should be frozen at **\$800.00 (prior lease rent) and the SCRIE Program covers the most recent increase reflected in the current renewal lease.**

5. "Preferential Rents" under Rent Stabilization Code § 2521.2

A "preferential rent" is a rent that an owner agrees to charge that is lower than the legal regulated rent that the owner could otherwise lawfully collect from a Rent Stabilized tenant. "Preferential rents" are either for:

- (1) the term of the lease only; or
- (2) the entire duration of the tenancy.

Which type exists for a particular tenant depends upon the language used in the lease (or a Rider to the lease) in which the landlord **first offered** the

“preferential rent” to the tenant.

For tenants with “preferential rents” for the **duration of the tenancy**, the SCRIE Program calculates the tenant’s share and the amount of the exemption using the preferential rent amounts.

For tenants with “preferential rents” for the **term of the lease only**, the SCRIE Program calculates the tenant’s share and the amount of the exemption using the legal regulated rents. As long as the “preferential rent” is in effect, this results in a higher benefit to the senior, as illustrated by the following example:

| | | | | |
|-------------------------------|---|----------------------|---|---------------------------|
| A: Original Pref. Rent | + | 6.5% Increase | = | Pref. Rent Renewed |
| \$500 | + | \$32.50 | = | \$532.50 |
| B: Original Legal Rent | + | 6.5% Increase | = | Legal Rent Renewed |
| \$700 | + | \$45.50 | = | \$745.50 |

In this example, if the landlord renews the lease at the preferential rate of \$532.50, and the tenant applies for a SCRIE, the SCRIE Program will use the legal rent amounts and give the landlord a monthly tax abatement of \$45.50. The tenant’s share of the monthly rent will then be the contract/lease rent of \$532.50 minus \$45.50 = \$487.

6. Effective Date

The “effective date” is the date on which the SCRIE benefit begins. SCRIE applications are effective as of the first day of the first month following the month in which the application is filed. See NYC Admin. Code § 26-405(m)(5) (Rent Control) and §26-509(b)(6) (Rent Stabilization).

Advocacy tip: Make sure to get applications in before the end of the month!

There are exceptions: Where the SCRIE application is based upon a rent increase arising from an Order issued by the DHCR for

1. an MBR/MCR/FCA (Rent Control); or
2. an MCI (“major capital improvement”); or
3. certain other less common situations

as long as the SCRIE application is filed within 90 days of such Order, the SCRIE Program will cover the increase retroactive to the effective date of such Order.

7. Portability

“SCRIE Portability” offers tenants in the SCRIE program a **limited** opportunity to transfer SCRIE benefits to a new apartment as follows: The dollar benefit that is “portable” (i.e., transferable to a new apartment) is **the lowest** of three options:

1. amount by which the new apartment’s rent exceeds the tenant’s “frozen” share of the rent in the old apartment;
2. amount of the SCRIE in the old apartment; or
3. amount by which the new apartment’s rent exceeds 1/3 of income.

All three options must be calculated; the lowest dollar figure can then be transferred to the new apartment.

The information that the tenant must provide in order to calculate the three options consists of:

- a) rent for the new apartment;
- b) rent for the old apartment;
- c) tenant’s “frozen” share of the rent in old apartment;
- d) current SCRIE benefit level in old apartment; and
- e) current income.

Because the transferable benefit is **the lowest of the three options**, portability is not financially feasible for many individuals.

Consider this example:

- a) Rent for new apartment = \$1500/month;
- b) Lease rent for old apartment = \$900/month;
- c) “Frozen” SCRIE share of the rent for old apartment = \$600/month;
- d) Tenant’s current SCRIE benefit in old apartment = \$300/month;
- e) Current income = \$900/month.

OPTION 1 = \$1500 - \$600 = **\$900** (amount by which new rent exceeds frozen rent in old apartment)

OPTION 2 = **\$300** (current SCRIE benefit)

OPTION 3 = **\$1200** (1/3 income= \$300; new rent of \$1500 exceeds 1/3 income by \$1200)

In this example, option 2 produces the **lowest** dollar figure. This means that **the portable SCRIE benefit is \$300**; with a new rent of \$1500, the tenant’s portion will be frozen at \$1200, and the SCRIE will be \$300, plus future increases. For this tenant with a frozen rent of \$600 in her old apartment, the move is not economically feasible, as she would have to pay a monthly rent of \$1200, which is \$300 more than her income.

DOF’s form for effectuating “portability” is called the “Apartment Benefit Transfer Application.”

8. Redetermination of Tenant Share due to Decrease in Income

Where there has been a **permanent decrease** in household income of 20% or more (generally due to the death/departure of a spouse or other family member), the SCRIE holder is entitled upon request to a **redetermination**. The redetermination will result in an increase in the amount of the SCRIE benefit so as to maintain the tenant’s rent payment at the same rent-to-income ratio as was represented in the last approved SCRIE application or recertification form, before the loss of household income. See Admin. Code § 26-405(m)(9) (rent control); Admin. Code § 26-509(b)(9) (rent stabilization).

Consider this example:

- Married couple on SSI has a total household income of \$1170/month (SSI married couple's rate)
- Rent payment was frozen under SCRIE many years ago at \$585/month, which is now ½ of the couple's current monthly income
- One spouse dies, leaving surviving spouse on SSI of \$797/month (Living Alone Rate)
- Upon the filing of a request for **redetermination**, tenant's rent payment is reduced to ½ of the surviving spouse's income: \$398.50

9. Renewal

SCRIE benefits are good for two years (or for the period of the lease, if less) and then must be renewed. Renewal forms are mailed out by the SCRIE Program to enrollees, and DOF now has different forms for the different types of regulated housing (Rent Stabilized apartments, Rent Controlled apartments and Rent Stabilized hotel/SRO units). These forms, like the application forms, require the applicant to list all members of the household and all income received by each member of the household. To renew eligibility, the only documents needed in addition to the Renewal Application are those setting forth the rent increase and, if there are any new household members, proof of their income. If the landlord fails to provide a renewal lease, the tenant should complete and submit the applicable DOF "Certification" form.

The DOF mails tenants renewal forms about 60 days prior to the expiration of the SCRIE benefit. But sometimes seniors do not receive the renewal forms and do not know that they nevertheless have to recertify. This can lead to the "lapsed SCRIE" situation described below. The statutes provide for an automatic six-month extension of the SCRIE ("deemed renewal"), provided that the tenant files a renewal application. This gives DOF a six-month grace-period to process the renewal application and, if the tenant is found eligible again, the resulting SCRIE order is retroactive to the expiration of the last SCRIE. However, the statute expressly makes a tenant liable to the landlord for the difference between the amount the tenant has paid under an automatically renewed order and the full legal rent in the event the tenant is ultimately found ineligible for the SCRIE renewal.

Where there is a rent increase based on a DHCR Order that is issued for an increase other than those that are covered by the renewal application – such as, for example, an MCI increase, which can occur at any time, or for a late-issued FCA or MCR increase – an “Adjustment Application” should be submitted to DOF.

10. Termination

A SCRIE will be terminated when it comes to DOF’s attention that the tenant has died or failed to recertify, or, upon recertification, if the tenant no longer meets one or more of the eligibility requirements (for example, if the tenant’s income now exceeds the maximum household limit). Sometimes seniors do not learn that their SCRIE has been terminated until long after the fact. This can lead to the “lapsed SCRIE” situation described below.

11. Lapsed SCRIE/Reinstatement

It happens on a fairly regular basis that elderly, often infirm, SCRIE Program participants fail to recertify, or have their benefits terminated without notice, resulting in a “lapsed” SCRIE. The failure to recertify often occurs because the tenant fails to receive (or return) the recertification forms which DOF mails out to SCRIE Program participants when their SCRIE benefits are up for renewal.

The problem usually comes to light when DOF audits the landlord’s real estate tax account and notifies the landlord that it has to repay a sum of money that represents tax abatement credits given to the landlord during a period when the SCRIE program participant is not eligible. The landlord then turns around and sues the tenant for rent arrears in a nonpayment eviction proceeding in Housing Court. In some of these cases, a theory can be developed that, as between the landlord, the tenant and the SCRIE Program, the landlord has the greatest ability and incentive to determine whether or not a SCRIE is effective before claiming a tax abatement. Arguably, the landlord’s failure to ascertain the viability of a tenant’s SCRIE before billing the tenant a reduced rent over an extended period of time warrants placing responsibility for the error on the landlord.

Here are some advocacy tips:

1. Upon request, DOF may reinstate a lapsed SCRIE where it can be shown that the tenant was income-eligible at all times for SCRIE benefits and there is **good cause** to reinstate the benefits. As of the time of this writing, the DOF has indicated that cases where the failure to certify was allegedly caused by the tenant's disability will be reviewed by NYC's EEO office.
2. Where the tenant was not eligible at all relevant times, it is unlikely that the SCRIE will be reinstated, although the tenant may have certain defenses to a landlord's nonpayment eviction proceeding in Housing Court. However, the landlord can bring a separate lawsuit, outside of Housing Court, seeking the unpaid rent monies representing the difference between the full legal rent and the amount paid by the tenant.

12. Benefit-Takeover/Succession Rights

The SCRIE statutes expressly state that a SCRIE order expires upon termination of occupancy of the apartment by the tenant to whom the SCRIE was issued. Nevertheless, DOF (and its predecessor agencies) has a policy of allowing an eligible remaining family member who has succession rights to the apartment to take over a deceased or otherwise departed senior citizen's SCRIE, **but only if** the presence of the remaining family member in the household had been reported to the SCRIE Program (through a listing on the original SCRIE application and/or subsequent renewal forms).

Therefore, if, for example, mother and daughter live together but the mother does not divulge her daughter's income on her SCRIE application and renewal forms, the daughter will be barred from taking over her mother's SCRIE benefit following her mother's departure from the apartment, even if the daughter has succession rights to the apartment and is otherwise eligible for SCRIE.

13. SCRIE-to-DRIE/DRIE-to-SCRIE Transfers

A surviving family member who lived with a SCRIE Program participant and is not eligible to take over the SCRIE based on age may be entitled to the parallel benefit under the DRIE (Disability Rent Increase Exemption) Program.

Alternatively, a DRIE Program participant who turns 62 is entitled to transfer to the SCRIE Program. In either event, a “SCRIE <-> DRIE Transfer Application” form should be completed and submitted to DOF.

14. Administrative Appeals

Administrative appeals may be taken from adverse agency decisions. DOF has an appeal form with instructions. The appeal form must be filed within 60 days of the order being appealed. However, the time to appeal can be extended “for good cause”. If an administrative appeal is denied, further review may be sought in a proceeding brought within four months of the unfavorable agency determination in State Supreme Court under Article 78 of the Civil Practice Law and Rules.

A tenant is not required to have a lawyer prepare an appeal of a decision regarding their SCRIE benefit, but it is advisable to seek the assistance of an advocate when preparing such an appeal. New York City has many offices that provide free legal services to tenants, and these offices may offer free assistance in preparing an appeal.

15. Where can tenants can obtain help with SCRIE problems?

The DOF now has a SCRIE Ombudsperson, whose job is to help identify and resolve issues with a tenant’s application or benefits. Tenants may contact the Ombudsperson’s office by mail, by filling out an on-line form, or by calling 311.

A tenant also can visit the DOF SCRIE/DRIE walk-in office from 8:30am - 4:30pm. This office is located in lower Manhattan at 66 John Street, 3rd Floor, New York, NY 10038.

A tenant can apply for legal assistance from one of the many offices, such as The Legal Aid Society and Legal Services NYC, that provide free legal representation to New Yorkers throughout the boroughs. To find out which offices serve a particular area, a tenant may consult www.LawHelpNY.org or call 311.

16. The Role of the Landlord

Landlords are responsible for:

- Verifying tenant and building information during the application process, upon request by DOF;
- Providing to tenants, in a timely manner, all necessary rental documents (such as leases for Rent Stabilized tenants; DHCR form numbers RN-26, RO-30 & R33.10 for Rent Controlled tenants; MCI orders);
- Collecting the correct amount of rent from the tenant and handling retroactive adjustments;
- Monitoring DOF's SCRIE Statement of Account each quarter to ensure receipt of all authorized credits;

- Advising DOF of any rent increases or decreases, changes in building status, ownership, or management, and changes in tenant's status due to a move or death;
- Registering Rent Stabilized apartments with the DHCR and applying for Rent Control MBR adjustments;
- Reporting any suspected fraudulent claim for SCRIE by a tenant.

17. Sources of Law

→ **Enabling Legislation: NYS Real Property Tax Law §§ 467-b & 467-c**

State Law authorizing municipalities to enact local SCRIE laws consistent with the state statute covering Rent Controlled and Rent Stabilized apartments (RPTL § 467-b) and apartments in buildings subject to either Article II, IV, V of XI of the Private Housing Finance Law (PHFL) or § 213 of the National Housing Act (RPTL § 467-c) occupied by senior citizens.

→ **NYC Rent & Rehabilitation Law, NYC Admin. Code T. 26, Ch. 3 (§26-405m.)**

Local law governing the SCRIE Program in NYC for Rent Controlled tenants.

→ **NYC Rent Stabilization Law, NYC Admin. Code T. 26, Ch. 4 (§26-509)**

Local law governing the SCRIE Program in NYC for Rent Stabilized tenants.

→ **NYC Rent Increase Exemption for Low Income Elderly Persons, NYC Admin. Code T. 26, Ch. 7 (§§ 26-601 et seq.)**

Local law governing the SCRIE Program in NYC for tenants in PHFL/“Mitchell-Lama”/§213 apartments.

→ **NYC Rent & Eviction Regulations, 9 NYCRR § 2202.20**

DHCR regulations covering the SCRIE Program for both Rent Controlled and Rent Stabilized tenants; some provisions are different for the two different types of rent regulation. Since DHCR does not currently administer any aspect of the SCRIE Programs in NYC, the viability of these regulations is questionable.

