Andrew M. Cuomo
Governor

Darryl C. Towns
Commissioner

New York State Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza
92-31 Union Hall Street
Jamaica, NY 11433

RSC Amendment Summary

9 NYCRR §2520.5 paragraphs (o) and (p) are re-lettered (p) and (q) and a new paragraph (o) is added to designate the Tenant Protection Unit (TPU) as a distinct unit under DHCR

9 NYCRR §2520.11 new paragraph (u) is added to provide that an owner will be required to provide the first tenant of a deregulated unit an exit notice explaining how the unit became deregulated, how the rent was computed and what the last regulated rent was. A copy of the rent registration indicating deregulated rent must be provided to the tenant.

9 NYCRR § 2521.1 is amended to add a new subdivision (l) to establish the criteria for setting the initial legal regulated rent for housing accommodations located in properties that were or continue to be owned by housing development fund companies (HDFC).

9 NYCRR 2521.2(b) is amended, 9 NYCRR §2521.2(b)(2) is repealed, and **9 NYCRR §2521.2(c) amended** to provide that where a preferential rent is charged, the legal rent can only be preserved by disclosure in a tenant's lease; a rent registration indicating a preferential rent will not be dispositive. The owner shall be required to maintain and submit where required by DHCR the rental history immediately preceding a preferential rent to the present which may be prior to the four–year period preceding the filing of a complaint.

9 NYCRR § 2522.4(a)(3)(22) is amended to provide there will be no MCI rent increases for conversions from master to individual metering; however, electrical wiring for the building can be subject to an MCI rent increase.

9 NYCRR § 2522.4(a)(13) is amended to provide that when an MCI rent increase application is received, DHCR will initiate its own search to determine if there is an "immediately hazardous" violation in a building and, if there is such a violation, the application will be rejected with leave to renew once the violation is remedied.

9 NYCRR §2522.4(d)(3)(iii) is amended to provide that a tenant receiving DRIE (disabled) benefits will not be subject to electrical sub-metering conversions; this conforms to how SCRIE (senior citizens) tenants are treated.

9 NYCRR §2522.5(c)(1) and 9 NYCRR §2522.5(c)(3) are amended to provide the following: Required lease riders attached to leases will have greater detail as to how the rent was calculated, including details about how any IAI rent increase was calculated; tenants will be able to request documentation from owners to support an IAI increase; if the lease rider and/or any requested IAI documents are not provided, there can be no rent increase until the rider/documentation is provided unless the owner can prove the rent charged is otherwise legal; if the rent charged is above the legal rent during period when rider/documentation is not provided, there can be a rent overcharge proceeding and no rent increase can be collected until the rider/documentation is provided.

9 NYCRR §2522.6 (b) is amended and 9 NYCRR § 2526.1(g) is re-lettered (h) and new subdivision (g) is added to provide that when the rent on base date for establishing rent under the four-year look-back period cannot be determined or the rent set on the base date was the subject of a fraudulent scheme to deregulate, the 3-part, court-sanctioned default formula for setting rents, e.g., lowest rent for comparable unit in building, will be used and a general catch-all, e.g. data compiled by DHCR or sampling method, will be available.

9 NYCRR §2523.4(a)(1), (a)(2), (c) and (d)(2) are amended to provide:
A tenant complaint of a service decrease will not be dismissed if the tenant failed to provide the owner with notice of the problem prior to filing a complaint with DHCR; any decrease in rent based upon a service decrease order will include a bar to future MCI and vacancy bonus rent increases; an owner's time to respond to a service decrease complaint will be reduced to 20 days if the tenant, in fact, gives prior notice, otherwise the response time is 60 days; if the tenant is forced to vacate, a 5 day response time is required and; if the complaint is for lack/reduction in heat/hot water then a 20 day response time is required.

9 NYCRR §2523.5(c)(2) and (3) are amended to provide that tenants holding over after the lease expires (they failed to renew their lease) will be treated as month-to-month tenants and not held to a new full lease term.

9 NYCRR §2524.3(a), (e), and (g) are amended to amend certain notice requirements.

9 NYCRR § 2525.5 is amended to redefine harassment to include certain false filings and false statements designed to interfere with tenant's quiet enjoyment or rights.

9 NYCRR § 2526.1(a)(2)(ii) is amended and 9 NYCRR § 2526.1(a)(2) adds new subparagraphs (iii), (iv), (v), (vi), (vii), (viii) and (ix) and 9 NYCRR § 2526.1(a)(3)(iii) is amended to provide a more comprehensive list of exceptions to the rule that when examining rent overcharges the look-back period to determine an overcharge is four years. The list of exceptions includes: when there is an allegation of a fraudulent scheme to deregulate the unit; prior to base date there is an outstanding rent reduction order based upon a decrease in services; it is determined that there is a willful rent overcharge; there is a vacant or exempt unit on the four-year base date, in which case DHCR may also look at the last rent registration, or; there is a need to determine whether a preferential rent exists.

9 NYCRR §2527.9 is amended by adding new subdivisions (c) and (d) to amend certain notice requirements.

9 NYCRR § 2528.3 (a) is amended to clarify that registration information may be collected as required by DHCR, RSC, or 2527.11.

9 NYCRR § 2528.3 is amended to add paragraph (c) to provide that owners will not be able to amend a rent registration without going through an administrative proceeding with notice to the tenant unless the change is governed by another government agency.

9 NYCRR § 2528.4(a) is amended to clarify that a rent freeze for failing to register will include MCI increases and vacancy bonus increases.

9 NYCRR § 2529.12 is amended to clarify filing requirements for Article 78 proceedings.

9 NYCRR § 2530.1 is amended to clarify the 60 day statute of limitations from date of mailing of an order.

9 NYCRR § 2531.2 is amended to prohibit luxury decontrol filings on SCRIE and DRIE tenants.

New York City Rent Stabilization Code Amendments

1. 9 NYCRR §2520.5 paragraphs (o) and (p) are re-lettered (p) and (q) and a new paragraph (o) is added as follows:

(o) The Office of the Tenant Protection Unit (TPU). The office of the DHCR designated by the Commissioner to investigate and prosecute violations of the ETPA, the RSL and the City and State Rent laws. In furtherance of such designation, the TPU may invoke all authority under the ETPA, RSL, RSC and the State and City rent laws and the regulations thereunder that inures to the Commissioner, DHCR or the Office of Rent Administration. However, nothing contained herein shall limit the mission and authority of the Office of Rent Administration to administer and enforce the ETPA, the RSL, and the City and State rent laws and all such regulations promulgated thereunder.

2. 9 NYCRR 2520.11 new paragraph (u) is added as follows:

(u) The owner of any housing accommodation that is not subject to this code pursuant to the provisions of subdivision (r) of this section or of section 2200.2(f)(19) of the New York City Rent and Eviction Regulations, shall give written notice certified by such owner to the first tenant of that housing accommodation after such housing accommodation becomes exempt from the provisions of this code or the city rent law. Such notice shall contain the last regulated rent, the reason that such housing accommodation is not subject to this Code or the city rent law, a calculation of how either the rental amount charged when there is no lease or the rental amount provided for in the lease has been derived so as to reach the applicable amount qualifying for deregulation pursuant to subdivision (r) of this section, (whether the next tenant in occupancy or any subsequent tenant in occupancy actually is charged or pays less than the applicable amount qualifying for deregulation), a statement that the last legal regulated rent or the maximum rent may be verified by the tenant by contacting DHCR and the address and telephone number of DHCR. Such notice shall be sent by certified mail within thirty days after the tenancy commences or after the signing of the lease by both parties, whichever occurs first or shall be delivered to the tenant at the signing of the lease. In addition, the owner shall send and certify to the tenant a copy of the registration statement for such housing accommodation filed with DHCR indicating that such housing accommodation became exempt from the provisions of this code or the city rent law, which form shall include the last regulated rent and shall be sent to the tenant within thirty days after the tenancy commences or the filing of such registration, whichever occurs later.

3. 9 NYCRR § 2521.1 is amended to add a new subdivision (l) as follows:

(l)(1) Notwithstanding any other provisions of this code, the initial legal regulated rent shall be established pursuant to paragraph (2) for housing accommodations located in properties that were or continue to be owned by housing development fund companies (HDFC's) created pursuant to Article XI of the Private Housing Finance Law (whether

such an HDFC was for rental housing, a mutual company, or subject to cooperative or condominium ownership or had otherwise previously been subject to this code) where such property has been conveyed pursuant to a judgment of foreclosure or pursuant to a stipulation of settlement in a foreclosure action (whichever occurs first).

(2) The initial legal regulated rent shall be the highest of:

(i) maintenance or carrying charges, common charges, or rent in effect immediately prior to such conveyance;

(ii) any minimum standard rent established by either HPD or DHCR as the respective supervising agency of an HDFC that was in effect immediately prior to such conveyance, even if such minimum standard rents had not been implemented for the specific building or housing accommodation; or

(iii) the rent specifically set by HPD or DHCR as the respective supervising agency of an HDFC where such HDFC or a successor HDFC continues to own the building.

4. 9 NYCRR 2521.2 (b) is amended to read as follows:

Such legal regulated rent as well as preferential rent shall be ["previously established" where: (1) the legal regulated rent is] set forth in [either] the vacancy lease or renewal lease pursuant to which the preferential rent is charged. [; or]

5. 9 NYCRR 2521.2(b)(2) is repealed:

[(2) for a vacancy lease or renewal lease which set forth a preferential rent and which was in effect on or before June 19, 2003, and the legal regulated rent was not set forth in either such vacancy lease or renewal lease, the legal regulated rent was set forth in an annual rent registration served upon the tenant in accordance with the applicable provisions of law, except that the rental history of the housing accommodation prior to the four-year period preceding the filing of a complaint pursuant to section 2526.1 or 2522.3 of this Title shall not be examined.]

6. 9 NYCRR 2521.2(c) is amended to read as follows:

(c) Where the amount of the legal regulated rent is set forth either in a vacancy lease or renewal lease where a preferential rent is charged, [the amount of the legal regulated rent shall not be required to be set forth in any subsequent renewal of such lease, except that] the owner shall be required to maintain, and submit where required to by DHCR, the rental history of the housing accommodation immediately preceding such preferential rent to the present which may be prior to the four-year period preceding the filing of a complaint [pursuant to section 2526.1 or 2522.3 of this Title shall not be examined].

7. 9 NYCRR § 2522.4(a)(3)(22) is amended to read as follows:

(22) REWIRING:
- new copper risers and feeders extending from property box in basement to every housing accommodation; must be of sufficient capacity (220 volts) to accommodate the installation of air conditioner circuits in living room and/or bedroom; [and] but otherwise excluding work done to effectuate conversion from master to individual metering of electricity approved by DHCR pursuant to paragraph (3) of subdivision (d) of this section.

8. 9 NYCRR § 2522.4(a)(13) is amended to read as follows:

(13) The DHCR shall not grant an owner's application for a rental adjustment pursuant to this subdivision, in whole or in part, if it is determined by the DHCR, based upon information received from any tenant or tenant representative or upon a review conducted on DHCR's own initiative that, as of the date of such application for [prior to the granting of approval to collect] such adjustment that the owner is not maintaining all required services, or that there are current immediately hazardous violations of any municipal, county, State or Federal law which relate to the maintenance of such services. However, as determined by the DHCR, such application may either be granted upon condition that such services will be restored within a reasonable time, or dismissed with leave to refile within sixty days which time period shall stay the two year filing requirement provided in section (a)(8) of this paragraph. [and] In addition, certain tenant-caused violations may be excepted.

9. 9 NYCRR 2522.4(d)(3)(iii) is amended to read as follows:

(iii) Recipients of Senior Citizen Rent Increase Exemptions (SCRIE) or Disability Rent Increase Exemptions (DRIE): For a tenant who on the date of the conversion is receiving a SCRIE or DRIE authorized by section 26-509 of the Rent Stabilization Law of Nineteen Hundred Sixty-nine, the rent is not reduced and the cost of electricity remains included in the rent, although the owner is permitted to install any equipment in such tenant's housing accommodation as is required for effectuation of electrical conversion pursuant to this paragraph.

(a) After the conversion, upon the vacancy of the tenant, the owner, without making application to DHCR, is required to reduce the legal regulated rent for the housing accommodation in accordance with the Schedule of Rent Reductions set forth in Operational Bulletin 2003-1, and thereafter [the] any subsequent tenant is responsible for the cost of his or her consumption of electricity, and for the legal rent as reduced, including any applicable major capital improvement rent increase based upon the cost of work done to effectuate the electrical conversion.

(b) After the conversion, if a tenant ceases to receive a SCRIE or DRIE, the owner, without making application to DHCR, may reduce the rent in accordance with the Schedule of Rent Reductions set forth in Operational Bulletin 2003-1, and thereafter the

tenant is responsible for the cost of his or her consumption of electricity, and for the legal rent as reduced, including any applicable major capital improvement rent increase based upon the cost of work done to effectuate the electrical conversion, for as long as the tenant is not receiving a SCRIE or DRIE. Thereafter, in the event that the tenant resumes receiving a SCRIE or DRIE, the owner, without making application to DHCR, is required to eliminate the rent reduction and resume responsibility for the tenant's electric bills.

10. 9 NYCRR §2522.5(c)(1) is amended to read as follows and (c)(ii) is renumbered (c)(iv) and a new (c)(ii) and (c)(iii) are added as follows:

(1) For housing accommodations subject to this Code, an owner shall furnish to each tenant signing a vacancy or renewal lease, a rider in a form promulgated or approved by the DHCR, in larger type than the lease, describing the rights and duties of owners and tenants as provided for under the RSL including a detailed description in a format as prescribed by DHCR of how the rent was adjusted from the prior legal rent. Such rider shall conform to the "plain English" requirements of section 5-702 of the General Obligations Law[,]. Copies of the form as promulgated by DHCR shall also be available in [Spanish, and] all languages that may be required pursuant to DHCR's language access plan. The rider shall be attached as an addendum to the lease. Upon the face of each rider, in bold print, in English and any other language as required by the DHCR language access plan, shall appear the following: "ATTACHED RIDER SETS FORTH RIGHTS AND OBLIGATIONS OF TENANTS AND LANDLORDS UNDER THE RENT STABILIZATION LAW." [("LOS DERECHOS Y RESPONSABILIDADES DE INQUILINOS Y CASEROS ESTAN DISPONIBLE EN ESPANOL")].

(i) For vacancy leases, such rider shall in addition also include a notice of the prior legal regulated rent, if any, which was in effect immediately prior to the vacancy, an explanation, and in a format prescribed by DHCR, [of] how the rental amount provided for in the vacancy lease has been computed above the amount shown in the most recent annual registration statement, as well as the prior lease, and a statement that any increase above the amount set forth in such registration statement is in accordance with adjustments permitted by the rent guidelines board and this Code.

(ii) Such rider shall also set forth that the tenant may, within sixty days of the execution of the lease, require the owner to provide the documentation directly to the tenant supporting the detailed description regarding the adjustment of the prior legal rent pursuant to paragraph (i) of this subdivision. The owner shall provide such documentation within thirty days of that request.

(iii) The method of service of the lease rider, the tenant request for documentation, and the owner's provision of documentation, together with proof of same, shall conform to the requirements set forth in the lease rider itself or such other bulletin or document rendered pursuant to section 2527.11.

[(ii)] (iv) [re-numbered only – text remains the same]

11. 9 NYCRR §2522.5(c)(3) is amended to read as follows:

(3) [Upon complaint by the] Where a tenant, permanent tenant or hotel occupant [that he or she was] is not furnished, as required by the above provision, with a copy of the lease rider pursuant to paragraph (1), [or] the notice pursuant to paragraph (2) [of this subdivision], or the documentation required on demand by paragraph (1)(ii) of this subdivision, the owner shall not be entitled to collect any adjustments in excess of the rent set forth in the prior lease unless the owner can establish that the rent collected was otherwise legal. In addition to issuing an order with respect to applicable overcharges, [the] DHCR shall order the owner to furnish the missing rider, [or] notice, or documentation. [In addition to such other penalties provided for pursuant to section 2526.2 of this Title, if the owner fails to comply within 20 days of such order, the owner shall not be entitled to collect any guidelines lease adjustment authorized for any current lease from the commencement date of such lease.] The furnishing of the rider, [or] notice, or documentation by the owner to the tenant or hotel occupant shall result in the elimination, prospectively, of such penalty. With respect to housing accommodations in hotels, noncompliance by the owner shall not prevent the hotel occupant from becoming a permanent tenant.

12. 9 NYCRR §2522.6 (b) is amended to read as follows:

(b) (1) Such order shall determine such facts or establish the legal regulated rent in accordance with the provisions of this Code. Where such order establishes the legal regulated rent, it shall contain a directive that all rent collected by the owner in excess of the legal regulated rent established under this section for such period as is provided in section 2526.1(a) of this Title, or the date of the commencement of the tenancy, if later, either be refunded to the tenant, or be enforced in the same manner as prescribed in section 2526.1(e) and (f) of this Title. Orders issued pursuant to this section shall be based upon the law and Code provisions in effect on March 31, 1984, if the complaint was filed prior to April 1, 1984.

(2)Where either (i) the rent charged on the base date cannot be determined, or (ii) a full rental history from the base date is not provided, or (iii) the base date rent is the product of a fraudulent scheme to deregulate the apartment, or (iv) a rental practice proscribed under section 2525.3 (b), (c) and (d) has been committed, the rent shall be established at the lowest of the following amounts set forth in paragraph (3).

(3) These amounts are:

(i) the lowest rent registered pursuant to section 2528.3 of this Code for a comparable apartment in the building in effect on the date the complaining tenant first occupied the apartment; or

(ii) the complaining tenant's initial rent reduced by the percentage adjustment authorized by section 2522.8 of this Code; or

(iii) the last registered rent paid by the prior tenant (if within the four year period of review); or

(iv) if the documentation set forth in (i) through (iii) of this paragraph is not available or is inappropriate, an amount based on data compiled by the DHCR, using sampling methods determined by the DHCR, for regulated housing accommodations.

(4) However, in the absence of collusion or any relationship between an owner and any prior owner, where such owner purchases the housing accommodations upon a judicial sale, or such other sale effected in connection with, or to resolve, in whole or in part, a bankruptcy proceeding, mortgage foreclosure action or other judicial proceeding, and no records sufficient to establish the legal regulated rent were made available to such purchaser, such orders shall establish the legal regulated rent on the date of the inception of the complaining tenant's tenancy, or the date four years prior to the date of the filing of an overcharge complaint pursuant to section 2526.1 of this Title, whichever is most recent, based on either:

(i) [(1)] documented rents for comparable housing accommodations, whether or not subject to regulation pursuant to this Code, submitted by the owner, subject to rebuttal by the tenant; or

(ii) [(2)] if the documentation set forth in subparagraph (i[1]) of this [subdivision] paragraph is not available or is inappropriate, data compiled by the DHCR, using sampling methods determined by the DHCR, for regulated housing accommodations; or

(iii) [(3)] in the event that the information described in both subparagraphs (i) [(1)] and (ii) [(2)] of this [subdivision] paragraph is not available, the complaining tenant's rent reduced by the most recent guidelines adjustment.

(5) This subdivision shall also apply where the owner purchases the housing accommodations subsequent to such judicial or other sale. [Notwithstanding the foregoing, this subdivision shall not be deemed to impose any greater burden upon owners with regard to record keeping than is provided pursuant to RSL section 26-516(g). In addition, where the amount of rent set forth in the rent registration statement filed four years prior to the date the most recent registration statement was required to have been filed pursuant to Part 2528 of this Title is not challenged within four years of its filing, neither such rent nor service of any registration shall be subject to challenge any time thereafter.]

13. 9 NYCRR §2523.4(a)(1), (a)(2), (c) and (d)(2) are amended to read as follows:

(a)(1) A tenant may apply to the DHCR for a reduction of the legal regulated rent to the level in effect prior to the most recent guidelines adjustment, subject to the limitations of subdivisions (c)-(h) of this section, and the DHCR shall so reduce the rent for the period for which it is found that the owner has failed to maintain required services. The order reducing the rent shall further bar the owner from applying for or collecting any further increases in rent including such increases pursuant to section 2522.8 of this Title until such services are restored or no longer required pursuant to an order of the DHCR. If the DHCR further finds that the owner has knowingly filed a false certification, it may, in addition to abating the rent, assess the owner with the reasonable costs of the proceeding, including reasonable attorney's fees, and impose a penalty not in excess of $250 for each false certification.

(a)(2) Where an application for a rent adjustment pursuant to section 2522.4(a)(2) of this Title has been granted, and collection of such rent adjustment commenced prior to the issuance of the rent reduction order, the owner will be permitted to continue to collect the rent adjustment regardless of the effective date of the rent reduction order, notwithstanding that such date is prior to the effective date of the order granting the adjustment. [In addition, regardless of the effective date thereof, a rent reduction order will not affect the continued collection of a rent adjustment pursuant to section 2522.4(a)(1) of this Title, where collection of such rent adjustment commenced prior to the issuance of the rent reduction order.] However, an owner will not be permitted to collect any increment pursuant to section 2522.4(a)(8) that was otherwise scheduled to go into effect after the effective date of the rent reduction order.

(c) Except for complaints pertaining to heat and hot water or other conditions requiring emergency repairs, [B] before filing an application for a reduction of the legal regulated rent pursuant to subdivision (a) of this section, a tenant [must have] should [first] notify[ied] the owner or the owner's agent in writing of all the service problems listed in such application. A copy of the written notice to the owner or agent with proof of mailing or delivery [must] should be attached to the application. Applications should [may only] be filed with the DHCR no earlier than ten [10 and no later than 60] days after such notice is given to the owner or agent. Failure to provide such prior written notice will not be grounds for dismissal of the application. [Prior written notice to the owner or agent is not required for complaints pertaining to heat or hot water, or other conditions requiring emergency repairs.] Applications based upon a lack of adequate heat or hot water must be accompanied by a report from the appropriate city agency finding such lack of adequate heat or hot water.

(d)(2) Upon receipt of a copy of the tenant's complaint from the DHCR, an owner shall have twenty (20) [45] days in which to respond[.] if the tenant provided DHCR with the proof of the written notice to the owner. If the tenant did not provide proof of written notice to the owner, an owner shall have sixty (60) days in which to respond. If the tenant's complaint indicates that the tenant has been forced to vacate the premises, the owner shall have five (5) days to respond. If the complaint pertains to heat and hot water

or to a condition which in DHCR's opinion may require emergency repairs, the owner shall have twenty (20) days to respond. Nothing herein shall preclude DHCR from granting an owner's request for a reasonable extension of time to respond in order to establish that service problems have been repaired. [the rest of the sections remains the same]

14. 9 NYCRR §2523.5(c)(2) and (3) are amended to read as follows:

(2) Where the tenant fails to timely renew an expiring lease or rental agreement offered pursuant to this section, and remains in occupancy after expiration of the lease, such lease or rental agreement may be deemed to be in effect, for the purpose of determining the rent in an overcharge proceeding, where such deeming would be appropriate pursuant to Real Property Law section 232-c. In such event, the expiring lease will be deemed to have been renewed upon the same terms and conditions at the legal regulated rent, together with any guidelines adjustments that would have been applicable had the offer of a renewal lease been timely accepted. Unless otherwise dictated by Real Property Law section 232-c, [T]the effective date of the rent adjustment under the "deemed" renewal lease shall commence on the first rent payment date occurring no less than 90 days after such offer is made by the owner.

(3) [Notwithstanding] Where there is no deemed lease pursuant to the provisions of paragraph (2) of this subdivision, an owner may [elect to] commence an action or proceeding to recover possession of a housing accommodation in a court of competent jurisdiction pursuant to sections 2524.2(c)(1) and 2524.3(f) of this Title, where the tenant, upon the expiration of the existing lease or rental agreement, fails to timely renew such lease in the manner prescribed by this section.

15. 9 NYCRR §2524.3(a), (e), and (g) are amended to read as follows:

(a) The tenant is violating a substantial obligation of his or her tenancy other than the obligation to surrender possession of such housing accommodation, and has failed to cure such violation after written notice by the owner that the violations cease within 10 days; or the tenant has willfully violated such an obligation inflicting serious and substantial injury upon the owner within the three-month period immediately prior to the commencement of the proceeding. If the written notice by the owner that the violations cease within ten days is served by mail, then five additional days, because of service by mail, shall be added, for a total of 15 days, before an action or proceeding to recover possession may be commenced after service of the notice required by section 2524.2 of this Part.

(e) The tenant has unreasonably refused the owner access to the housing accommodation for the purpose of making necessary repairs or improvements required by law or authorized by the DHCR, or for the purpose of inspection or showing the housing accommodation to a prospective purchaser, mortgagee or prospective mortgagee, or other

person having a legitimate interest therein; provided, however, that in the latter event such refusal shall not be a ground for removal or eviction unless the tenant shall have been given at least five days' notice of the inspection or showing, to be arranged at the mutual convenience of the tenant and owner so as to enable the tenant to be present at the inspection or showing, and that such inspection or showing of the housing accommodation is not contrary to the provisions of the tenant's lease or rental agreement. If the notice of inspection or showing is served by mail, then the tenant shall be allowed five additional days to comply, for a total of ten days because of service by mail, before such tenant's refusal to allow the owner access shall become a ground for removal or eviction.

(g) For housing accommodations in hotels, the tenant has refused, after at least 20 days' written notice, and an additional five days if the written notice is served by mail, to move to a substantially similar housing accommodation in the same building at the same legal regulated rent where there is a rehabilitation as set forth in section 2524.5(a)(3) of this Part, provided:

16. 9 NYCRR § 2525.5 is amended to read as follows:

It shall be unlawful for any owner or any person acting on his or her behalf, directly or indirectly, to engage in any course of conduct (including but not limited to interruption or discontinuance of required services, or unwarranted or baseless court proceedings, or filing of false documents with or making false statements to DHCR) which interferes with, or disturbs, or is intended to interfere with or disturb, the privacy, comfort, peace, repose or quiet enjoyment of the tenant in his or her use or occupancy of the housing accommodation, or is intended to cause the tenant to vacate such housing accommodation or waive or not exercise any right afforded under this Code including the right of continued occupancy and regulation under the RSC and RSL.

17. 9 NYCRR § 2526.1(a)(2)(ii) is amended to read as follows:

(ii) subject to paragraphs (iii), (iv), (v), (vi), (vii), (viii) and (ix) of this paragraph, the rental history of the housing accommodation prior to the four-year period preceding the filing of a complaint pursuant to this section, and section 2522.3 of this Title, shall not be examined; [.] and [This subparagraph shall preclude] examination of a rent registration for any year commencing prior to the base date, as defined in section 2520.6(f) of this Title, whether filed before or after such base date shall be precluded. [Except in the case of decontrol pursuant to section 2520.11(r) or (s) of this Title, nothing contained herein shall limit a determination as to whether a housing accommodation is subject to the RSL and this Code, nor shall there be a limit on the continuing eligibility of an owner to collect rent increases pursuant to section 2522.4 of this Title, which may have been subject to deferred implementation, pursuant to section 2522.4(a)(8) in order to protect tenants from excessive rent increases.]

18. 9 NYCRR § 2526.1(a)(2) new subparagraphs (iii), (iv), (v), vi), (vii), (viii) and (ix) are added as follows:

(iii) Except in the case of decontrol pursuant to section 2520.11(r) or (s) of this Title, nothing contained in this section shall limit a determination as to whether a housing accommodation is subject to the RSL and this Code, nor shall there be a limit on the continuing eligibility of an owner to collect rent increases pursuant to section 2522.4 of this Title, which may have been subject to deferred implementation, pursuant to section 2522.4(a)(8) in order to protect tenants from excessive rent increases.

(iv) In a proceeding pursuant to this section the rental history of the housing accommodation pre-dating the base date may be examined for the limited purpose of determining whether a fraudulent scheme to destabilize the housing accommodation or a rental practice proscribed under section 2525.3 (b), (c) or (d) rendered unreliable the rent on the base date.

(v) An order issued pursuant to section 2523.4(a) of this Code remaining in effect within four years of the filing of a complaint pursuant to this section may be used to determine an overcharge or award an overcharge or calculate an award of the amount of an overcharge.

(vi) For the purpose of determining if the owner establishes by a preponderance of the evidence that the overcharge was not willful, examination of the rental history of the housing accommodation prior to the four-year period preceding the filing of a complaint pursuant to this section shall not be precluded.

(vii) For the purpose of determining any adjustment in the legal regulated rent pursuant to section 2522.8(a)(2)(ii) of this Title, or any adjustment pursuant to a guideline promulgated by the New York City Rent Guidelines Board that requires information regarding the length of occupancy by a present or prior tenant or the rent of such tenants, review of the rental history of the housing accommodation prior to the four-year period preceding the filing of a complaint pursuant to this section shall not be precluded.

(viii) For the purposes of establishing the existence or terms and conditions of a preferential rent under section 2521.2(c), review of the rental history of the housing accommodation prior to the four-year period preceding the filing of a complaint pursuant to this section shall not be precluded.

(ix) For the purpose of establishing the legal regulated rent pursuant to section 2526.1(a)(3)(iii) where the apartment was vacant or temporarily exempt on the base date, review of the rental history of the housing accommodation prior to the four-year period preceding the filing of a complaint pursuant to this section shall not be precluded.

19. 9 NYCRR § 2526.1(a)(3)(iii) is amended to read as follows:

Where a housing accommodation is vacant or temporarily exempt from regulation pursuant to section 2520.11 of this Title on the base date, the legal regulated rent shall be [the rent agreed to by the owner and the first rent stabilized tenant taking occupancy after such vacancy or temporary exemption, and reserved in a lease or rental agreement; or, in the event a lesser amount is shown in the first registration for a year commencing after such tenant takes occupancy, the amount shown in such registration, as adjusted pursuant to this Code.] the prior legal regulated rent for the housing accommodation, the appropriate increase under section 2522.8, and if vacated or temporarily exempt for more than one year, as further increased by successive two year guideline increases that could have otherwise been offered during the period of such vacancy or exemption and such other rental adjustments that would have been allowed under this Code.

20. 9 NYCRR § 2526.1(g) is re-lettered (h) and new subdivision (g) is added to read as follows:

(g) Where the rent charged on the base date cannot be determined, a full rental history from the base date is not provided, or the base date rent is the product of a fraudulent scheme to deregulate the apartment or a rental practice proscribed under 2525.3(c) and (d) has been committed, the rent shall be established at the lowest of the following amounts.

(1) the lowest rent registered pursuant to section 2528.3 of this Code for a comparable apartment in the building in effect on the date the complaining tenant first occupied the apartment; or

(2) the complaining tenant's initial rent reduced by the percentage adjustment authorized by section 2522.8 of this Code; or

(3) the last registered rent paid by the prior tenant (if within the four year period of review; or

(4) if the documentation set forth in paragraphs (1)through (3) of this subdivision is not available or is inappropriate, data compiled by the DHCR, using sampling methods determined by the DHCR, for regulated housing accommodations.

However, in the absence of collusion or any relationship between an owner and any prior owner, where such owner purchases the housing accommodations upon a judicial sale, or such other sale effected in connection with, or to resolve, in whole or in part, a bankruptcy proceeding, mortgage foreclosure action or other judicial proceeding, and no records sufficient to establish the legal regulated rent were made available to such purchaser, such orders shall establish the legal regulated rent on the date of the inception of the complaining tenant's tenancy, or the date four years prior to the date of the filing of an overcharge complaint pursuant to this section, whichever is most recent, based on

either:

(1) documented rents for comparable housing accommodations, whether or not subject to regulation pursuant to this Code, submitted by the owner, subject to rebuttal by the tenant; or

(2) if the documentation set forth in paragraph (1) of this subdivision is not available or is inappropriate, data compiled by the DHCR, using sampling methods determined by the DHCR, for regulated housing accommodations; or

(3) in the event that the information described in both paragraphs (1) and (2) of this subdivision is not available, the complaining tenant's rent reduced by the most recent guidelines adjustment.

This subdivision shall also apply where the owner purchases the housing accommodations subsequent to such judicial or other sale.

[(g)] (h) [re-lettered only – text remains the same]

21. 9 NYCRR §2527.9 is amended by adding new subdivisions (c) and (d) to read as follows:

(c) Unless otherwise expressly provided in this code, no additional time is required for service by mail of any notice, order, answer, lease offer or other papers, beyond the time period set forth in the code and such time period provided is inclusive of the time for mailing.

(d) Unless otherwise expressly provided in this code, no additional time is required to respond or to take any action when served by mail with any notice, order, answer, lease offer, or other papers, beyond the time period set forth in this code and the time to respond is commenced upon mailing of said notice, order answer, lease offer or other paper.

22. 9 NYCRR § 2528.3 (a) is amended to read as follows:

(a) An annual registration shall be filed containing the current rent for each housing accommodation not otherwise exempt, a certification of services, and such other information as may be required by the DHCR, pursuant to the RSL, RSC or section 2527.11.

23. 9 NYCRR § 2528.3 is amended to add paragraph (c) to read as follows:

(c) An owner seeking to file an amended registration statement for other than the present registration year must file an application pursuant to sections 2522.6(b) and Part 2527 of this code as applicable to establish the propriety of such amendment unless the

amendment has already been directed by DHCR or is directed by another governmental agency that supervises such housing accommodation.

24. 9 NYCRR § 2528.4(a) is amended to read as follows:

(a) The failure to properly and timely comply, on or after the base date, with the rent registration requirements of this Part shall, until such time as such registration is completed, bar an owner from applying for or collecting any rent in excess of: the base date rent, plus any lawful adjustments allowable prior to the failure to register. Such a bar includes but is not limited to rent adjustments pursuant to section 2522.8 of this title. The late filing of a registration shall result in the elimination, prospectively, of such penalty, and for proceedings commenced on or after July 1, 1991, provided that increases in the legal regulated rent were lawful except for the failure to file a timely registration, an owner, upon the service and filing of a late registration, shall not be found to have collected a rent in excess of the legal regulated rent at any time prior to the filing of the late registration. Nothing herein shall be construed to permit the examination of a rental history for the period prior to four years before the commencement of a proceeding pursuant to sections 2522.3 and 2526.1 of this Title.

25. 9 NYCRR § 2529.12 is amended to read as follows:

The filing of a PAR against an order, other than an order adjusting, fixing or establishing the legal regulated rent, shall stay such order until the final determination of the PAR by the commissioner. Notwithstanding the above, that portion of an order fixing a penalty pursuant to section 2526.1(a) of this Title, that portion of an order resulting in a retroactive rent abatement pursuant to section 2523.4 of this Title, that portion of an order resulting in a retroactive rent decrease pursuant to section 2522.3 of this Title, and that portion of an order resulting in a retroactive rent increase pursuant to section 2522.4(a)(2), (3), (b) and (c) of this Title, shall also be stayed by the timely filing of a PAR against such orders until the expiration of the period for seeking review pursuant to article seventy-eight of the civil practice law and rules [60 days have elapsed after the determination of the PAR by the commissioner]. However, an order granting a rent adjustment pursuant to section 2522.4(a)(2) of this Title, against which there is no PAR filed by a tenant that is pending, shall not be stayed. Nothing herein contained shall limit the commissioner from granting or vacating a stay under appropriate circumstances, on such terms and conditions as the commissioner may deem appropriate.

26. 9 NYCRR § 2530.1 is amended to read as follows:

A proceeding for judicial review pursuant to article 78 of the Civil Practice Law and Rules may be instituted only to review a final order of the DHCR pursuant to section 2526.2(c)(2) of this Title; or to review a final order of the commissioner pursuant to section 2529.8 of this Title; or after the expiration of the 90-day or extended period within which the commissioner may determine a PAR pursuant to section 2529.11 of this

Title, and which, therefore, may be "deemed denied" by the petitioner. The petition for judicial review shall be brought in the Supreme Court in the county in which the subject housing accommodation is located and shall be served upon the DHCR and the Attorney General. A proceeding for judicial review of an order issued pursuant to section 2526.2(c)(2) or section 2529.8 of this Title shall be brought within 60 days after the issuance date of such order. Issuance date is defined as the date of mailing of the order. A party aggrieved by a PAR order issued after the 90-day or extended period of time within which the petitioner could deem his or her petition "denied" pursuant to section 2529.11 of this Title, shall have 60 days from the date of such order to commence a proceeding for judicial review, notwithstanding that 60 days have elapsed after such 90-day or extended "deemed denial" period has expired. Service of the petition upon the DHCR shall be made by either: [the rest of the section remains the same]

27. 9 NYCRR § 2531.2 is amended to add a new paragraph (e) as follows:

(e) No such ICF may be served on any apartment where the tenant is the recipient of a Senior Citizen Rent Increase Exemption (SCRIE) or a Disability Rent Increase Exemption (DRIE).

CONSOLIDATED - REGULATORY IMPACT STATEMENT SUMMARY

1. STATUTORY AUTHORITY:

The Administrative Code of the City of New York, (also known as "the Rent Stabilization Law") (RSL) §26-511(b) provides authority to the Division of Housing and Community Renewal ("DHCR") to amend the implementing regulations (also known as "the Rent Stabilization Code") ("RSC"); Section 44 of Chap. 97, Part B of the Laws of 2011 ("the Rent Law of 2011") further empowers DHCR to promulgate rules and regulations to implement and enforce all provisions of the Rent Law of 2011 and any law renewed or continued by the Rent Law of 2011 which includes the RSL.

RSL§§ 26-504.2(b); 26-511(c); 26-511(d); 26-514; 26-516(b); and 26-517 also provide specific statutory authority governing the subject matter of many of the proposed amendments.

2. LEGISLATIVE OBJECTIVES

The overall legislative objectives are contained in Sections 26-501 and 26-502 of the RSL and Section 2 of the Emergency Tenant Protection Act ("ETPA"). Because of a serious public emergency, the regulation of residential rents and evictions is necessary to prevent the exaction of unreasonable rents and rent increases and to forestall other disruptive practices that would produce threats to public health, safety and general welfare. DHCR is specifically authorized by RSL §26-511(c)(1) to promulgate regulations to protect tenants and the public interest, and is empowered by the Rent Law of 2011 to promulgate regulations to implement and enforce new provisions added by the Rent Law of 2011 as well as any law continued or renewed by the Rent Law of 2011 which includes the RSL.

3. NEEDS AND BENEFITS

DHCR has not engaged in an extensive amendment process with respect to these regulations since 2000. Since that time there has been significant litigation interpreting, not only these regulations, but the laws they implement. In addition, DHCR has had twelve years of experience in administration which informs this process so does its continuing dialogue during this period with owners, tenants, and their respective advocates. This dialogue is not only through its Office of Rent Administration (ORA) which engages in close to one hundred forums and meetings on an annual basis, but through the Tenant Protection Unit (TPU) which has been created to investigate and prosecute violations of the RSL.

DHCR underwent the regulatory process for the promulgation of amendments expressly required by the Rent Law of 2011 which generated further comments.

This specific promulgation process was also preceded by a mass email outreach to known stakeholders in the field to solicit additional comments and suggestions.

The needs and benefits of some of the specific modifications proposed are highlighted below.

a. Addition of TPU definition

Its inclusion demonstrates DHCR's commitment to the TPU and proactive enforcement of the RSL.

b. Codification of "Exit Registrations"

This new provision in the regulation is taken from RSL §26-504.2(b) and provides for the service of appropriate notices on a tenant in an apartment alleged to be exempt from the RSL because of high rent vacancy deregulation. With the passage of the Rent Law of 2011 which

expressly gave DHCR additional authorization to enforce the RSL, inclusion of this provision in the regulations is appropriate.

Greater oversight is demonstrably necessary in light of discrepancies among the registrations filed; those that are no longer being filed with high rent vacancy deregulation as the stated reason; and the number of units simply failing to register but without explanation.

Tying compliance into the current registration system provides an appropriate enforcement mechanism.

c. Preferential Rent Review

There exists a compelling need to adopt a new regulation which requires owners, in situations where a tenant is initially charged a preferential lesser rent and then charged a higher rent, to demonstrate the legitimacy of that higher rent. Close to twenty-five percent of the rents in New York City are listed in DHCR's registration data-base as having preferential rents.

The present regulations contain incorrect legal standards. Further, courts have also acknowledged that the "4 year rule" of review gives way in areas where there is a continuing obligation to conform one's conduct to standards created by other provisions of the Rent Stabilization Law.

The present rule of time-limiting review to four years of preferential rent (regardless of when the higher rent was theoretically assumed to be proper, but never really established), places tenants in an untenable situation that discourages the exercise of their right to obtain a proper rent history.

d. Submetering costs and MCI eligibility

This new provision properly recalibrates what equipment is MCI eligible with respect to submetering.

e. "C" violations and MCI's

DHCR will now be conducting independent reviews of New York City's database for immediately hazardous violations which will assure uniform and consistent enforcement of this standard governing MCI's.

f. Enhanced DRIE and SCRIE Protections

Since the last code review, the State of New York adopted a Disability Rent Increase Exemption (DRIE) for eligible low income disabled tenants similar to the existing Senior Citizen Rent Increase Exemption (SCRIE) available to the low income elderly.

DHCR regulations, which already prohibit the implementation of electrical submetering for SCRIE recipients, will be extended to disabled tenants receiving DRIE.

DHCR also is amending its regulations to exempt both SCRIE and DRIE tenants from the high income/high rent deregulation procedures set forth in the RSL as those tenancies have already been vetted through other government programs to have income far below that required for deregulation.

g. Lease Rider Requirements and Enforcement

DHCR data and experience shows that Individual Apartment Improvement (IAI) increases upon vacancy make up one of the largest components of increases under the RSL. Paradoxically, a tenant may now only secure meaningful information or review of the propriety of these increases by filing an overcharge complaint before DHCR or a Court. Providing more information in the vacancy lease rider itself, as well as affording tenants the

ability to demand supporting documentation directly from the owners without Court or DHCR intercession, will provide a cost effective alternative to such proceedings.

h. Codification of the overcharge "default formula"

DHCR uses this kind of formula for setting rents where an owner fails to provide appropriate documentation to establish the legal rent in an overcharge proceeding or where there was an illusory prime tenancy or a fraudulent scheme to deregulate the housing accommodation. However, the regulations themselves, did not incorporate it.

i. Strengthening the process for service complaints

The present regulation provides that tenants are required, prior to filing a service complaint with DHCR, to send a certified letter to the owner regarding the service deficiency.

More than a decade of implementation has led DHCR to the conclusion that the rule has often become a hurdle that suppresses the filing of complaints by the most vulnerable tenants.

The DHCR amendments also bar those parts of MCI increases slated for future collection, where there is a subsequently issued service reduction order. Precluding the collection of these future 6% MCI increments until an outstanding service deficiency is cured, is consistent with the plain language of the RSL, which bars collection of increases where there is a failure to provide services and will aid DHCR in incentivizing prompt restoration of services.

Similarly vacancy and longevity increases will no longer be allowed where there is an outstanding service reduction.

j. Deemed Leases

A 2000 codification of "deemed lease" rules apparently allowed owners to claim that they could extract the full rent from tenants for a new lease term where a tenant may have remained only for a short period prior to moving out. DHCR is returning to the more traditional and appropriate use of such "deemed leases" in overcharge proceedings.

k. Harassment Definition

This regulation expands the definition of "harassment" to reflect some of the more up-to-date schemes to deprive tenants of their legitimate rights as rent stabilized tenants. Not every harassing act is designed to create a vacancy, but can include intimidating the tenant in place to preclude the legitimate exercise of such rights. These actions can include false and illegitimate filings before DHCR

l. Codification of Certain Four Year Rule Exceptions

These provisions seek to set forth, in one place, a more comprehensive list of areas where, to date, by statute, case law or regulation, the "four year rule" that ordinarily governs rent and overcharge review, has been held not to be applicable and changes the rules with respect to preferential rents and "vacancy on the base date" cases.

The preferential rent change has already been explained. With claims of vacancies on the base date, it is more appropriate to test the validity of a present rent against these usual standards of overcharge review, rather than simply rubber-stamping any rent that is collected because of an alleged fortuity of a vacancy.

m. Amended registration and registration requirements

DHCR had accepted for filing, amended annual registrations at any time for any year. These amendments, if treated similarly to "late" registrations under the RSL, could carry a substantial penalty, but no penalty has been imposed.

The number of such amendments is significant and has the effect of corrupting the purpose of DHCR's registration data base as a contemporaneously created history of rents. Now, such amendments, where appropriate, would be reviewed and regulated by DHCR.

DHCR is also amending the registration provisions to appropriately reflect DHCR's authority and ability to change the registration forms themselves each year to capture data appropriate for the administration and enforcement of the RSL and RSC.

n. Freeze of Vacancy Bonuses based on Failure to Register

This change will conform DHCR's practice to this statutory penalty for failing to properly register.

4. COSTS

The regulated parties are tenants and owners. There are no additional direct costs imposed as costs of regular administration are capped at $10 per unit per year. The amended regulations do not impose any new responsibility upon state or local government. Owners will need to be initially more vigilant to assure their compliance with these changes, but such costs are already a generally-accepted expense of owning regulated housing. There are increased penalties in some instances if the regulations are violated, but the costs of conforming present business practices to the change in standards is not substantial. In addition, these consequences are largely consistent with existing case law or otherwise necessary to secure compliance. DHCR has made a significant effort to assure a safe harbor

or alternatives from the more dire consequences for owners who are operating in good faith and in substantial compliance.

5. LOCAL GOVERNMENT MANDATES

No new program, service, duty or responsibility is imposed on local government.

6. PAPERWORK

The amendments may, in a limited fashion, increase the paperwork burden. There will be additional costs associated with filings and the need for additional record retention, but these costs are comparably minimal and are of a kind with already existing registration and record keeping requirements.

Any particularized specific claims that a changed regulation may create hardship or inequity can and will be handled in the context of the administrative applications.

7. DUPLICATION

No known duplication of State or Federal requirements except to the extent required by law.

8. ALTERNATIVES

DHCR considered a variety of alternatives to many of these new rules. The alternative of continuing the rule presently in place for all of these changes was considered and rejected.

Other alternatives suggested, but rejected included; treating amended registrations as the equivalent of late registration, creating even more stringent pre-requirements for MCI filings with respect to violation clearance, and even more severe penalties for notice violations with respect to exit registrations and the provision of the lease rider. Continuation of the present lease rider rule, requiring an order from DHCR directing that such a rider be provided prior to any penalty, was not a real option as it effectively limits an owner's necessary compliance

with lease rider requirements to a subset of tenants already sufficiently knowledgeable to file a complaint with DHCR.

9. FEDERAL STANDARDS

Do not exceed any known minimum Federal standards.

10. COMPLIANCE SCHEDULE

It is not anticipated that regulated parties will require any significant additional time to comply with the proposed rules.

CONSOLIDATED - REGULATORY IMPACT STATEMENT

1. STATUTORY AUTHORITY:

Section 26-511(b) of the Administrative Code of the City of New York, (also known as "the Rent Stabilization Law") (RSL) and RSL section 26-518(a) provide authority to the Division of Housing and Community Renewal ("DHCR") to amend the implementing regulations (also known as "the Rent Stabilization Code") ("RSC"); Section 44 of Chap. 97, Part B of the Laws of 2011 ("the Rent Law of 2011") further empowers DHCR to promulgate rules and regulations to implement and enforce all provisions of the Rent Law of 2011 and any law renewed or continued by the Rent Law of 2011 which includes the RSL.

The RSL also provides specific statutory authority governing the subject matter of many of the proposed amendments: RSL §26-504.2(b) provides for notice and information to tenants upon deregulation and service of an "exit" rent registration identifying such apartments as now exempt from regulation. RSL §26-517 provides for rent registration generally. RSL §26-511(c)14 provides for "preferential rents" and the subsequent charging of a legal rent, tied also to its use to meet deregulation rent thresholds. RSL §26-511(c)(2) mandates promulgation of a code that requires owners not to exceed the level of lawful rents. RSL §26-511(c)14 requires owners at the option of the tenant to grant one or two year vacancy and renewal increases. RSL §26-511(c)(5) allows the RSC to include guidelines to assure that the levels for rent increase will not be subverted or made ineffective. RSL §26-511(c)(6)(b) provides that DHCR may establish criteria whereby it may act upon major capital improvement ("MCI") applications. RSL §26-511(d) provides for a rent stabilized lease rider in a form promulgated by DHCR. RSL §26-516(b) empowers DHCR to enforce the RSL and the RSC by issuance of appropriate orders, issuance of overcharge

determinations, and to establish treble damages. RSL §26-516 provides that in addition to any other remedy provided by law, any tenant may apply to DHCR for a reduction of the rent in effect prior its most recent adjustment and an order requiring such services to be maintained; that DHCR shall reduce the rent to such level where an owner has failed to maintain such services; that such owner "shall also be barred from applying for or collecting any further rent increases"; and that the restoration of such services shall result in the prospective elimination of such sanctions.

2. LEGISLATIVE OBJECTIVES

The overall legislative objectives are contained in Sections 26-501 and 26-502 of the RSL and Section 2 of the Emergency Tenant Protection Act ("ETPA"). The Legislature has determined that, because of a serious public emergency, the regulation of residential rents and evictions is necessary to prevent the exaction of unreasonable rents and rent increases and to forestall other disruptive practices that would produce threats to public health, safety and general welfare. The legislation also has an objective to assure that any transition from regulation to normal market bargaining with respect to such landlords and tenants is administered with due regard to these emergency conditions.

DHCR is specifically authorized by RSL §26-511(c)(1) to promulgate regulations to protect tenants and the public interest, and is empowered by the Rent Law of 2011 to promulgate regulations to implement and enforce new provisions added by the Rent Law of 2011 as well as any law continued or renewed by the Rent Law of 2011. These laws include the ETPA, the RSL, and the City and State Rent Control Laws.

3. NEEDS AND BENEFITS

DHCR has not engaged in an extensive amendment process with respect to these regulations since 2000. Since that time there has been significant litigation interpreting, not only these regulations, but the laws they implement. In addition, DHCR has had twelve years of experience in administration which informs this process, as does its continuing dialogue during this period with owners, tenants, and their respective advocates.

DHCR personnel within its Office of Rent Administration (ORA) engages in close to one hundred forums and meetings on an annual basis where the administration and implementation of these laws are discussed.

In the last year this information gathering process has been enhanced through several additional actions taken by DHCR.

First, DHCR created the Tenant Protection Unit (TPU), a unit designated by the Commissioner to investigate and prosecute violations of the ETPA, the RSL and the City and State Rent Laws. TPU, itself, has met with the various stakeholders in an effort to ascertain what issues and concerns impinge on the owner and tenant community affected by these regulations.

Second, DHCR underwent the regulatory process for the promulgation of amendments expressly required by the Rent Law of 2011. That process generated significant comments on other issues relating to the Rent Stabilization Code.

Third, this specific promulgation process was preceded by a mass email outreach to known stakeholders in the field to solicit even further comments and suggestions.

The needs and benefits of some of the specific modifications proposed are highlighted below.

a. Addition of TPU.

Although the existing regulations already provide for delegation of functions under RSL, the inclusion of TPU as a specific term within the regulations, demonstrates DHCR's commitment to the TPU and proactive enforcement of the RSL.

b. Codification of "Exit Registrations."

This new provision in the regulation is taken almost verbatim from RSL §26-504.2(b), a provision of the RSL added by the New York City Council pursuant to Local Law No. 12 of 2000. It provides for the service of appropriate notices on a tenant who resides in an apartment that an owner asserts is no longer subject to the RSL because of high rent vacancy deregulation. The enforcement of this section without a corresponding regulatory provision has been inconsistent and problematic. Although Courts have denied increases without compliance with its provisions because of its initial enactment by the City Council, there was some question as to the ability to integrate it into a DHCR enforcement paradigm as a portion of the Rent Laws. With the passage of the Rent Law of 2011 which expressly gave DHCR authorization to enforce any such law, the state legislature resolved this matter, making its inclusion of this provision in the regulations appropriate.

This greater oversight is long overdue. In New York City in 2011, 14,175 exit registrations were filed; in 2010, 16,907 units; and in 2009, 18,617. Those owners listing high rent vacancy deregulation as the reason was a lesser subset; on an annual basis: 11,364 units in 2011, 12,911 units in 2010 and 13,557 units in 2009. However, the number of units leaving the system (and without explanation) seems to be higher. In 2009, annual registrations (without initial registrations) were filed for 865,374 apartments. In 2011, 771,648 were filed, demonstrating that 93,726 units left the registration system. TPU and

ORA have an ongoing program to ascertain why apartments are not being registered. This program's inquires have resulted in the re-registration of 1,688 buildings with 16,969 apartments as of March 2013, all leaving a significant gap. Obviously there needs to be a more regularized reporting requirement with consequences rather than the present system which has no enforcement mechanism.

Tying compliance into the current registration system will provide an enforcement mechanism subject to the same curative provisions used in the applicable registration provisions in the RSL. The exit registrations, themselves, give owners a contemporaneous benchmark which will aid them in legitimate efforts to contemporaneously establish the propriety of high rent/vacancy deregulation and help them defend against claims by tenants that such deregulations are part of a fraudulent scheme as defined by the Court of Appeals in Grimm v DHCR, 15 N.Y.3d 358, 912 N.Y.S.2d 491 (1st Dept. 2010). Conversely, tenants will have greater awareness of their rights and be able to more accurately ascertain whether their apartment was properly deregulated.

c. Preferential Rent Review

Courts have ruled that the present regulations are incorrect to the extent that they assume that the preferential rent may be preserved exclusively by the filing of a registration or that the passage of more than four years precludes review as to whether there is a truly preferential rent.

Courts have also acknowledged that the "4 year rule" gives way in areas where there is a continuing obligation to conform one's conduct to standards created by other provisions of the Rent Stabilization Law.

Preferential rent is one of those areas. There exists a compelling need to adopt a new regulation which requires owners, in situations where a tenant is initially charged a preferential lesser rent and then charged a higher rent, to demonstrate the legitimacy of that higher rent.

Clearly there can be no conceivable way to check whether that "previously established" higher rent was proper without first examining the lease preceding it, and any other increases that went into creating that higher rent, even if such increases are more than four years before a complaint is filed. No statutory proscription exists to review that higher rent because of the passage of four years.

Time-limiting that review to four years regardless of when the higher rent was theoretically assumed to be proper, but never really established, places tenants in an untenable situation that discourages the exercise of their right to obtain a proper rent history. A tenant would need to decide, if the tenant is not paying this higher rent, whether to seek an immediate review of the higher rent or to hold off on seeking a rental review and let the time period for review run out and risk paying that higher rent at a later date without review. Alternatively, in seeking that review, the tenant would risk no longer being treated as a "preferred" by the owner upon lease renewal. Filing now may be a "lose" situation; failure to file may be a "lose" situation later.

As for owners, the actual benefits inuring to them that have been advanced as rationales behind these preferences are questionable when weighted against the actual data. Either owners, it is explained, are providing discounts to those they perceive will be good tenants; or in that certain boroughs, the rent stabilized rents will actually exceed market rents.

Neither explanation comes close to explaining the scope and prevalence of such preferential rents, given the legislature's findings that government intervention is necessary to prevent the exaction of even higher rents and rent increases, and that owner advocacy groups routinely assert that the legal rents under this system deprive owners of an appropriate return. On the other hand, in Grimm v. DHCR, supra, the Court of Appeals indicated that such claims of a discount may well be part of a fraudulent scheme to deregulate an apartment.

Close to twenty-five percent of the rents, 203,408 apartments in New York City, according to DHCR registration data-base, are listed as of May 2012 as having preferential rents (814,500 were registered), and there is no discernable pattern to support the rationale that these are simply lower rents in less "hot" boroughs. These preferential rents are equally prevalent in each of the four boroughs of New York City which have the majority of rent regulated units, with the largest number of preferential rents in Manhattan, cutting against the proffered explanation that preferential rents are an out-of-Manhattan phenomenon. As reported by DHCR to the NYC Rent Guidelines Board, as of May 16, 2012, there are 42,537 preferential rents registered in the Bronx, 50,406 in Brooklyn, 47,669 in Queens and 60,778 in Manhattan.

d. Submetering costs and MCI eligibility

This new provision properly recalibrates what equipment is MCI eligible with respect to submetering so that tenants are not charged for that part of a submetering installation that primarily benefits owners.

Submetering promotes energy efficiency by placing the costs of electrical usage as well as its future fluctuations directly on the tenants rather than filtering those increases through

the RSL system of controlling rent increases. Thus, "market risks" related to energy costs are essentially shifted from the owners to their tenants with the goal of making tenants more likely to conserve and budget their electrical usage. Tenants do receive a corresponding decrease from their legal rent when DHCR approves submetering, based on a formula that will reflect the estimated current cost of such electrical usage. However, allowing an MCI rent increase based on the installation of the device that enables such submetering, immediately results in less of a rent decrease than that formula provides. Other possible alternatives, such as barring submetering or continuing the present formulation, are not as appropriate. The regulatory amendment still promotes the energy conservation consistent with what DHCR and its predecessor rent agencies have done for forty years, but more appropriately apportions some of the costs between owner and tenant. Accordingly, DHCR will still allow increases for rewiring and electrical upgrades, but not for the submetering equipment itself.

e. "C" violations and MCI's

The presence of an immediately hazardous "C" violation leads to the denial of an MCI. Weinreb Management v. DHCR, 295 A.D.2d 232, 744 N.Y.S.2d 321 (1st Dept. 2002); 370 Manhattan Avenue Co., LLC v. DHCR, 11 A.D.3d 370, 783 N.Y.S.2d 38 (1st Dept. 2004); 251 West 98th Street Owners LLC v. DHCR, 276 A.D.2d 265, 713 N.Y.S.2d 729 (1st Dept. 2000)

Although not so limited by its regulations, as a matter of practice, DHCR was not conducting any independent review of the New York City's Violation Database, but only reviewed such violations where they were otherwise brought to DHCR's attention.

This practice, itself, has already been mitigated by subsequent case law, where the Appellate Division noted that others than the affected tenant themselves could legitimately bring such violations to DHCR's attention. Fieldbridge Associates LLC v. DHCR, 87 A.D.3d 598, 927 N.Y.S.2d 918 (1st Dept. 2011)

Since the promulgation of this Code provision in 1987, the New York City Violation database has become readily available online, and New York City has implemented numerous efficiencies to assure its data is current.

This new codification benefits owners and tenants. Tenants will obtain uniform and consistent enforcement of the already existing regulatory standards governing MCI's. For both owners and tenants, the modification in procedure to be applied after the effective date of the regulatory change is further coupled with a specific test period which provides all parties going forward with greater certainty as to whether specific violations will impinge on the grant of the MCI itself, or instead be the subject of a subsequent rent decrease application.

f. Enhanced DRIE and SCRIE Protections

Since the last code review, the State of New York adopted a Disability Rent Increase Exemption (DRIE) for eligible low income disabled tenants similar to the existing Senior Citizen Rent Increase Exemption (SCRIE) available to the low income elderly.

DHCR regulations, which already prohibit the implementation of electrical submetering for SCRIE recipients, will be extended to disabled tenants receiving DRIE.

DHCR also is amending its regulations to exempt both SCRIE and DRIE tenants from the high income/high rent deregulation procedures set forth in the RSL. As those tenancies have already been vetted through other government programs to have income far below that

required for deregulation, the procedure, if invoked by the owners, cannot obtain any meaningful result. It simply creates unneeded stress on these vulnerable populations. Even worse, it may result in the inappropriate loss of apartments through these senior or disabled tenants failing to adequately respond to mechanically generated notices as part of the process.

g. Lease Rider Requirements and Enforcement

DHCR data and experience shows that Individual Apartment Improvement (IAI) increases upon vacancy make up one of the largest components of increases under the Rent Stabilization Law. Paradoxically, because the improvements do not require tenant consent, they are among the least regulated. A tenant may only secure meaningful information or review of the propriety of these increases by filing an overcharge complaint before DHCR or a Court. This is a somewhat cumbersome and costly process for both owners and tenants. Providing more information in the vacancy lease rider itself, as well as affording tenants the ability to demand supporting documentation directly from the owners without Court or DHCR intercession, will provide a cost effective alternative to such proceedings. Greater transparency in how vacancy rents are set, will allow greater self-policing and encourage voluntary compliance with the Rent Stabilization Law. The change, itself, is not a significantly increased burden on owners as owners are already required to retain this information and make it available to DHCR, or face severe penalties.

The Rent Stabilization Code, itself, used to contain severe penalties for failing to provide such lease riders and Courts have denied increases that an owner seeks to secure without an appropriate lease. DHCR designed the consequences for non-compliance to be similar to those for failing to register, which contains ways to recognize a variety of mitigating circumstances, and also time-limits the period for these direct demands for information.

h. Codification of the overcharge “default formula”

DHCR and its predecessor agency have used this type of formula for setting rents where an owner fails to provide appropriate documentation to establish the legal rent in an overcharge proceeding. The same test is also used where there was an illusory prime tenancy or a fraudulent scheme to deregulate the housing accommodation.

However, the regulations, themselves, did not incorporate the formula. Instead, a modified formula was included in the RSL by the 2000 amendments that is available only in very limited circumstances, largely for buyers in foreclosure proceedings. The inclusion of this limited formula but not the actual rule itself has caused confusion.

i. Strengthening the process for service complaints

The present regulation provides that tenants are required, as a precondition to filing a service complaint with DHCR, to send a certified letter to the owner 10 to 60 days prior to filing a complaint regarding the service deficiency. A failure to append the letter to the DHCR complaint, results in dismissal of the application.

This rule, enacted as part of the Code in 2000, had, as its goal, fostering voluntary compliance by owners to provide required services.

More than a decade of implementation has led DHCR to the conclusion that, while positive interaction between owners and tenants regarding repairs without DHCR’s intervention needs to be encouraged, the dismissal of meritorious service complaints on this basis is an even greater problem. The rule has often become a hurdle that suppresses the filing of complaints by the most vulnerable tenants.

DHCR, as part of its service reduction procedures, already recognizes and gives owners notice and an opportunity to cure service complaints prior to the issuance of rent reduction

orders. Even after such reductions, DHCR has a process to restore the rents. Nonetheless, extensive numbers of rent reduction cases are granted and applications for rent (service) restoration need to be filed.

For calendar year 2009, there were 2,469 rent reduction applications properly filed based on failure to provide services and 1,013 rent reductions orders issued. For the calendar year 2010, there were 2,432 applications filed and 1,048 rent reduction orders issued. For the calendar year 2011 there were 2,342 applications filed and 1,156 rent reduction orders issued.

Rent restoration applications, after some lag time, eventually roughly match rent reductions ordered. For the calendar year 2009, there were 1,165 restoration applications filed. For the calendar year 2010, there were 1,146 applications filed. For the calendar year 2011, there were 1,141 applications filed. (Significantly, over the three year period, more than 25% of the rent (service) restoration orders found services not restored.)

DHCR has recently implemented its “code red” processing whereby DHCR, on the most egregious service issues notifies owners of the service reduction complaint and through the inspection process will assist owners in getting access to apartments, if necessary. The experience in this type of case processing is similar to that of filings where owners receive written notification of a service reduction by the tenant, in that in over 40% of the cases, rent reduction orders are issued due to the failure of owners to make repairs. The difference in code red case processing is that because no initial notice is required as a pre-requisite to filing with DHCR, action is taken much more quickly (orders are generally issued within 61 days of filing) when compared to standard processing which requires that the case may only be filed within a time period of 10 to 60 days after a tenant notifies an owner.

On the other hand, staff analysis shows that based on this pre-letter request, over sixteen percent of the service complaints that tenants try to file are rejected in whole based on the failure to send a "pre-letter" with another fifteen percent rejected in part where that letter does not raise each service problem upon which a DHCR complaint is then filed or there was another defect with the filing. Approximately seventy-five percent of rejected complaints are never re-filed. While a portion of these cases may have been addressed by the owners, the large percentage of cases granted after owners have been given notice suggests that is not the situation. Staff review of a significant sampling of the rejected complaints has also led to the conclusion that the effect of this rule falls disproportionately on complainants with limited English language proficiency as well as those identified as elderly and infirm. This disproportionate impact unfortunately makes sense, as such tenants are being called upon to navigate a technically dense requirement without the aid and/or intervention of the government as a precondition to obtaining actual government help.

Even where such notice is, in DHCR's opinion, appropriately given, there has been some owner movement in actual practice to turn the notice into a strict pleading requirement, to defeat service complaints, on the basis of" improper service", or that the tenant failed to use the appropriate legal name for the owner.

The proposed DHCR modification still encourages direct owner and tenant interaction to secure repairs and will recognize, as part of its case-by-case processing, that time, if reasonable under the circumstances, may be afforded to owners to provide necessary repairs.

However, the continuation of the regulation in its present form is untenable and unconscionable.

The DHCR amendments also bar those parts of MCI increases that have a future effective date, where there is a subsequently issued service reduction order with an effective date which is prior to the date slated for MCI increase collection. Precluding the collection of these future 6% MCI increments until an outstanding service deficiency is cured, is consistent with the plain language of the RSL, which bars collection of increases where there is a failure to provide services and will aid DHCR in incentivizing prompt restoration of services.

Similarly vacancy and longevity increases will no longer be allowed where there is an outstanding service reduction. DHCR's prior position to the opposite effect was consistent with its understanding that a failure to otherwise comply with the RSL did not affect the ability to collect these increases. However, the Appellate Division has now ruled otherwise. See, Bradbury v. 342 West 30th Street Corporation, 84 A.D.3d 681, 924 N.Y.S.2d 349 (1st Dept. 2011).

j. Deemed Leases

The use of "deemed leases" has an extensive history in overcharge cases and has been used in the past to shield owners from unwarranted overcharge awards where a tenant may not have executed a renewal lease, but remained for the entire term of such lease without eviction and paid the increase attendant on renewal. However, the 2000 codification of the deemed lease rule instead allowed owners to claim that the rule could be used as a sword, to extract the full rent from tenants for a complete lease term where a tenant may have remained only for a short period prior to moving out. The Appellate Division, 2nd Department, in Samson Mgt. v. Hubert, 92 A.D.3d 932, 939 N.Y.S.2d 138 (2nd Dept. 2012), found that the 2000 regulatory provision, if it was indeed seeking to give a legal gloss to such behavior,

would be contrary to law. Hence, DHCR is amending its regulation to conform to the Court's decision in Samson Mgt. v. Hubert and return to the traditional usage of "deemed leases."

k. Harassment Definition

This regulation expands the definition of "harassment" to reflect some of the more up-to-date schemes to deprive tenants of their legitimate rights as rent stabilized tenants. Not every harassing act is designed to create a vacancy, but can include intimidating the tenant in place to preclude the legitimate exercise of such rights. These actions can include false and illegitimate filings before DHCR

l. Codification of Certain Four Year Rule Exceptions

These provisions seeks to set forth, in one place, a more comprehensive list of areas where, to date, by statute, case law or regulation, the "four year rule" that ordinarily governs rent and overcharge review, has been held not to be applicable. The list should serve as a useful guide to owners and tenants. The list contains two areas expressly modified by these regulations: preferential rents and vacancy on the base date cases.

The needs and benefits for the change with respect to preferential rents have already been explained.

As to vacancies, DHCR, prior to this amendment, took the position that if an apartment was vacant or exempt (usually by owner occupancy) on the base date (four years prior to the filing of an overcharge complaint), DHCR was precluded from determining whether the present tenant's rent was legal. Rather than finding the correct rent by calculating what would have been the proper increase for that period, as it would have if the vacancy or exemption was within four years, DHCR would dismiss the complaint. Although this prior

policy was upheld, experience has demonstrated that this is an area where it is more appropriate to test the validity of a present rent against these usual standards, even if these standards required rental information that occurred before the base date, rather than simply rubber-stamping any rent that is collected.

The lack of a proper base date lease (which is what the owner would be asserting) is the identical lack of proof that could otherwise lead to use of the default method in setting the rent. In fact, there have been owners who have inappropriately used the "vacancy on base date" defense in an effort to defeat such legitimate review.

The present rule is not required by statute as the Appellate Division, First Department, has already reviewed information before the base date where there was such a vacancy, but because the owner claimed the rent was now also unregulated, it did not fall within the parameters of what had been the existing regulation. Gordon v. 305 Riverside Corp., 93 A.D.3d 596, 941 N.Y.S.2d 93 (1st Dept. 2012). There is ongoing litigation over the applicability of the four year rule to Roberts litigation; given that such litigation is still ongoing and not finally determined, it is not contained in this regulation.

m. Amended registration and registration requirements

Although not provided for by regulation, through its own inaction by not rejecting them, DHCR had allowed owners to file "amended" registrations at any time for any year. These amendments, if treated similarly to "late" registrations under the RSL, could carry a substantial penalty, but no penalty has been imposed.

The number of such amendments is significant. In 2009, amended registrations for 1,129 buildings representing 5,958 apartments were filed; in 2010, amended registrations for 1,259 buildings representing 8,597 apartments were filed; in 2011, amended registrations for 402

buildings representing 4,579 apartments were filed. The unsupervised inclusion of amendments in the registration system has the effect of corrupting the purpose of DHCR's registration data base as a contemporaneously created history of rents. An amended registration was cited by the Court of Appeals in Grimm v. DHCR, supra, as one of the indicia of a fraudulent scheme to deregulate a housing accommodation.

The new DHCR rule would still allow for such amendments, where appropriate, but would ensure that the process was regulated by itself or another governmental agency, and where appropriate, assure there was also notice to the present tenant, who could comment on the owner's rationale for seeking such amendment.

DHCR is also amending the registration provisions to appropriately reflect DHCR's authority and ability to change the registration forms themselves each year to capture data appropriate for the administration and enforcement of the RSL and RSC.

n. Freeze of Vacancy Bonuses based on Failure to Register

This change will conform DHCR's practice to the Court's interpretation of this statutory penalty for failing to properly register.

o. Housing Development Fund Companies

This provision provides an appropriate rent-setting mechanism for Housing Development Fund Companies upon a foreclosure which are not presently covered by DHCR's deconversion regulations and balances the need for an economic rent with the low income nature of these tenancies.

4. COSTS

The regulated parties are residential tenants and the owners of the rent stabilized housing accommodations in which such tenants reside. There are no additional direct costs imposed

on tenants or owners by these amendments as owner direct costs are capped at $10 per unit per year. The amended regulations do not impose any new program, service, duty or responsibility upon any state agency or instrumentality thereof, or local government. Owners of regulated housing accommodations will need to be initially more vigilant to assure their compliance with these changes. Compliance costs are already a generally-accepted expense of owning regulated housing. There are increased penalties in some instances if the regulations are violated, but the costs of conforming present business practices to the change in standards is not substantial. In addition, these consequences are largely consistent with existing case law or otherwise necessary to secure compliance. DHCR has made a significant effort to assure a safe harbor or alternatives from the more dire consequences for owners who are operating in good faith and in substantial compliance. Tenants will not incur any additional costs through implementation of the proposed regulations.

The additional costs need to be weighed against the actual outlay by owners leading to what DHCR is seeking to supervise, monitor, and make more transparent by many of these changes: increases leading to the possible deregulation of units. Imposing rents that approach deregulation thresholds requires a significant outlay of funds on the part of owners. The median rent stabilized rent is $1,107 per month. The median stay of a rent stabilized tenant is 7 to 8 years, based on DHCR's review of turn-over from its registration database. Thus, adding the vacancy bonus and longevity increase to the median rent will result in a rent of $1,288 per month while the amount to deregulate an apartment is a rent of $2,500. This means an owner must increase the rent through the installation of individual apartment improvements costing either $72,880 or $42,420, depending on the number of units in the building. This financial outlay stands in contrast to the median family income of a rent

stabilized tenancy of $37,000 per year and mean family income of $51,357 per year as reported by NYC Rent Guidelines Board.

5. LOCAL GOVERNMENT MANDATES

The proposed rule making will not impose any new program, service, duty or responsibility upon any level of local government.

6. PAPERWORK

The amendments may, in a limited fashion, increase the paperwork burden. There will be additional costs associated with filings and the need for additional record retention, but it is relatively minimal. The filing of exit notices and registrations and the use of proper lease riders are already part of the RSL. Serving final registrations is an extremely limited cost and registration has otherwise been an annual owner cost since 1984 for these housing accommodations.

There may be more instances where an owner may need to retain proof of the legality of rent for a longer period, but a prudent owner would already retain that information for other purposes, such as assuring that an increase was not part of a fraudulent scheme to deregulate an apartment, making sure leases were offered on the same terms and conditions, assuring that a preferential rent was correct, and to resolve possible jurisdictional disputes. Any particularized specific claims that a changed regulation may create hardship or inequity can and will be best handled in the context of the administrative applications, themselves, where such factual claims can be assessed. IG Second Generation Partners, L.P. v. DHCR, 10 N.Y.3d 474, 859 N.Y.S.2d 598 (2008)

7. DUPLICATION

The amendments do not add any provisions that duplicate any known State or Federal requirements except to the extent required by law. There are instances where a rent stabilized property participates in another State, city or Federal housing program. In those instances, there may be a need to comply with the RSC requirements as well as the mandates of that city, State or Federal program.

8. ALTERNATIVES

DHCR considered a variety of alternatives to many of these new rules. As set forth in part in the Needs and Benefits section, the alternatives of continuing the rule presently in place for all of these changes were considered and rejected.

There were other alternatives suggested as part of DHCR's outreach that were reviewed initially as part of DHCR's initial deliberative process, but were rejected.

For example:

DHCR considered treating any attempt to amend registrations as the equivalent of late registration, since it nullifies the previous timely filing. However, this blanket penalty gave way to a more nuanced procedure to allow review of the reasons for amendments and to make amendments subject to review and supervision.

DHCR considered creating more stringent pre-requirements for MCI filings with respect to violation clearance. However, in leaving those other building violations to service reductions, while tightening up procedures to assure the clearance of immediately hazardous violations, DHCR sought to strike a balance between the need to assure owner compensation for building improvements and the maintenance of already existing services.

DHCR considered the implementation of more severe penalties for notice violations with respect to exit registrations and the provision of the lease rider. Rather than create a blanket denial of increases, DHCR made the consequences act in lock step with regular registration penalties to assure that a paperwork failure, in and of itself, would not lead to an excessive penalty, if the rent was otherwise legal and proper. However, continuation of the present rule, which required as a precondition to any penalty for failing to provide a rider that the tenant obtain an order from DHCR directing that such a rider be provided, was not a real option. The purpose of the rider is to advise tenants of their rent stabilized rights and to allow them to make an informed decision as to whether the invocation of DHCR's intercession to obtain those rights is necessary. This precondition, by definition, limits penalties for failing to provide a rider only to those tenants already sufficiently savvy about their rights to already know them. It also effectively limits an owner's necessary compliance with lease rider requirements to the same subset of knowledgeable tenants, thus assuring that the purpose of the rider is effectively gutted by regulation.

9. FEDERAL STANDARDS

The proposed amendments do not exceed any known minimum Federal standards.

10. COMPLIANCE SCHEDULE

It is not anticipated that regulated parties will require any significant additional time to comply with the proposed rules.

CONSOLIDATED - RURAL AREA FLEXIBILITY ANALYSIS

The Rent Stabilization Code applies exclusively to New York City, and therefore, the proposed rules will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities located in any rural area pursuant to Subdivision 10 of SAPA Section 102.

CONSOLIDATED - REGULATORY FLEXIBILITY ANALYSIS (FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS)

1. EFFECT OF RULE

The Rent Stabilization Code ("RSC") applies only to rent stabilized housing units in New York City. The class of small businesses affected by these proposed amendments would be limited to certain small property owners, who own limited numbers of rent stabilized units. The amended regulations would have limited burdensome impact on such businesses. These amendments to the RSC, which apply exclusively in New York City, are expected to have no impact on the local government thereof.

2. COMPLIANCE REQUIREMENTS

The proposed amendments would require small businesses that own regulated residential housing units to perform some minimal additional recordkeeping or reporting. Such businesses will continue to need to keep records of rent increases and improvements made to the properties in order to qualify for rent increases authorized under the proposed changes, but in addition to keeping such records, will also be required in vacancy and renewal lease riders to provide such records to the tenant. In addition, rent increases will not be permissible until the proper lease rider is provided to the tenant. The rent would be frozen based on such failure if the rent is otherwise illegal.

Further, such businesses will be required to provide a valid explanation for the need to amend registration statements already filed with DHCR. The proposed

amendment of the registration statements must also be provided to the tenant in occupancy and would generally require the owner to provide DHCR an explanation of the need for such amendment.

In addition, small businesses will be required to produce rental records prior to the four year review of rental records in circumstances where there is a finding of a fraudulent scheme to deregulate an apartment; where there is a "preferential rent" in order to establish the terms and conditions of such preferential rent and whether it was previously established; and where an apartment was vacant or temporarily exempt on the base date. While these businesses may need to retain proof of the legality of rent for a longer period and produce such to DHCR, a prudent business owner would already have retained that information for these purposes already based on existing case law.

Such businesses will also be required to file an exit registration with DHCR when an apartment is deregulated and required to serve such on the tenant who resides in the apartment that the business asserts is no longer subject to regulation. The exit registrations themselves give these businesses a contemporaneous benchmark which will aid them in legitimate efforts to contemporaneously establish the propriety of high rent/vacancy deregulation and help them defend against claims by tenants that such deregulations are part of fraudulent scheme as defined by the Court of Appeals in Grimm v DHCR, 15 N.Y.3d 358, 912 N.Y.S.2d 491 (1st Dept. 2010). This requirement has also been statutory since 2000.

Businesses for a very limited time period will also be required to provide additional information directly to tenants with respect to explaining the propriety of

IAI charges comprising the rent as a new lease. However, since the purpose of this is to cut down on rent overcharge proceedings before DHCR and the court, it may be ultimately more cost effective than waiting on administrative or judicial proceedings to supply the information.

3. PROFESSIONAL SERVICES

The proposed amendments will not require small businesses to obtain any new or additional professional services. Many businesses do use a professional service to file and serve their annual registrations. Even if the filing of a rent registration was considered a new requirement, as explained in the Regulatory Impact Statement, the cost is comparatively minimal.

4. COMPLIANCE COSTS

There is no indication that the proposed amendments will impose any significant, initial costs upon small businesses. There are no additional direct costs imposed on these businesses by these amendments as owner direct costs are capped at $10 per unit per year. Small business owners of regulated housing accommodations will need to be initially more vigilant to assure their compliance with these changes. Compliance costs are already a generally-accepted expense of owning regulated housing. There are increased penalties in some instances if the regulations are violated, but the costs of conforming present business practices to the change in standards is not substantial. In addition, these consequences are largely consistent with existing case law or otherwise necessary to secure compliance. DHCR has made a significant effort to assure a safe harbor or alternatives from the more dire

consequences for owners who are operating in good faith and in substantial compliance.

The additional costs need to be weighed against the actual outlay by owners leading to what DHCR is seeking to supervise by many of these changes: increases leading to the possible deregulation of units. Imposing rents that approach deregulation thresholds requires a significant outlay of funds on the part of owners. The median rent stabilized rent is $1,107 per month. The median stay of a rent stabilized tenant is 7 to 8 years based on DHCR's review of turn over from its registration database. Thus adding the vacancy bonus and longevity increase to the median rent will result in a rent of $1,288 per month while the amount to deregulate an apartment is a rent of $2,500. This means an owner must increase the rent through individual apartment improvements through installation of improvements costing either $72,880 or $42,420 depending on the number of units in the building. This financial outlay stands in contrast to the median family income of a rent stabilized tenancy of $37,000 per year and mean family income of $51,357 per year as reported by New York City Rent Guidelines Board.

The amended regulations do not impose any new program, service, duty or responsibility upon any state agency or instrumentality thereof, or local government.

5. ECONOMIC AND TECHNOLGICAL FEASIBILITY

Compliance is not anticipated to require any unusual, new or burdensome technological applications but ultimately encourages the use of "online" filings and use of DHCR forms, which are increasingly online, which will actually reduce costs.

6. MINIMIZING ADVERSE IMPACT

The proposed regulations have no adverse impact on local government. They will have comparatively minimal costs to businesses considering that these changes are necessary to enforce a statute designed to protect the public health safety and welfare. The regulations being implemented do not create different regulatory standards for small businesses. Instead DHCR in the administrative proceedings themselves can take equitable circumstances into consideration which may include the size of the business. It is difficult, on a blanket regulatory basis, to make exceptions for small businesses. Outside of the proceedings themselves, it is difficult to ascertain the size of the business subject to these regulations as a single business may own multiple properties often created as single asset corporations. However, as set forth in the Regulatory Impact Statement, the new rules recognize a variety of mitigating circumstances, safe harbors and curative provisions so that an otherwise legally compliant owner suffers minimal or no penalties for a paperwork omission error. To the extent the approaches suggested in SAPA section 202-b are otherwise appropriate, present procedures take these into account.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

DHCR personnel within its Office of Rent Administration (ORA) engages in close to one hundred forums and meetings on an annual basis with community groups, owner and tenant advocacy organizations and local officials where the administration and implementation of these provisions was under discussion. In the last year this information gathering process has been enhanced through several additional actions taken by DHCR.

DHCR created the Tenant Protection Unit (TPU) a unit designated by the Commissioner to investigate and prosecute violations of the ETPA, the RSL and the City and State Rent Laws. TPU itself has met with the various stakeholders in an effort to ascertain what issues and concerns impinge on the owner and tenant community affected by these regulations.

Further, DHCR held a public hearing on the implementation of regulations to conform to the changes in the rent laws enacted by the 2011 Law at which many of these provisions were raised by commenters as suggested changes and ORA subsequently sent outreach letters to stakeholders, specifically including small businesses and their advocates, seeking comments and suggestions on changes to the regulations. Finally, the Rent Stabilization Law specifically provides for review by the New York City Department of Housing Preservation and Development prior to promulgation.

CONSOLIDATED - JOB IMPACT STATEMENT

It is apparent from the text of the rules, required by statutory amendment, that there will be no adverse impact on jobs and employment opportunities by the promulgation of these regulations.

Executive Order No. 17 Local Government Mandate Evaluation
Impact on Local Government and Property Taxpayers

Submitting Agency: DHCR

NYCRR Citation: 9 NYCRR 2520.5(o); 2520.11(u); 2521.1; 2521.2(b), (c); 2522.4(a)(3)(22); 2522.4(a)(13); 2522.4(d)(3)(iii); 2522.5(c)(1); 2522.5(c)(3); 2522.6(b); 2523.4(a)(1), (a)(2), (c), (d)(2); 2523.5(c)(2), (c)(3); 2524.3(a), (e), (g); 2525.5; 2526.1(a)(2); 2526.1(a)(3)(iii); 2526.1(g); 2527.9; 2528.3; 2528.4(a); 2529.12; 2530.1; 2531.2

Description of the Regulation: The proposed regulations codify the addition of the Tenant Protection Unit; codify exit registrations, provide an appropriate rent setting mechanism for HDFCs upon a foreclosure; remove language preserving preferential rents solely through registrations; remove submetering costs as eligible for MCI increases and allow DHCR to independently review "C" violations to deny MCI applications; add enhanced DRIE and SCRIE protections; increase requirements for lease rider with additional explanation of rent increases and the ability of tenants to demand supporting documentation, and provide for a rent freeze for failure to provide the lease rider or supporting documentation unless the rent would otherwise be legal; codify the default formula for rent setting with an alternative fourth method; remove service complaint pre-notice as a basis for dismissal of a complaint, reduce time for owners to respond to a service complaint, prevent 6% MCI increases from being collected after a service reduction order, and bar vacancy bonuses after a service reduction order; conform deemed lease provision to case law; redefine harassment to include certain false filings intended to deprive tenants of continued rent stabilized protections; codify exceptions to four year statute of limitations; require DHCR or other government approval for amended registrations if not amended within appropriate filing year; clarify that a rent freeze due to failure to register includes vacancy bonuses; add five days for mailing of certain notices, exclude additional five days for mailing of other papers and notices not already specified, and clarify that Article 78 statute of limitations runs from date of mailing of DHCR order.

Statutory Authority for the Regulation: The Administrative Code of the City of New York and Section 44 of Chapter 97, Part B of the Laws of 2011 enable DHCR to amend the Rent Stabilization Code.

Agency Contact: Gary R. Connor – General Counsel
Telephone: (212) 480-6707 **Email:** gconnor@nyshcr.org

1. **Does the regulation impose a mandate on a county, city, town, village, school district or special district that requires such entity to:**

   a. **Provide or undertake any program, project or activity;**

   Yes ☐ No X

b. Increase spending for an existing program, project or activity (even if such program, project or activity is voluntarily undertaken by a local government unit);

Yes ☐ No ☒

c. Grant any new property tax exemption, or broaden the eligibility or increase the value of any existing property tax exemption; or

Yes ☐ No ☒

d. Carry out a legal requirement that would likely have the effect of raising property taxes.

Yes ☐ No ☒

If the answer to all questions above are "no," ensuring the regulation will not result in a mandate on local governments and property taxpayers, an accounting and the approval of the Office for Taxpayer Accountability are not required. If the answer to any question above is "yes," and the regulation may have a fiscal impact on local governments and property taxpayers, please proceed to items 2 – 3.

2. Is the mandate required by federal law or regulation or state law?

Yes ☐ No ☐

a. If yes, please cite the specific provision in the statute or federal regulation.

b. If yes, please describe any elements of the regulation not specifically mandated by the statute or regulation.

3. If any portion of the mandate is not required by federal or state law, please attach to this Checklist an Accounting for such portion containing:*

☐ **a. A description of the mandate in the regulation;**

☐ **b. An accounting of the impacts of such mandate that includes:**

(i) A fiscal impact statement;

(ii) A cost-benefit analysis, which includes:

(x) a specific delineation of the costs and benefits to local governments and property taxpayers; and

(y) a quantification of the impact on local government revenue and expenditures, where such impact is quantifiable based on available

information (please consult with the Governor's Office of Regulatory Reform if further guidance is needed);

☐ **c. A description of input sought and received from affected local governments;**

☐ **d. A description of the proposed revenue sources to fund such mandate; and**

☐ **e. An explanation as to why this regulation should be advanced with a mandate.**

*Note: The "Regulatory and Flexibility Analysis for Small Businesses and Local Governments" may be attached so long as the items set forth in 3 above are fully accounted for in the Analysis.