

TPR Amendment Summary

9 NYCRR §2500.3 new paragraph (b) is added to define the Office of Rent Administration.

9 NYCRR §2500.3 paragraphs (c), (d) and (e) are re-lettered (d), (e), and (f) and a new paragraph (c) is added to designate the Tenant Protection Unit (TPU) as a distinct unit under DHCR

9 NYCRR §2500.9 new paragraph (s) is added to advise an owner 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 and a copy of the rent registration indicating deregulated rent which should also be provided to the tenant.

9 NYCRR §2501.2(b) is amended, 9 NYCRR §2501.2(b)(2) is repealed, and 9 NYCRR §2501.2(c) amended to provide that where a preferential rent is charged, the legal rent can only be preserved by disclosure in a tenant's lease; a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. DHCR shall review and the owner be required to submit 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 § 2502.4(a)(2)(iv)(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 § 2502.4(a)(7) is renumbered (8) and a new paragraph (7) is added to provide that an outstanding service reduction or immediately hazardous violation will bar the granting of an MCI application with the ability to refile upon its prompt clearance.

9 NYCRR §2502.4(b)(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 §2502.5 (c) and (d) are re-lettered (d) and (e) and a new paragraph (c) is added to require additional information in leases as to how the rent was calculated, including details regarding any individual apartment improvement (IAI) rent increases; tenants will be able to request documentation from owners to support an IAI increase; if the lease information and/or any requested IAI documents are not provided, there can be no rent increase until the information/documentation is provided unless the owner can prove the rent

charges is otherwise legal; if the rent charged is above the legal rent during the period when information/documentation is not provided, there can be a rent overcharge proceeding and no rent increase can be collected until the information/documentation is provided.

9 NYCRR §2502.6 (a) is amended and 9 NYCRR § 2506.1(g) and (h) are re-lettered (h) and (i) 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 §2503.4(a)(2), (b), and (c)(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 §2503.5(b)(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 §2504.3(c)(1),and (2) are amended to clarify amend certain notice requirements.

9 NYCRR § 2505.6 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 § 2506.1(a)(2)(ii) is amended and 9 NYCRR § 2506.1(a)(2) adds new subparagraphs (iii), (iv), (v), (vi), (vii), (viii) and (ix) and 9 NYCRR § 2506.1(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 §2507.9(a) is amended by adding new subdivisions (c) and (d) to amend certain notice requirements.

9 NYCRR §2508.1 is amended by adding new paragraphs (c) and (d) to provide certain notice requirements.

9 NYCRR § 2509.2 is amended to clarify that registration information may be collected as required by DHCR, ETPA, TPR, or 2507.11 and 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 § 2509.3(a) is amended to clarify that a rent freeze for failing to register will include MCI increases and vacancy bonus increases.

9 NYCRR § 2510.11 is amended to clarify filing requirements for Article 78 proceedings.

9 NYCRR § 2510.12 (a) is amended to clarify the 60 day statute of limitations from date of mailing of an order.

9 NYCRR § 2511.2 is amended to prohibit luxury decontrol filings on SCRIE and DRIE tenants.

9 NYCRR § 2511.4 is amended to correct a typographical error.

Tenant Protection Regulations Amendments

9 NYCRR §2500.3 new paragraph (b) is added as follows:

(b) Office of Rent Administration. The office of the division designated by the commissioner to administer the ETPA, the Rent Stabilization Law, and the City and State Rent Laws.

9 NYCRR §2500.3 paragraphs (c), (d) and (e) are re-lettered (d), (e), and (f) and a new paragraph (c) is added as follows:

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

[(c)] (d) [re-lettered only – text remains the same]

[(d)] (e) [re-lettered only – text remains the same]

[(e)] (f) [re-lettered only – text remains the same]

9 NYCRR §2500.9 new paragraph (s) is added as follows:

(s) Where the owner of any housing accommodation claims that such housing accommodation is not subject to this Subchapter pursuant to the provisions of subdivision (m) of this section or of section 2100.9(v) of the State Rent and Eviction Regulations, such owner may give written notice certified by such owner on a form promulgated by the division to the first tenant of that housing accommodation after such housing accommodation is claimed to become exempt from the provisions of this Subchapter or the act. Such form notice shall contain the last regulated rent, the reason that such housing accommodation is not subject to this Subchapter or the act, 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 (m) 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 the division at the address and telephone number of the division. Such form notice will provide for service by certified mail within thirty days after the tenancy commences or after the signing of the lease by both parties, whichever occurs first or delivered to the tenant at the signing of the lease. The owner may further send and certify to the tenant a copy of the registration statement for such housing accommodation filed with the

division indicating that such housing accommodation became exempt from the provisions of this Subchapter or the act, which registration statement form shall include the last regulated rent to be sent to the tenant within thirty days after the tenancy commences or the filing of such registration, whichever occurs later.

9 NYCRR 2501.2 (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]

9 NYCRR §2501.2(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 2506.1 or 2502.3 of this Title shall not be examined.]

9 NYCRR §2501.2(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 2506.1 or 2502.3(a) of the Title shall not be examined].

9 NYCRR §2502.4(a)(2)(vi)(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[.]; 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.

9 NYCRR § 2502.4(a)(7) is renumbered (8) and a new paragraph (7) is added as follows:

(7) 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 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 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 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. In addition, certain tenant-caused violations may be excepted.

[(7)] (8) [re-numbered only – text remains the same]

9 NYCRR §2502.4(b)(3)(iii) is amended to read as follows:

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 local law, 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 the division, 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 the division, 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 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 the division, is required to eliminate the rent reduction and resume responsibility for the tenant's electric bills.

9 NYCRR §2502.5 (c) and (d) are re-lettered (d) and (e) and a new paragraph (c) is added as follows:

(c)(1) For housing accommodations subject to this act, an owner shall furnish to each tenant signing a vacancy or renewal lease, information in a form promulgated or approved by the division, as part of such lease, describing rights and duties of owners and tenants under the act including a detailed description of how the rent was adjusted from the prior legal rent. Such information shall conform to the "plain English" requirements of section 5-702 of the General Obligations Law and information regarding such rights and duties shall also be available in all languages that may be required pursuant to DHCR's language access plan.

(c)(2) A vacancy lease shall provide that the tenant may, within sixty days of the execution, require the owner to provide the documentation directly to the tenant supporting the detailed

description regarding the adjustment from the prior legal rent. The owner shall provide such documentation within thirty days of that request.

(c)(3) The method of service of this lease information, 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 appropriate lease form or such bulletin or other document rendered pursuant to section 2507.11

(c)(4) Where a tenant is not furnished, as required by the above provision, with a copy of the lease information pursuant to paragraph (1) or the documentation required on demand by paragraph (2) 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, DHCR shall order the owner to furnish the information or documentation. The furnishing of the information or documentation by the owner to the tenant shall result in the elimination, prospectively, of such penalty.

[(c)] (d) [re-lettered only – text remains the same]

[(d)] (e) [re-lettered only – text remains the same]

9 NYCRR §2502.6(a) is amended to read as follows:

(a)(1) Where the legal regulated rent or any fact necessary to the determination of the legal regulated rent, or the dwelling space, essential services, or equipment required to be provided with the accommodation, is in dispute between the owner and the tenant, or is in doubt, or is not known, the division at any time upon written request of either party, or on its own initiative, may issue an order in accordance with section 2506.1 of this Title, and other applicable provisions of this Subchapter, determining the facts, including the legal regulated rent, the propriety of any amended registration statements, the dwelling space, essential services and equipment required to be provided with the housing accommodations. Such order shall determine such facts or establish the legal regulated rent in accordance with the provisions of this Subchapter. Where such order establishes the legal regulated rent, it may contain a directive that all rent collected by the landlord in excess of the legal regulated rent established under this section for a period commencing with the local effective act or the date of the commencement of the tenancy, if later, be refunded to the tenant in cash or as a credit to the rent thereafter payable, and upon the failure to comply with the directive, that the order may be enforced in the same manner as prescribed in section 2506.1(e) of this Title. 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 2505.3(c) has been committed, the rent shall be established at the lowest of the following amounts set forth in paragraph (2).

(2) These amounts are:

(i) the lowest rent registered pursuant to section 2509.2 of this Title 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 2502.5 of this Title; 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 (a) through (c) of this subdivision is not available or is inappropriate, data compiled by the division, using sampling methods determined by the division, for regulated housing accommodations.

9 NYCRR §2503.4(a)(2),(b), and (c)(2) are amended to read as follows:

(a)(2) Where an application for a rent adjustment pursuant to section 2502.4(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 2502.4(a)(2)(i) 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 2502.4(3)(iv) or section 2502.4(3)(v) that was otherwise scheduled to go into effect after the effective date of the rent reduction order.

(b) 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 division 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.

(c)(2) Upon receipt of a copy of the tenant's complaint from the division, an owner shall have twenty (20) [45] days in which to respond[.] if the tenant provided the division 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 the division's opinion may require emergency repairs, the owner shall have twenty (20) days to respond. Nothing herein shall preclude the division 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 remain the same]

9 NYCRR §2503.5(b)(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 2504.2(f) and 2504.3(d)(1) 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.

9 NYCRR §2504.3(c)(1) and (2) are amended to read as follows:

(1) in the case of a notice based upon section 2504.2(f) of this Part, at least 15 days prior to the date specified therein for the surrender of possession if the notice is served by mail, then five additional days, because of service by mail, shall be added; or

(2) in the case of a notice on any other ground pursuant to section 2504.2 of this Part, at least 7 calendar days prior to the date specified therein for the surrender of possession; and, in any event, prior to the commencement of any proceeding for removal or eviction. Such notice may be combined with a notice to cure if required by section 2504.1 of this Part and, in such case, the 7-day period provided herein may, if the notice so provides, be included in the 10-day period specified in the notice to cure, if the notice is served by mail, then five additional days, because of service by mail, shall be added; or

9 NYCRR § 2505.6 is amended to read as follows:

It shall be unlawful for any landlord or any person acting on his behalf, with intent to cause the tenant to vacate, to engage in any course of conduct (including, but not limited to,

interruption or discontinuance of essential services or filing of false documents with or making false statements to the division) which interferes with or disturbs or is intended to interfere with or disturb the comfort, peace, repose or quiet of the tenant in his use or occupancy of the housing accommodations.

9 NYCRR § 2506.1(a)(2)(ii) is amended to read as follows:

(ii) subject to subparagraphs (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 2502.3 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 2500.2(q) of this Title, whether filed before or after such base date shall be precluded. [Except in the case of decontrol pursuant to section 2500.9(m) or (n) of this Title, nothing contained herein shall limit a determination as to whether a housing accommodation is subject to the act and this Subchapter, nor shall there be a limit on the continuing eligibility of an owner to collect rent increases pursuant to section 2502.4 of this Title which may have been subject to deferred implementation.]

9 NYCRR § 2506.1(a)(2) is amended by adding new subdivisions (iii), (iv), (v), (vi), (vii), (viii), and (ix) to read as follows:

(iii) Except in the case of decontrol pursuant to section 2500.9(m) or (n) 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 Subchapter, nor shall there be a limit on the continuing eligibility of an owner to collect rent increases pursuant to section 2502.4 of this Title, which may have been subject to deferred implementation, pursuant to section 2502.4(a)(3)(vi) 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 conditional rental under section 2505.3(c) rendered unreliable the rent on the base date.

(v) An order issued pursuant to section 2503.4(a) of this Title 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, an 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 2502.7(a)(2)(ii) of this Title, or any adjustment pursuant to a guideline promulgated by a county rent guidelines board that requires information regarding the length of occupancy by a present or prior tenant or the rent of such tenants, the review of 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 2501.2(c), review of 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 2506.1(a)(3)(iii) where the apartment was vacant or temporarily exempt on the base date, review of 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.

9 NYCRR § 2506.1(a)(3)(iii) is amended to read as follows:

(iii) Where a housing accommodation is vacant or temporarily exempt from regulation pursuant to section 2500.9 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 shown is in the first registration for a year commencing after such tenant takes occupancy, the amount shown in such registration, as adjusted pursuant to this Subchapter.] the prior legal regulated rent for the housing accommodation, the appropriate increase under 2502.7, 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 Subchapter.

9 NYCRR §2506.1 (g) and (h) are re-lettered (h) and (i) and a new paragraph (g) is added as follows:

(g)(1)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 section 2505.3(c) has been committed, the rent shall be established at the lowest of the following amounts.

(i) the lowest rent registered pursuant to section 2509.2 of this Title 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 2502.7 of this Title; or

(iii) 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 (i) through (iii) of this subdivision is not available or is inappropriate, data compiled by the division, using sampling methods determined by the division, for regulated housing accommodations.

(2) 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:

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

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

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

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

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

9 NYCRR § 2507.9(a) 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 division pursuant to section 2506.2 of this Title. Such proceeding shall be brought within 60 days after the issuance of the order. The issuance date shall be defined as the date of the mailing of the order [, plus five days].

9 NYCRR §2508.1 is amended by adding new subdivisions (c) and (d) to read as follows:

(c) Unless otherwise expressly provided in this Subchapter, 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 this Subchapter and such time period provided is inclusive of the time for mailing.

(d) Unless otherwise expressly provided in this Subchapter, 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 Subchapter and the time to respond is commenced upon mailing of said notice, order answer, lease offer or other paper.

9 NYCRR §2509.2 is amended to read as follows:

An annual registration statement shall be filed containing the current rent for each housing accommodation and such other information specified in section 2509.1 of this Part as shall be required by the division[.], pursuant to the ETPA, TPR and 2507.11. The owner shall provide each tenant then in occupancy with a copy of that portion of such annual statement as pertains to the tenant's housing accommodation. An owner seeking to file an amended registration statement for other than the present registration year must file an application pursuant to section 2502.6(a) and Part 2507 of this Subchapter as applicable to establish the propriety of such amendment unless the amendment has already been directed by the division or is directed by another governmental agency that supervises such housing accommodation.

9 NYCRR § 2509.3(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 increases allowable prior to the failure to register. Such a bar includes but is not limited to rent adjustments pursuant to section 2502.7 of this Title. The filing of a late registration shall result in the prospective elimination of such sanctions, 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 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 2502.3 and 2506.1 of this Title.

9 NYCRR §2510.11 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 subdivision (a) of section 2506.1 of this Title, that portion of an order resulting in a retroactive rent adjustment pursuant to section 2503.4 of this Title, that portion of an order resulting in a retroactive rent decrease pursuant to section 2502.3 of this Title, and that portion of an order resulting in a retroactive rent increase pursuant to section 2502.4(a) (1), (c) and (d) of this Title, shall also be stayed by the timely filing of a PAR against such orders until [60 days have elapsed after the determination of the PAR by the commissioner.] the expiration of the period for seeking review pursuant to article seventy-eight of the civil practice law and rules. However, an order granting a rent adjustment pursuant to section 2502.4(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.

9 NYCRR § 2510.12 (a) 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 commissioner pursuant to section 2510.8 of this Part, or after the expiration of the 90 day or extended period within which the commissioner may determine a PAR pursuant to section 2510.10 of this Part, and which, therefore, may be "deemed denied" by the petitioner. For the purposes of this section, an order of remand to a district rent administrator, unless for limited or ministerial purposes only, and which the commissioner has designated as a final determination, and orders reopening a PAR proceeding, are not final orders. The petition for judicial review shall be brought within 60 days after the issuance date of such order, in the supreme court in the county in which the subject housing accommodation is located and shall be served upon the division and the Attorney General. Issuance date is defined as the date of mailing of the order [, plus 5 days].

9 NYCRR § 2511.2 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).

9 NYCRR § 2511.4(b) is amended to read as follows:

(b) Within 20 days after the filing of such request with the division, the division shall notify the tenant or tenants named on the lease that such tenant or tenants must provide the division with such information as the division and the DTF shall require to verify whether the total annual income exceeds \$250,000, [or] \$175,000, or [\$250,000] \$200,000 whichever applies, in each such year.

CONSOLIDATED - REGULATORY IMPACT STATEMENT SUMMARY

1. STATUTORY AUTHORITY:

The Emergency Tenant Protection Act of 1974 (“ETPA”)(McKinney Unconsol. Law 8621, et seq.), Laws of 1974 Chap. 576, section 10a provides authority to the Division of Housing and Community Renewal (“DHCR”) to amend the Tenant Protection Regulations (“TPR”); 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 ETPA.

ETPA §§8626(d)(3); 8627(a); 8630(a); 8632(a) 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 8622 and 8623 of the 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 ETPA §8630 to promulgate regulations to protect the rights granted under the ETPA 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 ETPA.

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.

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 ETPA.

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 even further comments and suggestions.

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

a. Addition of TPU.

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

b. Creation of "Exit Registration" forms and notices

This new section provides for the service of appropriate notices on a tenant in an apartment alleged to be exempt from the ETPA because of high rent vacancy deregulation.

Greater transparency with respect to deregulation is appropriate in light of discrepancies among the registrations filed with high rent vacancy deregulation as the stated reason and the number of units simply failing to register but without explanation. Its use would have the salutary effect of providing information up front, reducing the potential need for administrative proceedings and/or investigation with respect to overcharge and improper deregulation claims.

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 NYC and approximately twenty-six percent of the rents in the counties subject to the ETPA 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" 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. 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 TPR as those tenancies have already been vetted through other government programs to have income far below that required for deregulation.

f. Lease 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 ETPA. 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 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.

g. 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.

h. 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 ETPA, which bars collection of increases where there is a failure to provide services and will aid DHCR in incentivizing prompt restoration of services. In addition, an outstanding service reduction or immediately hazardous violation will bar the granting of an MCI application with the ability to re-file upon its prompt clearance.

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

i. Deemed Leases

A 2000 codification of the “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.

j. 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.

k. 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 to rules with respect to preferential rents and “vacancy on 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.

l. Amended registration

DHCR has accepted for filing, amended registrations at any time for any year. These amendments, if treated similarly to “late” registrations under the ETPA 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 ETPA and TPR.

m. 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. Costs by statute are proportionately borne by each municipality with ETPA units based on the number of units. Such costs may then be assessed by the municipality to the owner.

However, DHCR has not sought to certify as municipal costs more than the \$10 per unit cost which is the statutory cap for Rent Stabilized New York City units. 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 it is comparably minimal and is of a kind with already existing registrations 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.

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 - REGULATORY IMPACT STATEMENT

1. STATUTORY AUTHORITY:

The Emergency Tenant Protection Act of 1974 (“ETPA”)(McKinney Unconsol. Law 8621, et seq.), Laws of 1974 Chap. 576, section 10a provides authority to the Division of Housing and Community Renewal (“DHCR”) to amend the Tenant Protection Regulations (“TPR”); 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 ETPA.

The ETPA also provides specific statutory authority governing the subject matter of many of the proposed amendments. ETPA §8632-a(e) provides for penalties based on a failure to register apartments and 8632-a for rent registration generally. ETPA §8630 a-2 provides for “preferential rents” and the subsequent charging of a legal rent, tied also to its use to meet deregulation rent thresholds. ETPA §8630(a) mandates promulgation of a code that requires owners not to exceed the level of lawful rents. ETPA §8630(a) requires owners at the option of the tenant to grant one or two year vacancy and renewal increases and prescribe standards with respect to the terms and conditions of new and renewal leases. ETPA §8630(a) which allows the TPR to include guidelines to assure that the levels for rent increase established by the ETPA will not be subverted or made ineffective. ETPA §8626(d)(3) provides that DHCR may establish criteria whereby it may act upon major capital improvement (“MCI”) applications. ETPA §8632(a)(1) empowers DHCR to enforce the ETPA and the TPR by issuance of appropriate orders, issuance of overcharge determinations and to establish treble damages. ETPA §8627(a) 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 to its most recent adjustment and an order requiring such services to be maintained; that DHCR may reduce the rent to such level where an owner has failed to maintain such services.

2. LEGISLATIVE OBJECTIVES

The overall legislative objectives are contained in Sections 8622 and 8623 of the 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 ETPA §8630 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 and the TPR.

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.

The TPU as a specific term within the regulations, demonstrates DHCR's commitment to the TPU and proactive enforcement of the ETPA.

b. Creation of “Exit Registration” forms and notices

It provides for the creation of notices and registration statements with respect to a tenant who resides in an apartment that an owner asserts is no longer subject to the TPR because of high rent vacancy deregulation. This would be an appropriate adjunct to the rent registration system and would benefit both owners and tenants by providing greater transparency as to whether the unit has in fact been deregulated. Its use would have the salutary effect of providing information up front, reducing the potential need for administrative proceedings and/or investigation with respect to overcharge and improper deregulation claims.

In New York City, these forms have been set forth as part of the RSL since 2000. 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 in New York City (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. In apartments subject to the ETPA outside of NYC, in 2011, 1,515 exit registrations were filed; in 2010, 1,429; and in 2009, 1,412. Those owners listing high rent vacancy deregulation as the reason was a lesser subset; on an annual basis: 1,355 units in 2011, 1,227 units in 2010 and 1,177 units in 2009. TPU and ORA have an ongoing program to ascertain why apartments are not being registered. These program inquires have resulted in the re-registration of 1,688 buildings with 16,969 apartments as of March 2013, all leaving a significant gap.

These 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 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 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 weighed against the actual data. Either owners, it is explained, are providing discounts to those they perceive will be good tenants; or in that certain areas, 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 the 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. Similarly, in the counties subject to the ETPA approximately twenty-six percent of the rents, 9,842 units are registered as preferential (37,170 were registered).

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. 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 TPR. 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.

f. 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 Emergency Tenant Protection Act. 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 Emergency Tenant Protection Act. 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.

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 has time-limited the period for these direct demands for information.

g. Codification of the overcharge “default formula”

DHCR and its predecessor rent agencies 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 TPR 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.

h. 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, (across units subject to Rent Stabilization and ETPA) there were 2,469 rent reductions 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”. Another fifteen percent are 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 complaints may have been addressed by the owners, the large percentage of cases granted, even after owners have been given proper notice, more reasonably leads to the conclusion that this is not the situation. Staff review of a significant sampling of the rejected complaints also reveals that the effect of this rule falls disproportionately on complainants with limited English proficiency as well as those that can be identified as elderly or 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 bars 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 ETPA, which reduces the rent where there is a failure to provide services

and will aid DHCR in incentivizing prompt restoration of services. In addition, an outstanding service reduction or immediately hazardous violation will bar the granting of an MCI application with the ability to re-file upon its prompt clearance.

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 (and by extension parallel provisions of the ETPA) 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).

i. 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."

j. 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.

k. 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).

I. Amended registration

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 ETPA could carry a substantial penalty, but no penalty has been imposed.

The number of such amendments is significant. In 2009, (across units subject to Rent Stabilization and ETPA) 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 the 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.

m. 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.

4. COSTS

The regulated parties are residential tenants and the owners of the subject housing accommodations in which such tenants reside. There are no additional direct costs. Costs by statute are proportionately borne by each municipality with ETPA units based on the number of units. Such costs may be assessed by the municipality to the owner. However, DHCR has not sought to certify as municipal costs more than the \$10 per unit costs which is the statutory cap for Rent Stabilized New York City units. 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 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. In New York City, the median rent stabilized rent is \$1,107 per month. The median stay of a rent stabilized tenant is 7-8 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.

In the areas subject to the ETPA, the same analysis holds. The median ETPA rent for Nassau County is \$1,281.38, for Rockland County it is \$1,134.99 and for Westchester County it is \$1,100.00. The median family income for renter families (including regulated and non-regulated rentals) in Nassau County is \$47,618 per year, for Rockland County it is \$41,705 per year and for Westchester County it is \$40,609 as reported by the U.S. Census Bureau.

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. Serving final registrations would be an extremely limited cost, particularly when balanced against the owner benefits 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 ETPA 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; such as, treating any attempt to amend registrations as the equivalent of late registration, since it nullifies the previous timely filing.

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.

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 Emergency Tenant Protection Act applies only to rent stabilized housing units located in those communities in Westchester, Rockland and Nassau Counties that are subject to the Emergency Tenant Protection Act 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 Emergency Tenant Protection Regulations (TPR) apply only to rent stabilized housing units located in those communities in Westchester, Rockland and Nassau Counties that are subject to the Emergency Tenant Protection Act. The class of small businesses affected by these proposed amendments would be limited to small building owners, those who own small numbers of rent stabilized units. The amended regulations would have limited burdensome impact on such small businesses. These amendments to the TPR apply only in the aforementioned communities, and are expected to have no impact on the local governments 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.

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.

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.

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. Costs by statute are proportionately borne by each municipality with ETPA units based on the

number of units. Such costs may be assessed by the municipality to the owner. However, DHCR has not sought to certify as municipal costs more than the \$10 per unit cost which is the statutory cap for Rent Stabilized New York City units. 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.

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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 TECHNOLOGICAL 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 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 regulations. ORA subsequently sent outreach letters to stakeholders, specifically including small businesses and their advocates, seeking comments and suggestions on changes to the regulations.

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 2500.3(b)-(f); 2500.9(s); 2501.2(b), (c); 2502.4(a)(2)(iv)(22); 2502.4(a)(7); 2502.4(b)(3)(iii); 2502.5(c); 2502.6(a); 2503.4(a)(2), (b), (c)(2); 2503.5(b)(2), (3); 2504.3(c)(1), (2); 2505.6; 2506.1(a)(2); 2506.1(a)(3)(iii); 2506.1(g), (h), (i); 2507.9(a); 2508.1; 2509.2; 2509.3(a); 2510.11; 2510.12(a); 2511.2; 2511.4(b).

Description of the Regulation: The proposed regulations codify the addition of the Tenant Protection Unit; provide for exit registrations, remove language preserving preferential rents solely through registrations; clarify that submetering costs are not eligible for MCI increases and provide that an outstanding service reduction or immediately hazardous violation will bar the granting of an MCI application with ability to refile upon clearance; allow DHCR to add enhanced DRIE and SCRIE protections; provide for requirement of lease information with an explanation of rent increases and the ability of tenants to demand supporting documentation, and provide for a rent freeze for failure to provide such information 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; correct typographical error in annual income amount applicable for luxury deregulation.

Statutory Authority for the Regulation: The Emergency Tenant Protection Act of 1974, Laws of 1974, chap. 576, section 10a and Section 44 of Chapter 97, Part B of the Laws of 2011 enable DHCR to amend the Tenant Protection Regulations.

Agency Contact: Gary R. Connor – General Counsel

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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.