REGULATORY IMPACT STATEMENT
RENT STABILIZATION CODE

1. STATUTORY AUTHORITY:

§26-511(b) and §26-518(a) of the Administrative Code of the City of New York, (also known as "the Rent Stabilization Law" or "RSL") provide authority to the Division of Housing and Community Renewal ("DHCR") to amend the implementing regulations (also known as "the Rent Stabilization Code" or "RSC"). The Housing Stability and Tenant Protection Act of 2019, Ch.36 of the Laws of 2019 ("HSTPA"), and Ch. 39 of the Laws of 2019 ("Clean-up law") further empowered and required DHCR to promulgate rules and regulations to implement and enforce various provisions of HSTPA.

The RSL also provides specific statutory authority governing the subject matter of many of the proposed amendments. RSL §26-511(c)(2) mandates promulgation of a code that requires owners not to exceed the level of lawful rents. RSL §26-510(j) and §26-511 (c)(5-a), as added or amended by HSTPA, repeal the separate vacancy allowance that could be promulgated by the rent guidelines board. RSL§26-512(f), RSL §26-504.1, 504.2, 504.3 as amended by HSTPA repealed high rent vacancy and high rent/high income deregulation. RSL §26-511(c)(5) provides that the RSC may include such guidelines that assure that the levels for rent increase will not be subverted or made ineffective. RSL §26-511(c)(14), as amended by HSTPA, provides for the removal of a preferential rent upon vacancy only. RSL §26-516(a), (g) and (h), as amended or added by HSTPA, provides for the criteria and time frame for determining the rent and any rent overcharges including treble damages and sets the period for the maintenance of rental records by an owner. §RSL 26-511(c)(9)(b) as amended by HSTPA sets forth new criteria for recovery of rent stabilized housing

accommodations through owner occupancy. RSL §26-511(c)(6) and (13) and §26-511.1 as amended and added by HSTPA and the Clean-up law provide the parameters and criteria for individual apartment increases ("IAIs") and major capital improvement increases ("MCIs") and specifically references regulations as part of its implementation.

2. LEGISLATIVE OBJECTIVES

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

DHCR is specifically authorized by RSL §26-511(c)(1) to promulgate regulations to protect tenants and the public interest and is specifically empowered by HSTPA to promulgate regulations to implement and enforce new provisions added, as well as provisions amended or repealed by HSTPA and the accompanying Clean-up law.

3. NEEDS AND BENEFITS

DHCR has not engaged in an extensive amendment process with respect to these regulations since 2014. As noted, in June 2019 there were significant amendments to the rent laws by HSTPA and there has already been significant litigation interpreting those laws. In addition, DHCR has had years of experience in administration which informs this regulatory process, as does its continuing dialogue during this period with owners, tenants, and their

respective advocates. DHCR personnel have engaged in forums and meetings since the passage of HSTPA where the administration and implementation of the law was discussed. The needs and benefits of some of the specific modifications proposed are highlighted below.

a. Individual Apartment Improvements (9 NYCRR §2522.4)

HSTPA itself mandated most of the regulatory amendments made with respect to this section. An owner is entitled to a rent increase for an IAI when there has been a reasonable and verifiable modification, including improvements to the housing accommodation, increase in the services provided by the owner, or new furniture or furnishings or substantial increase in dwelling space provided by the owner.

HSTPA made changes to the IAI process that are being implemented, including:

- Requiring written consent from the tenant on an approved DHCR form.
- Requiring filings with DHCR for IAIs made to vacant and occupied apartments to be supported by before and after photographs, an itemized list of work performed along with a description or explanation of the reason or purpose of such work, which will be made part of the DHCR rent registration records and retained in a centralized electronic retention system.
- In buildings with 35 units or less, the amount of rent that can be increased is limited to 1/168th the cost of the improvement.
- In buildings with more than 35 units, the increase in rent is limited to 1/180th the cost of the improvement.
- No more than three (3) separate IAI increases may be collected over a 15-year period and the total cost of eligible improvements cannot exceed $15,000.

- Exclusive of installation of items such as appliances that do not need licensed contractors, all work must be done by a licensed contractor with no common ownership between the contractor and the owner in order to pass along these increases.
- Prohibition on increases based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings.
- Prohibition on increases where there are any outstanding hazardous and immediately hazardous violations of the Uniform Fire Prevention and Building Code (Uniform Code), New York City Fire Code, or New York City Building and Housing Maintenance Codes at the time of installation that pertain to the subject apartment.
- New IAI increases collected for the first time after June 14, 2019, are temporary and will be removed from the rent in 30 (thirty) years, at which time, the legal rent will be adjusted to include the removal of applicable guideline increases.

The proposed regulations implement the statutory requirements. The one known area of dispute is from the HSTPA Clean-up law. The legislature added a law exempting IAIs before HSTPA's effective date from HSTPA's limitation on the monetary limitation of $15,000 within a 15-year period. It has been asserted that this language also exempts those IAIs from the new amortization formula if completed but not implemented prior to HSTPA. DHCR is not adopting that interpretation as there is no support for that interpretation in either HSTPA or the Clean-up law.

b. Major Capital Improvements (MCIs) (9 NYCRR §2522.4)

The MCI provisions are another area that HSTPA changed and directed that DHCR promulgate regulations. The changes were to be made effective immediately to the extent feasible, but with a one-year period for implementation where necessary. These changes include:

- Modification to the MCI definition which incorporates new "green" installations.
- The removal of MCI increases after thirty (30) years.
- Amortization of costs over twelve (12) years for buildings with thirty-five (35) or fewer units and twelve and a half (12.5) years for buildings with more than thirty-five (35) units.
- Modification of the annual cap on collectability from six (6) percent per year to two (2) percent per year.
- For any renewal leases commencing on or after June 14, 2019, the collection of any rent increases due to any MCI approved on or after June 16, 2012, and before June 16, 2019, shall not exceed two (2) percent in any given year for any tenant in occupancy on the date the MCI was approved.
- The creation of a reasonable cost schedule.
- Prohibition of rent increases due to immediately hazardous violations as well as hazardous violations pertaining to the subject building.
- MCIs are also no longer allowed for work done in individual apartments that is not otherwise an improvement to the entire building which is largely directed at the prior practice of building-wide installations of new kitchens and bathrooms.
- The prohibition of MCIs in buildings with 35 percent or fewer rent regulated units.

- DHCR has already promulgated regulations regarding the reasonable costs but has now moved them from a stand-alone section to one more fully integrated with the other regulatory provisions to conform to HSTPA. In addition, the reasonable costs regulations have been modified to clarify the fact-based and case-by-case standard of review as actually applied by DHCR. These procedures give the regulated parties notice and another opportunity to comment on them as modified.

c. Rent Regulation for Supportive Housing Units (9 NYCRR §2520.11 and §2524.4)

HSTPA also amended three sections of the Emergency Tenant Protection Act McK. Unconsol. Laws §8625(a)(6) and §(a)(10) to extend rent stabilization to previously exempt housing accommodations (§8625(a)(10)) or to buildings (§8625(a)(6)) used by not-for-profit corporations that were providing permanent housing accommodations with governmental services for vulnerable individuals with disabilities who were homeless or at risk of homelessness. In addition, vulnerable individuals with disabilities who were homeless or at risk of homelessness are "deemed to be tenants" as part of the amendment exception to the pre-existing exemption of ETPA/ RSL coverage based on a tenant use of the accommodation as a non-primary residence. (McK. Unconsol. Laws §8625(a)(II)) These individuals' prior status is irrelevant as something other than tenant in light of the protection provided by HSTPA

These new inclusions are applicable to such housing accommodations provided "as of and after" the effective date of HSTPA. Further, the "terms" of their existing leases shall only be "affected" upon lease renewal; and upon vacancy the legal regulated rent is "the rent paid for such housing accommodation by the prior tenant, subject only to any adjustment adopted by the applicable guideline board." The regulations reflect these provisions.

d. High Rent/High Income Deregulation (9 NYCRR §2531)

HSTPA repealed the high rent/high income provisions of the rent laws with an exception with respect to the rules governing Real Property Tax Law §421-a (16). The Clean-up law clarified that units lawfully deregulated, prior to the effective date of HSTPA, remain deregulated.

The elimination of the high rent/high income provisions is required by HSTPA. While the high rent/high income deregulation provisions were considered as a necessary adjunct to the RSL and central to its purposes by some, the position is not borne out by objective evidence. DHCR's annual registration data and processing records reveal that, in total, High-Rent/High-Income Deregulation removed a total of 166 apartments from rent regulation in 2019 and 115 apartments in 2018.

e. Rent Overcharges (9 NYCRR §2526.1)

HSTPA made changes with respect to the processing and determination of rent overcharge cases which are reflected in these regulations. Further, it extended a prior four (4)-year rule to a new "six (6) or more year rule" and incorporates the prior regulatory exceptions with some clarifications into law. HSTPA also provides in certain overcharge processing, the use of the most recent "reliable" registration as a benchmark and allows consideration of all available evidence reasonably necessary to make a determination of the legal rent notwithstanding an election of an owner not to keep records older than the look back period.

DHCR regulations recognize the concurrent jurisdiction with respect to overcharge claims subject to the tenant's choice of forum and the rights of tenants to withdraw DHCR overcharge proceedings in favor of proceedings in court. Tenants can now receive up to six (6) years of rent overcharges, six (6) years of treble damages, and reasonable costs and attorneys' fees. Additionally, a tenant may now also file a claim "at any time".

The proposed amendments are consistent with the legislature's requirements and with the Court of Appeals decision in Matter of Regina Metropolitan Co. LLC v. New York State Division of Housing and Community Renewal, 2020 NY Slip. Op. 02127 (2020) in that they reflect a new rolling base date and grandfathering of claims and processing to reflect the review of time periods prior to the enactment of HSTPA and its application for recordkeeping, statute of limitations, rent review, and award of treble damages.

f. Apartment Reconfigurations (9 NYCRR §2521.1)

Previously, DHCR had allowed owners, as a matter of policy rather than regulation, upon certain combination/division/configuration of apartments to generate a new "first rent" for purposes of rent stabilization. The regulations were previously silent on this policy except for 9 NYCRR §2520.11(r)(12) which provided that if upon combination or reconfiguration, the rent charged exceeded the high rent vacancy deregulation rent threshold, the apartment would be deregulated. Clearly with the end of high rent vacancy deregulation, this regulation needed to be repealed.

While not expressly addressed by HSTPA, other provisions of HSTPA makes a continuation of the policy problematic. First, HSTPA created a new, more robust, enforcement mechanism and new limitations on individual apartment improvements, IAIs definitionally includes a "substantial increase in dwelling space." Second, the first rent policy was based on "the obliteration of the prior apartments' particular identity." As HSTPA places greater requirements on examining prior rent history to "consider all available rent history which is reasonably necessary to make [such] overcharge determinations," extinguishment of that history through policy is difficult to reconcile with this legislative command. Paradoxically, a continuation of an unreviewable first rent with the repeal of high rent vacancy deregulation

would lessen the amount an owner would spend on improvements and proof since owners would look to that high rent deregulation threshold as a cost that would be reached as a fall back. The general tenor of HSTPA with its emphasis on the preservation of units at historically reasonable rents militates against creating or continuing regulations that provide for unreviewable rents.

DHCR's new regulations in summary are as follows:

- If an owner combines regulated apartments, the legal regulated rent is the combined rent of each apartment.
- If an owner takes space from a regulated apartment to increase the size of an unregulated apartment, the new enlarged apartment becomes rent regulated.
- If an owner increases or decreases the size of a regulated apartment, the rent is adjusted by a percentage equal to the percent change in the size of the apartment.
- IAI increases can be used for apartment reconfigurations, subject to the HSPTA limitations on the use of IAIs for both apartments. No increase will be permitted where a vacancy prior to a reconfiguration was secured by harassment or other illegal means, or where the reconfiguration was not done in compliance with DOB regulations.

As noted in Devlin v. DHCR, 309 A.D.2d 1919 (2003), "the implementation of a first rent statute should not be used to frustrate the purpose of the RSL." With this change of emphasis within the RSL, the thrust of this policy needed to be changed as well. Continuing to allow setting of unreviewable first rents for combined apartments will result in endless after the fact

policing by DHCR. Further, it would allow a circumvention of the IAI, vacancy and overcharge sections of HSTPA.

An exception is made for rents and reconfigurations of units established by an affordable housing agency as part of their approved rehabilitation plan. Such rent would be consistent with such an affordable regimen and is therefore not subject to the same concerns driving this change with respect to other kinds of reconfigurations.

g. Succession Rights (9 NYCRR §2523.5)

Family members remaining in a rent stabilized unit after the vacature of the named lease holder have the right to remain in the apartment and continue to receive renewal leases. HSTPA made no changes to the statutory provisions regarding succession. However, DHCR has always been empowered to promulgate regulations, first by its general rent stabilization rule making authority, see, Rent Stabilization Association v. Higgins, 83 N.Y.2d 156 (1993) and subsequently by Public Housing Law §14. The regulations require contemporaneous occupancy by the family members with the named leaseholder for two years as their primary residence prior to the permanent vacature of the named leaseholder (9 NYCRR § §2523.5(b)).

Presently, there is a split between two departments, the Appellate Division 1st Department and 2nd Department (the two departments in which Rent Stabilization is applicable) as to how to measure the two-year period. The First Department has held that if the named leaseholder executes a lease, even if that leaseholder has vacated the apartment, the two years are then measured from the end of that lease. Third Lenox Terrace Assoc. v. Edwards, 91 A.D.3d 532, 937 N.Y.S.2d 41 (1st Dept. 2012). The Second Department, at DHCR's urging, has taken a more pragmatic approach, reviewing the period of actual physical vacature of the named lease

holder even if it happened before the execution of the lease. Jourdain v. DHCR, 159 A.D.3d 41, 70 N.Y.S.3d 239 (2nd Dept. 2018). True fraud and an extended period of misrepresentation will not be rewarded by adopting the *Jourdain* approach which DHCR will use as an exception to the actual physical vacature date. However, evicting long term family residents because the named leaseholder may have been in the process of moving out during the renewal period or was simply postponing an anticipated problematic and difficult interaction with their landlord over whether remaining family had the right to stay is simply too harsh a rule.

While executing the lease renewal by the vacating named leaseholder may have been inappropriate, the Court of Appeals has ruled (reversing DHCR) in other contexts that an unrelated program violation (failing to advise DHCR of the family member's occupancy) should not supersede the actual facts that such person was remaining a family member and the purpose of these rules is to assure family cohesion and prevent their displacement. Murphy v. DHCR, 21 N.Y.3d 649, 977 N.Y.S.2d 161 (2013). This regulation is an opportunity to provide even more clarity as to DHCR's intentions with respect to implementation as the agency delegated to promulgate these succession regulations.

In addition, current regulations (9 NYCRR § 2522.5(g)) allow spouses of leaseholders to be added to leases without going through the full succession process. These proposed regulations will allow domestic partners of leaseholders the same protections.

h. Rent Guidelines Board/Rent Guideline Increase on Vacancy (9 NYCRR §2522.8)

HSTPA requires the Rent Guidelines Board to establish a single "unitary" guideline applicable to both vacancy and renewal leases. HSTPA also includes a repeal of the ETPA and RSL provisions allowing for the imposition of what was commonly called the "vacancy bonus" which is also reflected in these regulations. However, HSTPA did not intend to place a greater

burden on existing tenants by excluding new tenants upon execution of their leases from the guideline increases. The RSL, as amended by HSTPA, thus requires: (1) a guideline finding for new and renewal leases required to be offered pursuant to the RSL; (2) no separate "vacancy" guideline; (3) that a guideline not run afoul of HSTPA's express prohibition for separate guidelines based on the length of tenancy; and (4) establishment of an "annual" guideline. To prevent "double dipping" on these annual increases or adjustments (as they are to be applied annually) the regulations provide that an owner would only be entitled to one vacancy increase per guideline year cycle; i.e., if an owner takes a rent guidelines board ("RGB") increase on vacancy and the tenant moves out mid-lease, the owner would not be entitled to another RGB increase.

i. Affordable Housing Regulatory Agreements (9 NYCRR §2521.2 and §2020.11)

These provisions were amended to reflect that affordable housing agencies often use regulatory agreements as part of their supervision of affordable housing. Additionally, the regulatory agreements may provide exceptions to rules on preferential rents that enable affordable housing developers to increase the rents upon renewal if approved by their supervising agency and the subject of a rental subsidy.

The proposed regulation will implement HSTPA by allowing other federal project based rental assistance administered by a public housing agency eligible to administer section 8 subsidies, to obtain these increases upon renewal with a supervising agency's consent.

j. Deconversion (9 NYCRR §2520.11)

DHCR, by these amendments, provides that upon "deconversion," the prior stabilized rent be used as the rent upon which future increases are based, unless the building initially converted more than six years before the deconversion. In the event of termination by the

Attorney General, DHCR will honor any rent determinations made as part of the Attorney General's enforcement proceedings.

k. High Rent Vacancy Deregulation (9 NYCRR §2520.11)

HSTPA eliminated high rent vacancy (as well as high rent/high income) deregulation as of June 14, 2019, with an exception with respect to the rules governing Real Property Tax Law §421-a (16).

l. Applying changed rules at PAR

The proposed regulation provides that when a law or regulation changes during the pendency of a PAR proceeding, the rules in effect at the time the Rent Administrator (RA) makes its decision controls unless equities or avoiding undue hardship require otherwise. This rule reverses the presumptions built into the prior regulation of generally applying new rules on PAR subject to the equitable and hardship exceptions. The rule change conforms with the major implementation requirements of the HSTPA based on Matter of Regina Metro. Co., LLC v DHCR, 35 NY3d 332, 154 N.E.3d 972 (2020).

Pending overcharge cases, both at the RA and PAR level, will be using pre-HSTPA rules that are consistent with the Regina Metropolitan decision. High Rent/High Income cases and cases involving High Rent vacancy where an RA order was issued prior to the passage of HSTPA will largely use pre-HSTPA rules, and any apartment lawfully deregulated prior to the HSTPA, remains deregulated. In MCIs, the effective date contemplated a year-long implementation of the new rules, with certain express retroactive modifications to the implementation of existing orders (where even those changes were made prospectively) and prohibited the issuance of new orders based on the HSTPA standard. These modifications all point to excluding these standards to orders issued prior to the HSTPA, but which are pending

on PAR. Further, the regulation also conforms the legal rule with the evidentiary fact rule of not accepting new evidence generally on PAR.

m. Actual Physical Address for Registration (9 NYCRR §2528.2 and §2523.8)

Part of the requirements of the rent stabilization law is that each owner register their building and each apartment annually. The proposed regulation requires owners to provide an actual physical address instead of utilizing a post office box address. This rule meets a need of assuring a methodology to serve or contact ownership when necessary or to greater enhance understanding of the true characteristics of ownership and liability.

n. Substantial Rehabilitation (9 NYCRR §2520.11)

There is an exclusion from regulation of buildings that were "substantially rehabilitated" as family units after January 1, 1974. The change reinforces the substantial rehabilitation regulatory requirement by stating more explicitly that a minimum of seventy-five percent of the buildings' systems need to be replaced and that credit toward the seventy-five percent will not include systems that are not in need of replacement. Applicants, however, can still include recently replaced systems in their applications. Additional changes to the substantial rehabilitation provisions include:

- A presumption regarding the deteriorated condition of the premises due to being at least 80% vacant is repealed as the prescription seemingly rewards keeping units off the market, in favor of making a true factual evaluation of the circumstances surrounding the vacancies.
- The exception based on findings of harassment is amended to include such findings of other government agencies or courts and to remove an exception to the rule on

extenuating circumstances exception where an owner is convicted of committing arson to its own building.

- The regulation further codifies and clarifies actual practice that assures regulated tenants who retain their apartments during the rehabilitation remain regulated until they vacate the apartment by affording that protection, regardless of whether their apartment is part of that rehabilitation or not.
- The regulation also makes clear that the burden of establishing the exception based on substantial rehabilitation is on the owner and is not changed based on the time between when the work was completed and when the issue needs to be resolved. However, changes made to the standards are prospective in nature.
- The regulations further codify the circumstances and procedures surrounding "dollar orders" where a tenant seeks to preserve their right of return where an apartment is destroyed by fire or other similar circumstance.
- The regulation requires that displaced tenants with "dollar" orders must express their intent not to return in writing unless the owner can demonstrate that the tenant is unreachable, and the tenant has stopped paying the dollar rent for at least six months.
- The regulation also requires that where tenants have a dollar order, owners that rebuild their buildings do so in the same configuration so as to not extinguish the tenant's right of return unless they can demonstrate that doing so would impose a severe financial burden. Otherwise, the displaced tenant would be eligible for the stipend provided in the case of demolition.

o. Demolition (9 NYCRR §2524.5)

The new regulations:

- Add a "good faith" requirement to the demolition provision to mirror longstanding language in RSL §26-511(e)(9)(a).
- Require the applicant at the time of the application to submit proof of financial ability to complete the proposed work, along with proof that the Department of Buildings ("DOB") has already approved the plans for demolition.
- Bring the definition of demolition in line with the DOB definition, which requires that the entire building be removed, including the foundation.
- Increase the stipends given to residents displaced by demolition by calculating the stipend based on the average rent for non-regulated vacant apartments multiplied by six years.
- Allow DHCR to revoke a demolition order if the owner fails to act in good faith or fails to undertake construction within a reasonable time.
- Permit DHCR to initiate enforcement proceedings *sua sponte* for failure to comply and make those penalties applicable to subsequent purchasers.

The regulations also require an owner to demonstrate the financial ability to demolish and re-construct as part of its application rather than supply it before a determination is made. The RSC provides that an owner can apply and receive approval to demolish a building if they present an approved plan and proof of financial ability to complete the project. Requiring an owner to submit an approved building plan and the financial ability to complete the plan with the filing of the application will allow for more appropriate and timely processing and facilitate the screening of improperly filed applications.

The amended regulations clarify DHCR's powers with respect to enforcement. The RSL and RSC contain penalties and remedies which DHCR can apply to enforce its demolition orders. Under RSC §2525.5, an owner can be found guilty of harassment for filing false documentation with DHCR in order to obtain approval of a demolition project. Additionally, under RSL §26-516, DHCR is empowered to impose significant monetary penalties after a hearing, where an owner is found to have harassed a tenant to obtain a vacancy. DHCR has always had the inherent authority as set forth in RSC §2527.8 to revoke orders based on irregularities, illegalities or fraud. These administrative remedies are cumulative and, as expressly set forth in the proposed amended regulations, they are not intended to supplant other causes of actions and remedies that may inure before DHCR, the courts or any other administrative bodies based on the failure of an owner to comply with the requirements of an approved demolition plan. Successor owners shall be bound by the terms and conditions of DHCR's order. Any remedies and penalties prescribed by the RSC shall apply to subsequent owners as well as to the owner whose application is granted.

Finally, conforming to the DOB standards for demolition eliminates two separate standards and adheres more closely to the statutory language which references DOB approval.

4. COSTS

There are no additional direct costs imposed on tenants or owners by these amendments as owner direct costs are capped at $20 per unit per year. The amended regulations do not impose any new program, service, duty or responsibility upon any state agency or instrumentality thereof, or local government. Owners of regulated housing accommodations will need to be more vigilant to assure their compliance with changes and the changes themselves in many

instances do require additional filings by owners. For example, IAIs now require contemporaneous filing with DHCR of certain proof, i.e., before and after photographs, that was only necessary previously in the context of an overcharge case or a direct demand by the tenant closely associated with the lease execution. The type of proof described here is the same kind of proof an owner looking to establish the propriety of the IAI increase would have maintained prior to HSTPA in the event of a subsequent overcharge claim. HSTPA may require additional costs to owners as explained in the Regulatory Flexibility Analysis with respect to MCIs. Compliance costs are already a generally accepted expense of owning regulated housing. In general, as in the example provided above, the increased compliance costs are less a product of the promulgation of these regulations, but rather the enactment of HSTPA.

In some instances, there are increased penalties if the regulations are violated, however, these consequences are consistent with the existing law or otherwise necessary to secure compliance. Tenants will not incur any additional direct costs through implementation of the proposed regulations but, as some of these regulatory standards have become more complex, may themselves be making additional submissions in the context of DHCR proceedings to resolve factual issues created by these new standards.

5. LOCAL GOVERNMENT MANDATES

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

6. PAPERWORK

The amendments will increase the paperwork burden essentially due to the changes made by HSTPA. There will be additional costs associated with filings and the need for additional

record retention. Owners need, with the new overcharge provisions, to retain proof of the legality of rent for a longer period, but a prudent owner would have already retained that information for other purposes, such as assuring that an increase was not a part of a fraudulent scheme to deregulate an apartment, making sure renewal leases were offered on the same terms and conditions, assuring that a preferential rent was correct, and to resolve possible jurisdictional disputes. Specific claims that a changed regulation may create hardship or inequity can and will be raised in the context of the administrative applications, themselves, where such factual claims can be assessed. However, consistent with HSTPA and the court decisions interpreting it, DHCR has mitigated some of these additional paperwork concerns by expressly promulgating a regulation that makes the application of these new statutory standards on PAR the exception rather than the rule.

7. DUPLICATION

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

8. ALTERNATIVES

As stated previously, much of these new regulations are a product of HSTPA, itself foreclosing much examination of alternatives. Nevertheless, DHCR considered a variety of alternatives to certain rules which were not exactly proscribed by HSTPA. Most often, however, the choices were questions of appropriate statutory interpretation.

a. Individual Apartment Improvements (IAIs)

The proposed amendments are necessary for DHCR to be in compliance with the legislative requirements outlined in Part K of HSTPA. Two major examples of such statutory interpretation are: 1) the implementation of the 15-year/$15,000 IAI rule to improvements installed prior to the effective date of HSTPA but where increases themselves were not effective until after HSTPA and 2) the need for licensed contractors for installation of IAIs. It was suggested that the rule in the Clean-up law exempting these installations from counting against the 15-year/$15,000 cap should also apply to the new amortization rules. However, the amortization was not included in the Clean-up law as an exception.

Moreover, the effective date requirements of HSTPA required that IAI changes be implemented, to the extent feasible, as effective immediately as possible. These provisions, DHCR believes, effectively precluded the suggestion of carving out an exception for amortization. As to the requirement of the installation of IAIs by licensed contractors, DHCR did not see such a requirement as an appropriate reading of the statute where local building code and rules did not require licensed contractors. Instead, DHCR saw the inclusion of this new requirement as one more issue DHCR must now check where such licensed contractor is required for such installation as part of an IAI review of an overcharge. For example, a requirement that the "installation" of a new refrigerator which is simply plugged in, should be by someone licensed, when no such license exists, did not square with DHCR's view of the meaning of the provision.

DHCR also believes the installation of appliances where the prior appliance was installed more than 15 years before (and before the enactment of HSTPA) was not meant to be a part of the $15,000 cap on three IAIs for the 15-year period. Such a reading of the statute simply left

too much to happenstance where there was a necessary replacement that could not otherwise be planned.

b. Major Capital Improvements (MCIs)

DHCR used its knowledge and experience in carrying out its operational responsibilities in creating a process around review of the prohibition of temporary MCI rent increase approvals where certain specific violations are extant. Various alternative options were suggested, none of which were effective as operational models: one was to deny an MCI application immediately whenever such a violation was placed. The second was to hold such MCI grant in abeyance indefinitely until the violation was cleared. The first option fails to recognize the exigencies of building operation and the well settled nature of a long outstanding violation clearance system. The second option fails to recognize the need for, and long settled doctrines of administrative finality. Instead, DHCR took its present process of review for violation at the time of application, approved as part of the "Portofino" litigation. (Portofino Realty Corp. v. DHCR, 2017 N.Y. Misc. LEXIS 5273, 2017 NY Slip Op 32773 (U) (Sup. Ct., Kings Co., 2017), aff'd 193 A.D.3d 773 (2d Dept.) (2021)). DHCR then added the HSTPA mandatory review and cure period prior to the final issuance of an MCI order. This combination provides for orderly processing of MCI applications, clearance of violations, but also the outright denials of MCI applications where such violations are not cleared.

Two ancillary provisions, although not directed to be changed by HSTPA, in DHCR's assessment, needed to be changed to give HSTPA effect. First, DHCR's prior regulation enabled an agreed upon increase in rent for new services where 75% of the residential tenants agreed to the service. With the new HSTPA rule, in denying any MCI increases in buildings with less than 35% regulated tenancies, the application of the 75% standard based on using all

tenants, could potentially undermine that 35% statutory limitation. Under DHCR's new rule, 75% of the residential tenants may still change the service, but it takes 75% of the rent regulated tenants to agree upon any increase associated with such a change.

Also, historically, DHCR had an evidentiary standard to judge the quality of an MCI. That standard facially precluded an independent inspection by DHCR of the MCI where an engineer certified correct installation and operation, unless 51% of the original complaining tenants disputed the certified opinion. Although such a rule may still be persuasive in many instances as to efficacy of the MCI, it no longer made any sense as an absolute prohibition against a DHCR inspection, in light of HSTPA's statutory command that 25% of all MCI installations be inspected. Such a self-imposed limitation by DHCR on certain inspections could serve to defeat that legislative directive and unreasonably limit selection of buildings for those inspections.

As with deregulation and overcharge, DHCR determined, as an issue of law, that new MCI rules needed to be applied to pending proceedings before the Rent Administrator, but not those pending at PAR as they were previously decided.

c. Rent Regulation for Supportive Housing

This is another area where DHCR wanted to ensure the regulations were consistent with the statute. DHCR, therefore, chose in its regulatory language to adhere closely to the terms of the statute itself. However, DHCR does note that even HSTPA's express terms have been open to variable interpretations. DHCR believes that HSTPA requires coverage of these previously exempt units rented either before and/or after HSTPA's enactment and HSTPA gives residents a continued right of occupancy as rent stabilized tenants in the event the not-for- profit surrenders or loses its tenancy. Further, given the remedial nature of this new statutory

inclusion, DHCR believes that the term "sub-tenant" should be interpreted expansively to include terms such as "licensees" and other nomenclature that existed under prior statutory interpretation.

d. High Rent/High Income Deregulation

There are no alternatives to this amendment. The elimination of this deregulation was part of HSTPA. DHCR repealed the entirety of the high rent/high income provisions just as the equivalent section was removed in its entirety from the statute by the legislature.

The division between pending RA proceedings (where the new law was applied) and PAR proceedings is dictated by what was already "lawfully deregulated" by DHCR order (and now just subject to PAR) and those that were still pending. Deregulation does however require the expiration of the lease then in effect. If the lease in effect had not expired prior to the enactment of HSTPA, the conditions for deregulation had not been lawfully completed prior to HSTPA's enactment.

e. Rent Overcharge

The choices with respect to the overcharge section are largely dictated by HSTPA itself and Regina Metropolitan.

f. Apartment Reconfigurations

Apartment reconfiguration was not a specific subject of HSTPA. However, the only existing DHCR regulation dealing with the topic of combined reconfiguration was within the high rent vacancy deregulation section, a matter expressly repealed by HSTPA. In addition, HSTPA's treatment of IAIs and its greater premium on the continued review and relevance of prior rent history all required review of the reconfiguration policy.

DHCR accordingly created a new paradigm consistent with those provisions of the HSTPA. The new rule allows for apartment reconfiguration, but within the confines of the provisions of the limitations placed on deregulation, IAIs and the expanded review of rent history.

g. Rent Guidelines Board/Rent Guideline Increase on Vacancy

The DHCR rule is not a policy choice, but a proper interpretation of HSTPA. In keeping with the interpretation that increases are allowed both on renewal and vacancy, DHCR created a rule to assure that there would be no duplicative rent increases where a tenant breaches a lease and leaves before its expiration.

h. Deconversion

Continuing the rule presently in place was not an acceptable alternative in light of its reference to a four-year period of review that was repealed by HSTPA.

i. High Rent Vacancy Deregulation

DHCR repealed the entire high rent vacancy deregulation section just as the equivalent section was removed in its entirety from the statute by the legislature. DHCR considered maintaining historical references to high rent/vacancy deregulation. The applicability to the various standards as they changed over various periods of time have been settled up to 2015 have now been settled by Altman v. 285 West fourth, LLC, 31 N.Y.3d 178 (2019). However, the impact of the changes made by the Rent Act of 2015 has been the subject of other litigation. In People's Home Improvement LL v. Kindig, the Court held that the rent in effect prior to vacancy controlled whether the rent exceeded the threshold to effect deregulation. More recently in 3265 Starr LLC v. Martinez, 202 N.Y. Misc. Lexis 6681, the Appellate Term 2nd Department reached the opposite conclusion. DHCR does not believe that the 3265 Starr

decision will necessarily be the final word from the courts nor is it yet ripe for resolution by regulation. DHCR shall instead for the time being makes its own assertion in cases that come before it which will be subject to judicial review.

j. Applying Changed Rules at PAR

DHCR considered a variety of alternatives to many of these new rules, as set forth in the Needs and Benefits sections. DHCR considered continuing the rule presently in place. The current regulations provide that "unless undue hardship or prejudice would result therefrom, where a provision is amended, or an applicable statute is enacted or amended during the pendency of a PAR, the determination shall be in accordance with the changed provision." However, DHCR decided that it would not be feasible to continue applying the current rules given the complexity of HSTPA, its actual legislative directions on implementation, and the Court of Appeals recent decision in Regina Metropolitan, all of which are discussed in the Needs and Benefit section.

k. Actual Physical Address for Registration

No significant alternatives to the proposed rules were considered by DHCR for the reasons stated in the Needs and Benefits section.

l. Demolition

The main alternative considered by DHCR was not to amend these provisions. However, the various technical changes are based on concerns raised by DHCR internally as to how best to process these matters as well as to close potential "loopholes" that could prevent DHCR in assuring the good faith use of the site of these regulated housing accommodations as expressed by the owner to DHCR. The utilization of DOB's definition for demolition more closely adheres to the actual language of the RSL. It was considered a better alternative as the present

"substantial demolition" standard is more in line with "substantial rehabilitation" where continued tenant occupancy is protected rather than leading to eviction. The change in the stipend calculation more accurately reflects the cost of replacement/relocation housing for which these stipends are supposed to represent an alternative. The impact of these changes to the broader owner and tenant communities are minimal in that there are presently only nineteen of these demolition applications pending before DHCR. This number needs to be contrasted with the one hundred and forty-one requests for a determination on substantial rehabilitation as of January 2022. To further highlight the difference in usage, these types of requests are not even required as part of a claim of exemption.

9. FEDERAL STANDARDS

The proposed amendments do not exceed or duplicate Federal standards. Many of HSTPA's provisions and rent regulation generally are the subject of current litigation as to their constitutionality.

10. COMPLIANCE SCHEDULE

By the time of final promulgation of these rules, HSTPA will have been extant for a significant period. Therefore, it is not anticipated that regulated parties will uniformly require time to comply with the proposed rules. To the extent that DHCR believes they do reflect rules not required by HSTPA, the rules themselves are generally made expressly prospective. Moreover, DHCR regulations provide for an option of additional grace periods for implementation.