RENT STABILIZATION CODE

EMERGENCY TENANT PROTECTION REGULATIONS

STATE RENT AND EVICTION REGULATIONS

CITY RENT AND EVICTION REGULATIONS

## Assessment of Public Comments for Regulatory Amendments

A Notice of Proposed Rule Making was published in the State Register on August 31, 2022. The Division of Housing and Community Renewal (DHCR) received comments submitted to it and/or presented at the public hearing held on November 15, 2022, regarding the proposed changes to the Rent Stabilization Code ("RSC"), the Emergency Tenant Protection Regulations ("TPR"), the City Rent and Eviction Regulations ("CRER") and the State Rent and Eviction Regulations ("SRER"). Written comments were accepted before, during and at least 5 days after the public hearing, in conformity with the State Administrative Procedure Act (SAPA). Oral comments were presented and received at the public hearing.

Comments were submitted by individual tenants, tenant advocacy organizations and representatives, owners, and owner advocacy organizations, public officials, and other interested members of the public. A majority of the comments received, particularly those from tenants, tenant advocacy groups, and public officials, were positive and expressed support for the proposed rules. In addition, there were numerous suggestions and operational recommendations not specifically related to the proposed amendments, which DHCR may take into consideration for any future amendments.

A synopsis of the comments and DHCR's responses are discussed below:

### Issue #1: Changes in overcharge processing to comply with HSTPA and the Court of Appeals decision in Regina. (9 NYCRR § ; 9 NYCRR § 2506.1)

Several public comments suggested that in rent overcharge matters, DHCR should apply the statute and policies in place at the time the overcharge occurred rather than those in place when the complaint is filed.

One commenter suggested that there should be a regulatory amendment eliminating the use and notion of a base date when determining the legal rent when there is a dispute regarding the reliability of a registration or illegal deregulation.

Commenters asked for detailed clarification regarding exceptions to the lookback rule.

DHCR's response:

DHCR considered the above issues and drafted its proposed regulatory amendments to align with HSTPA, as clarified and limited by the Court of Appeals decision in Regina *Co., LLC v. New York State Div. of Housing & Community Renewal, 35 NY3d 332 (2020)* ("The *Regina* decision or *Regina*"). Consistent with *Regina*, even with respect for complaints filed after the effective date of HSTPA, the proposed regulation creates a rolling base date. Using the rolling base date, review of pre-HSTPA rental history cannot exceed four years prior to the passage of HSTPA, unless that review comes within a four-year-rule exception that was in effect prior to the passage of the HSTPA.

In an exercise of caution, the proposed amendments leave in place the pre-HSTPA four-year-lookback rule exceptions exactly as was previously set forth in the Code. Litigation addressing the meaning and the propriety of four-year-rule exceptions is ongoing. Inclusion of pre-HSTPA exceptions was not intended to and does not supplant existing case law or case law as it continues to evolve.

Given the above, DHCR declines to adopt changes which would remove all base dates, as such action would be contrary to *Regina.*

**Issue #2 Changes to the Demolition Regulations (9 NYCRR § 2524.5(a); 9 NYCRR § 2504.4(f); 9 NYCRR § 2104.8; 9 NYCRR § 2204.8)**

Several comments requested that demolition regulations be amended to include a requirement that every owner applying for demolition before DHCR must show its post-demolition plans as a condition for approval of its demolition application.

Several comments supported the change in the proposed regulations requiring qualified demolitions to include removal of the entire building, including the

foundation. One comment asserted that the change requiring total demolition rather than substantial demolition violates NY Appellate Division decisions and decades of DHCR policy.

One comment asserted that the proposed changes will effectively disqualify landmarked buildings from the demolition remedy and that such *de facto* disqualification is an impermissible taking.

DHCR's Response:

The suggestion of including post-demolition plans as a condition of approval was engendered by a court decision in *First N.Y.LLC v DHCR*, 208 A.D.3d 1095, 175 N.Y.S.2d 23 (1st Dept. 2022). In this case, DHCR's policy of assessing post-demolition plans in every case as part of indicia of owner's good faith, was called into question. *First N.Y.* also noted that prior DHCR guidance regarding this post-demolition plan review as a per se rule, had previously been removed from those guidance documents in 2009.

The decision in *First N.Y.* post-dates the publication of these proposed rules. Although DHCR acknowledges the importance of this issue, changes to the regulation to address *First N.Y.* are beyond the scope of this regulatory initiative and its inclusion of changes would be an impermissible substantial deviation from the proposed regulations. *First N.Y.* does not bar post-demolition inquiry in all demolition applications. Plans may still be relevant if the facts demonstrate a genuine need for that inquiry to ascertain the good faith nature of the demolition application. Further, DHCR also does not rule out addressing this matter through a separate regulatory initiative.

Regarding DHCR's proposed change from a substantial demolition standard to a complete demolition standard, DHCR has articulated its reasoning in its Regulatory Impact Statement. As a legal matter, the existence of prior policies is not a preclusion from making changes. See *Peckham v Calogero*, 12 N.Y.3d 424, 883 N.Y.S.2d 751 (2009). DHCR previously pursued a regulatory initiative on demolition in 2009, which it subsequently withdrew. That initiative would still have allowed partial demolitions but based on a more limited definition. Upon this additional review, and in keeping with additional years of experience with its administration, DHCR views these partial demolitions are more akin to

“substantial rehabilitation”, where tenants in place should be entitled to protection rather than be subject to eviction.

The standard with respect to whether limitations based on a building’s “landmark status” amounts to a regulatory taking has been the subject of significant litigation and has been well articulated by the courts. See *Penn Central Transp. Co v City of New York*, 438 U.S. 104 (1978). Whether a very specific circumstance wherein an owner whose building has landmarked status may require a variance to this new regulatory paradigm to meet these constitutional standards is best left to the context of a specific demolition application, and the fact-based administrative proceeding and inquiry associated with that application.

**Issue #3- High Rent Deregulation Between 2015 and 2019**

There was little comment regarding the proposed regulations’ elimination of high rent deregulation in accord with the HSTPA. However, one commenter questioned why the proposed regulations do not address high rent vacancy deregulation between 2015 – 2019 when the DHCR Regulatory Impact Statement did address and evaluate the present case law on this period of deregulation.

Specifically, *People's Home Improvement LLC v Kindig*, 65 Misc 3d 1016 (2019) held that high rent vacancy deregulation pursuant to the Rent Act of 2015 requires an outgoing tenant with a rent above threshold. However, in *326 Star LLC v Martinez,* 74 Misc.3d 77 (Sup Ct, A Term, 2nd Dept. 2021) the Appellate Term held that the incoming tenant with rent above threshold is necessary for high rent vacancy deregulation (often referred to as the “Altman” Rule).

Several commenters urged DHCR to recognize the implications of *Regina Metropolitan* and continue to pursue any deregulation, no matter what state of the proceeding or its litigation posture, that could arguably implicate activity prior to 2019. Others stated that it should incorporate the First Department’s decision in *Fuentes v. Kwik Realty*, 186 A.D.3d 437 (1st Dept. 2020) which, the commenter said, held that a tenant is entitled to a new rent stabilized lease if they were not provided with a lease rider explaining the basis for a claimed vacancy deregulation.

DHCR’s Response:

DHCR has already acknowledged that *326 Starr* is a decision of the highest court to deal with the issue of the deregulation standard between 2015-and 2019.

With respect to its inclusion in the regulations, the state legislature, in enacting HSTPA, repealed both high rent/high income and high rent decontrol and eliminated all references to prior historical standards. Rather than continuing those historical references, HSTPA instead noted that an accommodation previously decontrolled remains decontrolled. DHCR regulations track this statutory approach. As to whether the filing of a deregulation application gives an owner a vested right to such decontrol even if not effectuated prior to the HSPTA, the Appellate Courts have, to date, consistently held the elimination of this form of deregulation does not violate *Regina*. DHCR also notes that it disagrees with the commenters' reading of the *Fuentes* decision.

**Issue #4 Succession (9 NYCRR § 2523.5; 9 NYCRR § 2503.5; 9 NYCRR § 2204.6; 9 NYCRR § 2104.6)**

"Succession" rights of family members to a rent-stabilized apartment generally require at least two years of contemporaneous occupancy, as family members, with the tenant of record (TOR). DHCR regulations clarify the period runs back from the actual physical vacatur ("permanent" or "physical vacatur") of the TOR rather than from a document execution date or lease expiration date. We note that execution or expiration of a renewal lease may not match up with the date of physical or permanent vacatur. Several commenters suggested a modification so that DHCR can ensure that the two years from when a TOR permanently vacates the subject apartment runs from when the TOR has established a primary residence elsewhere.

Other commenters asserted that DHCR should not have weighed in on any dispute between courts as to when this two-year period begins and ends. They contend that the legislature should have resolved the issue if it had wanted to do so when enacting the HSTPA.

DHCR's response:

Having considered the comments, at this time, DHCR will not make changes to the proposed regulations regarding the establishment of primary residence. Under

the standard both before and after the proposed regulation, DHCR and the Court, as the triers of fact with respect to succession, have the right to consider all appropriate factors in assessing the period of co-occupancy based on actual physical vacatur, including the establishment of primary residence at another location.

The request for this amendment seems appears grounded in the concern that “permanent vacatur” would mean, if not clarified, that the former TOR can have no subsequent presence whatsoever in the apartment.

DHCR believes this concern is grounded in an overreading of the provision. Permanent vacatur deals with the former TOR vacating the apartment, as a rent stabilized tenant and does not preclude TOR’s visitation or occasional presence in the premises. Given that the successors are remaining family members of that TOR, the sometime-presence of the TOR in the apartment has to be anticipated.

DHCR rejects the suggestion that it refrain from promulgating any regulations regarding succession. DHCR is authorized to promulgate regulations and, in fact, has done so in the past. See *RSA v Higgins*, 83 NY2d 156 (1993). DHCR ‘s interpretation of the regulations should accordingly be given deference.` See *Jourdain v DHCR*, 159 A.D.3d 41, 70 N.Y.S.3d 239 (2nd Dept. 2018).

**Issue #5 Fair Market Rent Appeals (9 NYCRR §2522.3; 9 NYCRR §2502.3)**

Fair Market Rent Appeals (FMRAs) provide tenants a limited opportunity to contest initial stabilized/ETPA rents which may occur after a rent control tenant vacates an apartment or when a new community adopts the ETPA.

Several commenters stated that DHCR should change the regulation for apartments outside of New York City to increase the two-year period to which refund orders can relate when a new community adopts the ETPA.

One commenter recommended that the proposed regulations effectively repeal the language regarding any examination of prior rental history, rendering the time to file an FMRA and to examine past rental history open-ended.

One commenter proposed that DHCR require that guidelines in determining FMRAs, established by the respective Rent Guideline Board, be made public.

DHCR's Response:

The proposed change of repealing the two-year limitation period for FMRAs outside of New York City is outside of the scope of this regulatory initiative. The board determinations of its fair market rent appeals guidelines are published and may set forth additional limitations on recovery of rent beyond those in the regulations.

**Issue #6 First Rent and Apartment Reconfiguration (9 NYCRR §2521.1; 9 NYCRR §2501.1)**

There were many comments pertaining to apartment reconfiguration and its effect on rents. The comments were largely, but not uniformly, in favor of the changes proposed by DHCR.

Several commenters, however, proposed that DHCR should alter the proposed regulation and permit owners to charge a market value rent when two stabilized apartments are combined.

At its core, DHCR's proposal modified the policies which previously enabled an owner to establish a new stabilized rent for these rent stabilized apartments. Instead, DHCR policy now requires that owners use an appropriate rent setting consistent with the RSL, using legal rents, individual apartment increases, and square footage where apartments are combined, divided, or reconfigured. Several commenters said that the proposed regulations do not adequately consider the amount of work necessary to improve and combine apartments and buildings. One commenter proposed that square footage should not be the only consideration in rent setting. DHCR should consider other concerns such as accessibility, comfort, and fire safety when determining rents.

Other commenters argued (without promising to limit the use of new units to appropriately sized families) that the ability to combine studio or one-bedroom apartments to create larger apartments that can accommodate families benefits the public, and without the ability to set new unreviewable rent, owners are disincentivized from adding to the supply of family-sized apartments.

There was a further claim that the amendments are silent as to how the rent would be calculated when a rent stabilized apartment is combined with an

unregulated or rent controlled apartment, as neither have a previously established stabilized legal rent.

There were those that felt the new regulation did not go far enough. One commenter had concerns that combining apartments under any circumstances could increase the risk of fire by eliminating walls.

Others requested that DHCR implement a policy requiring that owners request permission from DHCR, subject to proposed tenant review, to combine vacant apartments, including altering layouts/services. Others suggested that DHCR needed to ensure that DHCR would be very specific, as to heighten awareness as to when apartments are restored after a vacate order. In these commenters' opinion, in order to assure that there was no abuse of reconstruction standards, the best solution was to require restoration of an apartment after a vacate order with each amenity provided exactly as previously delivered.

Those against the new regulations, at their core, believed that any regulations governing reconfiguration do not fall under the purview of DHCR's authority. As a policy matter, they also argued that the proposed amendments would eliminate the last remaining method after HSPTA's enactment for landlords to improve their buildings and realize a return on their investment. They argued that additional regulation in this area is contrary to decades of DHCR policy and appellate decisions. Finally, these commenters expressed their concern that these proposed regulations would be applied retroactively.

DHCR's Response:

As noted in the Regulatory Impact Statement, the regulations and policies surrounding reconfiguration needed to be updated particularly to consider the legislative direction embodied by the HSTPA's changes. HSTPA further regulated apartment improvements and emphasized the importance of prior rent history in calculating rents. There is nothing in case law that mandates the continuation of a prior agency policy as suggested by some commenters. DHCR will apply these regulations prospectively, in that apartments operationally reconfigured and rented prior to the effective date of these regulations will have their rents governed under the prior standards.

The combination of unregulated apartments is neither the subject of this rule change nor DHCR's purview generally. However, rent regulated units, both rent stabilized and rent controlled, are subject to DHCR's supervision. The regulations are drafted to provide additional clarity and guidance but with some flexibility to address the different factual situations that may be presented.

The concerns regarding the removal of walls are not within DHCR's purview, however, all construction must comply with all appropriate building code standards as regulated and supervised by the appropriate building code authorities. DHCR declines to follow the suggestions that would add further mandated administrative proceedings which would in all cases delay tenant re-entry into apartments.

DHCR sees its present enforcement paradigm and enforcement options as appropriate.

The requirement that the proposed incoming new tenant's consent to a reconfiguration of vacant apartment would be beyond what is required for IAI's (which is now the allowable increases). Violations of both the present rules and the old rules regarding rents after reconfiguration are often reviewed in the context of overcharge cases.

**Issue #7 Substantial Rehabilitation (9 NYCRR §2520.11; 9 NYCRR §2500.9)**

Comments ranged from requests for further restrictions on the substantial rehabilitation exemption to requests seeking to relax the present standards.

Several commenters suggested further additions to the regulations: to provide that DHCR must deny substantial rehabilitation claims where the improvements were primarily financed with government funds; to require DHCR and courts to consider whether the landlord's conduct contributed to the deteriorated condition of the building; to require owners to present proof that the rehabilitation was completed in a continuous expeditious time frame; to require DHCR to consider any evidence, not merely past findings, that an owner or its predecessors engaged in tenant harassment for purposes of securing vacancies within ten years preceding rehabilitation of the building; to make clear the protections in RSC Section 2520.11(e)(5) (the continued rent stabilized projections

for existing tenancies) apply even if the entire building (including units of pre-existing tenants ) is deemed prospectively exempt; to protect tenants displaced due to vacate orders so that they retain constructive occupancy even if they fail to apply for a dollar order; and to require owners to apply for this exemption within two years of completion of the work.

Several commenters noted support for DHCR's removal of the 80% "vacancy presumption" (i.e., that such building was presumptively in need of substantial rehabilitation), which those commenters agreed could reward warehousing.

One commenter argued that requiring an owner to prove substantial rehabilitation going back decades would require the production of documents and evidence for which there was never any obligation to produce and trample on an owner's expectation of repose as expressly prohibited in *Regina.*

Several commenters argued that the proposed amendments will severely restrict an owner's ability to perform substantial rehabilitations and obtain orders from DHCR or the Courts confirming an exemption. Further, they asserted that the amendments will disincentivize building system upgrades and investments in older buildings.

Commenters also asserted that under the proposed regulations, an owner may be required to replace more than 75% of the building systems and still must prove the building's deteriorated condition. This, they asserted, would encourage wasteful replacements of systems that may have been recently replaced.

<u>DHCR'S Response:</u>

Under the RSL, substantial rehabilitation provisions are self-operating by statute and do not require individualized DHCR application or DHCR approval. This lack of need for pre-approval and contemporaneous review does not mean that claims of a substantial rehabilitation exemption must be taken at face value. The owner's ability to unilaterally claim this exemption makes it incumbent on each owner to maintain the records necessary to establish this. The record-keeping requirement is not new; claims based on this kind of jurisdiction exemption have been a well-recognized exception to the traditional limitations on "look back" periods.

DHCR has authority to promulgate rules and regulations relating to the substantive standards governing substantial rehabilitation. Changes made here

will largely be applied prospectively. Claims by commenters of their long-standing reliance on the former 80% rule as a safe harbor, are overstated. Negligent conduct by an owner that contributed to the building's deterioration was always within DHCR authority to assess in determining whether the exemption applies. DHCR uses extant harassment findings as an objective standard to prevent findings of substantial rehabilitation. With respect to present claims of harassment, DHCR cannot rule out additional fact-finding in an appropriate case. These protections are in addition to DHCR regulations for "dollar orders" and other permissible remedies where a tenant might have to be restored to their status, as part of their claim that a tenant may have been compelled by non-volitional circumstances to leave a building.

DHCR agrees that governmental funding for rehabilitation often precludes the use of this exemption but the creation of a per se rule in all instances is neither within the purview of this regulatory initiative nor necessarily appropriate without review of the actual case before DHCR.

**Issue #8 Major Capital Improvements (MCIs) (9 NYCRR §2522.4; 9 NYCRR §2502.4; 9 NYCRR §2102.3; 9 NYCRR §2202.4)**

Commenters raised issues that were not related to the proposed regulations. For example, there was some criticism of the already existing regulations such as the implementation of "reasonable cost" provisions, the continued inclusion of other kinds of building-wide increases, including new building-wide services agreed to by tenants, and building improvements required by law or related costs that may be part of an MCI installation. There were also operational concerns raised by commenters seeking to ensure that there was proper asbestos and lead paint removal/remediation, an "automated" rejection of MCI applications based on the existence of violations, actual record clearance of violations, and appropriate consideration of tenant objections.

There was also a claim that (although these schedules and regulations were already in place) DHCR should freeze the processing of all MCI applications until a reasonable cost schedule with accompanying regulations were in place; that DHCR should delve into any familial relationship between installers and owner; that DHCR should add qualified staff to validate that work was correctly done, so

as not to rely on objections raised as part of the administrative proceedings; and should be proactive to ensure that the 2% MCI cap on increases is enforced. Also, commenters wanted a rule for denial of any MCI in its entirety if necessary work permits were not properly signed off at the time of the MCI application or if there is clear evidence of incomplete or deficient work, or if there was any concealment of identity of interest with a contractor or if the claimed work was completed by the prior owner.

Several commenters expressed that the new statutory limitations on MCIs were too restrictive. Moreover, these commenters claimed that the application of these new MCI standards to pending MCI proceedings would violate *Regina*. There was a specific example regarding rules of using violations as a rationale for precluding the collection of an MCI rent increase retroactively to the effective date of a rent reduction order. It was also argued that because HSTPA does not define hazardous violations, that the new rules invite tenant-created conditions which could lead to the denial of MCI applications. It was also asserted that the elimination of retroactivity to MCI increases to the date of application, (an elimination now required by the Rent Stabilization Law) gives tenants an incentive to fight MCIs, merely to delay valid MCI increases.

DHCR'S Response:

As noted above, many of these comments reflected objections to the statutory provisions themselves, regulations outside of this regulatory initiative, or operational suggestions.

Regarding asbestos and lead-based paint remediation, such remediation costs may be considered work related to the installation of an MCI, and DHCR requires additional sign-offs by the city agencies involved in monitoring such remediation. The extent that which remediation is compensable as an MCI is best left to a case-by-case analysis. DHCR notes that the installation of building-wide kitchen and bathroom replacements does not transform these improvements from being individual apartment improvements, which cannot be aggregated to qualify for MCI treatment.

As to the intersection of violations and harassment findings with MCI eligibility, DHCR has present procedures to address the issue of violations and harassment

findings which it will continue to use, as supplemented by provisions added by the HSTPA.

As to the utilization of MCI rules to pending proceedings, DHCR believes the new regulations as proposed are in line with case law regarding the application of HSTPA standards. DHCR does note that this is the subject of litigation.

In summary, DHCR applies the new HSTPA MCI standards to proceedings pending at the Rent Administrator's level, but not to PAR applications on orders issued prior to the enactment of HSTPA.

"Retroactivity" may be arguably implicated with respect to previously approved MCI orders where the prior 6% annual limitation on phasing in the collection of increases has been reduced to 2%. However, even that phase-in is modified prospectively only, for renewal leases commencing on or after the effective date of the HSTPA.

**Issue #9 Individual Apartment Improvements (IAIs) (9 NYCRR §2522.4; 9 NYCRR §2502.4; 9 NYCRR §2102.3; 9 NYCRR §2204.2)**

Many comments regarding Individual Apartment Improvement (IAI) regulatory amendments were merely criticisms of the statutory changes made by the HSTPA. These criticisms included comments that HSTPA does not now allow low-rent apartments to rise to a reasonable rent level upon vacancy and that IAI compensation formulas are insufficient for owners to make necessary improvements. Others questioned why the IAI caps on compensation, which are also statutory, apply to all apartments, regardless of apartment size.

Some commenters suggested that DHCR promulgate a schedule of reasonable costs for IAIs or standard procedures for obtaining bids prior to the commencement of IAI work.

Several commenters questioned the specificity of proposed regulations as to when a licensed contractor is required for IAI work, while others opined that the proposed regulations should require owners to use a licensed contractor for all IAI work, without exception.

One commenter asserted, in error, that the proposed regulations grandfathered in all IAI work purportedly commenced prior to the HSTPA and that this grandfathering would be ripe for abuse.

DHCR'S Response:

DHCR largely tracked the statutory language of HSTPA with respect to the IAI provisions. For example, HSTPA does not mandate a reasonable cost "schedule" but only that the costs be reasonable and proposing a mandatory contracting process for bids prior to installation is beyond the scope of this regulatory initiative. With respect to the comments on licensed contractors, HSTPA does not mandate use of licensed contractors when they are not required by law.

**Issue #10 Default Formula (9 NYCRR §2522.6; 9 NYCRR §2502.6; 9 NYCRR § 2202.22; 9 NYCRR § 2102.6)**

Several commenters proposed adding back a modified default formula previously in place for calculating rents where there are no records or insufficient records for owners who purchase buildings at a judicial sale.

A commenter proposed that DHCR make public, in advance, its apartment sampling methods used when there is a default or issue a publicly available directive explaining how rents are determined in cases where the usual non-sampling methods cannot be used.

DHCR's Response:

With respect to the Judicial Sale Default formula, the proposed regulations seek to balance the new HSTPA provision of using the last reliable registration in rent setting against the lack of other information to establish the rent that a judicial sale purchase may or may not have. DHCR notes that it has left in place that part of the judicial sale exception with respect to the limitations on overcharge liability that was in the regulations.

As to alternative sampling methodology, DHCR needs to retain discretion on a case-by-case basis with appropriate input from the parties.

DHCR declines to adopt this suggestion. The court in *160 E 84th Street Assoc LLC v DHCR*, 160 A.D.3d 474, 75 N.Y.S.3d 141 (1st Dept. 2018) noted that DHCR has broad discretion to fashion a remedy where appropriate and should not be bound by a certain type of sampling.

**Issue #11- Apartment Registration (9 NYCRR §2509.2; 9 NYCRR §2509.3)**

There were a significant number of comments regarding rent registration: that approval be required before an owner is permitted to file a late registration; that DHCR should review all its apartment registrations for accuracy; that owners who stop registering units subject to rent stabilization should submit documentation explaining why the unit is no longer required to be registered; and that DHCR issue no orders on any other subject for buildings/units with a missing registration.

These suggestions were coupled with requests that DHCR provide greater transparency on its data and that DHCR consolidate its data infrastructure. As to additional owner obligations, DHCR should require landlords to provide rent-regulated tenants with documentation including a rent history on lease renewal or at any time rather than upon tenant complaint.

DHCR's Response:

As to data and registration and rent history transparency, although not the subject of these regulatory changes, DHCR has already implemented many of these proposals. DHCR lease riders require an owner calculation of the rental history and also enable tenants to directly request additional information for a sixty-day window period after lease execution. Apartment registration histories are available from DHCR by residents upon request at any time, as are DHCR orders. DHCR has also recently added certain operational data to its website to enhance transparency but notes that claims for transparency cannot transcend statutory or resident privacy concerns where implicated.

In addition to statutory penalties and procedures surrounding late registration, DHCR maintains an enforcement program in an effort to assure registration of apartments and buildings.

**Issue #12- Deconversion (9 NYCRR §2520.11; 9 NYCRR § 2500.9)**

A commenter suggested that in "deconversion" situations, tenants should be able to file complaints with the New York State Office of the Attorney General ("AG") as well as with DHCR. The commenter also proposed where the unit reverts to rent stabilization upon deconversion, the rent should be set at last reliable rent plus any lawful increases whether or not the unit was properly deregulated prior to conversion.

DHCR's Response:

DHCR believes the rent setting formula set forth in this regulation provides appropriate enforcement and flexibility and reflects its synergy with the Office of the Attorney General.

**Issue #13- Rent Control Fuel Cost Pass-alongs (9 NYCRR §2102.3; 9 NYCRR §2202.13)**

There were several comments that DHCR should take measures to assure fuel and labor pass-alongs will not be added to rent; that DHCR should require the refund of any improper fuel and labor pass-alongs; and should remove fuel and labor pass-alongs from the maximum base rent eligibility form.

DHCR's Response:

The maximum base rent eligibility form have been appropriately modified as the proposed regulations reflect the changes required by HSTPA and improper collection would be considered and treated as an overcharge.

**Issue #14- Electronic Leases**

It was suggested that owner be required to submit electronic copies of every vacancy and renewal lease signed by a tenant to DHCR and that DHCR should establish a record-keeping and certification system for each lease and to improve DHCR's enforcement capabilities.

DHCR's Response:

The comment is unrelated to the current regulatory initiative. Further, the rent law tasked DHCR with the creation and maintenance of a registration system to reflect rents and other information, rather than requiring that DHCR act as a central repository for all regulated leases. Rents and rent increases are instead tracked in accordance with the statute through the annual rent registration system.

**Issue #15 Additional Protections for Victims of Domestic Abuse and Tenants in Treatment for Substance Abuse (9 NYCRR §2523.5; 9 NYCRR §2503.5; 9 NYCRR §2204.6; 9 NYCRR §2104.6)**

Commenters suggested additional protections with respect to succession and primary residence for victims of domestic violence and that additional protections from owner-occupancy eviction be given to those in treatment for substance abuse.

DHCR's Response:

DHCR is adding additional language to the primary residence section to align with additional protections provided to victims of domestic violence; this primary residence section is also used to provide guidance on succession.

The questions as to why tenants who are in treatment for alcohol, gambling and controlled substance addiction are not afforded statutory protections given to tenants with other physical and mental disabilities is a legislative rather than a regulatory matter.

**Issue #16 Supportive Housing and Rent Calculation (9 NYCRR §2520.11; 9 NYCRR §2500.9)**

Commenters were generally supportive of DHCR's adoption of the HSTPA requirements affording rent stabilized protection to supportive housing providers and their residents. There was also support for DHCR's comments in its regulatory

impact statement that continued occupancy protections for the residents survive a possible end of the overarching leases of the supportive housing provider.

There were comments that DHCR should be more explicit on rent setting when this might happen. Commenters suggested that in these instances, the rent for the supportive housing resident should be based on the rent in effect prior to the supportive housing provider leases.

DHCR's Response:

DHCR agrees that the HSTPA provides for the continued occupancy of residents as rent-stabilized tenants. However, the rent-stabilized rents in accordance with law are based on the prior legal rents, which here, would be that paid by the not-for-profit provider.

**Issue #17- RGB Increases at Vacancy**

Several commenters asserted that there should be no Rent Guideline Board increases when a vacancy lease commences.

DHCR's Response:

DHCR has eliminated the prior practices of vacancy bonuses and longevity increases in conformance with the HSTPA. The statute now provides for uniform Rent Guideline Board increases for both vacancy and renewal leases.

**Issue #18- Physical Street Address of Owners (9 NYCRR §2509.1; 9 NYCRR §2528.2)**

Commenters were generally supportive of DHCR requirements for the addition of actual, physical street addresses for ownership as part of registration. They wanted assurances that the requirement would be reflected annually or with the transfer of the party.

DHCR Response:

Upon final promulgation of the proposed regulations, DHCR will include a field for the owner's actual physical street address in subsequent registration forms.

DHCR forms already require notice of transfer of ownership, and tenants will be receiving the change of ownership information with each annual registration.

**Issue #19- Preferential Rents (9 NYCRR §2526.1; 9 NYCRR §2506.1)**

Commenters acknowledged that DHCR made the changes to the preferential rent rules required by the HSTPA. One commentator mistakenly suggested that DHCR does not, in cases where rent in excess of a preferential rent is charged, conduct a standard analysis as to whether treble damages are warranted. Another suggested that DHCR add additional requirements regarding maintenance of services with respect to charging full legal rent after the termination of a preferential rent.

DHCR's response:

DHCR uses the required statutory analysis in overcharge cases where preferential rents are involved with respect to refunds and penalties. The RSL also has existing mechanisms with respect to the provision of required services, which DHCR will continue to enforce.