New York State
Division of Housing and Community Renewal
Office of Rent Administration

Operational Bulletin 95-3 (December 18, 1995)
(Replaces Operational Bulletin 94-1)

Implementing
Rent Regulation Reform Act of 1993
New York City Local Law 1994, No. 4
Affecting
New York City Rent Stabilization Law (RSL)
Emergency Tenant Protection Act of 1974 (ETPA)
New York City Rent and Rehabilitation Law (City Rent Control Law or CRCL)
Emergency Housing Rent Control Law (State Rent Control Law or SRCL)

This Operational Bulletin, which replaces Operational Bulletin 94-1 issued on January 3, 1994, is issued pursuant to section 2527.11 of the Rent Stabilization Code; the Emergency Tenant Protection Regulations adopted under the Emergency Tenant Protection Act; section 2209.8 of the City Rent and Eviction Regulations; and section 2109.8 of the State Rent and Eviction Regulations.

Both the Rent Regulation Reform Act of 1993 (RRRA), Chapter 253 of the Laws of 1993, effective July 7, 1993, and New York: City Local Law 1994, No. 4 (Local Law 4), effective April 1, 1994 provide for deregulation of high rent housing accommodations. The RRRA applies to all four of the above Rent Laws. Local Law 4 applies solely to the RSL and CRCL.

As discussed below, under both the RRRA and Local Law 4, deregulation of a high rent housing accommodation may occur:

A. Upon vacancy; or

B. As a result of occupancy by a high income tenant.

The RRRA also:

A. Establishes conditions for rent increases based upon individual apartment improvements.

B. Provides for deregulation of vacant rent regulated housing accommodations located in ETPA-locality cooperatives and condominiums, and if occupied, provides for deregulation upon vacancy.

C. Modifies penalties for failure to register rent stabilized housing accommodations subject to the RSL and ETPA.

I. High Rent Deregulation

Under all four systems of rent regulation, there is provision for high rent deregulation, with some variation among the systems. All references are to the RSL or ETPA, unless either the CRCL or SRCL is indicated in brackets. In this section, in order to reflect Local Law 4, housing accommodations regulated pursuant to the RSL or CRCL will be referred to as New York City (NYC) housing accommodations.

A. Deregulation upon vacancy

The RRRA added section 26-504.2 to the RSL and paragraph 13 to section 5a of the ETPA [and added subparagraph k to paragraph 2 of subdivision e of section 26-403 of the CRCL, and paragraph (n) to subdivision 2 of section 2 of the SRCL], providing for deregulation of vacant high rent housing accommodations, and if occupied, for deregulation upon their vacancy. Local Law 4 subsequently amended such sections of the RSL and CRCL.

1. Conditions for deregulation

a. Housing accommodations subject to the ETPA or SRCL (outside New York City).

(1) The housing accommodation must have had a legal regulated rent or maximum rent of $2,000 or more per month at any time between July 7, 1993 and October 1, 1993. The legal regulated rents on July 7, 1993 and on October 1, 1993 are included; and

(2) The housing accommodation must have been or became vacant on or after July 7, 1993.

b. Housing accommodations subject to the RSL or CRCL (New York City)

(1) The housing accommodation must have a legal regulated rent or maximum rent of $2,000 or more per month; and

(2) The housing accommodation must have been or became vacant on or after April l, 1994. Please note that prior to April 1, 1994, the effective date of Local Law 4, New York City housing accommodations regulated pursuant to the RSL or CRCL were subject to deregulation under the RRRA, according to the conditions set forth in section I.A.1.a., above.

c. Definition of “maximum rent”

For the CRCL, maximum rent is the maximum collectible rent (MCR); for the SRCL, maximum rent is the rent authorized by DHCR pursuant to a periodic increase process based upon owner application.

2. Examples illustrating conditions for deregulation

a. The legal regulated rent is $2,050 per month on August 1, 1993. The tenant in occupancy on August 1, 1993 vacates, and the next tenant executes a lease that commences September 1, 1993 for a lower monthly rental of $1,950.

The new tenancy is not subject to rent regulation. As long as the legal regulated rent was $2,000 or more per month at any time during the applicable period, between July 7, 1993 and October 1, 1993, a subsequent reduction in the legal regulated rent below $2,000 per month does not prevent high rent vacancy deregulation.

b. The legal regulated rent is set at $2,050 per month pursuant to a lease that commenced January 1, 1992 and expired December 31, 1993. On May 1, 1993, DHCR issued a final order reducing the rent to a level below $2,000 per month based upon a finding that the owner has failed to maintain required services. The owner filed an application to restore the rent on October 15, 1993. In a decision issued March 1, 1994, DHCR restored the rent to $2,050 per month, effective November 1, 1993.

ETPA: Where the tenant in occupancy vacates on or after July 7, 1993, the housing accommodation is not deregulated because the legal regulated rent was not $2,000 or more per month between July 7, 1993 and October 1, 1993. Although the reduced rent was later restored, for the period of effectiveness of the rent reduction order, which in this example covered the entire period between July 7, 1993 and October 1, 1993, the reduced rent was below $2,000 per month.

RSL: For vacancies occurring prior to April 1, 1994, the result would be the same as above. However, a vacancy on or after April 1, 1994 will result in deregulation under Local Law 4 because the legal regulated rent has been restored to $2,000 or more per month.

c. Under both the RSL, prior to its amendment by Local Law 4, and the ETPA, where prior to October 2, 1993, an owner installed new equipment in a vacant housing accommodation that had a monthly maximum or legal regulated rent of less than $2,000, and where such installation results in an increase in the monthly rental amount to at least $2,000, the lawful monthly maximum or legal regulated rent will be deemed as having been $2,000 or more between July 7, 1993 and October 1, 1993, provided that the next tenant in occupancy actually rents the housing accommodation for at least $2,000 per month. This is so, notwithstanding that the housing accommodation was not actually occupied by and rented to a tenant at that amount prior to October 2, 1993.

In NYC, pursuant to Local Law 4, the result will be the same if the owner installs the new equipment in a housing accommodation which is or becomes vacant on or after April 1, 1994.

As evidence that the subject housing accommodation was deregulated upon vacancy, owners should maintain all records from the date of filing of the last registration statement applicable to the housing accommodation.

d. Where an owner substantially alters the outer dimensions of a vacant, rent-stabilized housing accommodation which qualifies for a “first rent” and executed a vacancy lease that commenced between July 7, 1993 and October 1, 1993 (for a NYC housing accommodation, the vacancy lease must also have commenced between July 7, 1993 and October 1, 1993, or on or after April 1, 1994), providing for a monthly rent of $2,000 or more, the new tenancy is not subject to rent regulation.

e. Where a tenant in occupancy under a renewal lease sublet a housing accommodation pursuant to a sublease effective between July 7, 1993 and October 1, 1993 (or, for a NYC housing accommodation, pursuant to a sublease effective between July 7, 1993 and October 1, 1993, or a sublease effective on or after April 1, 1994), for which a sublet allowance would apply; the housing accommodation had a monthly legal regulated rent of

less than $2,000 at the time of the subletting; and the collection by the owner of a sublet vacancy allowance results in an increase in the monthly rental amount to at least $2,000; the housing accommodation will qualify for deregulation based upon the monthly legal regulated rent having been $2,000 or more between July 7, 1993 and October 1, 1993 (or, for a NYC housing accommodation, between July 7, 1993 and October 1, 1993 or on or after April 1, 1994). However, if the monthly rental amount for such period would not have otherwise reached at least $2,000 were it not for a ten percent surcharge payable to the tenant if the housing accommodation is sublet fully furnished, the monthly legal regulated rent will not be regarded as having been $2,000 or more for such periods.

f. A NYC housing accommodation is occupied at a rental of $1,950 from July 7, 1993 through October 1, 1993. On November 1, 1993, a new tenant moves in and pays a legal regulated rent of $2,050. Based upon a subsequent finding of a diminution of services, the legal regulated rent is reduced to $1,900, effective February 1, 1994. On May 1, 1994, with the rent reduction still in effect, the tenant vacated and another tenant moved in at the reduced rent of $1,900 per month. The housing accommodation is not vacancy deregulated pursuant to the RRRA or Local Law 4 of 1994. During neither the period from July 7, 1993 through October 1, 1993, nor the period commencing April 1, 1994, was the legal regulated rent $2,000 or more per month.

3. Exceptions

a. A housing accommodation found by DHCR to have become vacant due to an owner's harassment will not be deregulated.

b. Where a member of the household has acquired the right to be named on a renewal lease (for the CRCL and SRCL, the right to continue in occupancy as a statutory tenant] by "succession," as a "family member" (traditional or nontraditional) under DHCR regulations, the housing accommodation will not be considered as having become vacant.

c. These deregulation provisions shall not apply to housing accommodations which are subject to rent regulation by virtue of receiving tax benefits pursuant to sections 421-a or 489 of the Real Property Tax Law, until the expiration of the tax abatement period.

B. Deregulation of high rent housing accommodations occupied by high income tenants

The RRRA added sections 26-504.1 and 26-504.3 to the RSL, and following renumbering, paragraph 12 to subdivision a of section 5, and a new section 5-a, to the ETPA [and added a new subparagraph (j) to paragraph 2 of subdivision e of section 26-403 of the CRCL, added a new section 26-403.1 to the CRCL, added paragraph (m) to subdivision 2 of section 2 of the SRCL, and added a new section 2-a to the SRCL], providing for deregulation of housing accommodations occupied by certain "high income" tenants. Local Law 4 subsequently amended such sections of the RSL and CRCL.

1. The RRRA and Local Law 4 provide for deregulation under the following conditions:

a. For housing accommodations outside New York City, the legal regulated or maximum rent of the housing accommodation must have been $2,000 or more per month **as of October 1, 1993**, which means **on October 1, 1993**, and not earlier or later. For NYC housing accommodations, the legal regulated or maximum rent must have been $2,000 or more per month as of October 1, 1993, or be such amount on or after April 1, 1994.

b. The housing accommodation must be occupied by a tenant who had a total annual income in excess of $250,000 per year in each of the two calendar years preceding the year in which the owner serves the tenant with an income certification form (ICF).

(1) Annual income is defined as the federal adjusted gross income, as reported on the New York State income tax return.

(2) Total annual income is defined as:

(i) for housing accommodations subject to the ETPA or RSL, the sum of the annual incomes of all tenants or co-tenants named on the lease who occupy the housing accommodation, whether or not as their primary residence, and of all other persons who occupy the housing accommodation as their primary residence on other than a temporary basis; and

(ii) for housing accommodations subject to the SRCL or CRCL, the sum of the annual incomes of all persons who occupy the housing accommodation as their primary residence on other than a temporary basis. For housing accommodations subject to any of such four Rent Laws, the incomes of bona fide employees of such tenants, co-tenants, and occupants residing in the housing accommodation, in connection with their employment are not included. In addition, where a housing accommodation is sublet, the annual income of a bona fide sublessee is also not to be included, although the annual income of the sublessor will be included. Therefore, the annual income of a tenant or co-tenant named on the lease who will reoccupy the housing accommodation when the sublease expires will be included.

2. Examples

a. As noted above, a condition for high rent, high income deregulation is that the housing accommodation must have had a monthly legal regulated rent or a maximum rent of $2,000 or more on October 1, 1993 (both inside and outside NYC), or such rent on or after April 1, 1994 (NYC). As discussed above, in the examples set forth under high rent vacancy deregulation (I.A.), various issues may arise which affect the determination of whether the rent reached such level. Generally, such examples are also applicable to high rent, high income deregulation.

b. A tenant was occupying a NYC housing accommodation pursuant to a lease that provided for a rent of $1,950 per month and that expired on October 31, 1994. The tenant renewed his lease for a two year term commencing November 1, 1994 at a rent of $2,050 per month. Pursuant to the RRRA and prior to the enactment of Local Law 4, the housing accommodation would not have been eligible for high rent, high income deregulation because the legal regulated rent was less than $2,000 per month on October 1, 1993. Pursuant to Local Law 4, the housing accommodation may now be eligible for high rent, high income deregulation, provided that the legal regulated rent is $2,000 per month on or after April 1, 1994.

3. The RRRA requires the following procedures:

a. Income Certification Form (“ICF”)

(1) With regard to a high rent housing accommodation, the owner must serve the tenant on or before May 1st in each calendar year with DHCR’s ICF. DHCR

will not process an owner's petition for high income rent deregulation under the RRRA where the ICF not been served on the tenant on or before May 1st. Where an owner serves an ICF upon a tenant, the owner must serve the ICF by at least one of the following methods:

(i) Personal delivery, where a copy of the ICF is signed (not initialed) by the tenant upon receipt;

(ii) Certified mail, where accompanied by a United States Postal Service receipt;

(iii) Regular first class mail, where accompanied by a United States Postal Service Certificate of Mailing.

The ICF requires the listing of the names of all tenants, co-tenants, and other occupants whose incomes must be included in "total annual income," as defined above; and the identification of bona fide employees of such tenants, co-tenants, and other occupants residing in the housing accommodation in connection with their employment, and bona fide subtenants in occupancy pursuant to the provisions of section 226-b of the Real Property Law.

Commencing January 1, 1996, the ICF form will require tenants to state whether an occupant such as a minor child, is not required to file a New York State income tax return. In addition, the operative date for the determination of who is a tenant, co-tenant or occupant who must be identified on the ICF, and whose income, if any, will be included in total annual income, will be the date of service of the ICF upon the tenant. The ICF will also require the tenant to list all tenants, co-tenants, and other occupants whose incomes may be included in total annual income, and who vacated the housing accommodation within the calendar year in which the ICF is served, or within the two calendar years preceding the service of the ICF, and the dates on which such persons vacated the housing accommodation. It should be noted that the tenant will be required to include in total annual income the income of any such person who vacated the housing accommodation temporarily.

The ICF also requires a certification of whether the total annual income of only those tenants and occupants described in paragraph B.l.b. (2) above exceeded $250,000 in each of the two preceding calendar years. The ICF informs the tenant of the protection against harassment, that disclosure of income information is limited to the manner required on the ICF, and that only the tenants of housing accommodations that had a rent meeting the conditions specified in Section B.l.a. above may be served with and asked to complete an ICF. Where the monthly legal regulated rent or maximum rent of the housing accommodation does not meet the conditions specified in Section B.l.a., an owner is not authorized to serve an ICF on the tenant of such housing accommodation.

(2) The tenant must return the completed ICF to the owner within thirty days of service by the owner. The tenant is advised to retain a copy of the completed ICF.

(3) If the tenant(s) complete the ICF by conceding that the total annual income exceeded $250,000 in each of the two preceding calendar years, the owner may apply to DHCR for high income rent deregulation by filing a *Petition by Owner for High Income Rent Deregulation* (OPD), together with the ICF, by June 30th of the year in which the

owner serves the ICF upon the tenant. DHCR will not process the owner's petition where a complete OPD has not been filed with DHCR by such June 30th deadline. Incomplete or otherwise defective OPDs filed on or before June 15th will be rejected without prejudice, and owners advised of the reasons for such rejection and of the right to refile a complete OPD by June 30th. This advisement will not be available to owners who file incomplete or defective OPDs after June l5th, but they will still be entitled to perfect their OPDs by June 30th, if they so choose.

The OPD must be filed in person or by mail. An OPD filed by mail must be postmarked no later than June 30th. If the prepaid postage on the envelope in which the certification is mailed is by private postage meter, and the envelope does not have an official U.S. Postal Service postmark, then the certification will not be considered timely filed unless received by June 30th, or the owner submits other adequate proof of mailing by June 30th, such as an official Postal Service receipt or certificate of mailing. Within thirty days after the filing, DHCR will issue a deregulation order effective at the expiration of the existing lease [for CRCL and SRCL, effective June 1st of the following year]. A copy of the order will be mailed to the tenant by regular and certified mail, return receipt requested, and a copy will be mailed to the owner.

(4) To be eligible for high rent, high income deregulation, a NYC housing accommodation must continuously have a legal regulated or maximum rent of $2,000 or more per month from the owner's service of the ICF upon the tenant to the issuance of an order deregulating the housing accommodation.

b. Failure of tenant to return ICF

If the tenant fails to return the completed ICF to the owner, or if the owner disputes the information supplied by the tenant on the ICF, the owner may, by June 30th of the calendar year, request that DHCR verify, through the New York State Department of Taxation and Finance, whether the total annual household income exceeded $250,000 for each of the two preceding calendar years. DHCR will, within twenty days of receipt of the owner's request, ask for necessary identifying information from the tenant, giving the tenant sixty days to respond and advising the tenant that failure to respond will result in deregulation. If the tenant fails to provide the requested information, DHCR will issue by December 1st of such year an order providing that the housing accommodation shall be deregulated effective upon the expiration of the existing lease [for CRCL and SRCL, where leases are not used, deregulation will be effective on March 1st of the following year]. A copy of the order will be mailed to the tenant by regular and certified mail, return receipt requested, and a copy will be mailed to the owner. Where there is more than one named tenant, and only one responds to the notice, DHCR shall not consider the tenants to be in default.

c. Verification of total annual household income

If the Department of Taxation and Finance determines that the total annual household income exceeded $250,000 in each of the two preceding calendar years, the owner and tenant shall be notified by DHCR by November 15th and given 30 days to comment. Within forty-five days after the expiration of the comment period, where the facts warrant, DHCR shall issue an order of deregulation, effective upon expiration of the existing lease [for CRCL and SRCL, effective March 1st of the following year], and serve such order by mail as discussed under paragraph b. above.

Where the Department of Taxation and Finance determines that the income threshold has not been met or cannot ascertain whether the threshold has been met, DHCR will deny the OPD.

d. For both paragraphs b. and c. above, the same procedural filing requirements and deadlines as are set forth in paragraph a. above shall apply.

e. Lease renewal

Under the RRRA, an order of deregulation affecting a housing accommodation subject to either the RSL or the ETPA is not effective prior to the expiration of the existing lease. When an owner has filed an OPD with the DHCR, and the "window period" for the offer of the ensuing renewal lease, (in NYC, 120-150 days, and in the ETPA localities, 90-120 days prior to the end of the tenant's existing lease term) has not expired, and the proceeding for deregulation is pending, pursuant to section 2522.5 (g) of the Rent Stabilization Code, or section 2502.5 (c) (7) of the Tenant Protection Regulations, owners shall be permitted to attach a rider to the offered renewal lease, on a form prescribed or a facsimile of such form approved by DHCR, containing a clause notifying the tenant that the offered renewal lease shall no longer be in effect after 60 days from the issuance by DHCR of an order of deregulation, or, in the event that a Petition for Administrative Review (PAR) is filed against such order of deregulation, as discussed in paragraph f. below, after 60 days from the issuance by DHCR of an order dismissing or denying the PAR. In addition, at the owner's option, the owner may also offer a separate rider which provides for the substitution of an unregulated lease upon the issuance of an order of deregulation, at a rental amount and upon such other terms and conditions as specified therein by the owner, and which rider shall not be subject to approval by DHCR. In the event the tenant accepts such lease, the unregulated lease shall become effective on the first rent payment date occurring after 60 days from the issuance of an order of deregulation, or after 60 days from the issuance of an order dismissing or denying a PAR filed against such order of deregulation.

f. Administrative and judicial review

Orders pursuant to the RRRA granting or denying deregulation are subject to PARs, which must be filed with DHCR within thirty-five days after the date such orders are issued. A party aggrieved by a PAR order may seek judicial review by filing a proceeding in the Supreme Court under Article 78 of the Civil Practice Law and Rules.

4. Privacy

a. The only information exchanged in the process of income verification among the owner, tenant, DHCR and the Department of Taxation and Finance is whether the income threshold has been met.

Specific income figures will not be disclosed or exchanged.

b. The provisions of the State Freedom of Information Law ("FOIL") which might otherwise allow certain information to be disclosed, do not apply to an income information obtained by DHCR pursuant to the RRRA.

5. Subsequent occupancy

   A high rent housing accommodation, which becomes deregulated on the basis of high income, remains deregulated, notwithstanding subsequent occupancy by a household, the total annual income of which would not qualify for high income deregulation.

6. Additional Issues

   Question: Where the tenant on the lease is a corporation, is the annual income of the corporation considered in determining whether the threshold income level is met?

   Answer: No. Only the annual incomes of qualified occupants will be considered.

   Question: Where a tenant occupies two or more contiguous housing accommodations which may or may not be structurally combined to some degree, but not to a degree that would qualify for a "first rent," will the rents of each be combined in determining whether the monthly legal regulated rent is $2,000 or more?

   Answer: Because the facts of each situation will vary extensively, this issue will be considered on a case by case basis. Generally, the greater the degree of integration of apartments and their usage, the more likely they will be considered one apartment for determination of the issue.

II. Rent Increases For Individual Apartment Improvements

The RRRA modified the conditions under which rent increases are allowed for individual apartment improvements under all four rent regulatory systems.

A. Required DHCR approval eliminated

1. Before the enactment of the RRRA, the approval of DHCR was required in order for rent increases to be collected for individual apartment improvements under the CRCL and the SRCL and, in certain instances, under ETPA. Under the RRRA, the approval of DHCR is no longer required under any system. However, where there is a tenant in occupancy at the time of the improvement, written tenant consent is required. In the case of a vacant housing accommodation, no tenant consent is required.

2. For all applications for individual apartment improvement rent increases with tenant consent, or where the apartment was vacant, which were pending when the RRRA became effective (July 7, 1993), DHCR has sent notices to the parties informing them that, since such applications are no longer required, the proceedings have been closed without processing.

B. Amount of rent increase

1. Before the enactment of the RRRA, the amount of the permanent increase in the legal regulated rent (for rent stabilization) or maximum rent (for rent control) was not contained in any of the rent laws, but was set by regulation or DHCR practice at one-fortieth (1/40) of the cost of the improvement, including the cost of installation, but excluding finance charges. This l/40th increase was made statutory by the RRRA for all four rent regulatory systems.

2. The RRRA, consistent with already established DHCR regulation and practice, provided that no further rent increase for an individual apartment improvement is permitted during the useful life of the replaced equipment.

C. Notification requirement and effective date of rent increase

1. Under the RRRA, for housing accommodations governed by the CRCL and SRCL, an owner must notify DHCR of the individual apartment improvement on Form RN-79-b. Such notification is not required under RSL or ETPA.

2. Where the filing of Form RN-79-b with DHCR is required, the increase is not collectible until the first rent payment date after the owner's filing of such form.

D. DHCR approval still required for air conditioner charges

Where DHCR approval has been required in order for an owner to collect charges for the use of an air conditioner, whether electricity is included in the rent or not, such approval is still required. Permissible charges for air conditioners in New York City rent regulated housing accommodations are established annually. The latest establishment of such charges is found in the Tenth Annual Update of Section B of Supplement No. 1 to Operational Bulletin 84-4, issued September 8, 1995.

III. Vacancy Deregulation of Cooperative and Condominium Housing Accommodations in municipalities in Nassau, Westchester and Rockland Counties which have Adopted ETPA

The RRRA amended subdivision a of Section 5 of ETPA by adding a new paragraph 14, which adds a category of housing accommodations exempt from ETPA. This exemption applies to housing accommodations located in buildings converted to cooperative or condominium ownership, which are or become vacant on or after July 7, 1993, and to such housing accommodations which are occupied by "non-purchasing tenants" (as defined by Sec. 352-eee of the General Business Law) upon the occurrence of a vacancy after July 7, 1993. The rent laws and the general enforcement provisions of ETPA shall also continue to apply where DHCR finds that a tenant has vacated because of an owner's harassment.

This provision of the RRRA essentially brings into conformity the status of such vacated housing accommodations located in buildings under cooperative or condominium forms of ownership with the exempt status of similar housing accommodations located in New York City.

IV. Penalties for Failure to Register Rent Stabilized Housing Accommodations Subject to RSL and ETPA

The RRRA amended sections 26-516 and 26-517 of the RSL, and subdivision a of section 12 and subdivision e of section 12-a of ETPA, modifying the penalties for failure to register rent stabilized housing accommodations and modifying the procedures for determining non-registration-related overcharges.

A. Treble damages may no longer be imposed against an owner based solely on the owner's failure to register initially or annually. Where, however, DHCR finds that an owner has willfully collected an overcharge other than an overcharge attributable to an owner's non-registration, DHCR will assess treble damages on the entire overcharge, including that portion based upon the owner's non-registration.

B. Where rent increases were lawful but for the owner's failure to register, and where the owner files and serves a late registration, DHCR will not thereafter find that the owner has collected an overcharge at any time prior to the filing of the late registration. Furthermore, where DHCR finds that an owner has collected an overcharge other than an overcharge attributable to non-registration, but the collection of such overcharge was not willful pursuant to DHCR Policy Statement 89-2 and where the owner files and serves a late registration, DHCR shall not find that the owner collected an overcharge based upon non-registration. If, however, a late registration is filed subsequent to the filing of a rent overcharge complaint, DHCR will assess the owner with a late filing surcharge for each unit affected in the amount of fifty percent of the current administrative fee for timely filed registrations. The surcharge, based upon the current administrative fee, is $5.00. Where DHCR assesses an owner with a late filing surcharge, under the RSL, the owner must pay this surcharge to the New York City Department of Finance, and under the ETPA, to the applicable locality.

C. Owners are not permitted to collect that portion of a temporary retroactive major capital improvement (MCI) rent increase which is applicable to a period during which the owner had not registered the housing accommodation. The RRRA has not altered this prohibition.

D. The provisions of the RRRA described in paragraphs A and B of this section apply only to proceedings docketed by DHCR on or after July 1, 1991. However, with regard to overcharge cases docketed prior to that date, to avoid processing inconsistency, and because of recent court decisions that have sought to limit the imposition of treble damages, in such cases DHCR will not impose treble damages where any overcharge results solely from the owner's failure to prove service of the initial registration form (RR-1), or of an annual registration form, on either DHCR or the tenant, and all rent increases charged are otherwise lawful. DHCR deems a proceeding to be docketed as of the date such complaint is date-stamped as received in DHCR's mail room or is date-stamped by a DHCR employee when such complaint is submitted in person at a DHCR office.

E. A PAR against an order involving a complaint docketed prior to July 1, 1991, being an appeal of the determination of that proceeding, will not be considered a separate "proceeding" subject to the provisions of the RRRA described in item B of this section of this Operational Bulletin.

F. With regard to complaints docketed on or after July 1, 1991, because the scope of review of a PAR is limited to that which was presented in the Rent Administrator's proceeding, an owner who files a late registration after the issuance of a Rent Administrator's order finding overcharges based solely upon non-registration will remain responsible for such rent overcharges.

V. Significant Policy and Procedural Changes

As stated above, this Operational Bulletin supersedes and replaces Operational Bulletin 94-1, issued January 3, 1994. The replacement of 94-1 is necessary to reflect the subsequent enactment of Local Law 4, which amended the RRRA, as well as to effectuate the following significant changes in policy and procedure determined by the Office of Rent Administration to be necessary and appropriate pursuant to its authority to implement the RRRA:

Total Annual Income

To more accurately reflect the specific provisions of the RRRA, this Operational Bulletin includes both the Rent Control and Rent Stabilization/ETPA definitions of "total annual income" for the purpose of high income/high rent deregulation. As it affects housing accommodations subject to the ETPA or RSL, except for certain employees and subtenants, the RRRA authorizes the inclusion of the annual incomes of all persons named on the lease who occupy the housing accommodation, whether or not the housing accommodation is used as their primary residence, and all other persons who occupy the housing

accommodation as their primary residence on other than a temporary basis. However, for housing accommodations subject to the SRCL or CRCL, with similar exceptions, the RRRA authorizes the inclusion of the annual incomes of all occupants, including tenants, who occupy the housing accommodation **as their primary residence** on other than a temporary basis. Operational Bulletin 94-1 included only the Rent Stabilization/ETPA definition, and did not distinguish between that definition and the Rent Control definition. This Operational Bulletin clarifies that for ETPA and RSL housing accommodations, primary residence of named tenants in occupancy is not a factor for the inclusion of their income in the determination of "total annual income". See I.B.l.b. (2), at page 6.

In addition, as is discussed below, to discourage attempts to avoid lawful deregulation, this Operational Bulletin clarifies that total annual income includes the incomes of certain persons who vacated the housing accommodation temporarily prior to service of the ICF.

Income Certification Form

Difficulties in determining the effectiveness of the ICF for the purposes of high income/high rent deregulation have been experienced during the initial year of the RRRA. Therefore, an operative date for the determination of who must be identified, and whose income must be included, has been established as the date of service of the ICF.

Furthermore, to assure that the incomes of persons who may have vacated the housing accommodation prior to service of the ICF, but which incomes would otherwise be properly included within "total annual income" are properly "captured" for high income/high rent deregulation, the ICF will require the tenant to list all persons whose incomes are relevant, and who vacated the housing accommodation in the year of service of the ICF, or within the two calendar years preceding the service of the ICF, including the dates when they vacated. The income of any such person who vacated the housing accommodation **temporarily** is to be included in total annual income. The required information should enable an owner to investigate the circumstances of the vacating prior to the service of the ICF, and assist in preventing the avoidance of lawful deregulation.

In addition, to facilitate the "matching" of income and names as stated on the ICF, and to address problems experienced during the initial RRRA year, tenants will also be required to state whether an occupant, such as a minor child, is actually required to file a New York State income tax return. These changes in the ICF form become effective January 1, 1996, for use thereafter. See I.B.3.a.(1) at page 7.

Lease Renewal

During the initial year of the RRRA, owners have experienced uncertainty and inequity resulting from the impact of lease renewal requirements under the ETPA and the RSL upon the high income/high rent deregulation process. The RRRA provides that an order of deregulation is effective only upon the expiration of the "existing lease." Owners who have initiated the deregulation process are confronted with uncertainty as to whether to renew an expiring lease while their petition is still before the agency. Should they do so, they risk the inequity of being "locked" into another lease term, despite the subsequent granting of the petition for deregulation. To assure that the legislative intent of the RRRA is fully effectuated, as well as to also provide tenants with the security of lease renewal in the event that the owner's petition is ultimately denied, provision has been made for a cancellation clause rider procedure. Owners will be permitted to condition lease renewal upon the resolution of the high income/high rent deregulation process, including the determination of any administrative appeal. To provide tenants whose renewal leases are cancelled pursuant to rider with the opportunity to remain in occupancy at a known rental amount, owners are also authorized to include a rider with the renewal lease offering an unregulated lease that, at the tenant's option, may be substituted for the cancelled renewal lease. See I.B.3.e. , at page 11.

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