NEW YORK IS GETTING BACK TO NORMAL

IT'S DUE TIME FOR ADEQUATE RENT INCREASES

"The tide is turning against COVID-19 in New York, and thanks to our increasing vaccination rates, as well as our successful, data-based regional approach, we're able to take more steps to reopen our economy, help businesses and workers, and keep moving towards returning to normal."

– Governor Andrew Cuomo

Comments on the Preliminary Rent Guidelines for Order 53 | June 2021

RSA We House New York
Rent Stabilization Association

Joseph Strasburg, President
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Members of the Rent Guidelines Board:

On behalf of the 25,000 rental property owners that we represent, RSA would like to present this submission to highlight important facts that we believe justify a return to fair rent guideline increases this year. These rent increases are necessary to sustain the nearly one million rent-stabilized apartments in New York City.

The COVID-19 pandemic has been a once-in-a-century, cataclysmic event that undoubtedly changed every day life as we know it. Throughout the ongoing pandemic, the safety of New Yorkers and all Americans has been the priority. Regardless of whether or not the pandemic affected us individually, the enormous loss of life is something we can never forget.

In order to protect New Yorkers, government-imposed lockdown measures were taken over the last year that kept millions at home for months at a time. Unemployment numbers reached astronomical levels after reaching record lows in February 2020. As a result, millions of tenants were left unable to meet their rental obligations. Although there was universal optimism that the pandemic would be short-lived and that we would return to a level of normalcy by the summer, a massive second wave of the virus in the fall and winter delayed any chance that we had of fully reopening our City's economy.

Now, nearly 15 months into the pandemic, New Yorkers have done their part to ensure that this virus is almost in our rearview mirror. In addition to millions of people who have recovered from the virus, millions of New Yorkers have been fully vaccinated. In fact, we have made such great progress as a City and State that Governor Andrew Cuomo has announced a full, 100% reopening of our State economy.

It will be difficult to heal all of the economic wounds created by the pandemic, but plenty of government measures were taken over the last year to ensure that when this day came, the transition back to normalcy would not be impossible. For months leading up to our State's full reopening, unemployment numbers were already plunging and local businesses were beginning to thrive once again. Now, the often promised "light at the end of the tunnel" is finally here and New York is on a clear path to economic recovery.

Without question, we can all agree to some extent that the industry most-impacted by the pandemic has been the rental housing industry. When millions of tenants lost their jobs, whether temporarily or permanently, they could not pay their rent. When rent could not get paid, building owners could not pay their mortgages, property taxes, and other building operating expenses. This is not hyperbole. While various federal and local measures were taken to protect tenants, rent-stabilized building owners were still required to pay their bills while ensuring that their buildings were safe for their tenants during a global pandemic.

Last year, as uncertainties surrounding the pandemic remained, this Board froze rent levels once again despite staff data supporting a moderate rent increase. Building owner representatives did everything to avoid a third rent freeze in seven years, but the end result was inevitable given the economic climate in our City. One year later, even RGB data has shown that economic conditions have improved mightily, yet operating costs continue to rise and data is not yet available to determine the negative impact of the pandemic and the Housing Stability and Tenant Protection Act (HSTPA) of 2019 on building owners.

Generous government financial assistance has been in place for 15 months and will remain in place for at least another three months. For tenants who were severally-impacted by the economic ramifications of the pandemic, an historic $2.4 billion rent and utility relief program is on the verge of making tenants whole once again. For building owners, this is simply money that has been owed to them. So, while rents could not be paid, the ongoing eviction moratorium protected tenants while owners still needed to pay their expenses. Furthermore, no measures were taken by government to compensate building owners for increased costs incurred over the last year.

That is where this Board must fulfill its legal obligation. The data provided by RGB staff this year not only justifies the need for rent increases, but with severe limitations imposed over the last two years by the HSTPA, the need for investment back into aging rent-stabilized buildings has never been more dependent on this Board's ability to approve adequate rent guideline increases.

These rent increases allow these affordable housing providers to invest back into their buildings. When owners invest back into their buildings, they invest back into a fragile City economy that is in need of a major boost from the rental housing industry. The everyday operations and maintenance of rental properties significantly contributes to the City's economy. In addition to billions of dollars generated from property taxes that fund essential City services, thousands of other jobs rely on the rental housing industry. Many of these jobs were already at stake following the passing of the HSTPA, but the pandemic made it even more difficult for workers to maintain these jobs. If building owners have the funds to hire local contractors, plumbers, painters, and others for building improvements and repairs, a major shot in the arm will be provided to the City's small businesses.

Reasonable rent guideline increases are now the only avenue building owners can take if they hope to preserve their aging buildings. A fourth rent freeze cannot alleviate housing affordability problems, certainly not without threatening the living conditions of tenants and jeopardizing future investments in the City's rent-stabilized stock. They allow tenants to live in decent, affordable housing, and allow rental property owners to generate the money they need to meet all City and State mandates and keep a steady flow of money into a City economy that is in desperate need of a boost as we recover from the impact of the COVID-19 pandemic.

RSA We House New York

Rent Stabilization Association

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GOVERNMENT SUBSIDIES & PROTECTIONS FOR TENANTS

For decades, RSA has made the case to this Board and various State elected officials that the best solution for protecting income-burdened tenants in stabilized housing was to create and maintain a substantial program that subsidized yearly rent increases approved by the City's Rent Guidelines Board. The COVID-19 pandemic exposed the faults of New York's State and City governments, which neglected to protect some of our City's most vulnerable tenants ahead of an economic crisis. Fortunately, the federal government stepped up and provided generous financial assistance to New Yorkers over the last 15 months, regardless of whether or not the pandemic affected their employment status. These aid packages, coupled with a City economy that is ready to return to pre-pandemic levels, has put this Board in a position to reset and follow its mandate, which is to compensate owners for increased costs.

When deliberations began last year, the uncertainties that surrounded a potential economic recovery from the government-imposed lockdown measures put this Board in a precarious position that ultimately led to a third rent freeze in seven years. Although pre-pandemic data suggested that this Board approve the highest guideline increase since 2013, the impact of the pandemic on the City's tenants led to an unprecedented decision to negate this data and approve a 0% guideline. No matter how much data RSA presented that suggested otherwise, this Board was never going to ignore the requests of Mayor Bill de Blasio, who directed the RGB to enact another rent freeze without even reviewing staff data.

The numbers simply do not lie. Since the current Administration came into office seven years ago, there is no denying that this Board has prioritized tenant affordability rather than a fair balance of building owner and tenant needs. As soon as our economy began to take a negative turn during the peak of the pandemic, there was no question that this existing ideology would not change. Now, nearly one year after this Board finalized that rent freeze, data on both ends of the spectrum show that a return to adequate guidelines is justified.

It was never this Board's responsibility to protect tenants during a global pandemic. Rather, it was always government's obligation to provide financial assistance and protections and they have gone above and beyond to do so.

Regardless of whether or not tenants have remained employed or lost their jobs, the vast majority have been financially-assisted at great lengths through the federal government. A New York State eviction moratorium has also been in place since the end of March 2020 and will continue through August 31, 2020, totaling 16 months. This moratorium protects tenants across the board, even tenants who claim hardship but are required to provide proof that the pandemic has impacted their financial situation.

Extended unemployment assistance has been provided throughout the pandemic. From the onset, the first federal stimulus package provided an additional $600 per week in unemployment assistance. As a result, unemployed individuals began earning as much as $4,800 per month, or as little as $3,400 per month, through the end of July 2020. Beginning in August 2020 through August 2021, Presidential executive orders and additional stimulus packages provided unemployed individuals with an additional $300 per week in unemployment assistance. To understand the significance of these benefits, households with average annual incomes of $31,200 were earning double the amount of monthly income under increased unemployment assistance from March 2020 through August 2020 and households averaging $49,000 in annual income were earning approximately $1,000 more per month during that same time period[1] (**see Figure 1 below**)

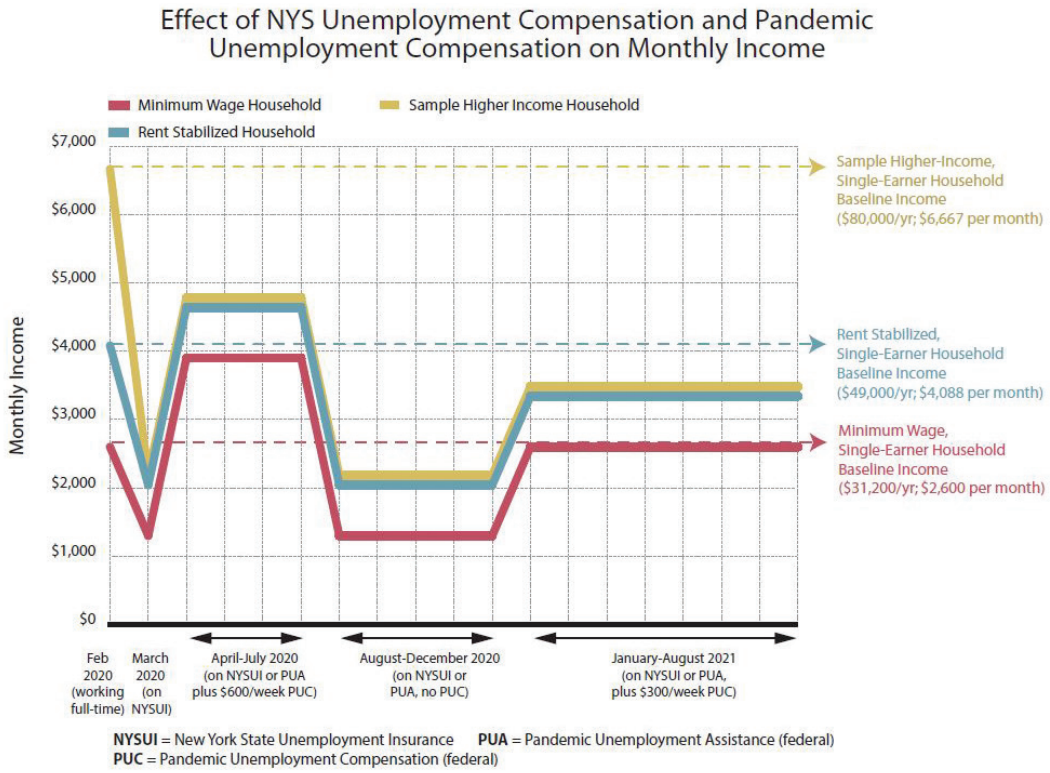

Figure 1
Source: 2021 RGB Income and Affordability Study

Additionally, three economic impact payments (EIPs), commonly known as "stimulus checks," of $1,200, $600, and $1,400 have been distributed to qualified households and individuals based on current or former income levels. So, over the last year, a qualified family of four received as much as $11,400 in stimulus payments *regardless of their employment status*. These EIPs, coupled with extended unemployment assistance, have put even the most income-burdened tenants in a better financial position despite the brief recession created by the pandemic.

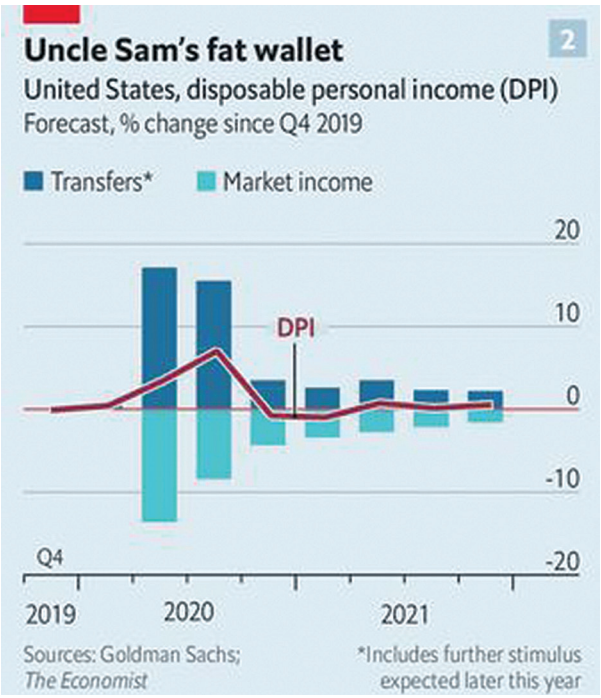

Figure 2
Source: The Economist

For most people, economic downturns are difficult, particularly those who were already income-burdened. Rising unemployment historically has resulted in rising poverty. Take the Great Recession of 2007-2009 for example, which prompted the share of Americans who are classified as "poor" to jump from 12% to 17%[2]. However, not only is it unfair to liken the economic impact of the Great Recession to the temporary recession created by the COVID-19 pandemic, but it is statistically incomparable. Never before during any recession has the federal government taken the measures that they took during the COVID-19 pandemic. At $2.2 trillion, the first stimulus package (CARES Act of 2020) alone was double the size of the $787 billion stimulus package (American Recovery and Reinvestment Act of 2009) passed to combat the Great Recession over a

decade ago. A recession typically results in household income falling, which results in increased poverty. As a result of generous government assistance and the first EIP, nominal household disposable income actually increased by 4% during the height of the pandemic last spring compared to the fourth quarter of 2019[3] (**see Figure 2 on page 8**). This was projected to remain stable in the event that the federal government passed additional stimulus measures. Subsequently, two additional EIPs were issued to Americans and generous enhanced unemployment assistance will continue through the beginning of this September.

Last year, RSA made similar arguments based on the data we had available at that time. Two additional stimulus packages, as well as rising employment and available job numbers, have further bolstered these arguments this year. While we made the case for rent increases as government assistance kept most New Yorkers whole during lockdown measures, we were told that a large population of undocumented citizens who live in stabilized apartments would not be eligible for enhanced unemployment benefits and EIPs, which further justified a rent freeze.

To offset these concerns, the State Legislature created the Excluded Workers Fund in the most recent State budget, which will provide a one-time payment of up to $15,600 to undocumented immigrants who lost their jobs during the pandemic and were not eligible for unemployment assistance. This program allows those tenants to receive the assistance they were not qualified for in addition to any rental arrears through the new statewide rent relief program, which we will soon go into detail. To truly gauge how significant the Excluded Workers Fund is, approximately 213,000 tenants in New York City will qualify for this program[4]. Although it is difficult to determine how many of these tenants live in stabilized apartments, this is truly a significant population of tenants regardless considering there were 850,607 registered stabilized apartments in New York City in 2020[5].

Last but not least, a federally-funded, $2.4 billion rent relief program, known as the New York State Emergency Rental Assistance Program (ERAP), is now available to qualified tenants, regardless of their immigration status, who were financially-impacted by the pandemic. This program provides up to 12 months of rental and utility arrears for tenants who meet certain eligibility criteria and potentially an additional three months for those who can prove that they continue to be severally financially-impacted. Although this money will be sent directly to building owners, these funds cannot be perceived as an "infusion of income," as this money, if received by property owners, is simply money that was owed to them while building expenses still needed to be paid.

It must be noted that if a property owner is to accept any funding amounts from this program, they cannot raise rents under any circumstances for the first 12 months following the acceptance of the payments. This most certainly includes any prospective rent increase granted by a county Rent Guidelines Board. So, for example, if a building owner accepts rent relief funds and receives it on August 1, 2021 and a

tenant's lease comes up for renewal on October 1, 2021, the property owner cannot begin to collect any potential rent guideline increase until at least August 2022. Even if a rent increase is approved, a large population of stabilized tenants will continue to be protected for over two years after the start of the pandemic. However, we would be remiss if we failed to mention the population of stabilized tenants who will not apply or qualify for rental relief, which we can safely assume means that those particular tenants were not financially-impacted in any way from the pandemic.

Had New York State enacted sound policy over the last decade that provided subsidies and protections for rent regulated tenants, we can argue that rent-stabilized, income-burdened tenants could have been in a far-better financial position throughout the pandemic. Nevertheless, the federal government provided generous financial protections to impacted New Yorkers over the last 14 months. Now, New York's economy is making a roaring comeback and that will only further benefit tenants. Business restrictions have been lifted, unemployment numbers and jobless claims are dropping, and job openings are surging.

CITY ECONOMY VASTLY IMPROVING MONTHS BEFORE RGB ORDER 53

Last year, as COVID death and positivity rates began to substantially decline heading into June, RSA and millions of people throughout New York were optimistic that the worst was behind us and that our economy would soon fully reopen. Although the deadly second wave of the virus dashed these expectations, the United States began administering highly anticipated COVID-19 vaccines by the end of 2020. Now, over 40% of the country has been fully vaccinated and approximately 45% of New York's entire population has been fully vaccinated[6]. As a result, the pandemic is finally under control and the lifting of business restrictions has bolstered the State's economy. In addition to the numerous protections that tenants will continue to have, thousands of people have returned to work and will continue to return to work. By the time these new guidelines go into effect in October, our City economy may not be as strong as it was in 2019, but it will certainly be the strongest it has been since the onset of the pandemic.

As of May 31st, New York has officially lifted all business restrictions. The industries hit hardest by the pandemic, such as food service and hospitality, are now operating at 100% capacity and pre-pandemic business hours, which now allows all staff to return to work and also allows for new employment opportunities. Prior to these statewide guidelines, the New York City unemployment rate was already on the decline, which dropped from a pandemic high of 18.1% in the second quarter of 2020, to 11.7% in March 2021, to 11.4% in April 2021[7]. New York State added 40,000 jobs in March and 35,000 jobs in April. The gradual lifting of business restrictions that occurred throughout May will certainly have a positive impact on subsequent State jobs reports in June and July.

Even more promising are the initial unemployment claims in New York City, which rose 218% during the week leading up to statewide lockdown measures in March 2020 and have now decreased 86% over the past year. During the week of April 11, 2020, weekly unemployment claims reached its peak of 185,000 and are now averaging less than 19,000 as of April 2021[1] (**see Figure 3 on page 12**). On a national level, as of May 20, 2021, initial jobless claims reached a pandemic-

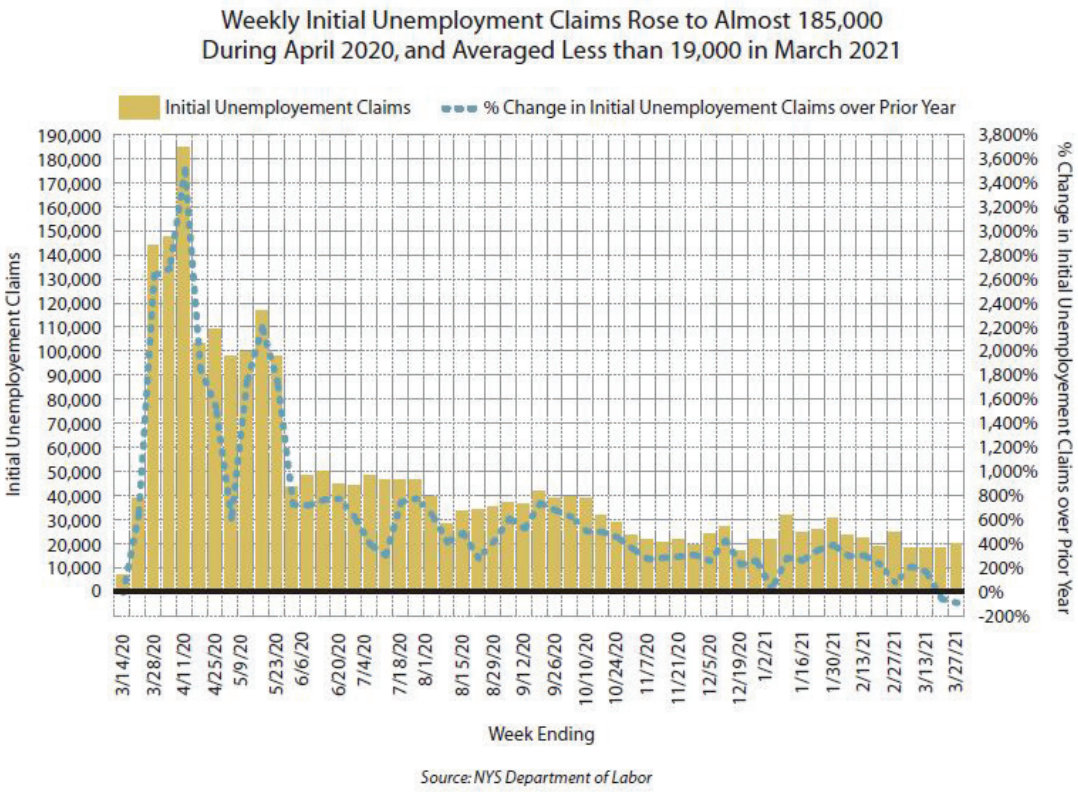

Figure 3
Source: 2021 RGB Income and Affordability Study

low of 444,000[8]. As a reminder, for those who have not returned to work yet or continue to have difficulty seeking employment, expanded unemployment assistance of an additional $300 per week will continue to be provided through the end of August.

Heading into June, City unemployment numbers were already on a positive path, but we are forced to wonder whether or not they could have been even more encouraging. Although it will take at least two months to truly gauge the impact of lifting restrictions on New York City businesses, national and local numbers from mid-April have already indicated that job openings may not be the issue as to why thousands continue to remain unemployed. Economists had predicted a higher jobs number and a lowered national unemployment rate for the month of April. Despite dozens of states partially or fully lifting business restrictions, only 266,000 jobs were added and the unemployment rate actually rose to 6.1%.

However, just days after these grim numbers were released, the U.S. Department of Labor announced that job openings throughout the country surged to a record-high of 8.12 million in the month of March. Although these promising numbers indicate that the job market should have been much stronger in April, business owners claim to be having difficulties filling new positions and convincing pre-pandemic employees to return back to work. A report shows that job vacancies

have exceeded hires by more than two million, which is the largest gap on record. In fact, 44% of small businesses have said that they could not fill job openings in April[9].

The struggle to hire workers wasn't just felt nationally, but locally throughout New York City as well. By mid-April, New York businesses were having the same hiring predicaments. Businesses ranging from private companies, to supermarkets, to restaurants, were unable to hire workers or bring workers back to work as they found themselves competing with the third federal stimulus package. For example, minimum wage positions offering $15 per hour, which equates to $600 per week for a 40-hour work week, provides far less money than current unemployment benefits. For residents continuing to collect unemployment assistance, a New York City resident can earn up to $804 per week, which includes the State's maximum weekly benefit of $504 per week and the extra $300 per week provided by the federal government. This is the equivalent of $20 per hour for a 40-hour work week[10].

Of course, we are not assuming that those who remain unemployed have chosen not to return to work or can easily find work in their fields. Many people have not returned to work for other pandemic-related reasons as well, such as the inability for parents to afford or find child care for students who continue to learn remotely, or ongoing fear of the COVID-19 virus itself. Nevertheless, the expanded unemployment benefits have certainly created a roadblock for many local businesses in need of hiring open positions. We are optimistic that the lifting of businesses restrictions will create thousands of other jobs and that they will be filled relatively quickly. This would continue to lower the City's unemployment rate over the summer. However, we may not be able to determine whether or not extended unemployment assistance truly had an impact on hiring rates until the additional $300 per week benefit expires at the end of August. That data could then be reflected in subsequent jobs reports in the early fall.

At any rate, existing data and projections all point to a much quicker economic rebound than many had predicated. The infusion of federal funds, particularly the third stimulus package, have boosted the City's coffers, helping the City pay for its response to the pandemic, allowing it to reverse some of its 2020 budget cuts, expand its services, and even replenish a portion of the City's reserve funds drawn down during the pandemic. As a result, the City's Independent Budget Office (IBO) is projecting a much stronger growth of jobs than they had originally projected back in February. By the end of 2021 alone, the IBO projects that the City will add a total of 264,000 jobs, which is approximately 43% of the total jobs lost during the height of the pandemic[11].

The economy has drastically recovered and will improve even more over the next five months before RGB Order 53 goes into effect. City economic conditions will continue to grow and this data, the data outlined in the previous section, and the RGB's own staff data, provides Board Members with everything that is needed to approve moderate rent guideline increases.

"The federal government has unleashed many billions of dollars for rental assistance and unemployment benefits, as have many local governments. Perhaps these governments can exercise some confidence that these aid dollars can go to paying most people's biggest expense – housing. Governments can also encourage landlords to work with their tenants by offering property tax breaks, tax credits, mortgage forbearance, or other benefits."

– Ethan Blevins, Pacific Legal Foundation

BUILDING OWNERS WERE NEGLECTED DURING PANDEMIC AND THE FUTURE IS BLEAK

The statewide eviction moratorium has left thousands of the City's rent-stabilized housing providers with billions of dollars in unpaid rent. Although a moratorium has protected tenants, building owners were still required to pay their mortgages, property taxes, water bills, and other daily and monthly operating expenses. Although the goal of the upcoming rent relief program is to make tenants and building owners whole for any unpaid rent, the federal and local governments have not provided any direct relief to building owners to help alleviate their expenses and increased costs since last March.

From the onset of the pandemic, as State and City elected officials continued to politicize the relationship between property owners and tenants, RSA repeatedly endorsed a robust rent subsidy program to keep tenants whole for the duration of the government-imposed lockdown measures. RSA had taken this position for decades, but during an unprecedented global pandemic, the time had never been more appropriate for such a program.

Before the pandemic, pro-tenant politicians had more than enough opportunities to support such measures as New York was in the midst of one of the greatest economic booms in State history. Once the pandemic hit, years of putting politics ahead of sound policy was exposed as New York State was not prepared to protect New York's most vulnerable tenants. Instead, our local elected leaders supported extreme measures, such as the cancelling of all rent payments and a third rent freeze in a five-year period despite data denouncing that effort.

Fast-forward 15 months later and a $2.4 billion rent relief program is now available for qualified tenants. However, New York State, home to the most financially-impacted and rent-burdened tenants in the entire country, is the last of 50 states to open the application process for federally-funded rent relief. Over that time period, while measures were taken to ensure that tenants remained in their home, the State and City failed to provide direct relief to building owners. In fact, the only measures taken on the City level were brief extensions of certain compliance deadlines and a temporary lowered interest rate from 18% to 7.5% for delinquent property tax payments. To even qualify for the lowered interest rate, building owners had to prove that they lost income as a result of the pandemic, unlike the eviction moratorium, which does not require tenants to show such proof of COVID-related hardship.

Making matters worse, the City Department of Finance (DOF) released tentative property tax assessments in January for all building classes throughout the City. For Class 2 rental property owners, proposed assessments varied for larger rental buildings throughout the five boroughs. However, for smaller, 4–10-unit buildings, assessments increased in all five boroughs by an average of 4.55%[12]. If these tentative assessments remain as is, the City IBO is projecting that for FY 2022, tax revenue is expected to decline by approximately 3.8% from FY 2021 collections, which already decreased from the prior fiscal year. This would be the City's first year-to-year decline in property tax revenue in 23 years.

Without federal stimulus money, the City has historically relied on property tax revenue to fill its coffers. As a result, it is no secret as to why the City did not take any property tax relief measures at any point throughout the pandemic. Why? Because as the City continues to deal with budget holes created by the pandemic, property tax payments, particularly from Class 2 residential properties, are the primary source to fund essential services such as the fire department (FDNY), police department (NYPD), education, and many others. Approximately 29 cents of every dollar allocated in the projected FY 2022 budget will come from property taxes[13]. And yet, federal funding from the third stimulus package has filled the City's piggy bank ahead of the 2022 Executive Budget. With an infusion of cash, the Mayor has opted to propose one-time property tax rebates of up to $300 for property owners, but only for Class 1 buildings of 1-3 families[14].

If the Mayor is able to implement this program, then Class 2 building owners, despite their financial importance to the City's annual budget and the impact that the pandemic has had on them, are once again left in the dark.

Although it is true that the City Water Board enacted a water rate freeze last year for all rate payers, property owners have still been required to pay their water bills at the existing Fiscal Year (FY) 2020 rate. Now, despite the lingering financial impact of the pandemic, the City Department of Environmental Protection (DEP) has proposed a 2.76% water rate increase for all rate payers to go into effect July 1, 2021[15]. It will ultimately be up to the Water Board to adopt the proposed rate at some point in June. However, the Board has historically adopted DEP's proposed rate or a number relatively close to it. In order for rent-stabilized building owners to offset increased water rates alone, a rent guideline increase similar to the proposed water rate increase would have to be approved.

The lack of financial relief has taken a toll on rent-stabilized property owners. When there is no relief on any level, coupled with months of rental arrears, it becomes increasingly difficult for property owners to keep up with building operating expenses. According to the Community Preservation Corporation (CPC), which provides financing for affordable housing providers of nearly 200,000 units throughout the City, loan delinquencies for their portfolios during the height of the pandemic increased to 7.07% in April 2020 and spiked to 10.81% in May 2020 (**see Figure 4 below**). Although delinquencies have since stabilized in the 5.5% to 8.25% range from June 2020 through March 2021, CPC's historical

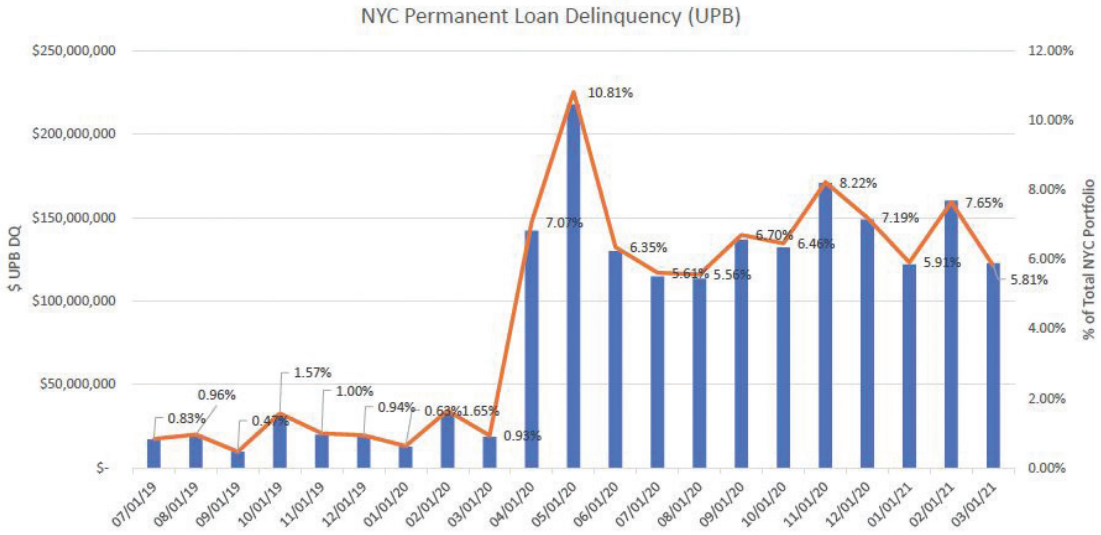

Figure 4
Source: The Community Preservation Corporation (CPC)

loan delinquency rate performed below 2% prior to the pandemic[16]. While this is only a sample of units throughout the City, it is indicative of the financial burdens suffered by building owners since last March.

Property tax and water and sewer bill payments are just two of the largest expense components for building owners. Unfortunately, the list does not end there nor did these expenses pause or decrease at any point during the pandemic. Tenants were permitted to stay in their homes over the last 14 months without having to meet rental obligations if they were not able to. On the other hand, building owners were required to continue paying their monthly operating expenses, especially those that owners are prevented from including in their RPIE filings through DOF. In the next section, we will detail these daily and yearly expenses that building owners have incurred, as well as existing and recently enacted government mandates that are overlooked by RGB studies.

"The Rent Guidelines Board's annual decisions on basic allowed rent adjustments are critical to both affordability and the long-term quality of New York City's rent stabilized housing stock. Given the Board's current mandate to find the right balance between maintaining affordability and allowing owners to earn a fair return, policymakers should be mindful to guard against any changes that may lead to the unintended consequences of inequitable rent increases or a gradual decline in the long-term quality of the housing stock."

– NYC Furman Center, May 2019

SEVERE UNDER-COMPENSATION, HSTPA, & PANDEMIC ARE EXPEDITING DETERIORATION

Although we have seen RGB Members come and go over the last eight years, the notion that building owners have been over-compensated by rent guidelines under previous administrations has been a consistent theme. Since 2014, rent guidelines have been historically-low or frozen, the most anti-owner rent laws in State history have been enacted, dozens of new government mandates have been enacted, and building owners were denied much-needed relief throughout the COVID-19 pandemic. Progressive policy shifts in Albany and New York City have allowed immense protections for tenants, but at the expense of the health of the City's aging rent-stabilized housing stock.

Under two terms of the current Administration, our industry has been told that rent-stabilized property owners were over-compensated through rent increases, particularly for 12 years under the previous Administration. In reality, the average one-year guideline between 2002 and 2013 was approximately 3.3%, while the average PIOC was 5.8%[17]. Nevertheless, during that 12-year period, the RGB acted independently of City Hall and continued a traditional approach to setting rent adjustments as they had done so for 45 years prior to this current Administration. Board Members properly analyzed data and understood that in order for building owners to offset increased operating expenses and inflation, a reasonable return through rent guideline increases was a necessity. With the

exception of a few irregular years where fuel costs fluctuated, owner operating expenses have consistently increased over the last eight years. This is mostly a direct result of annual increases in property taxes averaging 6%. Under the current Administration, the average PIOC has been 3.6%, while the average one-year guideline, including a third rent freeze last year, has averaged an abysmal 0.75%.

Some may argue that the average PIOC over the last eight years is significantly lower than the average under the Bloomberg Administration. However, the outdated calculation of the "*market basket of goods and services*" has not properly painted a complete picture of additional operating expenses that owners have sustained under this Administration and over the last 35 years in general. Over the last few decades, dozens of local and State mandates have been enacted that have added to the annual expenses of rent-stabilized property owners (**see Figure 5 below**). Some of these mandates, which have been highlighted in red in the aforementioned figure, have either been enacted or have gone into effect over the last 14 months during the pandemic. Rather than prioritize relief for rental property owners, the City Council instead enacted regulations that will further deplete an owner's financial reserves.

Government Mandates Not Included in the Price Index of Operating Costs
• Code Enforcement Re-inspection Fees
• DEP Recycling Regulation Costs
• New York State DEC Oil Tank Registration Fees
• DOB Standpipe Sprinkler Coding
• DHCR Annual Registration Fees
• Local Law 11 of 1998 (Façade Inspections)
• NYC Fire Department Fire Safety Notice Requirements
• NYC Fire Department Monthly Sprinkler Inspections
• Local Law 38 (Lead Hazard Reduction)
• Local Law 77 of 2015 (regulation of cooling towers)
• Conversion to Natural Gas or No. 2 heating oil
• Local Law 87: Energy Audits and Retro-commissioning
• Third-Party Elevator Inspections
• Lead paint certifications for workers in the building
• DOF Annual Preparation of Income and Expense Reports
• Local Law 84 (Benchmarking) + 2019 Amendment
• Local Law 10 of 2008 (Section 8 Processing)
• Local Law 69 of 2017 (Bedbug Infestation History)
• Local Law 55 of 2018 (Mold & Indoor Allergen Removal)
• DEP Annual Backflow Prevention Device Inspections
• Local Law 152 of 2016 (Gas Piping Inspections)
• Local Law 97 of 2019 (Carbon Emissions Reductions)
• Local Law31 of 2021 (XRF Lead Paint Inspections)

Figure 5

For some of these latest regulations, it is too soon to determine the total compliance costs because they will vary from building to building based on size. However, the retrofitting requirements of Local Law 97 of 2019 alone, which are already underway for hundreds of buildings, will be the most burdensome for the owners of buildings 25,000 square feet or larger (**see Figure 6 below**). Although the long-term benefits of reducing carbon emissions throughout the City are and should remain a major priority, rent-stabilized building owners are now faced with the steep financial responsibilities of meeting conversion requirements that do not qualify for Major Capital Improvements (MCIs). In July 2019, the Urban Green Council stated that Local Law 97 is "arguably the largest disruption of the NYC real estate industry" and will cost residential building owners up to $1 billion between now and 2024 and approximately $6.9 billion by 2030 in order to meet compliance requirements[18]. These costs were estimated before the City Council prematurely enacted legislation in October 2020 that amended Local Law 97 to expand the universe of buildings that will be required to comply with the law. Prior to this amendment, buildings 25,000 square feet or more were exempt if they contained at least one rent-regulated unit. Now, buildings with up to 35% regulated units are required to begin limiting carbon emissions within the next five years. To truly understand how significant Local Law 97 is, as well as the most recent amendment to the law, Urban Green Council now estimates that over 20,500 buildings throughout the City will be required to meet compliance requirements[19].

In addition to the financial burdens of meeting law requirements, the penalty costs alone for failure to comply, or failure to comply by specific deadlines, are outstanding. For example, for Local Law 97, an owner of a 50,000 square-foot residential building that emits 350 metric tons of carbon would be 12.5 metric tons over its 2024-2029 limit and would be required pay a fine of $3,350 per violation issued. A building will be fined $268 for each metric ton over the building's limit. For owners who fail to comply with Local Law 152 of 2016, which as of 2020 requires owners of all residential buildings to hire a Licensed Master Plumber to inspect gas piping systems, they will receive $10,000 fines. This fine is universal for all building owners regardless of their size or number of units.

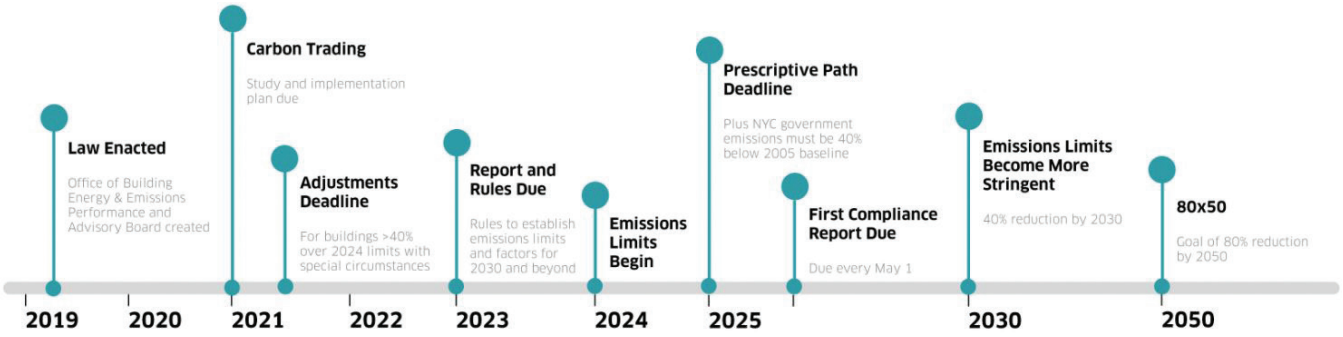

Figure 6
Source: The Urban Green Council

Furthermore, owners are prevented from including a growing list of miscellaneous expenses on RPIE filings (**see Appendix A, page 26**) through DOF. Additionally, we would be remiss if we did not reiterate that the RPIE report does not include data from approximately two-thirds of stabilized buildings and one-third of stabilized units because buildings containing 10 or fewer units, or assessed at less than $40,000, are not required to file RPIE statements. This makes the RGB data sample extremely non-representative. These smaller buildings are known to have lower rents and higher operating costs and therefore have lower levels of net operating income than the larger housing stock. If these smaller buildings were included in the analysis, net operating income would be lower than currently calculated.

Last but certainly not least, the latest changes to the rent laws, known as the Housing Stability and Tenant Protection Act (HSTPA) of 2019, are further placed under the spotlight as this Board continues to approve inadequate guidelines. These stringent rent laws and zero-to-minimal rent guidelines have limited an owner's ability to properly maintain their aging buildings. As you are aware, the most drastic changes in the HSTPA were made to an owner's ability to apply for MCIs and Individual Apartment Improvements (IAIs). Due to the changes in the laws, the vast majority of rent-stabilized property owners no longer have the ability to apply for such improvements, or have the financial ability to perform these major upgrades and repairs. If any major work is done on these buildings that would have qualified for MCIs or IAIs prior to 2019, owners are now dipping into their financial reserves in order to complete these necessary upgrades or repairs.

By last June, HCR could not yet provide updated statistics with regard to MCI and IAI work performed in rent-stabilized buildings between June 15, 2019 (enactment of the HSTPA) and June 2020. However, the data provided by HCR to the Board this year shows the negative impact of the HSTPA and an owner's ability to properly invest back into their buildings through MCI work. In 2020, only 218 MCI applications were granted in full or part out of 319 total applications. To measure how significant of a drop off that is, in 2019, 434 applications out of 651 applications were granted in full or part. In 2018, an astounding 1,020 applications out of 1,127 were granted in full or part. When putting a dollar amount on the granted applications, $65,587,760 was granted in 2020, compared to $318,634,296 in 2019 and $254,211,939 in 2018[5].

The drop off in applications and money invested back into rent-stabilized housing is evident and significant. The draconian changes of the rent laws have not discouraged investment back into buildings, but rather, they simply do not permit it. As a result, building owners are dipping into financial reserves that are dwindling by the day and are being depleted at a much faster rate as a result of the pandemic. After the HSTPA was passed, City officials acknowledged that reasonable and fair rent guidelines were necessary in order for building owners to continue providing safe and adequate housing. In order for that to come into fruition, this Board must understand that as well.

The Solution is Clear: Rent Increases Are Necessary for the Health of the Stabilized Stock

The health impact of the COVID-19 crisis will continue to improve, but the financial impact of the pandemic continues to grapple the rental housing industry. In the three years leading up to the pandemic, RSA welcomed Public Members of this Board, past and present, to participate in in-person discussions with our members and engage in conversations about real expenses for the City's rent-stabilized building owners. These Public Members, including now-Chairman David Reiss, consistently left these meetings with a better understanding of the real, every day and unexpected expenses that building owners are faced with. This global pandemic has economically devastated the rental housing industry and with no direct relief provided to these housing providers, these everyday burdens have only been exacerbated.

There is no question that the COVID-19 pandemic has taken a toll on low-income tenants, but government has gone above and beyond to protect them. If this Board once again blatantly ignores data that calls for rent guideline increases, then you are setting a dangerous precedent for subsequent guideline setting orders that could further show the negative economic effects of the current crisis, past inadequate guidelines, and the HSTPA. Continued under-compensation with another rent freeze will only make matters worse as operating expenses are clearly rising on an annual basis.

Until the time comes when City Hall's influence is removed from this rate setting process, or when this Board's outdated method of determining rent adjustments is replaced with a proper formula, the Members of this Board must continue to rely on the recommended commensurate ranges put forth by RGB data. As the PIOC report states, "*...in its simplest form, the commensurate rent adjustment is the amount of rent change needed to maintain owners' current dollar NOI at a constant level.*"

There is no denying it: this Board has blatantly ignored commensurate ranges over the last eight years under Mayor de Blasio. This year, commensurate adjustments call for, at a minimum, a 2% increase on one-year leases (**see Figure 7 on page 23**). In order to keep net operating income at a steady level and avoid future decreases in NOI, commensurate ranges cannot be ignored again. The City's aging rent-stabilized housing stock has faced its greatest challenges through historically inadequate rent guidelines, the HSTPA, and the COVID-19 pandemic. Rent increases are necessary in order to ensure that owners can invest back into their buildings in some capacity. The return of a healthy New York City economy will be dependent on the rental housing industry because when rent-stabilized buildings are healthy, local economies are healthy.

COMMENSURATES		
	1-Year Lease	2-Year Lease
"Net Revenue" Commensurate Adjustment	2.25%	4.5%
"Net Revenue" Commensurate Adjustment with Vacancy Increase	2.0%	3.25%
"CPI-Adjusted NOI" Commensurate Adjustment	2.75%	5.75%
"CPI-Adjusted NOI" Commensurate Adjustment with Vacancy Increase	2.5%	4.5%
"Traditional" Commensurate Adjustment	2.0%	2.4%

Figure 7
Source: 2021 RGB PIOC Study

RECOMMENDATIONS FROM RSA

After seven years of unsustainable rent guidelines that have averaged only 0.75%, this Board must reverse course and properly compensate owners for their continued increases in operating expenses. The quality of the City's rent-stabilized housing stock has been threatened, particularly over the last seven years, by three rent freezes, inadequate guideline increases, the HSTPA, and the catastrophic impact of the COVID-19 pandemic. With no financial relief for building owners provided by government, rent increases through the RGB are now realistically the only source of income needed to offset ever-increasing operating expenses. Any guideline that is less than the Board's own recommended commensurate ranges will further expedite the deterioration of the housing stock.

The PIOC forms the basis for the commensurate rent adjustments calculated each year by the Board staff. The commensurate rent adjustments result in a range of rent increases intended to keep building owners whole. Under the current Administration, this Board has blatantly ignored the commensurate adjustments, including last year when an historic third rent freeze was approved despite Board data recommending a one-year rent guideline no less than 2.5%.

We understand that this Board was left in an unprecedented situation last year in the midst of a global pandemic. However, the increased operating expenses outlined in last year's data, as well as the first decrease in net operating income in nearly 20 years, simply cannot be swept under the rug. Based on last year's staff reports alone, there is no denying the negative impact that inadequate rent guidelines have had on rent-stabilized property owners. In essence, this Board must consider two-years' worth of data when determining what the rent adjustments should be for Rent Guidelines Order 53.

Despite this year's commensurate adjustments calling for no less than a 2% percent increase for one-year leases, this Board is once again prioritizing tenant needs rather than a fair balance that properly compensates building owners for increased operating expenses incurred over the last year. There is no denying that the COVID-19 pandemic has had a negative financial impact on thousands of tenants. However, the federal, State, and City governments took all necessary measures to ensure that tenants remained in their homes and financially stable. Tenants will also continue to remain protected well beyond the commencement of RGB Order 53, especially if they receive funds from the State rent relief program. On the other hand, building owners have received no such assistance at any point during the pandemic.

Therefore, any consideration of a fourth rent freeze in the last eight years is unwarranted. In line with this year's commensurate adjustments, this year's PIOC, NOI calculated between 2017-2018, the impact of the HSTPA, and last year's RGB data that was intentionally ignored, RSA firmly believes that an increase of **3% for a one-year lease** and a **5% increase for a two-year lease** is justifiable.

Furthermore, pursuant to clarification issued by HCR in the fall of 2019 with regard to the HSTPA, these renewal guidelines must also apply to vacancy and renewal leases. Adequate guidelines that also include vacancy increases would be a starting point for owners to recoup from recent inadequate guidelines and reverse the recent trend in which the RGB's own commensurate rent adjustments have been deliberately ignored under the current Administration.

Housing affordability continues to be a concern for low-income tenants and tenants who have been financially impacted by COVID-19. However, as we have noted in the past, that concern must continue to be addressed by federal, State and City governments **only** and must be met by providing temporary or permanent rental subsidy assistance to those most in need of it. The mandate of this Board cannot continue to be ignored at the expense of the health of the City's aging housing stock.

New York's economy is finally getting back to normal. It is due time for a return to adequate rent guideline increases.

Appendix A

Instructions for Worksheet RPIE-2020 from the Department of Finance

Below are ***Ineligible Miscellaneous Expenses*** and expenses that are ***Eligible*** to be included in the Expense portion of the RPIE.

Ineligible Miscellaneous Expenses		
Air rights	Engineer's fee	Personal insurance
Alterations	Equipment purchase	Pointing - over $500
Amortization (except leasing)	Estimate expenses (except real estate taxes)	Projected expenses
Appliances	Financial charges or expenses	Pro-rated expense of any kind (except leasing and insurance)
Appraisal fee	Fines	Public phone charge
Architects fees	Franchise taxes	Real estate abatement fees
Automobile expenses	Furniture	Real estate fees
Bad debt	General expense	Real estate taxes
Bank charges	Gifts	Rebates
Blanket insurance policies	Ground rent	Recovery charges
Bond premium	Health club/gym	Refunds
Building rent	Improvement loan	Reimbursements of any type
Business insurance	In rem payments	Renovations
Business organization expenses	Income taxes	Rent
Cable service	Insulation	Rent strike settlement
Capital improvements	Intercom	Reserves for replacement
Car fare	Interest payments	Return of rent
Certificate of occupancy costs	J51 exemption/abatement filing fee (421a filing fee)	Safe deposit boxes
Certiorari costs	Janitor's apartment and/or utilities	Storage
Christmas expenses	General expense	Superintendent's apartment and/or utilities
Claims of any kind	Late charges	Tenant buyout
Closing costs	Lawsuit settlement	Tenant holdovers
Commercial rent tax	Lease cancellation costs	Tenant moving expense
Commitment costs	Lease surrender	Tenant refund
Common charges	Leasehold interest	Tenant's refund
Compactor	Lien	Termination fee
Computer purchases	Local law 5 or 10 filing fee	Title insurance
Construction	Management training	Transportation
Consultation fee (other than that specified for management or leasing)	Merchants association dues	Travel
Contributions	Miscellaneous expense	Unincorporated business tax
Corporation expenses	Mortgage Interest	Vacancy
Corporation taxes	Negative (bracketed) amounts	Vacancy and loss of rent
Debt service	Occupancy tax	Vacating expense
Delivery expense	Office rent	Variance costs
Demolition	Officers' salaries	Violations
Depreciation	Organization expenses	Write off on leasing & renting
Drawing	Parking	Zoning fees
Dumpster	Partners' salaries	Xmas expenses
Electrical survey	Penalties	

Eligible Miscellaneous Expenses			
Petty cash	Lease buy-out	Special assessments	Sundry

Endnotes

1. 2020 and 2021 RGB Income and Affordability Studies

2. The Economist, The COVID Bonus, July 11, 2020

3. Goldman Sachs U.S. Economics Analyst: Income Losses vs. Fiscal Stimulus

4. Fiscal Policy Institute

5. New York State Homes and Community Renewal

6. New York State COVID-19 Vaccine Tracker

7. New York State Department of Labor

8. United States Department of Labor

9. National Federation of Independent Businesses

10. "Businesses are Struggling to Hire Workers – and say Uncle Sam is to Blame," by Lisa Fickensher, New York Post, April 14, 2021

11. Double Shot: Infusion of Federal Funds Boost's City's Bottom Line, NYC IBO, May 17, 2021

12. New York City Department of Finance

13. Message of the Mayor, The City of New York Executive Budget, Fiscal Year 2022

14. The City of New York Executive Budget, Fiscal Year 2022

15. Water Rate Outlook for the Fiscal Year Beginning July 1, 2021, NYC DEP

16. CPC Presentation to the Rent Guidelines Board, April 2021

17. RGB Price Index of Operating Costs, 2002-2013

18. Urban Green Council Retrofit Market Analysis, June 2019

19. Urban Green Council NYC Buildings Emissions Law FAQs, November 2020