

RSA Reporter

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Proof is in the Data: RGB Order 54 Officially Underway

Board Research Reports Show Importance of Rent Increases

The first Rent Guidelines Board (RGB) process under Mayor Eric Adams may prove to be an historic one after Board data shows alarming conditions for owners of rent-stabilized properties.

On March 31st, deliberations for a new set of rent guidelines began and marked the official end of the Bill de Blasio era in terms of RGB influence. Over the last eight years, rent-stabilized property owners were demonized by former Mayor de Blasio and his anti-owner appointees to the Board. The end result was three rent freezes and historically-low rent guidelines that have had a detrimental impact on an owner's ability to properly maintain their aging buildings.

Although Mayor Adams has publicly stated that he would support a rent freeze if RGB data supported it, he has also been very adamant about a fair balance of tenant and building owner needs, particularly for small property owners. Nevertheless, it appears as if the new mayor will take a different approach than his predecessor and let the Board Members make a determination based on data rather than become directly involved in the decision-making process.

Ahead of the Board's first meeting, Mayor Adams announced two new appointees to the RGB. Christina Smyth, Esq. of Smyth Law P.C. was appointed as a new Owner Representative, replacing Scott Walsh, who had served on the Board since 2015. Arpit Gupta, a professor at the NYU Stern School of Business, has been appointed as a new Public Member, replacing Cecilia Joza, who was appointed by Mayor de Blasio in 2014. The vacancy for a new Tenant Representative was filled by Adán Soltren before the second meeting. Furthermore, David Reiss has returned as RGB chairperson.

Although it is important to have vocal Owner Representatives on the Board, it is more important to have Public Members, particularly a chairperson, who understand that building owners cannot sustain their buildings without adequate rent increases. Historically, the overwhelming majority of the five Public Members needed to vote in favor of a motion in order for it to pass. The approved motion was typically a balance of proper compensation for owners to recoup increased expenses, as well as tenant affordability. Over the eight-year period under de Blasio, that notion went by the wayside as most Public Members refused to support the highest possible rent increases as a result of influence directly from City Hall.

With a new Public Member, as well as an anticipated hands-off approach from Mayor Adams, we expect that Chairman Reiss will be able to freely open dialogue with the rest of the Board Members to discuss the importance of adequate rent guideline increases. Based on the data provided by this year's RGB research reports (*see page 3 for a summary*), this should be attainable. Although Chairman Reiss has been chairperson since 2019 and has been at the forefront of three inadequate guidelines, he has always been considerate of RSA's arguments, as well as the plight of our members, since he began as a Public Member in 2017.

RSA delivered invited testimony before the Board on April 26th and the Preliminary Vote is tentatively scheduled to take place the first week of May. In next month's issue, we will provide a detailed analysis of everything that you need to know about the preliminary ranges, as well as data and talking points for the RGB public hearings in June. ■

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PRESIDENT'S MESSAGE



Joseph Strasburg

RGB Data is Alarming (But Promising)

The Rent Guidelines Board (RGB) process is in full swing and the data provided by RGB staff is much worse than we expected.

RSA predicted that building owner financial conditions would be severe after nearly three years of the 2019 rent laws, three rent freezes and inadequate guidelines, the impact of the pandemic, and zero expense relief for owners at any point in the pandemic. However, we never expected the numbers reflected in the 2022 Income and Expense (I&E) Study to be as catastrophic as they are.

Although we have argued for years that the formulas used by RGB staff to determine net operating income (NOI) are inconclusive at best, this year's calculations are some of the worst in the history of the RGB. In fact, the decrease in NOI is the second largest in the history of the Board. This is an alarming trend that RSA warned this Board about for years under former Mayor Bill de Blasio.

This data, along with the findings of the Price Index of Operating Costs (PIOC) and the Income and Affordability (I&A) Study, have not only given RSA incredible leverage this year, but have shed a necessary light on the deteriorating conditions of the City's aging affordable housing stock. A full summary and analysis of these reports can be found on pages 3-4.

As we went to press with this issue of the *RSA Reporter*, RSA, along with other housing industry representatives, were preparing to deliver testimony before the RGB. In addition to the strong data presented in this year's RGB research, RSA was planning on providing additional important data through our own internal research, as well as the major research project that RSA conducted in conjunction with REBNY and CHIP.

Our unified industry message to the RGB is this: focus and make your decisions based on data. In reality, this was our message for eight years under former Mayor de Blasio when data and statistics were deliberately ignored to satisfy de Blasio's political agenda. However, if there was ever a time for this Board to focus solely on the data, it is certainly this year's.

The findings of the RGB reports are not an anomaly. Owners of

the rent-stabilized housing stock are struggling mightily and it is a direct result of an anti-owner agenda that has infested Albany and City Hall for at least the last eight years. An aging housing stock cannot be sustained when building owners are denied the rent increases they desperately need to keep up with increased operating expenses.

This year is a legitimate test for this Board. If they do not right the ship that they have steered in the wrong direction for nearly a decade, the data and conditions of the housing stock will only worsen. The only way to do that is to approve adequate guidelines that will allow building owners to sustain suitable living conditions for the very tenants that they are trying to protect.

Rather than demonize small property owners, tenant advocates should be pushing their elected official friends to enact sound policy that will protect income-burdened tenants for years to come. In the meantime, building owners desperately need rent increases now to maintain their apartments and buildings.

We expect you, our membership to join us in full force this year. With de Blasio out of office and promising data that could result in the highest guideline increases in nine years, our members should be motivated more than ever to come out and tell your stories. The next issue of the *RSA Reporter* will allow you prepare for public testimony in June and we will provide you with a schedule and instructions on how to participate.

Gearing Up: Good Cause Eviction Fight

The Legislature is back in session after a brief break following the holidays and the passing of the State budget. Although there have been no substantial updates with regard to Good Cause Eviction, we know this is a top legislative priority for the anti-owner lawmakers in Albany.

Our public relations campaign has accelerated and now it is time for our membership to participate in these efforts. Please see page 3 for more information about our latest VoterVoice campaign and what you can do to help us stop this legislative nightmare.

Aside from the RGB deliberations, the next six weeks are critical for our industry and we need our members to aid us in these efforts! ■

Rent Stabilization Association ♦ 123 William Street New York, NY 10038-3804 ♦ <http://www.rsanyc.org> ♦ (212) 214-9200

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Good Cause Eviction Takes Centerstage Following Budget

Maximum Industry Effort Needed to Thwart Proposal

With the State budget officially passed and in the rearview mirror, Good Cause Eviction will become the top legislative proposal for many anti-owner lawmakers over the next six weeks.

This year's legislative session ends earlier than normal as State lawmakers and Governor Kathy Hochul prepare for the statewide primary election on June 28th. A large majority of Senators and Assembly Members will return home to their districts on June 2nd to begin campaigning against primary challengers, which means the legislative session will more than likely have a hard stop. After the Passover and Easter holidays, the Legislature was set to reconvene in Albany as of April 25th and will be in session for six straight weeks through the first week of June.

For supporters of Good Cause Eviction, particularly bill sponsor Senator Julia Salazar, this is the top legislative item for lawmakers to consider this spring. Although RSA has worked diligently behind the scenes to ensure that various Senators and Assembly Members either withdraw support for Good Cause Eviction, or not support it at all, our work is cut out for us through the end of May.

Our joint coalition, Homeowners for an Affordable New York (HFAANY), has also ramped up our public relations advocacy campaign. In the first week of April, HFAANY launched its second phase of the campaign that will last through the end of the legislative session. This portion of the campaign includes new digital ads that feature real property owners from all over the State, new radio ads that are airing in multiple regions throughout New York, patch-through calling and emails to all Senators and Assembly Members urging them to vote against Good Cause Eviction, and text message notifications to thousands of registered voters.

If you have been following our updates with regard to Good Cause Eviction, we have reiterated the importance of saving

our **VoterVoice** campaign for the right time, particularly for when lawmakers would give their undivided attention to their constituents. Now, after four months of HFAANY educating the public about the consequences of Good Cause Eviction, we believe that our VoterVoice efforts will be critical over the next six weeks. The VoterVoice Good Cause Eviction campaign is officially live and if you are on RSA's email lists, you should have received an email directly from VoterVoice at this juncture. If not, you can visit the VoterVoice Good Cause Eviction landing page at <https://bit.ly/3JMXrvc>.

Although you will receive numerous notifications directly through VoterVoice, we will also be sharing this link over the next six weeks through RSA email blasts. We strongly encourage you to share this link with friends and family throughout the entire State of New York. If this bill were to pass, it would negatively impact all New Yorkers, not just multi-family property owners in New York City. It is critical that legislators from all over the State hear from their constituents.

In general, VoterVoice has been one of RSA's most successful tools when fighting against onerous proposals on the State and City level. Our last major effort, which was to fight the controversial criminal background check legislation at the City Council, generated over 2,000 emails from RSA members and their tenants to 48 different Council Members. The campaign was so impactful that the legislation ultimately failed because of the pressure that our members put on City lawmakers through VoterVoice.

RSA and HFAANY will be at the forefront to ensure that Good Cause Eviction does not pass, but it is incumbent upon our membership to participate in this VoterVoice effort moving forward. ■

Catastrophic RGB Data Shows Poor State of Stabilized Housing

Owner Revenue Down Sharply, Costs Rise

The 2022 research reports issued by the Rent Guidelines Board (RGB) have shown disastrous conditions for rent-stabilized housing providers throughout the five boroughs, as well as improved economic conditions for stabilized tenants.

Although we expected the negative financial-impact of the COVID-19 pandemic on building owners to be reflected in this year's RGB research, the impact of the Housing Stability and Tenant Protection Act (HSTPA) of 2019, as well as unsustainable and historically-low guidelines, have proven to have had the largest impact on the alarming data provided by the Board.

At the Board's first meeting on March 31st, RGB staff presented the **2022 Income and Expense (I&E) Study**. Over the last eight years, this report was arguably the most critical when determining a new set of rent guidelines because former Mayor Bill de Blasio's appointees to the Board focused mainly on the amount of rental income that building owners were able to obtain after paying

building operating expenses. Despite owner operating expenses increasing on an annual basis, the pro-tenant Board Members believed that consistent increases in owner income, also known as net operating income (NOI), proved that rent-stabilized property owners continued to operate under a sustainable system.

However, the data from this year's I&E Study painted an absolutely grim picture of the current state of the rent-stabilized housing stock. According to the report, building owner NOI **decreased by 7.8 percent**, the largest decrease in 17 years and the second largest decrease in the history of the RGB. This is also the second time in the last three years that NOI has decreased. Over the last eight years, RSA argued that if the Board continued to adopt inadequate and politically-motivated guidelines, owner income and reserves would eventually begin to deplete. Although NOI increased slightly last year, there was a downward trend in NOI that began in 2016 and ultimately resulted in a 0.6 percent decline that was reflected

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Catastrophic RGB Data Shows Poor State of Stabilized Housing

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in the 2020 I&E Study. This data, although alarming at the time, was ignored by the RGB during the height of the pandemic while former Mayor de Blasio pushed the Board to enact a third rent freeze under his tenure.

Even more alarming than the drastic decrease in NOI is that for the first time in the history of the Board, both the average rent growth (-3.8 percent) and the average income growth (-4.6 percent) declined. RGB Tenant Member Sheila Garcia and various Public Members on the Board have concerns as to whether or not this year's I&E data is skewed as a result of the impact of rent collections during the height of the pandemic. There is no doubt that the eviction moratorium and lack of rent collections had an impact on the data, but even if the vast majority of building owners were eventually made whole through the Emergency Rent Relief Program (ERAP), that would have only covered rent that was due and not the increases in operating expenses that owners faced over the last two years. Furthermore, this report does not factor in building debt service expenses for owners. This includes, but is not limited to, mortgage payments made by owners. If the RGB were able to factor these expenses into the I&E calculations, the NOI would decrease even further.

The second report issued by the RGB on April 14th was the 2022 **Price Index of Operating Costs (PIOC)**, which showed that building owner operating expenses increased once again, this year by **4.2 percent**. This year's PIOC is a direct result of increases in nearly all components calculated by the RGB. This once again includes increases in fuel (+19.6 percent), labor costs (+4.1 percent), utility costs (+5.8 percent), insurance costs (+10.9 percent), maintenance costs (+9.2 percent), and administrative costs (+6.7 percent). The only operating expense component to decrease was property taxes (-3.7 percent), which was a direct result of a decrease in property tax assessments in Fiscal Year (FY) 2022.

The property tax component holds the largest weight in the PIOC calculation. Had assessments not decreased last year, the total PIOC would have been astronomically higher. It is important to note that although assessments decreased, building owners were never provided with any property tax relief at any point throughout the pandemic. Although assessed values decreased due to a loss of residential rental income and in some cases, commercial unit income, owners were still required to meet their property tax obligations throughout the entire pandemic. Despite a decrease in assessments last year, final assessments are expected to go through the roof for FY 2023 effective July 1, 2022. This is three months before RGB Order 54 goes into effect.

Historically, RSA has always stressed the significance of the PIOC. Increased owner operating expenses were always a good indication of how the Board would decide on rent guideline increases. However, that practice went out the window over the last eight years while former Mayor de Blasio tainted and politicized what was supposed to be an independent process. Fortunately, Mayor

Eric Adams' Administration appears to have chosen a hands-off approach and will allow the Board to operate independently and focus solely on all of this alarming data.

We can also once again expect the **Income and Affordability (I&A) Study** to play a significant role this year. This report highlights year-to-year changes in many major economic factors affecting the City's rent-stabilized tenant population, including, but not limited to, unemployment data, eviction data, and wages. Although the pandemic continues to have an economic impact on some tenants, the 2022 I&A Study shows that tenant conditions have greatly improved over the last year. These improved conditions in the City include a continued decrease in the unemployment rate, a growth of 86,700 jobs, a 6.8 percent growth in wages, and a 47.8 percent decrease in non-payment proceedings in Housing Court in 2021. The RGB also provided a supplemental data point for the first quarter of 2022 that showed a further decrease in the unemployment rate, but also showed an increase in the rate of inflation, as well as an increase in non-payment filings in court. As a result, the rate of inflation and the rise in non-payment filings have become a major argument for the tenant advocacy.

These vastly-improved economic conditions come on the heels of the various financial measures that were taken to assist and protect tenants throughout the duration of the pandemic. This included three economic impact payments (EIPs), commonly referred to as stimulus checks, over a 13-month period, that could have provided a family of four as much as \$11,400 regardless of employment status. This is also included generous and extended unemployment assistance paid throughout the first 15 months of the pandemic that ranged from as much as an additional \$600 per week to an additional \$300 per week. For undocumented immigrants who were not eligible for extended unemployment assistance, New York State approved the Excluded Workers Fund, which provided qualified individuals with a one-time payment of up to \$15,600.

And lastly, the \$2.7 billion ERAP program was implemented last June and thousands of rent-stabilized tenants received up to 15 months in rental arrears paid, as well as protections from eviction and protections from any rent increases for 12 months from when the building owner received the ERAP payments for those tenants. Because of these measures, in addition to protections outlined by the Tenant Safe Harbor Act, tenants who continue to be financially-impacted by the pandemic have various protections from eviction in place for months to come.

This is obviously a lot of data to digest, but it is important for our members to understand many of the arguments that RSA will be making at invited testimony on April 26th and throughout the entire deliberation period. As previously mentioned, next month's issue of the *RSA Reporter* will outline all of the important data points that you will need to know when preparing your own testimony for the public hearings in June. ■

State Budget Includes New Funds for ERAP and LRAP

Surplus of Funds to Satisfy Thousands of Applications

Although the Governor and Legislature failed to pass an on-time State budget by April 1st, the final budget included nearly a billion dollars in additional assistance for pandemic-impacted property owners and tenants.

As you may recall, we reported in last month's issue of the *RSA Reporter* that both the State Senate and Assembly passed budget resolutions that included allocations of millions of dollars in State funds that would replenish both the Emergency Rental Assistance Program (ERAP) and Landlord Rental Assistance Program (LRAP). Although both houses of the Legislature made refunding these programs a priority, both the Senate and Assembly submitted different proposed funding amounts for each.

When the budget ultimately passed on April 9th, the following funding was approved for each program: ERAP will be replenished with **\$800 million** and LRAP will be replenished with **\$125 million**. Because this infusion of cash comes from State coffers, we anticipate that the money will be allocated quickly to the State Office of Temporary and Disability Assistance (OTDA), who has been administering both the ERAP and LRAP programs.

Prior to the passing of the budget, OTDA was only able to satisfy eligible ERAP applications that were submitted as of October 7, 2021. The reallocation of an additional \$119 in federal dollars from the U.S. Treasury Department in March allowed OTDA to begin processing applications that were submitted between September 21, 2021 and October 7, 2021. According to RSA's estimates, the recent allocation through the State budget should allow OTDA to pay out an additional 60,000 to 65,000 approved applications. As we went to press, OTDA's website had not been updated to reflect the new funding for ERAP, or provide a new timeline of dates that the agency will be able to satisfy applications through.

It is important to remember that OTDA originally shut down the application portal in mid-November 2021 after the initial pot of federal funding was fully depleted. However, the portal was reopened on January 11, 2022 after a Court order required them to do so, despite no additional funding available at that time. It will be interesting to see how many applications the newly allocated State funds will be able to satisfy between the current October 7, 2021 cut-off and the early-January reopening date. For reference, approximately 34,515 new applications were submitted between January 11th and April 20th. If our estimates are correct, there will still be tens of thousands of unsatisfied applications following the depletion of the new \$800 million in State funds.

With regard to LRAP, the State had originally only allocated \$125 million in funds for the program last summer, which was created to provide building owners with up to 12 months of past-due rent for tenants who either declined to complete an application for ERAP, or vacated their apartment during the pandemic with arrears. Priority was given to owners of buildings with 20 or fewer units and the program was only open between October 7, 2021 and late November 2021, when all funds were fully depleted. As we went to press, the LRAP portal had not been updated and still provides a disclaimer that states that any application submitted after November 16th cannot be satisfied. At this juncture, we are unsure if the recently allocated \$125 million will allow submission of new applications or can only be dedicated to qualified applications that were submitted before the portal closed on November 21st.

We will continue to update our members on all ERAP and LRAP-related activity through subsequent issues of the *RSA Reporter* and email blasts. ■

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