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The New Housing Emergency

Vacancy destabilization and excessive rent increases are undermining rent and eviction protections for low- and middle-income New Yorkers.

Introduction

The purpose of rent control and rent stabilization is to mitigate the potentially disruptive and displacing effects of a chronic, severe housing shortage in New York City and its surrounding suburbs. This long-term housing emergency exposes tenants to serious housing stresses such as unaffordable rents and intolerable conditions. Rent regulation addresses this situation by limiting rent increases and barring unjustified evictions, even at the termination of a lease period.

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The 1.6 million low- and middle-income New Yorkers who live in rent-regulated housing benefit in two ways:

- First, they are protected from unjustified evictions or unreasonable rent increases. This is especially important for tenants who find it necessary to demand better maintenance and services in their apartments or buildings. Without rent regulation, they would be vulnerable to landlords' refusal to renew their leases.
- Second, rent regulated tenants experience more affordable rents as a result of the limit on rent increases.

In addition, rent regulation benefits the city at large by promoting both neighborhood stability and market stability. This strengthens communities and ensures that tenants can share in the benefits when their neighborhoods improve.

Unfortunately, our supply of rent-regulated apartments is rapidly dwindling as a result of the vacancy destabilization provision of the rent laws, combined with provisions of current law allowing rent increases. In addition, these same rent increase mechanisms are allowing many apartments to pass out of affordability for many New Yorkers even as they remain subject to rent stabilization.

In this report, we will describe the economic and demographic profile of rent-regulated tenants in New York City, and of renters in the suburban counties of Nassau, Westchester, and Rockland, where several municipalities have opted into the protections of rent stabilization. We will also describe the impact of rent regulation on affordability in New York City.

We will then analyze changes in the supply of housing units affordable to low- and middle-income people from 2000 to 2007, using data from the United States Census and the American Community Survey. During this period, the number of apartments affordable to low- and middle-income households dropped sharply in all five boroughs of New York City and in all three suburban counties subject to rent stabilization under the Emergency Tenant Protection Act.

Finally, after describing the mechanisms of vacancy destabilization and of various legally allowable rent increases that are driving up rents and disrupting neighborhoods, we forward appropriate conclusions and recommendations.

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Who lives in rent-regulated housing?

In New York City and in the suburban counties of Nassau, Westchester, and Rockland, rent regulation is the primary source of housing for low- and middle-income New Yorkers. More low-income people live in rent-regulated housing than in any other type of housing, and the same is true for middle-income people. Public housing and privately owned subsidized housing are important parts of the region's housing stock, but they can accommodate only a relatively small portion of the demand for housing by low- and middle-income New Yorkers. Within the context of our tight, high-cost rental markets, it is not surprising that rent-regulated tenants have lower incomes than other New Yorkers, including unregulated tenants.

We define low-income households as those with incomes no more than twice the federal poverty threshold – about \$35,200 for a family of three. Middle-income households are those with incomes between 200 and 400 percent of poverty. By these definitions, a total of about 1.11 million New York City households were low-income in 2008. That is 36 percent of the total population. Another 789,000 were middle-income, or 25 percent of the total population. Most of these low- and middle-income households relied on the unassisted private rental market for their housing – 37 percent in regulated and 24 percent in unregulated apartments.

In rent-regulated areas of the suburban counties, 98,000 households had incomes below \$35,000 per year, roughly equivalent to the low-income category. That is 24 percent of the total population of those areas. Another 109,000 had incomes from \$35,000 to \$75,000 per year, roughly equivalent to the middle-income category. That is 27 percent of the total.¹ Sixty-five percent of households with incomes below \$35,000 per year were renters, as were 48 percent of those with incomes from \$35,000 to \$75,000 per year. Perhaps one quarter of all the suburban areas' tenants are rent-regulated. Tables 1 and 2 summarize the economic and demographic characteristics of tenants in New York City and the other rent-regulated areas.

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¹ The definition of rent-regulated areas used in this analysis is approximate, because it is based on the selection of Census tracts using town boundaries and Census named place boundaries. Actual rent-regulated jurisdictions are based on city, town, and village boundaries.

Table 1: Characteristics of tenant households in New York City

	Rent-regulated tenant	Unregulated tenant	All NYC households ¹
Number of households	1,021,000	754,000	3,101,000
Median income	\$38,000	\$50,300	\$49,000
Median rent	\$910	\$1,200	\$950 ²
Households below poverty threshold	18%	11%	14%
Households from 100 to 199 percent of poverty	21%	17%	18%
Households from 200 to 399 percent of poverty	29%	29%	27%
Immigrant head of household ³	49%	44%	44%
White head of household	37%	46%	43%
Black head of household	22%	20%	22%
Latino head of household	32%	21%	23%
Asian head of household	9%	13%	11%

Source: U.S. Census Bureau, New York City Housing and Vacancy Survey, 2008. Analysis by CSS.

¹ Includes owners and public and subsidized tenants as well as regulated and unregulated tenants.

² Tenant households only.

³ Does not include heads of household born in Puerto Rico.

These figures strongly support the conclusion that rent stabilization has a major impact on the housing and budget pressures faced by low- and middle-income New Yorkers.

Table 2: Characteristics of tenant households in rent-regulated areas of Nassau, Westchester, and Rockland counties

	Rent-regulated tenant	Unregulated tenant
Number of households	155,000	408,000
Median income	\$43,800	\$72,600
Median rent	\$1,100	---
Households with income below \$35,000 per year	41%	24%
Households with income from \$35,000 to \$75,000	34%	27%
White head of household	43%	63%
Black head of household	25%	16%
Latino head of household	27%	16%
Asian head of household	5%	6%

Source: U.S. Census Bureau, American Community Survey, 2005 to 2009. Analysis by CSS. The ACS does not distinguish regulated from unregulated renters.

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How does rent regulation affect affordability?

Rent regulation is a strategy to make housing more affordable, but it is not directly comparable to public or subsidized housing. Rent control and rent stabilization regulate rent increases but do not set any direct limit on rents based on household incomes. As a result, regulation cannot guarantee that rents will be affordable to low-income tenants, but they do provide an affordability benefit by limiting rent increases that would ordinarily take place in a tight, escalating market. Low-income rent-regulated tenants tend to pay rents that represent a large share of their total incomes – but a lower share than that paid by unregulated tenants.

This effect can be readily seen by analyzing the New York City Housing and Vacancy Survey, a survey conducted every three years by the United States Census Bureau under contract to the New York City Department of Housing Preservation and Development. This survey provides a window into the economic conditions of New York City tenants. Unfortunately, there is no parallel source of information for suburban tenants.

The most recent HVS shows that in 2008, the median low-income rent-regulated tenant household in New York City paid 48 percent of its income in rent, far higher than the 30 percent rent burden that is generally considered the standard of affordability. But it was even worse for the median low-income unregulated tenant, whose rent burden was 50 percent. Rent burdens have been rising in New York City for many years, but the benefit for regulated tenants has persisted.

Table 3: Rents, rent burdens, and after-rent income for tenant households in New York City

	Rent-Regulated Tenant			Unregulated Tenant		
	Poor	Low Income	Middle Income	Poor	Low Income	Middle Income
Median rent	\$810	\$830	\$900	\$1,000	\$1,050	\$1,100
Median rent burden	63%	48%	26%	67%	50%	29%

Source: U.S. Census Bureau, New York City Housing and Vacancy Survey, 2008. Analysis by CSS. Rent burden and after-rent income estimates are conservative, because the 5 percent of cases with lowest incomes have been omitted from the analysis, as have all cases where reported rent was greater than reported income.

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Table 4: Rents and rent burdens for tenant households in rent-regulated areas of Nassau, Westchester, and Rockland counties

	Income below \$35,000	Income from \$35,000 to \$75,000
Median rent	\$970	\$1,210
Median rent burden	---	29%

Source: U.S. Census Bureau, American Community Survey, 2005 to 2009. Analysis by CSS. Median rent burden could not be calculated for low-income group because the data records burdens only up to 35 percent, and 79 percent of households had burdens greater than that.

For poor households (those with income below the poverty threshold), the differences are even greater. And there are important benefits for middle-income households as well, as Table 3 makes clear. Table 4 presents comparable information for rent-regulated areas of the suburbs, to the extent that the Census Bureau's American Community Survey makes possible. These figures demonstrate that rent regulation makes a substantial contribution to the standard of living for millions of New Yorkers.

What is happening to the affordable housing supply?

There is no question that vacancy destabilization is rapidly depleting the supply of rent-regulated apartments. Apartments that remain subject to rent regulation are also becoming less affordable as a result of excessive rent increases allowed under current law.

Vacant apartments with rents over \$2,000 per month can be legally destabilized. But because other provisions allow large increases during vacancies, any rent-stabilized apartment can be deregulated upon vacancy, even when the previous rent was far below the \$2,000 threshold. Some of the rent increase mechanisms require landlords to spend money on apartment improvements, but others do not. The cost to the landlord is often very low compared to the advantages of destabilization. In addition, the lack of proactive enforcement by the state Housing and Community Renewal agency enables landlords to deregulate apartments without actually making the legally mandated improvements. Destabilization is never investigated unless the new tenant in a deregulated apartment complains.

As a result, regulated apartments are becoming far less available. In 2009, landlords reported that they removed 13,500 apartments from rent stabilization, and the number of reports has been rising

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steadily. But landlords are not required to report destabilizations, so the true rate of deregulation is certainly much higher than that.

The design of the New York City Housing and Vacancy Survey does not make it possible to produce a precise estimate of the number of apartments being deregulated, but an analysis by the Community Service Society has shown that the likelihood that an apartment seeker will obtain an apartment from the original rent-regulated stock has fallen dramatically. (This does not include recently developed apartments that are subject to rent stabilization because of subsidies and tax exemptions.) The biggest changes, as shown in Table 5, were in Manhattan below Harlem, where the likelihood fell from 52 percent in 2001 to 31 percent in 2007, and in Upper Manhattan, where it fell from 81 to 67 percent. But the likelihood of finding an original rent-regulated apartment also fell significantly in the gentrifying areas of Brooklyn and Queens adjacent to Manhattan, and in low-rent areas of the Bronx, Brooklyn, Queens, and Staten Island.² There is no comparable source of information for the suburban areas subject to rent regulation, but there is every reason to suspect the same market practices are happening here.

We can examine the supply of affordable rental housing at a finer scale using the decennial U.S. Census, conducted in 2000, and the American Community Survey, conducted by the Census Bureau from 2005 to 2009. These surveys do not distinguish rent-regulated from unregulated rental housing or from public and subsidized housing, but they do provide information on rents and incomes at the level of Census tracts – areas defined by the Census Bureau that typically contain populations of 1,000 to 10,000 people. The 2005-2009 American Community Survey data is the most recent such data available at tract level, and it can be seen as providing an approximate picture of the state of affairs in 2007.

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² “Destabilized Rents: The Impact of Vacancy Decontrol on Low-Income Communities,” by Tom Waters and Victor Bach. Community Service Society Policy Brief, June 2009.

Table 5: Proportion of recent movers in pre-1970 regulated apartments

	2002	2005	2008
Manhattan below Harlem	52%*	43%*	31%
Upper Manhattan	81%*	76%*	67%
Inner Queens and Brooklyn	45%*	41%	39%
High-rent outer ring	30%	34%	31%
Low-rent outer ring	54%*	54%*	49%
New York City	48%*	46%*	41%

Source: U.S. Census Bureau, New York City Housing and Vacancy Survey, 2002, 2005, and 2008. Percentages represent the number of tenant households who moved into regulated apartments built before 1970 in the three-year period prior to each survey, divided by the number of all regulated or unregulated tenant households who moved during the period. Owners and public and subsidized tenants are excluded. Asterisks indicate proportions that are significantly different ($p < 0.05$) from their 2008 values. Of the 2002 to 2005 changes, only Manhattan below Harlem is significant.

For the year 2000, we define housing units as affordable to low-income households if the monthly rent was no more than \$693, or 30 percent of the income of a family of three at 200 percent of the poverty line for that year, and we define housing units as affordable to middle-income households if the monthly rent was no more than \$1,386. For 2007, the cutoff rents used in this analysis are \$834 and \$1,669. This analysis does not take account of the number of bedrooms or the size of the housing unit.

Regardless of whether we are talking about rental housing affordable to low- or to middle-income New Yorkers, there were substantial losses from 2000 to 2007 in most areas of the metropolitan New York City. Maps 1 and 2 show the losses at tract level, and Table 6 summarizes them for the five boroughs of New York City and for the rent-regulated portions of the three suburban counties.

The losses are very severe, and they are widely dispersed geographically. In New York City, Upper Manhattan and the West Bronx stand out for having the most losses of low-income housing, while Manhattan below Harlem had the most losses of middle-income housing. In the suburbs, Yonkers and Mount Vernon lost the most units affordable to low-income people, while losses for middle-income people were felt almost everywhere. Since most public and subsidized housing units have lower rents than those cut-offs, these figures primarily reflect changes in the private-market housing stock, including rent-regulated and unregulated units.

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Table 6: Loss of affordable rental housing in New York City and rent-regulated areas of Nassau, Westchester, and Rockland counties

	Low-income			Middle-income		
	Affordable in 2000	Affordable in 2007	Percent loss	Affordable in 2000	Affordable in 2007	Percent loss
Manhattan	270,300	205,500	24%	454,500	377,000	17%
Bronx	274,100	207,400	24%	363,200	352,500	3%
Brooklyn	397,000	272,200	31%	616,300	551,000	11%
Queens	195,600	119,000	39%	426,000	366,000	14%
Staten Island	30,800	18,300	41%	53,000	42,200	20%
Nassau	11,600	8,900	23%	39,100	29,400	25%
Westchester	44,400	31,500	29%	101,300	86,500	15%
Rockland	3,100	2,600	16%	9,200	8,300	10%
TOTAL	1,226,800	865,300	29%	2,062,700	1,812,900	12%

Source: Decennial U.S. Census, 2000, long form, and U.S. Census Bureau, American Community Survey, 2005 to 2009.

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What is driving rent increases and destabilization?

The losses described in this report reflect both vacancy destabilization of regulated housing and rent increases now permitted within the regulated stock. These provisions – and the interactions between them – deserve to be better understood.

The “vacancy destabilization” provision of the Emergency Tenant Protection Act and the Rent Stabilization Law allows vacant apartments with rents over \$2,000 per month to be legally destabilized. But, it does not only apply to apartments where the rent rises to that level before the vacancy. Very few of the many thousands of apartments that have been deregulated under this provision had \$2,000 rents before vacancy. Apartments become subject to vacancy decontrol because of rent increases during vacancy.

The “vacancy allowance” is a provision allowing for a rent increase of about 20 percent on any apartment upon vacancy. (The exact amount varies according to the prevailing rent guidelines and the length of the new tenant’s lease.) The “vacancy bonus” allows an additional increase beyond that based on the number of years since the last vacancy. These increases can be taken without any action by the landlord.

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Individual apartment improvement increases, also known as “one-fortieths,” are based on improvements to vacant apartments. For every \$40 spent on improvements, the landlord may take a one dollar per month increase.

Major capital improvement, or MCI, increases affect occupied apartments. These increases are allowed when a landlord makes certain kinds of improvements to an entire building or section of a building. The provision was intended to improve the quality of the housing stock by encouraging improvements, so it allows a permanent rent increase totaling one dollar for every \$84 spent on the improvement. This means that landlord recoups the investment, allowing for interest, after about ten years, but collects the increased rent forever. Tenant advocates charge that today, many MCI increases seem more motivated by an effort to raise rents and displace tenants than to finance needed improvements.

These provisions interact powerfully to make possible the destabilization of any apartment on vacancy. If an apartment becomes vacant after renting for \$1,000, the legal rent automatically rises to about \$1,200. To destabilize it, the landlord need only spend \$32,000 on improvements. The market need not bear a \$2,000 rent for that apartment – even if the next tenant pays a lower amount, the apartment is still destabilized. But if the market will bear such a rent – or even a lower amount such as \$1,800 – the landlord will not only achieve destabilization but will recoup the \$32,000 invested in a matter of years. For many apartments, the cost associated with destabilization is very small compared to the benefit to the landlord.

To make matters worse, the lack of proactive enforcement by the state Housing and Community Renewal agency enables landlords to deregulate apartments without the legally mandated expenses. Destabilization is never investigated unless the new tenant in a deregulated apartment complains. When the tenant association at one large development on the Upper West Side of Manhattan worked with new tenants to challenge destabilizations, they consistently found that the deep-pocketed landlord had violated the law by deregulating apartments without spending the required amount of money on improvements. Tenants in another West Side development hired an architect to examine deregulated apartments, who found that the improvements there were only about 60 percent of what should have been required for deregulation. In these cases, there was no financial barrier to legal destabilization, but landlords appeared to choose not to conform with the law.

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A study by the Association for Neighborhood Housing and Development found numerous other cases of apparent fraud related to rent increases during vacancy. The ANHD report also examined the reduction in number of apartments renting for less than \$1,000 and calculated that more than half of this reduction was related to vacancy increases.³

Excessive rent increases during vacancies enormously magnify the loss of regulated housing due to vacancy destabilization, and they also harm the affordable housing supply directly. The steady increase in housing burdens for middle- and especially low-income regulated tenants is largely due to these increases. The destructive wave of speculative investment in New York City apartment buildings during the mid-2000s was partly based on investors' belief that they could deregulate apartments in Harlem and brownstone Brooklyn and rent them for over \$2,000 a month. But it appears that it was also based on the belief that rents could be raised rapidly in places like the central Bronx.⁴

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Conclusions and Recommendations

The combined effect of these rent increase mechanisms and vacancy destabilization prerogatives is allowing the going rents to rise extremely rapidly throughout the city and suburbs, but especially in Upper Manhattan and in areas of western Brooklyn, Northwest Queens, southern Westchester and western Nassau County – neighborhoods which have traditionally housed large communities of low-wage workers. In the most affected New York City areas, tenants who moved into private-market apartments in the years 2004 to 2007 are paying a median rent more than 62 percent higher than those tenants who moved in prior to 2001.⁵

A low-income family of three can afford a rent of about \$880 a month in 2011. There are now few if any areas of the city and suburbs where one could find a vacant two-bedroom apartment at that rent. A middle-income family, which can afford \$1,760, has more choices but only within a dwindling geographic area, and there

³ "The \$20,000 Stove: How Fraudulent Rent Increases Undermine New York's Affordable Housing." Association for Neighborhood Housing and Development, January 2009.

⁴ "Closing the Door 2008: Subsidized Housing Losses in a Weakened Market," by Tom Waters and Victor Bach. Community Service Society Policy Brief, September 2008. "Closing the Door 2009: Risks of Boom and Bust," by Tom Waters and Victor Bach. Community Service Society Policy Brief, December 2009. "Predatory Equity: Evolution of a Crisis. The threat to New York's affordable rental housing: 2005-2009." Association for Neighborhood Housing and Development, November 2009.

⁵ "Destabilized Rents: The Impact of Vacancy Decontrol on Low-Income Communities," by Tom Waters and Victor Bach. Community Service Society Policy Brief, June 2009.

are probably not enough apartments to meet the demand at this rent level.

All over the area's low- and middle-income neighborhoods, when a family that makes \$20,000 or \$30,000 a year moves out of an apartment where they paid 40 percent of income in rent, another family with the same income moves in and starts paying 60 percent of income in rent. When a family that makes \$50,000 or \$60,000 a year moves out of an apartment where they paid 25 percent of income in rent, another family with the same income moves in and starts paying 35 percent of income in rent. These numbers correspond to a real loss in those families' standard of living.

In the past few years, low- and middle-income New Yorkers have been hit hard by the recession, and there is still no job market recovery in sight. It is all too likely that the state of New York will make budget cuts that compound their hardships. Meanwhile, rents for low-income people continue to rise. For all these reasons, it is imperative to renew the rent regulation laws, repeal vacancy destabilization, curtail exorbitant rent increases on vacancy, and reform the major capital improvement rent increase.

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