An Introduction to the

New York City Rent Guidelines Board

and the Rent Stabilization System

By Timothy L. Collins, and Updated by the Staff of the New York City Rent Guidelines Board

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New York City Rent Guidelines Board
1 Centre Street, Suite 2210
New York, NY 10007
212-669-7480

PREFACE TO THE 2016 EDITION

The last edition of *An Introduction to the New York City Rent Guidelines Board and the Rent Stabilization System* was published in 2006. This followed a more in depth and comprehensive overhaul of this publication in 2001 (See *Acknowledgements 2001 Edition*). In an effort to make this publication more current, and therefore more relevant, the RGB staff performed an update of relevant text and appendices contained herein. In addition, the staff has incorporated some new material. Additions include current Board orders and explanatory statements and new summary data from the 2014 Housing and Vacancy Survey. Please note that the majority of the original text, analysis and commentary remain in its original form.

This introduction to the New York City Rent Guidelines Board covers the structure, function and history of the Board and its role in the rent stabilization system. Some attention has also been given to the broader regulatory environment affecting all residential landlord/tenant relations within the City.

The section entitled "Membership on the Board" (starting at page 5) covers the technical and legal requirements of Board membership. **Prospective members are asked to review this section carefully prior to finalizing their appointment to the Board.** Staff is also expected to be familiar with all aspects of these requirements.

An appendix has been provided for additional materials that are brief enough to be conveniently added. Other materials may be obtained through the sources noted in the text or in the list of "Other Noteworthy Materials" following the Table of Contents. Many excellent scholarly works and government publications are maintained in the staff library as are transcripts of prior meetings, past Board orders and related documents. These are available to Board members upon request.

This work is intended to acquaint the Board and its staff with many rent regulation and landlord/tenant issues in a general way. The analysis and commentary is that of the author/consultant. Nothing herein should be viewed as an official statement of the Rent Guidelines Board nor any of its individual members. It is not an authoritative legal document and should not be used as a primary reference for legal research. For those who have specific questions concerning landlord/tenant matters, the various laws, court decisions, regulations and government reports cited in this publication should be consulted directly. Professional assistance may be advised. Board members may, of course, consult directly with staff if further information or analysis is desired.

ACKNOWLEDGEMENTS (2001 EDITION)

This introduction to the work of the Rent Guidelines Board and the rent stabilization system has truly been a collaborative and evolving effort. In the early years of the Board's operation, newly appointed members were supplied with notes and memoranda on various aspects of their investigative and rulemaking functions. These briefing materials grew each year as the Board launched new studies and gained access to new sources of information. In 1989 the Board published the first of its well-received annual reports on New York City's housing market and demographic trends. In that same year, I prepared the first edition of this work while serving as the Board's executive director. The third and last edition was published in 1994.

In 1999 Anita Visser was appointed executive director and began a process of conducting a complete re-organization of all of the materials and resources used by staff to support the Board's work. The updating of this book fit well within this larger effort. Because of Anita's leadership, future Board members and staff will find an operation in top shape to face new challenges. Anita contributed extensively to this edition, adding most of the graphs and tables, reviewing and critiquing early drafts, and diplomatically nudging me along when the demands of my private law practice tugged in other directions. Largely as a result of Anita's input, this new edition is substantially revised and improved.

Three first-rate attorneys from the City's Office of Corporation Counsel reviewed and contributed extensively to this work. Spencer Fisher, Anthony Crowell and Ellen Schroeder meticulously examined the text and footnotes and suggested dozens of improvements. As a busy attorney myself, I know how demanding a careful review of an extensive document like this can be. I was highly impressed by the earnestness and care which they exhibited in their review, and I am deeply grateful for their time and input. I emphasize, however, that the final product and the opinions and views expressed herein, are my own and not an official statement of the Office of the Corporation Counsel.

Since the first edition of these materials in 1989, every member of the staff of the Rent Guidelines Board has provided some support and assistance. This latest edition benefited greatly from the assistance provided by Andrew McLaughlin, Susan Hayes, Brian Hoberman and Cecille Latty. It has always been a pleasure to work with Andrew who assisted in the layout and graphics. Susan deserves special recognition for taking primary responsibility for incorporating changes from each draft - a painfully tedious process which includes checking and re-checking each page and each note to ensure that the internal referencing is correct. Her patience is greatly appreciated. Brian Hoberman researched various information on tenant incomes and

demand for subsidized housing. Cecille carefully compiled and collated several of the appendices.

I want to also thank the Board's chairman, Edward Hochman, who has been a steadfast supporter of updating and expanding these briefing materials. Throughout his tenure, Ed has insisted upon the highest quality and integrity in the research which underlies the guideline setting process. In this respect, his contribution to this work cannot be overstated.

As with any collaborative work, several individuals deserve credit for their contributions, but the author alone must take responsibility for the final content. To the extent that any errors or shortcomings remain, I accept that responsibility. To borrow a phrase from Yeats, I have tried to "cast a cold eye" on the complex and conflicted world in which the Board operates. If certain matters have escaped my attention, I encourage others to fill in the gaps. The primary goal of these materials is not to have the final word, but to contribute to a conversation with integrity.

Finally, I want to extend my warmest thanks to my wife Marilyn and children Danny and Emily. This is the last of several late evenings I have devoted to completing this project. It is 10:17 PM on a Sunday night. Time to go home.

Timothy L. Collins
New York, New York
March 11, 2001

TABLE OF CONTENTS

LIST OF TABLES AND CHARTS

APPENDICES

A. Rent Stabilization Law §26-510
A1. Local Law 11
B. Board members since 1969
B1. Executive Directors since 1980
C. Public Officers Law §3, §10 and §30
D. Oath of Office
D1. Board Member written statement of eligibility
D2. Sign-in sheet for Board Members
D3. Per Diem requisition form
E. NYC Charter §2604(b) & (c) Conflict of Interest
F. Bylaws of the Board
G. Payment History of the Price Index Contract
H. Board Resolution Delegating Contracting Authority to the Chair
I. RGB Employee Manual
J. The Commensurate Rent Index formula
K. History of Income/Expense issue (Table 14 memo)
K1. Income & Expense review 1993
L. Multiple Dwelling Law §286
M. Chart of previous Apartment Orders, 1969-2016
M1. Chart of previous Hotel Orders, 1971-2016
N. Apartment Order #47
N1. Explanatory Statement to Apartment Order #47
N2. Hotel Order #45
N3. Explanatory Statement to Hotel Order #45
O. Rent Stabilization Law §26-513
P. Excerpts from J-51 and 421-a regulations
Q. Hotel Study 1991
Q1. Hotel Study update 1992
R. 'What to do with the Price Index,' Dr. Blackburn, February 2000
S. "Calculating the *Price Index of Operating Costs (PIOC)* Using Component Weights from the RPIE data presented in the *Income and Expense Study,"* Andrew Mclaughlin, April 2014
T. RGB Staff price projections 1975-2016
U. Price Index changes and stabilized rent increases 1969-2015
V. The RGB Rent Index
W. Consumer Price Index and stabilized rent increases 1969-2015
W1. Consumer Price Index and PIOC Increases, 1969-2015
X. Open Meeting Law (selected sections)
Y. NYC Charter §§1041-45 (from City Administrative Procedure Act)
Z. Selected Initial Findings of the 2014 New York City Housing and Vacancy Survey

Other Noteworthy Materials

1. Triennial Housing and Vacancy Survey (all years)
2. Housing NYC: Rents Markets and Trends 1989-2015
3. Price Index of Operating Costs 1969-2015 Apartments, Hotels, Lofts
4. Rent Stabilization Code
5. Rent Stabilization Law of 1969
6. Emergency Tenant Protection Act of 1974, as amended.
7. Rent Guidelines Board Orders and Explanatory Statements 1969-2016
8. DHCR 'Fact Sheets' for Rent Regulated Housing

INTRODUCTION

The latent causes of faction are ... sown in the nature of man... A zeal for different opinions concerning religion, concerning government, and many other points ... have ... divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. ...[T]he most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide themselves into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principle task of modern legislation and involves the spirit of party and faction in the necessary and ordinary operations of government.

James Madison, 1787[1]

The work of the New York City Rent Guidelines Board falls squarely within the mediating traditions of democratic government described above by Madison. The Board was established midway through a legislatively recognized housing shortage which has persisted for over half a century. It operates under emergency laws regulating matters otherwise governed by the private contractual arrangements of owners and tenants. The Board's essential mission might best be described as an attempt to construct or simulate "normal" or "fair" rent levels in a market driven by chronic scarcity and instability. The housing emergency hinges on the statutory recognition that a vacancy rate of less than 5% creates abnormal market conditions. The City Council and State legislature have recognized that such conditions cause "severe hardship to tenants" and force the "uprooting [of] long-time city residents from their communities."[2] According to the 2014 Housing and Vacancy Survey, the citywide vacancy rate is currently 3.45%.[3]

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[1] Quoting the Federalist No. 10. The Federalist Papers were written by James Madison, Alexander Hamilton and John Jay in the months following the Constitutional Convention of 1787. They were published in the New York press under the pseudonym "Publius" urging voters to ratify the new Constitution. The papers remain classics of political philosophy and influential sources of American constitutional law.

[2] Quoting Rent Stabilization Law of 1969 (N.Y.C. Admin. Code 26-501) Findings and Declaration of Emergency. All of the provisions of local law governing rent stabilization are contained in chapter 4 of Title 26 of the New York City Administrative Code (referred to as the Rent Stabilization Law of 1969 - "RSL"). The provisions of State law governing rent stabilization are contained in sections 8601-8617 of the Unconsolidated Laws of New York (also referred to as the Local Emergency Housing Rent Control Act of 1962 – the enabling legislation for local rent control and stabilization) and sections 8621 through 8634 of the Unconsolidated Laws of New York (referred to as the Emergency Tenant Protection Act of 1974 - "ETPA"). The State regulations governing rent stabilization in New York City are contained in the Rent Stabilization Code (subchapter B of the Rent Stabilization Regulations, Parts 2520-2530; Also cited as 9 NYCRR Parts 2520-2530).

[3] See Selected Findings of the 2014 Housing and Vacancy Survey in Appendix Z.

In the late 1960's tenants residing in buildings constructed after World War II faced rising rents and a lack of affordable alternatives which threatened the balance in their bargaining relations with owners. It was this perceived imbalance that led to the development of the present *rent stabilization* system. In 1969, the Board's first year of operation, rent stabilization covered about 400,000 rental units. At the time, the vast majority of apartments were located in older (pre'47) buildings and fell under the long established *rent control* system. Due to a series of legislative changes, rent control now covers less than 30,000 apartments, while the rent stabilization system has expanded to one million apartments which house over two million people – or about one in three City residents. This is the universe of apartments presently covered by the Board's rent orders.

The housing shortage has persisted unevenly over the years,[4] resulting in a continuation of rent regulations and prompting some of the most contentious legislative battles in modern times. The echoes of these larger debates have reverberated through the annual deliberations of the Rent Guidelines Board. A broad public consensus over the fairness and efficacy of rent regulation has never emerged and may well be unattainable.

Members of the rental housing industry and others have frequently charged that the rent adjustments authorized by the Board have been unfair to owners and harmful to the housing stock. The Rent Stabilization Association, representing some 25,000 rental properties, has claimed that "the Rent Guidelines Board has increasingly viewed New York City's stabilized housing stock as a specimen in isolation, minutely examining year to year economic variations but losing sight of the long term effects of 30 years of regulation…"[5] Owners have asserted that low rent guidelines lead to deferred maintenance, abandonment, a loss of tax revenues, and widely disparate rents for similar apartments.

Among tenant advocates and their supporters, a market (or quasi-market) solution to the housing shortage through increased rents has been viewed as an antidote that carries an unacceptably high mortality rate - by way of evictions, homelessness, gentrification or severe economic hardship. Moreover, they argue that the forces controlling housing quantity and quality are far more complex than the rent setting policies of the Rent Guidelines Board. Tenant representatives have charged that recent legislative changes and "unwarranted rent increases" have "pushed owners' profits to record levels, while operating costs are steady and financing costs are

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[4] For a table of vacancy rates since 1960 in New York City, see New York City's Housing Emergency table on page 4.
[5] Submission by the Rent Stabilization Association - Relative to Rent Guidelines Board Order 31, May 1999.

down."[6] These developments, they argue, "have a devastating impact on the city's housing affordability crisis and contribute to homelessness."[7]

The Rent Guidelines Board has never been able to resolve this housing dilemma to the satisfaction of both sides. Even a "normal" rental market will produce hardships for some owners and some tenants. The Rent Guidelines Board is mandated to establish fair rents but is not obligated to make every apartment affordable for tenants or every building profitable for owners. As the Board's Chairman observed in 1994:

> *[T]he RGB was meant to counteract the effects of what the state legislature determined was and is a continuing acute housing shortage. Such regulations, however, were never meant to either guarantee an owner a profit (i.e. thereby saving an incompetent owner from his own folly) or to serve as an adjunct to social welfare programs (i.e. protecting poor tenants from the economic forces that would be in effect, even if the housing shortage did not exist).*

Notwithstanding the volatility of these issues, experience has demonstrated that a guideline setting process with credibility, integrity and a measure of public respect is an attainable objective. Achievement of this objective requires sincere efforts to develop a full and accurate base of information on which to evaluate industry and tenant conditions, and fair hearings for the various individuals and groups who participate in the deliberative process.

In the years to come, the Rent Guidelines Board is likely to remain a key participant in the ongoing public conversation about the fairness and effectiveness of the rent stabilization system. Over the past decade the Board has made significant contributions to public understanding of housing issues by producing a wide range of empirical studies. We now know a good deal about the effects of New York's system of rent regulation on housing quantity, quality, profitability and affordability. While rent regulation will, no doubt, remain a contentious subject, speculation about its impact has gradually given way to carefully documented experience and analysis. In this briefing manual, we hope to share some of that experience, along with general information about the structure, function and history of the Board and the rent stabilization system.

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[6] Quoting Testimony Before the New York City Rent Guidelines Board Hearing on Rents for Rent Stabilized Apartments, June 22, 1999, Legal Services for NYC and The Legal Aid Society.
[7] Id

Table I.

NEW YORK CITY'S HOUSING EMERGENCY

NET RENTAL VACANCY RATES IN NEW YORK CITY, 1960-2014

Year	Net Rental Vacancy Rate
2014	3.45%
2011	3.12%
2008	2.91%
2005	3.09%
2002	2.94%
1999	3.19%
1996	4.01%
1993	3.44%
1991	3.78%
1987	2.46%
1984	2.04%
1981	2.13%
1978	2.95%
1975	2.77%
1970	1.50%
1968	1.23%
1965	3.19%
1960	1.81%

The City's vacancy rate is determined by dividing the number of vacant and available units by the sum of all occupied and vacant units. Thus in 2014, 75,458 vacant and available units are 3.45% of the sum of occupied and vacant units (2,184,297). The City's vacancy rate is calculated triennially in the Housing and Vacancy Survey (HVS) to determine if a housing emergency continues to exist. According to state law, a housing emergency may be declared when the citywide vacancy rate falls below 5%. According to the latest survey (2014), the vacancy rate (3.45%) still falls below the benchmark level of 5%, which if surpassed would result in an end to both the housing crisis and rent regulation, following appropriate legal process.

The HVS is performed in New York City by the U.S. Census Bureau. It contains comprehensive data on housing, neighborhoods and tenant demographics.

MEMBERSHIP ON THE BOARD

The Rent Guidelines Board (also referred to herein as the "Board" or the "RGB") is a local body with a mandate in both state and local law to investigate conditions within the residential real estate industry and to establish fair rent adjustments for rent stabilized units. Under the Rent Stabilization Law (section 26-510) the Board is charged with establishing annual guidelines following a review of (1) the economic condition of the residential real estate industry in New York City including such factors as the prevailing and projected (i) real estate taxes and sewer and water rates, (ii) gross operating maintenance costs (including insurance rates, governmental fees, cost of fuel and labor costs), (iii) costs and availability of financing (including effective rates of interest), (iv) over-all supply of housing accommodations and over-all vacancy rates, (2) relevant data from the current and projected cost of living indices for the affected area, and (3) such other data as may be made available to it.

Composition of the Board, Terms of Office, Eligibility for Appointment

The RGB consists of nine members, all of whom are appointed by the Mayor. Two members are appointed to represent tenant interests. One of these serves a two-year term, and the other a three-year term. Two members are appointed to represent owner interests. Like the tenant members, one serves a two-year term, and the other a three-year term. Five members (including the chairperson) are appointed to represent the general public. One of these serves a two-year term, another a three-year term and two serve four-year terms. The chairperson serves at the pleasure of the Mayor. The complete text of the law governing Board appointments, powers and duties is set forth in Appendix A. A complete listing of all members serving on the Rent Guidelines Board since 1969 and their terms of office is included in Appendix B.

All members are required to be residents of the City and must remain residents during their period of service. Each public member must have had at least five years experience in either finance, economics or housing. No member may be an employee or officer in any state or municipal rent regulation agency. Nor can any member own or manage rental property affected by the Board's orders or be an officer in any owner or tenant organization. The chairperson may hold no other public office. All members take an oath of office.[8] New members are expected to submit a written

[8] All of the above requirements for Board membership are contained in section 26-510(a) of the New York City Administrative Code with the exception of the residency requirements, which can be found in sections 3 and 30 of the Public Officers Law, see Appendix C. The requirement of execution and filing of an oath of office is included in section 10 of the Public Officers Law. The failure to file such oath within 30 days will create a vacancy in the office as per section 30(1)(h) of the Public Officers Law.

statement attesting to their compliance with the above eligibility requirements upon appointment. A sample copy of the oath and such statement is annexed hereto as Appendices D and D1 respectively. Each prospective member of the Board is also subject to a background investigation by the Department of Investigation prior to appointment.

Vacancies and Removal

A member may remain on the Board after the expiration of his or her term until a qualified new member is appointed. The Mayor is required to fill any vacancy which may occur by reason of death, resignation or otherwise, in a manner consistent with the original appointment. A member may be removed by the Mayor for cause, but not without an opportunity to be heard in person or by counsel. At least ten days notice to the member is required prior to such a hearing.

Conflicts of Interest & Financial Disclosure

All Board members and staff are required to comply with the ethics provisions contained in chapter 68 of the New York City Charter along with the rules and opinions of the New York City Conflicts of Interest Board. Under the conflicts of interest rules members of the Board and staff are prohibited from engaging in certain specified activities that generally concern misuse of authority for personal gain or practices that directly or indirectly conflict with official duties. The Charter also contains many post-employment restrictions.

Because Board members are "public servants" but not "regular employees" and because the agency they serve is the Rent Guidelines Board and not the executive branch of city government, the application of certain of the rules is limited. For example, a "regular employee" is prohibited from having a business interest in a firm that has business dealings with any <u>agency of the City</u>, while Board members may not have an interest in a firm that has business dealings with "<u>the agency</u> served by the public servant" – a less restrictive rule. To illustrate, an RGB employee may not have a business interest in a vendor that supplies and services copying machines to any city agency,[9] but this would not create a conflict for an RGB member so long as the RGB did not utilize that vendor's services. In any event, it is best to consult with the Executive Director if a "conflicts" question arises.

[9] There are exceptions to this restriction. For example, it may be permissible for an employee to own stock in a publicly traded business (e.g. Xerox, Canon or Sharp) which does business with the city.

Unclear issues will be referred directly to the Conflicts of Interest Board. A copy of the relevant provisions of the City Charter dealing with conflicts of interest is contained in Appendix E. **All Board members and staff are expected to be familiar with these provisions.**

Upon appointment and during each year of service, Board members are required to complete a financial disclosure statement. The general purpose of this statement is to ensure that Board members do not hold any interests which conflict with their duties as Board members or which would otherwise create an appearance of impropriety. All Financial Disclosure Forms are completed electronically.

Below are summary notes on some of the matters that may arise in connection with service as a Board member or employee:

- GIFTS: No public servant may accept a gift with a cumulative value of $50 or more in a 12-month period from a person or firm doing business with the City. There are exceptions to this rule such as gifts exchanged between co-workers or relatives, wedding gifts or meals given at a function where you represent the Board.

- MOONLIGHTING: This rule only applies to the Board's staff members who are "regular employees." RGB staff may not work for a company that has business with the City. In addition, any such outside work must be on the employee's own time and may not involve the use of city resources, confidential information or the use of the employee's official position.

- OWNERSHIP INTERESTS: The Rent Stabilization Law itself prohibits Board members from having an ownership interest in property subject to the Board's orders. Notably, there appears to be no restriction on continuing as a tenant in a rent stabilized apartment while serving on the Board.

- POLITICAL ACTIVITIES: All political activities must be performed on the member or employee's own time. Members and staff may not use a city letterhead, supplies, equipment or personnel while carrying out such activities. They may not coerce or induce fellow employees to participate in political activities. Managers may not even ask subordinates to participate in or contribute to a campaign.

- POST-EMPLOYMENT RESTRICTIONS: RGB staff and members may not appear before the RGB for a period of at least one year after leaving service. They may not divulge confidential information obtained while in the Board's employ. They may never work on a particular matter or project they were directly involved in while employed by the City. Notably, each new guideline is considered a separate and distinct matter, so it would be unusual for this latter conflict to arise.

Detailed advisory opinions and pamphlets on these topics and others are available to Board members on request. Again, if there is any uncertainty, it is always best to seek a ruling.

It may be useful to note that the Conflicts of Interest Board has the authority, upon the making of certain findings, to grant waivers and issue orders allowing public servants to hold positions, or maintain ownership interests, otherwise prohibited by the Charter.

Board Member Compensation

Members are compensated at a rate of one hundred dollars per day for up to twenty-five days per year. The chairperson receives one hundred twenty-five dollars per day for up to fifty days per year. This rate of compensation has remained unchanged since 1969.

Board members are compensated on a "per diem" basis although this term has never been precisely defined. By convention each Board meeting counts as at least one day of service. Board meetings that exceed seven hours (as the Board's public hearings often will) may qualify for additional per diem payments. For example, a twelve-hour meeting would qualify for two per diem payments.

To obtain compensation for attending a meeting of the Rent Guidelines Board, the member must sign the Rent Guidelines Board sign-in sheet circulated by the Office Manager at the meeting. The city will then issue a check to each member who attended the Board meeting. An example of the sign-in sheet is included herein as Appendix D2.

Under current practice, all other Board activities that cumulatively exceed five hours shall count as one per diem. These activities are compensated by what are known as "non-public" per diems. Such activities may include individual meetings with staff or attendance at briefings by government officials or housing experts, a review of staff reports or meetings with constituent groups (e.g. tenant or owner advocates).

If a Board member attends a briefing directly related to the Board's work (other than a Board meeting), or meets with a constituent group, or conferences with staff, a signed and dated form describing the date, duration, location and purpose of the qualifying activity should be forwarded to the Executive Director to ensure compensation. Board members may also list the time needed to review each of the many (often time consuming) reports issued in conjunction with Board meetings. A copy of an RGB per diem payment requisition form is included herein as Appendix D3. Note that non-public per diem requests are subject to review and approval by the RGB Chair, and the Department of Housing Preservation and Development.

Bylaws of the Board

In 1981 the Board adopted a brief set of bylaws that largely reflect the statutory provisions governing the Board's operations. The complete text of the bylaws is contained in Appendix F. The bylaws set forth the purpose and powers of the Board, qualifications of members, role of the chairperson and compensation of members, all in accordance with the Rent Stabilization Law. In addition, the composition of the Board's staff is established and the chairperson is granted the authority to modify this composition if the financial resources of the Board permit such modification.

The bylaws also reflect the requirements for annual public meetings and hearings contained in the Rent Stabilization Law. In addition, the chairperson is granted authority to call special meetings for any purpose consistent with the Board's mandate. All meetings must take place within the City of New York.[10] At least five members must be present before a meeting may begin and five supporting votes are needed for the Board to exercise its guideline setting authority. Thus, if only seven members attend a meeting, a simple majority of four votes is inadequate for the Board to exercise its guideline setting authority. By convention, at least one tenant and one owner representative should be present before any meeting proceeds. The order of business at each meeting is determined by the chairperson, but the order of business may be changed by vote of a majority of the members present. Robert's Rules of Order govern the proceedings except as to those matters addressed directly in the bylaws.

[10] A full discussion concerning the Board's meetings and hearings is provided on pages 114-117.

The Rent Guidelines Board Staff & Use of Consultants

Prior to 1980 the Board relied upon staff provided by the New York City Department of Housing Preservation and Development ("HPD") for its administrative support. In that year the City Council adopted Local Law 11 (copy annexed in Appendix A1), designating the chairperson as chief administrative officer of the Board, and permitting him or her to "employ, assign and supervise the employees of the rent guidelines board and enter into contracts for consultant services". This legislation appears to have been, in part, in response to public criticism of the practice of borrowing staff from "other agencies to which staff members owe their primary obligations."[11]

In each succeeding year, the Board has received an allocation of funds through a contract with the Department of Housing Preservation and Development ("HPD") to hire staff and provide for office expenses. Thus, in terms of its funding, the Board's staff operates through negotiation by its Chair of annual terms agreed upon with HPD.

Throughout the 1980's the Board had not exercised its power under Local Law 11 to directly enter into consulting agreements itself. The annual price index studies and other projects had been procured for the Board through contracts let by the Department of Housing Preservation and Development. For a time (1972-1978) these studies were funded in whole or in part by the Rent Stabilization Association, an owners advocacy group. The funding history of this important contract is contained in Appendix G. Since 1990 the Board has exercised full control over the scope of all consulting services as well as the choice of consultants.

Section 310(2) of the City Charter now requires a Board resolution when the Chairperson performs certain contract oversight functions. A resolution of this type, which authorizes the Chairperson to act on behalf of the Board in contract matters, was adopted on February 13, 1991.[12]

The Board's current full-time staff of four includes an executive director, a research director, a senior research associate, and an office manager. In addition to providing administrative support for the Board during its annual deliberations, the staff is engaged year round in research efforts and in providing information to the public on housing questions. The staff fields hundreds of calls per month from tenants and owners with housing and rent related questions. The Office of Corporation Counsel presently serves the function of legal counsel.

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[11] Quoting Coalition against *Rent Increase Passalongs v. Rent Guidelines Board*, 422 N.Y.S. 2nd 660, n.1 (Sup. Ct. NY Co.1979), 104 Misc.2d 101, affd, 176 AD2d 1043 (1st Dept. 1980).

[12] The full text of the resolution is included in Appendix H.

The executive director coordinates meetings, maintains Board communications and media relations, administers contracts, oversees procurement, supervises the staff, and works with the City's Corporation Counsel to advise the Board on all matters concerning litigation, new legislation, and the Board's lawful functions. The executive director also oversees the development and production of the information and analysis necessary for the Board to conduct its annual review of the conditions of the residential real estate industry. Finally, the executive director advises other public agencies on Board related matters and maintains the Board's internet site.

Although the staff often consults with the State Division of Housing and Community Renewal, the City Department of Housing Preservation and Development and the Office of the Corporation Counsel, it is an independent staff, directly responsible only to the chairperson and the Board itself. The Board is solely responsible for the staff's research projects and is fully accountable for the decisions it makes based on the staff's research findings.

Notably, Board members and staff are covered by section 50-k of the General Municipal Law. Consequently, they are entitled to be represented by the City's Corporation Counsel and to be indemnified for acts occurring within the scope of their public service.

A complete copy of the staff's RGB Employee Manual and office rules is included herein as Appendix I.

The Board's Web Site: http://www.nycrgb.org

In 1996 the Rent Guidelines Board launched the City's first web site. Although it received limited use at that time, by 2015, the site was receiving an average of over 1.5 million "hits" per month.

Currently the Board's site offers a variety of services. It includes all of the Board's major studies issued since 1995, along with data from the triennial Housing and Vacancy Surveys. The site also includes most of the Board's past rent orders. One highly popular feature is the "Apartment Guide" which offers advice and assistance to apartment hunters. Another widely used section is the section on frequently asked questions ("FAQ").

The site also includes a variety of publication reprints such as the Attorney General's Landlord/Tenant Guide; the New York City Housing Maintenance Code; A Tenant's Guide to Housing Court; a variety of Fact Sheets from the New York State Division of Housing and Community Renewal; and the full text of the Rent Regulation Reform

Act of 1997, the Rent Law of 2003, and a link to the Rent Act of 2011 and the Rent Act of 2015.

Legal Status of the Board

As previously noted, the Board is a local body with a mandate in both state and local law to investigate the conditions of the residential real estate industry and establish rent adjustments for rent stabilized units. Because it is not a state agency, it is not subject to the provisions of the State Administrative Procedure Act. It is, however, subject to the City Administrative Procedure Act. It is also subject to the Open Meetings Law and other requirements governing the process by which it conducts its business. These procedural requirements are discussed on pages 114 through 117.

The Board is a quasi-legislative body without judicial or executive authority. Its authority to make rent adjustments after reviewing certain mandated considerations is very broad. But it has no power to enforce its orders or to penalize violators. Enforcement authority for exceeding the Board's orders rests with the State Division of Housing and Community Renewal and the courts (usually the Housing Part of the Civil Court of the City of New York). There is no pro-active review of rental charges by the DHCR to achieve compliance with the Board's orders. Rent overcharge proceedings are initiated by individual tenants either by filing a complaint with the DHCR or by raising an overcharge claim in the courts.

The Board cannot act outside of its rent-setting jurisdiction, nor can it adopt rent orders that are unreasonable, arbitrary or capricious. The Board's orders must be justified in terms of the economic criteria set forth in the Rent Stabilization Law. That criteria is fully set forth in the law itself which is contained in section 26-510(b) of the Rent Stabilization Law, contained in Appendix A.

The Board may not abdicate its regulatory authority over the rent stabilized housing stock nor any part of it; only the City Council may permit such deregulation, and then only after a public hearing in accordance with section 3(b) of the Emergency Tenant Protection Act of 1974 (hereafter "ETPA").

To support the Board's investigative functions, all City and State agencies are required to cooperate with the Board by responding to all reasonable requests for information and assistance.[13]

[13] See ETPA, L. 1974, c.576, 4[13].

Table II.

HISTORY OF THE BOARD AND THE RENT REGULATION SYSTEM

Highlights of Rent Regulation in New York

1920	Emergency Rent Laws of 1920 adopted in the wake of sharp increases in dispossess proceedings and declining construction following World War I.
1927	Construction of new dwelling units reaches an all time high of 107,185 for the year.
1929	Rent Laws of 1920 terminated as vacancy rates approached 8%.
1943	Federal rent controls first adopted as a wartime measure to address anticipated housing shortages.
1946	New York State adopts “stand-by” rent control legislation in the event federal controls expire.
1947	Federal law exempts new construction from rent controls as of February 1st.
1951	New York State takes over administration of rent control as federal controls expire.
1953	Vacant apartments in one and two family homes decontrolled. Across the board rent increases of 15% adopted for units not previously receiving increases under rent control.
1958	Apartments renting for more than $416.66 unfurnished or $500 furnished are decontrolled. This affected about 600 units.
1962	Administration of 1.8 million rent controlled apartments is transferred from the State to the City. Enabling legislation is adopted permitting local governments to enact rent regulations.
1964	City adopts luxury decontrol for certain high rent apartments, resulting in decontrol of about 5,000 rent controlled apts.
1968	City adopts luxury decontrol for certain high rent apartments, resulting in decontrol of about 7,000 rent controlled apts.
1969	Rent Stabilization Law enacted in response to plummeting vacancy rates. Buildings with six units or more constructed after 2/1/47 and previously decontrolled apartments in buildings with six units or more units are covered. Rent Guidelines Board is established. Real estate industry groups given power to promulgate a stabilization code subject to City review.
1971	Vacancy decontrol adopted for all units. City is prevented from adopting rent regulations more stringent than those already in effect.
1974	Decontrolled and destabilized units are re-regulated under the Emergency Tenant Protection Act of 1974.
1983	Omnibus Housing Act transfers administration of rent regulations from the City to the State Division of Housing and Community Renewal.
1985	Official involvement of the Rent Stabilization Association and the Metropolitan Hotel Industry Stabilization Association in promulgating codes governing rent stabilized units is terminated.
1993	Under the Rent Regulation Reform Act of 1993, the state begins deregulating high rent ($2,000+) apartments upon vacancy. Also adopted is a high-income deregulation provision for occupied units with rents of $2,000 or more as of October 1, 1993 with tenants whose household income exceeded $250,000 in two previous years.
1997	Under the Rent Regulation Reform Act of 1997, the state expands high-income decontrol to cover households with incomes of $175,000 or more. In addition, the state adopts a mandatory formula for rental increases upon vacancy.
2003	The Rent Law of 2003, in effect until 2011, limits the ability of NYC to pass laws concerning rent regulatory issues controlled by the State; allows for the deregulation of an apartment upon vacancy if the legal regulated rent may be raised above $2000, even if the new rent the tenant pays is not actually an amount above $2000; and permits an owner, upon renewal, to increase a rent stabilized tenant's rent to the maximum legal regulated rent, regardless of whether a tenant has been paying a preferential rent (but does not prohibit contractual agreements between owners and tenants to maintain the preferential rent after renewal).

Table II. (continued)

HISTORY OF THE BOARD AND THE RENT REGULATION SYSTEM

Highlights of Rent Regulation in New York

2011	The Rent Act of 2011, in effect until 2015, limits the frequency of vacancy increases to one per calendar year; changes the formula for individual apartment improvements in buildings with more than 35 apartments to allow the landlord to increase the legal regulated rent by 1/60th of the cost of the improvements (was 1/40th under the prior Rent Law); raises the threshold for high-rent/vacancy deregulation to $2,500 (up from $2,000 under the prior Rent Law); and changes the threshold for high-rent/high-income deregulation to $2,500 in rent and a household income of more than $200,000 (up from $2,000 and $175,000 respectively).
2015	The Rent Act of 2015, in effect until 2019, raises the threshold for vacancy deregulation to $2,700 (up from $2,500 under the prior Rent Act); increases the threshold for vacancy deregulation each year per the one-year guidelines passed by the Rent Guidelines Board; changes the amortization period for Major Capital Improvements (MCIs) from 84 months to 96 months for buildings with 35 or fewer units and 108 months for buildings with more than 35 units; and alters the computation of the vacancy allowance for certain apartments where the previous tenant was paying a preferential rent.

Rent Regulation Prior to the Establishment of the Board

Laws and social customs have promoted and regulated economic activities since ancient times. Rent regulation is one policy among countless others impacting on the economy and property interests. Royal charters establishing private corporations created a vehicle for massive capital formation and set the stage for the modern day business enterprise. Old English common law rules and statutes established our concepts of real and personal property and channeled the ways in which property could be sold or transferred. By the end of the nineteenth century, bankruptcy and debtor/creditor laws controlled the creation and elimination of personal and business debt, antitrust measures reigned in anti-competitive practices, and health and building codes began eliminating dangerous conditions in urban areas. In the twentieth century, legislative reforms imposed health and safety protections in the workplace, land use restrictions, environmental protections, banking and securities regulations, and redefined the terms of private employment contracts.

Along with these legal developments, massive public investments in education, roads, transportation facilities, communication systems, and various types of public research and development, combined to create a physical and human infrastructure under which commerce and culture have generally flourished.

These varying public actions have had both positive and negative effects on the value of private property and the uses to which such property may be put. For example, a city's decision to place an airport in a particular location may double the profits of a neighboring motel, while slashing the value of homes adjacent to noisy runways. Likewise, the adoption of a zoning ordinance may be devastating to a developer who purchased a vacant lot in anticipation of putting up a (now prohibited) high rise building, while being highly beneficial to the owner of a neighboring brownstone threatened with congestion and obstruction of light from the new building.

In the City of New York, the supply of rental housing is drastically limited by a variety of public actions: zoning laws limit the size, use and location of residential housing; building codes restrict materials used in construction and design; historic preservation laws limit demolition or alteration of certain structures; wage and labor policies raise the expense of construction and maintenance; public ownership of parks, roads and other spaces limit the availability of building sites. These *public* actions - driven as they are by competing public values and concerns - indirectly raise the cost of new construction and site acquisition and thereby contribute to the housing shortage. While this is true in every city, in a highly congested area such as New York, the *costs and benefits* of public intervention are more pronounced. The enhanced value of residential buildings in New York is, thus, in large part, attributable to government intervention. To give a stark (if somewhat fanciful) illustration, if the City sold Central Park to private developers the value of residential units bordering the park would plummet, housing would be more abundant, and Manhattan, in general, would be a more affordable but far less attractive place to live.

Beyond the obvious and massive effects of federal fiscal and monetary policy, almost every act of government impacts - in some fashion - on private property interests. And at some level, all economic activity is the product of some implicit or explicit public policy, whether that policy is one of open competition or involves some degree of interventionism. Hence, there is no neutral baseline or "natural" market from which to measure deviations from market based allocations of goods and services. Government – past and present – is inextricably intertwined with the marketplace.

Both private markets and interventionist policies reflect a rough, evolving democratic consensus on how economic affairs should be conducted. We generally concern ourselves with "what works best." There are, however, constitutional limits, state laws, customs and traditions that restrict the degree to which government has been able or willing to interfere with markets and private property interests.[14] Among the innumerable government actions that impact on private property interests, rent regulation seems to tread most conspicuously.

Most interventionist measures and public sector activities have received widespread acceptance as necessary and proper to contain potentially destabilizing elements within our economy, to "promote the general welfare" or to foster salutary competitive practices. Generally, they spark little controversy.

Rent regulation has been an exception. Rent regulation involves direct government control of a key term in all contracts: price. Other contemporary examples of such overt intervention include minimum wage laws, milk price supports and rate setting for utilities and transportation services (e.g. yellow cabs). Yet these policies generate only a fraction of the passion witnessed during New York's periodic "rent wars."

Rent and price regulations are not new. After the first modern university was founded in Bologna, Italy around the beginning of the last millennium students flocked to the area creating a housing shortage. "Bolognese landlords threatened to raise scholars' rents" and "student protests led Emperor Frederick Barbarossa to

[14] The constitutionality of rent regulation is discussed in detail at pp. 46 through 55.

award them protection from exploitation in 1158."[15] In England, medieval clerics developed the concept of a just price for the necessities of life and Parliament continued to pass laws regulating the price of various services and commodities long after the clergy ceased to exert a significant influence in the making of laws.[16] In revolutionary era America the colonies (and later the states) regularly restricted prices on staples and limited the amount innkeepers could charge for food and lodging.[17] Notably, Trinity Church, owner of the "first large rural Manhattan estate to be organized for a town rental market," was subject to a ceiling on its annual income.[18]

Many ancient rules and customs operated not to shield consumers, tenants or laborers from market forces, but to protect vested interests such as landowners. A good example is New York's feudal land laws. Until the 1840's vast tracks of land populated by tenant farmers were controlled by a small number of large landlords. Feudal land tenures harnessed these farmers to leasehold estates, and prevented them from ever owning the land they worked. Violent uprisings erupted when the landlords attempted to enforce harsh lease conditions or sought evictions during periods of economic distress. These uprisings eventually led to state constitutional reforms in 1846, abolishing all feudal land tenures and promoting a conversion to freehold estates.

In some respects, these struggles revealed an endemic tension in landlord/tenant relations. As noted in the *1980 Report of the New York State Temporary Commission on Rental Housing*:

> *Simply substitute the years 1919-20, 1941-42, 1950-51, 1961-62, 1968-69, 1970-71, 1974 and 1979, for 1845, apartment house owners for landowners, and apartment house tenants for tenant-farmers and the conditions and remedial legislation action of over a century ago present a most striking parallel to the conditions and enactments of the later periods.*[19]

Residential leaseholders would never experience the dramatic changes secured by these early tenant farmers.[20] But changes in legal protections afforded residential tenants have been significant. Over the past century, lease terms governing tenure, habitability, evictions and rent adjustments have largely been supplanted or

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[15] Quoting from The Life Millennium, A University Education, p. 89, Life Books 1998.
[16] William H. Dunbar, State Regulation of Prices and Rates, 9 Harv. Q.J. Econ. 1, 4 (1895).
[17] See Ely, *The Guardian of Every other Right, A Constitutional History of Property Rights* at 19-20 (1992).
[18] Quoting Blackmar, Manhattan for Rent 1785-1850, 30 (1989).
[19] At p. I41-42.
[20] One might argue, however, that laws favoring conversion to co-operative and condominium ownership do, in fact, promote the gradual, albeit partial, elimination of traditional leasehold tenures in apartment buildings.

transformed by legislation and court rulings. Even in the absence of rent regulations, the common law lease of a century ago no longer exists. Leases once created independent covenants for delivery of possession and payment of rent. Tenants were thus obligated to pay rent even when possession was not delivered or services were not maintained. Leases now involve "mutually dependent" contractual obligations. If possession or services are not provided, rent may be withheld or abated.

A host of other lease terms have been altered by statute and court rulings. Lease provisions allowing "self-help" evictions are unlawful. Lease provisions waiving a landlord's obligation to maintain habitability are unlawful. Restrictions on roommates, subletting and pets are now governed by statute. Moreover, New York tenants now have affirmative rights to organize with other tenants, to receive protection against retaliatory evictions and to prevent landlords from engaging in various forms of discrimination (including discrimination on the basis of age, race, creed, color, national origin, sex, age, disability, familial status, marital status, the presence of children, sexual orientation, lawful occupation, alienage or citizenship status.)

In a sense, all leasehold interests in residential apartments in New York have evolved into a new type of tenure – clearly not the kind of freehold estate held by homeowners, but certainly not the common law leasehold of a century ago.

If the vestiges of feudalism spawned tenant-farmer uprisings of the 1840's, the unregulated proliferation of substandard (but high rent) housing in New York City created an even greater source of public unrest in the mid-nineteenth century. Affordability issues began to appear as soon as New York became a major metropolis. Notably, as today, the affordability problem was largely the product of a dual economy. As Burrows and Wallace observed in *Gotham*:

> *The 1830's boom improved living conditions for many working people, notably the two-fifths of the City's artisans who worked in the building trades, erecting the thousand-plus structures going up each year... But the majority of the working class saw their living standards deteriorate, partly because of boom-fostered inflation -- especially the rapidly rising rents exacted by those the City Inspector (in 1835) called 'mercenary landlords' -- but primarily because constructing housing for poor people wasn't profitable.*[21]

One response to the City's low-income housing needs was the construction of multi-family "tenements" - the first of which was erected in 1833. Unfortunately this

[21] Burrows & Wallace, *Gotham: A History of New York City to 1898*, p. 587.

proved to be an imperfect solution. Overcrowded tenements soon became a breeding ground for a variety of health and social problems. A cholera epidemic in 1849 took approximately 5,000 lives.[22] In 1854, a second cholera outbreak took 2,509 lives.[23] Unemployment afflicted about one in five tenement families.[24] Poverty was widespread and severe. According to one account:

> *Conditions in the City were beginning to take their toll in terms of the general social order. Major riots in 1849 and 1857 pointed toward the increasing pathological state of the tenement population. The most traumatic civil disturbance, however, was the "draft riots" of 1863. On the surface they were a reaction to newly imposed involuntary conscription for military service in the Civil War. But the violence was also the product of the intolerable condition of the city's poor. The wretched and diseased population of the tenements, especially of the Sixth Ward, poured into the city streets. They demonstrated beyond question the connection between the housing problem and the threat of civil disturbance.*[25]

As Jacob Riis described in *How the Other Half Lives*:

> *The tenement-house population had swelled to half a million souls by [1855], and on the East Side, in what is still the most populated district in all the world ... it was packed at a rate of 290,000 to the square mile ... The death of a child in a tenement was registered in the Bureau of Vital Statistics as 'plainly due to suffocation of foul air of an unventilated apartment,' and the Senators, who had come down from Albany to find out what was the matter with New York, reported that 'there are annually cut off from the population by disease and death enough human beings to people a city, and enough human labor to sustain it.' And yet experts had testified that, as compared with uptown, rents were from twenty-five to thirty percent higher in the worst slums of the lower wards…*[26]

By 1865, nearly five in seven city residents (not including Brooklyn) lived in sub-standard tenement housing.[27] In 1867 the State adopted the nation's first comprehensive law addressing health and safety issues in tenements. The Tenement House Act of 1867 mandated such things as fire escapes for non-fireproof buildings and at least one water closet for every twenty tenants. The law also forbade occupation of cellars.

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[22] Plunz, Richard, *A History of Housing in New York City*, p. 21.
[23] Id.
[24] Id. In 1858 there were about 25,000 unemployed tenement dwellers with approximately 100,000 family members affected. Just over 480,000 people lived in tenement housing. Id at 22.
[25] Plunz, Richard, *A History of Housing In New York City* p. 21.
[26] Riis, *How the Other Half Lives*, chap. 1, at 4.
[27] Plunz, at 22.

As the turn of the century approached, hundreds of thousands of new immigrants filtered into an already overcrowded housing stock. In 1884, Felix Adler, leader of the New York Society for Ethical Culture, observed, "[t]he evils of the tenement house section of this city are due to the estates which neglect the comfort of their tenants, and to the landlords who demand exorbitant rents."[28]

Neither the Tenement House Act, the market, nor philanthropic organizations proved sufficient to the task of ensuring healthful, safe and affordable housing. In 1894 a State legislative committee reported that while New York City ranked sixth in the world in population, it ranked first in density – with the Lower East Side surpassing a section of Bombay which contained the world's highest known population density.[29] Crowded, unsanitary housing again prompted legislative action. The Tenement House Act of 1901 mandated running water on each floor and a water closet in each apartment consisting of three rooms or more. Every room was required to have an exterior window and each apartment was required to have sufficient means of egress to limit the risk of death in a fire.[30]

Affordability remained an intractable problem. Protests and rent strikes involving thousands of apartments erupted in 1904 and 1908.[31] By the end of World War I conditions again worsened prompting widespread demands for greater protection.

[28] Id. at p. 39.
[29] Id. at 37.
[30] Id. at 47.
[31] Lawson, *The Tenant Movement in New York City 1904-1984* p.39-50.

Post-World War I Controls

The Emergency Rent Laws of 1920 were adopted in the wake of dramatic increases in dispossess proceedings and a collapse in new construction caused by a diversion of resources to the war effort. In 1919, some 96,623 dispossess proceedings were docketed in municipal courts, with an increasing number being commenced in the Fall of that year.[32] In the first eight months of 1920 another 87,442 such proceedings were commenced.[33] Construction levels were equally bleak. In 1915, 1,365 tenements went up containing 23,617 units, but by 1919 only 89 tenements were built, containing 1,481 apartments.[34] A highly organized and politicized tenant movement launched a series of protests and rent strikes, demanding relief from spiraling rents resulting from the shortage.[35]

These events coincided with the period known as the "Red Scare." Five Socialists had been elected to the State Assembly. A debate ensued as to whether the Socialists should be allowed to take their seats. In March of 1920, New York City's Mayor John Hylan, traveled to Albany, urging adoption of a series of rent bills. There he told the legislators, "[y]ou gentlemen are trying to clear the Assembly of socialism. Let me tell you that you must first eradicate the causes of socialism, and one of the greatest of these is the speculating landlord."[36] The Assembly expelled its Socialist members – the most ardent advocates of rent and eviction protections. A few hours later, absent votes from the Socialists, it adopted New York's first rent control laws.[37]

The "April rent laws" were extended and strengthened in September of 1920. Under these laws the courts of New York State were effectively charged with the administration of rents. When challenged by tenants, rent increases were reviewed according to a standard of "reasonableness". Effectively, any increase over that of a prior year was presumed "unjust, unreasonable and oppressive" unless an owner could demonstrate otherwise. Landlords seeking to justify rent increases were generally required to submit a Bill of Particulars setting forth gross income and expense figures. As observed in the *1980 Report of the New York State Temporary Commission on Rental Housing*:

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32 *1980 Report of the New York State Temporary Commission on Rental Housing*, I-42.
33 Id.
34 Id. at I-43.
35 Lawson, pp. 51-93.
36 Maeder, *Roofs, Revolt of the Tenants, March-April 1920*, NY Daily News 2/4/2000.
37 Lawson, p. 72.

[The] definition of 'reasonableness' was subject to judicial interpretation. Conflicting opinions and an absence of uniform interpretation and ruling cannot be considered surprising in light of the fact that there were no statutory guidelines and the courts had to determine in the first instance such questions as: what was properly includable in income and operating expenses; or, the consideration to be given to extraordinary repairs, contemplated future repairs, vacancies, bad debts, depreciation, and interest on mortgages. Perhaps, most important, the courts were required to determine what constituted a proper or fair rate of return to the landlord, and became thereby the 'administrative agency' administering the rent laws of 1920.[38]

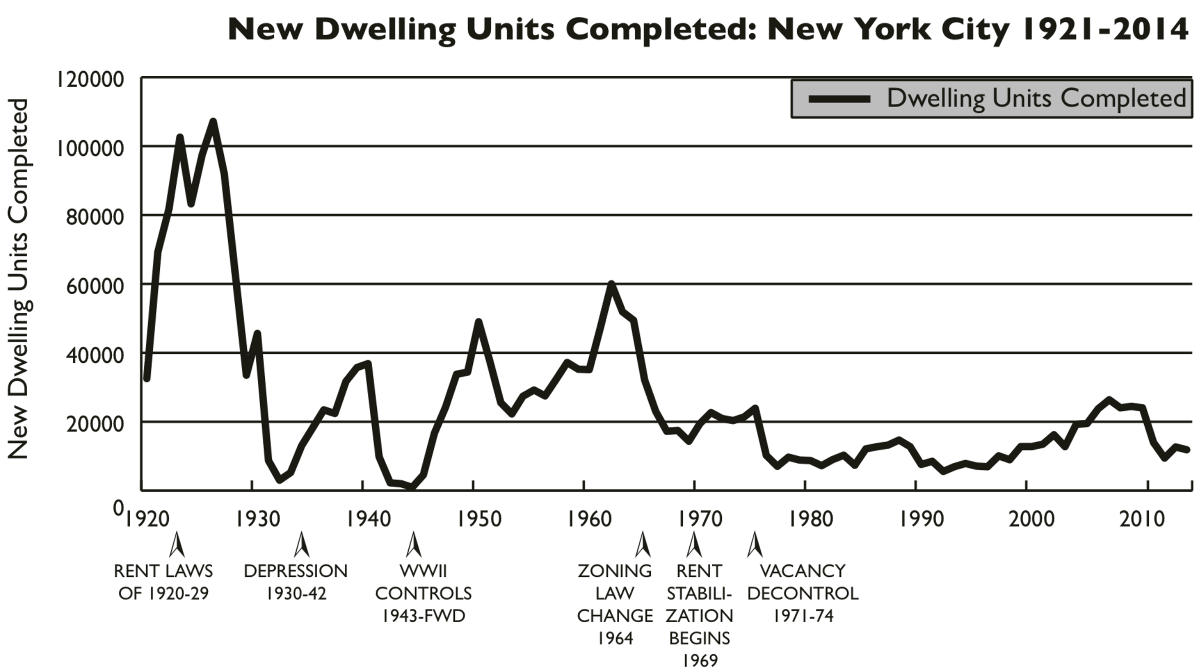
The housing shortage of the early 1920's was severe. Vacancy rates fell below 1% from 1920 through 1924. To induce new construction, the City exempted all properties built between 1920 to 1926 from property taxation until 1932. In addition, all units constructed after September 27, 1920 were exempt from the rent laws. Notwithstanding the presence of relatively strict rent protections for existing units, new construction proceeded at a record pace, with hundreds of thousands of new apartments being added to the stock before the decade ended. By 1928 the City's vacancy rate was approaching 8% and rent regulations were no longer needed. A phase out began in 1926 in the form of luxury decontrol – exempting units renting for more than $20 per room per month. After 1928 apartments renting for $10 or more, per room, per month were excluded. The Rent Laws of 1920 expired completely in June 1929, although limited protections against unjust evictions were continued.

[38] At p.1-45.

Chart I.

Rent Regulation and Construction of New Housing

What is notable about the experience of the 1920's is that a combination of property tax incentives, economic prosperity and the exemption of new construction from rent regulations all produced housing abundance. A second housing boom occurred in the two decades following World War II. Remarkably, as the graph below illustrates, New York's two great housing booms in the twentieth century occurred during periods when strict rent controls were imposed on existing units.



Despite the presence of similar policies and circumstances to those of the 1920's over the past four decades (i.e. tax abatements and exemptions from rent regulation for new construction and extended periods of economic growth), the City has been unable to achieve a normal vacancy rate (5%+). Among the many factors which might explain the difference between the experience of the 1920's and the present are the loss of relatively inexpensive building sites, the enactment of more restrictive zoning and building laws, and the gradual increase in the relative cost of housing in the suburban belt surrounding the City.

The Great Depression

The absence of rent controls during the Great Depression is instructive in one critical respect. Despite tragic levels of unemployment, widespread tenant unrest[39] and severe affordability problems, rent controls offered little as a policy option because rents were already depressed and vacancies remained high. As summarized by one housing historian:

> *In the early 1930s, a massive loss of income by all city residents threw housing markets into disarray; tenants could not pay their rents, landlords could not meet their mortgages, and courts received a flood of eviction and foreclosure cases they lacked the capacity to process or enforce.*[40]

With affordability problems on the rise, tenant households began doubling up. According to a 1946 Report of the Joint Legislative Committee to Recodify the Multiple Dwelling Law, the housing shortage began to re-appear as early as 1936 but the shortage was largely concealed because economic conditions had forced many families to double-up.

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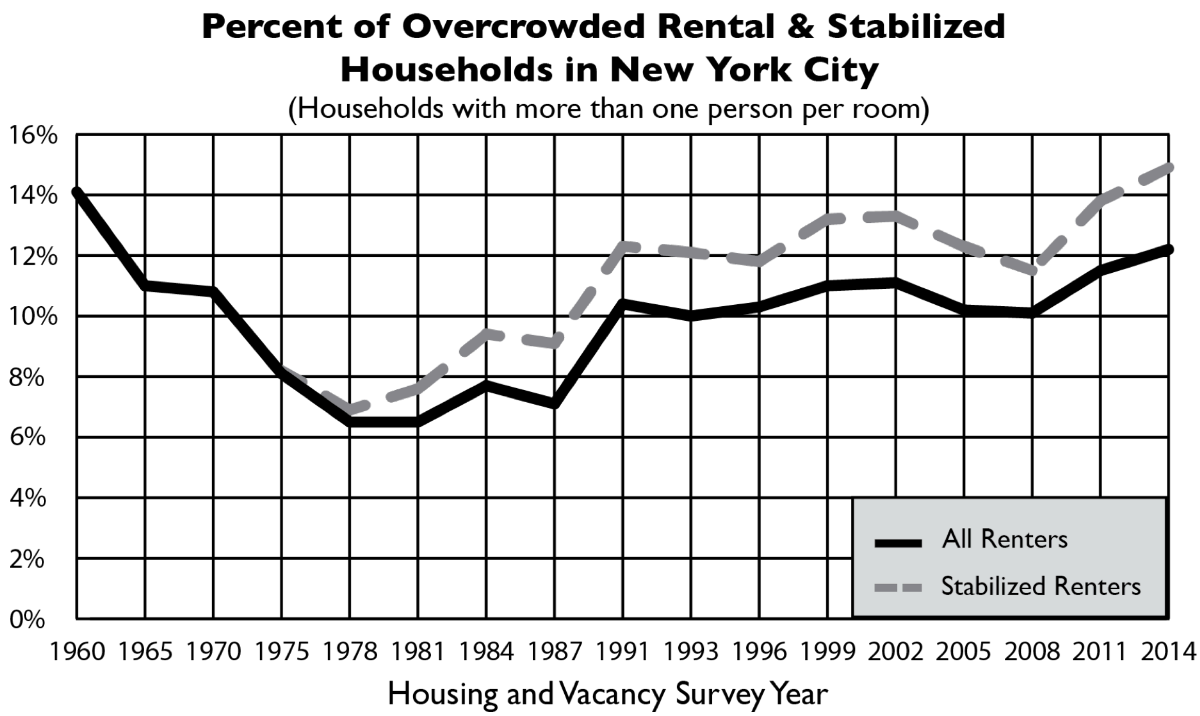
[39] See Lawson, pp. 95 - 127, (Chap. 3, From Eviction Resistance to Rent Control, Naison) analyzing the eruption of rent strikes and tenant activism in Harlem, the Bronx, Brooklyn and the Lower East Side in the 1930s.

[40] Id. at 96.

Chart II.

The Overcrowding Problem Today

In recent decades the triennial Housing and Vacancy Survey (HVS) has tracked the level of overcrowding in rental housing (a measure of "doubling up"). Along with vacancy rates, the level of overcrowding is a key indicator of the severity of the housing shortage and concomitant affordability problems.



The chart above shows overcrowding (defined as more than one person per room) rates found in each HVS since 1960. Rent stabilized households show more severe overcrowding levels than in all renter households, except in 1975. Overcrowding in both stabilized and all renter households has also shown a general trend of increase since the late 1970s.

World War II Era Controls

In 1942, under the Emergency Price Control Act, the federal government established a price regulation system nationwide in response to the prospect of wartime shortages and inflation. The setting of rents under this system was left to the discretion of the Administrator of the Office of Price Administration ("OPA"), subject to review by a special court known as the Emergency Court of Appeals. Under the new system, the implementation of rent control in New York did not begin until 1943. According to one account:

> *With the advent of World War II and the imposition of federal rent control in selected defense areas elsewhere in the United States, the city's left and liberal housing groups lobbied Mayor Fiorella LaGuardia and President Roosevelt's [OPA] to freeze rents. Initially, OPA refused, claiming that the city's rental vacancy rate was too high to justify rent control. In the wake of an August 1943 Harlem riot and threatened rent strikes if landlords did not exercise voluntary restraints, however, OPA changed its mind and imposed a wartime rent freeze…*[41]

On November 1, 1943 rents were frozen for all rental units in New York City at rent levels that had existed on March 1, 1943. These rents were subsequently adjusted by the Administrator as conditions warranted and in accordance with federal legislative intent.

Following last minute extensions of the law in 1944 and 1945, and a belated extension in 1946 (described below), the Emergency Price Control Act expired in 1947. Prior to its expiration Congress adopted the Housing and Rent Act of 1947 which preserved rent controls into 1948. This Law did not regulate units which were certified for occupancy after February 1, 1947.[42] Subsequent acts further extended these controls until the federal government's involvement with rent regulation in any city was fully terminated in 1953.

In 1946 the State of New York enacted "stand by" legislation to preserve rent controls in the event that federal controls expired. In 1950 this legislation was activated with a rent freeze and the establishment of a commission to review rent regulation. In 1951, in anticipation of the withdrawal of federal controls, the State adopted a system of rent regulation similar to the federal system, and the administration of rents for 2.1 million apartments was transferred to the State from the federal government.

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[41] Keating, Teitz & Skaburskis, *Rent Control - Regulation and The Rental Housing Market* 1998, p. 154.

[42] February 1, 1947 is a critical date. Until 1969 all housing built after this date was exempt from any kind of rent regulation. Generally, references to "post-war" housing are references to buildings with certificates of occupancy issued after this date. Conversely, references to "pre-war" housing are to buildings built before this date. Virtually no housing was constructed between 1942 and 1947, so references to "pre" war housing are not entirely inaccurate.

Establishing a pattern that would continue for fifty years, the 1940's witnessed a series of “hair's breadth escapes for controls.”[43] The first Extension Act [of federal controls] was approved on June 30, 1944, the very day initial controls were to have expired. The second Extension Act was adopted on June 30, 1945 - also the last day to act - extending controls to June 30, 1946. According to one account, “to pass this extension in time Congress went to considerable lengths. On June 30th the House of Representatives met at 10:00 A.M. (the Senate had already passed the extension), and at 1:25 P.M. the resolution was approved by the House, rushed to a waiting airplane and flown to Kansas City for President Truman's signature.” One year later, on June 29th, 1946 Congress failed to override President Truman's veto of the 1946 Extension Act. By midnight on June 30th 1946 the nation would be “without price or rent controls - except in New York State... On the afternoon of Sunday, June 30, 1946, Joseph D. McGoldrick, former New York City Comptroller, was attending the christening of his third daughter. He was rushed to a waiting State Commerce Department airplane, which flew him to Albany. When he arrived at 9:00 P.M., he was taken immediately to Governor Dewey's office, where he was sworn in as temporary State Housing Rent Commissioner. Just exactly two hours and thirty-seven minutes before the expiration of controls, he issued 'State Housing Regulation Number 1' which acted to continue federal controls wherever they had existed in New York under federal law.” One month later, responding to President Truman's objections to the 1946 extension bill (objections largely concerning agricultural commodities), Congress adopted a revised bill that the President signed on July 25, 1946, thus re-establishing federal controls.

Under the State system made operational in 1951, owners who claimed hardship in meeting building expenses were permitted to apply for rent increases in addition to those directly authorized by statute. A minimum fair net annual return of 4% on equalized assessed value was allowed.[44]

In 1953 an across the board rent adjustment of 15% over the rent levels which existed on March 1, 1943 was adopted. This applied to all rents that had not yet been increased by at least this much since 1943. In addition, the minimum fair net annual return was increased from 4% to 6%. The equalization rates of 1954 became the base rates for use in computing equalized assessed value in fair net annual return proceedings.

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[43] This series of events was described by Frederic Berman, former housing commissioner in the Lindsey administration, in a special 1968 report entitled A History of Rent Control in New York City. The quotes are taken from that report.

[44] Equalization of property taxes involves the adjustment of real property assessments (valuations) within a taxing district in order to achieve a uniform proportion between assessed values and actual cash values of real estate so that all property tax owners are taxed at an equal rate. See Wurtzebach and Miles, Modern Real Estate, glossary p.742.

In 1958 some 600 units in NYC with rents exceeding $416.66 per month ($500 per month if furnished) and which met certain other criteria, were decontrolled as luxury units.

In 1961 the fair net annual return provisions were refined to prevent certain abuses. In addition, the use of 1954 equalization rates on assessed value as a base for reviewing fair net annual return applications was eliminated in favor of using current equalization rates. Since recognition of newer assessments and equalization rates, in effect, raised the recognized values of these properties, many owners now qualified for rent increases. Consequently, "hardship" applications were filed in record numbers.

According to the State Commission's 1980 report, the rent increases resulting from the recognition of new assessment and equalization rates were criticized by tenants as unfair, and this "issue soon spilled over into and became the principal issue in that year's mayoralty campaign". In order to prevent the State from engineering future rent increases of this sort, "the candidates of both parties pledged to demand self-determination and local administration of rent control within the City of New York".[45] Consequently, in 1962 the duty of administering rent control along with the power to enact local controls was transferred to the City. Post-1946 buildings, which had been exempted under federal and state controls, remained so under City controls.

Also, as noted in the Commission's report, "the maximum rents as they existed under state law, which, in effect, were the 1943 freeze date rents adjusted pursuant to intervening statutes, became the maximum rents under the City Act."[46]

Under City controls "[t]he fair net annual return (hardship) provision required the use of 'current assessed' instead of 'current equalized assessed' value as the valuation base for computing an owner's entitlement to a rent adjustment. Also, rent increases pursuant to the fair net annual return provision were limited to a maximum of 15 percent biennially. Local Law 30 of 1970 (which established the MBR [Maximum Base Rent] program) re-instituted the use of current equalized value in the fair net annual return provision."[47] The MBR system later linked the removal of certain housing code violations to eligibility for rent increases, a requirement that still applies for buildings with rent controlled units.

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[45] Quoting the Commission's Report at 1-62.
[46] Quoting the Commission's Report at 1-64.
[47] Id. at 1-64.

In 1971 the State adopted several new laws limiting the continuance of rent control. One of these provided for the decontrol of rental units vacated after June 30, 1971. This "vacancy decontrol" law remains in effect, although most decontrolled units now fall under rent stabilization. Another 1971 law, popularly known as the "Urstadt" law, prohibited the City from adopting new rent regulations more stringent than those already in existence. This law also remains in effect.

It should be added that the City adopted various forms of luxury decontrol for certain high rent units in both 1964 and 1968. It should also be noted that there was a brief return to federal rent regulation under the Nixon administration's wage and price program with a 90 day freeze in late 1971.

Rent Control Today

There now remain less than 30,000 rent controlled units in the City. The remaining units are generally occupied by persons who have remained in possession of their apartments since June 30, 1971, or by their surviving spouse, adult lifetime partner or other family member. The median age of rent controlled tenants, as of 2014, was 72, up from a median of 70 in 2011. The median annual income for rent controlled households in 2010 was $30,070 (in 2013 dollars) and was $29,000 in 2013. In general, this is a dwindling stock occupied by an elderly, low-income population.

The "maximum base rent" or "MBR" for each rent controlled unit is adjusted biennially according a general adjustment factor established by the State's Division of Housing and Community Renewal. These units are also subject to a 7.5% cap on annual rent increases. This cap produces what is known as the "maximum collectible rent" or the "MCR." The MCR - the amount a tenant actually pays for a given apartment - often reaches the MBR. When this occurs, adjustments in the maximum collectible rent cannot exceed the maximum base rent. For example, if the maximum collectible rent is $500, a 7.5% increase would bring the rent to $537.50. But, if the maximum base rent is $510 the collectible rent cannot exceed this base. In this situation both the MCR and the MBR are now $510. If the biennial MBR is then increased by 5%, both the MCR and the MBR will increase by 5% resulting in a rent paid of $535.50. In 2010 the biennial MBR approved increase was 12.9%

It is important to note that the Rent Guidelines Board has no role in the adjustment of rent controlled rents. Most rent controlled units will fall under rent stabilization upon vacancy, however, and the Board does have a special role in helping to establish initial rents for these decontrolled units. This process is described at pages 84 through 86 under the discussion of Fair Market Rent Appeals and at pages 92 through 94 under the heading Special Guidelines for Decontrolled units.

Rent Stabilization

In 1969 rapidly falling vacancy rates and an increases in complaints of rising rents in non-controlled units led Mayor Lindsay to call upon a group representing the owners of unregulated apartments to propose a self-regulation program. At the same time the Mayor appointed the first Rent Guidelines Board "to make an independent evaluation of the plan for self-regulation" to be submitted by the owner's group.

Following the owner's report and review by the Rent Guidelines Board, the City enacted the Rent Stabilization Law of 1969 ("RSL"). This law applied to some 325,000 apartments that had been completed after February 1, 1947. It also applied to some 75,000 formerly controlled apartments that had been decontrolled through subdivision, conversion or luxury decontrol laws. Unlike rent control, which applied to buildings with 3 or more units (and one or two unit buildings if continuously occupied since April 1, 1953), rent stabilization applied to buildings with 6 or more units. Consequently, decontrolled units in buildings with 3, 4 or 5 units remained decontrolled. Also, the law did not apply to new buildings that received a certificate of occupancy after March 10, 1969.[48]

Under the 1969 law, the Rent Guidelines Board continued in operation and was charged with the establishment of guidelines for rent increases within certain prescribed limitations. Any lease or rental agreement adopted after May 31, 1968 would be subject to the first guideline, which governed lease renewals and new leases occurring between June 1, 1968 and June 30, 1970.

For leases coming due under the first guideline the law prescribed no more than a 10% increase for 2-year leases, and a 15% increase for 3-year leases. Also, an additional 5% vacancy allowance was granted for two-year leases, and a 10% allowance was given for 3-year leases. The Board was thereafter charged with establishing annual guidelines following a review of (1) the economic condition of the residential real estate industry in New York City including such factors as the prevailing and projected (i) real estate taxes and sewer and water rates, (ii) gross operating maintenance costs (including insurance rates, governmental fees [added in 1983], cost of fuel and labor costs), (iii) costs and availability of financing (including effective rates of interest), (iv) over-all supply of housing accommodations and over-all vacancy rates, (2) relevant data from the current and projected cost of living indices for the affected area, and (3) such other data as may be made available to it.

[48] Later, this date would be changed to January 1, 1974, and newly constructed buildings may have become subject to rent stabilization if the owner/developer took part in the City's J-51, 421a or similar tax abatement programs. These programs are discussed at page 94.

At the time no special Board positions for tenant or owner representation were designated. The designation of two owner and two tenant representatives was added in 1974.

The new law also placed the development of a code to regulate owner/tenant relations (with regard to appropriate supplemental charges, lease renewals, evictions etc.) in the hands of the Rent Stabilization Association ("RSA")—a private industry group—subject to approval by the City's housing agency. Also established was a "Conciliation and Appeals Board" consisting initially of owner and public members to review rent code violations. Tenant representation was added to this board in 1974. Under the Omnibus Housing Act of 1983, the Conciliation and Appeals Board was abolished. Two years later the State legislature also removed the RSA from its role in developing the rent code, along with its counterpart in the hotel sector—the Metropolitan Hotel Industry Stabilization Association. The powers of these bodies, along with the City's administration of rent regulation were transferred to the State Division of Housing and Community Renewal ("DHCR") where they remain today.[49]

In the mid-1980's this agency came under increasing attack from many sectors prompting a State legislative investigation of the agency's performance. The 1987 report following this review was entitled "Bleak House" and was highly critical of DHCR. It is worth noting that owner groups, while critical of DHCR, have often asserted that rent regulation in New York City is bureaucratically unmanageable. Tenant groups, on the other hand, have charged that a lack of government commitment to the proper functioning of the system is to blame for its failures. In more recent years the DHCR has implemented a number of administrative improvements addressing many of its earlier difficulties.

In 1971, under pressure from owners, the State legislature adopted vacancy decontrol (as previously mentioned) and vacancy destabilization. This allowed owners to set market rents upon vacancy and would have led to the phasing out of both rent control and rent stabilization had the measure remained in force. However, rapidly rising rents during the 1971-74 period led to the passage of the Emergency Tenant Protection Act (ETPA) of 1974. Together with the RSL and the Local Emergency Rent Control Act of 1962, this is the fundamental law now governing the rent stabilization system. A detailed review of the ETPA, excerpted from the 1980 report, is provided below.

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[49] For an overview of the administrative history of rent regulation and a critique of the system as a failed attempt at owner self regulation, see Keating, *Landlord Self-Regulation: New York City's Rent Stabilization System 1969 - 1985*, 31 J. of Urb. & Contemp. L. 77 (1987).

[Note: Certain summarized sections of the ETPA contained in the 1980 report have been edited out of this excerpt.]

Vacancy decontrol and destabilization soon became a political issue in much the same manner as the change by the State in the Fair Net Annual Return provision had been ten years earlier. The City of New York brought a court action to postpone the operation of the law but its application was denied. In 1973 Mayor-elect Beame charged that as a result of the State's mandated vacancy decontrol law many of the City's poor, moderate and middle income families had been placed in an intolerable position by not only being forced to pay exorbitant rents but in also losing the assurance they previously had against the possibility of unconscionable future rent increases, and he further asserted that many City residents were being driven out of the City as a result of vacancy decontrol. Governor Rockefeller appointed a Committee under the Chairmanship of Assemblyman Andrew Stein to conduct hearings and make recommendations on the subject. The "Stein Committee" recommended abrogation of vacancy decontrol.

In 1974 the Legislature enacted the Emergency Tenant Protection Act of 1974 (ETPA) (Chapter 576, Laws of 1974) the objective of which was to prevent excessive rent increases in the decontrolled sector of the rental housing market due to low vacancy rates, the inadequate supply of standard rental housing and the increase in new household formations in New York City and the surrounding suburban counties of Nassau, Rockland and Westchester. Chapter 576 in substance provided for a State stabilization program (ETPA) and also amended the New York City Rent Stabilization law. The provisions of ETPA are declared by the statute to be applicable only to New York City, and any City Town or Village (at their respective option) in Nassau, Rockland and Westchester counties.

Chapter 576 is a complex statute. It substantially affected the State rent control program outside New York City, and all New York City rent control and rent stabilization regulation. However, it did not affect State and City pre-1947 rent controlled housing (which in New York City and the three counties remained controlled by the State and City rent control agencies) which remained under existing law and regulation so long as the same tenant in occupancy on June 30, 1971 remained in possession. Essentially ETPA amended the vacancy decontrol provision of Chapter 371 as applicable to the areas indicated above. Section 4 of Chapter 571 is the

Emergency Tenant Protection Act of 1974 and significant provisions thereof are summarized by section.

Section 3(a) provides for the local determination of an emergency for all or any class or classes of housing where the vacancy rate is 5% or less (except State or City rent controlled housing accommodations) and describes the local determination of emergency as extending to housing accommodations:

- previously decontrolled
- decontrolled in the future
- previously destabilized
- presently exempt from State rent control
- presently exempt from City rent control
- presently exempt from the New York City rent stabilization law

Section 3(b) and (c) requires a declaration that the emergency is at an end when the vacancy rate exceeds 5%, and permits an earlier termination in whole or in part where the local governing body finds the emergency to be wholly or partially abated. Any existence or termination of an emergency must be preceded by a public hearing.

Section 4(c) provides that in New York City the Rent Guidelines Board shall be the Board established by the New York City rent stabilization law as amended.

Section 5 provides that a local emergency may be declared for all or any class of housing except:

(a) New York State or City rent controlled accommodations
(b) government-owned accommodations
(c) accommodations whose rents are fixed or subject to the supervision of the State Division of Housing and Community Renewal, the New York City Housing and Development Administration, or the New York State Urban Development Corporation or, to the extent regulation under ETPA is inconsistent therewith accommodations aided by insurance under any provision of the National Housing Act;
(d) accommodations in buildings containing less than six dwelling units unless part of a garden type maisonette dwelling complex containing six or more dwelling units notwithstanding the

existence of “one or two family certificates of occupancy” for portions thereof;

(e) buildings completed or rehabilitated after January 1, 1974;

(f) accommodations owned by an eleemosynary institution and operated on a non-profit basis;

(g) hotel accommodations outside New York City;

(h) motor homes, trailer homes and tourist courts;

(i) non-housekeeping furnished accommodations where there are two or less boarders and the remaining portion of the housing accommodation is occupied by the owner or his immediate family;

(j) accommodations in buildings operated exclusively for charitable purposes on a non-profit basis;

(k) accommodations which are not occupied by the tenant in possession as his primary residence.

Section 11 declares void as contrary to public policy any lease provision or rental agreement which purports to waive a tenant’s rights under ETPA.

Section 13 directs all state and local government agencies to cooperate with the State Division of Housing and Community Renewal, and any rent guidelines board in effectuating the purposes of ETPA. [emphasis added]

Chapter 576

The following sections of Chapter 576 also enacted significant changes as to the State’s rent control and New York City’s rent control and rent stabilization programs.

Section 2 amends Chapter 371 Laws of 1971 by repealing vacancy decontrol for New York City rent stabilized accommodations and by providing that all previously destabilized apartments and all decontrolled apartments - past and future - are to be subject to ETPA.

A provision which denied decontrol of rent controlled accommodations where a finding by the City Rent Agency that the vacature of the accommodation had been achieved via tenant harassment was retained.

Section 7 amends section YY51-3.0 [now §26-504] of the Administrative Code of the City of New York by adding housing accommodations made subject to the provisions of the Rent Stabilization Law by ETPA. These are:

(a) Vacancy decontrolled accommodations (in buildings containing six or more accommodations) which were formerly subject to rent control;
(b) accommodations formerly subject to New York City rent stabilization which had been vacancy destabilized;
(c) accommodations in New York City created between 1969 and 1974 and had been exempt from both rent control and rent stabilization.

Section 9 amends section YY51-5.0 [now §26-510] with respect to the New York City Rent Guidelines Board by staggering the terms of the members, and prescribing criteria for guidelines orders.

Section 12(b) (1) repeats the language of section 9(b) of ETPA except that in addition to designating the Conciliation and Appeals Board as the agency for determining fair market rent applications,[50] it also requires that decisions by the Conciliation and Appeals Board on such applications consider, in addition to the special guidelines to be established by the City's Rent Guidelines Board, the "...rents generally prevailing in the same area for substantially similar housing accommodations." [Fair Market Rent Appeals are discussed at 76-78 and 84-86, *infra.*]

Section 15 provides that all rights, remedies and obligations created pursuant to the New York City Rent Stabilization Law, the Rent Stabilization Code, and the orders of the Conciliation and Appeals Board inure to the benefit of all owners and tenants made subject to the rent stabilization law by ETPA. It also declares that nothing in Chapter 576 is intended to diminish the powers of the Conciliation and Appeals Board, or the New York City Rent Guidelines Board to make, amend, or modify rules, regulations, or guidelines.

Section 17 declares the provisions of ETPA to be effective immediately subject to a declaration of a public emergency by the local legislative body. **** end of edited excerpt from the 1980 report ****[51]

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[50] Now a DHCR function.
[51] This edited excerpt was taken from pp. 1-84 through 1-94 of the 1980 report.

The Omnibus Housing Act of 1983

The next major revision of the rent regulation laws occurred in 1983 with the passage of the Omnibus Housing Act. This Act had only a limited impact on the operations of the Rent Guidelines Board, however, and its main features, including the transfer of administration of rent regulations from the City to the State and the abolition of the Conciliation and Appeals Board, have previously been mentioned. Three changes imposed by the new law did affect the Board's operations. Prior to this act the Board routinely adopted special rent adjustments or surcharges at different times within a single guideline period. The new law ended this practice by limiting the Board to one guideline package per year. In addition, the law eliminated the availability of three-year leases as an option for tenants faced with lease renewals. Finally, the law added "governmental fees" to the list of cost considerations that the Board is required to review.

Also worth note is the fact that the 1983 law significantly overhauled certain enforcement provisions of the rent stabilization laws. Treble damages were imposed for willful rent overcharges [limited to two years / straight damages for overcharges up to four years]. A four-year limitation period was established for filing overcharge claims.[52] In addition, for the first time owners of rent stabilized apartments were required to register rents on an annual basis.

As mentioned earlier, subsequent legislation in 1985 ended the official involvement of the Rent Stabilization Association and the Metropolitan Hotel Industry Stabilization Association in the stabilization system.

The Rent Regulation Reform Act of 1993

Another major change in the rent regulation system came with the adoption of the Rent Regulation Reform Act of 1993. Following a pattern set decades earlier, there were four last minute extensions of the rent laws, including one in which Governor Cuomo entered the Senate chamber at 11:57 PM to sign a three day extension before

[52] Under this rule an overcharge was viewed as a continuing infraction. Thus, a tenant was allowed to challenge the last four years of any overcharge even if the unlawful increase began prior to the four-year period. Subsequent changes in 1993 and 1997 made the limitations period absolute. Thus, unlawful increases in rent that are more than four years old are now completely immunized from challenge.

the midnight deadline. In the final bill State legislative leaders agreed to the first decontrol initiative in over twenty years. The key provisions of the 1993 law are briefly as follows:

- Apartments renting for $2,000 or more between July 7, 1993 and October 1, 1993, which were vacant on July 7, 1993 or thereafter, were exempted from rent regulation.[53]

- Apartments which 1) are occupied by persons who have a total annual income in excess of $250,000 per year for two succeeding years, and 2) that have legal rents in excess of $2,000 per month as of October 1, 1993, were exempted from rent regulation. The $250,000 threshold would be modified four years later with the adoption of the Rent Regulation Reform Act of 1997.

- The law established a system of income certification to be administered through the Division of Housing and Community Renewal with the cooperation of the Department of Taxation and Finance.

- The law established one-fortieth the cost of individual apartment improvements as the allowable monthly rent increase when such improvements are made. The DHCR had considered implementing a longer "amortization" period via administrative regulations. The establishment of one-fortieth as the appropriate amount by statute eliminated the possibility of such an administrative change.[54]

- The law limited the availability of damages in cases where stabilized tenants claim a rent overcharge because the owner failed to register the apartment with the Division of Housing and Community Renewal.[55]

- The law provided that the chairperson of the Senate Committee on Housing and Community Development, jointly with the chairperson of the Assembly Housing Committee would establish a study group on rental housing which would produce a report for the Governor, the President Pro Tem of the Senate, and the Speaker of the Assembly no later than June 30, 1995. The study was to examine a number of issues relating to the impact and effectiveness of rent regulations and was to include, among other things, "recommendations regarding: (1) the methodology and criteria employed by rent guidelines boards

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[53] The July 7, 1993—October 1, 1993 time period was later extended by Act of the New York City Council so that an apartment reaching the $2,000 threshold AFTER October 1, 1993 was subject to vacancy decontrol.

[54] See pages 80-82 for a discussion of individual apartment improvements.

[55] See page 88 for a discussion of the consequences of a failure to register.

in establishing guidelines for rent adjustments." This study and accompanying recommendations were apparently never completed.

- The law extended the ETPA until the fifteenth day of June 1997.

The Rent Regulation Reform Act of 1997

The Rent Regulation Reform Act of 1997 followed one of the most bitter state legislative battles of the 20th century. Following a failed effort to work out a compromise between the Republican led Senate and the Democratic led Assembly, existing rent laws expired at midnight on June 15, 1997 – the first time in over fifty years that the state was without some kind of rent regulations. After four days of intense negotiations, the laws were renewed for six more years, with some major changes.

- The law imposed a complex statutory vacancy allowance which provides as follows:

  - If the incoming tenant selects a two-year lease, the increase shall be 20% over the prior legal regulated rent.

  - If the new tenant selects a one-year lease, the increase shall be 20% over the legal regulated rent, less the difference between (a) the RGB two-year renewal lease guideline applied to the prior legal regulated rent, and (b) the RGB one-year renewal lease guideline applied to the prior legal regulated rent. For example, if the one-year guideline is 4% and the two-year guideline is 7%, the vacancy allowance is 17% (i.e. 20-(7-4)=17).

  - In addition to the above, if an owner has not collected a vacancy allowance for the vacant apartment for at least 8 years, the owner is entitled to an additional six-tenths of one percent (.6%) for each year since the last vacancy allowance for the apartment was taken (or since the apartment fell under rent stabilization). For example, if the prior tenant was in occupancy for eleven years, and the new tenant takes a two-year lease, the vacancy allowance is 20% plus (.6% x 11) or a total of 26.6%.

  - If the prior legal rent was less than $300, an additional $100 increase may be added. If the prior rent was above $300 but below $500, the owner is entitled to all increases allowed by law or a minimum increase of $100. These vacancy allowances are in lieu of RGB one or two-year renewal increases, but in addition to other increases authorized by statute, such as major capital improvement increases, individual apartment increases, and any additional vacancy increase adopted by the RGB.

- The RRRA of '97 also modified succession rights. It eliminated nieces, nephews, aunts and uncles from its definition of family members eligible to succeed departing tenants of record. These individuals still might qualify for succession rights if they can prove "emotional and financial commitment, and interdependence between [themselves] and the tenant." The new law also imposed a vacancy allowance on the second succeeding family member. Thus, if a parent passed away leaving an apartment to a son, the son would not have to pay a vacancy allowance. If, however, the son were to depart, leaving the apartment to a brother (a brother who meets the requisite two year co-occupancy requirement) the brother would have to pay all vacancy allowances in effect.

- The RRRA of '97 further modified the luxury decontrol provisions first adopted in 1993. Tenants residing in apartments renting for more than $2,000 per month earning more than $175,000 per year for two consecutive years (down from $250,000) are now subject to high income decontrol.

- An amendment to the Rent Stabilization Law adopted by the New York City Council in 1997 provided that the high rent vacancy decontrol adopted in 1993 only applied to apartments renting for $2,000 or more at the time they are vacated. The DHCR had taken a different view, and concluded that if the rent lawfully reached $2,000 (through the vacancy allowance, improvement allowances etc.) after the prior tenant vacated, it could be deregulated. The State adopted the DHCR's view and codified it in the RRRA of '97. Subsequently, the City Council adopted a local law requiring owners to disclose prior rent histories to new occupants of deregulated apartments.

- The RRRA of '97 restricted consideration of evidence to establish rent overcharge claims to events occurring within four years of the claim. Thus, if a tenant does not file an overcharge claim within four years of the rent registration filed with the DHCR claimed to include the excessive amount, the rent is final and the complaint will not be considered.

- To eliminate any fear developers may have of subsequent rent regulations, the RRRA of '97 allows the Commissioner of DHCR to enter into contracts with developers to exempt new construction from any form of rent regulation for a period of fifty years.

- The RRRA of ’97 also provides a mechanism to remove “hold-out” rent controlled tenants from buildings where the owner seeks to demolish and construct new units. If such tenants occupy less than ten percent of the units in a building (or one apartment in a building with 10 or fewer units), the owner may remove such tenants, but must provide relocation benefits established by the DHCR.

- The RRRA of ’97 imposes strict requirements that tenants engaged in Housing Court proceedings deposit rents into court on a second adjournment or if more than 30 days have passed following the party’s first appearance (unless the owner has requested the adjournments.)

- The RRRA of ’97 also stiffens criminal penalties for physical harm to tenants caused by landlords engaged in harassment, making such acts a Class E felony. The Legislature’s requirement of physical injury makes this particular enactment rather illusory. Under most circumstances, it is already a felony to deliberately injure someone.

The Rent Law of 2003

The Rent Law of 2003 (Chapter 82 of the Laws of 2003), in effect until June 15, 2011, was enacted in June of 2003 and amended the 1997 rent laws in three major ways:

- Limits the ability of NYC to pass laws concerning rent regulation issues controlled by the State;

- Allows for the deregulation of an apartment upon vacancy if the legal regulated rent may be raised above $2000, even if the new tenant is not actually charged an amount above $2000;

- And permits an owner, upon renewal, to increase a rent stabilized tenant's rent to the maximum legal regulated rent, regardless of whether a tenant has been paying a preferential rent (but does not prohibit contractual agreements between owners and tenants to maintain the preferential rent after renewal).

The Rent Act of 2011

The following is a summary of the major changes to various rent laws, passed by the NYS Legislature and signed by the Governor on June 24, 2011. It will remain in effect until June 15, 2015. These major changes were put into effect with passage of this bill:

- **Frequency of vacancy increases:** Effective June 24, 2011, rent increases legally permitted upon vacancy may not be taken more than once in any calendar year (January 1 - December 31).
- **Idividual Apartment Improvements:** Effective Sept. 24, 2011, individual apartment improvements completed in buildings with more than 35 apartments allow the landlord to permanently increase the legal regulated rent by 1/60th of the cost of the improvements (was 1/40th under the prior Rent Law). For improvements done in apartments located in buildings containing 35 or fewer units, passing along 1/40th of the cost of improvements remains unchanged.
- **High-Rent/Vacancy Deregulation:** Effective June 24, 2011, this provision allows for the deregulation of an apartment upon vacancy if the legal regulated rent reaches $2,500 (up from $2,000 under the prior Rent Law);
- **High-Rent/High-Income Deregulation:** Effective July 1, 2011, this provision permits, by order of DHCR, upon application by the building owner, the deregulation of an apartment with a monthly legal regulated rent of $2,500 or more (up from $2,000 under the prior Rent Law) if household income is in excess of $200,000 in each of the two preceding calendar years (up from $175,000 under the prior Rent Law). These new thresholds apply to proceedings commenced in the 2012 cycle, not to proceedings filed prior to July 1, 2011.

The Rent Act of 2015

The following is a summary of the major changes to various rent laws, passed by the NYS Legislature and signed by the Governor on June 26, 2015. It will remain in effect until June 15, 2019. These major changes were put into effect with passage of this bill:

- **Vacancy Deregulation:** This provision allows for the deregulation of an apartment upon vacancy if the legal regulated rent reaches $2,700 (up from $2,500 under the prior Rent Law). It also provides that this deregulation threshold will increase each January by the amount that the Rent Guidelines Board has authorized for one-year renewal leases in the current guideline year.
- **Major Capital Improvement Increases:** Previously, increases permitted for Major Capital Improvements (MCIs) were amortized over a seven-year period. Per the Rent Act of 2015, the amortization period increases to eight years for buildings with 35 or fewer units, and nine years for buildings with more than 35 units.
- **Vacancy Increases:** For apartments where the vacating tenant was paying a preferential rent, the statutory vacancy increase of the apartment cannot exceed five percent of the previous legal regulated rent if the last vacancy lease commenced less than two years ago; ten percent of the previous legal regulated

rent if the last vacancy lease commenced less than three years ago; or fifteen percent of the previous legal regulated rent if the last vacancy lease commenced less than four years ago.

Noteworthy Aspects of Selected Court Cases

Along with the development of the state and local laws discussed in the preceding section, frequent litigation over the past 40 years has done much to shape the operation of the Rent Guidelines Board and the rent stabilization system. What follows is a list of court decisions and some notes on how these decisions may have reinforced or changed the system and the Board's role in it. Some of the cases involve Rent Guidelines Boards that operate outside of the City under a mandate similar to that of the N.Y.C. Rent Guidelines Board. The cases themselves should be directly consulted for further information on the facts and issues involved in each.

1. <u>8200 Realty Corporation v. Lindsay</u>
   27 N.Y.2d 124, 313 N.Y.S.2d 733 (1970)
   - The New York Court of Appeals upheld the constitutionality of the real estate industry self-regulation system. Although noteworthy from a historical perspective, this case is no longer directly relevant to rent stabilization since the Rent Stabilization Association is no longer statutorily involved in administration of the rent regulations.

2. <u>Associated Builders/CHIP v. N.Y.C. Rent Guidelines Board</u>
   Supreme Court N.Y. Co., Special Term Part I (1974) Index No. 11928/74
   - The court rejected RGB guidelines on the grounds that they were not accompanied by a detailed explanatory statement.

3. <u>Strausman v. Herman</u>
   52 A.D. 2d 882, 383 N.Y.S.2d 59 (2d Dept.1976), aff'd 42 N.Y.2d 1053 (1977)
   - The Appellate Division found that an affidavit by the Chairman of the Nassau County RGB stating that a DHCR ruling was consistent with the intent of the rent guideline it was interpreting was sufficient to support the validity of the ruling. Thus, the annulment of that ruling by a lower court was reversed. Therefore the courts will give the Board's interpretation of its own orders great weight.

4. <u>Allyn Realty Corp. v. Herman</u>

56 A.D.2d 626, 391 N.Y.S.2d 685 (2d. Dept. 1977) [Involves Nassau County RGB]

- The court ruled that the literal meaning of Board orders should be adhered to unless the literal interpretation of such meaning would lead to an absurd result.

5. <u>Incorporated Village of Great Neck Plaza v. Nassau Co. Rent Guidelines Board</u>
   60 A.D. 2d 593, 400 N.Y.S.2d 120 (2d Dept. 1977)
   - The Appellate Division ruled that the Nassau County RGB's failure to consider financing costs, vacancy rates and data reasonably available with respect to owners' net incomes, as required by 4(b) of the Emergency Tenant Protection Act of 1974 (a provision corresponding to 26-510(c)) resulted in the invalidation of its guidelines.

6. <u>Rent Stabilization Association v. N.Y.C. RGB</u>
   98 Misc 2d 312, 413 N.Y.S.950 (1978)
   - The Supreme Court, New York County, ruled that the Open Meetings Law applies to RGB Meetings. Because of violations of this law, the court ordered that the RGB hold further meetings to promulgate new guidelines but refrained from establishing court ordered guidelines in the interim period.

7. <u>Coalition Against Rent Increase Passalongs v. Rent Guidelines Board of N.Y.C.</u>
   104 Misc 2d 101, 427 N.Y.S.2d 660 (Sup. Ct. N.Y. Cty. 1979) aff'd 176 A.D.2d 343 (1980)
   - The Supreme Court, New York County, ruled that reopening of RGB guidelines for adjustments after the July 1, annual adjustment was permitted. This, however, is no longer permissible under the Omnibus Housing Act of 1983.
   - Also, the court noted, "...all rent controls in the City of New York [citations omitted] have a twofold purpose: to limit profiteering in a market marked by housing shortage and to conserve and improve the housing stock of the City of New York."

8. <u>Incorporated Village of Great Neck Plaza v. Nassau County RGB</u>
   69 A.D. 2d. 528, 418 N.Y.S.2d 796 (1979)\
   - The court ruled that Nassau County RGB is not a state agency and therefore is not subject to the State Administrative Procedure Act (SAPA). Following the same rationale, the New York City RGB is also not subject to SAPA.

9. Liotta et. al. v. RGB
   547 F. Supp. 800 (S.D.N.Y. 1982)
   - Property owners argued in federal court that a loud and boisterous atmosphere at an RGB meeting precluded fair and rational deliberations and resulted low rent increases which constituted a denial of due process to the owners. The United States District Court for the Southern District found that in instances where state law provides an adequate remedy to initially seek redress of alleged due process violations, a plaintiff must seek state court review of the issue before it seeks review in federal court.

10. Matter of Muriel Towers Co.
    117 Misc. 2d 837 (Sup. Ct. N.Y. Co. 1983)
    - The Supreme Court, New York County, found that the "circus atmosphere" (created by the exercise of constitutional rights by a "vocal citizenry") at an RGB meeting did not prevent rational deliberations by the Board. The Court also found that the Board's consideration of tenants' ability to pay in setting guidelines is proper.

11. METHISA v. RGB
    Supreme Court N.Y. Co. Index No. 21444/84(1984)
    - A 0% adjustment guideline for hotel rents following hearings in which evidence of extensive neglect and deprivation of services in these buildings was presented was upheld. According to the court, the RGB is permitted to consider the nature of the services provided as part of its examination of expenditures. Such consideration is not penal nor quasi-judicial in nature and thus does not exceed the RGB's jurisdiction.

12. Stein v. RGB
    127 A.D. 2d 189, 514 N.Y.S.2d 222 (1st Dept. 1987)
    - The Appellate Division, First Department ruled that supplementary Board orders or re-openers are permissable to protect the public from the impact of changed economic conditions in the housing market. [Reopening the guidelines in the same guideline period is no longer permissible since the passage of the Omnibus Housing Act of 1983. See #7]

13. RSA v. Dinkins, RGB / Gesmer

Sup. Ct., N.Y. Co., Index No. 11506/90; 167 A.D.2d. 179, 562 N.Y.S. 2d 411 (1st Dept. 1990), app. den. 77 N.Y.2d. affd. 809 (1990)

- The Supreme Court, New York County, ruled that absolute impartiality in landlord-tenant matters is not a prerequisite to appointment as a public member of the RGB. In addition, the court held that the qualifications of Ellen Gesmer, which included 11 years experience as an attorney handling housing related matters, met the statutatory requirement of "at least five years experience in either finance, economics or housing." (See note in next case)

14. RSA v. Dinkins, RGB / Friedheim

Sup. Ct., N.Y. Co. - N.Y.L.J. 4/3/91 p.22, col. 1

- The Rent Stabilization Association (RSA) sought to have Oda Friedheim, a tenant member of the RGB removed, alleging that she was an officer in a tenant organization in violation of the Rent Stabilization Law. The court ruled that a *Quo Warranto* action brought by the Attorney General was the exclusive means for contesting title to a public office in New York State. [Note: The exclusive right of the Attorney General to contest title to office was raised on appeal in the Gesmer case as well. The Appellate Division chose to follow the lower court's ruling on the merits - and never addressed this standing issue.]

15. 23 Realty Associates v. Tiegman et al.

Sup. Ct., Co. of N.Y. Index No. 12465/91 App. Withd. 176 A.D.2d. 1251 (1st Dept. 1991)

- A rent stabilized hotel owner claimed that hotel guidelines from 1984 through 1990 were adopted without any lawfully required investigation, or proper consideration of all guideline components and criteria. The court ruled that the City had "marshaled considerable data to show that RGB enacted its guidelines after giving due consideration to the [required] criteria."
- The Court also ruled that all challenges except the challenge to the most recent guideline were time barred by a four month statute of limitations.

16. RSA v. Dinkins / RGB

U.S. District Court, S.D.N.Y. (J. Stanton) 805 F.Supp. 159 (S.D.N.Y 1992), affd. 5 F.3d 591 (2d. Cir. 1993)

Note: Since this case directly concerns the RGB's methodology, a summary of the District Court's opinion is provided. This summary is for informational purposes only. The plaintiff dropped the challenge against the RGB methodology on appeal, and the Second Circuit Court of Appeals reviewed the case *de novo*. Therefore, the decision of the District Court is not binding precedent.

The District Court Opinion

- The RSA initiated a challenge in federal court alleging *inter alia* that the guidelines over several years failed to account for the effects of inflation on owners net operating income. They argued that this failure, along with an inadequate hardship mechanism, resulted in an unconstitutional taking of property because such adjustments were essential to maintaining a "reasonable return on the property as an investment." The court stated that "a 'reasonable return' is not protected by law in this circuit" (p.163). Instead, the court made clear that the relevant test at issue is whether or not economic viability is impaired. Citing a prior case the court noted, "the crucial inquiry...is not whether the regulation permits plaintiffs to use the property in a 'profitable' manner, but whether the property use allowed by the regulation is sufficiently desirable to permit property owners to sell the property to someone else for that use." Id. The court did not conclude that the RGB failed to provide owners with a reasonable return, but found that even if the RSA's allegations to that effect were true, an unconstitutional taking would not necessarily have occurred. The court also emphasized the difficulty of mounting a facial challenge to rent regulations, noting that unlike an "as applied" challenge where a concrete injury to an individual plaintiff is demonstrated, in facial challenges plaintiffs must "establish that no set of circumstances exists under which the act would be valid."

The Opinion of the Second Circuit Court of Appeals, 5F 3d 591(2d. Cir. 1993)

- On appeal to the Second Circuit, the plaintiff dropped the challenge against the RGB's methodology but pressed the claim that DHCR's hardship rent increase procedures (explained in detail at 74 to 76) were facially unconstitutional because such procedures did not guarantee an adequate return. The appeals court concluded that such claims could only be framed in an "as applied" challenge, and that "the proper recourse is for the aggrieved individuals themselves to bring suit" (p. 595). The court noted that although such an approach to a suit "may appear inefficient and burdensome, it is the only way to present a federal court with the type of live 'case or controversy' demanded by the Constitution. Moreover, it is the only realistic way to be able to resolve it fully and fairly." Finding that the RSA lacked proper standing to bring an as applied challenge, the Second Circuit unanimous affirmed the District Court's decision.

17. The Greystone Hotel v. City of New York, the Rent Guidelines Board et al.
98-9116 (2d. Cir 1999) (unpub. op.) affg. 13 F. Supp. 2d. 524 (S.D.N.Y. '98)

- The owner of a "Class B" hotel argued that the RGB violated its rights to due process and equal protection by granting lower rent increases than those given for apartments. The owner also argued that the rent stabilization law and code effected a physical and regulatory taking of its property. Because the property retained some economic value no regulatory taking was found. Because the owner initially chose to use the hotel as a rental property, no physical taking was found. With respect to the relatively lower rent adjustments given to hotel owners the owner claimed that it was being forced to address the affordability problems of lower income tenants. The court found that the "RGB considered tenant hardship in accordance with a statutory scheme that mandated this consideration in conjunction with a host of other factors that explicitly weigh landlord costs" (p.3). Because the RGB made "a rational attempt to accommodate the conflicting interests of protecting tenants from burdensome rent increases while at the same time ensuring that landlords are guaranteed a fair return on their investment" no due process or equal protection violation was found, citing Pennell v. City of San Jose, 485 U.S. 1, 13 (1988). Notably, the Court declined to permit this decision to be used as a precedent in subsequent proceedings. Thus, while it resolved the dispute between the parties, it may not be cited as precedential authority in future legal proceedings.

18. Benroal Realty LP v. Nassau County Rent Guidelines Board
Supreme Court, Nassau County, N.Y.L.J. 2/14/01 p.31, col. 6

- The Nassau County Rent Guidelines Board linked its rent adjustments to whether or not each affected community under its jurisdiction offered a Senior Citizen Rent Increase Exemption (SCRIE). Tenants in communities without a SCRIE program received higher rent increases than tenants in communities with a SCRIE program. The Supreme Court, Nassau County, ruled that the Nassau County RGB had "no statutory or inherent authority to extend the state statutory benefits of SCRIE for eligible seniors to non-eligible tenants generally."

19. New York State Tenants & Neighbors Coalition, Inc. v New York State Division of Housing & Community Renewal
18 A.D.3d 875, 796 N.Y.S.2d 371 (2d Dep't 2005)

- The New York State Tenants & Neighbors Coalition sued the New York State Division of Housing, attempting to invalidate the rent guidelines set in Nassau County for the guideline year 2003-2004. The Emergency Tenant Protection Act requires the RGB to submit, on or before July 1st of each year, with the DHCR its "findings for the preceding calendar year" and to "accompany such findings with a statement of the maximum rate or rates of rent adjustment authorized for leases or other rental agreements commencing during the next succeeding twelve months." Tenants & Neighbors argued that the Board failed to include, as part of the Guideline certified on September 25, 2003, any specific findings "for the preceding [i.e., 2002] calendar year" and contended that the failure to include such findings invalidates the Guideline. The RGB and DHCR argued that Part II of the Guideline contained "findings" sufficient to meet the requirements of ETPA, including a generic list of the types of data, materials, and other information reviewed and relied upon each year by the Board in determining whether a rent adjustment is warranted. The appellate court found that the Board's interpretation of the words "findings for the preceding calendar year" was neither rational nor reasonable, and criticized the Board's use of a "generic list of items so broad as to remain virtually unchanged over a period of several years." Although the court agreed with Tenants & Neighbors that the Board had not made required "findings," it would not overturn the Guideline because of the omission, and ordered the Nassau County RGB only to adopt findings in compliance with the ETPA.

20. <u>Mercedes Casado, et al., v. Marvin Markus, et al.,</u>
898 N.Y.S.2d 780 (Sup. Ct. 2010)
    - This case was filed by Merecedes Casado, et al., against RGB Chair Marvin Markus, challenging the validity of the fixed dollar provision of Apartment Order #40. This Order provided a 4.5% increase for one-year lease renewal and 8.5% increase for two-year lease renewal or *a fixed dollar amount of $45 for a one-year lease renewal or $85 for a two-year lease renewal for tenants in place for 6 years or more, whichever was greater*. The Supreme Court held in favor of the plaintiffs and found that the RGB did not have the authority to create separate classes of housing accommodations under the Rent Stabilization Law. The Court reasoned that only the City Council had that authority. Therefore the Court voided the fixed dollar provisions of Order #40 and left the percentages as valid. On appeal by the RGB, the Appellate Division, First Department, affirmed the Supreme Court's decision. On appeal to the NYS Court of Appeals, the Court reversed and dismissed the petition challenging the minimum dollar increases. The Court held that the RGB does have the power to make distinctions between low-rent apartments in which there

has been no recent vacancy and other apartments. It rejected petitioners' argument that the RGB may not permit any increases that are larger, in percentage terms, for some apartments than for others. Therefore, the originally passed guidelines were ruled valid and legal.

The Constitutionality of Rent Regulation

The constitutionality of rent regulation is an issue commonly raised in discussions about the RGB's orders. Because it is rarely analyzed, an extensive treatment of the issue is provided below.

The Takings Clause of the Fifth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, provides that private property shall not be taken for public use without just compensation. The Takings Clause has been a source of great dispute and scholarly debate for over a century.

Generally speaking, constitutional scholars have all but given up arguing that rent regulations inevitably result in an unconstitutional taking of private property.[56] The few scholars who persist in such attacks often founder on definitional grounds. If even the smallest degree of price or rent regulation results in an unconstitutional taking because the “natural” order of the market is altered in a way which favors one party over another, every act of government which economically disadvantages someone to the benefit of another becomes suspect. Virtually every law has some burden shifting economic impact. Economic interests, as measured in pure market terms, are constantly being diminished or enhanced by governmental action. Only property rights, a limited subset of such interests, receive constitutional protection. As Harvard law professor Frank Michelman has explained, if every existing “legally sanctioned advantage is property” we are gradually “forced to recognize in every act of government a redefinition and adjustment of a property boundary [for which compensation must be paid]. The war between popular self government and strongly constitutionalized property now comes to seem not containable but total.”[57]

Constitutional norms shaped by settled precedent and adjusted by evolving practical concerns are precisely what prevent this “war” from spreading. Within our democratic system, property (and the power that attaches to it) is thus treated as a

[56] But see Epstein, *Rent Control and the Theory of Efficient Regulation*, 54 BROOKLYN L. REV. 741 (1989) and Responses by various authors in 54 BROOKLYN L. REV. 1215 (1989).
[57] Quoting Michelman, *Takings*, 1987, 88 COLUMBIA LAW REVIEW 1600, 1627-28 (1988).

legal norm - informed but not controlled by economic analysis.[58] The reasonable expectations of property owners are supported by legal protections that operate outside of any abstract or purely economic definition of property. But expectations alone do not define property rights. As constitutional scholar Laurence Tribe has observed:

> *Grounded in custom or necessity, these expectations achieve protected status not because the state is deigned to accord them protection, but because constitutional norms entitle them to protection. These norms, however, cannot be expressed entirely within the language of expectations; that path is a circular one inasmuch as expectations are themselves subject to governmental manipulation. Instead, the norms must reflect a mix of several concerns -- including regularity... autonomy ...and equality. Without appeal to such concerns we are defenseless against the alluring but fatal argument that, since it is government that gives, government is free to take as well.*[59]

Some scholars have suggested that we should look back to the original intention of the Framers to determine what was meant by the term property at the time the Bill of Rights was adopted. Even if the Fifth Amendment's prohibition against taking property terminated the conceptual development of what is meant by "property", thereby freezing what was included in the term in 1791, locked in with it would be the operative meaning property received under the common law - a meaning which, as previously discussed,[60] failed to immunize against price and rent regulations.

As with all language, what is meant by a legal term or phrase is inseparable from the experience of its users. A legal term which remains in use for centuries is subtly remolded by the evolving culture, manipulated by pressing interests, nuanced by changing contexts and animated by the unique frame of reference brought to bear by each new interpreter. No special exception exists for the term property. Thus, "property" may one day incorporate within its meaning an inviolable right to demand any price that a market might allow; or it may include fewer rights than are presently secured. In any reasonable construction of the term property and the rights it implies, the correct constitutional balance will hang somewhere between established understandings and emerging practical concerns. As Professor Michelman puts it,

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[58] As Justice Holmes put it in his famous Lochner dissent, "... a constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the State or of laissez faire. It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment upon the question of whether statutes embodying them conflict with the Constitution of the United States." 198 U.S. 45, 75 (1905).

[59] Tribe, American Constitutional Law, pp. 608-609.

[60] See text at page 17.

"balancing - or, better, the judicial practice of situated judgment or practical reason - is not the law's antithesis but a part of law's essence."[61]

Scholarly disputes about the nature of property and the extent of constitutional protections are likely to continue as long as scholars, property and the Constitution are around. There is, however, a rather large body of authoritative court decisions that deal with the "takings" issue, along with a number of other constitutional concerns raised by the regulation of rents.

While "takings" claims have presented the most notable challenge, rent regulations have also been attacked as violative of substantive and procedural due process, equal protection, the Contracts Clause, as exceeding Congressional war powers, violating the doctrine of separation of powers, imposing involuntary servitude, and as an unconstitutional quartering of troops.[62] Few such challenges have been successful.

In 2008 owners of a four-story residential building, James and Jeanne Harmon, commenced an action in federal court against the Chair of the Rent Guidelines Board (RGB) and the NYS Division of Housing and Community Renewal (DHCR) seeking a declaratory judgment and permanent injunction declaring the Rent Stabilization Law unconstitutional as applied to plaintiffs and plaintiffs' property and declaring certain apartment leases null and void. In Harmon v. Kimmel (originally referred to as Harmon v. Markus), plaintiffs raised a myriad of constitutional challenges, including a takings claim and claims that the law violates plaintiffs' due process rights, the contract clause, thirteenth amendment protection from involuntary servitude, and the equal protection clause. In March of 2010, the United States District Court, Southern District of New York, granted the RGB's motion to dismiss as well as that of the state defendants.

The Harmons then appealed to the United States Court of Appeals for the Second Circuit, in New York. In March of 2011, The US Court of Appeals denied this appeal. A three-judge panel of the appeals court said the couple was aware of the law when they acquired the building. The panel added that the couple retained important rights under the regulations: they could, in some circumstances, reclaim the apartments for their own use; they could demolish the building so long as they did not replace it with housing; and they could "evict an unsatisfactory tenant." All of that meant, the panel said, that the city's regulations did not amount to "permanent physical occupation of the Harmons' property."

[61] Supra, note 57 at 1629.
[62] See Radford, *Regulatory Takings Law in the 1990's: The Death of Rent Control?,* 21 SOUTHWESTERN UNIVERSITY LAW REVIEW 1019 (1992) (internal citations omitted).

Finally, the Harmons attempted a final appeal by petitioning the U.S. Supreme Court to consider their claim that the NYS rent stabilization law was unconstitutional. In March of 2012, the U.S. Supreme Court refused the Harmons' petition.

The U.S. Supreme Court's Treatment of Rent Control Laws

The first significant constitutional challenge to rent controls followed the adoption of post World War I controls in Washington D.C. and New York City. These "due process" challenges were rejected in an opinion written by Justice Oliver Wendall Holmes in 1921.[63] Notably, Justice Holmes' recognition of the concept of what is now referred to as a "regulatory taking," postdated these decisions by one year.[64] The only instance where the United States Supreme Court has stricken a rent control statute came in 1924 when Justice Holmes found that the wartime justification of the rent controls had come to an end.[65] On two occasions World War II era rent controls were unsuccessfully challenged before the U. S. Supreme Court.[66]

In 1992 the U.S. Supreme Court addressed a physical takings claim in a rent control ordinance involving mobile home lots. In *Yee v. City of Escondido*,[67] the Court held that where owners of rent regulated mobile home lots or "pads" had opened their property to occupation by others (the initial pad renters), they could not "assert a per se right to compensation based on their inability to exclude particular individuals", including those who purchased mobile home units from prior tenants, and thus succeeded them in their right to a rent controlled pad. The court explicitly decided not to review a regulatory takings claim which had not been raised at trial.

In *Pennell v. San Jose*,[68] the court found no constitutional infirmity in a rent control ordinance which permitted the consideration of tenant hardship in a mechanism for special rent adjustments. Applying a rational basis standard of review, among other things, the court held that the hardship provision neither rendered the ordinance facially invalid under the Due Process clause, nor violated the Equal

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[63] *Block v. Hirsh*, 256 U.S. 135 (1921) (dealing with Washington, D.C.'s rent control laws); See, also, *Marcus Brown Holding Co. v. Feldman* 256 U.S. 170 (1921) dealing with New York City's rent control laws.

[64] In *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922), (Justice Holmes recognized that if a regulation goes "too far" it will be recognized as a taking).

[65] *Chaselton Corp. v. Sinclair* 264 U.S. 543 (1924).

[66] *Bowles v. Willingham*, 321 U.S. 503 (1944) and *Woods v. Cloyd W. Miller Co.,* 333 U.S. 138 (1948).

[67] 503 U. S. 519, (1992)

[68] 485 U.S. 1 (1987)

Protection Clause. The court recognized that “a legitimate and rational goal of price or rate regulation is the protection of consumer welfare.”[69] Most notably, the Court declined to consider the appellant's claim that the hardship provision resulted in a regulatory taking. Finding that there was “no evidence that the 'tenant hardship clause' [had] in fact ever been relied upon by a hearing officer to reduce the rent below the figure it would have been set at on the basis of other factors set forth in the Ordinance”[70] the majority declared the regulatory taking claim premature. In a notable dissent, Justice Scalia, joined by Justice O'Connor reached the regulatory takings issue and concluded that, because the hardship provision forced some individuals (landlords) to bear a public burden alone (i.e. support low-income tenants), the hardship provision resulted in a regulatory taking.

The dissent in *Pennell* suggests that policy makers should be wary about the constitutionality of any measure that imposes a discrete regulatory burden on owners due to the fact that they may have low income or hardship tenants in their building. It implies that the elimination of abnormal rents through rent controls is clearly constitutional. However, imposing a public welfare burden on individual owners may not be.[71]

In *Greene v. Mirabel*[72] the court dismissed for want of a substantial federal question a takings claim challenging the 7 1/2% statutory limit on annual rent

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[69] Id. at 13.

[70] Id. at 11.

[71] Compare *Parrino v. Lindsay*, 29 N. Y. 2d 30 (1971). In *Parrino* the New York State Court of Appeals had occasion to consider whether a temporary local law, which generally froze rents for elderly persons with household incomes of less than $4,500, was unconstitutional. In citing the temporary nature of the measure and the fact that the rent levels paid had already been upheld as constitutionally valid, the Court of Appeals refused to find a denial of equal protection. The court also found that a regulatory taking had not occurred. This portion of the decision was criticized in a case that went before the Supreme Court of New Jersey a few years later. In *Property Owners Association of North Bergen v. North Bergen*, 378 A.2d 25 (1977) a North Bergen ordinance which provided that elderly tenants earning less that $5,000 annually would be immune from rent increases was found to result in an unconstitutional taking. There the Court held,

> *“A legislative category of economically needy senior citizens is sound, proper and sustainable as a rational classification. But compelled subsidization by landlords or by tenants who happen to live in an apartment building with senior citizens is an improper and unconstitutional method of solving the problem.” 378 A.2d at 31.*

Justice Scalia quoted this passage approvingly in his dissent in *Pennell* noting that the Supreme Court of New Jersey was dealing with “the same vice I find dispositive here” 485 U.S. at 23. Perhaps the *Parrino* case can be distinguished on the grounds that it dealt with a temporary measure and that the rent levels had already been found constitutional. The New Jersey Supreme Court was clear in its disagreement with *Parrino*, however, and passed over the opportunity to distinguish it from the North Bergen case. After noting that *Parrino's* “factual circumstances are not present here” the Court added, “and we do not find *Parrino* persuasive.” 378 A.2d at 31

[72] 485 U.S. 983 (1988).

increases under New York's rent control law. While the statute in question permitted a higher increase if landlord's could prove that the return on their investment was less than 8 1/2%, the landlords asserted that they were denied “hardship” adjustments before the Division of Housing and Community Renewal and in state courts.

After avoiding a direct “regulatory takings” challenge to rent control for over sixty years, in *Lingle v. Chevron*[73] the U.S. Supreme Court finally addressed such a claim in 2005. *Lingle* involved the regulation of rents for commercial gas stations in the state of Hawaii.

Beginning in 1980 a growing body of case law suggested that the courts could declare laws regulating property unconstitutional if such laws failed to “substantially advance legitimate state interests” - leaving it to the courts to decide just what such “legitimate state interests” are. Legal advocates for property owners were hopeful that a determination of whether rent regulation laws served “legitimate state interests” could be removed from the legislative process and left to the judiciary. With this they foresaw the gradual restriction and possible demise of all rent regulations. Indeed, the New York Court of Appeals affirmed this perception when it exercised discretion under the “legitimate state interests” standard to strike down a law protecting the employees of not-for-profit hospitals who sublet rent stabilized apartments rented by such hospitals. In *Manocherian v. Lenox Hill Hospital*, the New York Court of Appeals held that protecting a non-occupying institutional consumer was not a “legitimate state interest” given the stated general goals of New York’s rent laws. This case is discussed below at page 56.

In *Lingle v. Chevron*, involving a restriction imposed by the Hawaii Legislature upon rent charged by oil companies to dealers leasing service stations, Justice O’Connor held that the “legitimate state interests” test had absolutely no validity in the context of regulatory takings jurisprudence. In a clear and categorical decision without dissent, Justice O’Connor eliminated a quarter of a century of confusion surrounding regulatory takings. Noting that the “legitimate state interests” test was inappropriately borrowed from certain due process cases, Justice O’Connor declared that the finding of a regulatory taking rested upon other tests which are closer to a classic ouster of an owner from property - such as when a permanent physical invasion occurs, or an owner suffers the destruction of all economically beneficial

[73] Lingle v. Chevron USA, 125 S.Ct. 2074 (2005)

uses, or a property is so heavily burdened that the regulation amounts to a taking.[74] None of these latter standards pose significant threats to rent regulations of the type currently in effect in New York and most other jurisdictions that have such protections.

In light of the Court's unanimous decision in *Lingle*, it is difficult to imagine how a constitutional claim to a conventional rent regulation statute could succeed at this time. *Yee* established that such laws do not constitute a physical taking. *Pennell* established that such laws do not violate due process or equal protection of the law. *Lingle* established that rent regulations cannot be scrutinized for their underlying public policy justifications in the context of constitutional takings analysis.

Challenges to Rent Regulation laws before the New York Court of Appeals

The New York Court of Appeals struck down two measures aimed at protecting rents or tenancies between 1989 and 1995, and upheld two others.

In *Federal Home Loan Mortgage Corporation v. New York State Division of Housing and Community Renewal*,[75] the New York Court of Appeals held that units in a formerly rent stabilized building which underwent cooperative conversion regain the protection of rent stabilization if the building loses its cooperative status upon foreclosure of an underlying mortgage. This result was particularly unwelcome in the banking community. The market value of properties foreclosed upon could be expected to vary significantly depending on whether the property experienced free market rents or regulated rents following foreclosure. Hence the Court's decision to recognize a reversion to rent regulated status effectively raised the incentive on the part of financial institutions to arrange for workouts - as an alternative to foreclosure in financially troubled cooperatives.

Although the court in *Federal Home Loan Mortgage Corp.* appeared to have responsibility for addressing the narrow question of whether the building reverted to rent stabilized status,[76] it also considered constitutional objections to the law which

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[74] Although Justice O'Connor acknowledged that a regulation may run afoul of the Due Process Clause if it is arbitrary or irrational, and Justice Kennedy took note of this possibility in a concurrence, it is unlikely, in light of *Pennell*, that a typical rent regulation requirement would be invalidated under such a deferential analysis.

[75] 87 N.Y. 2d 325 (1995).

[76] This question had been certified from the United States Court of Appeals for the Second Circuit where the case had been under consideration. Id.

permitted this reversion.[77] First, it addressed the plaintiff's claim that the law effected a physical taking. Recognizing that "the essence of plaintiff's dispute is not that it is being forced to use the property in a new or undesirable manner, but that the rent it charges in terms of the rental leases should be market based and not subject to regulation under the [Rent Stabilization Law]" the court found that "no new use of the property had been forced upon plaintiff, and no unconstitutional physical taking has been effectuated."[78]

The court also rejected a regulatory takings claim. Notably, in addressing the regulatory takings claim the court reiterated its recognition of the legal framework for finding a regulatory taking used in *Manocherian v. Lenox Hill Hospital*,[79] and earlier in *Seawall Assocs. v. City of New York*[80], (a framework which, as discussed below, has now been brought into question by *Lingle*). Unlike the *Manocherian* case, however, [discussed below] the *Federal Home Loan Mortgage Corp.* decision found that extending the protection of the Rent Stabilization Law to the former cooperative shareholders would "serve the same legitimate State interest served by application of the RSL in a housing shortage - 'preventing eviction and resulting vulnerability to homelessness of the identified beneficiaries"'. Having found the proper nexus, the court rejected the plaintiff's regulatory taking claim.

Manocherian v. Lenox Hill Hospital,[81] is a rather complex case which held that the extension of rent stabilization protections to leases held by not-for-profit hospitals for ultimate use by hospital employees (as subtenants) resulted in a regulatory taking.

With the adoption of the Omnibus Housing Act of 1983 the New York State Legislature tightened rules with regard to sublets by, among other things, limiting the right to sublet to tenants who intended to return and occupy their units at the termination of the subtenancy. Since not-for-profit hospitals could not be prime/occupying tenants, the effect of this law was to terminate the rent stabilized status of leases held by such entities. As a result, a number of hospital employee/subtenants faced eviction. To remedy this unintended consequence the New York State Legislature adopted Chapter 940 of the laws of 1984, which restored rent stabilized status to these leases.

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[77] Rent Stabilization Law, NYC Admin. Code Section 26-504.
[78] 87 N.Y.2d at 335.
[79] 84 N.Y.2d. 385 (1994).
[80] 74 N.Y. 2d 92 (1989). See also Lucas v. So. Carolina Coastal Council 505 U.S. 1003 (1992).
[81] 84 N.Y.2d 385 (1994), cert den., 514 U.S. 1109 (1995).

This re-establishment of rent protection for a non-occupying corporate entity was challenged by the plaintiff as a regulatory taking. Relying upon the takings standard articulated in *Seawall* (discussed below), and finding that Chapter 940 did "not protect and benefit specific occupant subtenants, but rather erect[ed] a subsidized housing regime for Lenox Hill Hospital's preferential allotment" the New York Court of Appeals held that Chapter 940 "suffers a fatal defect by not substantially advancing a closely and legitimately connected State interest."[82] The court thus drew a distinction between a non-occupant corporate entity and housing consumers who intended to occupy their apartments. The court appeared to be influenced to some degree by the perpetual status of the hospital as a corporate tenant and by the fact that the hospital employees could be evicted upon discharge from their employment. These facts, the court ruled, contravened two key goals of rent protection "occupant protection and eventual market redemption."[83]

Notwithstanding the various considerations which appeared to weigh in the court's finding, this was the first time that the New York Court of Appeals ruled that a rent law produced unconstitutional subsidies. The ruling appears to suggest that any legislative attempt to protect non-occupying consumers (e.g. business and not-for-profit entities) in a market where rents are effected by a legislatively recognized housing shortage, may be closely scrutinized by state courts. Nonetheless, is difficult to see how the ruling in *Manocherian* can survive the U.S. Supreme Court's decision in *Lingle*. The analytical framework utilized in *Manocherian* included the "legitimate state interest" test which was explicitly and unanimously rejected by the U.S. Supreme Court in *Lingle*.

In *Rent Stabilization Assn. v. Higgins*,[84] the New York Court of Appeals upheld an administrative regulation promulgated by the New York State Division of Housing and Community Renewal which granted unmarried partners of a permanent character succession rights of the same type enjoyed by surviving spouses. Among other claims raised by the appellants, the regulation was challenged as permitting a forced physical occupation of the property resulting in a *per se* taking. Relying upon *Yee*, the court concluded that "[b]ecause the challenged regulations may require the owner-lessor to accept a new occupant but not a new use of its rent-regulated property, we conclude that appellants have failed to establish their claim that, facially, a permanent physical occupation of appellant's property has been effected." The appellants also raised a regulatory taking claim. Dismissing the claim, the court found no deprivation of an

[82] 84 N.Y.2d 385, 386 (1994).
[83] 84 N.Y. 2d at 394.
[84] 83 N.Y.2d 156(1994).

economically viable use of the property and no failure to advance the legitimate state interest of protecting persons against the possible loss of their homes.

Decisions like *Higgins, Manocherian* and the *Federal Home Loan Mortgage* have been influenced to some degree by *Seawall Associates v. City of New York*, although the latter decision did not directly address a traditional rent regulation law in the same sense.[85] *Seawall* involved an attempt to prevent the further decline and loss of single room occupancy housing by imposing a moratorium on the alteration, conversion or demolition of such housing. The law allowed an exemption for those who were willing to pay $45,000 dollars per unit into a low-income housing fund. In addition, the law mandated that unused units be repaired and rented out. Finding that the buy- out provision amounted to a form of "ransom" and that the rent up provision resulted in a forced physical occupation of the property, the New York Court of Appeals ruled that the law resulted in an unconstitutional physical and regulatory taking.

As indicated above, *Lingle* sets forth a clear standard for analyzing regulatory takings claims, and provides that an inquiry into whether a regulation "substantially advances legitimate state interests" is not a proper component of the regulatory takings analysis. Accordingly, *Lingle* calls into question the reliance of *Seawall* and other cases on such an analysis in deciding whether a measure amounts to a regulatory taking. However, *Lingle* does not directly address whether the physical taking component of *Seawall* was properly decided.

The foregoing developments suggest that long established, traditional rent control measures appear likely to survive judicial scrutiny against takings claims. On the other hand, new and novel extensions of such protections, particularly those may be found to constitute a physical occupation, could meet with mixed success.

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[85] 74 N.Y.2d 92 cert den. 493 U.S. 976 (1989).

MAIN FEATURES OF RENT STABILIZATION

The landlord/tenant context — objectives, enforcement & primary provisions of the Emergency Tenant Protection Act, Rent Stabilization Law, Rent Stabilization Code & related laws

As seen from the history of rent regulation, the rent stabilization system has evolved from a combination of State, City and administrative agency actions beginning in 1969. Under the Emergency Tenant Protection Act (ETPA) of 1974, the State established the broad legal parameters within which the City, its agencies, and now the State Division of Housing and Community Renewal must administer rent stabilization. Much of the ETPA, however, refers to and relies upon provisions of the local Rent Stabilization Law (RSL) of 1969 as governing the administration of rent stabilization within New York City. Both laws in turn prescribe the establishment of a code of regulations known as the Rent Stabilization Code (RSC) which implements the provisions of these laws in detail.

Although the provisions of the ETPA concerning rent setting and the role of the Rent Guidelines Board(s) were previously noted, it may be worthwhile to consider some of the general themes of the rent stabilization laws and regulations before proceeding with a more detailed discussion of the administration of rents.

The rent stabilization system is structured to provide three interrelated protections to tenants while permitting a fair return to owners who invest in rental property. A prime concern of lawmakers in establishing the system was to preserve the basic **affordability** of rental housing. Yet, affordable rents would provide little protection for tenants who are at the same time vulnerable to arbitrary evictions or service reductions. Consequently, the rent regulation system goes far beyond the simple establishment of rents and addresses a whole range of landlord/tenant issues. These issues mainly concern **habitability** and **security of tenure**.

It is also important to consider whether rent regulation produces **fair returns** for affected owners. As previously discussed, the interests of owners are vested with certain protections based upon the constitutional guarantees of equal protection, due process and just compensation for the taking of private property for public use. Concern for these protections has been incorporated into the structure of the rent stabilization system through the allowance of "hardship" rent increases for owners and by the various constitutional limitations governing the Board's and the DHCR's general authority. Additionally, the system is designed to prevent tenants from unfairly abusing or profiting from their control over regulated units. Finally, mechanisms have been added to encourage owners to invest in major capital improvements and to develop new rental units or to improve existing units.

A general familiarity with all of these aspects of rent stabilization is helpful in understanding the regulatory framework within which the rent guidelines must be established and enforced.

Affordability

The findings of the City Council in enacting the Rent Stabilization Law of 1969, and the State legislature in adopting the Emergency Tenant Protection Act of 1974, clearly establish that fair and *generally* affordable rents are a primary objective of these laws. The intent is clearly not to guarantee an affordable rent for every tenant. Rather, it is to protect tenants against "abnormal" rents driven up by chronic housing shortages. A full reprint of the findings from the Rent Stabilization Law of 1969, as amended, is provided below:

Rent Stabilization Law of 1969 (as amended)
Findings and Declaration of Emergency

The council hereby finds that a serious public emergency continues to exist in the housing of a considerable number of persons within the city of New York and will continue to exist after April first, nineteen hundred seventy-four; that such emergency necessitated the intervention of federal, state and local government in order to prevent speculative, unwarranted and abnormal increases in rents; that there continues to exist an acute shortage of dwellings which creates a special hardship to persons and families occupying rental housing; that the legislation enacted in nineteen hundred seventy-one by the state of New York, removing controls on housing accommodations as they become vacant, has resulted in sharp increases in rent levels in many instances; that the existing and proposed cuts in federal assistance to housing programs threaten a virtual end to the creation of new housing, thus prolonging the present emergency; that unless residential rents and evictions continue to be regulated and controlled, disruptive practices and abnormal conditions will produce serious threats to the public health, safety and general welfare; that to prevent such perils to health, safety and welfare, preventive action by the council continues to be imperative; that such action is necessary in order to prevent exactions of unjust, unreasonable and oppressive rents and rental agreements and to forestall profiteering, speculation and other disruptive practices tending to produce threats to the public health, safety and general welfare; that the transition from regulation *to a normal market of free bargaining between landlord and tenant, while still the objective of state and city policy, must be administered with due regard for such emergency; and that the policy herein expressed is now administered locally within the city of New York by an agency of the city itself, pursuant to the authority conferred by chapter twenty-one of the laws of nineteen hundred sixty-two.*

The council further finds that, prior to the adoption of local laws sixteen and fifty-one of nineteen hundred sixty-nine, many owners of housing accommodations in multiple dwellings, not subject to the provisions of the city rent and rehabilitation law enacted pursuant to said enabling authority either because they were constructed after nineteen hundred forty-seven or because they were decontrolled due to monthly rental of two hundred fifty dollars or more or for other reasons, were demanding exorbitant and unconscionable rent increases as a result of the aforesaid emergency, which led to a continuing restriction of available housing as evidenced by the nineteen hundred sixty-eight vacancy survey by the United States bureau of the census; that prior to the enactment of said local laws, such increases were being exacted under stress of prevailing conditions of inflation and of an acute housing shortage resulting from a sharp decline in private residential construction brought about by a combination of local and national factors; that such increases and demands were causing severe hardship to tenants of such accommodations and were uprooting long-time city residents from their communities; that recent studies establish that the acute housing shortage continues to exist; that there has been a further decline in private residential construction due to existing and proposed cuts in federal assistance to housing programs; that unless such accommodations are subjected to reasonable rent and eviction limitations, disruptive practices and abnormal conditions will produce serious threats to the public health, safety and general welfare; and that such conditions constitute a grave emergency. (§26-502 of the RSL continues and re-affirms these findings.)

The question of how much weight to give to affordability is a controversial one. Two judicial pronouncements on the issue indicate that tenants' ability to pay is a permissible consideration in setting the guidelines.[86] Owner representatives have often asserted that affordability (as reflected in tenant incomes, unemployment statistics, shelter allowances, non-payment petitions, evictions etc.) should not be a factor in the Board's annual deliberations. They have argued that rent limits established by focusing on economic factors - such as operating costs, vacancy rates, mortgage rates and so on -

[86] See *Greystone Hotel Co. v. City of New York, Rent Guidelines Board* et al., case #17, supra at p.45. Note: This case was not published and may not be cited as precedent in any other case. See also Matter of *Muriel Towers Co.,* case #10, supra at page 44.

preserve affordability to the extent intended by the system. In other words, guidelines that are exclusively concerned with the specific considerations prescribed by law[87] result in presumptively "fair" rents. Tenants counter that this focus on the mandated considerations neglects the intent of the legislation - described in the above Declaration of Emergency - and ignores the third section of the charge to the Board which permits it to consider "such other data as may be made available to it".

Regardless of who has the better of this argument there is an independent and quite plausible reason for continuing to review and factor affordability into the guidelines. In the purest economic sense, the object of the guidelines should be to eliminate the effects of the housing shortage on rent levels. All of the mandated criteria suggest that the Board should be making a rough attempt to simulate the kinds of rents that a competitive market with a vacancy rate in excess of 5% might provide. Such a market would be shaped by the same basic forces that control all unregulated markets: supply and demand. Demand would in turn be determined by a host of factors, the most significant of which is tenant affordability.

In an unregulated rental housing market, if incomes fall or unemployment rises the demand curve will gradually shift downward - more people will double up, move away, skip out on payments or negotiate more vigorously with owners - and rents will eventually fall or rent increases will be limited. This pattern was clearly in evidence in unregulated markets nationally where rents remained virtually flat throughout the recession of the early 1990's.[88] In New York's unregulated rental sector, rents fell by as much as 15% during this recession.[89] Vacancy rates are higher in other areas of the country, giving rise to more balanced bargaining relations and permitting the partial transfer of recessionary pressures from tenants to owners. Except in high rent sectors where market rents prevail, New York's housing shortage largely suppresses or masks these consequences. Housing options in middle and low-income markets are limited. Owners are commonly in a position to say, "take it or leave it" and tenants have little choice but to accept what is offered. The benefit to low and moderate-income tenants of a recession-induced deflation of rents is largely lost. In short, a genuine attempt to simulate a competitive equilibrium rental price will recognize that rents fall in a

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[87] Recall that the mandated considerations include:

(1) the economic condition of the residential real estate industry in N.Y.C. including such factors as the prevailing and projected (i) real estate taxes and sewer and water rates, (ii) gross operating maintenance costs (including insurance rates, governmental fees, cost of fuel and labor costs), (iii) costs and availability of financing (including effective rates of interest), (iv) over-all supply of housing accommodations and over-all vacancy rates;

(2) relevant data from the current and projected cost of living indices for the affected area; and

(3) such other data as may be made available to it.

[88] See State of the Nation's Housing - 1992, Joint Center for Housing Studies of Harvard Univ., Exhibit 2a.

[89] N.Y. Times 2/7/93 Real Estate Section at 12, col. 1

recession because incomes fall. From this perspective, ability to pay may be an important economic factor for the Board to consider.

The consideration of affordability does not necessarily compel lower rent adjustments. Those who are willing to factor affordability into the guidelines by limiting increases during a recession are bound to accept a logical corollary - when tenant incomes rise so should rents. Nothing in the Declaration of Emergency suggests that rent levels should be immunized against inflationary pressures brought on by rising incomes.

The RGB's main tool for studying affordability issues is the annual *Income and Affordability Study (I&A)*, published and presented each spring by RGB staff members. The full report can be found on our website or in the annual *Housing NYC: Rents Markets and Trends* book, also published by the RGB. This study attempts to capture the most recent reports and statistics regarding the affordability of New York City housing. Studies vary by year, but generally include data from the triennial *Housing and Vacancy Survey (HVS),* the most recent *American Community Survey* data, employment and economic statistics, as well as reports produced by policy institutes and advocacy groups.

According to the 2014 HVS, which reflects household income for 2013, the median income for rental households was $41,500, an inflation-adjusted ("real") increase of 1.1% from 2010.[90] Owner households earned substantially higher income, which in 2013 was a median of $80,000, almost double the income of renters. The 2014 HVS found different income levels among those living in units that were rent controlled, rent stabilized, unregulated, or part of some other regulation program (such as public housing or Mitchell-Lama). The lowest median income was found among those tenants in "other" regulated units, which at $18,296 was a real decrease of 3.1% from 2010. Those in rent control units had a median household income of $29,000 in 2013, a real decrease of 3.6%. Tenants living in stabilized buildings built prior to 1947 ("pre-war") had a median income of $40,000, and post-46 ("post-war") tenants earned a median income level of $46,000, real increases of 2.3% and 0.3%, respectively. Stabilized tenants on the whole had a median income of $40,600 (a real decrease of

[90] Unless otherwise noted, all following data is from the *2014 Housing and Vacancy Survey*, conducted by the Census Bureau. Total household income in the HVS includes wages, salaries, and tips; self-employment income; interest dividends; pensions; and other transfers and in-kind payments.

0.3%), while those tenants in unregulated[91] apartments earned a median of $58,000 in 2013 (a real increase of 7.7%).

The HVS also examines rent levels, and it revealed that in 2014, the median monthly contract rent, which excludes any additional tenant payments for fuel and utilities, for all rental units was $1,200. Rent stabilized tenants on the whole paid this same amount ($1,200) in median contract rent, including $1,153 for pre-war rent stabilized apartments, and $1,300 for post-war rent stabilized apartments. These are inflation-adjusted increases from 2011 of 6.3% for rent stabilized units as a whole, and 4.4% and 9.2% for pre- and post-war units, respectively. Among the other categories of rental units, rent controlled tenants paid a median of $900 (a 6.6% real increase), tenants living in private, nonregulated rentals paid a median of $1,500 (a real increase of 5.3%), and tenants living in "other" regulated units (such as public housing and Mitchell- Lama) paid the least in median contract rent, $583 (a real decrease of 6.4%).

Median gross rent, which includes fuel and utility payments, was $1,325 for all renters, a real increase of 4.3%. Rent stabilized tenants on the whole paid a median gross rent of $1,300 in 2014, including $1,266 for pre-war rent stabilized apartments, and $1,413 for post-war rent stabilized apartments. Adjusting for inflation, that is an increase from 2011 of 5.3% for all rent stabilized units over the three-year period, and increases of 3.9% and 9.4%, respectively, for pre- and post-war rent stabilized units. Rent controlled tenants paid less than the average rent stabilized tenant, with a median gross rent of $1,020 in 2014 (a real increase of 8.1%), while those in unregulated units paid the most, a median of $1,625 (a real increase of 2.7%), and those in "other" regulated units paid the least, a median of $595 in gross rent (a real decrease of 6.0%).

The HVS also breaks down the distribution of renter occupied housing by gross rent level. Of the more than two million rental units in New York City that report cash rent, 7.3% rent for less than $500, and 16.9% rent for between $500-$999. More than three- quarters of rental units (75.7%) rent for over $1,000, including 19.5% that rent for more than $2,000. [92]

Examining affordability of rental housing, the 2014 HVS reported that the median gross rent-to-income ratio for all renters was 33.8%, meaning that half of all households residing in rental housing pay more than 33.8% of their income in gross

[91] Private non-regulated units consist of units which were never rent controlled or rent stabilized, units which were decontrolled, and unregulated rentals in cooperatives or condominium buildings.
[92] There were 53,391 units which did not report a cash rent.

rent, and half pay less. While equal to the highest ratio in the history of the HVS, it is unchanged from 2011, when the ratio was also found to be 33.8%. Furthermore, a third (33.5%) of rental households pay more than 50% of their household income in gross rent (up from 33.1% in 2011). Generally, housing is considered affordable when a household pays no more than 30% of their income in rent.[93] The contract rent-to-income ratio was 31.2% for all renters in 2014, up 0.3 percentage points from 2011, and the highest ratio ever reported by the HVS.

Rent stabilized tenants are the tenants facing the highest financial burden, with a median gross rent-to-income ratio of 36.4%, meaning a majority of rent stabilized tenants are not able to afford their apartments, based on the HUD benchmark for housing affordability. Looking at these figures more closely, rent stabilized tenants in pre-war apartments are facing a median rent burden of 37.0%, while tenants in post-war units had a median ratio of 34.7% in 2014. All of these figures increased from 2011, including increases of 1.6 percentage points for all rent stabilized tenants, 1.5 percentage points for tenants in pre-war units, and 0.9 percentage points in post-war units.

It is important to note that an analysis done by RGB staff in both 2012 and 2015 found that rent-to-income ratios in the HVS were artificially high due to an anomaly in the way rents for many tenants receiving Section 8 are recorded by the HVS. While generally paying no more than 30% of their income towards rent, tens of thousands of rent stabilized tenants receiving Section 8 are recorded with gross rent-to-income ratios in excess of 100%. That analysis found that in 2011 the median gross rent-to-income ratio for rent stabilized tenants as a whole may have been exaggerated by as much as four percentage points because of this anomaly. In 2014 the median gross rent-to-income ratio for rent stabilized tenants was exaggerated by approximately three percentage points.

Rent controlled tenants had the second highest median gross rent-to-income ratio, 35.5% (a 3.8 percentage point rise), unregulated tenants paid a median of 33.0% in 2014 (a decrease of 0.7 percentage points), and tenants in "other" regulated units paid a median of 30.3% (a decrease of 0.6 percentage points).

Per data from the Census Bureau's annual nationwide 2013 American Community Survey, despite ongoing efforts by a number of government agencies and non- profit groups, housing affordability remains an issue in a city ranked 26th highest among 77 big cities (those with populations with of at least 250,000) of gross rent-to-

[93] The HUD benchmark for housing affordability is a 30% rent-to-income ratio. Source: Basic Laws on Housing and Community Development, Subcommittee on Housing and Community Development of the Committee on Banking Finance and Urban Affairs, revised through December 31, 1993, Section 3.(a)(2).

income ratios.[94] At 32.2%, the median gross rent-to-income ratio in New York City remained at the same level as 2012. By borough, rates ranged from a low of 28.7% in Manhattan, to 32.7% in Brooklyn, 33.0% in Staten Island, 33.6% in Queens, and 34.9% in the Bronx. The only borough to vary by more than one percentage point as compared to the prior year was in the Bronx, where the gross rent-to-income ratio fell 1.1 percentage points.

The percentage of households Citywide paying 50% or more of their income towards gross rent in 2013 fell for the second consecutive year, down to 29.6% from 30.0% in 2012. At the borough level, rates ranged from a low of 24.9% paying at least 50% of their income towards gross rent in Manhattan, to a high of 34.4% in the Bronx.

This survey also reports that the median contract rent in New York City was $1,125 in 2013, and the median gross rent was $1,228. Between 2012 and 2013, median monthly contract rents for all apartments in New York City increased an inflation-adjusted ("real") 1.1% and median gross rents increased by 1.0% (and by 2.8% and 2.7%, respectively, in nominal terms). Inflation-adjusted gross rents rose by 0.5% in Queens, 1.1% in Manhattan, 1.9% in both the Bronx and Brooklyn, and 2.4% in Staten Island.

In addition, during 2013 median household income for renters rose both nominally and in real terms, by 1.7% and 0.1% respectively, to $40,908. Notably, after falling during 2012, income for owner- occupied households rose in nominal terms by 5.1% and 3.4% in real terms. Since the inception of this survey in 2005, renter income has fluctuated in real 2013 dollars from a low of $39,285 in 2011 to a high of $42,941 in 2008. For renters, 2013 marks the second consecutive year of increase in both nominal and real terms.

The survey also provides mean household income for cities in quintiles. In New York City the top quintile (i.e., the top 20%) in mean household income makes 26.28 times more than the lowest quintile (i.e., the lowest 20%), the seventh highest ratio among big cities, and an increase from 24.95 in 2012. While New York's income disparity ratio does rank near the top nationwide, it lags notably behind Atlanta, with a ratio of 36.81, the highest disparity among big cities. Other major cities, such as Los Angeles (22.74), Chicago (24.45), Houston (20.30), and Philadelphia (22.77), all have smaller differentials between income levels than New York City. Among the cities ranking higher than New York City are Boston (29.67) and Washington, DC (30.30). The smallest disparity among big cities is in Anchorage, Alaska, with a ratio of 9.31.

[94] *2013 American Community Survey*, U.S. Census Bureau. http://factfinder.census.gov (Based on places with a population of more than 250,000).

While the ratio between the upper and lower quintiles was 26.95 for all of New York City, it was 42.59 in Manhattan, where the top quintile makes an average of more than $410,000 more annually than the lowest quintile.

One of the many prices tracked in the federal Consumer Price Index (CPI) is the cost of rental housing. While not specific to New York City (the local CPI area extends into the suburbs of New York City), the CPI can provide a useful comparison of the rise of housing costs to those of other components of the price index.[95] For the 46-year period since the inception of rent stabilization (from 1968 to 2014) the cost of rental housing in the New York area rose 724% and overall prices rose more slowly, at 621%. This is the converse of nationwide averages, where the cost of rental housing rose at a slower pace than overall costs (538% and 580%, respectively).

Between 2013 and 2014, rental costs rose 3.0% in the NYC area, versus an overall increase in prices of 1.3%. This is slightly lower than the 2013 rent increase of 3.1%. While the rate of inflation of rents did increase during 2014, it was still lower than many other recent years, including rates of 4.5% in 2007, 5.1% in 2008, and 3.9% in 2009.

In the U.S. as a whole, rental costs rose at a slightly faster pace than the New York City area, rising by 3.2% in 2014. But rental costs in the NYC metropolitan area did rise faster than five of the seven cities selected for comparison, including the metropolitan areas of Philadelphia, Boston, Chicago, Los Angeles, and Washington, DC, which rose at rates of between 1.8% to 2.9% in 2013. But rental rates in the NYC metropolitan area did rise slower than those in San Francisco, which saw rents rise 5.5%, and Atlanta, which rose by 4.5%.

Results from the *2014 HVS*[96] reveal that 4.1% of market rate renters receive Section 8 vouchers, while 9.0% of rent stabilized tenants do so. In addition, 3.5% of rent stabilized tenants receive a shelter allowance (versus 1.5% of market rate renters) and 5.7% are in the SCRIE (Senior Citizen Rent Increase Exemption) program[97]. Among rent stabilized tenants, 20.0% live under the federal poverty level (versus 15.0% of market rate tenants), while 23.4% receive public assistance (versus 14.0% of market rate renters). Rent stabilized tenants also live in more crowded conditions than other renters, with 14.9% of apartments considered overcrowded (more than one person per room), as

[95] Bureau of Labor Statistics; http://www.bls.gov; Data accessed March, 2015

[96] All data in this paragraph is from the 2014 Housing and Vacancy Survey. Percentages are based on those households that responded to the question and excludes any household that did not report an answer.

[97] This statistic is derived not from the HVS (which has data on the SCRIE program, but because more than 80% of respondents did not answer the question is highly unreliable), but from the reported 57,3251 tax abatements given to owners in FY 2015, as reported by the Dept. of Finance.

compared with 11.39% of market rate apartments. They also live, on average, in smaller apartments than non-regulated tenants, with an average of 3.2 rooms per apartment versus 3.7 rooms in market rate apartments.

Rent regulation does, of course, play some role in limiting the rents paid by many households that receive limited or no assistance. Yet, in spite of the high number of rental households protected by rent regulation, the proportion of household income paid in rent rose steeply throughout the early period of stabilization. (This phenomenon also occurred - to a lesser extent - throughout the nation during the same period.) The median "rent to income ratio," or percent of gross income paid in rent, increased from 20% to 33-34% for all renters and from 22% to 36% for stabilized renters over the past 44 years (see table on this page).[98]

Table III.

Median Percent of Gross Income Paid in Rent for all Renters and Stabilized Renters in New York City 1970-2014		
Year	**All Renters**	**Stabilized Renters**
1970	20%	22%
1975	25%	27%
1978	28%	30%
1981	27%	29%
1984	29%	30%
1987	29%	29%
1991	29%	28%
1993	30%	31%
1996	30%	30%
1999	29%	30%
2002	28%	28%
2005	31%	32%
2008	31%	31%
2011	34%	35%
2014	33%	36%

Source: Housing and Vacancy Surveys 1970-2014, U.S. Bureau of the Census

Tenants currently residing in rent stabilized apartments (as distinguished from those searching for new apartments) receive the greatest level of protection under the existing system. The creators of rent stabilization were particularly concerned with

[98] Housing and Vacancy Surveys 1970-2014

community and household stability and sought to avoid the displacement of "long-time" residents. While existing tenants face guideline adjustments upon renewal of their leases, new tenants are charged vacancy increases (in accordance with the statutory formula). This approach has, however, resulted in widely "skewed" rents for comparable apartments. Notably, the RGB staff has found that "longevity discounts" exist in unregulated housing as well as in New York's regulated market.[99] Whether regulated or not, landlords favor long-term steady rent payers. The critical difference is that rent regulated tenants tend to stay in their units about twice as long (about nine years on average) as their unregulated neighbors. Thus the longevity discounts accumulate over a longer period.

Habitability

Historically a tenant's obligation to pay rent was considered independent of an owner's obligation to provide a habitable apartment. Thus tenants were required to pay rents even when services were unavailable or hazardous conditions existed. In 1939 the State began to depart from this tradition by permitting tenants to deposit rents into court when apartment conditions threatened life, health or safety. This process required a court proceeding, however, and did not provide the tenant with compensation for having to live with the dangerous conditions or for the loss of services. The court simply withheld the rents to induce the landlord to make the needed repairs or to restore services - or the court ordered that the problems be remedied directly with the deposited funds.[100] No abatement of rent was authorized for the period in which tenants were without full enjoyment of their apartments.[101]

In 1943, under federal rent controls, owners were required to provide essential services or face a downward adjustment of rents. These protections were continued when the State took over the administration of rent control in 1951. In 1971, amendments to the rent control laws establishing the MBR system expanded tenant protections by requiring owners to correct all "rent impairing" violations - a designation given to a select group of housing code violations by the City's housing agency - and at least 80% of all other violations, prior to receiving any rent increase. These protections for rent controlled tenants continue in effect today.

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[99] See Rent Stabilized Housing in New York City, A Summary of RGB Research, 1994; Rent Skewing in Rent Stabilized Buildings, 1994, p. 62, noted further herein at page 111.

[100] Former Civil Practice Act, 1920, section 1446-a, added L. 1939, c. 661, and repealed by CPLR 10001. Now section 755 of the Real Property Actions and Proceedings Law.

[101] In 1965, §302-a was added to the Multiple Dwelling Law permitting, under certain circumstances, a complete abatement of rent if selected violations, designated as "rent impairing" remain uncorrected.

In adopting the Rent Stabilization Law of 1969, the City established protections against loss of services for the newly created class of rent stabilized tenants by requiring that such protections be included in the code of regulations to be established by the real estate industry.[102] The current Rent Stabilization Code [now promulgated by the DHCR] requires owners to certify annually that they are continuing to provide the same services as those provided at the time the apartment first became subject to stabilization.[103]

In 1975 the State reversed completely the policy of decoupling the obligation to pay rent from the obligation to supply fully habitable premises. Under the **warranty of habitability**[104] all residential leases are now "effectively deemed a sale of shelter and services by the landlord who impliedly warrants: first, that the premises are fit for human habitation; second, that the condition of the premises is in accord with the uses reasonably intended by the parties; and, third, that the tenants are not subjected to any conditions endangering or detrimental to their life, health or safety."[105] Consequently all tenants, regardless of rent regulation status, are now eligible to seek repairs and rent abatements for violations of this warranty.[106]

The right of rent stabilized tenants to seek compensation for lost services and to obtain the restoration of such services is still in some ways broader than the rights afforded by the warranty of habitability. The services protected by the warranty or otherwise required by law may not include all services furnished on certain applicable base dates, which the Rent Stabilization Code has categorized as "required services" and which rent stabilized tenants have a right to continue.[107] If a required service is not provided, the DHCR may reduce the rent to the amount in effect prior to the most recent guideline increase for the period in which the tenant is deprived of the service. The rent reduction commences on the first day of the month following the month in which the owner is served with a copy of the tenant's complaint. It is important to note that the warranty of habitability may provide greater relief for loss of those services covered by the warranty because rent abatements under the warranty may be retroactive and are not limited solely to the elimination of guideline increases.

It is also worth noting (although unconnected with habitability) that rent stabilized tenants have a right to a renewal lease on the same terms and conditions as the expiring lease. If a tenant received what the Code considers an "ancillary service"

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[102] See former RSL section YY51-6.0(c)(8), and current RSL section 26-514.
[103] See RSC sections 2523.2 through 2523.4
[104] Real Property Law section 235-b.
[105] Quoting Cooke, Ch. J., N.Y. Court of Appeals, *Park West Management Corp. v. Mitchell*, 1979, 47 N.Y. 2d at 319.
[106] See also §235 of the Real Property law, which makes willful refusals to provide essential services a misdemeanor.
[107] See RSC 2520.6(r).

(e.g. garage space, swimming pool access, health club rights etc.) under an expiring apartment lease - even though such service was not provided on the applicable base dates for required services - the tenant may continue to demand such services at stabilized rents upon renewal of the lease. While the owner may not demand that the tenant rent the ancillary service (other than security) as a condition of renting the apartment, once the tenant has accepted the service, the owner may demand that the service (and special charges for it) be included in subsequent renewal leases. However, tenants have a right to sublet such services. These renewal rights and obligations are not protected under the Code if the service is not provided primarily for the tenants in the building and is governed by a separate agreement.

Security of Tenure

It has long been recognized that any "attempt to limit the landlord's demands" through rent regulation would fail "[I]f the tenant remained subject to the landlord's power to evict".[108] Therefore, under rent regulation the general power to evict is eliminated in favor of a limited power to remove tenants for specifically enumerated causes. Also, special protections have been added to protect tenants from illegal evictions and harassment.

Under the **rent control** system tenants have permanent tenure and their rights and obligations are fully spelled out in the state Rent and Eviction Regulations.[109] Consequently they are referred to as statutory tenants and they do not face periodic lease renewals. Rent controlled tenancies may only be terminated on grounds set forth in the Rent and Eviction Regulations. Under the **rent stabilization** system tenants are also granted permanent tenure, but their rights and obligations are defined by both the Rent Stabilization Code and their individual leases. Rent stabilized tenants have a general right to renew their leases as they expire. Under rent stabilization there are two means for ending a tenancy: First, there are a number of grounds to **evict** the tenant such as nonpayment of rent, maintaining a nuisance, illegal subletting or use of the apartment for unlawful purposes; Second, there are grounds for **refusing to renew the lease** such as recovery of the apartment for the owner's personal use or recovery when the tenant maintains a primary residence elsewhere.

If an owner attempts to remove the tenant unlawfully s/he will be subject to both civil and criminal penalties. The Rent Stabilization Code provides as follows:

> *It shall be unlawful for any owner or any person acting on his or her behalf, directly, or indirectly, to engage in any course of conduct (including, but not limited to,*

[108] Quoting O.W. Holmes, J., U.S. Supreme Court *Block v. Hirsh* 256 U.S. 135,157-58 (1921).
[109] NYCRR §2200 et. seq.

interruption or discontinuance of services, or unwarranted or baseless court proceedings) which interferes with, or disturbs, or is intended to interfere with or disturb the privacy, comfort peace, repose, or quiet enjoyment of the tenant in his or her occupancy of the housing accommodation, or is intended to cause the tenant to vacate such housing accommodation or waive any right afforded under this Code.[110]

If a tenant was removed from a unit through harassment, the owner is not permitted to collect a vacancy increase from the next tenant who occupies the unit.[111] Whether or not the tenant vacates, the Division of Housing and Community Renewal may impose fines against the owner and future rent increases of any sort may be denied.[112] Further, criminal penalties may be sought through the Office of Corporation Counsel under the Unlawful Eviction Law.[113] Note that this latter law protects tenants in all rental units - not just rent regulated units.[114] In addition, treble damages for unlawful evictions may be imposed under section 853 of the Real Property Actions and Proceedings Law.

Fair Returns

The broad goal of the rent stabilization system is the establishment of "fair" rent levels for both owners and tenants. Fairness, of course, is a normative matter that is open to interpretation. Given the overall legal framework supporting the establishment of rent guidelines the term appears to connote a process that attempts to balance three objectives. One objective is the establishment of rent levels that are generally humane - in the sense that owners are not permitted to fully exploit demand for housing accommodations driven by situational scarcity. A corresponding objective is setting rents that reasonably support the reliance and expectation interests of good faith (non-speculative) investors. While the Board cannot guarantee a profit for every owner, it should attempt to preserve the kind of returns that a competitive market with a vacancy rate in excess of 5% might generate - given all the various and changing factors of supply and demand such as tenant incomes and costs of operation. Finally, fairness requires that the overall rent burden be allocated among tenants in an even-

110 R.S.C. §2525.5
111 See RSL §26-510(d).
112 See RSC §2526.2(c)(3) & (d).
113 N.Y.C. Admin. Code §26-521 et. seq.
114 See also §235-d of the Real Property law granting all tenants the right to obtain injunctive relief against harassment; §286(6) of the Multiple Dwelling Law denying free market status to loft units held by owners found guilty of harassment; §26-412(d) & §26-403(e)(2)(i)(9) of the NYC Rent Control Law, making harassment a violation and forbidding decontrol of units vacated via harassment, respectively. Further, see §2.7(2)(a) of the City's 421-a regulations included in Appendix P - prohibiting deregulation in certain cases where harassment occurs, and §26-504.2 of the RSL prohibiting high rent vacancy decontrol in the case of harassment.

handed way - or that differentials in rent adjustments among similarly situated tenants bear some reasonable relationship to legitimate public policy.

Does rent stabilization produce "fair" returns? In order to consider this question logically it would be useful to have a common measure to determine whether the goal is being achieved. Unfortunately, much of the disagreement over the effectiveness of rent regulation is really disagreement over the objectives of rent regulation. Rent regulation may have many purposes:

- to keep rents generally affordable;
- to maintain a building's net operating income at stable levels; or
- to ensure a "reasonable return"

The closest thing to an authoritative measure for considering the success of the rent stabilization system is contained in the law itself, and, like many laws, the rent stabilization law contains some objectives and ideals that may not operate in complete harmony.

The rent stabilization law generally directs that the Rent Guidelines Board consider **cost-push** inflationary factors such as increases in heating fuel or labor costs before establishing rent adjustments. In addition, special rent increases administered by the DHCR are permitted to encourage major capital improvements, individual apartment improvements and to remedy economic hardship. Yet, the same laws appear to prescribe an end to the effects of **demand-pull** inflation on rents. This is the type of inflation that commonly results from a shortage or fixed supply of a needed good. As Justice Bellacosa summarized in the case of *Manocherian v. Lenox Hill Hospital*, "the State intended to protect dwellers who could not compete in an overheated rental market, through no fault of their own… and to 'forestall profiteering, speculation and other disruptive practices.'"[115]

Notably, the Rent Stabilization Law does not speak about "profits." There is a good reason for this. Simply put, the Board does not control profit levels. Any such attempt would result in an intractable circularity problem: rents rise, property values climb, investors must spend more to purchase properties, rents must rise again to maintain the same relative return on investment.

Generally speaking there are two investors in every rental property: the purchaser and the lending institution. The lender's profit is determined by the interest it charges and the percentage of defaults it copes with. The purchaser's profit is determined by

[115] 84 N.Y.2d 385 (1994) *cert denied*, 514 U.S. 1109 (1995).

the return it realizes on the amount of capital it has placed at risk. In a very real sense, virtually all owners of rent stabilized properties receive market rate profit levels.[116] That is because purchase prices are wholly unregulated and market driven.

The rent stream of any given building will determine its market value. Although the Board sets the rents, it cannot order an investor to pay more (or a seller to take less) than the building is worth in market terms. Thus, if the Board sets a rent below market, it will limit a building's appreciation and value. Any purchaser of that building will pay less for it in order to ensure that the investment is worthwhile. Whether the investment was a wise one will depend on how well the investor predicted future rent streams given the regulatory environment in which the building operates. The ultimate effect of rent stabilization is, therefore, to mute property values – not profits.[117] In the absence of rent regulation an investor would presumably pay more for the subject property, and, in a sense, gamble against what the market would bring in terms of changes in demand. Under rent regulation, the investor pays less and gambles against what regulatory authorities will do.

Of course, the Board may affect profit levels in unforeseen ways if it acts unpredictably or erratically. Thus, if the Board gave a far larger rent increase than its prior practices would have suggested, prudent investors would be awarded with an unexpected windfall. Conversely, if the Board adopted rent adjustments well below those suggested by its past actions, the reasonable expectations of owners who purchased stabilized buildings would be frustrated.

In sum, one factor in ensuring fair *profit* levels is steady and predictable behavior on the part of the Rent Guidelines Board. Stable behavior on the part of the Board allows new investors to make a rational assessment of whether or not the asking price of a particular building is competitive relative to other investments.

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[116] A notable exception to this generalization would be those owners who purchased buildings in an open market environment and were subsequently subjected to rent regulations. The precise proportion of such buildings in the stabilized stock is not known, but is thought to be relatively small.

[117] Notably, in empirical terms, the actions of the Rent Guidelines Board have not been shown to mute growth in the re-sale value of rent stabilized buildings. In a survey of real estate transactions for rental buildings in New York City covering the period from 1976 through 1993, median sales prices increased over 400% while the national inflation rate increased at less than half that rate. See *Sales Price Data, Rent Stabilized Housing in New York City: A Summary of Rent Guidelines Board Research*, 1993, p. 112. Although this increase may be affected by a variety of factors, such as the type and quantity of buildings being sold, this consistent trend does suggest that, in general, the RGB has not acted to frustrate the reasonable expectations of good faith investors.

The Commensurate Rent Formula

Stability requires that the Board monitor the changing relationship between operating costs and rent levels. The general approach taken by the Rent Guidelines Board over the past three decades has been to "keep owners whole" for changes in operating costs, and to protect net operating incomes from the effects of inflation. This has been accomplished, with varying degrees of accuracy, through the use of an annual price index of operating costs, along with certain formulas falling under the heading of "the commensurate rent adjustment." The "traditional" commensurate formula simply attempted to ensure that net operating income was preserved in nominal terms – unadjusted for inflation.

The commensurate rent formula has evolved over the years to a rather precise mechanism that reflects actual lease renewal and vacancy patterns from year to year. In addition, an adjustment has been added to preserve net operating income against the effects of inflation. A complete discussion of the various formulae used to construct the commensurate adjustment is included in Appendix J.

The commensurate is neither a rent floor nor a ceiling. When the commensurate is relatively high, the Board tends to adopt guidelines somewhat lower than it suggests. When it is low, the guidelines typically exceed it. For example, in 1990, when a 21% spike in fuel and utility costs resulted in a commensurate rent adjustment of 7.3% for one-year leases and 9.5% for two-year leases (under the "traditional" formula), the Board adopted a 4.5% for one-year leases and a 7% for two-year leases. In 2000, the traditional formula suggested a 4.8% one-year guideline and a 6% two-year guideline; the CPI adjusted formula suggested a 6% one-year guideline and a 10% two-year guideline (largely due to fuel costs). The Board adopted a 4% one-year guideline and a 6% two-year guideline.

By comparison, in the low inflation years of 1995, 1998 and 1999, when the traditional commensurate was 0% for one-year leases and ranged from 1.1% to 1.8% for two-year leases, the Board adopted 2% increases for one-year leases and 4% increases for two-year leases. For further detail, see the chart of commensurate rent increase formulas as presented to the Rent Guidelines Board, the PIOC percent change and final rent guidelines.

Table IV.

Commensurate Rent Increase (as reported to RGB)

Year	PIOC Change	Traditional		Net Revenue w/ Vacancy		Net Revenue w/o Vacancy		CPI-Adjusted w/ Vacancy		CPI-Adjusted w/o Vacancy		Rent Guidelines	
		1-YR	2-YR	1-YR	2-YR	1-YR	2-YR	1-YR	2-YR	1-YR	2-YR	1-YR	2-YR
1994	**2.0%**	1.4%	2.6%	1.0%	1.75%	1.75%	2.5%	2.0%	3.0%	2.5%	4.0%	2.0%	4.00%
1995	**0.1%**	0.0%	1.1%	_	_	_	_	_	_	_	_	2.0%	4.00%
1996	**6.0%**	4.0%	5.0%	3.0%	4.0%	5.0%	7.0%	4.5%	6.0%	7.0%	8.0%	5.0%	7.00%
1997	**2.4%**	1.6%	2.2%	_	_	1.5%	3.0%	_	_	2.5%	4.5%	2.0%	4.00%
1998	**0.1%**	0.0%	1.1%	_	_	0.0%	0.0%	_	_	0.5%	1.5%	2.0%	4.00%
1999	**0.03%**	0.0%	1.8%	_	_	0.0%	0.0%	_	_	0.0%	1.5%	2.0%	4.00%
2000	**7.8%**	4.8%	6.0%	4.0%	7.5%	6.5%	9.5%	6.0%	10.0%	8.5%	12.0%	4.0%	6.00%
2001	**8.7%**	5.2%	5.9%	4.5%	8.0%	6.5%	11.0%	6.5%	10.5%	9.0%	13.0%	4.0%	6.00%
2002	**-1.6%**	0.0%	0.0%	-5%	-3.5%	-2.3%	-1.0%	-3.5%	-1.8%	0.0%	0.0%	2.0%	4.00%
2003	**16.9%**	10.4%	12.6%	12%	16%	15%	20%	13.5%	18%	16%	23%	4.5%	7.50%
2004	**6.9%**	4.3%	5.5%	2.5%	4.5%	5.5%	9.0%	4.0%	7.0%	7.0%	11.5%	3.5%*	6.5%*
2005	**5.8%**	3.6%	5.9%	2.5%	4.5%	4.25%	8.0%	4.0%	7.0%	6.5%	10.5%	2.75%*	5.5%**
2006	**7.8%**	5.3%	7.5%	5.0%	9.5%	6.5%	11.0%	6.5%	12.0%	8.0%	13.5%	4.25%*	7.25%
2007	**5.1%**	3.6%	6.8%	3.25%	5.75%	4.5%	7.5%	4.5%	8.0%	5.75%	9.75%	3.0%	5.75%
2008	**7.8%**	5.4%	8.1%	4.75%	9.5%	6.25%	11.5%	6.0%	11.25%	7.5%	13.25%	4.5%♦	8.5%♦
2009	**4.0%**	2.7%	3.5%	1.75%	2.5%	3.5%	5.5%	3.25%	5.0%	5.0%	8.0%	3.0%♦	6.0%♦
2010	**3.4%**	2.4%	4.8%	1.25%	2.25%	2.75%	5.5%	1.5%	2.5%	3.0%	5.75%	2.25%	4.5%
2011	**6.1%**	4.2%	6.9%	3.25%	6.5%	4.75%	9.5%	4.0%	7.5%	6.0%	10.0%	3.75%	7.25%
2012	**2.8%**	1.9%	4.3%	1.25%	2.0%	2.25%	4.0%	2.5%	4.0%	3.75%	6.0%	2.0%♦	4.0%♦
2013	**5.9%**	4.0%	4.9%	3.25%	6.25%	5.0%	9.0%	4.25%	7.25%	6.25%	9.75%	4.0%	7.75%
2014	**5.7%**	3.8%	4.4%	3.0%	5.75%	4.75%	8.5%	3.75%	6.75%	5.5%	9.5%	1.0%	2.75%
2015	**0.5%**	0.3%	1.7%	-2.0%	-1.0%	0.0%	1.5%	-1.5%	-0.5%	0.75%	2.0%	0.0%	2.0%

Source: Price Index of Operating Costs reports 1989-2015; RGB Orders #26-47. *Guidelines are 0.5% lower for tenants that pay for their own heat. **Guideline is 1% lower for tenants who pay their own heat. ♦Minimum" guidelines for these years were also passed by the RGB. See the specific orders for more details.

The practice of "smoothing" out year-to-year adjustments to obtain a steady pattern of increases, although not without its critics, has been a consistent feature in past RGB orders. This may, in part, be due to the fact that approximately one third of tenants do not experience renewals in any given year. Those tenants in the second year of a two-year lease, signed under a prior guideline, may either miss, or be consistently hit by periodic jumps in the guidelines. Consequently, the Board has leaned against mechanical application of the commensurate rent formula.

Historically, the Board has managed to maintain a very stable relationship between building incomes and expenses. Indeed, the best evidence available to the Board's staff suggests that pre-war buildings, which include more than two out of three stabilized units, have witnessed a substantial increase in relative net operating income since 1970. This resulted from a decline in the proportion of each rent dollar devoted to operating expenses (the "O&M to Rent Ratio"). This occurred despite the fact that aging buildings usually tend to see a rise in the O&M to Rent Ratio over time. Relative returns in post-war buildings are more difficult to track, but appear to be stable. Overall, the RGB staff has estimated that in 1967 about 62% of rent was devoted to operating expenses. By 1997, in essentially the same group of buildings, only 59% of rent went to operating costs. As a result, average net operating income rose from 38% to 41% of rent over the period of stabilization. A detailed analysis of this issue was set forth in a May 13, 1999 memo to the Board, and is included herein at Appendix K. The usefulness of this memo cannot be overstated. It provides the best evidence available to the Board of the effects of rent stabilization on operating returns since the rent stabilization system began. The original income and expense review from 1993 is also included herein in Appendix K1.

Protection Against Tenant Abuses

In attempting to equalize bargaining relations between owners and tenants the rent regulation laws conferred special benefits on tenants that were generally intended to protect their welfare. If such benefits are exchanged for the personal enrichment of the tenant, or if put to frivolous use, the objective of the laws would be undermined. Consequently, the rent stabilization laws prohibit or limit tenants from engaging in such practices as subletting or assigning apartment leases at a profit; assigning leases without the owner's consent; passing lease renewal rights on to occupants who have no legally recognized relationship with the tenant; or claiming the protection of rent regulation when the apartment is not used as a primary residence. In addition to these prohibitions, the rent laws continue to permit the remedy of eviction for practices that are generally recognized as abuses. These practices include non-payment of rent, maintaining a nuisance, use of the unit for illegal or immoral purposes or refusal to provide access for repairs.[118]

Subletting

Subletting rent stabilized apartments is permissible under limited circumstances. Apartments may be sublet for two years in any four-year period if the owner has agreed to the sublet. The tenant must, however, be able to establish that the apartment will be maintained for his or her primary residence and that s/he intends to return to it upon the expiration of the sublease.[119] An owner may not unreasonably refuse to grant permission to sublet, and a failure to respond within 30 days to a request from the tenant for permission to sublet is considered an approval of the request. This procedure is described in detail in the Real Property Law §226-b, which governs all

[118] Procedures used in eviction proceedings are generally governed by Article 7 of the Real Property Actions and Proceedings Law.
[119] See RSC §2525.6.

sublets in buildings with four or more units. In rent stabilized apartments subtenants may not be charged any rent in addition to the stabilized rent except for the following:

- Ten percent may be added by the prime tenant for furnishings - the 10% **furniture allowance** is a constant statutory percentage and is not affected by actions of the Rent Guidelines Board. This fee is paid by the subtenant to the prime tenant; and
- The **sublet allowance** under the rent guideline in effect at the commencement of the prime lease may be added by the owner. This allowance percentage is determined annually by the Rent Guidelines Board. The sublet allowance is paid by the subtenant to the prime tenant, who in turn pays it to the owner.

Lease Assignment

A rent stabilized tenant may not freely assign his or her lease (i.e. transfer to another all rights under the lease). According to §226-b of the Real Property Law, written permission of the owner is required unless a right to assign is already contained in the lease. If the owner unreasonably withholds such permission, the tenant's only remedy is to gain release from the lease after 30 days notice to the owner. If permission to assign is granted, the owner is entitled to increase the rent by the vacancy allowance in effect at the time the departing tenant last renewed his or her lease.

Tenants are generally obligated to honor their lease obligations throughout the lease period. Tenants who vacate before their leases expire may be held liable for rent due through the remaining period.

The limitations on assignments should not be confused with the "succession rights" of occupants of the apartment who are family members as defined in §2520.6(o) of the Rent Stabilization Code. These occupants may have the right to renew the lease in their own name upon the death or departure of the tenant of record.[120]

Succession Rights

Spouses or family members[121] who have resided in the apartment for the qualifying periods provided in the Rent Stabilization Code may remain in the apartment as fully

[120] See RSC §2523.5(b).

[121] "Family member" is defined as a husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law of the tenant or permanent tenant. See also page 39 for a discussion of changes to the definition of family member under the Rent Regulation Reform Act of 1997.

protected rent stabilized tenants. The inclusion of adult lifetime partners within the definition of spouse or family member is recognized by the Division of Housing and Community Renewal and has been upheld by the courts.[122]

Primary Residence

Under §2524.4 of the Rent Stabilization Code an owner may refuse to renew the lease of any tenant who does not occupy his/her apartment as a primary resident. The evidence necessary to establish non-primary residence is left to the discretion of "a court of competent jurisdiction". Often tax filings, voter registration records, utility bills, drivers licenses and other evidence of a regular presence in the unit are reviewed.

Finally, tenants who refuse to execute properly offered leases are subject to eviction.[123]

Roommates

A rent stabilized tenant's right to have a roommate is secured by Section 235-F of the Real Property Law, which governs additional occupants in all types of housing. Prior to the last revision of the Rent Stabilization Code, a tenant's right to charge rent to an additional occupant was unlimited. Under § 2525.7 of the new code, rent stabilized tenants may charge roommates no more than a proportionate share of the rent. A proportionate share of the rent is determined by dividing the legal rent by the total number of tenants named on the lease and the total number of occupants in the apartment. However, a tenant's spouse and family, or an occupant's dependent child, are not included in the total.

THE ADMINISTRATION OF RENTS UNDER RENT STABILIZATION: THE ROLE OF THE DIVISION OF HOUSING AND COMMUNITY RENEWAL

As discussed in the section dealing with the history of rent stabilization, the State Division of Housing and Community Renewal ("DHCR"), through its Office of Rent Administration ("ORA"), is responsible for administering rent stabilization (along with rent control). The DHCR has three major roles within the rent stabilization system: It has the quasi-legislative role of promulgating the Rent Stabilization Code. It has the executive role of administering the various filing, registration and special

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[122] This regulation was upheld by the N.Y. State Court of Appeals. See *Lease Succession Regulations Upheld*, N.Y.L.J., 12/22/93, page 1, col. 3, describing the court's ruling in *RSA v. Higgins*, 164 AD 2d 283 (1st Dept. 1990), Affirmed, 83 N.Y. 2d 156 (1993), *cert denied*, 512 U.S. 1213 (1994).
[123] See RSC §2524.3(f).

rent adjustment provisions of the Code, and in prosecuting those who violate any part of it. And finally, it has the quasi-judicial role of judging the merits of claims brought pursuant to the Code between tenants and owners in accordance with the standards applicable to administrative tribunals. If appealed, such determinations are subject to review by the state courts. What follows is a brief discussion of those areas where the decisions of the DHCR may affect rent levels.

Major Capital Improvements and Individual Apartment Improvements

The introductory paragraphs of a June 1989 report entitled Review of the Major Capital Improvement Program prepared for the DHCR by Ernst & Whinney and Speedwell, Inc., outline the issues and objectives related to this program:

> *In an attempt to maintain and improve the condition of rent regulated housing in New York, owners who undertake building-wide major capital improvements (MCI's) have historically been allowed increases in base rents over and above annual rent guidelines and MBR rent increases to compensate them for such investments. These increases are allowed without the consent of tenants if the improvements are for "the operation, preservation and maintenance of the structure" and are approved by the Division of Housing and Community Renewal (DHCR). In addition, one-fortieth of the cost of improvements made to individual apartments can be added to the monthly base rent with the tenant's consent or if the apartment is vacant.*
>
> *The concept of rewarding owners by increasing their internal rate of return has always been controversial, since the increase is basically financed by the tenants who occupy the building and do not have a significant role in approving the improvements. Representatives of tenant interests argue that the potential for MCI increases encourages owners to delay maintenance activity, for which no incentive is provided, in order to qualify for the MCI program and its investment incentives. In addition, increases to base rents impact tenant affordability. Representatives of owner interests argue that a rent regulated system removes their ability to recapture replacement costs without special consideration, and that the current incentive levels are not sufficient to attract needed improvements (p.1).*

Basically, the major capital improvement program allows owners to increase monthly rents by a formula that allocates $1/96^{th}$-$1/108^{th}$ (depending on whether the building size is 35 units or less) of the cost of the improvements among the units in the building. Rents may not be increased by more than 6% per year (15% for rent controlled units), however, and owners must often wait two or three years before the full allocation is fully incorporated into the building's rent structure. Thus, if 1/96th of the cost of a given improvement would ultimately permit a 10% increase in monthly rent, the tenant will receive a 6% MCI rent increase in year one and a second increase equaling 4% of the original rent in year two.[124] These increases are added separately and apart from increases granted by the Rent Guidelines Board. Once the rents have been increased they remain part of the base rent even after the expiration of the "amortization" period.[125] Major capital improvements may also qualify for J-51 tax benefits but a portion of the rent increases must be forgone if these benefits are granted. MCI increases must be approved by the DHCR before they may be collected. Tenants are notified of the MCI application and given an opportunity to object.

Where new appliances or improvements to individual apartments are concerned, 1/40th of the cost is added to the apartment's base rent in buildings with 35 or fewer units and 1/60th the cost in buildings with more than 35 units. The owner is required to obtain permission from the tenant who occupies the unit to qualify for this type of rent increase. If the apartment is vacant, the rent of the subsequent tenant is simply adjusted and no approval is necessary. There is no cap on the annual increase in rent that may be collected as a result of the improvement and the prior approval of DHCR is not required.

Rent increases resulting from major capital improvements and individual apartment improvements received a great deal of attention at the hearings of the Rent Guidelines Board in the late 1980's. Tenants often asserted that guideline adjustments should take into account the returns being realized by owners through these programs. Owners argued that, taken as a whole, they are still under–compensated for their investments. According to the above quoted study, "the estimated rate of return for the sample [of 1003 MCI applications studied], excluding a few J-51 ineligible buildings, was 18.2%"(p.3). This figure is somewhat overstated, however, since the "amortization period" was five years or sixty months when the study was conducted. Legislation in 1990 [perhaps in response to the study's findings] extended the amortization time to a seven-year or 84-month period, thus reducing the allowable rent increase.

Based upon an "analysis of the provisions of the [individual apartment] program" the "annual after tax rate of return ... was estimated to be 33.9% if the

[124] The practice of adding an additional increase of 6% (for a total of 12%) to make up for delays in processing MCI applications was stricken by the N.Y. Court of Appeals in *Bryant Ave. Tenant's Association v. Koch* 71, N.Y. 2d 856 (1998).

[125] This aspect of the MCI program has been upheld by the New York State Court of Appeals (*Ansonia Residents Assn. v. DHCR*, 75 N.Y. 2d 206 (1989)).

improvements were not financed and 68.5% if 60% of the improvements were financed."(p.3). Despite a DHCR initiative to raise the amortization period (and thus reduce the rate of return) the forty month period for this program remains in effect and was codified in statute with the adoption of the Rent Regulation Reform Act of 1993. Since no prior approval is needed for the individual apartment improvements, no delay in obtaining these increases is incurred.

Hardship Rent Increases

A rent regulation system that required owners to maintain artificially reduced rents in the face of chronic operating losses would be viewed as confiscatory. Nearly every rent regulation system allows for some type of rent adjustment to remedy such situations.

Under rent stabilization in New York City there are two formulas for determining whether a rent increase is appropriate in hardship cases: the **comparative** method and the **alternative** method. Under the comparative method a rent increase may be granted if the owner has not maintained the same average net income in the current three year period as was maintained for the years 1968-70 (marking the beginning of rent stabilization). If records are unavailable, a more recent three-year period may be substituted, under certain conditions.

The hardship application will not be approved unless the owner can demonstrate that:

- the present rate of return on the owner's equity (fair market value minus the unpaid principal amount of the mortgage indebtedness) is less than 8.5%;
- s/he has owned the building for at least three years;
- no previous hardship application has been granted in the past three years;
- real estate taxes and water and sewer charges have been paid or have been lawfully challenged; and
- all services are being maintained and immediately hazardous violations have been corrected or restoration and correction has been made a condition of granting the increase.

In calculating the rate of return the Code establishes six times the rent roll as the fair market value. Operating expenses, an allowance for management services and "actual annual mortgage debt service" are subtracted from gross rents to determine if the remaining balance falls short of 8.5% of the owners equity in the building. If it does, and all other conditions are satisfied, the owner may obtain rent increases equal to the difference between the average annual net income for the three-year base period and the average annual net income for the current period. Rents may be raised no more than 6% in any one-year period, however, and tenants may cancel their leases if they wish to leave and avoid the increases.[126]

Under the **Alternative Hardship** formula established by the Omnibus Housing Act of 1983, owners are permitted to receive a rent increase when the building's annual operating expenses (including mortgage interest) are greater than 95% of the gross rent. To qualify for a hardship increase the owner must:

- have owned the property for at least three years;
- have at least a 5% equity position;
- not have received a hardship increase within the previous three years;
- have paid or have lawfully challenged real estate taxes and water and sewer charges; and
- have maintained all services and corrected all immediately hazardous violations or restoration and correction has been made a condition of granting the increase.

Like comparative hardship, rents may be increased no more than 6% per year until the hardship has been remedied and the tenant may avoid the increase by canceling the lease.[127]

According to a 1989 report on hardship increases prepared by the Policy and Research Bureau of DHCR, "from 1984-1988 inclusive, 128 alternative hardship applications were reviewed. Of these, 92 were denied, 1 was approved, 33 were pending and 2 were withdrawn." Eleven comparative hardship applications were reviewed. Ten were reported as "denied for being incomplete" and one was pending.
The report went on to suggest some of the most likely reasons for the limited number of applications and the extremely low approval rate:

- "Owners are not losing money".
- Because of tenant affordability problems "owners...are not interested in a complicated filing for a rent increase they cannot collect".
- "The hardship application suffers from 'bad press'".
- Many small owners cannot afford the services of an accountant, may not keep good records and may "face language barriers and other handicaps in dealing with the rent regulation structure".
- "The hardship application process is too complex".
- Economic conditions including length of ownership, mortgage costs and purchase price have operated to help limit the prevalence of true hardship cases.

[126] See RSC §2522.4(b) and RSL 26-511(c)(6).
[127] See RSC §2522.4(c) and RSL 26-511(c)(6-a).

> Yet, "the current low level of applications received, may change radically with the slowdown of New York City's economic expansion."

Little has changed in the past 20 years. The approval rate of hardship applications remains almost non-exsistent and the number of applications received annually continues to be very low. According to testimony from DHCR before the RGB in June of 2015, two hardship applications were filed in 2014. This is an area of consistent concern to the RGB and the focus of possible legislative reform by DHCR. The return guaranteed by the hardship program was the subject of an unsuccessful constitutional challenge in the U.S. 2d Circuit Court of Appeals.[128]

Fair Market Rent Appeals: (Apartments moving from Rent Control to Rent Stabilization)

As noted in the section concerning the history of rent regulation, most apartments under rent control will become rent stabilized upon vacancy. Over 700,000 formerly rent controlled units have fallen under rent stabilization this way, although only a small fraction of newly stabilized tenants will challenge their rents. Because the relationship of rents in rent controlled units to prevailing market rents varies dramatically from unit to unit, a standard increase upon becoming rent stabilized would result in stabilized rents which themselves are erratic and inconsistent in their relationship to market rents. To avoid this the authors of the ETPA wanted to provide a large degree of flexibility in the setting of rents when rent controlled units become stabilized. They did not, however, want to deprive tenants in newly stabilized units of an opportunity to protest rents that bear no reasonable relationship to a "fair" market amount. Consequently, a system was adopted which allows tenants to challenge newly stabilized rents in formerly rent controlled units through what is known as a "Fair Market Rent Appeal".

This process begins with the vacancy of a rent controlled tenant. Recall that rent controlled units may be found in any building constructed prior to February 1, 1947, with three or more legal units and occupied by the same tenant since June 30, 1971 or occupied by the tenant's lawful successor (a spouse, adult lifetime partner or other family member). Rent controlled units that are in 3, 4 or 5 unit buildings do not become stabilized upon vacancy and, consequently, no process for appealing rent levels is available. If the vacated apartment is in a building with 6 or more units, although stabilized, the owner is initially free to advertise the apartment for any amount. The owner must, however, notify any new tenant of his/her right to challenge the rent within 90 days by providing the tenant with an "Initial Legal Regulated Rent Notice". If the

[128] See case #16, supra at 43-44.

tenant decides to challenge the rent, the tenant "need only allege that [the Initial Legal Regulated Rent] is in excess of the fair market rent and ... present such facts which, to the best of his or her information and belief, support such allegation".[129]

Once the appeal is filed, two methods are employed in attempting to determine if the new rent is legally "fair". The DHCR will look to a special guideline promulgated by the Rent Guidelines Board [more will be said about how this guideline is established on pages 92-94]. Until 1988 this special guideline took the form of a percentage increase above the pre-existing Maximum Base Rent for the unit. From 1988 through 1990 the Board experimented with alternative formulas above the Maximum Collectible Rent or "MCR" [See page 29 for the distinction between MCR & MBR]. Returning to the original approach, in 1991 and 1992 the special guideline consisted of a fixed rate of 15% above the MBR. In an attempt to close the gap between rents in pre-47 stabilized units and rents in recently decontrolled units, in 1993 the Board moved to a straight 40% increase above the MCR.

In later years the Board added a minimum increase above both the MBR and the MCR. Thus, in 1995 the special guideline consisted of the greater of 35% above the MBR or 45% above the MCR. In 1996 and 1997 the numbers were 40% and 50% respectively. In 1998 the Board increased the special guideline to the greater of 80% above the MBR or a minimum of $650. In 1999, 2000, and 2001 the Board adopted a complex special guideline consisting of the greater of 150% above the MBR plus the fuel cost adjustment, or the Fair Market Rent for existing housing established by the U.S. Department of Housing and Urban Development. Beginning in 2002, this was lowered to 50% above the MBR or the HUD Fair Market Rent, and the fuel cost adjustment was eliminated. Beginning in 2011, this amount was lowered again, to 30% above the MBR or the HUD Fair Market Rent.

The DHCR will also consider "rents generally prevailing in the same area for substantially similar housing accommodations". This is known as the "comparability" standard. The owner may submit evidence of rents for comparable units rented to tenants up to four years prior to or one year subsequent to the commencement of the complaining tenant's initial lease. Leases ending more than one year prior to the commencement of the complaining tenant's lease are updated by guideline amounts. Alternatively, "[a]t the owner's option, market rents in effect for other comparable housing accommodations on the date the tenant filing the appeal took occupancy" may be considered.[130]

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[129] See RSL §26-513(b), included in Appendix O.
[130] RSC 2522.3(e)(2).

The Office of Rent Administration will average the rent adjusted pursuant to the Special Guideline with any qualified comparable rents in reaching a final rent determination in a Fair Market Rent Appeal. Thus, the comparability standard does not operate in a manner that is wholly independent of the Special Guideline. Notably, unlike other rent overcharges, rents paid in excess of the Fair Market Rent determined by the DHCR are not subject to treble damages.

It is critical to note that if the newly established legal rent exceeds $2,700 upon vacancy the apartment can become deregulated in accordance with the Rent Act of 2015.

Overcharge Proceedings

The Rent Stabilization Code clearly prohibits charging rent in excess of the legal regulated rent and this includes a prohibition against demanding "key money" or any other special charge not specifically authorized by the Code.[131] The amount of the security deposit and the distribution of interest from such deposits is also regulated by the Code.[132] Willful rent overcharges may result in a penalty to be paid to the tenant equal to three times the overcharge. Treble damages for willful overcharge claims may be collected for only two years of the overcharge. An overcharge which the owner demonstrates not to have been willful will result in a straight repayment of the overcharge to the tenant plus interest. Damages for non-willful overcharge claims may be had for up to four years prior to filing the overcharge claim.[133] Both the Rent Stabilization Code and Section 213-a of the State's Civil Practice Law and Rules prohibit consideration of evidence of a rent overcharge occurring more than four years prior to the filing of the complaint. It is important to note that certain courts (most notably the Housing part of the Civil Court of the City of New York) have concurrent jurisdiction with the DHCR over rent overcharge claims.

Other Adjustments in Rent: air conditioners, failure to maintain services, failure to register

Air Conditioners

In buildings <u>where the owner provides electricity</u> to individual tenants as part of the services covered by the base rent [approximately 10% of stabilized units], the owner may add a special separate charge for air conditioner usage when a new air conditioner

[131] See RSC §2525.1 et seq.

[132] See RSC §2525.4; see also General Obligations Law, Article 7 - The security deposit laws are enforced by the State Attorney General's Office.

[133] See generally RSC §2526.1.

is installed. If the air conditioner is installed by the tenant the owner may charge the monthly amount permitted by the DHCR in accordance with its most recent operational bulletin update on air conditioner rates. (See DHCR's thirtieth annual update of section B of supplement No. 1 to operational bulletin 84-4. For the period from 10/1/15 through 9/30/16 - permitting a $29.94 per month charge per air conditioner if electricity costs are included in the rent). If installed by the owner with the tenant's permission, the same amount may be collected and, in addition, the owner may collect 1/40th or 1/60th of the cost of the air conditioner as permitted by §2522.4(a)(1) of the Code.

Failure to Maintain Services

As noted in the discussion concerning habitability (*supra*, at pages 69-71), failure to maintain the services required under §2520.6(r) of the Rent Stabilization Code could result in a rent reduction equal to the last guideline increase. The DHCR is responsible for reviewing these applications.[134] Most of the services covered are protected by the warranty of habitability, however, and it is often the case that tenants will resolve service complaints in a housing court proceeding - most typically in response to an owner's action for non-payment of rent. Notably, new amendments to the Rent Stabilization Code have classified a number of service reductions as "deminimus" and therefore not substantial enough to result in a DHCR ordered rent reduction (RSC 2523.4(e)).

Appliance Surcharges (Dishwasher, Washing Machine, Dryer)

Effective with Operational Bulletin 2005-1, in March of 2005, the DHCR began allowing landlords to charge a surcharge to tenants with tenant-installed dishwashers, washing machines, and dryers. While landlords are not required to allow tenants to install their own dishwashers, washing machines, or dryers, where the landlord does consent the surcharge compensates the landlord for the extra water and electricity used by such appliances. Rates differ based on whether electricity is or is not included in the rent of the apartment. For washing machines, in electrical exclusion buildings the monthly surcharge is $20.76 per month, and is $22.23 for electrical inclusion buildings. For dryers, the rates are $0.00 per month for exclusion buildings and $12.29 for inclusion buildings ($8.88 for gas powered dryers in electrical inclusion buildings). For dishwashers the rates are $5.17 and $7.12 respectively. The surcharge is not part of the permanent rent and can be reviewed annually by DHCR.

[134] See RSC §2523.4

Failure to Register

The Rent Stabilization Code requires owners to register all rent stabilized units.[135] Failure to register will bar an owner from collecting any rent increase for the period during which the apartment was required to be registered but was not. Once a late registration is properly filed the owner may collect these increases on a prospective basis only. Thus, the tenant is not obligated to pay any rent increase until the unit is properly registered and the owner may not recoup his/her losses by registering late. The Rent Regulation Reform Act of 1993 added that if rents collected on unregistered units "were lawful except for the failure to file a timely registration, the owner, upon the service and filing of a late registration, shall not be found to have collected an overcharge at any time prior to the filing of a late registration. If such late registration is filed subsequent to the filing of an overcharge complaint, the owner shall be assessed a late filing surcharge for each late registration in an amount equal to fifty percent of the timely rent registration fee."[136]

High Rent Vacancy Deregulation

Apartments where the legal rent is $2,700 per month or more may no longer subject to rent regulation. Vacancy deregulation of high rent units has been in effect since July 7, 1993 under the provisions of the 1993 Rent Regulation Reform Act. Notably, a stabilized rent can exceed $2,700 per month and remain stabilized if the same primary tenant remains in the apartment and renews his or her lease, and they are not otherwise subject to high income deregulation.

High Income Deregulation

If the legal regulated rent for an apartment exceeds $2,700 per month and the total household income for two consecutive years exceeds $200,000 per year, the apartment is subject to statutory decontrol. Confirmation of income is a process that involves the filing of an income statement with the DHCR if the owner makes a proper demand. If the tenant fails to respond in a timely fashion, the unit is subject to destabilization by default. If an income certification is received, the DHCR will check it against the records of the State Department of Taxation and Finance. If such a check confirms an income greater than $200,000 a destabilization order will issue.

[135] See RSC §2528.
[136] Rent Stabilization Law §26-517(e).

DUTIES OF THE RENT GUIDELINES BOARD

Establishment of basic rent adjustments for renewal leases: Apartments, Hotels and Lofts

The one decision of the Rent Guidelines Board that has, by far, the greatest impact on owners and tenants is the annual establishment of lease renewal guidelines. These guidelines traditionally include a percentage increase in the monthly contract rent. For example a 2% increase in the monthly rent for a one-year lease renewal. In recent years, the Board has also included a minimum rent increase in the form of a fixed dollar adjustment. For example, a 2% increase or $20, whichever is greater, for a one-year lease renewal. Historically, past boards have included other forms of increase, i.e. a supplemental rental adjustment and minimum rents. These increases are dicussed in detail below.

Since 1983 tenants have had the option of choosing between one and two year renewal leases.[137] An estimated 86% of all stabilized tenants have a renewal lease, and 14% move or 'turn over,' each year. Almost 50% of all stabilized tenants with leases regularly sign one-year leases, leaving just over 50% of tenants who sign two-year leases. Approximately half of those choosing two-year leases remain unaffected by any given guideline - being in the second year of a two-year lease signed under the previous guideline.[138] Consequently, about 65% of the approximately one million rent stabilized households are directly affected by the adoption of any single set of annual renewal guidelines.

The economic impact of these guidelines on the City's housing stock is enormous. Given 2014 rent levels (as estimated by the HVS), any 1% increase in average rents raises aggregate rent rolls by about $159 million dollars per year. Based on estimated rent rolls (including an estimated impact of the statutory vacancy allowance) for the two guideline periods since the last Housing and Vacancy Survey was conducted (October of 2014-through September 2016),[139] for the stabilized apartment inventory as a whole, amounted to approximately $642 million in cumulative added rent - an average of about $636 in total added rent per rent stabilized household. Guideline renewal increases account for most of this growth.

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[137] Prior to the enactment of the Omnibus Housing Act of 1983 tenants were given the additional option of choosing three year leases.

[138] See note 17 following Table 7 in the Explanatory Statement for Apartments (Appendix N1) for further explanation of these estimates.

[139] This is the cumulative effect of the last four rent indices, as explained in Endnotes 17, 18 and 19 of the Explanatory Statement for Order #47 (see Appendix N1).

Two major caveats are in order. First, not all of the increases authorized by the Board are collectible. Increases in renewal guidelines may not be passed on to tenants who occupy one of the growing number of units renting at market – particularly outside of Manhattan. The second major caveat (which may more than countervail the first) is that the impact of administrative rent adjustments authorized by the Division of Housing and Community Renewal is largely unknown. The effect of thousands of major capital improvement and individual apartment improvement rent increases is not and cannot presently be measured in the rent index prepared by the RGB staff each year. Therefore, these increases are not reflected in the above estimates.

The vast majority (about one million) of tenant households affected by these guidelines are **apartment** dwellers. A small number of rent stabilized tenants (this figure is difficult to estimate) fall within the hotel stabilized group. The number of stabilized hotel units has declined dramatically in recent years as a result of building demolitions and conversions and from an increase in transient (and thus unregulated) hotel rentals.

The Board reviews the economics of hotel buildings separately from apartments pursuant to §26-510(e) of the RSL (included as part of Appendix A). It also holds hearings for hotels and adopts separate hotel orders. These orders have historically differed significantly from those given for apartments and lofts. While one year renewal increases for apartments and lofts averaged around 3% between 1996 -2000, increases for the hotel sector averaged about 1% over the same period. More than half of the guidelines for Hotels have been 0% since then.

A sound estimate of the number of **loft** units currently affected by the Board's loft guidelines pursuant to §286 of the Multiple Dwelling Law is difficult to calculate.[140] As these units are "legalized" and move from interim multiple dwelling status to class "A" multiple dwellings some may be deregulated while others may fall under apartment rent stabilization.

While the Rent Guidelines Board does conduct an independent review of the economics of loft buildings, because of significant similarities with apartments in operating cost changes over the years the Board's loft orders have generally paralleled its apartment orders, but are usually lower. Since 2009, loft orders have equaled apartment orders, while in 2008 they were a percentage point lower for one-year leases, and two percentage points lower for two-year leases.

[140] A copy of §286 of the Multiple Dwelling Law is contained in Appendix L.

Useful Appendices for Reference:

- A complete **summary of apartment and hotel increases** adopted over the years is contained in Appendices M and M1, respectively.
- A copy of the most recent **apartment guideline order** (also covering lofts) is attached in Appendix N.
- The **explanatory statement** for this order follows in Appendix N1.
- A copy of the most recent **hotel guideline** order is contained in Appendix N2 followed by the order's **explanatory statement** in Appendix N3.

Special Orders

Sublet Allowances

As discussed in the section describing the Rent Regulation Reform Act of 1997, the vacancy allowance is now established by statute, although the RGB is not precluded from adding an additional vacancy increase. The Board may, however, promulgate a special vacancy allowance for apartments occupied by subtenants, known as the 'sublet allowance.' Section 2525.6(e) of the Rent Stabilization Code provides that "the legal regulated rent payable to the owner effective upon the date of subletting may be increased by the vacancy allowance, if any, provided by the Rent Guidelines Board Order in effect at the commencement of the date of the lease, provided the lease is a renewal lease." Under Order #47, the Board authorized a 10% sublet allowance.

Supplemental Rent Adjustment

The supplemental rent adjustment is a fixed dollar amount in addition to renewal and vacancy increases which is added to rents the Board has regarded as exceptionally low. This adjustment has been one of the most controversial components of the Board's past rent orders. Owners have strongly urged the continuance of the adjustment to remedy what is viewed as unfairly low rents. Tenant advocates, on the other hand, have regarded it as a "poor tax" upon the hardest hit class of tenants and a cause of homelessness.

As shown in the following chart, the first supplemental adjustment was adopted in 1983 as part of order #15. From 1990 through 1993 no supplemental adjustment was added. In 1994 the Board reinstituted the allowance and in 1999 a minimum rent of $215 was imposed. In 2000 the Board added $15 for rents under $500 and continued the minimum rent provision. There have been no supplemental rent adjustments since Order #32 in 2000.

Table V.

Supplemental Rent Adjustments in RGB Orders 1983-2016

Order Number	Guideline Year	Rent Cut-Off	Supplement	Minimum Rent
15	10/1/83 to 9/30/84	< $200 per month	$10	
16	10/1/84 to 9/30/85	< $250 per month	$10	
17	10/1/85 to 9/30/86	< $300 per month	$15	
18	10/1/86 to 9/30/87	< $350 per month	$15	
19	10/1/87 to 9/30/88	< $325 per month	$10	
20	10/1/88 to 9/30/89	< $325 per month	$5	
21	10/1/89 to 9/30/90	< $325 per month	$5	
26*	10/1/94 to 9/30/95	< $400 per month	$15	
27	10/1/95 to 9/30/96	< $400 per month	$20	
28	10/1/96 to 9/30/97	< $400 per month	$20	
29	10/1/97 to 9/30 98	< $400 per month	$15	
30	10/1/98 to 9/30/99	< $450 per month	$15	
31	10/1/99 to 9/30/00	< $500 per month	$15	$215
32	10/1/00 to 9/30/01	< $500 per month	$15	$215

*Note: There were no supplements in RGB Orders 22 through 25 and 33-46. Source: RGB Orders # 15-47.

Special Guidelines and Decontrolled Units

As discussed in the section concerning fair market rent appeals (*supra*, at pp. 79 to 81) apartments in buildings with six or more units vacated by a rent controlled tenant will fall under rent stabilization. If the first stabilized tenant chooses to challenge the rent, the DHCR will consider the special guidelines adopted by the Board pursuant to §26-513 of the RSL (See Appendix O) in making its determination as to whether the new rent is "fair". As noted previously, in addition to this advisory guideline the DHCR will permit the owner to submit information on "rents generally prevailing in the same area for substantially similar housing accommodations." If presented with such information, the current DHCR practice is to average the rent calculated in accordance with the special guideline with the average rent for qualified comparable units.

In establishing the special guidelines, at one time the Board's policy was generally to close the gap between rent controlled rents and rent stabilized rents, the latter often being much higher. From 1974 through 1986 the Board adopted special guidelines that ranged between 15% to 20% above the maximum base rent ("MBR") established under the rent control system. In 1987 the Board took notice of information provided by the most recent Housing and Vacancy Survey which indicated that median rent stabilized rents in pre '47 buildings were approximately 35% above median rent controlled rents. Consequently, the Board increased the special guideline to 35% above the MBR in its 1987 rent orders. The following year tenant representatives argued that since the Board's stated aim for the special guideline was to close the gap between rent controlled and rent stabilized rents, and since the gap reflected in the HVS figures is really a gap between Maximum Collectible Rents[141] and stabilized rents, the special guideline should be added to the MCR and not the MBR. Acknowledging some value in retaining the MBR as the minimally desired rent, the Board's 1988 and 1989 special guidelines consisted of a 45% increase above the MCR or a 25% increase above the MBR - whichever increase was greater. In 1990 the Board moved to a fixed increase of 35% above the MCR. In 1991, responding to arguments that the MBR is a minimally sufficient rent to run a building, the Board returned to the MBR as an appropriate base from which to calculate adjustments by simply adding 15% to the MBR. This approach was continued in 1992. In 1993 the Board once again returned to the "closing the gap" approach by adding 40% to the MCR.

In later years the Board again added a minimum increase above both the MBR and the MCR. Thus, in 1995 the special guideline consisted of the greater of 35% above the MBR or 45% above the MCR. In 1996 and 1997 the numbers were 40% and 50% respectively. In 1998 the Board increased the special guideline to the greater of 80% above the MBR or a minimum of $650. In 1999, 2000, and 2001 the Board adopted a complex special guideline consisting of the greater of 150% above the MBR plus the fuel cost adjustment, or the Fair Market Rent for existing housing established by the U.S. Department of Housing and Urban Development. This percentage was lowered to 50% in 2002 (without fuel adjustments), where it remained until 2011, when it was lowered to 30%. It is currently 33%.

Notably, according to the 2014 Housing and Vacancy Survey, the median rent controlled rent (the "MCR") is $900, while the median rent stabilized rent is $1200 – a 33% difference.[142] Because the MBR is always equal to or greater than the MCR, the Board's most recent minimum adjustment of 33% above the MBR would raise a typical decontrolled unit to at least $1,200 per month, equal to the median stabilized rent.

It should be added that the Board's special guideline orders also affect buildings which have been decontrolled pursuant to section 2(f)(15)(c)&(d) [now §2200.2(f)(15)(iii)&(iv)] of the New York City Rent and Eviction Regulations. These sections concern apartments with past rent levels that made them high rent or "luxury" apartments in the mid-1960's. These units may still be decontrolled on a case by case basis pursuant to a court order. While this type of decontrol rarely occurs today, the Board's orders continue to provide protection for newly stabilized tenants who move into one of

[141] "MCR" = the amount rent controlled tenants are actually required to pay which may increase by no more than 7.5% per year. The MBR is a rent ceiling which reflects the amount theoretically required to maintain the unit and produce a fair return. The MCR never exceeds the MBR.

[142] 2011 Housing and Vacancy Survey

these previously controlled units. These decontrol guidelines have historically been identical to the special guidelines for rent controlled units which are voluntarily vacated.

Electrical Inclusion Adjustment

Approximately 90% of stabilized tenants pay for their own electricity while some 10% have the cost of electricity included in their rent. If the cost of electricity rises at a faster rate than the average increase in operating and maintenance costs and the Board does not compensate owners for this difference in its rent orders, owners who supply electricity would be at a disadvantage. Similarly, if the price of electricity were falling relative to other expenses, owners who supply electricity would reap a windfall unless the Board adjusted rents accordingly. Recognizing this, the Board has included special adjustments - both up and down - where the rate of increase for electricity costs has not paralleled changes in other costs. These "electrical inclusion adjustments" were common in the mid-1970's to the early-1980's but have not been added to any rent order since 1983 when a one percent reduction for master metered buildings was included in order #15. Master metered buildings are still analyzed separately in the Board's annual review of operating cost changes, however, and there is no indication that electrical inclusion adjustments will not be included in future rent orders.

Buildings with J-51 or 421-a Tax Abatements

As mentioned previously, owners of property completed or substantially rehabilitated after January 1, 1974 may avail themselves of 421-a (new construction) or J-51 (rehabilitation) tax abatements or similar abatements. A condition of entering these programs is acceptance of rent stabilized status for a prescribed period. The period of stabilized status and conditions for deregulation vary by program. Relevant portions of these regulations are attached as Appendix P.[143]

Owners of buildings receiving 421-a benefits may charge initial rents according to a formula that accounts for development costs and operating expenses, and, during the period of gradual diminution of their 421-a tax exemption, may only charge guideline rent increases plus 2.2% of the original rent per annum.[144] Owners of buildings with J-51 tax benefits do not receive this additional 2.2% increase.

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[143] See also RSC 2520.11 (o) &(p).
[144] See RSC 2522.5(e)(2).

Stabilizers

Stabilizers, according to a 1982 staff review, "have been authorized to take into account the yield of rent stabilized buildings relative to other investments and increases in capital costs for such buildings". They have consisted of separate additional rent increases ranging from 1% to 1/2% in orders 2, 3, 4 & 6c. They have also been explicitly "included" in the standard increases in orders 5,7,8,9,10 & 11. While the stabilizers enacted in these years are incorporated into base rents in accordance with subsequent rent orders, no additional stabilizers have been added in recent years.

Other - Fractional Terms, Escalator Clauses

Although the RSC §2522.5 provides that rent stabilized tenants have a right to choose only a one or two-year renewal lease, under certain rare circumstances a lease term may be a fraction of these periods. If that is the case, the Board's orders provide that lease terms of up to one year shall be deemed a one-year lease for the purposes of determining the appropriate rent adjustment. Similarly, a lease term of more than one year and up to two years in length is deemed a two-year lease.

Escalator clauses are provisions in lease agreements permitting periodic rent adjustments that are generally fixed or pegged to some economic indicator. Under the RSC §2522.5(e) most escalator clauses are no longer permitted in stabilized leases. According to the Board's orders, where escalator clauses continue to be permitted, the amount of any increase due under such clause must be offset against the guideline increases.

Exemptions to Orders

Warehousing Exemptions

As far back as 1972, under **hotel** order #3, the Board began adopting orders denying rent increases to owners of hotel buildings that contain a large number of units deliberately withheld from the market. It has long been argued that owners who deliberately deprive themselves of additional rents by withholding units from the market should not be heard to complain that existing rents for the remaining tenants are inadequate to produce a fair return on their investment. This view may be distinguished from attempts to eliminate warehousing on public policy grounds through the imposition of fines or other penalties. The anti-warehousing provisions of recent Board orders are an attempt to distinguish between buildings in economic terms and to adopt guidelines accordingly - not to penalize owners who choose to utilize their properties in a manner that some might find offensive.

In 1985, an anti-warehousing provision was added to an **apartment** order for the first time. Order #17 deprived owners of vacancy allowances in buildings of 50 units or more in which more than 10% of units were deliberately withheld from the market. Anti-warehousing provisions have not been retained in the Board's recent apartment orders.

Registration Exemption/Hotels

The stabilization provisions governing hotels are distinct from those governing apartments in one fundamental respect: vacant hotel units may be rented to transient tenants who are generally not protected by the rent stabilization laws.[145] Prior to 1983, rents in hotel units that became vacant were allowed to go to market. They were thereafter re-stabilized if the unit became occupied by a permanent tenant. In 1983 the language permitting market rents upon vacancy was deleted. New tenants were not automatically given rent stabilized status under this legislation, however, and are still required to request a lease or reside in the unit for six months before becoming "permanent" (and thus stabilized) tenants. Upon becoming a permanent tenant, the DHCR will require that the rent be rolled back to the level that existed under the last stabilized tenancy, plus any renewal increase. Consequently, the hotel stabilization laws continue to permit several classes of tenants within a single building: those who are long term stabilized tenants, those who are transient tenants and as such pay open market rents, those who reside units with rents which exceeded $350 per month or $80 per week on 5/31/68 and thus were never stabilized,[146] and those new tenants who request leases or reside in their unit for six months and thereby become rent stabilized.[147] It is easy to see that owners have significant incentives to rent only to transient tenants and the Board has received testimony that such practices are commonplace.

Recognizing that owners who reap market rentals from transient tenants may have less of a need for rent increases from other tenants, the Board, in many recent hotel orders, adopted special exemptions for buildings which show limited occupation by rent regulated tenants. Because rent registration data compiled by the DHCR indicates the number of stabilized units and those not stabilized in a given hotel or SRO, the Board uses this ratio to establish the criteria for implementing its "registration exemption". For instance, the provision (under Hotel Order #41)

[145] Such tenants may have the right to become permanent and thus rent stabilized tenants pursuant to §2522.5(a)(2) of the RSC, as well a right to be notified of the protections afforded by rent stabilization [RSC §2522.5(c)(2)], but these protections may have been thwarted to some extent by the use of "short-stay" agreements and by other actions designed to deprive tenants of legal process (required under NY Admin. Code § 26-521) prior to being locked out.
[146] See RSL §26-506.
[147] See RSL §26-510(e).

allowed for no rent increase if fewer than 85% of the residential units in a building are occupied by permanent rent stabilized or rent controlled tenants paying no more than the legal regulated rent.

In 1991 the RGB staff compiled data on operating expenses and registration levels in the stabilized hotel sector. As the report indicated, it appeared that at least 40% of the hotel stabilized universe of buildings had never been registered with DHCR. The most severe non-registration problem appears to be with rooming houses in the outer boroughs. In 1992 the staff added to the report by compiling data which indicated, among other things, that the transient problem is largely confined to Class B hotels - where [in hotels registered with the DHCR] an average of only 57% of units were registered as stabilized. Copies of these two staff reports on hotels are included in Appendix Q and Q1.

In addition to the registration exemption, the RGB has refused rent increases to owners who fail to provide new hotel occupants with a copy of the "Rights and Duties of Hotel Owners and Tenants, pursuant to Section 2522.5(c)(2) of the Rent Stabilization Code." Thus, while hotel owners received a 3.0% rent increase under Order #41 (the last such increase), they received a 0% adjustment if they failed to provide this required notice. Among other things, this notice apprises incoming tenants of their right to the protections of rent stabilization.

Resolutions

The Board is often called upon to adopt advisory resolutions with respect to the legislative design or administration of the rent stabilization laws, and has, on occasion adopted such resolutions. In 1992 the Board adopted a resolution calling upon the DHCR to look in to possible violations of the Board's hotel orders. In 1988 the Board adopted two resolutions, one requesting an examination of the process by which hardship increases are granted and a second requesting an examination of a proposal from City Council President Andrew Stein to deny rent increases to owners who have outstanding uncollected judgments for housing code violations. (Corporation Counsel later advised that this latter policy, or any policy linking rent increases to code compliance or energy conservation efforts, may not be within the Board's discretion.) In the summer of 1993 the Board adopted an extensive resolution on distressed properties.

Research and Mandated Considerations

The Rent Stabilization Law sets forth the factors that must be considered by the Board prior to the adoption of rent guidelines. These include:

(1) the economic condition of the residential real estate industry in N.Y.C. including such factors as the prevailing and projected (i) real estate taxes and sewer and water rates, (ii) gross operating maintenance costs (including insurance rates, governmental fees, cost of fuel and labor costs), (iii) costs and availability of financing (including effective rates of interest), (iv) over-all supply of housing accommodations and over-all vacancy rates,
(2) relevant data from the current and projected cost of living indices for the affected area, and
(3) such other data as may be made available to it.

Economic Condition of the Residential Real Estate Industry

Price Index of Operating Costs Survey

Each year since 1969 the Board has been provided with a Price Index of Operating Costs (also known as the price index or "PIOC") which approximates the actual changes in gross operating costs for apartment buildings. The PIOC also provides information on actual changes in real estate taxes and sewer and water rates.[148] These price changes are incorporated into a single figure that often becomes a point of departure for consideration of other economic and policy issues relating to the guidelines. Although not controlling, the PIOC is perhaps the most influential figure affecting the final guidelines.

The price index is a relatively complex instrument for estimating the actual costs of operating a rental building. In 1970 the federal Bureau of Labor Statistics constructed a "market basket" of goods that a typical owner is expected to purchase in a given year. The basic components of that market basket include taxes, labor, fuel, utilities, insurance, maintenance and administrative costs. Each item is given a "weight" to gauge its relative importance in the overall basket. Price changes in the various components are gathered through a series of surveys of vendors and reviews of such things as labor and insurance contracts. In the case of taxes, actual changes in

[148] From 1969 through 1981 this index was prepared by the Bureau of Labor Statistics. Between 1982 and 1987 the index was prepared by Urban Systems Research and Engineering and in 1988 and 1989 by Abt Associates. In 1990 it was prepared by Speedwell Inc. Since 1991 the index has been prepared by the RGB staff with the assistance of Speedwell Inc. A payment history of the contract is included in Appendix G. Separate price indices are also provided for hotels and lofts.

tax bills are derived from tax data received from the City's Department of Finance. The price of heating fuel is adjusted to reflect the relative warmth of the year under review, by adjusting for degree-day variation. Each year the weights in the market basket are adjusted to reflect the relative changes in the price of each component. Thus, for example, if labor costs outpace insurance costs, the weight given to labor will be increased before the next survey.

With the exception of taxes, fuel and insurance, the price index is not a measure of **cost** changes.[149] Rather it is a measure of **price** changes. Thus, if an owner experiences fuel savings due to conservation measures such as the installation of thermopane windows, or labor savings by switching from manual to automatic elevators, such gains are not captured in the index. Similarly, if an owner is saddled with new costs such as new permit or filing fees, or regulatory obligations such as lead paint removal, these burdens are not captured in the index.

In addition to these limitations, any mechanism for measuring prices may run askew over long periods of time. Thus, periodic "reality checks" through alternative data sources or through a wholesale updating of the weights or the market basket may be needed. In 2000 the Board undertook a review of these various issues by contracting with Dr. Anthony Blackburn, who authored many of the price index reports in the 1980's, to examine the need for updating the index. Dr. Blackburn found that "[t]he PIOC appears to have provided quite accurate estimates of changes in operating costs over the last 17 years, in part because its errors have been offsetting. It also appears that, because of a drift in the expenditure weights, there is now a potential for the PIOC to misestimate future changes in operating costs." For this reason, Dr. Blackburn recommended various adjustments utilizing alternative income and expense data. A complete copy of his report is annexed hereto in Appendix R.

This "drift in the expenditure weights" predicted by Dr. Blackburn came to fruition in the first decade of the new millennium. Although the PIOC expenditure weights were revised each year, and there had been some changes to expenditure items since 1983, the PIOC no longer represented expenditure patterns that are prevalent today. In fact, the RGB report that measures recent owner-reported expenses, the *Income and Expense Study (I&E)*, shows that increases in overall operating costs had been smaller than those shown by the PIOC in recent years.

In the fall of 2013, the RGB commissioned Dr. James Hudson to study this issue and to offer suggestions on how to use the NYC Department of Finance Real

[149] The prices changes in the fuel component and some fuel-related items are 'cost-weighted,' to account for seasonal usage.

Property Income and Expense (RPIE) data presented in the *RGB Income and Expense Studies* to update the expenditure patterns in the PIOC. The results of Dr. Hudson's analysis were released in his paper entitled *Comparing the Price Index of Operating Costs (PIOC) and the RGB Income and Expense Study* and were presented to the Board on March 27 of that year and can be found in Appendix S. Dr. Hudson concluded that the main cause of the differences between the PIOC and the I&E is "how owners change their spending in response to changes in prices and the goods and services that are available." These changes are not captured in the PIOC. He proposed two approaches to address the divergence between these indices:

- Use the most recent I&E to create the component weights for each year's PIOC. This will connect the PIOC much more closely to what owners have actually been buying so that we can better estimate the overall effect of price changes.
- Annually survey owners about their costs for various items within a single component, to update the item weights and allow development of improved items and specifications. Since this is not necessary for taxes and insurance (which have one item each in their components), it should allow updates of items weights across the PIOC every 5-6 years.

In 2015 Dr. Hudson, with the assistance of the RGB staff, used the expenditure patterns presented in the *2015 Income and Expense (I&E) Study* to update the component weights for the apartment *2015 PIOC*. The I&E provides an analysis of expenses as reported by owners in the Real Property Income and Expense (RPIE) statements (as required by Local Law 63, enacted in 1986). These statements are submitted annually to the NYC Department of Finance and represent reported expenses by building owners with stabilized units, based on the most recent completed calendar year at the time of filing. Going forward, RGB staff will use this annual data to update the PIOC expenditure weights each year, ensuring that future indices will contain current expenditure patterns.

As a result of updating the owners' expenditure patterns, it is important to note that the PIOC now contains seven expense components, instead of the traditional nine components presented in previous PIOCs. However, the individual items priced in the PIOC are the same items that were included in previous price indices. Where appropriate, they have simply been allocated to new components. Taxes, Labor Costs and Insurance Costs are the only components that contain the same items as in previous PIOCs, and therefore the only components that can be directly compared to previous price indices.

It is also important to note that the update to expenditure patterns is only for the Apartment PIOC. Since staff was unable to obtain sufficient I&E data to update either the PIOC for Lofts or the PIOC for Hotels, the methodology used to calculate the loft and hotel indices is the same as in previous PIOCs. However, in order to maintain symmetry between indices, the expense items were aligned to the seven components now used in the Apartments PIOC.

Price Index Projections

In addition to the price index, each year the staff produces a set of price projections for the coming year. These projections are particularly helpful with respect to the renewal guidelines for two-year leases. A complete summary of the projections from 1975 through 2016 including actual changes in the price indices with which to gauge the accuracy of the projections is included in Appendix T.

RGB Rent Index

The price changes measured by the PIOC are also compared to projected changes in rent levels to produce an estimate of the average operating cost to rent ratio ("O&M to rent ratio") in rent stabilized buildings. The staff uses a measure called the RGB Rent Index to estimate the overall impact of the Board's guidelines and the statutory vacancy allowance on rent rolls each year. The one and two-year guideline increases, the mix of lease terms, the supplemental adjustment, the statutory vacancy allowance and the minimum rent are combined to produce the aggregate change in rent levels. A chart of the changes in operating costs from 1969 through 2015 as estimated by the price index, along with the RGB Rent Index over the same period is contained in Appendix U.

A table of the history of the RGB Rent Index, along with a brief explanation, is included in Appendix V.

Income and Expense Study

Much has been said about the accuracy and general value of the annual price index. Owners have charged that it fails to reflect true operating costs and other obligations of ownership while tenants claim that the index methodology is unsound and misleading in the sense that it does not provide data on actual expenditures and profits. While no study of profits has ever been undertaken, access to income and expense statements on file with the New York City Department of Finance has greatly enhanced the Board's understanding of the financial condition of rent stabilized properties. For over two decades, the Board has received detailed summaries of operating costs as well as rental incomes. The Real Property Income and Expense (RPIE) data is analyzed by RGB staff in its annual *Income and Expense Study*. In addition, in the Spring of 1992 the Department of Finance conducted audits on some 46 rent stabilized properties in order to gauge the accuracy of the I&E filings.

The changing relationship between incomes and expenses is an extraordinarily complex matter that draws upon a variety of data sources. A complete history of the income and expense issue was prepared in the spring of 1993 and was published in the 1993 Summary of Research. The full text of the 1993 report is contained in Appendix K1. An update of that memo, analyzing historic changes in the relationship between operating costs and rents is contained in Appendix K. These memos provide a summary of the methodology used to compute O&M costs prior to the inception of the RPIE.

In previous editions of the **Introduction to the NYC Rent Guidelines Board** book, there has been an analysis of the difference between costs and income among both pre- and post-war buildings, that is, buildings constructed before 1947 ("pre-war") and after 1946 ("post-war"). The sources of this data are annual apartment registrations filed with the NYS Division of Housing and Community Renewal (DHCR) as well as RPIE (Real Property Income and Expense) filings with the NYC Department of Finance. Unfortunately, the growing disparities between these two data sources makes a comparison among post-war buildings incompatible.

Historically, the post-war analysis compared the cost-to-rent ratio for expenses and **contract** rent from 1969 to a current cost-to-income ratio derived from expense and **collected** rent data from RPIE filings for buildings built after 1946. Because one data source relies on contract rents, and the other collected rents, and we need to make a like comparison, monthly I&E rent (which includes vacancy and collection losses) must be adjusted to estimate contract rents. To equate these two numbers, a methodology, which was developed by the RGB staff in 1999, adjusted the collected rent by the gap between the monthly mean RPIE rent and the monthly mean registered DHCR rent. Although this methodology was sound when first implemented, changes to the recent data since then have made it problematic for us to continue making this comparison. (See Appendix K for a full discussion of this methodology.)

Perhaps the most significant problem is how the rent is reported to DHCR. Owners are now required to report legal rents, actual rents and preferential rents separately. Each of these rents present problems for staff in determining which can be used in the post-war methodology as a proxy for contract rent. While DHCR legal rents are the maximum rent that an owner can charge the tenant, it does not necessarily reflect the actual rent paid by the tenant. The legal rent may be significantly higher than the contract or actual rents paid. Recent owner registration data indicated that approximately 28% of apartment rents registered with DHCR were receiving preferential rents, which by definition is less than the legal amount.[150] This was not the case in 1999. As with legal reported rents, using the actual rent data creates issues as well. The actual rent paid as reported to DHCR represents what the tenant actually **pays**, not what the owner actually **receives** in rent. Therefore, actual rents reported by owners includes those tenants whose rent is partially paid by the government, e.g. a section 8 subsidy. Finally, the reported preferential rent field does not include those tenants who are paying the legal amount. To further complicate the issue, DHCR does not document the year the building was built as a part of the registration requirement, making it impossible to focus solely on rents for buildings built after 1946.

While DHCR rent only includes rent stabilized apartment rents, RPIE rent includes rents from units that have been deregulated that are commanding free market rents. Since 1993, the year owners were allowed to deregulate apartments under certain situations, a significant number of units have been deregulated. Once deregulated, owners can charge market rents. These market rents are included in the RPIE rent because buildings containing both stabilized units and free market units are included in the calculation of this rent figure. In addition, the RPIE data also includes rents from rent controlled apartments. Finally, unlike the DHCR rental data, the RPIE rent does not include data from buildings with 10 units or less because owners of buildings with fewer than 11 units are not required to file under the law.

Although staff can no longer calculate a Post-War cost-to-rent ratio, we can still calculate the Pre-War cost-to-income ratio because the methodology does not include the use of DHCR rents. In the Pre-War stock, the audited cost-to-income ratio decreased by three percentage points from .65 in 1967 to .62 in 2013. In other words, owners of these units (which were subject to rent control at the time) spent 65 cents of each rent dollar on operating costs in 1967. By 2013 they spent an average of 62 cents of each rent dollar on operating costs. According to the 2014 HVS, 74% of the stabilized units in NYC are located in pre-war buildings.

These are complex issues and many caveats are in order. Board members are advised to consult the complete text of the memo (see Appendix K). When applying the methodology outlined in the memo, the cost of operating a rental building relative to rental income has fallen over four decades of rent stabilization for buildings built prior to 1947. This means that the average net operating incomes for this set of buildings have grown relative to operating costs.

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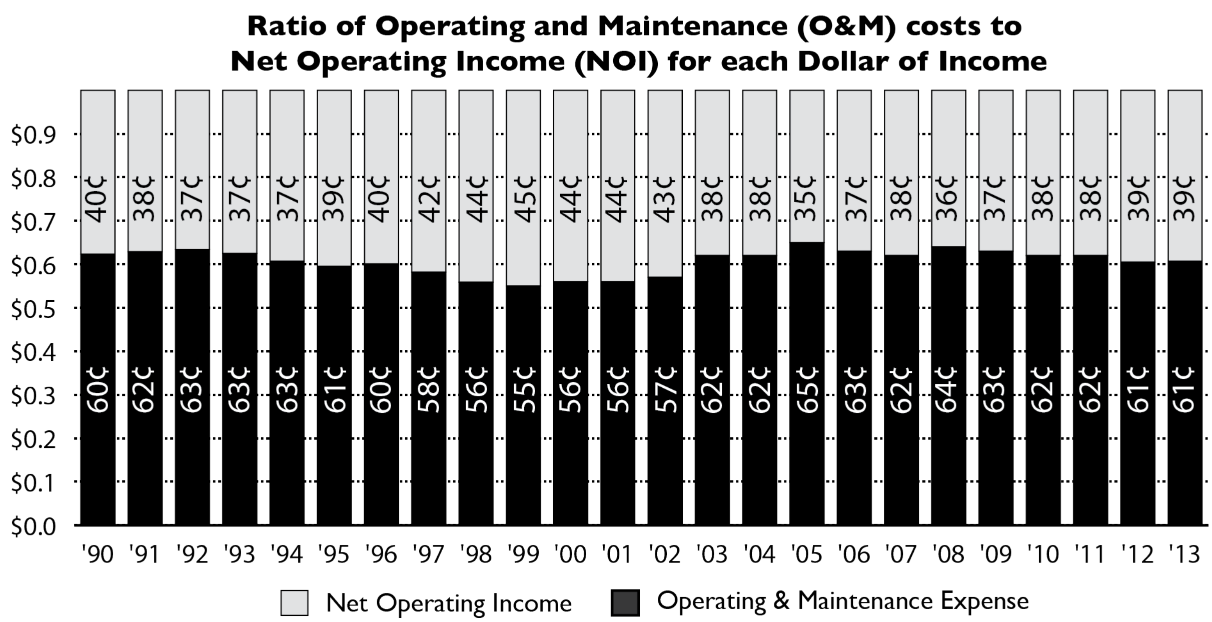
[150] Some of the disparity between legal and preferential rents is due to the 421a tax abatement program, where initial legal rents are often set at market, and if market rents decline, the legal rent can become substantially higher than the preferential rent.

As previously stated, the RGB has had access to owner-reported income and expense data from the Department of Finance RPIE filings for over 20 years. From this data, the RGB staff calculates a cost-to-income ratio. Chart III that follows is derived directly from annual income and expense filings and represents both post-war and pre-war buildings. It shows, for every dollar of stabilized owner income, the average amount spent on expenses in a building and the amount left over for net operating income. In 2013, the cost-to-income ratio for the entire stock of rent stabilized housing was .607, meaning that owners were spending 60.7 cents of every dollar earned on expenses.

Chart III.



Source: RGB Income and Expense Studies, 1991-2015.

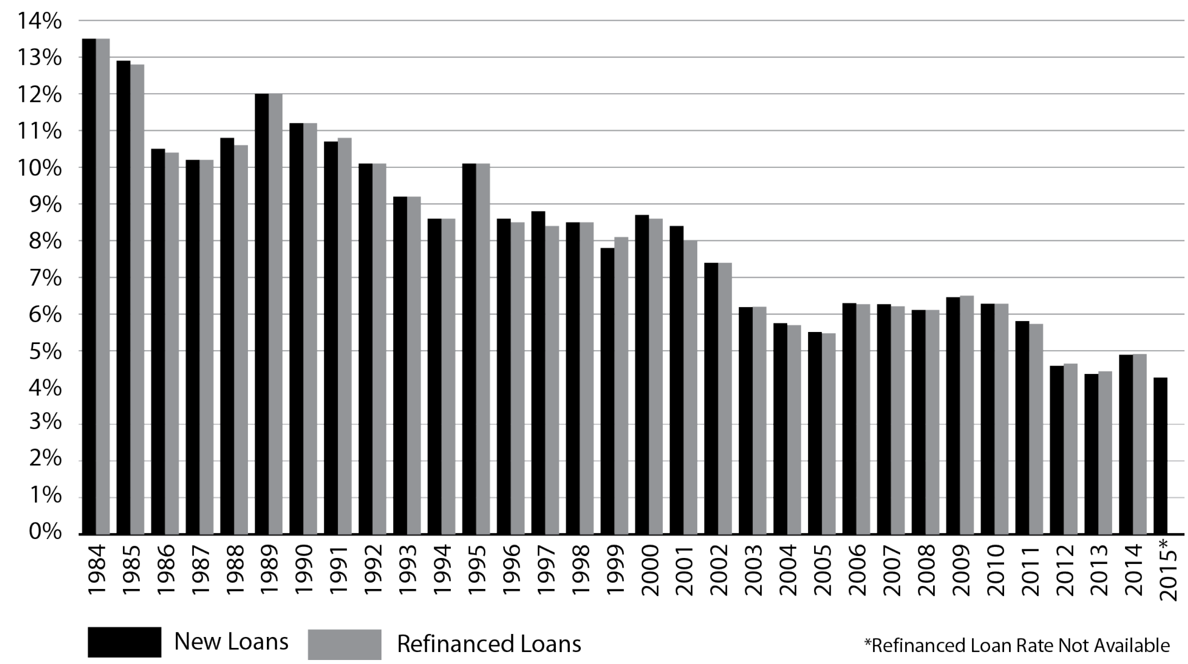
The price index, along with the O&M to rent/income ratios and the projections, are used to generate two figures known as the commensurate rent adjustment. This adjustment was discussed on pages 75 to 77. A memorandum describing the various commensurate formulae is included herein at Appendix J.

The Cost and Availability of Financing

The Mortgage Survey

Each year the Board's research staff conducts a survey of area lending institutions. This survey includes questions on financing terms, financial characteristics of "typical mortgages," factors influencing mortgage decisions, and the number and dollar value of loans made to owners of stabilized buildings. The results of the survey are reported to the Board annually in the *Mortgage Survey Report*. In addition, experts in banking and finance are often invited to testify at Board meetings. The chart on the following page shows average interest rates for new and refinanced multi-family mortgages for rent stabilized properties from 1983-2015.

Chart IV.
Average Interest Rates for New and Refinanced
Mortgages, 1984-2015



Source: RGB Mortgage Surveys, 1984-2015.

Overall Supply of Housing and Overall Vacancy Rates

The Housing Supply Report

The local emergency housing rent control act mandates the production of a housing survey every three years specifically to determine if the declared housing emergency continues to exist justifying a continuation of the rent control law.[151] This survey commonly known as the Triennial Housing and Vacancy Survey (or the "HVS"), has evolved over the years into a highly detailed picture of the City's rental housing stock along with demographics on the tenant population. Although originally concerned

[151] See Unconsolidated Laws of N.Y. §8603.

only with rent control, the survey now provides a wealth of data on all housing sectors. Consequently, the Board is provided with a comprehensive base of information regarding the overall supply of housing and vacancy rates every three years.

In addition to the HVS data, the Board updates its information on the City's housing supply by reviewing new construction levels and rehabilitation efforts through information provided by the Department of Buildings and the Department of Housing Preservation and Development. Data provided by the State Attorney General's Office on the number of buildings converted to cooperatives is also reviewed. This data is summarized annually for the Board in the *Housing Supply Report*. See also the chart of New Dwelling Units Completed: New York City, 1921-2014 on Page 23.

Changes to the Rent Stabilized Housing Stock in NYC

Rent regulation has been a fixture in New York City's housing market for the last 60 years. The rent laws that govern rent regulated housing have been substantially changed and/or modified over time. Specifically, the Rent Regulation Reform Act of 1993 allowed for high rent/vacancy decontrol of stabilized units. In addition to legislative changes, the existing laws allow for dynamic changes in the regulatory status of a significant portion of the rent regulated housing stock in any given year. Units enter the regulatory system, leave the system, or change status within the system.

In 2003, the RGB started to track the units entering and leaving the rent regulatory system. The findings of the staff were released in a report entitled *Changes in the Rent Stabilized Housing Stock in NYC, 1994-2002*. This report outlined the changes in the rent stabilized housing stock in New York City from 1994 to 2002 by quantifying the events that lead to additions to and subtractions from this category of housing. From 1994 through 2002, approximately 105,000 housing units left rent stabilization, while approximately 62,000 units initially entered the stabilization system. The built-in fluidity of the system resulted in a net loss of an estimated 43,000 regulated stabilized units to the rent stabilized housing stock. Subsequent reports have been done in each year since 2002, resulting in a total net loss of units since 1994 of 104,000.

However it is important to note that these totals do not represent every unit that has been added or subtracted from the rent stabilized stock since 1994, but rather those that have been recorded or registered by various city and state agencies. They represent a 'floor', or minimum count, of the actual number of newly regulated and deregulated units in these years.

Data from the Cost of Living Indices

The Income and Affordability Study

Each year the Board is provided with data on an April-to-April basis from the regional cost of living index. This information may be compared to the data provided by the annual price index to gauge changes in a landlord's cost of maintaining rental housing relative to the overall cost of other goods and services. It is also helpful in comparing relative changes in rent to the cost of other goods and services. A comparison of changes in rent stabilized rents to changes in the regional consumer price index is contained in Appendix W. The cost of living data is reported to the Board annually in the *Income and Affordability Study*.

One of the most important indices, stabilized tenant income, is only available in the triennial Housing and Vacancy Survey. The table on this page details median stabilized household income from 1974 through 2013, in nominal rates as well as real 2013 dollars.

Table VI.

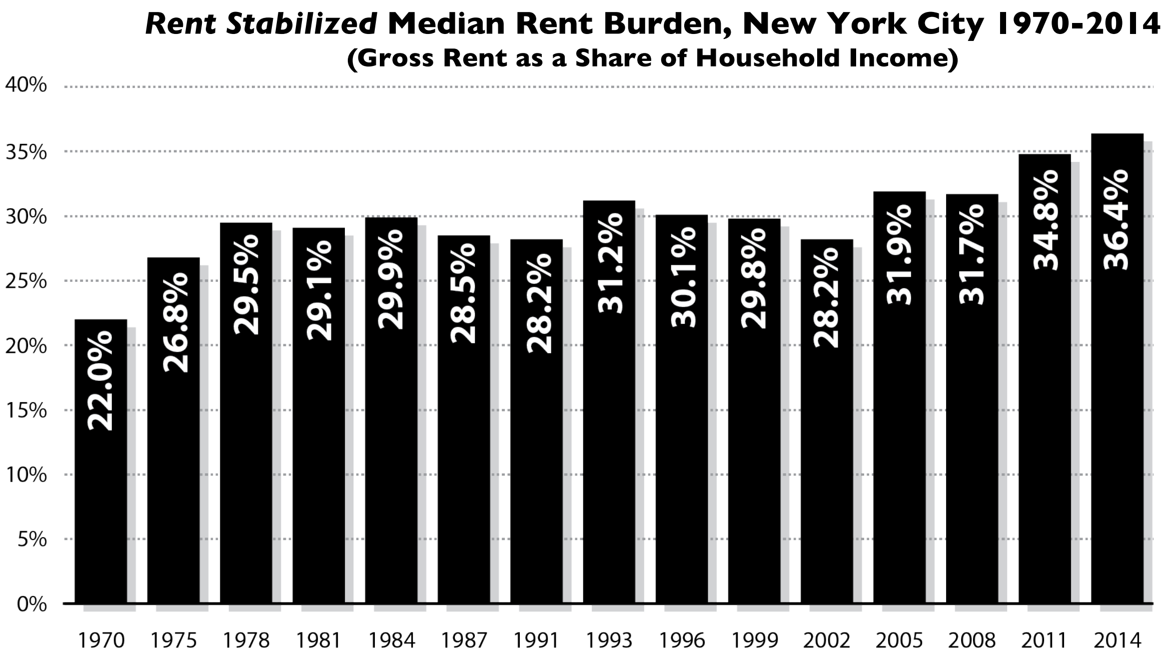
New York City Median Stabilized Renter Household Income 1974-2013

Year	Nominal	Real 2013 Dollars
2013	$40,600	$40,600
2010	$37,000	$39,453
2007	$36,000	$40,742
2004	$32,000	$40,130
2001	$32,000	$43,927
1998	$27,000	$39,945
1995	$25,300	$40,061
1992	$20,160	$34,518
1990	$21,000	$38,942
1986	$18,547	$42,417
1983	$14,483	$37,272
1980	$11,976	$37,487
1977	$9,980	$39,946
1974	$9,908	$47,527

Source: 1975–2014 Housing and Vacancy Surveys, U.S. Bureau of the Census

Another important figure derived from the HVS is the share of income paid in rent, or rent burden for *rent stabilized* tenants. The chart on this page shows the median rent burden for rent stabilized households from 1970-2014. As discussed earlier in the Affordability section on pages 60 through 69, the rent burden for both stabilized households and all renter households has risen sharply, especially in the initial stages of stabilization.

Chart V.



Source: 1970–2014 Housing and Vacancy Surveys, U.S. Bureau of the Census

Other Data - Summary of Special Research from 1989-2000

Along with the large variety of facts and figures provided by those who testify at the Board's annual meetings and hearings, the Board has requested special reports in a number of areas related to the economic condition of the rental housing industry and to the circumstances faced by rent stabilized tenants. Key findings from these various reports are provided below. The year noted refers to the annual research summary (available at our office) where the full report may be found.

1989

Building Violations and Tax Arrearages in Rent Stabilized Hotels, SRO's and Rooming Houses (pp. 113-115)

While now dated, this brief report disclosed that median per unit tax arrearages were a more serious problem for rooming houses ($390) than for hotels ($360) and SRO's ($210). Similarly, rooming houses averaged about three times as many housing code violations per unit (1.34) than SRO's (.42) and more than seven times as many as hotels (.17).

1990

The Supplementary Rent Adjustment / Housing Affordability (pp. 46 - 47)

This report provides an overview of the effects of the Board's supplemental allowance on individual rent levels from 1983 to 1989 in percentage terms - depending on rent levels and the lease terms chosen. Generally, tenants unaffected by the supplemental adjustment experienced cumulative rent increases of 30 to 32% depending on whether they chose a one or two year lease. Cumulative rent increases for tenants affected by the supplemental adjustment ranged from 40% to 72%. Thus, while the dollar amount of increases may have been as great or greater for higher rent tenants, low rent tenants experienced much larger increases in percentage terms.

1991

Energy Efficiency in Rent Stabilized Buildings (pp. 48)

This brief report compares energy usage targets for “efficient” buildings developed by the Department of Housing Preservation and Development's Division of Energy Conservation, with actual energy usage derived from income and expense data for rent stabilized buildings. The report concludes that owners should save “anywhere between 6% and 13% on heating bills if greater conservation efforts are made.” Such improvements “should be achieved through 'better maintenance procedures, and low cost retrofits'“ and “do not represent targets achievable only through highly expensive system replacements.”

Report on Rent Stabilized Hotels (pp. 74 - 85)

This extensive report reviews the economic condition of rent stabilized hotels, SRO's and rooming houses, along with levels of rent registration with the DHCR for each group. The study finds that “it appears that 40% of all (potential) stabilized hotel-type units have not been registered even once since 1984.” It further found that 47% of buildings had not registered. It found that 59% of rooming house units, 29% of hotel units and 18% of SRO units were unregistered. A later analysis conducted in 1992 (reported at pp. 91-93 of the 1992 Research Summary) found that, among hotels that did register with the DHCR, on average, only about 60% of income was derived from registered rents. Among SRO's and rooming houses that registered with DHCR, virtually all of their income was derived from registered rents. Both reports raised troubling questions about the enforcement and efficacy of rent regulations in the hotel/SRO/rooming house sectors.

1992

The Vacancy Allowance (pp. 51 - 61)

This report summarizes the history of the Board's vacancy allowance and some arguments for and against the allowance. Issues discussed include its effects on rent skewing, tenant mobility, building revenues and the enforceability of alternative vacancy allowance formulas. In addition, an analysis of DHCR's treatment of preferential rents (rents below legal levels) and what happens to these rents when a vacancy occurs. While instructive, much of the analysis has been rendered moot by the imposition of a statutory vacancy allowance formula under the Rent Reform Act of 1997.

Effects of Rent Regulation on Economic and Racial Integration (pp. 71 - 76)

This extensive review found that “there is no statistical evidence of a relationship between rent regulation and economic or racial integration” but does “not conclusively negate the possibility that, under some circumstances, rent regulation may promote or facilitate greater economic and racial integration.” The report relies upon extensive economic and ethnicity information available from the 1987 Housing and Vacancy Survey. Utilizing various statistical measures, the report found no significant variations in integration levels resulting from the relative proportion of rent stabilized units in 53 sub-borough areas.

1993

A Review of Change in Income and Expenses, 1967-1991 (pp. 33-44)

This extensive report examines the effects of over twenty years of rent stabilization on the net operating incomes of regulated buildings. It is fully updated and the same issues are analyzed in a 1999 staff memo included herein at Appendix K and K1.

Tax Arrears in Rent Stabilized Buildings, 1993 (pp. 50-54)

This brief report analyzes the characteristics of buildings in distress as indicated by excessive tax arrears (3+ quarters in arrears). It discloses that the arrearage problem reflects “the ongoing financial deterioration of the worst-off buildings” insofar as many of the buildings were chronic delinquents. About 80% were built before 1929.

They had slightly higher operating costs than average (driven by higher fuel and repair costs), and lower rent collections. Average tenant incomes in these buildings was about 25% lower than the average for all stabilized households. Average rents were 10% below the average for comparably sized buildings and 20% below the average for all buildings. Buildings with arrears also tended to be "over-mortgaged" insofar as they carried debt levels that were difficult to service given their rent rolls.

The NYC Housing and Vacancy Survey: A Ten Year Retrospective (1981-91) (pp. 62-76)

This extensive report covers developments in the housing market during the 1980's including new construction, household incomes, rents, affordability, vacancies, demographics of tenant households, and housing and neighborhood quality. One of the more notable findings with respect to the operations of the RGB is that during this period "[r]ent increases outpaced the RGB's Price Index of Operating Costs by a fair margin. The ten year change in the PIOC was 71% compared to an 85% increase in rents."

1994

Tax Arrears in Rent Stabilized Buildings, 1994 (pp. 48-58)

Expanding upon the work started in 1993, this report includes a survey of owners of buildings with 3+ quarters in tax arrears. For those owners, the study reveals "vacancy and collection losses to be a severe problem" with "nearly 20% of the potential monthly rent roll" being "uncollected, 6% due to vacancy and 13.5% due to collection losses." When asked what single city initiative would most improve the profitability of their buildings, 40% favored lower property and water & sewer rates; 30% favored a "fairer and more efficient housing court" and only 25% favored higher rent guidelines. With respect to the actions of the Rent Guidelines Board, two-thirds of the owners responding indicated that targeted guidelines for low rent apartments or small buildings, as opposed to general guideline increases, would most improve their profit levels. This report is particularly helpful in understanding conditions in distressed housing and the concerns of owners.

Rent Skewing in Rent Stabilized Buildings (pp. 62-65)

Rent skewing is a way of describing substantial differentials in rent for comparable units. One of the more significant problems with most rent regulation systems is that rent adjustments tend to impose relatively higher rents on newcomers. Allocating rent adjustments in an even-handed way is a difficult task. In this 1994 report, the RGB staff found that "length of occupancy" discounts occur in both regulated and unregulated rental housing. The annual discounts tenants receive are about the same.

Nonetheless, rent stabilized tenants generally had deeper overall discounts due to the fact that they tended to occupy their apartments about twice as long as unregulated tenants. Thus, for example, in Manhattan the annual longevity rent discount received by both regulated and unregulated tenants averaged 2.6% per year. Still rent stabilized tenants in Manhattan stayed in their apartments 8.9 years on average, compared to 4.2 years for unregulated tenants. This resulted in an average longevity discount of 23.4% for stabilized tenants, and only a 10.7% average discount for unregulated tenants. The longevity discounts for the other boroughs are far less pronounced. (Brooklyn: 14.8% stabilized; 14.2% unregulated / Queens: 16.2% stabilized; 11.0% unregulated.) In the Bronx, unregulated apartments actually witnessed larger longevity discounts (11.4% - stabilized; 12.1% unregulated). In sum, the RGB staff found that because stabilization tends to produce longer-term tenancies, greater longevity discounts (and skewing) are generally found.

1995

Distressed Housing (pp. 49-56) (tax arrears and foreclosures)

These reports continue the Board's review of distressed housing. Most notable is the examination of tax foreclosure policies of 26 cities compiled from a survey taken by RGB staff. The survey found that few cities managed tax delinquent properties as New York has (i.e. seizing delinquent properties and managing them as a public sector landlord). Rather, "[n]early all [of the cities surveyed] attempt to retrieve as much revenue as possible from buildings in arrears through auctions, lien sales or, if necessary, demolition and subsequent sale of vacant lots." In 1994 the City announced that it had stopped foreclosing ("vesting") tax delinquent properties. By the time the RGB revisited this issue in 1996, the City began selling the tax liens of relatively healthy properties to investment banks. (See 1996 Report - Tax-Delinquent Property p. 76-77). More troubled buildings were deeded to third party buyers who were given various incentives and loans to improve the properties. The City's Department of Housing Preservation and Development also set up an "early warning" system to help responsible owners improve the financial and physical condition of their buildings to avoid tax foreclosure.

Small Buildings (pp. 59-63)

This report examines the condition of small buildings in terms of rent levels operating costs, tax arrears, and tenant incomes. The report concludes that while "small buildings are not vastly different from large buildings in most respects, small buildings are slightly worse off than large buildings according to every variable we reviewed." Small buildings have lower gross income and slightly higher expenses; they pay slightly higher property taxes relative to their total income; they have higher vacancy and collection losses; they tend to be older; they are more likely to have an owner living in them; their tenants have somewhat lower income and tend to move more frequently. The report also observes that these buildings are more vulnerable to economic downturns. Indeed, three quarters of buildings falling into tax arrears have fewer than 20 units.

Notably the report does not examine the profitability of small buildings. To do so, RGB staff would have to examine the return on equity placed at risk by small building owners. While small buildings produce less income, it is also likely that they have lower per unit purchase prices. In short, apartments in small buildings generally tend (a broad generalization) to be at the lower end of the market and their economic conditions reflect that position.

1996

Rent to Income Ratios - a comparison among large cities (pp. 66-68)

The RGB staff utilized census bureau data to compare the relative cost of rental housing in New York City with 21 other large cities (those with at least 50,000 rental units). New York was found to have relatively high rents (exceeded by only six of the cities). However, because New Yorkers have higher average incomes, the median tenant household had a relatively low rent to income ratio. That is, while nationally, the median tenant household spent 31% of their income on rent, in New York the average was 28%. Three-quarters of the 21 cities listed had higher average rent to income ratios than New York.

1996 Tax Arrears Study (pp. 58-60)

See note under 1995 - Distressed Housing

1997

Summary of 1996 Housing and Vacancy Survey Data (Appendix D, pp. 94-111)

This extensive statistical summary of data from the 1996 Housing and Vacancy Survey covers regulatory status, vacancy rates, economic characteristics (rents, incomes etc.), neighborhood quality and demographic characteristics of renter households. It is largely dated, but may be useful for historical comparisons. A complete analysis of the 1996 HVS was subsequently published by the Department of Housing Preservation and Development and is available to RGB members. A similar publication for the 1999 HVS should be available in 2001.

1998

Recent Movers Study (pp. 56-68)

This important study offers an initial glimpse of the effects of the luxury decontrol provisions of the Rent Reform Act of 1997. In an extensive survey of recent movers, the RGB staff found that rents rose 12%, on average, when a vacancy occurred - less than the 18% to 20%+ "minimum" allowed by law. This suggested that not all landlords were able to collect the increases and that regulated rents were already at or close to market in many areas. The study found a stark difference between the market in Manhattan south of 96th Street on the East Side and 110th Street on the West Side, and the other areas of the City. In the "core" area of Manhattan recent movers paid rent increases averaging 21% while recent movers in the Bronx paid 5%; in Brooklyn 8%; and in Queens 8%. The increases were attributed to both a strong economy as well as the legislative changes in 1997. The study also found that "vacancy decontrol" (where a vacancy occurs and lawful rents exceed $2,000) was occurring almost exclusively in Manhattan.

Meetings, Hearings and Administrative Procedures

Meetings

The Board typically holds eight to ten meetings per year to discuss its research agenda, review staff reports and to hear testimony from invited guests including public officials, housing experts and industry and tenant representatives. In accordance with the Open Meetings Law every meeting of the Board must be open to the public, except when circumstances warrant executive sessions.[152] Public notice of any meeting scheduled at least one week in advance must be provided to the press and conspicuously posted in a public location at least 72 hours before the meeting. Notice of meetings scheduled less than one week in advance must be given, to the extent practicable, to the press, and publicly posted at a reasonable time before the meeting. The schedule of Board meetings is usually discussed and resolved in the early spring and is published in the City Record.

Executive sessions are permissible for the limited purposes set forth in §105 of the Public Officers Law and to consult with legal counsel.

[152] A copy of the relevant portions of the Open Meetings Law is contained in Appendix W.

Hearings

The Rent Stabilization Law §26-510(h) (contained in Appendix A) along with the City Charter [discussed below] mandates annual hearings prior to the adoption of rent guidelines. Notice of the hearings, as well as the language of the proposed orders, is provided in the City Record for eight days and at least once in a newspaper of general circulation at least eight days before the hearing. At the same time that the proposed guidelines are published in the City Record, they must be posted on the NYC website, nyc.gov, in the NYC Rules section. The language of the public notice of comment, along with that of the proposed guidelines, must be approved by Corporation Counsel and the Mayor's Office of Operations. The hearings are usually held in mid-June just prior to the Board's July 1st deadline for promulgating new guidelines. Any person who wishes to testify has a legal right to do so, and the Board has traditionally allowed two to three minutes for each speaker, alternating between owner and tenant representatives. Speakers have also been permitted to register in advance of the hearings and pre-registered speakers are given priority in the order of speakers.

Administrative Procedures

Prior to the adoption, in 1988, of Chapter 45 of the New York City Charter, also known as the City Administrative Procedure Act, or "CAPA", the Board operated exclusively under the limited procedures prescribed by the Rent Stabilization Law. CAPA is a uniform set of rulemaking and adjudication procedures that applies to City agencies. Since the Board does not perform any adjudicative functions it is only affected by CAPA's rulemaking procedures. These procedures added the requirement that proposed guidelines be published at least thirty days prior to the public hearings on the final guidelines. Consequently, the Board's procedures have remained largely unchanged except to the extent that proposed guidelines are now adopted at a public meeting that takes place in May. The hearings that are conducted in June, pursuant to §26-510(h) of the Rent Stabilization Law, also function as CAPA hearings on the proposed guidelines. A copy of CAPA is included in Appendix Y.

As stated above, the RGB is required to follow CAPA when determining preliminary and final adjustments on renewal leases for rent stabilized apartments, lofts and hotels in New York City. Local Law No. 134 of 2013 (LL 134), enacted by the City Council, amended CAPA in Charter section 1043(e), by adding the following provisions:

> [O]ther than a rule adopted pursuant to subdivision i of this section, no final rule shall be adopted by [a] board or commission unless its final language is posted in a prominent location on such agency's website and electronically

> transmitted to each member of such board or commission at least three calendar days, exclusive of Sundays, prior to such rule's adoption; provided, however, that revisions may be made to a final rule posted online and sent electronically in conformity with this subdivision at any time prior to the vote on such rule if such revisions are approved by all members of such board or commission by unanimous consent. … This paragraph shall not be construed to create a private right of action to enforce its provisions. Inadvertent failure to comply with this paragraph shall not result in the invalidation of any rule.

As a result of these new provisions, the RGB staff is required to email the language of the Apartment and Loft Order and the Hotel Order that will be voted on (consistent with the preliminary adjustment that the RGB will propose in May) to the members of the Board at least three calendar days (excluding Sunday) before the meeting at which the vote on these final guidelines are taken. In addition, staff is also required to prominently post this language on the RGB website, nycrgb.org, at least three calendar days prior to the meeting in which the final Orders are adopted.

Furthermore, LL 134's provision requires that revisions made to the final rule *less* than three days prior to the meeting must be approved by *unanimous* consent of all RGB members present at the meeting. Barring unanimous consent, any adopted motion that was not previously e-mailed to RGB members and posted in conformance with LL 134 and that seeks to change the one- and/or two-year renewal lease adjustment or any other component of the annual guideline at the final voting meeting would *not* be final. Adoption of such a change would be contingent on compliance with LL 134's notice requirements and a second vote necessitating that the Board reconvene at least three calendar days (excluding Sunday) later. When the Board does reconvene, it could then adopt the change by a vote of five members; there would *not* need to be a unanimous vote at the reconvened meeting.

Voting Meetings - Order of Business

Two meetings are held each year for a vote on rent adjustments: the meeting to adopt proposed guidelines discussed above, and the meeting to adopt the final guidelines. While the Chair and the Board establish the order of business, a typical voting meeting will proceed as follows:

- Board members attention will be called to drafts of the apartment (and loft) orders in their folders. At the meeting on the proposed guidelines, these drafts will consist of the prior year's order with blank spaces where rent adjustments will be entered. This "boilerplate" language will usually be read into the record by the Chair. At the meeting to consider the "final" guidelines, members will have copies of the proposed orders.
- Prior to the meeting members will receive drafts of the Apartment and Loft Explanatory Statement and Findings and the Hotel Explanatory Statement and Findings. These documents will be adopted by the Board at this meeting, subject to being modified after the voting meeting per the Board's actions and instructions.
- The floor will be opened to proposals on apartment guidelines for one and two year leases as well as the Special Guideline for units leaving rent control and becoming stabilized (see pages 92 to 94 for a discussion of this guideline.) Other elements of rent adjustments such as supplemental increases for low rent apartments or a vacancy factor for sublets[153] may be "packaged" with the apartment guidelines. Votes are taken on each proposal in accordance with Roberts Rules, until at least five "yes" votes can be mustered for an apartment order. Generally, the language of the Order and the language for the Explanatory Statement and Findings are adopted within the same motion.
- Loft guidelines can be bundled with the apartment motion or considered separately in a like fashion.
- The next order of business is usually the "hotel" orders. Board members attention will then be called to the hotel orders and the process of reading into the record the boilerplate language will occur. There are five groups of hotel stabilized units: Class A and Class B hotels, rooming houses, SRO's and lodging houses. These groups may be addressed separately or together. Voting proceeds in the same fashion as for apartments. Once again, the language of the Hotel Order and the language for the Explanatory Statement and Findings are adopted within the same motion.
- Any special or new items of business may be introduced at any time, but any material change in the order of business will require a majority vote.
- A motion to adjourn will be taken.

[153] Note that since 1997 vacancy guidelines are prescribed by statute. The RGB retains the authority to increase rents where sublets occur as per the Rent Stabilization Code, section 2525.6(e).

Final Orders and Explanatory Statements

Usually about one week after the final vote, the Board's orders and related explanatory statements are filed with the City Clerk and published in the City Record. The Rent Stabilization Law directs that the *filing* of the Board's orders and its findings—i.e. the explanatory statements — must be completed not later than July 1st of each year. Once the language of the orders is reviewed and approved by Corporation Counsel and the Mayor's Office of Operations, the orders and explanatory statements should be published in the City Record as soon as is practicable. The final orders and explanatory statements should be forwarded to City Council for its information and published at least 30 days (by August 31st) before the first effective date of the orders (October 1st). In addition, the final orders and explanatory statements must be posted on NYC Rules, which is a part of the City's website, nyc.gov, at least 30 days before the rules go into effect.

The guidelines themselves go into effect for leases being renewed and vacancies occurring on or after October 1st of the same year, and on or before September 30th of the following year. Most hotel/SRO tenants do not have leases and pay the new rent immediately upon the effective date of the hotel guidelines–which is also October 1st.

The orders of the Board are final unless found to be unlawful by a court of competent jurisdiction. A 1991 court ruling indicates that any legal challenge to the Board's orders must be initiated within four months.[154]

[154] See case #15, supra at page 45.

Appendix A

Rent Stabilization Law

§ 26-510. Rent guidelines board

a. There shall be a rent guidelines board to consist of nine members, appointed by the mayor. Two members shall be representative of tenants, two shall be representative of owners of property, and five shall be public members each of whom shall have had at least five years experience in either finance, economics or housing. One public member shall be designated by the mayor to serve as chairman and shall hold no other public office. No member, officer or employee of any municipal rent regulation agency or the state division of housing and community renewal and no person who owns or manages real estate covered by this law or who is an officer of any owner or tenant organization shall serve on a rent guidelines board. One public member, one member representative of tenants and one member representative of owners shall serve for a term ending two years from January first next succeeding the date of their appointment; one public member, one member representative of tenants and one member representative of owners shall serve for terms ending three years from the January first next succeeding the date of their appointment and two public members shall serve for terms ending four years from January first next succeeding the dates of their appointment. The chairman shall serve at the pleasure of the mayor. Thereafter, all members shall continue in office until their successors have been appointed and qualified. The mayor shall fill any vacancy which may occur by reason of death, resignation or otherwise in a manner consistent with the original appointment. A member may be removed by the mayor for cause, but not without an opportunity to be heard in person or by counsel, in his or her defense, upon not less than ten days notice.

b. The rent guidelines board shall establish annually guidelines for rent adjustments, and in determining whether rents for housing accommodations subject to the emergency tenant protection act of nineteen seventy-four[155] or this law shall be adjusted shall consider, among other things (1) the economic condition of the residential real estate industry in the affected area including such factors as the prevailing and projected (i) real estate taxes and sewer and water rates, (ii) gross operating maintenance costs (including insurance rates, governmental fees, cost of fuel and labor costs), (iii) costs and availability of financing (including effective rates of interest), (iv) over-all supply of housing accommodations and over all vacancy rates, (2) relevant data from the current and projected cost of living indices for the affected area, (3) such other data as may be made available to it. Not later than July first of each year, the rent guidelines board shall file with the city clerk its findings for the preceding calendar year, and shall accompany such findings with a statement of the maximum rate or rates of rent adjustment, if any, for one or more classes of accommodations subject to this law, authorized for leases or other rental agreements commencing on the next succeeding October first or within the twelve months thereafter. Such findings and statement shall be published in the City record.

c. Such members shall be compensated on a per diem basis of one hundred dollars per day for no more than twenty-five days a year except that the chairman shall be compensated at one hundred twenty-five dollars a day for no more than fifty days a year. The chairman shall be chief administrative officer of the rent guidelines board and among his or her powers and duties he or she shall have the authority to employ, assign and supervise the employees of the rent guidelines board and enter into contracts for consultant services. The department of housing preservation and development shall cooperate with the rent guidelines board and may assign personnel and perform such services in connection with the duties of the rent guidelines board as may reasonably be required by the chairman.

[155] Section 8261 et seq., post.

d. Any housing accommodation covered by this law owned by a member in good standing of an association registered with the department of housing preservation and development pursuant to section 26-511 of this chapter[156] which becomes vacant for any reason, other than harassment of the prior tenant, may be offered for rental at any price notwithstanding any guideline level established by the guidelines board for renewal leases, provided the offering price does not exceed the rental then authorized by the guidelines board for such dwelling unit plus five percent for a new lease not exceeding two years and a further five percent for a new lease having a minimum term of three years, until July first, nineteen hundred seventy, at which time the guidelines board shall determine what the rental for a vacancy shall be.

e. With respect to hotel dwelling units, covered by this law pursuant to section 26-506 of this chapter, the council, after receipt of a study from the rent guidelines board, shall establish a guideline for rent increases, irrespective of the limitations on amount of increase in subdivision d hereof, which guideline shall apply only to permanent tenants. A permanent tenant is an individual or family who at any time since May thirty-first, nineteen hundred sixty-eight, or hereafter, has continuously resided in the same hotel as a principal residence for a period of at least six months. On January first. nineteen hundred seventy-one and once annually each succeeding year the rent guidelines board shall cause a review to be made of the levels of fair rent increases provided under this subdivision and may establish different levels of fair rent increases for hotel dwelling units renting within different rental ranges based upon the board's consideration of conditions in the market for hotel accommodations and the economics of hotel real estate. Any hotel dwelling unit which is voluntarily vacated by the tenant thereof may be offered for rental at the guideline level for vacancies established by the rent guidelines board. If a hotel dwelling unit becomes vacant because the prior tenant was evicted therefrom, there shall be no increase in the rental thereof except for such increases in rental that the prior tenant would have had to pay had he or she continued in occupancy.

g.[157] From September twenty-fifth, nineteen hundred sixty-nine until the rate of permissible increase is established by the council pursuant to subdivision e of this section, there shall not be collected from any permanent hotel tenant any rent increase in excess of ten percent over the rent payable for his or her dwelling unit on May thirty-first, nineteen hundred sixty-eight. except for hardship increases authorized by the conciliation and appeals board. Any owner who collects or permits any rent to be collected in excess of the amount authorized by this subdivision shall not be eligible to be a member in good standing of a hotel industry stabilization association.

h. The rent guidelines board prior to the annual adjustment of the level of fair rents provided for under subdivision b of this section for dwelling units and hotel dwelling units covered by this law, shall hold a public hearing or hearings for the purpose of collecting information relating to all factors set forth in subdivision b of this section. Notice of the date, time, location and summary of subject matter for the public hearing or hearings shall be published in the City Record daily for a period of not less than eight days and at least once in one or more newspapers of general circulation at least eight days immediately preceding each hearing date, at the expense of the city of New York, and the hearing shall be open for testimony from any individual, group, association or representative thereof who wants to testify.

i. Maximum rates of rent adjustment shall not be established more than once annually for any housing accommodation within the board's jurisdiction. Once established, no such rate shall, within the one-year period, be adjusted by any surcharge, supplementary adjustment or other modification. (L.1985, c. 907, § 1,)

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[156] Chapter 4 of Title 26 of the Administrative Code of the City of New York.
[157] No par. f has been enacted.

THE CITY RECORD-2/29/80

Local Law No. 11

Introduced by Council Member Manton (by request of the Mayor)—
A LOCAL LAW to amend the administrative Code of the city of New York in relation to the rent guidelines board and its staff.

Be it enacted by the Council as follows:

Section l. Subdivision c of section YY51-5.0 of title YY of chapter fifty-one of the administrative code of the city of New York is hereby amended to read as follows:
c. Such members shall be compensated on a per diem basis of one hundred dollars per day for no more than twenty-five days a year except that the chairman shall be compensated at one hundred twenty-five dollars a day for no more than fifty days a year The chairman shall be chief administrative officer of the rent guidelines board and among his or her powers and duties he or she shall have the authority to employ, assign and supervise the employees of the rent guidelines board and enter into contracts for consultant services. The department of housing preservation and development shall cooperate with the rent guidelines board and may assign personnel and perform such services in connection with the duties of the rent guidelines board as may reasonably be required by the chairman.

§2 This local law shall take effect immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, S.S.:
I hereby certify that the foregoing is a true copy of a local law of The City o New York passed by the Council on February 5 1980 and approved by the Mayor on February 21 1980.

DAVID N. DINKINS, City Clerk, Clerk of the Council

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW SECTION 27
Pursuant to the provisions of Municipal Home Rule Law Section 27, 1 hereby certify that the enclosed local law (Local Law No 11 Council Int. No. 759-A), contains the correct text and received the following vote at the meeting of the New York City Council on February 5, 1980: 35 for; 5 against; 1 not voting

Was approved by the Mayor on February 21, 1980.
Was returned to the City Clerk on February 21 1980

ALLEN G SCHWARTZ, Corporation Counsel

Appendix B

RENT GUIDELINES BOARD MEMBERS

	Representation	Appointed	Length of Term	Expiration of Term§	Termination of service
Chairpersons					
Roger Starr	Public	6/15/69		Pleasure of Mayor	N/A
Prof. Emanuel Tobier	Public	6/08/74		Pleasure of Mayor	N/A
Dr. Jacob B. Ukeles	Public	6/28/75		Pleasure of Mayor	N/A
Frances Levenson	Public	4/20/78		Pleasure of Mayor	7/01/79
Marvin Markus	Public	11/26/79		Pleasure of Mayor	N/A
Amalia V. Betanzos	Public	11/30/84		Pleasure of Mayor	8/31/86
William J. Mulrow	Public	4/20/87		Pleasure of Mayor	4/05/88
Arthur B. Spector	Public	4/05/88		Pleasure of Mayor	12/27/89
Aston L. Glaves	Public	4/17/90		Pleasure of Mayor	12/31/93
Edward Hochman, Esq.	Public	5/03/94		Pleasure of Mayor	4/30/01
Steven Sinacori, Esq.	Public	5/07/01		Pleasure of Mayor	12/1/01
Marvin Markus	Public	3/21/02		Pleasure of Mayor	2/1/10
Jonathan L. Kimmel, Esq.	Public	2/05/10		Pleasure of Mayor	12/23/13
Rachel D. Godsil	Public	4/23/14		Pleasure of Mayor	12/2/2015
Hon. Kathleen A. Roberts (Ret.)	Public	3/29/16		Pleasure of Mayor	presently serves
Board Members					
Anthony H. Atlas	Public*	6/15/69			N/A
Edward J. Cleary	Public*	6/15/69			N/A
Gladys Jones	Public*	6/15/69			see below
Dr. Frank Kristof	Public*	6/15/69			see below
William A. Lyon	Public*	6/15/69			see below
Joseph P. McMurray	Public*	6/15/69			see below
Thomas B. Shortman	Public*	6/15/69			N/A
John Trubin	Public*	6/15/69			see below
William Brennen	Owners	6/10/74	3 Years	12/31/77	N/A
Bruce Gould	Tenants	6/10/74	3 Years	12/31/77	N/A
Gladys Jones	Public	6/10/74	3 Years	12/31/80	6/28/80
Dr. Frank Kristof	Public	6/10/74	2 Years	12/31/76	see below
William A. Lyon	Owners	6/10/74	2 Years	12/31/76	N/A
Joseph P. McMurray	Public	6/10/74	4 Years	12/31/78	N/A
Norman Samnick	Public	6/10/74	4 Years	12/31/78	8/30/78
John Trubin	Tenants	6/10/74	2 Years	12/31/76	12/29/77
Ralph W. Morhard	Owners	9/15/76	2 Years	12/31/76	N/A
Sid Davidoff	Tenants	12/31/77	2 Years	12/31/80	N/A
Monsignor Harry J. Byrne	Public	12/22/78	2 Years	12/31/80	5/4/82
Barbara Chocky	Tenants	12/22/78	3 Years	12/31/83	N/A
Scott Mollen	Public	3/27/79	4 Years	12/31/82	N/A
Carolyn Odell	Public	3/27/79	4 Years	12/31/82	N/A
Hyman Sardy	Owners	6/8/79	2 Years	12/31/80	3/12/82
Carl O. Callender	Tenants	5/20/81	2 Years	12/31/82	7/1/86
David Castro-Blanco	Public	5/20/81	3 Years	12/31/83	2/25/86
Karen M. Eisenstadt	Public	5/20/81	4 Years	12/31/86	N/A
Dr. Frank Kristof	Owners	3/12/82	2 Years	12/31/82	5/21/84
W. Philip Johnson	Public	5/13/82	2 Years	12/31/86	6/30/86
Eugene J. Morris, Esq.	Owners	4/15/83	3 Years	12/31/83	12/3/84

(continued)	Representation	Appointed	Length of Term	Expiration of Term§	Termination of service
Joseph L. Forstadt, Esq.	Owners	5/18/84	3 Years	12/31/93	5/1/97
Darryl Greene, Esq.	Public	5/18/84	4 Years	12/31/86	10/30/86
Cynthia H. Reiss, Esq.	Tenants	5/18/84	3 Years	12/31/86	8/4/86
Harold Lubell	Owners	5/17/85	2 Years	12/31/06	9/7/06
Harriet Cohen	Tenants	4/24/87	3 Years	12/31/90	5/10/89
John Durant Cooke	Public	4/24/87	2 Years	12/31/89	6/26/89
Stephen Dobkin	Tenants	4/24/87	2 Years	12/31/89	5/10/89
Kent C. Hiteshew	Public	4/24/87	4 Years	12/31/91	8/5/88
Nancy A. Paulson	Public	4/24/87	4 Years	12/31/91	10/2/89
Augustin Rivera	Public	4/24/87	3 Years	12/31/97	2/26/03
William R. Howell	Public	2/27/89	4 Years	12/31/90	3/28/90
Oda Friedheim	Tenants	4/17/90	3 Years	12/31/93	6/22/92
Galen Kirkland	Tenants	4/17/90	2 Years	12/31/92	6/22/92
Victor Marrero	Public	4/17/90	4 Years	12/31/91	1/8/93
Janice Robinson	Public	4/17/90	2 Years	12/31/92	10/17/91
Ellen Gesmer, Esq.	Public	5/8/90	4 Years	12/31/91	1/4/93
Hilda Blanco	Public	6/25/92	2 Years	12/31/92	2/7/95
Barbara Gordon-Espejo	Public	12/23/92	4 Years	12/31/95	3/12/96
Jane Stanicki	Public	1/8/93	4 Years	12/31/95	1/23/96
Leslie Holmes, Esq.	Tenants	3/16/93	2 Years	12/31/94	died 7/96
Kenneth Rosenfeld, Esq.	Tenants	4/1/93	3 Years	12/31/93	3/31/99
Paul Atanasio, Esq	Public	2/1/95	2 Years	12/31/96	1/26/98
Earl Andrews	Public	4/11/96	4 Years	12/31/99	1/13/97
Elissa Fitzig	Public	1/16/96	4 Years	12/31/99	3/23/98
Paula Dagen	Public	3/18/97	4 Years	12/31/99	3/13/98
David Pagan	Tenants	3/21/97	2 Years	12/31/06	12/31/06
Bartholomew Carmody	Public	4/27/98	4 Years	12/31/99	7/19/02
Vincent Castellano	Owners	4/27/98	3 Years	12/31/99	2/26/03
Edward Weinstein	Public	4/27/98	2 Years	12/31/98	12/7/00
Justin Macedonia, Esq.	Public	6/18/98	4 Years	12/31/99	3/6/01
Jeffrey Coleman, Esq.	Tenants	3/31/99	3 Years	12/31/99	12/28/01
Mort Starobin	Public	4/30/01	2 Years	12/31/02	2/26/03
David Rubenstein	Public	5/8/01	4 Years	12/31/03	9/1/03
Adriene L. Holder, Esq.	Tenants	5/7/02	3 Years	12/31/07	3/11/13
Steven J. Schleider, MAI	Owners	4/10/03	3 Years	12/31/13	3/26/14
Betty Philips Adams	Public	4/14/03	4 Years	12/31/06	2/25/13
Gale D. Kaufman	Public	4/10/03	4 Years	12/31/06	12/31/06
Elizabeth Lusskin	Public	4/10/03	3 Years	12/31/04	12/31/05
Martin A. Zelnik	Public	4/14/03	2 Years	12/31/04	3/22/06
Jonathan L. Kimmel, Esq.	Public	2/27/06	3 Years	12/31/10	2/05/10
Leslie Wright, Esq.	Public	3/22/06	2 Years	12/31/06	9/30/07
Risa A. Levine, Esq.	Public	3/21/07	4 Years	12/31/10	12/31/10
Ronald S Languedoc, Esq.	Tenants	3/21/07	2 Years	12/31/10	12/31/10
Magda L. Cruz, Esq.	Owners	3/21/07	2 Years	12/31/14	3/11/2015
David H. Wenk	Public	3/20/08	2 Years	12/31/14	6/24/2014
Ronald Scheinberg, Esq.	Public	3/22/10	3 Years	12/31/10	2/25/13
Courtney Moore	Public	2/15/11	4 years	12/31/14	11/18/13
Brian Cheigh	Tenants	4/26/11	2 years	12/31/12	1/08/14
Carol J. Shine, Esq.	Public	2/26/13	3 years	12/31/13	11/19/13
Tanya F. Levy-Odom	Public	2/26/13	4 years	12/31/14	3/25/14
Harvey Epstein	Tenants	4/1/13	3 years	12/31/16	presently serves
Carol J. Shine, Esq.	Public	11/20/13	4 years	12/31/14	3/11/2015
Steven Flax	Public	3/26/14	3 years	12/31/16	presently serves
Cecilia Joza	Public	3/26/14	4 years	12/31/14	presently serves

(continued)	Representation	Appointed	Length of Term	Expiration of Term§	Termination of service
Sara Williams Willard	Owners	3/26/14	3 years	12/31/16	7/2/2015
Sheila Garcia	Tenants	3/26/14	2 years	12/31/14	presently serves
K. Sabeel Rahman	Public	3/12/2015	2 years	12/31/16	presently serves
Helen Schaub	Public	3/12/2015	4 years	12/31/18	presently serves
J. Scott Walsh	Owners	3/12/2015	2 years	12/31/16	presently serves
Mary Serafy	Owners	3/29/2016	3 years	12/31/16	presently serves

§ Expiration of Term refers to the last day of a member's appointed or reappointed term as delineated by the Mayor's Office.

* Prior to 1974, there were no separate designations for public, owner and tenant members.

Note: Some Board Members resigned prior to or following the expiration date of their term as 'holdovers'. Continuation in office after expiration of the term is permitted by §26-510(a) of the RSL. Also, a number of new appointments are made to fill out the unexpired terms of members who have resigned.

Appendix B1

RENT GUIDELINES BOARD EXECUTIVE DIRECTORS

	Period of Service	
Executive Directors	**From**	**To**
Maria Patterson	March, 1980	1982
Andrea Kremen	1982	1984
Kenneth Zeichner	1984	September, 1985
Eric Weinstock	September, 1985	October, 1988
Tim Collins	October, 1988	November, 1994
Doug Hillstrom	November, 1994	March, 1999
Anita Visser	March, 1999	December, 2003
Andrew McLaughlin	January, 2004	Presently serves

Appendix C

Public Officers Law §§§ 3, 10 & 30

§ 3. Qualifications for holding office

1. No person shall be capable of holding a civil office who shall not, at the time he shall be chosen thereto, have attained the age of eighteen years, except that in the case of youth boards, youth commissions or recreation commissions only, members of such boards or commissions may be under the age of eighteen years, but must have attained the age of sixteen years on or before appointment to such youth board, youth commission or recreation commission, be a citizen of the United States, a resident of the state, and if it be a local office, a resident of the political subdivision or municipal corporation of the state for which he shall be chosen, or within which the electors electing him reside, or within which his official functions are required to be exercised, or who shall have been or shall be convicted of a violation of the selective draft act of the United States, enacted May eighteenth, nineteen hundred seventeen, or the acts amendatory or supplemental thereto, or of the federal selective training and service act of nineteen hundred forty or the acts amendatory thereof or supplemental thereto.

§ 10. Official Oaths

Every officer shall take and file the oath of office required by law, and every judicial officer of the unified court system, in addition, shall file a copy of said oath in the office of court administration, before he shall be entitled to enter upon the discharge of any of his official duties. An oath of office may be administered by a judge of the court of appeals, the attorney general, or by any officer authorized to take, within the state, the acknowledgment of the execution of a deed of real property, or by an officer in whose office the oath is required to be filed or by his duly designated assistant, or may be administered to any member of a body of officers, by a presiding officer or clerk, thereof, who shall have taken an oath of office. An oath of office may be administered to any state or local officer who is a member of the armed forces of the United States by any commissioned officer, in active service, of the armed forces of the United States. In addition to the requirements of any other law, the certificate of the officer in the armed forces administering the oath of office under this section shall state (a) the rank of the officer administering the oath, and (b) that the person taking the oath was at the time, enlisted, inducted, ordered or commissioned in or serving with, attached to or accompanying the armed forces of the United States. The fact that the officer administering the oath was at the time duly commissioned and in active service with the armed forces, shall be certified by the secretary of the army, secretary of the air force or by the secretary of the navy, as the case may be, of the United States, or by a person designated by him to make such certifications, but the place where such oath was administered need not be disclosed. The oath of office of a notary public or commissioner of deeds shall be filed in the office of the clerk of the county in which he shall reside. The oath of office of every state officer shall be filed in the office of the secretary of state; of every officer of a municipal corporation, including a school district, with the clerk thereof; and of every other officer, including the trustees and officers of a public library and the officers of boards of cooperative educational services, in the office of the clerk of the county in which he shall reside, if no place be otherwise provided by law for the filing thereof.

§ 30. Creation of vacancies

1. Every office shall be vacant upon the happening of one of the following events before the expiration of the term thereof:

d. His ceasing to be an inhabitant of the state, or if he be a local officer, of the political subdivision, or municipal corporation of which he is required to be a resident when chosen;

h. His refusal or neglect to file his official oath or undertaking, if one is required, before or within thirty days after the commencement of the term of office for which he is chosen, if an elective office, or if an appointive office, within thirty days after notice of his appointment, or within thirty days after the commencement of such term; or to file a renewal undertaking within the time required by law, or if no time be so specified, within thirty days after notice to him in pursuance of law, that such renewal undertaking is required. The neglect or failure of any state or local officer to execute and file his oath of office and official undertaking within the time limited therefor by law, shall not create a vacancy in the office if such officer was on active duty in the armed forces of the United States and absent from the county of his residence at the time of his election or appointment, and shall take his oath of office and execute his official undertaking within thirty days after receipt of notice of his election or appointment, and provided such oath of office and official undertaking be filed within ninety days following the date it has been taken and subscribed, any inconsistent provision of law, general, special, or local to the contrary, notwithstanding.

* * * * * * * *

Appendix D

Oath of Office example

I, ____

do solemnly swear, that I will support the Constitution of the United States and the Constitution of

the State of New York, and that I will faithfully discharge the duties of the office of

MEMBER

of the **Rent Guidelines Board**

of **The City of New York***, according to the best of my ability.*

Subscribed and sworn before me, this ________day of _______________, A. D. 20_____

____
(Member signature)

____
(Notary Public signature and stamp)

and filed in the office of the City Clerk, this ______ day of ____________, A. D. 20____.

__________________________*City Clerk*
(signature)

Appendix D1

Written Statement of Eligibility (sample form)

A letter for the Rent Guidelines Board files is traditionally supplied to the Executive Director following appointment, affirming compliance with the eligibility requirements. Here is an example of a typical format for this letter:

Dear ______________________,
(Executive Director)

In connection with my appointment to the Rent Guidelines Board, I, _____________________, affirm that I am not a member, officer or employee of any municipal rent regulation agency or the state division of housing and community renewal; I do not own or manage real estate covered by the Rent Stabilization Law; I am not an officer of any owner or tenant organization; and I am a resident of New York City.

For Chairs only:

In addition, I hold no other public office.

____
(Signature)

____
(Date)

Appendix D2

Sign-in sheet for Board members (sample)

New York City Rent Guidelines Board
1 Centre Street, Suite 2210 • New York, NY 10007 • (212) 669-7480
Fax: (212) 669-7488 • Web: nycrgb.org

Chair
Rachel D. Godsil

Executive Director
Andrew McLaughlin

RENT GUIDELINES BOARD SIGN IN SHEET

Date of Meeting Place of Meeting

Board Members Name	Signature	Social Security #
RACHEL D. GODSIL		
MAGDA L. CRUZ		
HARVEY EPSTEIN		
STEVEN FLAX		
SHEILA GARCIA		
CECILIA JOZA		
CAROL J. SHINE		
DAVID H. WENK		
SARA WILLIAMS WILLARD		

Appendix D3

Per Diem requisition form

New York City Rent Guidelines Board
51 Chambers Street, Suite 202 • New York, NY 10007 • (212) 385-2934
Fax (212) 385-2554 • www.housingnyc.com

Chairman
Jonathan L. Kimmel

Executive Director
Andrew McLaughlin

RENT GUIDELINES BOARD
PER DIEM PAYMENT REQUISITION
(for performance of RGB activities)

FOR: ______________________________

PERIOD COVERED: / / **TO** / /

Chairperson	
Member	

DATE	DURATION	LOCATION	ACTIVITY

Total official meeting/hearing days:	
Total hours on other days:	
Number of Diem Payments Requested:	

Date = Date the chairperson/member performed the RGB activity.
Duration = Length of time the chairperson/member performed the RGB activity.
Location = Place the chairperson/member performed the RGB activity (RGB office, other office, home, etc.)
Activity = Type of RGB activity (e.g. - official meetings, informal meetings, research, telephone calls, etc.). For telephone calls, name of other participant must be listed.

CERTIFICATION:

I certify that all information set forth in this requisition is true, correct and complete and that all the activities described herein for which payment has been requested have been performed in pursuit of the business and operation of the New York City Rent Guidelines Board ("RGB") and in compliance with the requirements of the Rent Stabilization Law and the contract between the RGB and the New York City Department of Housing Preservation and Development. Falsification of any statement made herein is an offense punishable by a fine or imprisonment or both (New York City Administrative Code Section 10-154).

____
Signature of chairperson/member Date

HPD USE ONLY - DO NOT ENTER DATA IN THIS BOX

Total hours approved:

Total amount approved:

Approved by:

____
HPD Representative Title Date

Appendix E

New York City Charter §2600-2606

Chapter 68

Conflicts of Interest (Updated 1/2016)

§2600. Preamble.
Public service is a public trust. These prohibitions on the conduct of public servants are enacted to preserve the trust placed in the public servants of the city, to promote public confidence in government, to protect the integrity of government decision- making and to enhance government efficiency.

§2601. **Definitions**. As used in this chapter,

1. “Advisory committee” means a committee, council, board or similar entity constituted to provide advice or recommendations to the city and having no authority to take a final action on behalf of the city or take any action which would have the effect of conditioning, limiting or requiring any final action by any other agency, or to take any action which is authorized by law.

2. “Agency” means a city, county, borough or other office, position, administration, department, division, bureau, board, commission, authority, corporation, advisory committee or other agency of government, the expenses of which are paid in whole or in part from the city treasury, and shall include but not be limited to, the council, the offices of each elected official, the board of education, community school boards, community boards, the financial services corporation, the health and hospitals corporation, the public development corporation, and the New York city housing authority, but shall not include any court or any corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility.

3. "Agency served by a public servant" means (a) in the case of a paid public servant, the agency employing such public servant or (b) in the case of an unpaid public servant, the agency employing the official who has appointed such unpaid public servant unless the body to which the unpaid public servant has been appointed does not report to, or is not under the control of, the official or the agency of the official that has appointed the unpaid public servant, in which case the agency served by the unpaid public servant is the body to which the unpaid public servant has been appointed.

4. "Appear" means to make any communication, for compensation, other than those involving ministerial matters.

5. A person or firm "associated" with a public servant includes a spouse, domestic partner, child, parent or sibling; a person with whom the public servant has a business or other financial relationship; and each firm in which the public servant has a present or potential interest.

6. "Blind trust" means a trust in which a public servant, or the public servant's spouse, domestic partner, or unemancipated child, has a beneficial interest, the holdings and sources of income of which the public servant, the public servant's spouse, domestic partner, and unemancipated child have no knowledge, and which meets requirements established by rules of the board, which shall include provisions regarding the independent authority and discretion of the trustee, and the trustee's confidential treatment of information regarding the holdings and sources of income of the trust.

7. "Board" means the conflicts of interest board established by this chapter.

8. "Business dealings with the city" means any transaction with the city involving the sale, purchase, rental, disposition or exchange of any goods, services, or property, any license, permit, grant or benefit, and any performance of or litigation with respect to any of the foregoing, but shall not include any transaction involving a public servant's residence or any ministerial matter.

9. "City" means the city of New York and includes an agency of the city.

10. "Elected official" means a person holding office as mayor, comptroller, public advocate, borough president or member of the council.

11. "Firm" means sole proprietorship, joint venture, partnership, corporation and any other form of enterprise, but shall not include a public benefit corporation, local development corporation or other similar entity as defined by rule of the board.

12. "Interest" means an ownership interest in a firm or a position with a firm.

13. "Law" means state and local law, this charter, and rules issued pursuant thereto.

14. "Member" means a member of the board.

15. "Ministerial matter" means an administrative act, including the issuance of a license, permit or other permission by the city, which is carried out in a prescribed manner and which does not involve substantial personal discretion.

16. "Ownership interest" means an interest in a firm held by a public servant, or the public servant's spouse, domestic partner, or unemancipated child, which exceeds five percent of the firm or an investment of twenty-five thousand dollars in cash or other form of commitment, whichever is less, or five percent or twenty-five thousand dollars of the firm's indebtedness, whichever is less, and any lesser interest in a firm when the public servant, or the public servant's spouse, domestic partner, or unemancipated child exercises managerial control or responsibility regarding any such firm, but shall not include interests held in any pension plan, deferred compensation plan or mutual fund, the investments of which are not controlled by the public servant, the public servant's spouse, domestic partner, or unemancipated child, or in any blind trust which holds or acquires an ownership interest. The amount of twenty-five thousand dollars specified herein shall be modified by the board pursuant to subdivision a of section twenty-six hundred three.

17. "Particular matter" means any case, proceeding, application, request for a ruling or benefit, determination, contract limited to the duration of the contract as specified therein, investigation, charge, accusation, arrest, or other similar action which involves a specific party or parties, including actions leading up to the particular matter; provided that a particular matter shall not be construed to include the proposal, consideration, or enactment of local laws or resolutions by the council, or any action on the budget or text of the zoning resolution.

18. "Position" means a position in a firm, such as an officer, director, trustee, employee, or any management position, or as an attorney, agent, broker, or consultant to the firm, which does not constitute an ownership interest in the firm.

19. "Public servant" means all officials, officers and employees of the city, including members of community boards and members of advisory committees, except unpaid members of advisory committees shall not be public servants.

20. "Regular employee" means all elected officials and public servants whose primary employment, as defined by rule of the board, is with the city, but shall not include members of advisory committees or community boards.

21. a. "Spouse" means a husband or wife of a public servant who is not legally separated from such public servant.

b. “Domestic partner” means persons who have a registered domestic partnership pursuant to section 3-240 of the administrative code, a domestic partnership registered in accordance with executive order number 123, dated August 7, 1989, or a domestic partnership registered in accordance with executive order number 48, dated January 7, 1993.

22. "Supervisory official" means any person having the authority to control or direct the work of a public servant.

23. "Unemancipated child" means any son, daughter, step-son or step-daughter who is under the age of eighteen, unmarried and living in the household of the public servant.

§2602. Conflicts of interest board.

a. There shall be a conflicts of interest board consisting of five members, appointed by the mayor with the advice and consent of the council. The mayor shall designate a chair.

b. Members shall be chosen for their independence, integrity, civic commitment and high ethical standards. No person while a member shall hold any public office, seek election to any public office, be a public employee in any jurisdiction, hold any political party office, or appear as a lobbyist before the city.

c. Each member shall serve for a term of six years; provided, however, that of the three members first appointed, one shall be appointed for a term to expire on March thirty- first, nineteen hundred ninety, one shall be appointed for a term to expire on March thirty- first, nineteen hundred ninety-two and one shall by appointed for a term to expire on March thirty-first, nineteen hundred ninety-four, and of the remaining members, one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety-two and one shall be appointed for a term to expire on March thirty-first, nineteen hundred ninety- four. If the mayor has not submitted to the council a nomination for appointment of a successor at least sixty days prior to the expiration of the term of the member whose term is expiring, the term of the member in office shall be extended for an additional year and the term of the successor to such member shall be shortened by an equal amount of time. If the council fails to act within forty-five days of receipt of such nomination from the mayor, the nomination shall be deemed to be confirmed. No member shall serve for more than two consecutive six-year terms. The three initial nominations by the mayor shall be made by the first day of February, nineteen hundred eighty-nine and both later nominations by the mayor shall be made by the first day of March, nineteen hundred ninety.

d. Members shall receive a per diem compensation, no less than the highest amount paid to an official appointed to a board or commission with the advice and consent of the council and compensated on a per diem basis, for each calendar day when performing the work of the board.

e. Members of the board shall serve until their successors have been confirmed. Any vacancy occurring other than by expiration of a term shall be filled by nomination by the mayor made to the council within sixty days of the creation of the vacancy, for the unexpired portion of the term of the member succeeded. If the council fails to act within forty-five days of receipt of such nomination from the mayor, the nomination shall be deemed to be confirmed.

f. Members may be removed by the mayor for substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of office or violation of this section, after written notice and opportunity for a reply.

g. The board shall appoint a counsel to serve at its pleasure and shall employ or retain such other officers, employees and consultants as are necessary to exercise its powers and fulfill its obligations. The authority of the counsel shall be defined in writing, provided that neither the counsel, nor any other officer, employee or consultant of the board shall be authorized to issue advisory opinions, promulgate rules, issue subpoenas, issue final determinations of violations of this chapter, or make final recommendations of or impose penalties. The board may delegate its authority to issue advisory opinions to the chair.

h. The board shall meet at least once a month and at such other times as the chair may deem necessary. Two members of the board shall constitute a quorum and all acts of the board shall be by the affirmative vote of at least two members of the board.

§2603. Powers and obligations.

a. Rules. The board shall promulgate rules as are necessary to implement and interpret the provisions of this chapter, consistent with the goal of providing clear guidance regarding prohibited conduct. The board, by rule, shall once every four years adjust the dollar amount established in subdivision sixteen of section twenty-six hundred one of this chapter to reflect changes in the consumer price index for the metropolitan New York-New Jersey region published by the United States bureau of labor statistics.

b. Training and education.

1. The board shall have the responsibility of informing public servants and assisting their understanding of the conflicts of interest provisions of this chapter. In fulfilling this responsibility, the board shall develop educational materials regarding the conflicts of interest provisions and related interpretive rules and shall develop and administer an on- going program for the education of public servants regarding the provisions of this chapter.

2. (a) The board shall make information concerning this chapter available and known to all public servants. On or before the tenth day after an individual becomes a public servant, such public servant shall be provided with a copy of this chapter and shall sign a written statement, which shall be maintained in his or her personnel file, that such public servant has received and read and shall conform with the provisions of this chapter. [Eff. 11/2/2010]

(b) Each public servant shall undergo training provided by the board in the provisions of this chapter on or before the sixtieth day after he or she becomes a public servant, and periodically as appropriate during the course of his or her city service. Every two years, each agency shall develop and implement an appropriate agency training plan in consultation with the board and the mayor's office of operations. Each agency shall cooperate with the board in order to ensure that all public servants in the agency receive the training required by this subdivision and shall maintain records documenting such training and the dates thereof. The training required by this subdivision may be in person, provided either by the board itself or by agency personnel working in conjunction with the board, or through an automated or online training program developed by the board. [Eff. 11/2/2010]

(c) The failure of a public servant to receive the training required by this paragraph, to receive a copy of this chapter, or to sign the statement required by this paragraph, or the failure of the agency to maintain the required statement on file or record of training completed, shall have no effect on the duty of such public servant to comply with this chapter or on the enforcement of the provisions thereof. [Eff. 11/2/2010]

c. Advisory opinions.

1. The board shall render advisory opinions with respect to all matters covered by this chapter. An advisory opinion shall be rendered on the request of a public servant or a supervisory official of a public servant and shall apply only to such public servant. The request shall be in such form as the board may require and shall be signed by the person making the request. The opinion of the board shall be based on such facts as are presented in the request or subsequently submitted in a written, signed document.

2. Advisory opinions shall be issued only with respect to proposed future conduct or action by a public servant. A public servant whose conduct or action is the subject of an advisory opinion shall not be subject to penalties or sanctions by virtue of acting or failing to act due to a reasonable reliance on the opinion, unless

material facts were omitted or misstated in the request for an opinion. The board may amend a previously issued advisory opinion after giving reasonable notice to the public servant that it is reconsidering its opinion; provided that such amended advisory opinion shall apply only to future conduct or action of the public servant.

3. The board shall make public its advisory opinions with such deletions as may be necessary to prevent disclosure of the identity of any public servant or other involved party.

The advisory opinions of the board shall be indexed by subject matter and cross-indexed by charter section and rule number and such index shall be maintained on an annual and cumulative basis.

4. Not later than the first day of September, nineteen hundred ninety the board shall initiate a rulemaking to adopt, as interpretive of the provisions of this chapter, any advisory opinions of the board of ethics constituted pursuant to chapter sixty-eight of the charter heretofore in effect, which the board determines to be consistent with and to have interpretive value in construing the provisions of this chapter.

5. For the purposes of this subdivision, public servant includes a prospective and former public servant, and a supervisory official includes a supervisory official who shall supervise a prospective public servant and a supervisory official who supervised a former public servant.

d. Financial disclosure.

1. All financial disclosure statements required to be completed and filed by public servants pursuant to state or local law shall be filed by such public servants with the board.

2. The board shall cause each statement filed with it to be examined to determine if there has been compliance with the applicable law concerning financial disclosure and to determine if there has been compliance with or violations of the provisions of this chapter.

3. The board shall issue rules concerning the filing of financial disclosure statements for the purpose of ensuring compliance by the city and all public servants with the applicable provisions of financial disclosure law.

e. Complaints.

1. The board shall receive complaints alleging violations of this chapter.

2. Whenever a written complaint is received by the board, it shall:

(a) dismiss the complaint if it determines that no further action is required by the board; or

(b) refer the complaint to the commissioner of investigation if further investigation is required for the board to determine what action is appropriate; or

(c) make an initial determination that there is probable cause to believe that a public servant has violated a provision of this chapter; or

(d) refer an alleged violation of this chapter to the head of the agency served by the public servant, if the board deems the violation to be minor or if related disciplinary charges are pending against the public servant.

3. For the purposes of this subdivision, a public servant includes a former public servant.

f. Investigations.

1. The board shall have the power to direct the department of investigation to conduct an investigation of any matter related to the board's responsibilities under this chapter. The commissioner of investigation shall, within a reasonable time, investigate any such matter and submit a confidential written report of factual findings to the board.

2. The commissioner of investigation shall make a confidential report to the board concerning the results of all investigations which involve or may involve violations of the provisions of this chapter, whether or not such investigations were made at the request of the board.

g. Referral of matters within the board's jurisdiction.

1. A public servant or supervisory official of such public servant may request the board to review and make a determination regarding a past or ongoing action of such public servant. Such request shall be reviewed and acted upon by the board in the same manner as a complaint received by the board under subdivision e of this section.

2. Whenever an agency receives a complaint alleging a violation of this chapter or determines that a violation of this chapter may have occurred, it shall refer such matter to the board. Such referral shall be reviewed and acted upon by the board in the same manner as a complaint received by the board under subdivision e of this section.

3. For the purposes of this subdivision, public servant includes a former public servant, and a supervisory official includes a supervisory official who supervised a former public servant.

h. Hearings.

1. If the board makes an initial determination, based on a complaint, investigation or other information available to the board, that there is probable cause to believe that the public servant has violated a provision of this chapter, the board shall notify the public servant of its determination in writing. The notice shall contain a statement of the facts upon which the board relied for its determination of probable cause and a statement of the provisions of law allegedly violated. The board shall also inform the public servant of the board's

procedural rules. Such public servant shall have a reasonable time to respond, either orally or in writing, and shall have the right to be represented by counsel or any other person.

2. If, after receipt of the public servant's response, the board determines that there is no probable cause to believe that a violation has occurred, the board shall dismiss the matter and inform the public servant in writing of its decision. If, after the consideration of the response by the public servant, the board determines there remains probable cause to believe that a violation of the provisions of this chapter has occurred, the board shall hold or direct a hearing to be held on the record to determine whether such violation has occurred, or shall refer the matter to the appropriate agency if the public servant is subject to the jurisdiction of any state law or collective bargaining agreement which provides for the conduct of disciplinary proceedings, provided that when such a matter is referred to an agency, the agency shall consult with the board before issuing a final decision.

3. If the board determines, after a hearing or the opportunity for a hearing, that a public servant has violated provisions of this chapter, it shall, after consultation with the head of the agency served or formerly served by the public servant, or in the case of an agency head, with the mayor, issue an order either imposing such penalties provided for by this chapter as it deems appropriate, or recommending such penalties to the head of the agency served or formerly served by the public servant, or in the case of an agency head, to the mayor; provided, however, that the board shall not impose penalties against members of the council, or public servants employed by the council or by members of the council, but may recommend to the council such penalties as it deems appropriate. The order shall include findings of fact and conclusions of law. When a penalty is recommended, the head of the agency or the council shall report to the board what action was taken.

4. Hearings of the board shall not be public unless requested by the public servant. The order and the board's findings and conclusions shall be made public.

5. The board shall maintain an index of all persons found to be in violation of this chapter, by name, office and date of order. The index and the determinations of probable cause and orders in such cases shall be made available for public inspection and copying.

6. Nothing contained in this section shall prohibit the appointing officer of a public servant from terminating or otherwise disciplining such public servant, where such appointing officer is otherwise authorized to do so; provided, however, that such action by the appointing officer shall not preclude the board from exercising its powers and duties under this chapter with respect to the actions of any such public servant.

7. For the purposes of this subdivision, the term public servant shall include a former public servant.

i. Annual report.

The board shall submit an annual report to the mayor and the council in accordance with section eleven hundred and six of this charter. The report shall include a summary of the proceedings and activities of the board, a description of the education and training conducted pursuant to the requirements of this chapter, a statistical summary and evaluation of complaints and referrals received and their disposition, such legislative and administrative recommendations as the board deems appropriate, the rules of the board, and the index of opinions and orders of that year. The report, which shall be made available to the public, shall not contain information, which, if disclosed, would constitute an unwarranted invasion of the privacy of a public servant.

j. Revision.

The board shall review the provisions of this chapter and shall recommend to the council from time to time such changes or additions as it may consider appropriate or desirable. Such review and recommendation shall be made at least once every five years.

k. Except as otherwise provided in this chapter, the records, reports, memoranda and files of the board shall be confidential and shall not be subject to public scrutiny.

§2604. Prohibited interests and conduct.

a. Prohibited interests in firms engaged in business dealings with the city.

1. Except as provided in paragraph three below,

(a) no public servant shall have an interest in a firm which such public servant knows is engaged in business dealings with the agency served by such public servant; provided, however, that, subject to paragraph one of subdivision b of this section, an appointed member of a community board shall not be prohibited from having an interest in a firm which may be affected by an action on a matter before the community or borough board, and

(b) no regular employee shall have an interest in a firm which such regular employee knows is engaged in business dealings with the city, except if such interest is in a firm whose shares are publicly traded, as defined by rule of the board.

2. Prior to acquiring or accepting an interest in a firm whose shares are publicly traded, a public servant may submit a written request to the head of the agency served by the public servant for a determination of whether such firm is engaged in business dealings with such agency. Such determination shall be in writing,

shall be rendered expeditiously and shall be binding on the city and the public servant with respect to the prohibition of subparagraph a of paragraph one of this subdivision.

3. An individual who, prior to becoming a public servant, has an ownership interest which would be prohibited by paragraph one above; or a public servant who has an ownership interest and did not know of a business dealing which would cause the interest to be one prohibited by paragraph one above, but has subsequently gained knowledge of such business dealing; or a public servant who holds an ownership interest which, subsequent to the public servant's acquisition of the interest, enters into a business dealing which would cause the ownership interest to be one prohibited by paragraph one above; or a public servant who, by operation of law, obtains an ownership interest which would be prohibited by paragraph one above shall, prior to becoming a public servant or, if already a public servant, within ten days of knowing of the business dealing, either:

(a) divest the ownership interest; or

(b) disclose to the board such ownership interest and comply with its order.

4. When an individual or public servant discloses an interest to the board pursuant to paragraph three of this subdivision, the board shall issue an order setting forth its determination as to whether or not such interest, if maintained, would be in conflict with the proper discharge of the public servant's official duties. In making such determination, the board shall take into account the nature of the public servant's official duties, the manner in which the interest may be affected by any action of the city, and the appearance of conflict to the public. If the board determines a conflict exists, the board's order shall require divestiture or such other action as it deems appropriate which may mitigate such a conflict, taking into account the financial burden of any decision on the public servant.

5. For the purposes of this subdivision, the agency served by

(a) an elected official, other than a member of the council, shall be the executive branch of the city government,

(b) a public servant who is a deputy mayor, the director to the office of management and budget, commissioner of citywide administrative services, corporation counsel, commissioner of finance, commissioner of investigation or chair of the city planning commission, or who serves in the executive branch of city government and is charged with substantial policy discretion involving city-wide policy as determined by the board, shall be the executive branch of the city government,

(c) a public servant designated by a member of the board of estimate to act in the place of such member as a member of the board of estimate, shall include the board of estimate, and government.

(d) a member of the council shall be the legislative branch of the city

6. For the purposes of subdivisions a and b of section twenty-six hundred six, a public servant shall be deemed to know of a business dealing with the city if such public servant should have known of such business dealing with the city.

b. Prohibited conduct.

1. A public servant who has an interest in a firm which is not prohibited by subdivision a of this section, shall not take any action as a public servant particularly affecting that interest, except that

(a) in the case of an elected official, such action shall not be prohibited, but the elected official shall disclose the interest to the conflicts of interest board, and on the official records of the council or the board of estimate in the case of matters before those bodies,

(b) in the case of an appointed community board member, such action shall not be prohibited, but no member may vote on any matter before the community or borough board which may result in a personal and direct economic gain to the member or any person with whom the member is associated, and

(c) in the case of all other public servants, if the interest is less than ten thousand dollars, such action shall not be prohibited, but the public servant shall disclose the interest to the board.

2. No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.

3. No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.

4. No public servant shall disclose any confidential information concerning the property, affairs or government of the city which is obtained as a result of the official duties of such public servant and which is not otherwise available to the public, or use any such information to advance any direct or indirect financial or other private interest of the public servant or of any other person or firm associated with the public servant; provided, however, that this shall not prohibit any public servant from disclosing any information concerning conduct which the public servant knows or reasonably believes to involve waste, inefficiency, corruption, criminal activity or conflict of interest.

5. No public servant shall accept any valuable gift, as defined by rule of the board, from any person or firm which such public servant knows is or intends to become engaged

in business dealings with the city, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions.

6. No public servant shall, for compensation, represent private interests before any city agency or appear directly or indirectly on behalf of private interests in matters involving the city. For a public servant who is not a regular employee, this prohibition shall apply only to the agency served by the public servant.

7. No public servant shall appear as attorney or counsel against the interests of the city in any litigation to which the city is a party, or in any action or proceeding in which the city, or any public servant of the city, acting in the course of official duties, is a complainant, provided that this paragraph shall not apply to a public servant employed by an elected official who appears as attorney or counsel for that elected official in any litigation, action or proceeding in which the elected official has standing and authority to participate by virtue of his or her capacity as an elected official, including any part of a litigation, action or proceeding prior to or at which standing or authority to participate is determined. This paragraph shall not in any way be construed to expand or limit the standing or authority of any elected official to participate in any litigation, action or proceeding, nor shall it in any way affect the powers and duties of the corporation counsel. For a public servant who is not a regular employee, this prohibition shall apply only to the agency served by the public servant.

8. No public servant shall give opinion evidence as a paid expert against the interests of the city in any civil litigation brought by or against the city. For a public servant who is not a regular employee, this prohibition shall apply only to the agency served by the public servant.

9. No public servant shall,

(a) coerce or attempt to coerce, by intimidation, threats or otherwise, any public servant to engage in political activities, or

(b) request any subordinate public servant to participate in a political campaign. For purposes of this subparagraph, participation in a political campaign shall include managing or aiding in the management of a campaign, soliciting votes or canvassing voters for a particular candidate or performing any similar acts which are unrelated to the public servant's duties or responsibilities. Nothing contained herein shall prohibit a public servant from requesting a subordinate public servant to speak on behalf of a candidate, or provide information or perform other similar acts, if such acts are related to matters within the public servant's duties or responsibilities.

10. No public servant shall give or promise to give any portion of the public servant's compensation, or any money, or valuable thing to any person in consideration of having been or being nominated, appointed, elected or employed as a public servant.

11. No public servant shall, directly or indirectly,

(a) compel, induce or request any person to pay any political assessment, subscription or contribution, under threat of prejudice to or promise of or to secure advantage in rank, compensation or other job-related status or function.

(b) pay or promise to pay any political assessment, subscription or contribution in consideration of having been or being nominated, elected or employed as such public servant or to secure advantage in rank, compensation or other job-related status or function, or

(c) compel, induce or request any subordinate public servant to pay any political assessment, subscription or contribution.

12. No public servant, other than an elected official, who is a deputy mayor, or head of an agency or who is charged with substantial policy discretion as defined by rule of the board, shall directly or indirectly request any person to make or pay any political assessment, subscription or contribution for any candidate for an elective office of the city or for any elected official who is a candidate for any elective office; provided that nothing contained in this paragraph shall be construed to prohibit such public servant from speaking on behalf of any such candidate or elected official at an occasion where a request for a political assessment, subscription or contribution may be made by others.

13. No public servant shall receive compensation except from the city for performing any official duty or accept or receive any gratuity from any person whose interests may be affected by the public servant's official action.

14. No public servant shall enter into any business or financial relationship with another public servant who is a superior or subordinate of such public servant.

15. No elected official, deputy mayor, deputy to a citywide or boroughwide elected official, head of an agency, or other public servant who is charged with substantial policy discretion as defined by rule of the board may be a member of the national or state committee of a political party, serve as an assembly district leader of a political party or serve as the chair or as an officer of the county committee or county executive

committee of a political party, except that a member of the council may serve as an assembly district leader or hold any lesser political office as defined by rule of the board.

c. This section shall not prohibit:

1. an elected official from appearing without compensation before any city agency on behalf of constituents or in the performance of public official or civic obligations;

2. a public servant from accepting or receiving any benefit or facility which is provided for or made available to citizens or residents, or classes of citizens or residents, under housing or other general welfare legislation or in the exercise of the police power;

3. a public servant from obtaining a loan from any financial institution upon terms and conditions available to members of the public;

4. any physician, dentist, optometrist, podiatrist, pharmacist, chiropractor or other person who is eligible to provide services or supplies under title eleven of article five of the social services law and is receiving any salary or other compensation from the city treasury, from providing professional services and supplies to persons who are entitled to benefits under such title, provided that, in the case of services or supplies provided by those who perform audit, review or other administrative functions pursuant to the provisions of such title, the New York state department of health reviews and approves payment for such services or supplies and provided further that there is no conflict with their official duties; nothing in this paragraph shall be construed to authorize payment to such persons under such title for services or supplies furnished in the course of their employment by the city;

5. any member of the uniformed force of the police department from being employed in the private security field, provided that such member has received approval from the police commissioner therefor and has complied with all rules and regulations promulgated by the police commissioner relating to such employment;

6. a public servant from acting as attorney, agent, broker, employee, officer, director or consultant for any not-for-profit corporation, or association, or other such entity which operates on a not-for-profit basis, interested in business dealings with the city, provided that:

(a) such public servant takes no direct or indirect part in such business dealings;

(b) such not-for-profit entity has no direct or indirect interest in any business dealings with the city agency in which the public servant is employed and is not subject to supervision, control or regulation by such agency, except where it is determined by the head of an agency, or by the mayor where the public servant is an agency head, that such activity is in furtherance of the purposes and interests of the city;

(c) all such activities by such public servant shall be performed at times during which the public servant is not required to perform services for the city; and

(d) such public servant receives no salary or other compensation in connection with such activities;

7. a public servant, other than elected officials, employees in the office of property management of the department of housing preservation and development, employees in the department of citywide administrative services who are designated by the commissioner of such department pursuant to this paragraph, and the commissioners, deputy commissioners, assistant commissioners and others of equivalent ranks in such departments, or the successors to such departments, from bidding on and purchasing any city-owned real property at public auction or sealed bid sale, or from purchasing any city- owned residential building containing six or less dwelling units through negotiated sale, provided that such public servant, in the course of city employment, did not participate in decisions or matters affecting the disposition of the city property to be purchased and has no such matters under active consideration. The commissioner of citywide administrative services shall designate all employees of the department of citywide administrative services whose functions relate to citywide real property matters to be subject to this paragraph; or

8. a public servant from participating in collective bargaining or from paying union or shop fees or dues or, if such public servant is a union member, from requesting a subordinate public servant who is a member of such union to contribute to union political action committees or other similar entities.

d. Post-employment restrictions.

1. No public servant shall solicit, negotiate for or accept any position (i) from which, after leaving city service, the public servant would be disqualified under this subdivision, or (ii) with any person or firm who or which is involved in a particular matter with the city, while such public servant is actively considering, or is directly concerned or personally participating in such particular matter on behalf of the city.

2. No former public servant shall, within a period of one year after termination of such person's service with the city, appear before the city agency served by such public servant; provided, however, that nothing contained herein shall be deemed to prohibit a former public servant from making communications with the agency served by the public servant which are incidental to an otherwise permitted appearance in an adjudicative proceeding before another agency or body, or a court, unless the proceeding was pending in the agency served during the period of the public servant's service with that agency. For the purposes of this

paragraph, the agency served by a public servant designated by a member of the board of estimate to act in the place of such member as a member of the board of estimate, shall include the board of estimate.

3. No elected official, nor the holder of the position of deputy mayor, director of the office of management and budget, commissioner of citywide administrative services, corporation counsel, commissioner of finance, commissioner of investigation or chair of the city planning commission shall, within a period of one year after termination of such person's employment with the city, appear before any agency in the branch of city government served by such person. For the purposes of this paragraph, the legislative branch of the city consists of the council and the offices of the council, and the executive branch of the city consists of all other agencies of the city, including the office of the public advocate.

4. No person who has served as a public servant shall appear, whether paid or unpaid, before the city, or receive compensation for any services rendered, in relation to any particular matter involving the same party or parties with respect to which particular matter such person had participated personally and substantially as a public servant through decision, approval, recommendation, investigation or other similar activities.

5. No public servant shall, after leaving city service, disclose or use for private advantage any confidential information gained from public service which is not otherwise made available to the public; provided, however, that this shall not prohibit any public servant from disclosing any information concerning conduct which the public servant knows or reasonably believes to involve waste, inefficiency, corruption, criminal activity or conflict of interest.

6. The prohibitions on negotiating for and having certain positions after leaving city service, shall not apply to positions with or representation on behalf of any local, state or federal agency.

7. Nothing contained in this subdivision shall prohibit a former public servant from being associated with or having a position in a firm which appears before a city agency or from acting in a ministerial matter regarding business dealings with the city.

e. Allowed positions.

A public servant or former public servant may hold or negotiate for a position otherwise prohibited by this section, where the holding of the position would not be in conflict with the purposes and interests of the city, if, after written approval by the head of the agency or agencies involved, the board determines that the position involves no such conflict. Such findings shall be in writing and made public by the board.

§2605. Reporting.

No public servant shall attempt to influence the course of any proposed legislation in the legislative body of the city without publicly disclosing on the official records of the legislative body the nature and extent of any direct or indirect financial or other private interest the public servant may have in such legislation.

§2606. Penalties.

a. Upon a determination by the board that a violation of section twenty-six hundred four or twenty-six hundred five of this chapter, involving a contract work, business, sale or transaction, has occurred, the board shall have the power, after consultation with the head

of the agency involved, or in the case of an agency head, with the mayor, to render forfeit and void the transaction in question.

b. Upon a determination by the board that a violation of section twenty-six hundred four or twenty-six hundred five of this chapter has occurred, the board, after consultation with the head of the agency involved, or in the case of an agency head, with the mayor, shall have the power to impose fines of up to twenty-five thousand dollars, and to recommend to the appointing authority, or person or body charged by law with responsibility for imposing such penalties, suspension or removal from office or employment. [Eff. 11/2/2010]

b-1. In addition to the penalties set forth in subdivisions a and b of this section, the board shall have the power to order payment to the city of the value of any gain or benefit obtained by the respondent as a result of the violation in accordance with rules consistent with subdivision h of section twenty-six hundred three. [Eff. 11/2/2010]

c. Any person who violates section twenty-six hundred four or twenty-six hundred five of this chapter shall be guilty of a misdemeanor and, on conviction thereof, shall forfeit his or her public office or employment. Any person who violates paragraph ten of subdivision b of section twenty-six hundred four, on conviction thereof, shall additionally be forever disqualified from being elected, appointed or employed in the service of the city. A public servant must be found to have had actual knowledge of a business dealing with the city in order to be found guilty under this subdivision, of a violation of subdivision a of section twenty-six hundred four of this chapter.

d. Notwithstanding the provisions of subdivisions a, b and c of this section, no penalties shall be imposed for a violation of paragraph two of subdivision b of section twenty-six hundred four unless such violation involved conduct identified by rule of the board as prohibited by such paragraph.

§2607. Gifts by lobbyists.
Complaints made pursuant to subchapter three of chapter two of title three of the administrative code shall be made, received, investigated and adjudicated in a manner consistent with investigation and adjudication of conflicts of interest pursuant to this chapter and chapter thirty-four.

Appendix F

Bylaws of the New York City Rent Guidelines Board

Article One

Organization

Name: The name of this organization shall be NEW YORK CITY RENT GUIDELINES BOARD (herein referred to as the "Board").

Article Two

Purpose and Powers

The Board shall establish annually guidelines for rent adjustments for rent stabilized housing accommodations in New York City which are subject to the New York City Rent Stabilization Law of 1969 (hereinafter referred to as the "RSL") and the New York State Emergency Tenant Protection Act of 1974 (hereinafter referred to as the "ETPA"), including any extensions, amendments of renewals thereof.

The Board shall have the power to do any and all acts consistent with the provisions of the RSL and consistent with any and all enabling state and federal legislation, such as but not limited to, the ETPA.

In setting these guidelines, the Board shall consider, among other things (1) the economic condition of the residential real estate industry in the affected area including such factors as the prevailing and projected (i) real estate taxes and sewer and water rates, (ii) gross operating maintenance costs (including insurance rates, cost of fuel and labor costs), (iii) costs and availability of financing (including effective rates of interest), (iv) over-all supply of housing accommodations and over-all vacancy rates, (2) relevant data from the current and projected cost of living indices for the affected area, (3) such other data as may be made available to it.

Article Three

Membership

The Board shall consist of 9 members. Appointment, removal and qualifications of Board members shall be in accord with the RSL.

Article Four

Officers

One public member shall be designated by the Mayor to serve as Chairman and shall hold no other public office.

The Chairman shall be chief administrative officer of the Board and among his or her powers and duties he or she shall have the authority to employ, assign and supervise the employees of the Board and enter into contracts for consultant services.

Article Five

Compensation of Members

Board members shall be compensated in accordance with the provisions of the RSL.

Article Six

Staff

The Board shall have a permanent staff to assist it in carrying out its mandate. The staff may consist of an Executive Director/Research Director, Research Associate, Counsel, Office Manager and Secretary. Notwithstanding anything herein to the contrary, the Chairman may modify the composition of the staff by adding of subtracting employees or by changing their responsibilities, provided such modifications are consistent with the overall financial resources of the Board.

Article Seven

Hearings and Meetings

1. Annual Hearings. Prior to the annual adjustments of the level of fair rents for dwelling units and hotel units covered by the RSL the Board shall hold a public hearing, or hearings for the purpose of collecting information.

2. Annual Meetings. Pursuant to the RSL, the Board shall hold public meetings sufficient in number to enable it to fulfill its statutory mandate of issuing annual guidelines for units covered under the RSL.

3. Special Meetings and Hearings. The Chairman may hold hearings and/or meetings in addition to those above mentioned for any purpose consistent with the Board's mandate.

4. Notice of Meetings and Hearings. Notice of all meetings and hearings shall meet the requirements of law.

5. Place of Meeting and Hearings. Every hearing and meeting of the Board shall take place within the City and State of New York.

6. Quorum Requirements. At all meetings of the Board, the Attendance of five members thereof shall constitute a quorum for the transaction of business.

Once a quorum is attained the meeting may continue thereafter, even though a member (or members) whose presence was necessary to constitute the quorum leaves the meeting prior to its adjournment, but no purported action of the Board shall be valid unless the vote thereon is in accord with the voting requirements as specified herein below.

7. Order of Business. The order of business at all meetings shall be determined by the Chairman, but such order may be changed by a majority of those members present. If the Chairman is unavailable to preside over a meeting, he or she shall appoint another public Board member to preside over and to determine the order of business for such meeting by orally notifying the Board's staff of such appointment.

8. Rules of Order. All meetings and hearings win be conducted in accordance with Robert's Rules of Order unless such rules are in conflict with anything stated herein, in which case these Bylaws shall control.

9. Voting. Each Board member, including the Chairman, shall be entitled to vote when he or she is present at a meeting. A member will not be entitled to vote by proxy.

The vote of at least five members of the board shall constitute an act of the Board, except as otherwise required by law or by these Bylaws.

The amendment of repeal of these Bylaws shall require the vote of at least six Board members.

Article Eight

Promulgation of Guideline Orders

Not later than July first of each year, the Board shall file with the City Clerk its findings for the preceding year, and shall accompany such findings with a statement of the maximum rate or rates of rent adjustment, if any, for one or more classes of accommodations subject to the RSL for leases or other rental agreements commencing during the twelve month period beginning October first of that year.

On or about May first of each year, but not later than July first of that year, the Board shall issue its guidelines, as described in the above paragraph, for hotel dwelling units subject to the RSL.

Article Nine

Bylaws

The decision of the Board shall be conclusive on all questions of construction of these Bylaws.

Adopted May 18, 1981

Appendix G

Payment History of PIOC: BLS Contract, consultants, RGB Staff

YEAR	CONTRACT AMOUNT	BLS/Consultant∞	RSA
1970	$150,000	$150,000	
1971	$122,000	$122,000	
1972	$150,000	$ 50,000	$100,000
1973	$155,000	$ 55,000	$100,000
1974	$160,000	$ 55,000	$105,000
1975	$175,000	$ 60,000	$115,000
1976	$183,000		$183,000
1977	$190,000		$190,000
1978	$196,000	$ 35,000	$161,000
1979	$207,000	$207,000	
1980	$224,000	$224,000	
1981	$242,000	$242,000	
1982	$292,000	$292,000	
1983	$300,000	$300,000	
1984	$250,000	$250,000	
1985	$287,384	$287,384	
1986	$235,000	$235,000	
1987	$1.00*	$1.00*	
1988	$191,178	$191,178	
1989	$195,053	$195,053	
1990	$174,858	$174,858	
1991	$120,907	$120,907 (RGB Staff)**	
1992	n/a	$ 58,542 (RGB Staff)***	
1993	n/a	$ 54,637 (RGB Staff)***	
1994	n/a	$ 52,173 (RGB Staff)	
1995	n/a	$ 38,630 (RGB Staff)	
1996	n/a	$ 20,139 (RGB Staff)	
1997	n/a	$ 21,726 (RGB Staff)	
1998	n/a	$ 24,668 (RGB Staff)	
1999	n/a	$ 33,384 (RGB Staff)***	

∞The Department of Housing Preservation and Development (HPD) issued the PIOC contract from 1970 to 1981 to the Bureau of Labor Statistics. Private consulting groups performed the PIOC from 1982 to 1990. The PIOC was brought "in-house" in 1991.
* PIOC contract rejected by NYC Board of Estimate; Performed gratis by USR&E.
** Consultant supplied survey workers and prepared tax relative.
*** Consultant prepared tax relative only.
Note: Costs for 1992-99 include printing and mailing costs, temporary workers salaries, consultants contracts and PIOC supervisor salary February to April.

Appendix H

RESOLUTION
NEW YORK CITY RENT GUIDELINES BOARD
FEBRUARY 13, 1991

Whereas, §310(2) of the New York City Charter provides as follows:

Sec. 310. Scope. Except as otherwise provided in this charter or by statute,

> 2. all goods, services or construction to be procured by an entity, the majority of the members of whose board are city officials or are individuals appointed directly or indirectly by city officials shall be procured as prescribed in this chapter; provided, however, that where the provisions of this chapter require action by the mayor or an appointee of the mayor in regard to a particular procurement except for mayoral action pursuant to subdivision c of section three hundred thirty-four, such action shall not be taken by the mayor or such appointee of the mayor, but shall be taken by the governing board of such entity or by the chair of the board or chief executive officer of such entity pursuant to a resolution adopted by such board delegating such authority to such officer;

and

Whereas, the Chair of the Rent Guidelines Board is its chief administrative officer and has the authority to enter into consulting contracts pursuant to §26-510 of the Rent Stabilization Law and Article Four of the Bylaws of the Rent Guidelines Board; and

Whereas, by resolution adopted on December 4, 1990, the Rent Guidelines Board has directed its staff to produce a price index of operating costs for 1991, comparable in scope and methodology to price indices produced in prior years, and has further authorized the hiring of a consultant and other necessary personnel to assist the staff in this effort; and

Whereas, the need to purchase goods and services to support the Board's research needs may arise from time to time and may require the involvement of the Chair of the Rent Guidelines Board to act as Mayor under the procurement system Established pursuant to Chapter 13, of the New York City Charter,

NOW THEREFORE BE IT RESOLVED, that the New York City Rent Guidelines Board thereby delegates to its Chair full authority to act as, and on behalf of, the Board in all matters involving the procurement of goods and services governed by Chapter 13 of the New York City Charter. This resolution shall remain in effect until such time-- as it is specifically revoked by a majority of total members of the Rent Guidelines Board or is otherwise terminated by operation of law.

RENT GUIDELINES BOARD
EMPLOYEE
OFFICE MANUAL

FOR THE EMPLOYEES OF THE
NEW YORK CITY RENT GUIDELINES BOARD

November 2006

TABLE OF CONTENTS

PREFACE

PURPOSE OF MANUAL

This manual summarizes the rules and regulations which govern the Rent Guidelines Board employees. It is to be used as an authoritative guide by all RGB employees.

When the staff office was established in 1980 it was with the understanding that staff employees would be treated like City employees with respect to matters such as compensatory time, annual leave, fringe benefits and that annual salary adjustments would track those for municipal employees in the prior years. Some adjustments have been made to accommodate the unique obligations of the office.

I. THE WORKDAY

A. The workday is eight hours long. All employees are to work 7 hours per day, 35 hours per week, and are required to take a one hour lunch period each day. The normal workday is from 9 a.m. to 5 p.m. unless prior arrangements have been made with the Executive Director. Flex time may be arranged so that thc workday may begin as early as 7:30 a.m. or as late as 10:00 a.m., and as early as 3:30 p.m. or as late as 6:00 p.m. with the prior approval of thc Executive Director. The workweek is five days long, beginning Monday and ending on Friday.

During the period from February 15th through June 30th staff may be requested to work weekend hours. All staff members are expected to be reasonably flexible with these work demands.

Compensatory or weekend hours must be requested by or otherwise pre-approved by the Executive Director or Director of Research.

B. Lunch Period

Employees are allowed to take one hour for lunch at a set time unless approval is received for other arrangements by the Executive Director or Director of Research. Employees are not supposed to work for more than five hours before taking their lunch break. Employees responsible for phones wishing to take lunch at a different time should make arrangements to switch hours with another employee.

The lunch hour cannot be shortened to provide for late arrival or early departure. If employees are requested to shorten their lunch period, or remain in the office and work through lunch, they may receive credit at the end of the day for each quarter hour of lunch time lost. Such credit must be authorized by either the Executive Director or Director of Research **in advance.**

Employees are expected to return from their lunch periods promptly.

C. Lateness

Employees should arrive at work on time and be ready to begin their work at the start of their work schedule. It is important that every employee report to work on time every day. If you are unable to report to work for whatever reason, or expect to be more than 15 minutes late, you should call the Executive Director or the Director of Research. If they are unavailable when you call, leave a message with whomever answers the phone.
Lateness without good reason is not acceptable in this office.

D. Management Hours

The Director of Research and Executive Director will arrange to assure that at least one Director is generally present in the office between the hours of 8:00 a.m. and 6:00 p.m. If necessary, either Director may be contacted at home during these business hours.

E. Public Meeting and Hearing Days

All employees are expected to report to work at least 1 hour prior to scheduled time of Public Meetings or Hearings in order to prepare any last minute materials needed by the Board members.

All employees are expected to help in setting up the meeting rooms prior to the start of the meetings or hearings. The set up involves arranging tables and chairs, recording equipment, coffee/tea, placing material in the Board Members' folders, etc.

II. TIME RECORD

A. Weekly Attendance Sheets

Time sheets must be filled out promptly with each arrival and departure.

III. ANNUAL LEAVE

Annual leave is a combined vacation, personal business, and religious holiday leave allowance.

A. Accrual of Time – All Employees other than Executive and Research Directors

Employees are credited with the monthly accrual of annual leave after being in full pay status for at least fifteen (15) calendar days that month.

Annual leave for employees hired **FROM 2/2/92 TO 6/30/04** is as follows:

Completed Years of Service	Yearly (Days)	Monthly (Hrs:Mins
1	18 work days	10:30
4	19	11:05
5	20	11:40
8	25	14:35
15+	27	15:45

Annual leave for employees hired **ON OR AFTER 7/1/04** is as follows:

Completed Years of Service	Yearly (Days)	Monthly (Hrs:Mins
1	17 work days	9:55
2	18	10:30
6	19	11:05
9	20	11:40
10	21	12:15
11	22	12:50
12	23	13:25
15	25	14:35
17+	27	15:45

Employees requesting annual leave in any amount must notify and receive prior approval from the Executive Director.

B. Accrual of Time – Executive and Research Directors

Employees are credited with the monthly accrual of annual leave after being in full pay status for at least fifteen (15) calendar days that month.

Annual leave for directors hired **PRIOR TO 7/1/2004** is as follows:

Completed Years of Service	Yearly (Days)	Monthly (Hrs:Mins
1	20 work days	13:20
8	25	14:35
15+	27	15:45

Annual leave for directors hired **ON OR AFTER 7/1/04** is as follows:

Completed Years of Service	Yearly (Days)	Monthly (Hrs:Mins
1	18	10:30
5	19	11:05
7	20	11:40
10	21	12:15
11	22	12:50
12	23	13:25
13	24	14:00
14	25	14:35
17+	27	15:45

The Research Director requesting annual leave in any amount must notify and receive prior approval from the Executive Director.

IV. SICK LEAVE ALLOWACE

Sick leave is to be used only for the employee's personal medical purposes.

A. Accrual of Time

Sick leave allowance is one day per month. There is no limit on the amount of sick leave an employee may accrue. There are no restrictions on the use of sick leave based on length of service.

During the period from March l5-June 30, sick leave will only be granted for illnesses which require a visit to thc doctor or thc hospital. The requirement of a doctor's note may be waived by the Executive Director or Director of Research if a full explanation as to why a doctor's visit is not necessary is given by noon of the day in which sick leave commences. Any absence of more than three (3) days will require a doctor's note at any time without exception. Employees taking sick leave at any time of year are obligated to notify the office as soon as sick leave commences.

Death in the family: Up to four (4) days paid leave will be granted to any employee who suffers the loss of an immediate family member. This includes spouse, registered domestic partner, child, parent, sister, brother, father-in-law, mother-in-law, grandchild or any relative residing in the employee's household. This leave is NOT deducted from annual, sick or compensatory leave and is considered Bereavement Leave.

V. COMPENSATORY TIME

Authorized voluntary overtime beyond the normal work week is compensated by time off at the rate of straight time. An employee receives credit for overtime only when the overtime exceeds one (1) hour in a work week.

Compensatory time may be used in units of one-half (1/2) hour except when reporting to work. In this case, the minimum charge is one (1) hour. The use of compensatory time must have the prior approval of the Executive Director or Director Research.

Although compensatory time should be used within three months of its accrual, the Board's schedule may make this impossible for individual staff members. Therefore, staff members with large overtime balances should consult with the Executive Director regarding its use.

During the period from February l5th-June 30th compensatory time can be used only with the permission of the Executive Director. Leave will be granted during this period only for compelling circumstances.

VI. INFORMATION ON TME BALANCES

All questions relating to your time balances should be directed to the Executive Director or Director of Research.

At the end of each month all employees will be given a summary attendance sheet, which will show the amount of overtime, sick leave and annual leave you have earned and how much you have used for the prior month.

VII. MEAL ALLOWANCE

If employees are required to work overtime and if dinner is not provided for them, they will be entitled to a monetary allowance for meals.

The allowance is provided according to the following schedule:

For two continuous hours of overtime $8.25
For five continuous hours of overtime $8.75

An employee should apply for a meal allowance immediately after earning it by notifying the Executive Director or Director of Research. This will be reimbursed in cash after the next pay period.

VIII. HOLIDAYS

A. Our regular holidays with pay are:

1. New Year's Day
2. Martin Luther King's Birthday
3. Washington’s Birthday
4. Memorial Day
5. Independence Day
6. Labor Day
7. Columbus Day
8. Election Day
9. Veteran's Day
10. Thanksgiving Day
11. Christmas Day

When a holiday falls on Saturday, it shall be observed on the preceding Friday. When a holiday falls on Sunday, it shall be observed on the following Monday.

Employees hired prior to July 1, 2004 are entitled to one floating holiday in each calendar year during which the employee is in active pay status with the employer prior to Lincoln's Birthday of such calendar year. The floating holiday shall be taken at the employee's discretion, subject to the needs of the RGB. The floating holiday must be used in the calendar year in which it is earned and may not be carried over to a succeeding year or cashed out upon separation of service. If the agency head calls upon an employee not to take the floating holiday by the end of the calendar year, the floating holiday shall be carried over to the following calendar year only.

X. WORK HABIT

All staff members are expected to complete their work in a timely fashion. Anyone who has completed their assignments should inform the Executive Director or Director of Research as soon as possible.

Staff members will meet with the Executive Director and Director of Research every three months on a formal basis for a briefing on their work and, of course, on an as needed basis in between.

All staff members are responsible for proofreading their own work. No correspondence, table, chart, etc. should be circulated unless it has been proofread twice. Staff members are expected to cooperate in proofreading each other's work. Correspondence from the Executive Director or Director of Research will be proofread by the person who typed it and at least once by another Director or staff member.

All employees (with the exception of the Executive Director and the Director of Research) will be expected to answer the phone if, for whatever reason, the Public Information Assistant and Office Manager are unavailable to handle the phones.

RGB Staff Library - The library is located in the conference room. There are copies of various reports and other documents from various other agencies. When you have finished with any item taken from the library return it to the bin located in the library area so that it can be placed on the proper shelf.

Dress Code - As general rule employees of the Rent Guidelines Board may dress informally except for the following times:

a. If you have to attend a meeting outside the office or:
b. If there is a public meeting or hearing of the Board, then in both instances employees are required to dress appropriately.

All employees are expected to be generally neat and clean.

Appendix J

The City of New York

Rent Guidelines Board
51 Chambers Street, Room 202
New York, NY 10007
212-349-2262

Chairman: Aston L. Glaves

Public Members: Hilda Blanco, Barbara Gordon-Espejo. Agustin Rivera, Jane Stanicki
Owner Members: Joseph L. Forstadt, Harold A. Lubell
Tenant Members: Leslie Holmes, Kenneth Rosenfeld
Executive Director: Timothy Collins
Director of Research: Douglas Hillstrom

April 27, 1993

To:	Members of the Board
From:	D. Hillstrom
Subject:	Commensurate Rent Increase

The commensurate rent increase is a formula which the RGB has used throughout its history. The commensurate rent increase has been explained as the percentage rent increase needed to maintain landlords' current dollar net operating income (NOI) at a constant level. The commensurate rent increase for this year is[158]:

One Year Lease	Two year Lease
3.3%	4.0%

As a means of compensating landlords for cost increases, the commensurate rent increase formula has two major drawbacks. First, although the formula is supposed to keep landlords' current dollar income at a fixed level, the formula doesn't consider the mix of one and two year lease renewals. Since only two-thirds of leases are renewed in any given year, and a preponderance of leases are for two years, the formula does not necessarily accurately estimate the amount of income needed to compensate landlords for past O&M increases.

A second possible flaw of the commensurate formula is that it does not consider the erosion of landlords' income by inflation. By maintaining current dollar net operating income at a constant level, adherence to the formula may cause profitability to decline over time, although this is not an inevitable consequence of using the

[158] The accuracy of the PIOC is assumed as is the collectability of legally authorized increases. Calculating the Commensurate Rent Increase requires an assumption about next year's PIOC. In this case we use 1.8%, staff's PIOC projection for 1994.

commensurate.[159] Of course other factors (e.g. individual apartment improvement and MCI increases) may mitigate these impacts.

An alternative to the commensurate rent increase would consider the mix of lease terms and sources of landlord revenue allowed by the RGB other than lease renewals (e.g. vacancy renewals). We will call this the "Net Revenue" rent increase. This formula takes into consideration the mix of leases actually signed by tenants but does NOT adjust NOI for inflation. Depending on whether revenue from a 5% vacancy allowance is included in these calculations, the **"Net Revenue"** increase is[160]::

One Year Lease	Two year Lease
3%	5.5% (Vacancy allowance income included)
4%	6 % (Vacancy allowance income NOT included)

An alternative to this "Net Revenue" formula would be to consider lease terms and to adjust NOI upward to reflect inflation so that BOTH O&M and NOI remain constant. We will call this the "Adjusted NOI" increase, which would result in the following figures[161]:

One Year Lease	Two year Lease
4%	7.5% (Vacancy allowance income included)
5.5%	8% (Vacancy allowance income NOT included)

[159] Whether profits will actually decline depends on the level of inflation, the composition of net operating income (i.e. how much is debt service and how much is profit), changes in tax laws, and interest rates.

[160] The following assumptions were used in the computations: (1) The required increase in landlord revenue is 3.3%, or 70% of the 1993 PIOC increase of 4.72%; (2) These lease terms are only illustrative. Other combinations of one and two year lease increases could also result in a 3.3% revenue increase. (3) Lease terms were derived from the 1991 NYC Housing and Vacancy Survey. According to the HVS, 24.9% of all tenants have a one-year lease and the remainder have two-year leases. As a result, 62.5% of tenants renew their leases in a given year. The increase in landlords' revenue reflects this lease distribution. (4) The 1991 HVS showed a turnover rate of 9.7%. As a result of turnover, landlords can expect an increase in revenue of about one-half percent, given the 5% vacancy allowance. This assumes that the vacancy allowance is collectible in all cases.

[161] NOI was adjusted upward by the most recent yearly increase in the Consumer Price Index, March 1992 to March 1993. This figure was 3.4%.

These "Adjusted NOI" figures have a major drawback - we are adjusting the debt service portion of NOI UPWARD by the inflation rate when in fact, interest rates have been falling in recent years.[162]

All of these methods have their limitations. The commensurate increase is artificial and doesn't consider the impact of lease terms or inflation on landlords' income. The "Net Revenue" formula does not attempt to adjust NOI based on changes in interest rates or deflation of landlord profits. The "Adjusted NOI" formula inflates the debt service portion of NOI, even though interest rates have been falling, rather than rising. Finally, none of the formulas consider the impact of the MCI program or individual apartment improvement increases on landlord profitability.

Each of these formulas may be best thought of as a starting point for deliberations. The staff's other research (e.g. the mortgage survey or the I&E study) and testimony to the board can be used to modify the various estimates depending on these other considerations.

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[162] An alternative would be to adjust only the portion of NOI which is "profit" upwards. In fact, we do not know what average "profits" are, but if we assume a figure of 10% of rent, the respective lease adjustments would be 4% for a one year lease and 5.75% for a two year lease if vacancy allowance income is included.

New York City Rent Guidelines Board
51 Chambers Street, Suite 202 • New York, NY 10007 • (212) 385-2934
Fax (212) 385-2554 • www.housingnyc.com

Chairman
Edward S. Hochman

Executive Director
Anita Visser

Memo

To: Jeffrey Coleman
From: Anita Visser
CC: Edward Hochman
All Board Members
Date: May 13th, 1999
Re: Table 14's reliability; and
Comparing the Economic Condition of the Stabilized Stock, 1967 to 1997

Further to your request following the May 6th meeting, regarding, Part One: the history and validity of Table 14, and, Part Two: a comparison of the economic condition of the stabilized stock from 1967-97, this memo updates a staff report on these subjects from 1993.

PART ONE: Table 14's History and Reliability

Each year the Board estimates the current average proportion of the rent roll which owners spend on operating and maintenance costs. This figure is used to ensure that the rent increases granted by the Board compensate owners for the increases in operating and maintenance expenses. This is commonly referred to as the O&M to rent ratio.

Over the first two decades of rent stabilization, the change in the O&M to rent ratio contained in Table 8 (hereinafter, referred to as "Table 14" - its past designation) was updated each year to reflect the changes in operating costs as measured by the PIOC and changes in rents as measured by staff calculations derived from guideline increases. Over the years, some Board members and other housing experts have challenged the price index methodology and the soundness of the assumptions used in calculating the O&M to rent ratio in "Table 14". Several weaknesses in the table have been acknowledged for some time. These are outlined below, followed by description.

Several Weaknesses have been Identified in Table 14:

- Does not account for huge shifts in housing stock of units of different ages that fell under stabilization;
- Rent Index does not account for administrative rent increases: MCI's or Apartment Improvement increases;
- O&M Cost index base of .55 reflects only Post-War units;

- The first stabilized units were mostly Post-War—today about 7 out of 10 stabilized units are Pre-War;
- Faulty adjustments were made to the O&M index in the 1970s to account for the influx of Pre-War buildings-a one-sided adjustment;
- The PIOC may overstate actual cost increases as it outpaces Longitudinal I&E cost increases; and
- Any reliable longitudinal comparison cannot take place where there have been massive shifts in the universe being measured.

The first problem with Table 14 is that the calculation does not account for the changes in the housing stock and market factors which have certainly affected the relationship between rents and operating costs to some degree. Next, for the purpose of measuring the relationship between legal regulated rents and operating cost changes, the usefulness of "Table 14" is also limited. The rent index contained in the table does not adjust for administrative rent increases (MCI's and Apartment Improvement increases) and rents charged below established guidelines (preferential).

The operating cost index contained in the table is more troublesome. The .55 base contained in the table reflects an estimate concerning nearly all post-war units. The vast majority of stabilized units (about 7 out of 10) are now in pre-war buildings which had higher O&M ratios in 1970. The cost index was adjusted (departing from the PIOC) in the 1970's in an attempt to accommodate for this influx of pre-war buildings into the stabilized sector. This attempt was misguided. The rent index reflects changes in rents initially in the post-war sector - so adjustments to the cost index to reflect the influx of pre-war units results in a one-sided distortion of the changing relationship between costs and rents.

Staff's research suggests that the PIOC may overstate actual cost increases. While most of this bias occurred in the 1970 - 1982 period, recent comparative evidence from the Income and Expense studies suggests that a gradual overstatement of operating costs may still occur under the PIOC. Expenditures examined in the most recent I&E study suggest that from 1991 to 1997 actual costs rose by some 24% while the adjusted PIOC indicated a 26% rise, showing there is only a negligible difference between the two indices over the last seven years. However, from 1990 to 1997, the gap between the two indices is larger. From 1990 to 1997, the I&E rose 33% while the adjusted PIOC rose 38%, a difference of 5 percentage points. Since this longitudinal analysis covers only an eight-year period, a conclusive statement on this pattern cannot be made at this time. What remains clear, however, is that "Table 14," in its current form, presents a highly misleading picture of the changing relationship of operating costs to rents over time.

PART TWO: Comparing the Economic Condition of the Stabilized Stock: an update of Changes in Income and Expenses, 1967-97

To compare the economic condition of the stabilized stock over the thirty-year history of rent regulation, Table 14 has proven to be an insufficient measure. Using the best data that exists from the beginning of stabilization, however, it is possible to make point-to-point comparisons of O&M/Rent or Income ratios from 1967 to 1997. Because stabilization began in 1969 with primarily Post-War units, we will perform the following:

- Separate point-to-point comparisons of O&M Ratios for Post-War and Pre-War units from 1967-97 (Sections I & II);

- Examine the overall point-to-point O&M Ratio comparison from 1967-97 (Section III); and
- Compare inflation-adjusted NOI point-to-point from 1970 to 1997 for the Post-War stock to determine if NOI has increased or decreased in real terms for the units that have been stabilized the longest (Section IV). (The absence of actual dollar NOI at the outset of stabilization in the Pre-War stock prevents a similar comparison)

MAIN FINDINGS

Making like point-to-point comparisons:

- In the Post-War stock, the O&M to Rent (contract) ratio increased by 2.1 percentage points from .55 to .571 from 1969-97;
- In the Pre-War stock, the O&M to Income ratio decreased by 5.4 percentage points from .65 to .596 from 1967-97;
- The overall (Pre-War and Post-War) O&M to Rent/Income ratio declined by 3.4 percentage points from .623 to .589 from 1967-97; and
- Adjusting NOI for inflation in the Post-War stock, (the only stock for which comparative data is available), shows that from 1969-70 to 1997 average monthly NOI fell slightly from $386 to $378 (by $8 or 2%).

I. Post-War units O&M to Rent (contract rent) ratios: Point-to-Point comparison

a) 1969-70 Post-War O&M to Rent (contract) ratio: .55

The data for the most reliable O&M Ratio for Post-War units comes from two sources. The average monthly O&M cost figure comes from a 1969 study of Stabilized Apartment Houses performed by the Bureau of Labor Statistics—$110. The average monthly rent figure was calculated from the 1970 decennial Census data on contract rents, (not collected rents)—$203.

A figure for average monthly gross income for 1969 in the stabilized stock is not available so to make a like-to-like comparison, the ratio we will use is O&M to Rent for Post-War units only. Furthermore, the rent in the Census data is a contract rent, not a collected rent, so to make a like-to-like comparison, we will use contract rents throughout. The $110 cost and $203 contract rent averages yield a O&M to Rent ratio of .54. Since the cost figure is from 1969 and the rent figure is from 1970, adjustment to bring the cost figure to 1970 levels could yield a ratio as high as .58. However, the "Table 14" O&M to Rent ratio of .55 for Post-War units in 1970 falls in this range and is a reasonable estimate.

b) 1997 Post-War O&M to Rent (contract) ratio: .571

Using the latest Income and Expense data from the NYC Department of Finance (1997 RPIE filings), we make a like-to-like comparison to the B.L.S/Census data ratio detailed above by dividing average monthly audited O&M Post-War costs: $503.78, into average monthly Post-War rents. Because we need to make a like comparison monthly I&E rent (collected) must be adjusted to estimate contract rents. To do this, we increase the rent figure $820.12 by the current gap between the mean RPIE (collected) and the mean DHCR (contract) rents—7.5%, yielding $881.63. The resulting O&M to Rent ratio is .571.

$503.78 audited Post-War O&M costs		O&M to Rent ratio
$881.63 collected Post-War rent increased to contract	=	.571

c) The Post-War O&M to Rent ratio increased by 2.1 percentage points from 1969-97

Using a like point-to-point comparison, the O&M to Rent ratio in Post-War units increased by 2.1 percentage points from an estimated .55 in 1969-70 to .571 in 1997. This means that a slightly greater amount of contract rent was being consumed by O&M costs in Post-War units in 1997. This may be influenced, inpart, by the following factors which are unrelated to rent regulation:

(1) the departure of more profitable units to co-op and condo conversion—there were 325,000 Post-War stabilized units in 1969, there were 288,000 in 1996;
(2) the Post-War stock is 30 years older and rising O&M costs are a natural occurrence.

Notably, since the RGB Rent Index increase was higher than the increase in operating costs in 1998 by approximately 3.6%, (See Table 14 annexed attached—O&M increased by 0.1% and the RGB Rent index increased by 3.7%), the 2.1% increase in the O&M to Rent ratio from 1970-97 may have been eliminated in 1998.

II. Pre-War units O&M to Income ratios: Point-to-Point comparison

a) 1967 Pre-War O&M to Income ratio: .65
Based on a 1993 staff study, which constructed an estimate of a mean O&M to Rent/Income ratio for the Pre-War stock derived from extensive work by George Sternlieb in 1967, the true O&M to Income ratio estimate (Sternlieb combined rent and income) fell into a range from .65 to .70. We will accept the more conservative figure of .65

b) 1997 Pre-War O&M to Income ratio: .596
Using the latest Income and Expense data from the NYC Department of Finance (1997 RPIE filings), we make a like-to-like comparison to the Sternlieb ratio by dividing average monthly audited O&M Pre-War costs: $389.08, into average monthly Pre-War income—$652.79. The resulting O&M to Income ratio is .596.

$398.08 audited Pre-War O&M costs	O&M to Rent ratio
$652.79 Pre-War income	= .596

c) The Pre-War O&M to Income ratio decreased by 5.4 percentage points from 1967-97
Using a like point-to-point comparison, the O&M to Income ratio in Pre-War units decreased by 5.4 percentage points from an estimated .65 in 1967 to .596 in 1997. This means that less income is being consumed by O&M costs in Pre-War units from 1967-97. This may be explained by the fact that as rent controlled units gradually transitioned into stabilization, they experienced substantial increases in income. As a result, their O&M to Income ratios fell.

III. How have conditions changed for the stabilized stock as a whole?— Overall O&M ratio Point-to-Point comparison 1967-97

To make a like comparison of the economic condition of the overall universe of stabilized units, the ratios detailed above will be weighted by the proportion of Pre- and Post-War units found in the 1996 HVS. Note however, that the ratio for the Pre-War stock is O&M to Income and the ratio for the

Post-War stock is O&M to contract Rent. While these two ratios measure slightly different things, we can still derive reasonable evidence of changes in the stabilized stock as a whole.

a) 1996 HVS proportion of stabilized units by age:

# of Units	Proportion	
Post-War	288,344	27.4%
Pre-War	763,956	72.6%
Total	1,052,300	100%

b) Point-to-Point Comparison 1967-97

Calculating the 1967-70 Overall ratio:

Ratio *	Proportion =	Product			
Post-War	.55	27.4%	0.1507 (O&M to Rent ratio)		
Pre-War	.65	72.6%	0.4719 (O&M to Income Ratio)		
	Overall 1967 Ratio:	0.6226		=	.623

Calculating the 1997 Overall ratio:

Ratio *	Proportion =	Product			
Post-War	.571	27.4%	0.1565 (O&M to Rent ratio)		
Pre-War	.596	72.6%	0.4327 (O&M to Income Ratio)		
	Overall 1997 Ratio:	0.5892		=	.589

c) Overall the O&M to Rent/Income ratio has declined 3.4 percentage points from 1967-97
Using a like point-to-point comparison, the overall O&M to Rent/Income ratio for stabilized units decreased by 3.4 percentage points from an estimated .623 in 1967-70 to .589 in 1997. This estimate means that less rent and income is being consumed by operating expenses in 1997 than in 1967-70. As a whole, this analysis suggests that owners of stabilized units experienced relative gains in NOI over the thirty-year period of rent stabilization.

IV. Is NOI being kept whole for inflation?—a Comparison of inflation-adjusted NOI point-to-point from 1970 to 1997 for the Post-War stock

Finally, we will compare inflation-adjusted NOI in the Post-War stock, the units that have fallen under stabilization the longest, to determine if owners are being kept "whole" for inflation, and to use another measure to assess the general economic condition of stabilized units.

Post-War NOI Calculation

	1970	1997
Rent	$203	$881.63 ($820.12*1.075 inflates collected to contract)
O&M Expenses	$110	$503.78 (audited O&M costs)
NOI	$ 93	$377.85
CPI Urban NY-NJ	41.2	170.8 = 4.1456 inflation factor*
Real Term NOI	$385.54	$377.85 difference = -$7.69

This analysis shows that by making a like comparison and adjusting 1970 NOI for inflation, NOI in Post-War units declined slightly by 2% from 1967-97. The estimated drop in NOI in the Post-War stock may be attributed, in part, to non-regulatory factors such as co-op conversions and the natural rise in maintenance costs due to aging. Moreover, rent increases authorized in 1998 may have had the effect of eliminating this 2.1% decline in NOI.

Notably, the 1999 I&E Study, found that inflation-adjusted NOI in stabilized buildings of all ages has remained roughly constant from 1989-97, growing by 3% in real terms since 1989.

It should be noted that NOI is not the sole criteria for profitability as leveraging, interest rates, mortgage terms and rates of income tax all play a role in determining the ultimate profitability of a stabilized housing investment.

*Inflating 1970 NOI to 1997 dollars: $93 * 4.1456 = $385.54

Attached are the following:
1) Copy of Table 14 from the Explanatory Statement plus additional guidelines tables;
2) Copy of 1993 RGB staff report:
A Review of Changes in Income and Expenses, 1967-91.

Appendix K1

A Review of Changes in Income and Expenses, 1967-91

Introduction

The changing relationship between rents, operating and maintenance expenses, and owner income lies at the very heart of rent regulation. Other things being equal,[163]1 rents which generally preserve the inflation adjusted value of net operating returns over time accomplish one of the central goals of the stabilization system: fairness to good faith investors. In New York City measuring the effects of stabilization on net operating incomes is a matter of exceptional complexity. Massive shifts in the regulated stock over twenty four years make point to point comparisons of income and expense profiles impossible to develop with any precision. Since 1969 over 700,000 units have moved from rent control to stabilization. Some 60,000 stabilized units in post-war buildings have moved from rentals to co-ops. About 90,000 stabilized units are now in converted buildings and will be decontrolled upon vacancy. In addition, thousands of units left regulation via abandonment or foreclosure by the City. Only about one in five currently stabilized units were subject to stabilization in 1969.

The difficulty of making such measurements is, nevertheless, clearly outweighed by the need to develop some working understanding of the impact of stabilization on relative industry returns. The last report on this issue was issued by the RGB staff in 1989. Since that time a variety of new data sources have been made available to the Board. In 1990, for the first time, the staff was provided with information on rents and operating expenses from income and expense ("I&E") statements on file with the Department of Finance. In 1992, to test whether the I&E statements were generally reliable, forty-six properties were carefully audited. In addition, aggregate data on changing market values of multi-family buildings from 1975 through 1992 has been provided. Data on tax arrearages has been made available from the Department of City Planning. Finally, the State Division of Housing and Community Renewal has contributed data on registered rents. These considerable efforts have allowed us to examine long term trends with an eye towards changes in net operating incomes. In light of these information advances we have prepared an update of the 1989 report. While a few questions will require more time before conclusions may safely be drawn, many of the questions which troubled the Board over the past decade have been answered.

History of the Income and Expense Issue

Nineteen ninety-three marks the fiftieth year that New York City has been subject to some form of rent regulation. The long term impact of rent regulation on the quality and availability of housing is, therefore, an issue which has been a subject of public concern for some time. In his

[163] "Other things" of relevance here might include population trends, tenant incomes, the average age of the regulated housing stock and the return on investments of comparable risk and liquidity. To preserve the value of net operating incomes in the face of a declining population, sagging incomes, aging properties and declining returns on comparable investments would be to implement a form of profit insurance never intended by the system. On the other hand, modest gains in average net operating income might be expected in the face of a rising population, higher incomes, a decline in the average age of regulated buildings (reflecting new construction) and rising returns on comparable investments. Of course, "other things" are rarely equal - except perhaps on economics exams.

well known study, *The Urban Housing Dilemma: The Dynamics of New York City's Rent Controlled Housing*, George Sternlieb asked property owners in 1967 many of the questions that continue to occupy center stage in the debates over rent regulation. The focus of these questions is summarized in his introduction:

"The rent control formula, as presently implemented in the city, has provision for a number of ways of securing rent increases, both in return for additional investment and in order to prevent undue owner hardship; but the formula raises numerous questions. How well have these increase methods kept pace with increased costs? To what degree has maintenance suffered as a function of rent control? What elements of the Rent Control Law are being utilized and are there variations in the knowledge and utilization of these formulas? Are there significant variations between operational patterns of rent controlled and non-rent controlled structures of which the city should be aware? What is the influence of tenant ethnic origins and welfare recipiency upon landlord attitudes? For that matter, who are the landlords and what are the factors which enter into their decision making, particularly in relationship to maintenance and other forms of investment procedure?

New York City's housing policies and rent control must be considered as one element in the broad matrix whose function is to provide, both now and in the future, a satisfactory environment for the city's inhabitants. Currently, most social concern is with the tenant's needs. In the long run there is the question of whether these can be satisfied without a reasonable degree of assured return to the landlord.

The mere age of the city's housing stock requires continual reinvestment. Within the context of our time, most of the funds must be secured from the private market. How competitive, given the variety of outlets for private capital, is New York City's housing?"

In short, Sternlieb's inquiry concerned the broad social and economic environment affecting investment in rental housing. An isolated examination of the relationship between rental income and operating costs without a careful look at how these other matters might affect (dis)investment patterns provides an incomplete basis for policy analysis. Yet, a full update on the wide variety of matters covered in his study would be very costly and time consuming (Sternlieb's field work began in 1967; his report was issued in 1972). For our immediate purposes, we will only examine Sternlieb's findings on the relationship between rents and operating costs in pre-war buildings.

The Pre-War Stock in 1967

Since "expenses" and "repair and maintenance costs" were separated in Sternlieb's analysis, and since these are combined in more recent data, we have combined them here for the purpose of later comparisons.

Mean operating cost to rent ratios[164] are reported in exhibits 3-1 and 3-5 in Sternlieb's report. Again, Sternlieb did not combine "expenses" and "repairs" as a percent of net rent received [see text accompanying exhibit 3-1]. The samples for expenses and repairs as a percent of rent received appear to be virtually identical - with only 6 of 664 buildings missing in the repairs table because of the "lack of baseline data." Consequently, combining the two tables to get expenses and repairs as a percent of net rent received is not too risky. Doing so provides the

164 The O&M to rent ratio is the proportion of all rent that landlords spend on operating and maintenance expenses. A declining O&M ratio over time generally indicates that landlords are in a better position while a growing O&M ratio indicates that operating expenses are taking a larger portion of landlords' revenues, thereby leaving less net operating income.

O&M Ratios in Pre-war Structures in 1967

	Expenses	Repairs	Total
Old Law Structures			
5-19 units	66.05%	16.9%	82.95%
20 units or more	57.47%	12.6%	70.07%
New Law Structures			
5-19 units	60.15%	16.2%	76.35%
20-49 units	56.03%	13.0%	69.03%
50 units or more	52.54%	10.9%	63.44%
Structures Built After 1929			
10-49 units	54.04%	9.3%	63.34%
50 units or more	52.24%	8.9%	61.14%
Small Structures			
3 and 4 units	67.31%	19.5%	86.81%

mean O&M to rent ratios for the pre-war universe in 1967 as shown in the table above.

Note that "net rent received is a residual of gross potential residential rents, including imputed rents for superintendent and other resident employees and/or owners, and commercial rents; less vacancies and bad debts and other gross income elements" (p. 22, emphasis added). This observation is critical in making comparisons with more recent data on O&M to rent ratios which will be examined further on. Note also the affect of age and size upon the O&M ratios.

The universe of buildings examined by Sternlieb in 1967 included some 881,312 units in rent controlled (pre-war) buildings (Exhibit AII-8).[165] Tens of thousands of these properties were, no doubt, lost to abandonment since that time. Today some 707,000 pre-war apartments fall under rent stabilization while about 120,000 remain under rent control. Rent controlled properties with fewer than six units do not, as a matter of law, fall under rent stabilization upon vacancy. Since smaller properties have undergone vacancy decontrol and many marginal properties have been abandoned, one would expect that only a fraction of the buildings with very high O&M to rent ratios would have fallen under stabilization. Conseq-uently, the average O&M ratios for buildings examined by Sternlieb may be affected somewhat if all properties which did not eventually fall under stabilization were removed from the sample. Those that made it into stabilization probably had slightly lower than average O&M ratios in 1967.

Examining the proportion of units in each class and the relative mean O&M ratios, and eliminating the 3-4 unit category, it appears that pre-war properties combined had a mean O&M to rent ratio of about .70.[166] Assuming a loss of the most distressed of these properties to abandonment and a slight loss (of five unit buildings) to decontrol, it appears that the properties which eventually fell under rent stabilization had O&M ratios in the mid to high 60s. Keep in mind that this estimate includes commercial income in the denominator of "net rent received". While not a precise estimate, this is the only figure available with which to compare with the current O&M ratios of pre-war buildings. As will be shown further on, it appears that O&M ratios in the pre-war stabilized stock were not demonstrably different in 1967 from the O&M ratios found in our recent study of 1991 income and expenses.

[165] The largest category was the New Law structures with 20-49 units which included 296,460 units.

[166] This figure is derived by multiplying the mean O&M ratios listed above by the number of units in each respective class (See Sternlieb, Exhibit AII-8), summing and then dividing by the total number of units in all classes (excluding 3-4 unit properties as noted).

The failure to achieve lower O&M ratios may have been affected, in part, by non-regulatory influences: aging buildings, relative declines in tenant income, vacancy losses etc. It is important to recall that owners of rent controlled units have been entitled to market rents upon vacancy except when newly stabilized tenants have initiated and prevailed in Fair Market Rent Appeals. Such appeals occur only in a fraction of eligible cases. Also, once stabilized, rents in pre-war buildings are increased periodically in accordance with established rent guidelines. Finally, rents may increase as a result of major capital or individual apartment improvements.

Perhaps a better measure of changes in O&M to rent ratios is found in the post-war universe to which we will later turn our attention.

Information Development After the Urban Housing Dilemma

Moving beyond 1967 allows us to focus on the workings of the Rent Guidelines Board and the impact of its decisions on the changing relationship between rents and operating costs. In order to put our newest information in perspective it is important to recall the history of Board practices and policies relating to this issue.

In 1969, in response to an extremely tight rental market with a vacancy rate at 1.23%, the newly enacted Rent Stabilization Law limited the rents of some 325,000 previously unregulated post-war units and about 75,000 decontrolled units. Specified increases above levels that had existed on May 31, 1968 were established by the City Council. Thereafter, the Rent Guidelines Board was given responsibility for further annual adjustments.

In the early days of stabilization (1970 to 1974) the RGB focused primarily on changes in operating and maintenance expenses (i.e. the Price Index of Operating Costs) to determine its rent guidelines. Dennis Keating, in his comprehensive review of the rent stabilization system *(Landlord Self-Regulation: New York City's Rent Regulation System 1969-1985*, Journal of Urban & Contemporary Law, Vol. 31:77) found that

> "Beginning in 1970, the RGB relied heavily, but not exclusively, on the BLS operating cost price index for its determination of rent increases. Initially, the absence of tenant representation on the RGB, the use of the operating cost price index, the RGB's secrecy, and its consideration of additional factors to justify rent increases occasioned little controversy. These issues, however, would later become much debated in a public forum. During this early era, the RGB convened annually, held no public hearings, and quietly issued annual rent increase orders."

Following a period of vacancy decontrol, in 1974 the State Legislature passed the Emergency Tenant Protection Act (ETPA). The act extended rent stabilization to hundreds of thousands of units previously subject to rent control. At the same time, the RGB was required to include designated seats for tenant and owner representatives.

Shortly after passage of the ETPA, in a letter of August 6, 1974 to Roger Starr (Administrator of the Housing Development Administration), Emmanuel Tobier (Chairperson of the Rent Guidelines Board) seems to have foreseen the probability that the RGB would need better information to reconcile the conflicting demands of tenants and landlords.

". . . we must re-examine the current relationship between operating and maintenance costs and building income in the rent stabilized sector . . . building owners might be willing to provide this data. Perhaps the easiest route might be to look at the relationship between operating costs and revenue, by examining a representative sample of buildings, and incorporate this information into our guidelines."

By looking to voluntary disclosure of income and expense information from owners, Professor Tobier may have been attempting to catch a brief moment in time before the landlord-tenant relationship worsened beyond compromise. In fact, the last half of 1974 and the first months of 1975 were an unusually troubled period for the RGB. Lawsuits were filed challenging the legitimacy of the Board's orders. As a result, one rent guideline was invalidated on the procedural ground that the Board had failed to adequately explain the factual basis for its order and its methodology. This court decision led to the development of detailed explanatory statements which now accompany each new set of rent guidelines.

Dennis Keating sums up the atmosphere of the mid-70's -

> "The protracted and acrimonious public conflict, in which the RGB's credibility, conclusions, and procedures were politically and legally challenged was a turning point in the history of the rent stabilization system. No longer would the rent-adjustment process under self-regulation be shielded from public scrutiny . . . Henceforth, the RSA and tenant groups would become increasingly combative . . ."

Although the RGB was sued by both landlord and tenant groups in the late 70's, the courts refused to invalidate the Board's methodology. The RGB continued to rely to a great extent on the Bureau of Labor Statistics' Price Index of Operating Costs (PIOC).

In addition to the studies produced by the RGB, tenant and landlord groups attempted to examine the income and expense issue from their different perspectives. Landlords argued that the net operating income of rent stabilized buildings was declining due to large increases in operating costs and insufficient rent increases. Tenants, on the other hand, believed that rents were rising faster than tenant incomes. During this period of stagnant income growth and high inflation in New York City it is possible that both groups were correct in their assertions.

It was not until 1982 that the issue of profitability of rent stabilized housing was raised once again by the RGB. In that year Urban Systems Research and Engineering (USR&E) replaced the Bureau of Labor Statistics as the contractor for the PIOC. In addition to the price index, the RGB also commissioned USR&E to undertake research on six so-called "special topics" including:

1. Operating cost to rent ratios
2. Mortgage financing and refinancing characteristics
3. Rates of return
4. Tenant turnover patterns and the distribution of lease terms
5. Tenant income characteristics
6. Use of city tax abatement programs and the use of energy conservation programs

In a publication of June 1, 1982 entitled "Research Design on Special Topics" USR&E broadly outlined a "rate of return" (i.e. landlord profit) study. The authors examined several different definitions of "rate of return" and the sources of data which would be required to examine actual landlord profits. They concluded that:

> ". . . it will be impossible to secure all the information necessary to calculate the actual rates of return on any significant or usable set of buildings. Such a data base would include owners' annual tax returns, annual financial statements on the buildings, financing arrangements and purchase/sale prices. This is evidently impossible to acquire."

It is unclear why the consultants concluded at that time that sources of data for a study of actual landlord profits were "evidently impossible to acquire." USR&E did propose an alternative study of rates of return, using "a set of prototypical buildings, intended to be representative of the stabilized inventory." However, this study was never undertaken.

In 1982 USR&E was also commissioned to produce a landlord expenditure study. A sample was selected to be representative of all stabilized buildings in the city. In the fall of 1982 a survey questionnaire was mailed to over 2400 owners of stabilized buildings. In essence, the questionnaire asked owners to provide a detailed breakdown of operating and maintenance expenses for 1982. Approximately 400 landlords returned fully completed questionnaires.

The primary purpose of the 1982 Expenditure Study was to update the expenditure weights in the Price Index of Operating Costs. An expenditure weight is the percentage of landlord operating and maintenance (O&M) cost attributable to a given type of O&M expenditure (e.g. in 1982 the Price Index of Operating Costs assumed that fuel costs were 37% of all landlord expenditures in pre-'47 buildings. However, the 1982 Expenditure Survey found that owners of pre-'47 buildings spent only 29% of O&M on fuel in 1982. As a result, the expenditure weight for fuel was revised from .37 to .29 the following year). Precise expenditure weights are needed if year-to-year changes in overall O&M costs are to be accurately measured.

For reasons that remain unclear, Table 14 of the RGB's annual explanatory statement, which details the history of changes in the O&M to rent ratio, was NOT updated following completion of the 1982 Expenditure Study, even though the information to do so was available. Although tentative plans for a "operating cost to rent ratio" study were made in 1984, plans for the study were discontinued in 1985.

In the mid-80's criticism of the Price Index of Operating Costs continued to build. For instance, in 1985 the New York State Tenant and Neighborhood Coalition issued the following statement:

> "The Price Index is not only conceptually flawed, but yields no information whatever about actual landlord incomes, expenditures, or profits - the true measures of the economic condition of the industry. In contrast to the practices of every other body charged with the responsibility of regulating prices in the public interest, the Rent Guidelines Board neglects all questions of income and profitability when considering the need for rent adjustments."

At least some of these sentiments were apparently shared by the Board of Estimate, which, in a unanimous vote in 1985, passed a resolution supporting an examination of owners' books and records. The city administration did support legislative initiatives to allow such an examination. However, none of the proposals to require owners to "open the books" ever passed the State Senate. In the fall of 1985 members of the RGB asked the staff

> ". . . to prepare a report, in consultation with New York City's Department of Housing, Preservation and Development (HPD) and the New York State Division of Housing and Community Renewal (DHCR), regarding how the Board could obtain a representative sample of owners books and records and how such a sample and examination could be of use to the Board . . ."

After contacting both DHCR and HPD regarding the feasibility of obtaining a sample of owners' books it was concluded that

> ". . . Since both HPD and DCHR [sic] have stated that such a study could not take place without a legislative change which would either grant DHCR jurisdiction to conduct the study or grant subpoena power to the New York City Rent Guidelines Board, such a

study could not be undertaken . . ." (Research Report Regarding the Feasibility of Auditing a Representative Sample of Owners Books and Records dated January 31, 1986)

The situation that the RGB found itself in in 1986 was best summarized by an article in the New York Times entitled "Dissatisfaction with Stabilization's Cost Index Grows, but No Consensus has Emerged on Alternate System" (*New York Times*, July 6, 1986) . The article found that the two RGB tenant representatives had resigned "citing personal reasons but also dissatisfaction with this year's increases and the way they were determined."

In 1987, reflecting a continued dissatisfaction with the price index methodology, the Board of Estimate rejected the price index contract. The consultant selected for the study (USR&E) performed it gratis at the request of the Commissioner of the Department of Housing, Preservation and Development. Later that year the consultant filed a voluntary petition for bankruptcy protection. In 1988 and 1989 the price index was procured through the City University Research Foundation and, therefore, did not require Board of Estimate approval. Until 1991, the Rent Guidelines Board did not commission or fund the price index - procurement and payment were handled directly by the Department of Housing Preservation and Development (except in 1988 and 1989 as noted).

By 1987 it appeared that the debate over landlord "profits" had reached a standstill. However, in 1986 the City Council enacted Local Law 63, which mandated that owners of income-producing properties file income and expense statements with the City's Department of Finance. The law was passed in order to aid the city in determining assessed values of properties.

Local Law 63 filings were, of course, of much interest to the RGB, since a representative sample of these properties' income and expense statements could be used to calculate and update operating and maintenance cost to rent ratio. In addition, if the filings were obtained by the RGB on a regular basis they could be used to calculate year-to-year changes in landlord operating and maintenance costs and income to examine the accuracy of the Price Index of Operating Costs. However, Local Law 63 filings by themselves are not sufficient to calculate landlord "profits" since they do not contain any information on mortgage expense, changes in building resale values, and so on. In addition, these filings cannot by themselves replace the price index because the time periods reflected in the filings are at least one year old at the time of aggregation. The Board's mandate calls for more recent cost data which only the price index supplies.

Not long after Local Law 63 was enacted, litigation concerning various aspects of the law made it impossible for the RGB to obtain any of the new information. A temporary restraining order was imposed prohibiting the City's Finance Department from releasing any Local Law 63 data. On March 9, 1988 the RGB requested the city's Corporation Counsel to seek a lifting of the temporary restraining order. Although the attempt to lift the order was unsuccessful, the court order did eventually expire in March of 1989. Unfortunately, the RGB was still unable to obtain any Local Law 63 data. In a letter dated April 22, 1989, Anthony Shorris, Commissioner of the Department of Finance explained that until the case was fully settled the data would be reserved for Department of Finance purposes only. In addition, key entry of the data had not yet been implemented and would take some time.

In April 1989 Harriet Cohen, a tenant member of the RGB, requested that staff review "Table 14" of the Board's annual explanatory statement. "Table 14" contains a calculation of the operating and maintenance cost ratio for rent stabilized buildings from 1972 to the present (see Appendix C, Table C.3). After thoroughly reviewing the history and methodology of "Table 14" staff concluded that "between 1970 and 1982 the "Table 14" O&M ratio seems to have diverged from the actual cost and rent data which can be obtained by using HVS and operating cost studies." The staff review did not conclusively show that the "Table 14" O&M to rent ratio was mistaken. However, it did show that "a lack of sufficient new survey data over the last 20 years has resulted in a present inability to supply valid corroborating evidence for the statistical and economic assumptions underlying "Table 14"." **The staff review suggested that the problem with "Table 14" most likely was a result of the inaccuracy of the Price Index of Operating Costs in measuring actual landlord expenditures between 1970 and 1982. It was strongly suggested that new studies be undertaken to:**

> ". . . provide a new O&M to rent ratio in both mean and median terms. Perhaps more importantly, a new study of rents and expenses could analyze the distribution of buildings in terms of varying O&M to rent ratios. This would help inform the Board as to the number of rent stabilized buildings operating at the margin, and the proportion of those with adequate net operating income. Finally . . . the PIOC (Price Index of Operating Costs) probably needs to be updated (to make it) . . . a more reliable indicator of cost increases in rent stabilized housing."

The events of the summer of 1986 were repeated in May of 1989 when the two tenant representatives resigned from the Board. In their letters of resignation Harriet Cohen and Stephen Dobkin stated that the city administration had "conspired to make it impossible . . . to obtain any data on owner profits or the steadily rising value of residential real estate" and that the City University Research Foundation had "once again been misused to produce the Price Index...which reflects only the owners' concerns." In addition, both called on the RGB to expand research efforts.

In the spring of 1990 the new city administration actively supported the RGB's efforts to obtain summary data from owner local law 63 income & expense filings. RGB and Finance staff worked together to produce the first I&E (income & expense) study. The methodology of the study is contained in *Rent Stabilized Housing in New York City: A Summary of Rent Guidelines Board Research, 1990*. Subsequent Income and Expense studies were produced in 1991, 1992 and 1993.

The Post War Stock in 1970

Before moving to the major findings of these studies we will need to revisit our analysis of the relationship between rents and operating costs in post-war buildings at the beginning of rent stabilization. This analysis was included in RGB's 1990 Research Summary (pages 26-30):

> "Using an estimate of the mean rent for stabilized post '46 apartments ($203) derived from a special tabulation of the 1970 decennial census and comparing it to the mean operating cost in 1969 ($110) found by the Bureau of Labor Statistics in its 1970 study of stabilized apartment houses yields a mean O&M ratio of .54. However, since the operating cost study measured 1969 costs and the census measured 1970 rents, it is possible that the true O&M ratio for 1970 may have been as high as .58 (adjusting for subsequent price increases). As far as we can tell, the "true" O&M ratio probably ranged between a low of .54 and a high of .58. The O&M ratio for 1970 in "Table 14" [the RGB index of rents and operating costs] was .55 and falls into this range."

An examination of these data sources in 1989 led to a conclusion that the .55 estimated O&M ratio for post-war buildings in 1970 appeared to be reasonable. This continues to be the best available estimate.

It is important to note, however, that this is an estimate of the ratio between operating costs and residential contract rents. The rents used here do not reflect vacancy or collection losses or commercial income. The 1967 O&M ratio for pre-war properties previously discussed is a ratio of operating costs to net rent received which adjusts for such losses and includes commercial income.

* * *

In short, we have concluded that the best estimates of the relationship between operating costs and rental income in the rent stabilized sector - at the outset of rent stabilization - are as follows:

- **In pre-war buildings which eventually fell under stabilization approximately 65¢ to 70¢ of each rent dollar actually collected was spent on operating costs in 1967.**[167]
- **In post-war buildings which first fell under rent stabilization in 1969, approximately 55¢ of each rent dollar contracted for in residential units was spent on operating costs.**

Today's Income and Expense Issues

The Pre-War Stock Today

Now, turning to the more recent data we find further complexities. The pre-war stock continues to include a significant number of rent controlled units. While contract rents for stabilized units in the pre-war stock were $512 according to the 1991 HVS, residential rents actually collected were much lower at $451 according to statements reflecting 1991 incomes and expenses filed with the Department of Finance. The effect of rent controlled units along with vacancy and collection losses and preferential rents thus becomes quite clear. These factors have a large impact on revenues in pre-war buildings independent of the influences of rent stabilization. The best we can do in terms of a comparative O&M ratio for the pre-war stock is a straightforward comparison of operating expenses with total building income (which appears comparable to Sternlieb's "net rent received"). This results in a ratio of .70. If we adjust the operating expenses downward by 8% (reflecting an estimate of over-reporting of expenses derived from our 1992 audits) the ratio is .64. Consequently, **the relationship of operating expenses with total building income in the pre-war stock in 1991 appears to be in the same range (.64 to .70) as it was in 1967.**

A few more qualifying observations are in order. First, pre-war buildings have aged some 26 years since 1967 and thus could be expected to have experienced rising O&M ratios - in the absence of regulatory changes. Second, collection and vacancy losses are probably quite a bit higher now than in 1967.[168] The gap between rents registered with DHCR and rent collections rose sharply in 1991 reflecting, in part, the effects of the current recession on collection and vacancy losses. In a related development, there has been a sharp decline in tenant incomes relative to rents. In 1970 the median gross rent as a percent of income was 19% for rent controlled households.[169] In 1991 the median gross rent to income ratio for stabilized pre-war buildings was over 29%.[170]

The Post-War Stock Today

167 See supra p. 34-36.

168 Sternlieb found vacancy losses for most buildings ranging from .4% to 2.4%. Similarly, collection losses for most buildings ranged from a negligible .1% to 2.3% (see Sternlieb exhibits 2-2 and 2-3 and accompanying text). With over 4% of units in pre-war buildings vacant and available for rent in 1991, vacancy losses have clearly risen. We suspect that collection losses have also risen significantly.

169 Sternlieb, Housing and People in New York City, Exhibit 5-12. Sternlieb's analysis was based upon a special tabulation of the 1970 decennial census.

170 1991 Housing and Vacancy Survey, Series IA- Table 36.

Turning now to the post-war stock further complexities appear. One would expect that, as in the pre-war stock, residential rents collected would be below the contract rents reported in the 1991 HVS. This, however, is not the case. The I&E data for 1991 indicates that, on average, $653 in rent was collected for each apartment in post-war buildings. The HVS data indicates that the average contract rent for these units [excluding stabilized units in co-ops] was actually $652. While collection and vacancy losses are much smaller in post-war buildings (and rents received are not affected by the presence of rent controlled units) one would expect rent collections to be a bit less than contract rents. The staff's Table 14 rent index (updating a $203 average rent for 1970) suggests that the rent guidelines alone should have resulted in an average rent of some $662 - and that would not include administrative increases authorized for major capital improvements and individual apartment improvements. However, at least some of the increases authorized by the RGB and the DHCR are not charged at the high end of the market and this may partly explain why the $652 is lower than expected. Rents reported to surveyors are rents actually paid - including preferential rents. In short, the $652 figure for contract rents, while lower than actual rent collections would suggest, is still reasonable enough to be explained by sampling differences between the HVS and the I&E data.

Comparing the $652 HVS figure to average operating costs of $470 reported in the I&E data results in a ratio of operating costs to contract rents of .72. Adjusting the $470 figure by the 8% suggested by our audit findings produces a ratio of .66. Thus**, it appears that ratio of expenses to contract rents for post-war stabilized buildings has risen (from .55 in 1970) to at least .66.**

Again, a few qualifying observations are in order. Although some post-war stabilized units were newly constructed after 1970 (fewer than 10%), the average age of post-war buildings has obviously risen over 23 years. This alone would have resulted in some rise in O&M ratios. Second, less than two out of three of the original stabilized post-war units remain in unconverted buildings. Our operating cost and rent figures reflect only the approximately 200,000 units remaining in unconverted post-war properties. If conversions typically occurred in better and newer buildings this would leave behind properties with higher O&M ratios resulting in a misleading rise in the average. Finally, we suspect that preferential rents are a more common occurrence in post-war buildings today than in 1970. The contract rents reported to HVS surveyors are rents agreed to by tenants and owners - not necessarily the highest rents authorized by law. Contract rents in 1970 may have been much closer to legal limits. If the market has taken over the higher end of this stock, the rise in the O&M ratio may reflect a relative decline in demand for luxury units. That is, in the tight market of 1970 owners may have been less likely to rent below legal limits and their relative returns would have been higher. A loss of demand at the high end is the consequence of a changing market - not rent regulation. We cannot gauge the precise effect of any of these factors on the current O&M ratio. Nonetheless, it would certainly be misleading to suggest that this rise in the O&M ratio is wholly a function of rent stabilization.

Revisiting "Table 14"

As previously noted, much of the staff's past work focused on the accuracy and usefulness of a table which compares changes in operating costs (as measured by the PIOC) with changes in rents (as measured by staff calculations derived from guideline increases). "Table 14" (see Appendix

C.3) depicts O&M ratios rising from .55 in 1970 to .74 in 1993. Several weaknesses in the table have been acknowledged for some time. Changes in the housing stock and market factors noted above have certainly affected the relationship between rents and operating costs to some degree. Yet, if these were the only weaknesses the table might remain useful as a simple measure of the relationship between legal regulated rents and operating cost changes. Even for this limited purpose, however, the table is misleading in several categorical respects. First, the rent index contained in the table fails to account for administrative rent increases (MCI's and Apartment Improvement increases) and does not adjust for rents charged below established guidelines (preferentials). Coincidentally, however, the rent index appears to have tracked contract rents in post-war buildings quite effectively. If rents in post-war buildings were $203 in 1970 as we have suggested, the rent index projects a rise to $662 by 1991. The 1991 HVS reported mean contract rents at $663 for the post-war stock [not excluding stabilized units in co-ops].

The operating cost index contained in the table is more troublesome. The .55 base contained in the table reflects an estimate concerning only post-war units. As we have noted the vast majority of stabilized units (about 7 out of 10) are now in pre-war buildings which had higher O&M ratios. The cost index was adjusted (departing from the PIOC) in the 1970's in an attempt to accommodate for this influx of pre-war buildings into the stabilized sector. This attempt was misguided. As noted, the rent index reflects changes in rents initially in the post-war sector - so adjustments to the cost index to reflect the influx of pre-war units results in a one sided distortion of the changing relationship between costs and rents. If PIOC changes for post-war buildings had been left unadjusted the index would have risen from .55 in 1971 to 222.78 in 1991 (as adjusted the index rose even higher - to 228.96). From 1969 to 1971 average operating costs in post-war buildings had risen to about $128 per month. Updating this figure by the unadjusted index (i.e. by the PIOC for post-war buildings) to 1991 results in an average operating cost of $519 per month - fully 10.4% higher than the $470 figure for 1991 expenses reported by owners of post-war buildings on I&E forms, and 20.1% above the $432 staff estimate when an adjustment for estimated over-reporting is factored in.

We believe that this difference in cost estimates reflects a tendency on the part of the PIOC to overstate actual cost increases. We continue to suspect, however, that most of this bias occurred in the 1970 - 1982 period. When USR&E conducted its operating cost survey in 1982, an average monthly cost of $262 per unit was found in the post-war stock. Updating that figure by the PIOC for post-war buildings through 1991 results in an average cost of $441 per month - a figure much closer to our $432 estimate of actual costs. Note, however, that much of this period witnessed increasing investment and improvement in the city's housing stock - a time when we would not expect owners to limit maintenance and operating costs. Expenditures examined in our most recent I&E study suggest that from 1989 to 1991 actual costs rose by some 11% while the PIOC indicated a 16% rise (see page 31) - perhaps reflecting recession induced cost cutting. Since this longitudinal analysis covers only a two year period a conclusive statement on this pattern cannot be made at this time. What remains clear, however, is that **table 14, in its current form, presents a highly misleading picture of the changing relationship of operating costs to rents over time.**

Conclusions and Recommendations

A long effort to measure the impact of rent stabilization on the relationship between operating expenses and rents has resulted in some notable findings in recent years. Intricate and complex questions remain, however, and it is now evident that a clear picture may never emerge.

According to our best evidence, it presently appears that the ratio of operating costs to rent collections in the pre-war stabilized stock is about where it was twenty-five years ago. Given the passage of time and the probability of rising vacancy and collection losses, the pre-war stock seems to have achieved modest benefits transitioning to rent stabilization. Substantial evidence indicates that the ratio between operating costs and contract rents has risen in the post-war stock. The aging of that stock along with co-operative conversions and slack demand at the high end may explain much of this rise. Whatever deterioration may have occurred is clearly not as dramatic as is often charged. Recognizing the long period in which it was handicapped by inadequate information, it appears that the Rent Guidelines Board has done a remarkably effective job of immunizing owners from the effects of cost push inflationary factors while protecting tenants from demand driven rent increases. In this respect, the rent stabilization system has lived up to its mandate and continues to fulfill its purpose.

We note, however, that this analysis reflects industry averages and cannot capture the effects of stabilization on individual properties. In addition, although the impact of rent regulation on changes in the relationship between rents and operating costs may have been limited, that does not suggest that market influences on that relationship should be ignored by regulators. In the overall attempt to establish fair rents, market influences on housing viability are as critical a concern as market influences on tenants' ability to pay. Unfortunately, the current economic environment poses an equal threat to both.

We close with one recommendation. For over four years the staff has expressed serious reservations about the usefulness and accuracy of "Table 14". Nonetheless, we remained cautious about discontinuing the table for lack of a substitute. With current longitudinal income and expense data we have constructed a new and far more reliable index, using 1989 as a base year. Except for the most recent year and the coming year, this new index measures changes in building income and operating expenses as reported in annual income and expense statements. The second to last year in the table will reflect actual PIOC increases and projected rent changes. The last year in the table - projecting into the future - will include staff projections for both expenses and rents. A copy of the proposed new index is attached.

While we believe this to be a more reliable index, it is not without limitations. First, as noted, for the past and coming year the index will continue to rely upon the price index and staff rent and cost projections. Commercial income - accounting for some 11% of average owner income - will continue to be an independent variable on the rent side. While this figure will be corrected with actual income data each year, changes for the most recent and coming year will be estimated to follow residential rents. Because of the relatively small portion of income derived from commercial units, this should not throw the projections off by any significant amount - unless, of course, the commercial market undergoes abrupt changes. Second, while the new table attempts to measure industry conditions by looking at the overall relationship between costs and income, it does not measure the specific impact of rent regulation on that relationship.

Because we cannot anticipate the effects of preferential rents, MCI and individual apartment improvements for the past and coming year, such a specific measure is impossible to develop. More importantly, the continued presence of operating costs for commercial units in the I&E data[9], impairs our ability to precisely measure the relationship of residential rents to purely residential operating costs. If, however, the goal of the table is to broadly monitor the health of the housing stock over time, the inclusion of all building income and operating costs is a preferred indicator in any event.

Before closing we would like to note the special nature of this report. We have attempted to objectively analyze income and expense trends in stabilized housing along with the history of policy development in this area. We also have suggested a new way of measuring future changes. These are not, however, simple administrative or ministerial matters. The ultimate determination of the relative state of the housing industry and the manner in which conditions are monitored are clearly matters which call for a legislative judgment. We hope that this report will assist the Board in making that judgment. ❑

[9] Residential rents are reported separately from commercial income, but expenses relating to commercial and residential space are not separated.

Editor's Note: On June 11, 1993 the Board voted to continue reporting "Table 14" along with the new table.

Calculation of Operating and Maintenance Cost Ratio for Rent Stabilized Buildings, 1989-93

	Average Monthly O&M Per d.u.*	Average Monthly Income Per d.u.	Average O&M to Income Ratio*
1989	$370 ($340)	$567	.65 (.60)
1990	$382 ($351)	$564	.68 (.62)
1991	$382 ($351)	$559	.68 (.63)
1992**	$400 ($368)	$576	.69 (.64)
1993***	$412 ($379)	$592	.70 (.64)

* Operating and expense data listed is based upon unaudited filings with the Department of Finance. Audits of 46 buildings conducted in 1992 suggest that expenses may be overstated by 8% on average. See Rent Stabilized Housing in New York City, A Summary of Rent Guidelines Board Research, 1992, pages 40-44. Figures in parentheses are adjusted to reflect these findings.

** Expense figure includes expenses for 1991 (average expenses reported on income and expense statements filed with the Department of Finance) updated by the increase in Price Index of Operating Costs for the 4/1/92 -4/1/93 period (4.7%). Income figure includes income for 1991 (average income reported on income and expense statements filed with the Department of Finance) updated by a staff estimate based upon renewal and vacancy guidelines, choice of lease terms and estimated annual turnover rates (3.11%).

*** Expense figure includes 1992 expense estimate updated by staff projections for the period from 4/1/93 through 4/1/94 (3.1%) (Note: The projection was revised to 3.1% from 1.8% after the initial publication of this report.). Income includes income estimate for 1992 updated by staff estimate based upon renewal guidelines and choice of lease terms (2.8%).

Appendix L

Multiple Dwelling Law

Article 7-C. Legalization of Interim Multiple Dwellings

§ 286. Tenant Protection

1. It shall not be a ground for an action or proceeding to recover possession of a unit occupied by a residential occupant qualified for the protection of this article that the occupancy of the unit is illegal or in violation of provisions of the tenant's lease or rental agreement because a residential certificate of occupancy has not been issued for the building, or because residential occupancy is not permitted by the lease or rental agreement.

2. (i) Prior to compliance with safety and fire protection standards of article seven-B of this chapter[171], residential occupants qualified for protection pursuant to this article shall be entitled to continued occupancy, provided that the unit is their primary residence, and shall pay the same rent, including escalations, specified in their lease or rental agreement to the extent to which such lease or rental agreement remains in effect or, in the absence of a lease or rental agreement, the same rent most recently paid and accepted by the owner; if there is no lease or other rental agreement in effect, rent adjustments prior to article seven-B compliance shall be in conformity with guidelines to be set by the loft board for such residential occupants within six months from the effective date of this article.

(ii) In addition to any rent adjustment pursuant to paragraph (i) of this subdivision, on or after June twenty-first, nineteen hundred ninety-two, the rent for residential units in interim multiple dwellings that are not yet in compliance with the requirements of subdivision one of section two hundred eighty-four of this article shall be adjusted as follows:

(A) Upon the owners' filing of an alteration application, as required by paragraph (ii) [fig 1] , (iii) or (iv) of subdivision one of section two hundred eighty-four of this article, an adjustment equal to six percent of the rent in effect at the time the owner files the alteration application.

(B) Upon obtaining an alteration permit, as required by paragraph (ii) [fig 1] , (iii) or (iv) of subdivision one of section two hundred eighty- four of this article, an adjustment equal to eight percent of the rent in effect at the time the owner obtains the alteration permit.

(C) Upon achieving compliance with the standards of safety and fire protection set forth in article seven-B of this chapter for the residential portions of the building, an adjustment equal to six percent of the rent in effect at the time the owner achieves such compliance.

(D) Owners who filed an alteration application prior to the effective date of this subparagraph shall be entitled to a prospective adjustment equal to six percent of the rent on the effective date of this subparagraph.

(E) Owners who obtained an alteration permit prior to June twenty- first, nineteen hundred ninety-two shall be entitled to a prospective adjustment equal to fourteen percent of the rent on June twenty-first, nineteen hundred ninety-two.

(F) Owners who achieved compliance with the standards of safety and fire protection set forth in article seven-B of this chapter for the residential portions of the building prior to

[171] Multiple Dwelling Law §275 et. seq.

June twenty-first, nineteen hundred ninety-two shall be entitled to a prospective adjustment equal to twenty percent of the rent on June twenty-first, nineteen hundred ninety-two.

(iii) Any rent adjustments pursuant to paragraph (ii) of this subdivision shall not apply to units which were rented at market value after June twenty-first, nineteen hundred eighty-two and prior to June twenty-first, nineteen hundred ninety-two.

(iv) Payment of any rent adjustments pursuant to paragraph (ii) of this subdivision shall commence the month immediately following the month in which the act entitling the owner to the adjustment occurred.

3. Upon or after compliance with the safety and fire protection standards of article seven-B of this chapter, an owner may apply to the loft board for an adjustment of rent based upon the cost of such compliance. Upon approval by the loft board of such compliance, the loft board shall set the initial legal regulated rent, and each residential occupant qualified for protection pursuant to this article shall be offered a residential lease subject to the provisions regarding evictions and regulation of rent set forth in the emergency tenant protection act of nineteen seventy-four, except to the extent the provisions of this article are inconsistent with such act. At such time, the owners of such buildings shall join a real estate industry stabilization association in accordance with such act.

4. The initial legal regulated rent established by the loft board shall be equal to (i) the rent in effect, including escalations, as of the date of application for adjustment ("base rent"), plus, (ii) the maximum annual amount of any increase allocable to compliance as provided herein; and (iii) the percentage increase then applicable to one, two or three year leases, as elected by the tenant, as established by the local rent guidelines board, and applied to the base rent, provided, however, such percentage increases may be adjusted downward by the loft board if prior increases based on loft board guidelines cover part of the same time period to be covered by the rent guidelines board adjustments.

5. An owner may apply to the loft board for rent adjustments once based upon the cost of compliance with article seven-B of this chapter and once based upon the obtaining of a residential certificate of occupancy. If the initial legal regulated rent has been set based only upon article seven-B compliance, a further adjustment may be obtained upon the obtaining of a residential certificate of occupancy. Upon receipt of such records as the loft board shall require, the loft board shall determine the costs necessarily and reasonably incurred, including financing, in obtaining compliance with this article pursuant to a schedule of reasonable costs to be promulgated by it. The adjustment in maximum rents for compliance with this article shall be determined either (i) by dividing the amount of the cash cost of such improvements exclusive of interest and service charges over a ten year period of amortization, or (ii) by dividing the amount of the cash cost of such improvements exclusive of interest and service charges over a fifteen year period of amortization, plus the actual annual mortgage debt service attributable to interest and service charges in each year of indebtedness to an institutional lender, or other lender approved by the loft board, incurred by the owner to pay the cash cost of the improvements, provided that the maximum amount of interest charged includable in rent shall reflect an annual amortization factor of one-fifteenth of the outstanding principal balance. Rental adjustments to each residential unit shall be determined on a basis approved by the loft board. An owner may elect that the loft board shall deem the total cost of compliance with this article to be the amounts certified by the local department of housing preservation and development of such municipality in any certificate of eligibility issued in connection with an application for tax

exemption or tax abatement to the extent such certificate reflects categories of costs approved by the loft board as reasonable and necessary for such compliance. Rental adjustments attributable to the cost of compliance with this article shall not become part of the base rent for purposes of calculating rents adjusted pursuant to rent guidelines board increases.

6. Notwithstanding any provision of law to the contrary, a residential tenant qualified for protection pursuant to this chapter may sell any improvements to the unit made or purchased by him to an incoming tenant provided, however, that the tenant shall first offer the improvements to the owner for an amount equal to their fair market value. Upon purchase of such improvements by the owner, any unit subject to rent regulation solely by reason of this article and not receiving any benefits of real estate tax exemption or tax abatement, shall be exempted from the provisions of this article requiring rent regulation if such building had fewer than six residential units as of the effective date of the act which added this article, or rented at market value subject to subsequent rent regulation if such building had six or more residential units at such time. The loft board shall establish rules and regulations regarding such sale of improvements which shall include provisions that such right to sell improvements may be exercised only once for each unit subject to this article, and that the opportunity for decontrol or market rentals shall not be available to an owner found guilty by the loft board of harassment of tenants.

7. The local rent guidelines board shall annually establish guidelines for rent adjustments for the category of buildings covered by this article in accordance with the standards established pursuant to the emergency tenant protection act of nineteen seventy-four. The local rent guidelines board shall consider the necessity of a separate category for such buildings, and a separately determined guideline for rent adjustments for those units in which heat is not required to be provided by the owner, and may establish such separate category and guideline. The loft board shall annually commission a study by an independent consultant to assist the rent guidelines board in determining the economics of loft housing.

8. Cooperative and condominium units occupied by owners or tenant-shareholders shall not be subject to rent regulation pursuant to this article.

9. No eviction plan for conversion to cooperative or condominium ownership for a building which is, or a portion of which is an interim multiple dwelling shall be submitted for filing to the department of law pursuant to the general business law until a residential certificate of occupancy is obtained as required by this article, and the residential occupants qualified for protection pursuant to this article are offered one, two or three year leases, as elected by such persons, in accordance with the provisions for establishment of initial legal regulated rent contained herein. Non-eviction plans for such buildings may be submitted for filing only if the sponsor remains responsible for compliance with article seven-B and for all work in common areas required to obtain a residential certificate of occupancy. Cooperative conversion shall be fully in accordance with section three hundred fifty-two-eeee of the general business law, the requirements of the code of the local real estate industry stabilization association, and with the rules and regulations promulgated by the attorney general.

10. The functions of the local conciliation and appeals board of such municipality regarding owners and tenants subject to rent regulation pursuant to this article shall be carried out by the loft board until such time as provided otherwise by local law.

11. Residential occupants qualified for protection pursuant to this article shall be afforded the protections available to residential tenants pursuant to the real property law and the real property actions and proceedings law.

12. No waiver of rights pursuant to this article by a residential occupant qualified for protection pursuant to this article made prior to the effective date of the act which added this article shall be accorded any force or effect; however, subsequent to the effective date an owner and a residential occupant may agree to the purchase by the owner of such person's rights in a unit.

13. The applicability of the emergency tenant protection act of nineteen seventy-four to buildings occupied by residential tenants qualified for protection pursuant to this article shall be subject to a declaration of emergency by the local legislative body. In the event such act expires prior to the expiration of this article, tenants in interim multiple dwellings shall be included in coverage of the rent stabilization law of nineteen hundred sixty-nine of the city of New York.

Section effective through March 31, 2001.

Appendix M

Apartment Guidelines

1969-2016

The City of New York Rent Guidelines Board
1 Centre Street, Suite 2210 • New York, NY 10007
email: ask@nycrgb.org • web address: nycrgb.org

Chair: Rachel D. Godsil
Executive Director: Andrew McLaughlin

Rent Guidelines Board Apartment Orders #1 through #47 (1969 to 2016)

Order Number	Renewal Leases Starting Between	One Year	Two Years	Three Years	Vacancy Allowance	Electrical Inclusion	Separate Stabilizer	Fair Market Rent Guidelines for Previously Controlled Units
47	10/1/15 to 9/30/16	0.0%	2.0%	--	--[1, 2]	None	None	Greater of MBR + 33% or H.U.D's Fair Market Rent[3]

[1] No vacancy allowance is permitted except as provided by the Rent Regulation Reform Act of 1997 (and the Rent Act of 2015 for Order 47 only).
[2] In the event of a sublease, governed by subsivision (e) of Section 2525.6 of the Rent Stabilization Code, there is a 10% allowable increase.
[3] The fair market rent for existing housing as established by the U.S. Dept. of Housing and Urban Development (HUD) for the NY Primary Metropolitan Statistical Area pursuant to Section 8c (1) of the U.S. Housing Act of 1937, as found at 42 U.S. Code Section 1437f and 24 C.F.R. Part 888, with such Fair Market Rents to be adjusted accordingly whether the tenant pays his own gas and/or electric charges as part of his rent as such gas and/or electric charges are determined by the NYC Housing Authority.

Order Number	Renewal Leases Starting Between	One Year	Two Years	Three Years	Vacancy Allowance	Electrical Inclusion	Separate Stabilizer	Fair Market Rent Guidelines for Previously Controlled Units
46	10/1/14 to 9/30/15	1.0%	2.75%	--	--[1, 2]	None	None	Greater of MBR + 30% or H.U.D's Fair Market Rent[3]
45	10/1/13 to 9/30/14	4.0%	7.75%	--	--[1, 2]	None	None	Greater of MBR + 30% or H.U.D's Fair Market Rent[3]
44	10/1/12 to 9/30/13	2% or $20, whichever is greater	4% or $40, whichever is greater	--	--[1, 2]	None	None	Greater of MBR + 30% or H.U.D's Fair Market Rent[3]
43	10/1/11 to 9/30/12	3.75%	7.25%	--	--[1, 2]	None	None	Greater of MBR + 30% or H.U.D's Fair Market Rent[3]
42	10/1/10 to 9/30/11	2.25%	4.5%	--	--[1, 2]	None	None	Greater of MBR + 50% or H.U.D's Fair Market Rent[3]
41	10/1/09 to 9/30/10	3.0%[4] 2.5%[5]	6.0%[4] 5.0%[5]	--	--[1, 2]	None	None	Greater of MBR + 50% or H.U.D's Fair Market Rent[3]

Where the most recent vacancy lease was executed six years or more prior to the date of the renewal lease under this Order, a minimum of 3.0% or $30, whichever is greater, for a one year lease (2.5% or $25, whichever is greater, where the tenant pays for heat) or 6.0% or $60, whichever is greater, for a two-year lease (5% or $50, whichever is greater, where the tenant pays for heat) shall apply.

[4] If the owner provides heat at no charge to tenant. [5] If the tenant pays own heat.

Order Number	Renewal Leases Starting Between	One Year	Two Years	Three Years	Vacancy Allowance	Electrical Inclusion	Separate Stabilizer	Fair Market Rent Guidelines for Previously Controlled Units
40	10/1/08 to 9/30/09	4.5%[4] 4.0%[5]	8.5%[4] 8.0%[5]	--	--[1, 2]	None	None	Greater of MBR + 50% or H.U.D's Fair Market Rent[3]

Where the most recent vacancy lease was executed six years or more prior to the date of the renewal lease under this Order, a minimum of 4.5% or $45, whichever is greater, for a one year lease (4% or $40, whichever is greater, where the tenant pays for heat) or 8.5% or $85, whichever is greater, for a two-year lease (8% or $80, whichever is greater, where the tenant pays for heat) shall apply.

Order Number	Renewal Leases Starting Between	One Year	Two Years	Three Years	Vacancy Allowance	Electrical Inclusion	Separate Stabilizer	Fair Market Rent Guidelines for Previously Controlled Units
39	10/1/07 to 9/30/08	3%	5.75%	--	--[1, 2]	None	None	Greater of MBR + 50% or H.U.D's Fair Market Rent[3]
38	10/1/06 to 9/30/07	4.25%[4] 3.75%[5]	7.25%[4] 6.75%[5]	--	--[1, 2]	None	None	Greater of MBR + 50% or H.U.D's Fair Market Rent[3]
37	10/1/05 to 9/30/06	2.75%[4] 2.25%[5]	5.5%[4] 4.5%[5]	--	--[1, 2]	None	None	Greater of MBR + 50% or H.U.D's Fair Market Rent[3]
36	10/1/04 to 9/30/05	3.5%[4] 3%[5]	6.5%[4] 6%[5]	--	--[1, 2]	None	None	Greater of MBR + 50% or H.U.D's Fair Market Rent[3]

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Rent Guidelines Board Apartment Orders #1 through #47 (1969 to 2016)

Order Number	Renewal Leases Starting Between	One Year	Two Years	Three Years	Vacancy Allowance	Electrical Inclusion	Separate Stabilizer	Fair Market Rent Guidelines for Previously Controlled Units
35	10/1/03 to 9/30/04	4.5%	7.5%	--	--[1, 2]	None	None	Greater of MBR + 50% or H.U.D's Fair Market Rent[3]
34	10/1/02 to 9/30/03	2%	4%	--	--[1, 2]	None	None	Greater of MBR + 50% or H.U.D's Fair Market Rent[3]
33	10/1/01 to 9/30/02	4%	6%	--	--[1, 2]	None	None	Greater of MBR + 150% + Fuel Adjustments or H.U.D's Fair Market Rent[3]
32	10/1/00 to 9/30/01 (Rent ≤$500, add $15)	4% (Rent <$215 after appropriate increases in this order have been applied, will be $215)	6%	--	--[1, 2]	None	None	Greater of MBR + 150% + Fuel Adjustments or H.U.D.'s Fair Market Rent [3]
31	10/1/99 to 9/30/00 (Rent ≤$500, add $15)	2% (Rent <$215 after appropriate increases in this order have been applied, will be $215)	4%	--	--[1, 6]	None	None	Greater of MBR + 150%+ Fuel Adjustments or H.U.D.'s Fair Market Rent [3]
30	10/1/98 to 9/30/99	2% (Rent <$450, add $15)[8]	4%	--	--[1, 7]	None	None	Greater of MBR + 80% + Fuel Adjustments or $650
29	10/1/97 to 9/30/98	2% (Rent ≤$400, add $15) [9]	4%	--	--[1, 7]	None	None	Greater of MBR + 40% + Fuel adjustment or MCR + 50% + Fuel Adjustment
28	10/1/96 to 9/30/97 (Rent ≤$400, add $20)	5%	7%	--	9%[10]	None	None	Greater of MBR + 40% + Fuel adjustment or MCR + 50% + Fuel Adjustment
27	10/1/95 to 9/30/96	2% (Rent ≤$400, add $20)	4%	--	8.5%[10]	None	None	Greater of 35% above MBR or 45% above the MCR
26	10/1/94 to 9/30/95	2% (Rent<$400, add $15)[12]	4%	--	10% or 5%[10, 11]	None	None	Greater of 35% above MBR or 40% above the MCR
25	10/1/93 to 9/30/94	3%	5%	--	5, 3, or 0%[10, 13]	None	None	MCR + 40%
24	10/1/92 to 9/30/93	3%	5%	--	5%[10]	None	None	MBR +15% + Fuel Adjustment
23	10/1/91 to 9/30/92	4%	6.5%	--	5%[10]	None	None	MBR + 15% + Fuel Adjustment
22	10/1/90 to 9/30/91	4.5%	7%	--	5%[10]	None	None	MCR + 35% + Fuel Adjustment

[6] In the event of a sublease, governed by subsivision (e) of Section 2525.6 of the Rent Stabilization Code, there is a 0% allowable increase.

[7] In the event of a sublease, governed by subsivision (e) of Section 2525.6 of the Rent Stabilization Code, there is a 5% allowable increase.

[8] Provided the monthly rent resulting from application of this level of increase or any portion thereof does not exceed $465.

[9] Provided the monthly rent resulting from application of this level of increase or any portion thereof does not exceed $415.

[10] If no other Vacancy Allowance was taken within the same guideline year.

[11] 10% for rents < $400[33], 5% for rents <$1000

[12] Applicable for apartments located in buildings with thirty or fewer dwelling units.

[13] 5% for rents < $500, 3% for rents ≥ $500 <$1000, 0% for rents ≥ $1000.

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21	10/1/89 to 9/30/90	5.5% (Rent < $325, add $5)[14]	9%	--	12%[10]	None	None	Greater of 25% above MBR or 45% above MCR + Fuel Adjustment
20	10/1/88 to 9/30/89	6% (Rent < $325, add $5)[15]	9%	--	12%[10]	None	None	Greater of 25% above MBR or 45% above MCR + Fuel Adjustment
19	10/1/87 to 9/30/88	3% (Rent < $325, add $10)[17]	6.5%	--	10%[16]	None	None	1986 MBR + Fuel Adjustment + 35%
18	10/1/86 to 9/30/87	6% (Rent < $350, add $15)[18]	9%	--	7.5%[16]	None	None	1986 MBR + Fuel Adjustment + 20%
17	10/1/85 to 9/30/86	4% (Rent < $300, add $15)[19]	6.5%	--	7.5%[16]	None	None	1984 MBR + Fuel Adjustment + 20%
16	10/1/84 to 9/30/85	6% (Rent < $250, add $10)[21]	9%	--[20]	7.5%[16]	None	None	1984 MBR + Fuel Adjustment + 15%
15	10/1/83 to 9/30/84	4% (Rent < $200, add $10)[23]	7%	10%	0, 5, 10, or 15%[22]	Minus 1%	None	1982 MBR+Fuel Adj.+20%
14	10/1/82 to 9/30/83	4%	7%	10%	None	Minus 1%	None	1982 MBR + Fuel Adj + 15%
13	10/1/81 to 9/30/82 [24]	10%[4] 6.5%[5]	13%[4] 9.5%[5]	16%[4] 12.5%[5]	15%	4%	None	20% above 1980 MBR
12, 12a	7/1/80 to 6/30/81 [25]	11%[4] 5%[5]	14%[4] 7%[5]	17%[4] 9%[5]	5%[26], 10%[27] 15%[28]	1.5%	None	15% above 1980 MBR
11, 11a, 11b[29]	7/1/79 to 6/30/80	8.5%	12%	15%	5%[30] or 15%[31]	None	None	20% above 1978 MBR

[14] Caps: Renewal Lease - $342.88 one year, $354.25 two years; Vacancy Lease - $381.88 one year, $393.25 two years.

[15] Caps: Renewal Lease - $344.50 one year, $354.25 two years; Vacancy Lease - $383.50 one year, $393.25 two years.

[16] If no vacancy allowance was taken under the previous order.

[17] Caps: Renewal Lease - $334.75 for one year lease, $346.13 for two year lease; Vacancy Lease - $367.25 for one year lease, $378.63 for two year lease.

[18] Caps: Renewal Lease - $371.00 for one year lease, $381.50 for two year lease; Vacancy Lease - $397.25 for one year lease, $407.75 for two year lease.

[19] Caps: Renewal Lease - $312 for one year lease, $319.50 for two year lease; Vacancy Lease - $334.50 for one year lease, $342.00 for two year lease.

[20] Owners no longer required to offer a three year lease effective 10/1/83.

[21] Caps: Renewal Lease - $265 for one year lease, $272.50 for two year lease; Vacancy Lease - $283.75 for one year lease, $291.25 for two year lease.

[22] 0% if 15% or more vacancy allowance has been charged since 7/1/79.
5% if less than 15% but more than 0% vacancy allowance has been charged since 6/1/79.
10% if the last vacancy allowance was charged between 7/1/75 and 6/30/79.
15% if no vacancy allowance has been charged in any guidelines period since 7/1/75.
If rent is < $200, see box with Vacancy Allowance Caps.

[23] Caps: Renewal Lease without electric - $208 one year; $214 two years, $220 three years.
Renewal Lease with electric - $206 one year, $212 two years, $218 three years.

Caps on Vacancy Allowance for Rents < $200

	Owner pays elec. 1yr	Owner pays elec. 2yr	Owner pays elec. 3yr	Tenant pays elec. 1yr	Tenant pays elec. 2yr	Tenant pays elec. 3yr
0%	$206	$212	$218	$208	$214	$220
5%	$216	$222	$228	$218	$224	$230
10%	$226	$232	$238	$228	$234	$240
15%	$236	$242	$248	$238	$244	$250

[24] Starting with Order #13, rent increases are based on the legal rent in effect on September 30 prior to the guideline period.

[25] This guideline period is for fifteen months.

[26] If there has been a change in tenancy since 7/1/75. [27] If there has been no change in tenancy since 7/1/75.

[28] Vacancy increase over 6/30/81 rent for new leases starting on or after 7/1/81 and on or before 9/30/81.

[29] A fuel surcharge of $8 per month is in effect one year from the starting day of any leases commencing between 7/1/79 and 6/30/80.

[30] For leases beginning between 7/1/79 and 1/31/80.

[31] For leases beginning between 2/1/80 and 6/30/80.

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Rent Guidelines Board Apartment Orders #1 through #47 (1969 to 2016)

Order Number	Renewal Leases Starting Between	One Year	Two Years	Three Years	Vacancy Allowance	Electrical Inclusion	Separate Stabilizer	Fair Market Rent Guidelines for Previously Controlled Units
10b,c,d,e	7/1/78 to 6/30/79	2.5%[32]	2%[32]	.5%[32]	10%[33]	--	--	
10,10a	7/1/78 to 6/30/79	4.5%	6.5%	8.5%	5%	0.5%	None	15% above 1978 MBR
9	7/1/77 to 6/30/78	6.5%	8.5%	11.5%	5%	4%[34]	None	20% above 1976 MBR
8[35]	7/1/76 to 6/30/77	6.5%	8%	11.0%	5%	3.5%[34]	None	15% above 1976 MBR
7[35]	7/1/75 to 6/30/76	7.5%	9.5%	12.5%	5%	3.5%	None	22.5% above 1974 MBR
6,6a,6b,6c[35]	7/1/74 to 6/30/75	8.5%	10.5%	12%	None	2.5%[36]	None	15% above 1974 MBR
5[37]	7/1/73 to 6/30/74	6.5%	8.5%	10.5%	5%[38]	None	None	
4[37]	7/1/72 to 6/30/73	6%	8%	10%	5%[38]	None	0.5%	
3	7/1/71 to 6/30/72	7%	9%	12%	10%[38]	None	1%	
2	7/1/70 to 6/30/71	6%	8%	11%	7.5%	None	1%	
1	7/1/68 to 6/30/70	10%[39]	10%	15%	5%[40] or 10%[41]	None	None	

32 In addition to the base adjustment permitted under order #10a, these fuel adjustments for one, two and three year leases could be charged effective 3/1/79. Additional fuel adjustments were set down by Orders #10c,d and e as follows: 1) as of 1/1/80 in addition to the above, $12.00 per month per unit could be charged through 6/30/80; 2) starting 7/1/80, an $8.00 per month per unit fuel adjustment could be charged effective through the end of the lease. In all cases, these adjustments apply only where the landlord provides heat at no additional charge to the tenant. Also, none of these adjustments become part of the base rent and cannot be included in subsequent calculations of rent increases.

33 For leases where apartment was vacated between 2/1/80 and 6/30/80.

34 Only if no electrical inclusion was previously taken.

35 Special adjustments apply for the first renewal lease of any apartment decontrolled under the Vacancy Decontrol Law. See Supplemental Order #6a for specifics.

36 Applies only to leases starting on or after 9/1/74.

37 Vacancy Decontrol was in effect from 7/1/71 to 6/30/74.

38 Effective only for apartments vacated before 6/30/71 and not subject to the Vacancy Decontrol Law.

39 A one-year lease extension at the same rental could be requested by the tenant.

40 For two year leases.

41 For three year leases.

Appendix M1

Hotel Guidelines

1971-2016

The City of New York Rent Guidelines Board
1 Centre Street, Suite 2210 • New York, NY 10007
email: ask@nycrgb.org • web address: nycrgb.org

Chair: Rachel D. Godsil
Executive Director: Andrew McLaughlin

Rent Guidelines Board Hotel Orders #1 through #45 (1971 to 2016)

Order Number	Renewal Leases Starting Between	Residential Class A	Lodging Houses	Rooming Houses	Class B Hotels	S.R.O. Buildings	***FOR SPECIAL NOTE ON RENT ADJUSTMENTS ON VACANCY: SEE END.**
45	10/1/15 to 9/30/16	0%	0%	0%	0%	0%	
44	10/1/14 to 9/30/15	0%	0%	0%	0%	0%	
43	10/1/13 to 9/30/14	0%	0%	0%	0%	0%	
42	10/1/12 to 9/30/13	0%	0%	0%	0%	0%	
41	10/1/11 to 9/30/12	3%[1]	3%[1]	3%[1]	3%[1]	3%[1]	[1]These increases shall be 0% when permanent rent stabilized or rent controlled tenants paying no more than the legal regulated rent, at the time that any rent increase in this Order would otherwise be authorized, constitute fewer than 85% of all units in a building that are used or occupied, or intended, arranged or designed to be used or occupied in whole or in part as the home, residence or sleeping place of one or more human beings.
40	10/1/10 to 9/30/11	0%	0%	0%	0%	0%	
39	10/1/09 to 9/30/10	0%	0%	0%	0%	0%	
38	10/1/08 to 9/30/09	4.5%[1]	4.5%[1]	4.5%[1]	4.5%[1]	4.5%[1]	
37	10/1/07 to 9/30/08	0%	0%	0%	0%	0%	
36	10/1/06 to 9/30/07	2%[2]	2%[2]	2%[2]	2%[2]	2%[2]	[2]These increases shall be 0% when permanent rent stabilized or rent controlled tenants paying no more than the legal regulated rent, at the time that any rent increase in this Order would otherwise be authorized, constitute fewer than 80% of all units in a building that are used or occupied, or intended, arranged or designed to be used or occupied in whole or in part as the home, residence or sleeping place of one or more human beings.
35	10/1/05 to 9/30/06	0%	0%	0%	0%	0%	
34	10/1/04 to 9/30/05	0%	0%	0%	0%	0%	
33	10/1/03 to 9/30/04	3.5%[3,4]	3.5%[3,4]	3.5%[3,4]	3.5%[3,4]	3.5%[3,4]	[3]These increases shall be 0% when permanent rent stabilized or rent controlled tenants paying no more than the legal regulated rent, at the time that any rent increase in this Order would otherwise be authorized, constitute fewer than 75% of all units in a building that are used or occupied, or intended, arranged or designed to be used or occupied in whole or in part as the home, residence or sleeping place of one or more human beings. [4]If the owner failed to provide to new occupant(s) of a unit a copy of Rights and Duties of Hotel Owners and Tenants, pursuant to Section 2522.5 of the Rent Stabilization Code, then the allowable level of rent adjustment shall be 0%.

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Executive Director: Andrew McLaughlin

Rent Guidelines Board Hotel Orders #1 through #45 (1971 to 2016)

Order Number	Renewal Leases Starting Between	Residential Class A	Lodging Houses	Rooming Houses	Class B Hotels	S.R.O. Buildings	***FOR SPECIAL NOTE ON RENT ADJUSTMENTS ON VACANCY: SEE END.**
32	10/1/02 to 9/30/03	0%[4,5]	0%[4,5]	0%[4,5]	0%[4,5]	0%[4,5]	[5]These increases shall be 0% when permanent rent stabilized or rent controlled tenants paying no more than the legal regulated rent, at the time that any rent increase in this Order would otherwise be authorized, constitute fewer than 70% of all units in a building that are used or occupied, or intended, arranged or designed to be used or occupied in whole or in part as the home, residence or sleeping place of one or more human beings.
31	10/1/01 to 9/30/02	2%[4,6]	2%[4,6]	2%[4,6]	2%[4,6]	2%[4,6]	[6]These increases shall be 0% if fewer than 70% of the residential units in a building are occupied by permanent rent stabilized or rent controlled tenants paying no more than the legal regulated rent, at the time that any rent increase in this Order would otherwise be authorized.
30	10/1/00 to 9/30/01	2%[4,6]	2%[4,6]	2%[4,6]	2%[4,6]	2%[4,6]	
29	10/1/99 to 9/30/00	4%[4,6]	4%[4,6]	4%[4,6]	4%[4,6]	4%[4,6]	
28	10/1/98 to 9/30/99	0%	0%	2%[4,7,8]	0%	0%	[7] If the affected building contains A) 20 or more units; and 10% or more of the units have been withheld from the rental market for a period exceeding 30 days, unless the owner can show a reasonable basis for the witholding; OR B) 20% or more of the units are not registered with the DHCR, then the allowable level of rent adjustment shall be 0%. [8]If fifty percent or more of the units have been leased, used, or dedicated to a use other than permanent residential housing at the legal level, then the allowable level of rent adjustment shall be 0%.
27	10/1/97 to 9/30/98	0%	0%	2%[4,7,8]	0%	0%	
26	10/1/96 to 9/30/97	0%	0%	0%	0%	0%	
25	10/1/95 to 9/30/96	0%	0%	0%	0%	0%	
24	10/1/94 to 9/30/95	2%	2%[7]	2%[7]	2%[7]	2%[7]	
23	10/1/93 to 9/30/94	3%	2%[7]	2%[7]	2%[7]	3%[7]	
22	10/1/92 to 9/30/93	3%	2%	2%	2%[7]	2%[7]	
21	10/1/91 to 9/30/92	3.5%	3.5%	3.5%	3.5%[9]	3.5%[9]	[9]If the affected building contains A) 20 or more units; and 10% or more of the units have been deliberately withheld from the rental market for a period exceeding 30 days OR B) 20% or more of the units are not registered with the DHCR; then the allowable level of rent adjustment shall be 0%.
20	10/1/90 to 9/30/91	2%	2%	2%	2%[9]	2%[9]	

Rent Guidelines Board Hotel Orders #1 through #45 (1971 to 2016)

Order Number	Renewal Leases Starting Between	Residential Class A	Lodging Houses	Rooming Houses	Class B Hotels	S.R.O. Buildings	***FOR SPECIAL NOTE ON RENT ADJUSTMENTS ON VACANCY: SEE END.**
19	10/1/89 to 9/30/90[9]	3.5%[11]	3.5%[11]	3.5%[11]	3.5%[9,11]	3.5%[9,11]	[10]For those leases or rental agreements which will expire between 7/1/89 and 9/30/89 the rent in effect under the expiring lease shall continue in effect through 9/30/89. [11]A temporary rent increase of .875% of the rent charged and paid on June 30, 1989 may be charged. This temporary increase may be collected only for the effective period of this Order and may not be included in the legal regulated base rent once a new rent is charged under a subsequent Order.
18	7/1/88 to 6/30/89	3.5%	2%	3.50%	2%[9]	2%[9]	
17	7/1/87 to 6/30/88	3%	3%	3%	0%	0%	
16	7/1/86 to 6/30/87	0%	0%	0%	0%	0%	
15	7/1/85 to 6/30/86	2%[12]	2%[12]	2%[12]	2%[12]	2%[12]	[12]For buildings of more than 30 units this increase shall not apply where more than 5% of the units are vacant for the 60 days preceding the effective date of this order, except as otherwise permitted in the order.
14	7/1/84 to 6/30/85	0%	0%	0%	0%	0%	
13	7/1/83 to 6/30/84	4%[13, 14]	4%[13, 14]	4%[13, 14]	4%[13, 14]	4%[13, 14]	[13]This increase will not apply where 40% or more of the dwelling units in a hotel are vacant and unoccupied on the date specified in the order except as otherwise permitted in the order. [14]Those units which have had no new tenancy commencing on or after July 1, 1978, are allowed an additional 5% vacancy allowance over rentals charged on June 30, 1983.
12	7/1/82 to 6/30/83	2%[13]	2%[13]	2%[13]	2%[13]	2%[13]	
11	5/1/81 to 6/30/82	10%[13, 15, 16]	10%[13, 15, 16]	10%[13, 15, 16]	10%[13, 15, 16]	10%[13, 15, 16]	[15]A temporary surcharge of 1.67% can be applied for the period between 5/1/81 to 5/31/81 and remains in effect through June 30, 1982 or through the termination of the tenancy, whichever occurs first and shall not merge with the base rent established pursuant to Hotel Order 11 for the purpose of computing any rental adjustments. [16]A temporary surcharge of .83% can be applied for the period between 6/1/81 to 6/30/81 and remains in effect through June 30, 1982 or through the termination of the tenancy, whichever occurs first and shall not merge with the base rent established pursuant to Hotel Order 11 for the purpose of computing any rental adjustments.
10	5/1/80 to 4/30/81	9.5%[13]	9.5%[13]	9.5%[13]	9.5%[13]	9.5%[13]	
9	5/1/79 to 4/30/80	6.5%[13]	6.5%[13]	6.5%[13]	6.5%[13]	6.5%[13]	
8	5/1/78 to 4/30/79	5%[13]	5%[13]	5%[13]	5%[13]	5%[13]	
7	5/1/77 to 4/30/78	7%[13]	7%[13]	7%[13]	7%[13]	7%[13]	

The City of New York Rent Guidelines Board
1 Centre Street, Suite 2210 • New York, NY 10007
email: ask@nycrgb.org • web address: nycrgb.org

Chair: Rachel D. Godsil
Executive Director: Andrew McLaughlin

Rent Guidelines Board Hotel Orders #1 through #45 (1971 to 2016)

Order Number	Renewal Leases Starting Between	Residential Class A	Lodging Houses	Rooming Houses	Class B Hotels	S.R.O. Buildings	***FOR SPECIAL NOTE ON RENT ADJUSTMENTS ON VACANCY: SEE END.**
6	1/1/76 to 4/30/77	6%[13]	6%[13]	6%[13]	6%[13]	6%[13]	
5	1/1/75 to 12/31/75	8%[13]	8%[13]	8%[13]	8%[13]	8%[13]	
4	1/1/74 to 12/31/74	5.5%[13]	5.5%[13]	5.5%[13]	5.5%[13]	5.5%[13]	
3	1/1/73 to 12/31/73	4%[13]	4%[13]	4%[13]	4%[13]	4%[13]	
2	1/1/72 to 12/31/72	4.5%	4.5%	4.5%	4.5%	4.5%	
1	1/1/71 to 12/31/71	6%/8%[17]	6%/8%[17]	6%/8%[17]	6%/8%[17]	6%/8%[17]	[17]Order #1 calls for a 6% increase “which shall escalate as of June 1, 1971 to 8%” over the rent in effect on 12/31/70.

***Note on Rent Increases Upon Vacancy in Stabilized Hotel Units:**

Prior to 1983 the Rent Stabilization Law provided that “any hotel dwelling unit which is voluntarily vacated by the tenant thereof may be offered for rental at any price notwithstanding any established permissable rent level.” Chapter 448 of the Laws of 1983 substituted the following language: “Any hotel dwelling unit which is voluntarily vacated by the tenant thereof may be offered for rental at the guideline level for vacancies established by the rent guidelines board.” Only once, in 1983, has the board permitted a special increase upon vacancy for stabilized hotel units.

Appendix N

2015 Apartment & Loft Order #47

NEW YORK CITY RENT GUIDELINES BOARD

2015 Apartment & Loft Order #47

June 29, 2015

Order Number 47 - Apartments and Lofts, rent levels for leases commencing **October 1, 2015** through **September 30, 2016.**

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY RENT GUIDELINES BOARD BY THE RENT STABILIZATION LAW OF 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended, and as implemented by Resolution No 276 of 1974 of the New York City Council, and in accordance with the requirements of Section 1043 of the New York City Charter, that the Rent Guidelines Board (RGB) hereby **adopts** the following levels of fair rent increases over lawful rents charged and paid on **September 30, 2015**. These rent adjustments will apply to rent stabilized apartments with leases commencing on or after **October 1, 2015** and through **September 30, 2016**. Rent guidelines for loft units subject to Section 286 subdivision 7 of the Multiple Dwelling Law are also included in this order.

ADJUSTMENT FOR RENEWAL LEASES (APARTMENTS)

Together with such further adjustments as may be authorized by law, the annual adjustment for renewal leases for apartments shall be:

> For a **one**-year renewal lease commencing on or after **October 1, 2015** and on or before **September 30, 2016**: **0.0%**
>
> For a **two**-year renewal lease commencing on or after **October 1, 2015** and on or before **September 30, 2016**: **2.0%**

These adjustments shall also apply to dwelling units in a structure subject to the partial tax exemption program under Section 421a of the Real Property Tax Law, or in a structure subject to Section 423 of the Real Property Tax Law as a Redevelopment Project.

VACANCY ALLOWANCE FOR APARTMENTS

No vacancy allowance is permitted except as provided by the Rent Regulation Reform Act of 1997 and the Rent Act of 2015.

ADDITIONAL ADJUSTMENT FOR RENT STABILIZED APARTMENTS SUBLET UNDER SECTION 2525.6 OF THE RENT STABILIZATION CODE

In the event of a sublease governed by subdivision (e) of section 2525.6 of the Rent Stabilization Code, the allowance authorized by such subdivision shall be **10%**.

ADJUSTMENTS FOR LOFTS (UNITS IN THE CATEGORY OF BUILDINGS COVERED BY ARTICLE 7-C OF THE MULTIPLE DWELLING LAW)

The Rent Guidelines Board **adopts** the following levels of rent increase above the "base rent," as defined in Section 286, subdivision 4, of the Multiple Dwelling Law, for units to which these guidelines are applicable in accordance with Article 7-C of the Multiple Dwelling Law:

> For **one**-year increase periods commencing on or after **October 1, 2015** and on or before **September 30, 2016**: **0.0%**
>
> For **two**-year increase periods commencing on or after **October 1, 2015** and on or before **September 30, 2016**: **2.0%**

VACANT LOFT UNITS

No Vacancy Allowance is permitted under this Order. Therefore, except as otherwise provided in Section 286, subdivision 6, of the Multiple Dwelling Law, the rent charged to any tenant for a vacancy tenancy commencing on or after **October 1, 2015** and on or before **September 30, 2016** may not exceed the "base rent" referenced above plus the level of adjustment permitted above for increase periods.

FRACTIONAL TERMS

For the purposes of these guidelines any lease or tenancy for a period up to and including one year shall be deemed a one-year lease or tenancy, and any lease or tenancy for a period of over one year and up to and including two years shall be deemed a two-year lease or tenancy.

ESCALATOR CLAUSES

Where a lease for a dwelling unit in effect on May 31, 1968 or where a lease in effect on June 30, 1974 for a dwelling unit which became subject to the Rent Stabilization Law of 1969, by virtue of the Emergency Tenant Protection Act of 1974 and Resolution Number 276 of the New York City Council, contained an escalator clause for the increased costs of operation and such clause is still in effect, the lawful rent on **September 30, 2015** over which the fair rent under this Order is computed shall include the increased rental, if any, due under such clause except those charges which accrued within one year of the commencement of the renewal lease. Moreover, where a lease contained an escalator clause that the owner may validly renew under the Code, unless the owner elects or has elected in writing to delete such clause, effective no later than **October 1, 2015** from the existing lease and all subsequent leases for such dwelling unit, the increased rental, if any, due under such escalator clause shall be offset against the amount of increase authorized under this Order.

SPECIAL ADJUSTMENTS UNDER PRIOR ORDERS

All rent adjustments lawfully implemented and maintained under previous apartment orders and included in the base rent in effect on **September 30, 2015** shall continue to be included in the base rent for the purpose of computing subsequent rents adjusted pursuant to this Order.

SPECIAL GUIDELINE

Under Section 26-513(b)(1) of the New York City Administrative Code, and Section 9(e) of the Emergency Tenant Protection Act of 1974, the Rent Guidelines Board is obligated to promulgate special guidelines to aid the State Division of Housing and Community Renewal in its determination of initial legal regulated rents for housing accommodations previously subject to the City Rent and Rehabilitation Law which are the subject of a tenant application for adjustment. The Rent Guidelines Board hereby **adopts** the following Special Guidelines:

For dwelling units subject to the Rent and Rehabilitation Law on **September 30, 2015**, which become vacant after **September 30, 2015**, the special guideline shall be the greater of:

(1) **33%** above the maximum base rent, or

(2) The Fair Market Rent for existing housing as established by the United States Department of Housing and Urban Development (HUD) for the New York City Primary Metropolitan Statistical Area pursuant to Section 8(c) (1) of the United States Housing Act of 1937 (42 U.S.C. section 1437f [c] [1]) and 24 C.F.R. Part 888, with such Fair Market Rents to be adjusted based upon whether the tenant pays his or her own gas and/or electric charges as part of his or her rent as such gas and/or electric charges are accounted for by the New York City Housing Authority.

Such HUD-determined Fair Market Rents will be published in the Federal Register, to take effect on **October 1, 2015**.

DECONTROLLED UNITS

The permissible increase for decontrolled units as referenced in Order 3a which become decontrolled after **September 30, 2015**, shall be the greater of:

(1) **33%** above the maximum base rent, or

(2) The Fair Market Rent for existing housing as established by the United States Department of Housing and Urban Development (HUD) for the New York City Primary Metropolitan Statistical Area pursuant to Section 8(c) (1) of the United States Housing Act of 1937 (42 U.S.C. section 1437f [c] [1]) and 24 C.F.R. Part 888, with such Fair Market Rents to be adjusted based upon whether the tenant pays his or her own gas and/or electric charges as part of his or her rent as such gas and/or electric charges are accounted for by the New York City Housing Authority.

Such HUD-determined Fair Market Rents will be published in the Federal Register, to take effect on **October 1, 2015**.

CREDITS

Rentals charged and paid in excess of the levels of rent increase established by this Order shall be fully credited against the next month's rent.

STATEMENT OF BASIS AND PURPOSE

The Rent Guidelines Board is authorized to promulgate rent guidelines governing apartment units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4 [§2]).

The Rent Guidelines Board is also authorized to promulgate rent guidelines for loft units subject to Section 286 subdivision 7 of the Multiple Dwelling Law. The purpose of the loft guidelines is to implement the public policy set forth in the Legislative Findings of Article 7-C of the Multiple Dwelling Law (Section 280).

Dated: June 29, 2015

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Rachel D. Godsil
Chair
New York City Rent Guidelines Board

Appendix N1

Explanatory Statement
Apartment & Loft Order #47

EXPLANATORY STATEMENT - APARTMENT ORDER #47

Explanatory Statement and Findings of the Rent Guidelines Board In Relation to 2015-16 Lease Increase Allowances for Apartments and Lofts under the Jurisdiction of the Rent Stabilization Law[1]

Summary of Order No. 47

The Rent Guidelines Board (RGB) by Order No. 47 has set the following maximum rent increases for leases subject to renewal on or after October 1, 2015 and on or before September 30, 2016 for apartments under its jurisdiction:

For a one-year renewal lease commencing on or after October 1, 2015 and on or before September 30, 2016: 0.0%

For a two-year renewal lease commencing on or after October 1, 2015 and on or before September 30, 2016: 2.0%

Vacancy Allowance

The vacancy allowance is now determined by a formula set forth in the State Rent Regulation Reform Act of 1997 and the Rent Act of 2015, not by the Orders of the Rent Guidelines Board.

Sublet Allowance

The increase landlords are allowed to charge when a rent stabilized apartment is sublet by the primary tenant to another tenant on or after October 1, 2015 and on or before September 30, 2016 shall be 10%.

Adjustments for Lofts

For Loft units to which these guidelines are applicable in accordance with Article 7-C of the Multiple Dwelling Law, the Board established the following maximum rent increases for increase periods commencing on or after October 1, 2015 and on or before September 30, 2016. No vacancy allowance is included for lofts.

1 Year	2 Years
0.0%	2.0%

The guidelines do not apply to hotel, rooming house, and single room occupancy units that are covered by separate Hotel Orders.

Any increase for a renewal lease may be collected no more than once during the guideline period governed by Order No. 47.

[1] This Explanatory Statement explains the actions taken by the Board members on individual points and reflects the general views of those voting in the majority. It is not meant to summarize all the viewpoints expressed.

Special Guideline

Leases for units subject to rent control on September 30, 2015 that subsequently become vacant and then enter the stabilization system are not subject to the above adjustments. Such newly stabilized rents are subject to review by the State Division of Housing and Community Renewal (DHCR). In order to aid DHCR in this review the Rent Guidelines Board has set a special guideline of whichever is greater:

1. 33% above the maximum base rent, or

2. The Fair Market Rent for existing housing as established by the United States Department of Housing and Urban Development (HUD) for the New York City Primary Metropolitan Statistical Area pursuant to Section 8(c) (1) of the United States Housing Act of 1937 (42 U.S.C. section 1437f [c] [1]) and 24 C.F.R. Part 888, with such Fair Market Rents to be adjusted based upon whether the tenant pays his or her own gas and/or electric charges as part of his or her rent as such gas and/or electric charges are accounted for by the New York City Housing Authority.

Such HUD-determined Fair Market Rents will be published in the Federal Register, to take effect on October 1, 2015.

All rent adjustments lawfully implemented and maintained under previous apartment Orders and included in the base rent in effect on September 30, 2015 shall continue to be included in the base rent for the purpose of computing subsequent rents adjusted pursuant to this Order.

Background of Order No. 47

The Rent Guidelines Board is mandated by the Rent Stabilization Law of 1969 (Section 26-510(b) of the NYC Administrative Code) to establish annual guidelines for rent adjustments for housing accommodations subject to that law and to the Emergency Tenant Protection Act of 1974. In order to establish guidelines the Board must consider, among other things:

1. the economic condition of the residential real estate industry in the affected area including such factors as the prevailing and projected (i) real estate taxes and sewer and water rates, (ii) gross operating and maintenance costs (including insurance rates, governmental fees, cost of fuel and labor costs), (iii) costs and availability of financing (including effective rates of interest), (iv) overall supply of housing accommodations and overall vacancy rates;

2. relevant data from the current and projected cost of living indices for the affected area;

3. such other data as may be made available to it.

The Board gathered information on the above topics by means of public meetings and hearings, written submissions by the public, and written reports and memoranda prepared by the Board's staff. The Board calculates rent increase allowances on the basis of cost increases experienced in the past year, its forecasts of cost increases over the next year, its determination of the relevant operating and maintenance cost-to-rent ratio, and other relevant information concerning the state of the residential real estate industry.

Material Considered by the Board

Order No. 47 was issued by the Board following **seven** public meetings, **four** public hearings, its review of written submissions provided by the public, and a review of research and memoranda prepared by the Board's staff. Approximately 92 written submissions were received at the Board's offices from many individuals and organizations including public officials, tenants and tenant groups, and owners and owner groups. The Board members were provided with copies of public comments received by the **June 18, 2015** deadline. All of the above listed documents were available for public inspection.

Open meetings of the Board were held following public notice on March 12, April 2, April 16, April 23, and May 28, 2015. On **April 29, 2015**, the Board adopted proposed rent guidelines for apartments, lofts, and hotels.

Public hearings were held on **June 8, June 11, June 15 and June 18, 2015** pursuant to Section 1043 of the New York City Charter and Section 26-510(h) of the New York City Administrative Code. Testimony on the proposed rent adjustments for rent-stabilized apartments and lofts was heard on June 8 from **2:00 p.m. to 7:25 p.m.,** June 11 from **5:00 p.m. to 9:05 p.m.,** June 15 from **5:00 p.m. to 7:45 p.m., and** June 18 from **5:15 p.m. to 9:15 p.m.** The hearings ended when all those who were in attendance who wished to testify did so and there were no additional speakers. Testimony from members of the public speaking at these hearings was added to the public record. The Board heard testimony from **approximately** 190 apartment tenants and tenant representatives**,** 56 apartment owners and owner representatives**,** and 15 public officials. In addition, 14 speakers read into the record written testimony from various public officials. On **June 29, 2015** the guidelines set forth in Order No. 47 were adopted.

A written transcription and/or audio recording and/or video recording was made of all proceedings.

Presentations by RGB Staff and Housing Experts Invited by Members of the Board

Each year the staff of the New York City Rent Guidelines Board is asked to prepare numerous reports containing various facts and figures relating to conditions within the residential real estate industry. The Board's analysis is supplemented by testimony from industry and tenant representatives, housing experts, and by various articles and reports gathered from professional publications.

Listed below are the other experts invited and the dates of the public meetings at which their testimony was presented:

Meeting Date / Name	Affiliation
March 12, 2015:	Staff presentation, *2015 Income and Expense Study*
	NYC Department of Housing Preservation and Development (HPD)
1. Elyzabeth Gaumer	Acting Assistant Commissioner, Research and Evaluation
April 2, 2015:	Staff presentations *2015 Income and Affordability Study* *2015 Mortgage Survey Report*

April 16, 2015:	Staff presentation, *2015 Price Index of Operating Costs*
	Presentation by Dr. James F. Hudson and RGB Executive Director Andrew McLaughlin
	NYC Department of Housing Preservation and Development (HPD)
1. Daniel Hernandez	Deputy Commissioner for Neighborhood Strategies
April 23, 2015:	
	Apartment Tenants group testimony:
1. Tim Collins	Collins, Dobkins and Miller LLP
2. Barika Williams	Association for Neighborhood and Housing Development (ANHD)
3. Victor Bach	Community Service Society (CSS)
	Apartment Owners group testimony:
1. Mary Ann Rothman	New York Council of Cooperatives and Condominiums
2. Ali Ruth Davis	Real Estate Board of New York (REBNY)
3. Patrick Siconolfi	Community Housing Improvement Program (CHIP)
4. Jimmy Silber	Small Property Owners of New York (SPONY)
5. Jack Freund	Rent Stabilization Association (RSA)
	Hotel Tenants group testimony:
1. Larry Wood	Goddard Riverside Law Project and Family Council
2. Dan Evans	Goddard Riverside SRO Law Project
3. Brian Sullivan	SRO Law Project at MFY Legal Services, Inc.
May 28, 2015:	Staff presentations *2015 Housing Supply Report* *Changes to the Rent Stabilized Housing Stock in New York City in 2014*
	NYC Furman Center
1. Max Weselcouch	Director of the Moelis Institute for Affordable Housing Policy

Selected Excerpts from Oral and Written Testimony from Owners and Owner Groups[2]

Comments from owners and owner groups included:

"This year, we believe those necessary increases are 5% for a one-year lease and 9% for a two-year lease…Over the long term, rent increases granted by the RGB have, at best, amounted to two-thirds of the measured increase in operating costs. Even if the PIOC is now viewed as having over-measured operating costs, the rent increases granted by the RGB would still have been inadequate relative to the long-term increases in operating costs. Stated another way, RGB rent increases have averaged three percent per year, while operating costs have increased at roughly twice that rate."

[2] Sources: Submissions by owner groups and testimony by owners

"Although the Rent Guideline Board's 2015 Price Index of Operating Costs (PIOC) only shows an overall increase of 0.5% in operating costs this year, we believe that this figure greatly understates the actual costs incurred by property owners. When one takes into account how buildings contract to purchase their fuel and the heavy (and continually increasing) tax burden on rental properties, we believe that the true cost of operating a multi-family rental building has risen more in the past year than the PIOC would suggest."

"The City's tax practices remain a troubling aspect of housing policy. Taxes are the largest expense and the expense which is growing the quickest. The PIOC states that property taxes constitute 26% of the budget of a rent stabilized building. But, this is not the only cost paid to the City; water and sewer taxes are another 5%. Added to this is a vast array of fees to the City for filings, permits, certifications, permissions, tenant caused violations, restoration fees, franchise fees and others which constitute another 2% (and which the RGB does not measure). This totals 33%. So one-third of the expense of operating a rent stabilized building is just to pay the City."

"The RSA urges the RGB to enact guidelines at the top of the proposed range: 2% for a one-year lease and 3.5% for a two-year lease…In addition, the RSA urges the Board to consider a supplemental dollar allowance for low-rent apartments: an additional $50 for apartments renting for less than $500 per month and an additional $30 for apartments renting for less than $800 per month."

"We are asking the Board for a fair rental increase of 5% for a one-year lease and 9% for a two-year lease, and that there not be a rent freeze. If we do not receive fair rental increases then we will not be able to keep our building operating or be able to continue to provide a proper level of services to the families that live there."

Selected Excerpts from Oral and Written Testimony from Tenants and Tenant Groups[3]

Comments from tenants and tenant groups included:

"From 2011 to 2014, the median rent for rent-stabilized apartments rose by 11.9 percent, or 6.3 percent above inflation. Incomes rose by 5.0 percent, or 0.3 percent below inflation. This squeeze is also evident in the increased rent burden on the median stabilized tenant, who went from paying 31.9 percent of income as rent in 2011 to 33.1 percent in 2014. There was also in a sharp increase in overcrowding, possibly as a result of households doubling up or taking on additional members in order to meet the rising rents. The share of apartments with more than one person per room rose from 11.5 percent in 2011 to 12.2 percent in 2014."

"Between 2008 and 2013 the median rent paid by stabilized tenants jumped from 31.6% to 36.4% of household income - the highest rent burdens ever recorded. More than one in three stabilized households now devote more than half of their income to rent. The ranks of the City's homeless have risen by more than 50% over the same period and now exceed 54,000. That the previously described massive increase in owner income occurred at a time when tenant incomes were declining, housing affordability problems severely deepened and homelessness skyrocketed, was nothing less than a scandal - a scandal that was only partially ameliorated by last year's historically low guideline increases…All critical data points (both long and short term) overwhelmingly support a rent rollback in 2015."

"We are testifying today to urge the Board to roll back rent increases for one-year lease renewals by 1.5% and to freeze rent increases at 0% for two-year lease renewals. Rolling

[3] Sources: Submissions by tenant groups and testimony by tenants.

back rents in 2015-16 would best serve the rent-stabilized tenants of NYC, so many of whom struggle to meet yearly rent increases. Poverty in New York is rampant, and the homeless population, including thousands and thousands of children, is at an all-time high."

"I am testifying tonight on behalf of District Council 37. DC 37 represents 122,000 members and another 50,000 retireees…While the median wage of a DC 37 member is $39,000, we have 10,000 members making less than $10 per hour and 300 members who are homeless and living in public shelters…Corrective action is needed, and it is needed now. DC 37 urges this Board to go beyond the proposed rent freeze and to approve guidelines that roll back rents and restore our member's economic health."

"More than one million households in NYC are increasingly rent-burdened, which means they are paying 30 percent or more of household income on rent and almost 50 percent of households in our community [Washington Heights & Inwood] are severely rent-burdened, which means they spend more than 50 percent of their income on rent."

Selected Excerpts from Oral and Written Testimony from Public Officials[4]

Comments from public officials included:

"While renters have continued to struggle, we have seen the disparity between renters' and owners' needs grow. For the most rent data from 2012-2013, Net Operating Income for stabilized building owners increased by 3.4% over the previous year, attributing to the ninth consecutive yearly increase in a row. I want to caution the Board from authorizing any increase that could make this disparity even worse."

"The countless unwarranted increases approved by the RGB under previous administrations continue to threaten the economic and cultural diversity of this City. Tenants need and deserve a rollback of rents to help undo years of damage already done to affordable housing in NYC. My district is home to tens of thousands of rent stabilized tenants, and this Board's decision each year is the primary factor in whether or not my constituents – and nearly two million tenants statewide – will be able to remain in their homes. More than half of all renters are rent burdened, paying more than 30 percent of their income toward rent. Many in my district have seen their rent stabilized rents exceed their fixed incomes and are quickly burning through what little savings they do have in a desperate attempt to avoid homelessness."

"The combination of rising rents and stagnant wages has led to rising rent-to-income ratios – one of the fundamental measures of housing affordability – for rents across the income spectrum, but particularly for the City's low-income households…At a moment when Albany debates the future of rent regulation and whether to continue programs offering billions of dollars in tax incentives for developers to construct affordable housing, it is critical to maintain the affordability that we already have. The only way to do that is by enacting a long overdue rent freeze that will provide relief for low-income New Yorkers."

"In the past, the Rent Guidelines Board gave far more attention to landlords' costs than to tenants' ability to pay. The Board overestimated landlords' fixed costs, and voted for rent increases that far outstripped the growth of the local economy. This year, striking a fair balance for tenants and landlords means voting for a rent rollback."

[4] Sources: Submissions by public officials.

"I am here tonight to urge the Rent Guidelines Board to support a rent freeze—a pause if you will—in the spiraling cost of housing. This will not only serve the immediate needs of the thousands of Bronx families that I represent, it would also reduce market pressures that threaten to undermine Mayor deBlasio's ambitious plans to build and preserve 200,000 units of affordable housing."

FINDINGS OF THE RENT GUIDELINES BOARD

Rent Guidelines Board Research

The Rent Guidelines Board based its determination on its consideration of the oral and written testimony noted above, as well as upon its consideration of statistical information prepared by the RGB staff set forth in these findings and the following reports:

1. *2015 Income and Expense Study*, March 2015, (Based on income and expense data provided by the Finance Department, the *Income and Expense Study* measures rents, operating costs and net operating income in rent stabilized buildings);

2. *2015 Mortgage Survey Report*, April 2015, (An evaluation of recent underwriting practices, financial availability and terms, and lending criteria);

3. *2015 Income and Affordability Study*, April 2015, (Includes employment trends, housing court actions, changes in eligibility requirements and public benefit levels in New York City);

4. *2015 Price Index of Operating Costs*, April 2015, (Measures the price change for a market basket of goods and services which are used in the operation and maintenance of stabilized buildings);

5. *2015 Housing Supply Report*, May 2015, (Includes new housing construction measured by certificates of occupancy in new buildings and units authorized by new building permits, tax abatement and exemption programs, and cooperative and condominium conversion and construction activities in New York City); and,

6. *Changes to the Rent Stabilized Housing Stock in NYC in 2014*, May 2015, (A report quantifying all the events that lead to additions to and subtractions from the rent stabilized housing stock).

The six reports listed above may be found in their entirety on the RGB's website, nycrgb.org, and are also available at the RGB offices, 51 Chambers St., Suite 202, New York, NY 10007 upon request.

2015 Price Index of Operating Costs For Rent Stabilized Apartment Houses in New York City

The 2015 Price Index of Operating Costs for rent stabilized apartment houses in New York City found a 0.5% increase in costs for the period between March 2014 and March 2015.

This year, the PIOC for all rent stabilized apartment buildings increased by 0.5%. Increases occurred in all PIOC components except Fuel, which declined by 21.0%. The largest increase in any component was seen in Insurance Costs (7.2%). More moderate increases occurred in Taxes (4.2%), Administrative Costs (3.9%), Labor Costs (3.8%), Maintenance (3.0%) and Utilities (1.2%). The growth in the Consumer Price Index (CPI) during this same time period was higher than the PIOC, rising 1.0%.[5] See Table 1 for changes in costs and prices for all rent stabilized apartment buildings from 2014-15.

The "core" PIOC, which excludes erratic changes in fuel oil, natural gas, and electricity costs used for heating buildings, is useful for analyzing long-term inflationary trends. The core PIOC rose by 3.6% this year and was higher than the overall PIOC due to the exclusion of the costs in the Fuel component, which declined 21.0%.

This year staff updated the expenditure patterns used in the Apartment PIOC with data from RPIE statements. This resulted in an overall PIOC of 0.5%. Had the PIOC not been reweighted to reflect current expenditure patterns, the PIOC would have been –1.1%, 1.6 percentage points lower, primarily because the cost of fuel oil went down 23.4% and it accounted for a larger share of overall expenses in the previous PIOC methodology.

Table 1

2014-15 Percentage Changes in Components of the Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City[6]			
Item	Expenditure Weights	2014-15 Percentage Δ	2014-15 Weighted Percentage Δ
Taxes	26.15%	4.18%	1.09%
Labor Costs	16.01%	3.81%	0.61%
Fuel Oil	12.62%	-21.00%	–2.65%
Utilities	11.06%	1.17%	0.13%
Maintenance	16.26%	2.95%	0.48%
Administrative Costs	13.03%	3.90%	0.51%
Insurance Costs	4.88%	7.25%	0.35%
All Items	100%	-	0.52%

Source: *2015 Price Index of Operating Costs* for Rent Stabilized Apartment Houses in New York City.
Note: The Δ symbol means change.

[5] The average CPI for All Urban Consumers, New York-Northeastern New Jersey for the year from March 2013 to February 2014 (257.5) compared to the average for the year from March 2014 to February 2015 (260.1) rose by 1.0%. This is the latest available CPI data and is roughly analogous to the 'PIOC year', which for the majority of components compare the most recent point-to-point figures from April to March, monthly cost-weighted figures from April to March, or the two most recent fiscal year bills.
[6] Totals may not add due to weighting and rounding.

On April 23, 2015 the staff of the Rent Guidelines Board released a memo to Board members with information relating to the *Price Index of Operating Costs (PIOC)*. The entire memo follows:

At the April 16, 2015 *Price Index of Operating Costs* (PIOC) presentation, three questions were asked for which an immediate answer could not be provided. Detailed answers follow.

Question 1: Can fuel costs from the Income & Expense Report *be provided historically?*

The table below presents both nominal and inflation-adjusted fuel costs by calendar year (1991-2013). Inflation-adjusted costs are in 2013 dollars. Note that data from 2003 was not able to be provided for any of the I&E components.

Year	Nominal Fuel Costs	Fuel Costs ($2013)	% of Total Operating Expenses
1991	$41	$73	10.7%
1992	$41	$70	10.4%
1993	$41	$68	10.1%
1994	$40	$65	9.7%
1995	$38	$60	9.0%
1996	$45	$69	10.2%
1997	$43	$65	9.5%
1998	$35	$52	7.6%
1999	$35	$51	7.5%
2000	$53	$74	10.5%
2001	$54	$74	10.2%
2002	$46	$62	8.1%
2003	--	--	
2004	$65	$82	9.9%
2005	$83	$100	12.2%
2006	$84	$98	12.1%
2007	$97	$110	13.2%
2008	$115	$125	14.6%
2009	$92	$100	11.8%
2010	$96	$102	12.2%
2011	$113	$117	13.9%
2012	$110	$112	12.5%
2013	$119	$119	12.8%

Source: RGB Income & Expense Studies

Question 2: How many buildings have been converted from fuel oil to natural gas since 2011?

We have requested this data from the NYC Department of Buildings but it had not been received at the time that this memo was released.

Question 3: Can you provide the formulas used to calculate the different Commensurate Rent Adjustments?

Throughout its history, the Rent Guidelines Board has used a formula, known as the commensurate rent adjustment, to help determine annual rent guidelines for rent stabilized apartments. In essence, the "commensurate" combines various data concerning operating costs, revenues, and inflation into a single measure indicating how much rents would have to change for net operating income (NOI) in stabilized buildings to remain constant. The different types of "commensurate" adjustments described below are primarily meant to provide a foundation for discussion concerning prospective guidelines.

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. In other words, the formula provides a set of one- and two-year renewal rent increases (guidelines) that will compensate owners for the change in prices measured by the PIOC and keep net operating income "whole." Historically, it is important to note that when commensurate adjustments are calculated, the combined percentage increases in rent stay within a tenth of a percentage point of the total percentage increase required to keep owners' "whole."

There are a total of five commensurate rent formulas in the PIOC. Each formula attempts to compensate owners for the change in the expense portion of their revenue. But reflecting that there are other factors that can both raise or lower NOI, various formulas include other factors, such as the mix of lease terms, extra income upon vacancy lease signings, and adjustment of net operating income (NOI) by inflation. These factors are listed below:

- **Cost-to-Income Ratio** - This ratio is derived from the most current *Income and Expense Study*, which showed that the ratio of average operating costs to average income in stabilized buildings was 66.1%. In other words, owners spend 66.1% of their income, on average, for operating costs. All formulas use this figure.
- **Apartment PIOC** - Each formula adjusts the expense portion of the revenue dollar (66.1%, see above) by using the overall change in the PIOC of 0.523%. All formulas include the change in the PIOC.
- **Projected PIOC** – The 2016 PIOC projection is 4.204% and is used only in the "Traditional Commensurate Formula."
- **Mix Term of Lease Signers** – As derived from 2011 HVS data, the most current data available, during a guideline period, 60.8% of tenants sign renewal leases, 15.7% sign vacancy leases, and 23.5% of tenants do not sign a renewal lease because they are in the second year of a two-year lease. The 60.8% of tenants signing renewal leases is comprised of 37.3% signing one-year leases and 23.5% signing two-year leases. These figures are used in the "Net-Revenue" and "CPI-Adjusted NOI" formulas.
- **CPI-Adjusted NOI** – In order to take into account inflation, the NOI portion of the revenue dollar, which is 33.9% of each dollar earned, is adjusted by the rise in the CPI of 1.040% over the same time period as the PIOC. This figure is used in the "CPI-Adjusted NOI" formulas.
- **Median Vacancy Increase** – For all commensurate formulas that include a vacancy assumption, the 8.7% median increase in vacancy leases found in rent stabilized apartments that reported a vacancy lease (per the 2014 apartment registration file from the Division of Housing and Community Renewal) was used. This figure is used in the "Net-Revenue" and "CPI-Adjusted NOI" formulas that include a vacancy assumption.

Net-Revenue Formula

Per the *2015 PIOC*, the commensurates for the Net Revenue formula are 0.0% for a one-year lease and 1.5% for a two-year lease, without considering vacancy increases. Considering the impact of vacancy leases, the commensurates are -2.0% for a one-year lease and -1.0% for a two-year lease. The focus of the Net Revenue formula is compensating owners for the change in the PIOC. It also considers the mix of lease terms, while adjusting the O&M portion of the revenue dollar only. To determine how much rents would need to be increased for owners to be kept "whole" in the face of the 0.523% increase in the PIOC, this change in the PIOC is multiplied by the cost-to-income ratio

(66.1%) as reported in the *2015 I&E Study*. This results in adjustments to rents of 0.346%. The formula is as follows:

0.661 (cost-to-income ratio) x 0.523 (PIOC change) = 0.346 (percentage rents need to be increased)

Since the Board is obligated to set renewal lease adjustments for one- and two-year leases, percentage increases are calculated for these two types of lease renewals, that combined, will compensate owners the 0.346% rise necessary to keep them "whole". The Net-Revenue formulas take into account the mix of lease terms to calculate these adjustments. The formula is as follows:

	% of lease signers		Guideline Adjustment		% Adjustment in rents
One-Year Lease	37.3%	x	0%	=	0.0%
					+
Two-Year Lease	23.5%	x	1.5%	=	0.352%
				Total:	0.352%
				Target:	0.346%
				Difference:	0.006

As illustrated in the formulas above, assuming a guideline of 0% for a one-year lease and 1.5% for a two-year lease would provide a total increase of rents of 0.352%. This increase is close to the 0.346% that was previously calculated as being necessary to keep owners "whole," less than one-hundredths of a difference.

In order to calculate the Net Revenue formula with vacancy, we follow the same formula as above, but also need to consider the median increase upon vacancy of 8.7%. The formulas are as follows:

	% of lease signers		Guideline Adjustment		% Adjustment in rents
One-Year Lease	37.3%	x	-2.0%	=	-0.747%
					+
Two-Year Lease	23.5%	x	-1.0%	=	-0.235%
					+
Vacancy Increase	15.7%	x	8.7%	=	1.370%
				Total:	0.388%
				Target:	0.346%
				Difference:	0.042

Since the median vacancy increase is 8.7%, when multiplied by the percentage of vacancy leaseholders (15.7%), the result is a 1.37% increase in rents, which exceeds the 0.346% required. Therefore, negative guideline adjustments of -2.0% for a one-year lease and -1.0% for a two-year lease are needed in order for the combined adjustment of 0.388% to be close to what is required to keep owners "whole". There is just a four-hundredths of a percentage point difference between these two numbers.

CPI-Adjusted NOI Formulas

Per the *2015 PIOC*, the commensurates for the CPI-Adjusted NOI formula are 0.75% for a one-year lease and 2.0% for a two-year lease, without considering vacancy increases. Considering the impact of vacancy leases, the commensurates are -1.5% for a one-year lease and -0.5% for a two-year lease. The focus of the CPI-Adjusted NOI formula is not only compensating owners for the change in the PIOC, but also for the effect of inflation on NOI. Similar to the Net Revenue formulas, the CPI-Adjusted NOI formulas adjust the O&M portion of the revenue dollar by the PIOC (66.1% x 0.523%=0.346%). However, it also adjusts the NOI portion of the revenue dollar, which is 33.9%, by the 1.04% rise in the CPI during the same time period as the PIOC. The total percentage adjustments needed to keep owners "whole" is calculated by adding the results of these two formulas.

0.661 (cost-to-income ratio) x 0.523 (PIOC change)	= 0.346	
	+	
0.339 (percentage of NOI $) x 1.040 (CPI change)	= 0.353	
Total	0.699 (% rents need to be increased)	

As a result, rents would need to increase 0.699% to compensate owners for the rise in the PIOC and inflation. As with the Net Revenue formulas, the CPI-Adjusted NOI formulas take into account the mix of lease terms. The CPI-Adjusted NOI formula without vacancy considered is as follows:

	% of lease signers		Guideline Adjustment		% Adjustment in rents
One-Year Lease	37.3%	x	0.75%	=	0.280%
					+
Two-Year Lease	23.5%	x	2.0%	=	0.469%
				Total:	0.749%
				Target:	0.699%
				Difference:	0.050

As illustrated in the formulas above, the total percentage increase in rents of a guideline of 0.75% for a one-year lease and a 2.0% increase in a two-year lease is 0.749%. This increase is close to the 0.699% required to keep owners "whole," just five-hundredths of a difference.

In order to calculate the CPI-Adjusted NOI formula with vacancy we need to consider the median increase upon vacancy of 8.7%. The formulas are as follows:

	% of lease signers		Guideline Adjustment		% Adjustment in rents
One-Year Lease	37.3%	x	-1.5%	=	-0.560%
					+
Two-Year Lease	23.5%	x	-0.5%	=	-0.117%
					+
Vacancy Increase	15.7%	x	8.7%	=	1.370%
				Total:	0.692%
				Target:	0.699%
				Difference:	0.007

Since the median vacancy increase is 8.7%, when one multiplies it with the percentage of vacancy leaseholders (15.7%), the result is a 1.37% increase in rents, which exceeds the 0.699%. Therefore, negative guideline adjustments of -1.5% for a one-year lease and -0.5% for a two-year lease are needed in order for the combined adjustments of 0.692% to be close to the amount required to keep owners "whole."

It is important to note that the guideline adjustments in the Net Revenue and CPI-Adjusted NOI formulas are only illustrative — other combinations of one- and two-year guidelines could produce similar adjustments in revenue.

Traditional Commensurate Formula

Per the *2015 PIOC*, the commensurates for the "Traditional" formula are 0.3% for a one-year lease and 1.7% for a two-year lease. The Traditional commensurate adjustment is the formula that has been in use since the inception of the Rent Guidelines Board and reflects the increase in operating costs of 0.523% found in the *2015 PIOC* and the projection of a 4.204% increase next year. This formula does not consider the mix of one- and two-year lease renewals, nor does it consider the erosion of landlords' income by inflation.

Similar to the other commensurate formulas, the Traditional formula adjusts the O&M portion of the revenue dollar only. To determine how much rents would need to be increased for owners to be kept "whole" in the face of the 0.523% increase in the PIOC, this change in the PIOC is multiplied by the cost-to-income ratio (66.1%) as reported in the *2015 I&E Study*. This results in adjustments to rents of 0.346% (rounded down to 0.3% in the commensurates presented in the *2015 PIOC*). This is how the one-year guideline adjustment is calculated.

Unlike the other commensurates, the Traditional uses both the PIOC increase (0.523%) and the PIOC projection of 4.204% to calculate the two-year guidelines adjustment. For the first year of the two-year lease it compensates owners solely for the 0.346% increase needed to keep owners "whole." The second year of the lease it takes the PIOC projection and multiplies it by the cost-to-income ratio (0.661% x 1.04204), resulting in having to compensate owners for the second year of the 2-year lease by 3.138%. However, owners are not permitted to increase rents during the term of the lease. So instead of having two rent adjustments, this formula spreads the increase over the two years of the lease by adding the percentage increase to compensate owners from the first year with that of the second year, and dividing that number by two (0.346% + 3.138%/2).

The Traditional formula is as follows:

	% of adjustment in rents 2015		% of adjustment in rents 2016		Number of Years		Guideline Adjustment
1-Year Lease	0.346%		n/a	x	1	=	0.3%
2-Year Lease	0.346%	+	3.138%	/	2	=	1.7%

As illustrated in the formulas above, the suggested guideline increases using the Traditional commensurate formula yields 0.3% for a one-year lease and 1.7% increase for a two-year lease.

Each of these formulae may be best thought of as a starting point for deliberations. The other Rent Guidelines Board annual research reports (e.g., the *Income and Affordability Study* and *the Income and Expense Study*) and testimony to the Board can be used to modify the various estimates depending on these other considerations.

Local Law 63/Income & Expense Review

The sample size for the Income and Expense (I&E) Study includes almost 14,600 properties containing over 660,000 units. This is the 23rd year that staff has been able to obtain longitudinal data in addition to cross-sectional data. The RGB staff found the following average monthly (per unit) operating and maintenance (O&M) costs in 2014 Real Property Income and Expense (RPIE) statements for the year 2013:

Table 2

2015 Income and Expense Study Average Monthly Operating and Maintenance Costs Per Unit			
	Pre '47	Post '46	All Stabilized
Total	$856	$959	$884

Source: 2015 Income and Expense Study, from 2014 Real Property Income and Expense filings

In 1992, the Board benefited from the results of audits conducted on a stratified sample of 46 rent stabilized buildings by the Department of Finance. Audited income and expense (I&E) figures were compared to statements filed by owners. On average the audits showed an 8% over reporting of expenses. The categories, which accounted for nearly all of the expense over reporting, were maintenance, administration, and "miscellaneous." The largest over-reporting was in miscellaneous expenses.

If we assume that an audit of this year's I&E data would yield similar findings to the 1992 audit, one would expect the average O&M cost for stabilized buildings to be $812, rather than $884. As a result, the following relationship between operating costs and residential rental income was suggested by the Local Law 63 data:

Table 2(a)

2013 Operating Cost to Rent/Income Ratio Adjusted to 1992 Audit					
	O&M Costs[7]	Rent	O&M to Rent Ratio	Income	O&M to Income Ratio
All stabilized	$812	$1,182	0.687	$1,337	0.607

Source: *2015 Income and Expense Study*, from 2014 Real Property Income and Expense filings for 2013, NYC Department of Finance.

Forecasts of Operating and Maintenance Price Increases for 2015-16

In order to decide upon the allowable rent increases for two-year leases, the RGB considers price changes for operating costs likely to occur over the next year. In making its forecasts the Board relies on expert assessments of likely price trends for the individual components, the history of changes in prices for the individual components and general economic trends. The Board's projections for 2015-16 are set forth in Table 3, which shows the Board's forecasts for price increases for the various categories of operating and maintenance costs.

Table 3

Year-to-Year Percentage Changes in Components of the Price Index of Operating Costs: Actual 2014-15 and Projected 2015-16		
	Price Index 2014-15	Projected Price Index 2015-16
Taxes	4.2%	7.7%
Labor Costs	3.8%	3.7%
Fuel Oil	-21.0%	0.0%
Utilities	1.2%	2.6%
Maintenance	3.0%	3.4%
Administrative Costs	3.9%	2.9%
Insurance Costs	7.2%	7.9%
Total (Weighted)	**0.5%**	**4.2%**

Source: 2015 Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City, which includes the 2016 PIOC Projection.

Overall, the PIOC is expected to grow by 4.2% from 2015 to 2016. Costs are predicted to rise in each component except Fuel, where costs are anticipated to be flat. The largest growth, of 7.9%, is projected to be in Insurance Costs. Taxes, the component that carries the most weight in the Index, is projected to increase 7.7%. More moderate increases are projected in Labor Costs (3.7%), Maintenance (3.4%), Administrative Costs (2.9%) and Utilities (2.6%). The table on the previous page shows predicted changes in PIOC components for 2016. The core PIOC is projected to rise 4.8%, 0.6 percentage points more than the overall projected Apartment PIOC.

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[7] Overall O&M expenses were adjusted according to the findings of an income and expenses audit conducted by the Department of Finance in 1992. The unadjusted **O&M to Rent** ratio would be 0.748. The unadjusted **O&M to Income** ratio would be 0.661.

Commensurate Rent Adjustment

Throughout its history, the Rent Guidelines Board has used a formula, known as the commensurate rent adjustment, to help determine annual rent guidelines for rent stabilized apartments. In essence, the "commensurate" combines various data concerning operating costs, revenues, and inflation into a single measure indicating how much rents would have to change for net operating income (NOI) in stabilized buildings to remain constant. The different types of "commensurate" adjustments described below are primarily meant to provide a foundation for discussion concerning prospective guidelines.

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. In other words, the formula provides a set of one- and two-year renewal rent increases or guidelines that will compensate owners for the change in prices measured by the PIOC and keep net operating income "whole."

The first commensurate method is called the "Net Revenue" approach. While this formula takes into consideration the types of leases actually signed by tenants, it does not adjust owners' NOI for inflation. The "Net Revenue" formula is presented in two ways: First, adjusting for the mix of lease terms; and Second, adding an assumption for stabilized apartment turnover and the impact of revenue from vacancy increases. Under the "Net Revenue" formula, a guideline that would preserve NOI in the face of this year's 0.5% increase in the PIOC is 0% for a one-year lease and 1.5% for a two-year lease. Using this formula, and adding assumptions for the impact of vacancy increases on revenues when apartments experience turnover, result in guidelines of -2.0% for one-year leases and -1.0% for two-year leases.

The second commensurate method considers the mix of lease terms while adjusting NOI upward to reflect general inflation, keeping both operating and maintenance (O&M) costs and NOI constant. This is commonly called the "CPI-Adjusted NOI" formula. A guideline that would preserve NOI in the face of the 1.0% increase in the Consumer Price Index (see Endnote 3) and the 0.5% increase in the PIOC is 0.75% for a one-year lease and 2.0% for a two-year lease. Guidelines using this formula and adding the estimated impact of vacancy increases are -1.5% for one-year leases and -0.5% for two-year leases.[8]

The "traditional" commensurate adjustment is the formula that has been in use since the inception of the Rent Guidelines Board. The "traditional" commensurate yields 0.3% for a one-year lease and 1.7% for a two- year lease. This reflects the increase in operating costs of 0.5% found in the 2015 PIOC and the projection of a 4.2% increase next year.[9]

As a means of compensating for cost changes, this "traditional" commensurate rent adjustment has two major flaws. First, although the formula is supposed to keep owners' current dollar income constant, the formula does not consider the mix of one- and two-year lease renewals. Since only about three-fifths of leases are renewed in any given year, with a

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[8] The following assumptions were used in the computation of the commensurates: (1) the required change in owner revenue is 66.1% of the 2015 PIOC increase of 0.5%, or 0.3%. The 66.1% figure is the most recent ratio of average operating costs to average income in stabilized buildings; (2) for the "CPI-Adjusted NOI" commensurate, the increase in revenue due to the impact of inflation on NOI is 33.9% times the latest 12-month increase in the CPI ending February 2015 (1.0%), or 0.35%; (3) these lease terms are only illustrative—other combinations of one- and two-year guidelines could produce the adjustment in revenue; (4) assumptions regarding lease renewals and turnover were derived from the 2011 Housing and Vacancy Survey; (5) for the commensurate formulae, including a vacancy assumption, the 8.7% median increase in vacancy leases found in the rent stabilized apartments that reported a vacancy lease in the 2014 apartment registration file from the Division of Housing and Community Renewal was used; and (6) the collectability of these commensurate adjustments are assumed.

[9] Calculating the "traditional" commensurate rent adjustment requires an assumption about next year's PIOC. In this case, the 4.2% PIOC projection for 2016 is used.

preponderance of leases having a two-year duration, the formula does not necessarily accurately estimate the amount of income needed to compensate owners for O&M cost changes.

A second flaw of the "traditional" commensurate formula is that it does not consider the erosion of owners' income by inflation. By maintaining current dollar NOI at a constant level, adherence to the formula may cause profitability to decline over time. However, such degradation is not an inevitable consequence of using the "traditional" commensurate formula.[10]

All of these methods have their limitations. The "traditional" commensurate formula is artificial and does not consider the impact of lease terms or inflation on owners' income. The "Net Revenue" formula does not attempt to adjust NOI based on changes in interest rates or deflation of owner profits. The "CPI-Adjusted NOI" formula inflates the debt service portion of NOI, even though interest rates have been generally falling, rather than rising, over recent years. Including a consideration of the amount of income owners receive on vacancy assumes that turnover rates are constant across the City.

Finally, it is important to note that only the "traditional" commensurate formula uses the PIOC projection and that this projection is not used in conjunction with or as part of the "Net Revenue" and "CPI- Adjusted NOI" formulas. As stated previously, all three formulas attempt to compensate owners for the adjustment in their operating and maintenance costs measured each year in the PIOC. The "Net Revenue" and the "CPI-Adjusted NOI" formulas attempt to compensate owners for the adjustment in O&M costs by using only the known PIOC change in costs (0.5%). The traditional method differs from the other formulas in that it uses both the PIOC's actual change in costs as well as the projected change in costs (4.2%). If the change in projected costs, which may not be an accurate estimate of owner's costs, is added to the "Net Revenue" and "CPI-Adjusted NOI" formulas, the resulting guidelines will likely over- or under-compensate for the change in costs.

Each of these formulae may be best thought of as a starting point for deliberations. The other Rent Guidelines Board annual research reports (e.g., the *Income and Affordability Report* and the *Income and Expense Study*) and testimony to the Board can be used to modify the various estimates depending on these other considerations.

Consideration of Other Factors

Before determining the guideline, the Board considered other factors affecting the rent stabilized housing stock and the economics of rental housing.

Effective Rates of Interest

The Board took into account current mortgage interest rates and the availability of financing and refinancing. It reviewed the staff's 2015 Mortgage Survey Report of lending institutions. Table 4 gives the reported rate and points for the past nine years as reported by the mortgage survey.

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[10] Whether profits will actually decline depends on the level of inflation, the composition of NOI (i.e., how much is debt service and how much is profit), and changes in tax law and interest rates.

Table 4

2015 Mortgage Survey[11] Average Interest Rates and Points for New and Refinanced Permanent Mortgage Loans 2007-2015									
New Financing of Permanent Mortgage Loans, Interest Rate and Points									
	2007	2008	2009	2010	2011	2012	2013	2014	2015
Avg. Rates	6.3%	5.9%	6.5%	6.3%	5.8%	4.6%	4.4%	4.9%	4.3%
Avg. Points	0.61	0.47	0.62	0.79	0.61	0.63	0.59	0.54	0.70
Refinancing of Permanent Mortgage Loans, Interest Rate and Points									
	2007	2008	2009	2010	2011	2012	2013	2014	2015
Avg. Rates	6.2%	5.8%	6.5%	6.3%	5.7%	4.7%	4.4%	4.9%	-
Avg. Points	0.61	0.44	0.62	0.83	0.61	0.63	0.40	0.50	-

Source: 2007–2015 Annual *Mortgage Survey Reports*, RGB.
Note: As of the 2015 *Mortgage Survey Report*, respondents are no longer surveyed on refinancing rates and points.

Condition of the Rent Stabilized Housing Stock

The Board reviewed the number of units that are moving out of the rental market due to cooperative and condominium conversion.

[11] Institutions were asked to provide information on their "typical" loan to rent stabilized buildings. Data for each variable in any particular year and from year to year may be based upon responses from a different number of institutions.

Table 5

Number of Cooperative / Condominium Plans[12] Accepted for Filing, 2006-2014									
	2006	2007	2008	2009	2010	2011	2012	2013	2014
New Construction	644	573	454	335	235	185	121	151	210
Conversion Non-Eviction	53	66	50	29	20	20	25	18	20
Conversion Eviction	13	16	18	13	4	9	3	0	0
Rehabilitation	0	8	4	1	0	2	11	21	37
Total	710	663	526	378	259	216	160	190	267
Subtotal:									
HPD Sponsored Plans	13	16	18	13	4	9	3	0	0

Source: New York State Attorney General's Office, Real Estate Financing.

Consumer Price Index

The Board reviewed the Consumer Price Index. Table 6 shows the percentage change for the NY-Northeastern NJ Metropolitan area since 2008.

Table 6

Percentage Changes in the Consumer Price Index for the New York City - Northeastern New Jersey Metropolitan Area, 2008-2015 (For "All Urban Consumers")								
	2008	2009	2010	2011	2012	2013	2014	2015
1st Quarter Avg.[13]	3.8%	0.8%	2.1%	2.3%	2.6%	1.9%	1.3%	-0.1%
Yearly Avg.	3.9%	0.4%	1.7%	2.8%	2.0%	1.7%	1.3%	--

Source: U.S. Bureau of Labor Statistics.

Calculating of the Current Operating and Maintenance Expense to Rent Ratio

Each year the Board estimates the current average proportion of the rent roll which owners spend on operating and maintenance costs. This figure is used to ensure that the rent increases granted by the Board compensate owners for the increases in operating and maintenance expenses. This is commonly referred to as the O&M to rent ratio.

[12] The figures given above for eviction and non-eviction plans include those that are abandoned because an insufficient percentage of units were sold within the 15-month deadline. In addition, some of the eviction plans accepted for filing may have subsequently been amended or resubmitted as non-eviction plans and therefore may be reflected in both categories. HPD sponsored plans are a subset of the total plans. Some numbers revised from prior years.

[13] 1st Quarter Average refers to the change of the CPI average of the first three months of one year to the average of the first three months of the following year. Some numbers revised from prior years.

With current longitudinal income and expense data, staff has constructed an index, using 1989 as a base year. Except for the last three years, this index measures changes in building income and operating expenses as reported in annual income and expense statements. The second and third to last years in the table will reflect actual PIOC increases and projected rent changes. The last year in the table - projecting into the future - will include staff projections for both expenses and rents. This index is labeled as Table 7.

However, this index it is not without limitations. First, as noted, for the past and coming year the index will continue to rely upon the price index and staff rent and cost projections. Second, while this table looks at the overall relationship between costs and income, it does not measure the specific impact of rent regulation on that relationship.

Table 7

Revised Calculation of Operating and Maintenance Cost Ratio for Rent Stabilized Buildings from 1989 to 2016			
Year[14]	Average Monthly O & M Per d.u.[15]	Average Monthly Income Per d.u.	Average O & M to Income Ratio
1989	$370 ($340)	$567	.65 (.60)
1990	$382 ($351)	$564	.68 (.62)
1991	$382 ($351)	$559	.68 (.63)
1992	$395 ($363)	$576	.69 (.63)
1993	$409 ($376)	$601	.68 (.63)
1994	$415 ($381)	$628	.66 (.61)
1995	$425 ($391)	$657	.65 (.59)
1996	$444 ($408)	$679	.65 (.60)
1997	$458 ($421)	$724	.63 (.58)
1998	$459 ($422)	$755	.61 (.56)
1999	$464 ($426)	$778	.60 (.55)
2000	$503 ($462)	$822	.61 (.56)
2001	$531 ($488)	$868	.61 (.56)
2002	$570 ($524)	$912	.63 (.57)
2003	$618 ($567)	$912	.68 (.62)
2004	$654 ($601)	$969	.67 (.62)
2005	$679 ($624)	$961	.71 (.65)
2006	$695 ($638)	$1,009	.69 (.63)
2007	$738 ($678)	$1,088	.68 (.62)
2008	$790 ($726)	$1,129	.70 (.64)
2009	$781 ($717)	$1,142	.68 (.63)
2010	$790 ($726)	$1,171	.67 (.62)
2011	$812 ($746)	$1,208	.68 (.63)
2012	$841 ($772)	$1,277	.66 (.60)
2013	$884 ($812)	$1,337	.66 (.61)
2014[16]	$930 ($854)	$1,394	.67 (.61)
2015[17]	$935 ($858)	$1,445	.65 (.59)
2016[18]	$974 ($895)	$1,475	.66 (.61)

Source: RGB Income and Expense Studies, 1989-2015, Price Index of Operating Costs 2014 - 2015, RGB Rent Index for 2012 - 2015.

[14] The O&M and income data from 2008 to 2011 has been revised from that reported in previous explanatory statements to reflect actual, rather than estimated, expense and income data.

[15] Operating and expense data listed is based upon unaudited filings with the Department of Finance. Audits of 46 buildings conducted in 1992 suggest that expenses may be overstated by 8% on average. See *Rent Stabilized Housing in New York City, A Summary of Rent Guidelines Board Research 1992*, pages 40-44. Figures in parentheses are adjusted to reflect these findings.

[16] Estimated expense figure includes 2013 expense updated by the I&E-weighted PIOC for the period from 3/1/13 through 2/28/14 (5.2%). Income includes the income estimate for 2013 updated by staff estimate based upon renewal guidelines and choice of lease terms for a period from 3/1/13 through 2/28/14 (**4.23**% - i.e., the 10/1/12 to 9/30/13 rent projection (3.95%) times (.583), plus the 10/1/13 to 9/30/14 rent projection (4.62%) times (.417)).

[17] Estimated expense figure includes 2014 expense estimate updated by the PIOC for the period from from 3/1/14 through 2/28/15 (0.5%). Income includes the income estimate for 2014 updated by staff estimate based upon renewal guidelines and choice of lease terms for a period from 3/1/14 through 2/28/15 (**3.69**% - i.e., the 10/1/13 to 9/30/14 rent projection (4.62%) times (.583), plus the 10/1/14 to 9/30/15 rent projection (2.39%) times (.417)).

[18] Estimated expense figure includes 2014 expense estimate updated by the staff PIOC projection for the period from 3/1/14 through 2/28/15 (4.2%). Income includes the income estimate for 2014 updated by staff estimate based upon renewal guidelines and choice of lease terms for a period from 3/1/14 through 2/28/15 (2.06% - i.e., the 10/1/14 to 9/30/15 rent projection (2.39%) times (.583), plus the 10/1/15 to 9/30/16 rent projection (1.60%) times (.417)).

Changes in Housing Affordability

Looking at New York City's economy during 2014, it showed many strengths as compared with the preceding year. Positive indicators include growing employment levels, which rose for the fifth consecutive year, increasing 3.0% in 2014. The unemployment rate also fell, declining by 1.6 percentage points, to 7.2%. Gross City Product (GCP) also increased for the fifth consecutive year, rising in real terms by 3.1% in 2014. In addition, inflation-adjusted wages rose by 2.1% during the most recent 12-month period (the fourth quarter of 2013 through the third quarter of 2014), and inflation slowed slightly. The number of non-payment filings in Housing Court fell by 3.4%, while evictions fell by 6.9%. And public assistance caseloads fell for the first time since 2008, by 3.9%, while Supplemental Nutrition Assistance Program (SNAP) caseloads fell for the first time since 2002, by 5.6%.

Negative indicators include a 4.0% increase in the number of non- payment cases "calendared" in housing court, as well as the sixth consecutive year of increase in homeless levels, which rose to an average of more than 54,000 persons a night, an increase of 9.5% over 2013 levels.

The most recent numbers, from the fourth quarter of 2014 (as compared to the fourth quarter of 2013), show that homeless levels were up 10.8%, cash assistance levels were up 0.7%, and the number of calendared cases in Housing Court were up 2.7%.[19] However, most indicators were positive, with employment levels up 2.6%, the unemployment rate down 1.9 percentage points, non-payment housing court filings down 11.3%, and SNAP recipients down 5.6%. Fourth quarter GCP also rose, by 2.6% in real terms, and inflation was lower than that of the last quarter of 2013, rising by 0.8%, as compared to 1.3%.

On April 13, 2015 the staff of the Rent Guidelines Board released a memo to Board members with additional information concerning the *2015 Income & Affordability Study*. The memo follows:

At the April 2, 2015 *Income & Affordability Study* (I&A) presentation, five questions were asked for which an immediate answer could not be provided. Detailed answers follow.

Question 1: Can historical poverty rates be provided?

Poverty rates are reported from the annual *American Community Survey*, conducted by the U.S. Census Bureau. The Census Bureau began this survey in 2005. Detailed data on poverty statistics were reported to the Board in a memo dated April 22, 2014. They are again reported here, updated to include 2013 data.

[19] This data is obtained from the Civil Court of the City of New York, which cannot provide exact "quarterly" data. The Court has 13 terms in a year, each a little less than a month long. This data is for terms 10-13, which is from approximately the middle of September through the end of the year. It is compared to the same period of the prior year.

Overall Poverty Rate (Individuals)

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013
US	13.3%	13.3%	13.0%	13.2%	14.3%	15.3%	15.9%	15.9%	15.8%
NYC	19.1%	19.2%	18.5%	18.2%	18.7%	20.1%	20.9%	21.2%	20.9%
Bronx	29.2%	29.1%	27.1%	27.6%	28.5%	30.2%	30.4%	31.0%	30.9%
Brooklyn	22.4%	22.6%	21.9%	21.1%	21.8%	23.0%	23.6%	24.3%	23.3%
Manhattan	17.9%	18.3%	17.6%	16.9%	16.6%	16.4%	18.3%	17.8%	18.9%
Queens	11.9%	12.2%	12.0%	12.1%	12.6%	15.0%	15.8%	16.2%	15.3%
SI	11.0%	9.2%	9.8%	10.0%	11.2%	11.8%	11.7%	11.6%	12.8%

Overall Poverty Rate, Aged Under 18 (Individuals)

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013
US	18.5%	18.3%	18.0%	18.2%	20.0%	21.6%	22.5%	22.6%	22.2%
NYC	27.7%	28.2%	27.3%	26.5%	27.1%	30.0%	29.8%	31.4%	29.8%
Bronx	39.7%	41.3%	38.1%	39.7%	40.4%	43.0%	40.9%	44.5%	42.0%
Brooklyn	30.5%	32.3%	31.7%	30.4%	31.5%	34.0%	33.6%	34.9%	33.2%
Manhattan	29.6%	27.1%	27.5%	21.8%	24.5%	22.1%	25.6%	25.8%	25.6%
Queens	15.9%	17.0%	16.5%	16.4%	15.4%	21.8%	21.1%	23.2%	20.7%
SI	17.5%	11.8%	12.4%	14.8%	15.2%	17.1%	17.5%	14.6%	18.7%

Overall Poverty Rate, Aged 18-64 (Individuals)

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013
US	11.9%	12.0%	11.6%	11.9%	13.1%	14.2%	14.8%	14.8%	14.8%
NYC	15.6%	15.9%	15.4%	15.2%	16.0%	17.4%	18.4%	18.4%	18.5%
Bronx	24.5%	24.3%	23.0%	22.9%	24.5%	26.1%	26.9%	26.4%	27.6%
Brooklyn	18.3%	18.2%	17.7%	16.9%	17.8%	19.5%	20.0%	20.5%	19.8%
Manhattan	14.2%	15.8%	15.0%	15.0%	14.4%	15.1%	16.8%	16.0%	17.4%
Queens	10.4%	10.5%	10.3%	10.7%	11.7%	13.4%	14.3%	14.6%	14.0%
SI	8.7%	7.9%	8.5%	8.9%	10.0%	9.8%	10.2%	10.7%	11.5%

Overall Poverty Rate, Aged 65 and over (Individuals)

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013
US	9.9%	9.9%	9.5%	9.9%	9.5%	9.0%	9.3%	9.5%	9.6%
NYC	20.3%	19.0%	18.4%	18.6%	18.0%	17.2%	19.0%	19.1%	18.8%
Bronx	26.4%	22.6%	20.6%	21.6%	20.8%	22.5%	24.7%	24.8%	23.8%
Brooklyn	25.7%	24.2%	23.4%	23.8%	23.1%	20.6%	23.2%	24.4%	23.1%
Manhattan	21.7%	20.4%	18.9%	20.7%	18.6%	17.0%	17.8%	17.9%	19.4%
Queens	13.0%	12.5%	13.0%	12.8%	12.7%	12.3%	15.1%	13.3%	13.7%
SI	10.0%	11.0%	11.2%	6.4%	9.9%	11.8%	8.7%	11.1%	9.1%

Poverty Rate, All Families

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013
US	10.2%	9.8%	9.5%	9.7%	10.5%	11.3%	11.7%	11.8%	11.6%
NYC	16.7%	16.3%	15.6%	15.3%	15.8%	17.0%	18.0%	18.2%	17.5%
Bronx	27.0%	26.5%	24.4%	25.4%	25.4%	27.6%	28.1%	28.8%	27.6%
Brooklyn	20.1%	19.3%	18.3%	17.7%	18.3%	19.7%	20.4%	20.8%	19.5%
Manhattan	15.1%	15.1%	15.1%	12.9%	13.3%	12.4%	14.9%	15.1%	14.8%
Queens	9.5%	9.9%	10.0%	9.9%	10.5%	12.1%	13.1%	12.9%	12.3%
SI	9.4%	7.0%	6.9%	8.1%	9.3%	9.6%	8.7%	9.4%	10.3%

Poverty Rate, Families With Related Children in Household

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013
US	15.6%	15.0%	14.9%	15.0%	16.6%	17.9%	18.6%	18.8%	18.5%
NYC	23.3%	23.0%	22.3%	21.9%	22.3%	25.0%	24.8%	26.0%	24.6%
Bronx	34.5%	35.3%	31.9%	33.8%	34.1%	37.4%	36.2%	38.5%	36.2%
Brooklyn	25.8%	26.1%	25.9%	24.4%	25.5%	28.0%	27.6%	28.8%	26.7%
Manhattan	23.5%	22.1%	23.3%	19.3%	19.0%	18.8%	21.0%	21.1%	21.0%
Queens	13.9%	14.1%	13.7%	14.2%	14.0%	17.7%	17.9%	19.1%	17.2%
SI	13.6%	9.3%	10.3%	12.6%	13.5%	14.4%	12.9%	12.8%	16.1%

Poverty Rate, Married-Couple Families

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013
US	5.0%	4.7%	4.5%	4.6%	5.1%	5.6%	5.8%	5.8%	5.8%
NYC	9.1%	9.2%	9.0%	8.9%	9.2%	10.1%	10.8%	11.1%	10.9%
Bronx	12.0%	10.7%	11.8%	12.8%	10.4%	12.8%	14.4%	14.1%	15.8%
Brooklyn	13.9%	12.8%	12.4%	12.2%	12.7%	14.3%	14.4%	15.2%	14.3%
Manhattan	6.8%	7.8%	7.2%	5.5%	6.7%	5.0%	7.7%	6.8%	7.2%
Queens	6.2%	7.6%	7.0%	7.3%	7.8%	9.0%	9.6%	10.0%	9.4%
SI	4.1%	4.2%	4.2%	4.2%	4.9%	5.6%	4.2%	4.2%	5.0%

Poverty Rate, Female-headed Families (no spouse present)

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013
US	29.4%	28.6%	28.2%	28.0%	29.4%	30.3%	31.4%	31.8%	30.9%
NYC	31.2%	30.4%	29.3%	28.8%	29.2%	30.7%	31.6%	32.2%	30.6%
Bronx	42.0%	41.4%	38.4%	38.7%	39.4%	41.8%	41.3%	42.9%	39.5%
Brooklyn	31.0%	31.1%	30.2%	29.0%	28.7%	30.7%	31.2%	31.1%	29.7%
Manhattan	32.6%	31.8%	32.1%	28.6%	29.8%	27.8%	30.6%	33.1%	31.9%
Queens	18.5%	17.8%	18.2%	18.1%	17.9%	20.6%	22.8%	21.4%	21.1%
SI	31.5%	16.9%	16.2%	23.4%	26.0%	23.5%	25.9%	27.8%	26.9%

Poverty Rate, Male-headed Families (no spouse present)

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013
US	13.8%	13.2%	12.8%	13.6%	15.8%	16.9%	17.6%	17.7%	17.1%
NYC	14.6%	14.3%	13.9%	12.2%	15.4%	15.8%	17.4%	18.7%	16.4%
Bronx	20.9%	23.4%	16.5%	15.6%	18.7%	21.1%	22.2%	23.4%	21.0%
Brooklyn	16.3%	16.8%	13.9%	14.4%	19.7%	15.5%	21.2%	22.9%	18.1%
Manhattan	17.2%	13.7%	17.1%	12.0%	12.6%	16.3%	15.5%	18.9%	16.4%
Queens	8.1%	7.1%	10.7%	8.4%	10.5%	12.3%	12.5%	12.1%	11.1%
SI	2.8%	10.4%	12.9%	7.6%	11.1%	17.4%	9.6%	10.9%	16.6%

Question 2: Can rent burdens for rent stabilized tenants be provided for the last ten years, as well as the proportion of rent stabilized tenants paying at least 50% of their income towards rent?

The only source of this data is the triennial *Housing and Vacancy Survey*. The raw data from the 2014 survey has not been released as of the time of this memo, and only limited information is currently available. See below for statistics from previous studies.

HVS Year	Median Gross Rent-to-Income Ratio (Rent Stabilized)	Proportion of Tenants Paying 50% or More of Income Towards Gross Rent (Rent Stabilized)
2014	36.4%	Statistic Not Yet Available
2011	34.8%	34.8%
2008	31.4%	30.9%
2005	31.6%	30.6%
2002	28.0%	26.6%

Question 3: Can you provide rent-to-income ratios for rent stabilized tenants, excluding Section 8 tenants, over time?

The only source of this data is the triennial *Housing and Vacancy Survey (HVS)*. The raw data from the 2014 survey has not been released as of the time of this memo. Data from previous surveys follows.

The contract rent to-income ratio does not include the cost of utilities. The gross rent-to-income ratio is the cost of contract rent, plus utilities. Out-of-pocket rent is the rent that people report they pay themselves, excluding any subsidies from government sources. All data presented below is derived from raw data from the *HVS*, as released by the Census Bureau. Because of privacy issues, the Census Bureau "top codes" certain data, such as very high incomes or very high rent levels. Because of this, certain statistics that are calculated by the Census Bureau (as released via tables on their website, which are not top coded), are sometimes slightly different (see table in Question 2) than statistics run from the raw data. However, because all data below is run from raw data, they can be compared to each other.

HVS Year	2011	2008	2005
Median RS Contract Rent-to-Income Ratio	32.0%	28.4%	29.3%
Median RS Gross Rent-to-Income Ratio	35.2%	31.4%	31.9%
Number of RS Units Containing Section 8 Tenants	*82,688*	*58,395*	*67,727*
Median RS Contract Rent-to-Income Ratio (w/o Section 8)	30.0%	27.3%	28.0%
Median RS Gross Rent-to-Income Ratio (w/o Section 8)	32.7%	30.3%	30.4%
Median RS Out of Pocket Rent-to-Income Ratio (Contract)*	27.0%	25.5%	25.7%
Median RS Out of Pocket Rent-to-Income Ratio (Gross)*	31.0%	29.1%	29.1%

*Out of pocket rent-to-income ratios are not provided by the Census Bureau in raw HVS data. This statistic was derived from raw data regarding out of pocket rents, utility costs, and income levels.

Question 4: Can the vacancy rate, by rent level, be provided for rent stabilized households?

The only source of this data is the triennial *Housing and Vacancy Survey*. The raw data from the 2014 survey has not been released as of the time of this memo. This request will be fulfilled when the data is released.

Question 5: Can you provide household income by rent level and where people live?

The only source of this data is the triennial *Housing and Vacancy Survey*. The raw data from the 2014 survey has not been released as of the time of this memo. This request will be fulfilled when the data is released.

On May 22, 2015 the staff of the Rent Guidelines Board released a memo to Board members with additional information concerning the *2015 Income & Affordability Study*. The memo follows:

At the April 2, 2015 *Income & Affordability Study* (I&A) presentation, five questions were asked for which an immediate answer could not be provided. Some of these questions were answered in a memo dated April 13, 2015, with a follow-up memo containing additional information released on May 22, 2015. Some questions were still outstanding at the time of the last memo because data from the *2014 NYC Housing and Vacancy Survey (HVS)* had not yet been released to the public. Detailed answers to all outstanding questions follow.

Question 1: Can rent burdens for rent stabilized tenants be provided for the last ten years, as well as the proportion of rent stabilized tenants paying at least 50% of their income towards rent?

Updated figures for 2014 are provided below, derived directly from published tables on the *2014 HVS* website. HPD cautions against comparing 2014 data with previous years because of a change in the way rent stabilized buildings are classified.

HVS Year	Median Gross Rent-to-Income Ratio (Rent Stabilized)	Proportion of Tenants Paying 50% or More of Income Towards Gross Rent (Rent Stabilized)
2014	36.2%*	35.7%*
2011	34.8%	34.8%
2008	31.4%	30.9%
2005	31.6%	30.6%
2002	28.0%	26.6%

Source: 2002-2014 NYC Housing and Vacancy Survey
*Data directly from tables provided on the 2014 HVS website

Question 2: Can you provide rent-to-income ratios for rent stabilized tenants, excluding Section 8 tenants, over time?

Updated figures for 2014 are provided below, derived from raw HVS data as calculated by HPD and the RGB. HPD cautions against comparing 2014 data with previous years because of a change in the way rent stabilized buildings are classified.

The contract rent-to-income ratio does not include the cost of utilities. The gross rent-to-income ratio is the cost of contract rent, plus utilities. Out-of-pocket rent is the rent that people report they pay themselves, excluding any subsidies from government sources. All data presented below is derived from raw data from the *HVS*, as released by the U.S. Census Bureau. Because of privacy issues, the Census Bureau "top codes" certain data, such as very high incomes or very high rent levels. Because of this, certain statistics that are calculated by the Census Bureau (as released via tables on their website, which are not top coded), are sometimes slightly different (see table in Question 2) than statistics run from the raw data. However, because all data below is run from raw data, they can be compared to each other.

HVS Year	2014	2011	2008	2005
Median RS Contract Rent-to-Income Ratio	33.1%	32.0%	28.4%	29.3%
Median RS Gross Rent-to-Income Ratio	36.4%	35.2%	31.4%	31.9%
Number of RS Units Containing Section 8 Tenants	*87,352*	*82,688*	*58,395*	*67,727*
Median RS Contract Rent-to-Income Ratio (w/o Section 8)	30.7%	30.0%	27.3%	28.0%
Median RS Gross Rent-to-Income Ratio (w/o Section 8)	33.5%	32.7%	30.3%	30.4%
Median RS Out of Pocket Rent-to-Income Ratio (Contract)*	28.5%	27.0%	25.5%	25.7%
Median RS Out of Pocket Rent-to-Income Ratio (Gross)*	32.2%	31.0%	29.1%	29.1%

Source: 2005-2014 NYC Housing and Vacancy Survey
*Out of pocket rent-to-income ratios are not provided by the Census Bureau in raw HVS data. This statistic was derived from raw data regarding out of pocket rents, utility costs, and income levels.

Question 4: Can the vacancy rate, by rent level, be provided for rent stabilized households?

See table below for data from the *2014 HVS*, as calculated by HPD.

Rent Level	Vacancy Rate (Rent Stabilized Only)
All Rent Stabilized Units	2.12%
Less than $800	1.14%
$800 to $999	2.35%
$1000-$1,249	2.23%
$1,250-1,499	2.35%
$1,500-$1,999	2.02%
$2,000-$2,499	2.71%
$2,500+	2.60%

Source: *2014 NYC Housing and Vacancy Survey*

Question 5: Can you provide household income by rent level and where people live?

See tables below for data from the *2014 HVS*, as calculated by HPD, for rent stabilized households. We have also included the median contract and gross rents, by neighborhood, in Table 5b. Note that all data at the sub-borough level should be interpreted with caution, as the survey sample is small. Those sub-boroughs highlighted in red (in Queens and Staten Island) should be interpreted with extreme caution as the results are most likely less accurate that those of the other sub-boroughs.

Table 5a: Rent Stabilized Median Household Income, by Rent Level

Rent Level	Median Household Income (Rent Stabilized Only)
All Rent Stabilized Units	$40,600
Less than $800	$20,568
$800 to $999	$32,800
$1000-$1,249	$35,000
$1,250-1,499	$44,000
$1,500-$1,999	$68,000
$2,000-$2,499	$90,000
$2,500+	$110,000

Source: *2014 NYC Housing and Vacancy Survey*

Table 5b: Rent Stabilized Median Household Income, Median Contract Rent, and Median Gross Rent, by Borough and Sub-borough

Borough/Sub-borough[20]	Median Household Income (RS Only)	Median Contract Rent (RS Only)	Median Gross Rent (RS Only)
Bronx			
Mott Haven/Hunts Point	$24,000	$1,000	$1,145
Morrisania/East Tremont	$21,928	$1,050	$1,175
Highbridge/ S. Concourse	$25,000	$975	$1,115
University Heights/ Fordham	$22,068	$1,050	$1,210
Kingsbridge Heights/Mosholu	$28,656	$1,050	$1,200
Riverdale/Kingsbridge	$30,480	$1,075	$1,180
Soundview/Parkchester	$35,000	$1,030	$1,155
Throgs Neck/Co-op City	$54,000	$1,200	$1,290
Pelham Parkway	$35,016	$1,100	$1,200
Williamsbridge/Baychester	$23,196	$1,150	$1,300
Boroughwide	*$27,400*	*$1,050*	*$1,190*

[20] All data at the sub-borough level should be interpreted with caution, as the survey sample is small. Those sub-boroughs highlighted in red should be interpreted with extreme caution as the results are most likely less accurate that those of the other sub-boroughs.

Borough/Sub-borough	Median Household Income (RS Only)	Median Contract Rent (RS Only)	Median Gross Rent (RS Only)
Brooklyn			
Williamsburg/Greenpoint	$66,000	$1,479	$1,590
Brooklyn Heights/Fort Greene	$80,000	$1,600	$1,655
Bedford Stuyvesant	$33,976	$1,200	$1,260
Bushwick	$40,000	$1,157	$1,268
East New York/Starrett City	$30,000	$1,100	$1,236
Park Slope/Carroll Gardens	$72,000	$1,600	$1,812
Sunset Park	$33,356	$1,100	$1,280
North Crown Heights/Prospect Heights	$38,000	$1,020	$1,150
South Crown Heights	$43,000	$1,100	$1,200
Bay Ridge	$46,000	$1,152	$1,255
Bensonhurst	$38,350	$1,100	$1,190
Borough Park	$35,000	$1,200	$1,330
Coney Island	$28,000	$1,200	$1,285
Flatbush	$50,000	$1,200	$1,316
Sheepshead Bay/Gravesend	$44,000	$1,155	$1,290
Brownsville/Ocean Hill	$26,000	$1,050	$1,185
East Flatbush	$41,400	$1,000	$1,105
Flatlands/Canarsie	$33,000	$1,100	$1,208
Boroughwide	*$40,000*	*$1,148*	*$1,250*
Manhattan			
Greenwich Village/Financial District	$90,000	$1,976	$2,060
Lower East Side/Chinatown	$55,000	$1,500	$1,600
Chelsea/Clinton/Midtown	$49,000	$1,795	$1,865
Stuyvesant Town/Turtle-Bay	$80,000	$1,650	$1,700
Upper West Side	$66,004	$1,800	$1,930
Upper East Side	$70,000	$1,775	$1,843
Morningside Heights/Hamilton Heights	$35,480	$1,221	$1,304
Central Harlem	$50,000	$1,100	$1,200
East Harlem	$40,600	$1,125	$1,223
Washington Heights/Inwood	$41,940	$1,200	$1,280
Boroughwide	*$57,000*	*$1,500*	*$1,555*

Borough/Sub-borough	Median Household Income (RS Only)	Median Contract Rent (RS Only)	Median Gross Rent (RS Only)
Queens			
Astoria	$60,000	$1,350	$1,460
Sunnyside/Woodside	$50,926	$1,300	$1,400
Jackson Heights	$41,600	$1,250	$1,380
Elmhurst/Corona	$45,000	$1,250	$1,345
Middle Village/Ridgewood	$37,000	$1,200	$1,275
Rego Park/Forest Hills	$57,000	$1,360	$1,460
Flushing/Whitestone	$34,000	$1,200	$1,338
Hillcrest/Fresh Meadows	$49,000	$1,350	$1,440
Kew Gardens/Woodhaven	$42,000	$1,215	$1,320
South Ozone Park/Howard Beach	$33,000	$1,025	$1,093
Bayside/Little Neck	$75,000	$1,200	$1,470
Jamaica	$44,000	$1,200	$1,310
Bellerose/Rosedale	$50,590	$1,500	$1,600
Rockaways	$40,000	$1,081	$1,200
Boroughwide	*$47,000*	*$1,270*	*$1,370*
Staten Island			
North Shore	$30,000	$1,195	$1,239
Mid-Island	$40,000	$975	$975
South Shore	$31,600	$900	$1,217
Boroughwide	*$30,000*	*$1,000*	*$1,192*
Citywide	**$40,600**	**$1,200**	**$1,300**

Source: 2014 NYC Housing and Vacancy Survey

Buildings with Different Fuel and Utility Arrangements

The Board was also informed of the circumstances of buildings with different fuel and utility arrangements including buildings that are master-metered for electricity and that are heated with gas versus oil (see Table 8). Under some of the Board's Orders in the past, separate adjustments have been established for buildings in certain of these categories where there were indications of drastically different changes in costs in comparison to the generally prevailing fuel and utility arrangements. This year the Board did not make a distinction between guidelines for buildings with different fuel and utility arrangements under Order 47.

Table 8

Changes in Price Index of Operating Costs for Apartments in Buildings with Various Heating Arrangements, 2014-15, and Commensurate Rent Adjustment		
Index Type	2014-15 Price Index Change	One-Year Rent Adjustment Commensurate With O&M to Income Ratio of .661
All Dwelling Units	0.5%	0.33%
Pre 1947	-0.1%	-0.07%
Post 1946	1.2%	0.79%
Oil Used for Heating	-0.4%	-0.26%
Gas Used for Heating	1.7%	1.12%

Note: The O&M to Income ratio is from the *2015 Income and Expense Study*.
Source: RGB's 2015 Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City.

On April 27, 2015 the staff of the Rent Guidelines Board released a memo regarding heat and hot water complaints. Below is the memo in its entirety:

This memo is in response to the request for the number of heat and hot water complaints over recent years:

Heat and Hot Water Complaints	
FY05	124,645
FY06	124,297
FY07	123,168
FY08	111,642
FY09	128,708
FY10	114,009
FY11	115,629
FY12	99,409
FY13	108,853
FY14	120,106

Source: Mayor's Management Report (MMR), FY 2005-2014
Note: Beginning with Fiscal Year (FY) 2014 MMR, figure reports the number of complaints that were closed during the 2014 FY. Prior MMR FY figures are the number of complaints filed during each FY.

On May 22, 2015 the staff of the Rent Guidelines Board released a memo regarding Hotel/SRO/Rooming House registration data. Below is the memo in its entirety:

This memo is an update to staff memos released June 4, 2007, June 4, 2009, June 12, 2012, and June 4, 2013, which analyzed hotel registration data filed with the NYS Division of Housing and Community Renewal (DHCR) in 2005, 2008, 2011, and 2012, respectively. Staff members recently analyzed the 2014 DHCR registration database for data related to hotels, SROs, and rooming houses (hereafter referred to only as "hotels").

In 2014, 529 buildings identified by owners as hotels registered units with DHCR, eight more than in 2012.[21] Within these 529 buildings, 14,554 individual apartment registrations were filed (1,709 less than in 2012). Owners identified a total of 9,080 of the registered units as being "rent stabilized" (1,381 less than in 2012) and the balance (5,474 units) were identified as being either "permanently exempt," "temporarily exempt," or "vacant." Of these 529 buildings, 52 (9.8% of the total) consisted entirely of exempt and/or vacant units. In addition, 214 buildings (40.5% of the total buildings) contain less than 85% permanently stabilized units. These 214 buildings contain 1,662 rent stabilized units, 18.3% of the total stabilized units.

Building owners/managers were asked to identify which of their units were temporarily or permanently exempt from rent stabilization laws. In 2014, 112 units were reported as being permanently exempt (0.8% of the total number of registered hotel units). Among permanently exempt units, 59 (52.6% of these units) were reported as being deregulated due to High Rent/Vacancy or High Rent/High Income Decontrol, with the rest reported as being deregulated due to substantial rehabilitation and a few other isolated reasons. There were also 3,772 units reported as temporarily exempt (25.9% of the total number of registered hotel units). The most commonly reported reason for being temporarily exempt is "Hotel/SRO (Transient)" status, as was the classification given to 2,533 (67.2%) of the temporarily exempt units. Less common was "Not Prime Residence" (837 units, or 22.5%, a sharp increase from 6.5% in 2012) and "Owner Occupancy/Employee," "Other," and "Commercial/Professional." In general, units that are temporarily exempt are either rented at what the market will bear, for as little as one night, or rented to government agencies, not-for-profit organizations, or universities as temporary housing. In addition, 1,590 units (10.9% of total units) were registered with DHCR as "Vacant."

The analysis starts by looking at the reported legal rents of those units identified as "rent stabilized" by building owners. The legal rents are the maximum amount that a landlord is able to charge to tenants (or government agencies subsidizing tenants), but do not necessarily reflect what a tenant is actually paying. Owners can choose to charge tenants a lower rent than legally allowed (known as a "preferential rent") and owners are also asked to provide DHCR with data for subsidized tenants, whose "actual" rents are the rents actually paid out of pocket by tenants, with the balance being made up by various government agencies and programs. As noted in Footnote #1, all data is owner-reported and cannot be verified for accuracy.

See the tables below for detailed information on legal, preferential, and actual rents paid by rent stabilized hotel tenants.

Table 1 shows the number of rent stabilized units and buildings that registered legal rents with DHCR in 2014. It also provides the median and mean legal rents for these units, by borough, and Citywide. These rents reflect the maximum amount that owners could charge for their units, as of April 2014.

[21] All data in this memo is based on owner-reported information as reported to DHCR in their 2014 registration database.

Table 1: 2014 Median and Mean "Legal" Rents for Units Identified as Rent Stabilized (excludes exempt and vacant units)

Borough	*# of Stabilized Units*	*# of Stabilized Buildings*	***Median** Legal Rent*	***Mean** Legal Rent*
Bronx	859	52	$1,109	$1,135
Brooklyn	1,393	132	$1,161	$1,153
Manhattan[22]	5,881	225	$1,037	$1,281
Queens	865	63	$1,250	$1,312
Staten Island	82	5	$796	$847
Citywide	**9,080**	**477**	**$1,106**	**$1,246**

Source: 2014 DHCR Building and Apartment Registration filings

Table 2 illustrates the median and mean "preferential" rents for the over one-quarter (29.0%) of *rent stabilized* units that reported charging one. Also shown is the percentage difference from the median and mean legal rents of *just those units with reported preferential rents*. The median Citywide *legal* rent for these units is $1,386 and the mean *legal* rent is $1,545.

Table 2: 2014 Median and Mean "Preferential"[23] Rents for Units Identified as Rent Stabilized (excludes exempt and vacant units)*

Borough	*# of Stabilized Units*	***Median***		***Mean***	
		Preferential Rent	*% Difference from Legal Rent***	*Preferential Rent*	*% Difference from Legal Rent***
Bronx	276	$1,004	-28%	$942	-33%
Brooklyn	616	$1,183	-12%	$1,048	-25%
Manhattan	1,549	$872	-37%	$772	-52%
Queens	184	$1,191	-31%	$1,248	-30%
Staten Island	8	$623	-14%	$726	-26%
Citywide	**2,633**	**$906**	**-35%**	**$888**	**-43%**

Source: 2014 DHCR Building and Apartment Registration filings
*Only for those units reporting a preferential rent.
**Refers to the legal rents of just those units that reported preferential rents.

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22 In the 2013 version of this memo, Manhattan figures included a hotel in Manhattan with close to 200 rent stabilized units, almost all with legal rents in excess of $4,000 (which skewed the median and mean legal rents upwards). An endnote (Endnote #3 of the June 4, 2013 memo) was included in that memo explaining that this particular hotel had not registered units in the prior year, so data should be compared between the two years with caution. This particular hotel registered no hotel units in 2014. This may be the case for other buildings as well, but data was not analyzed with regards to this.

23 Upon a close examination of the DHCR apartment registration file, 180 units in three buildings (two in Brooklyn, and one in Queens) were found to have erroneously registered all the "preferential" rents in their buildings as "actual" rents. In these 180 cases, the "actual" rent that they registered was either $1,191, or $1,183 (which were the HUD Fair Market Rent levels for studio apartments in FY 2012 and 2014, respectively). These building owners identified their tenants as receiving subsidies from a variety of government programs, including principally Shelter Plus and Section 8. By knowing that these tenants were part of government subsidy programs, we can infer that they actually paid significantly less than the HUD Fair Market Rent a month (although the owner did receive this amount through a combination of payments from the tenant and the government). As such, the records of these 180 units were altered to make the relevant HUD FMR the "preferential" rent, while the "actual" rent field was modified to be blank, as we do not know the true out-of-pocket rents for these tenants. Absent these modifications, the means and medians reported in Tables 2-4 would be somewhat different. Note that the balance of units in the DHCR registration files may or may not have been registered correctly. DHCR registration files are submitted by owners, and staff cannot verify the accuracy of every record. For the purposes of this memo, we are assuming that all other registrations were accurate.

Table 3 shows the median and mean "actual" rents paid by a reported 33.2% of *rent stabilized* hotel tenants. These are the rents that are paid by tenants out of pocket, with the balance being paid by government programs such as Section 8, Shelter Plus or SCRIE. Also shown is the percentage difference from the median and mean legal rents of *just those units with reported actual rents*. Theoretically, the owners of the 3,018 units reporting actual rents can receive the difference between the actual and legal rents from government programs, and in fact, 70% of these units do not report any "preferential" rents, implying that in most cases owners do receive the full legal rent for these units. The median Citywide *legal* rent for these units is $1,240 and the mean *legal* rent is $1,507. Not reported here are detailed statistics for the 892 units that report both actual and preferential rents (which would indicate that the owners of these units *do not* receive the full legal rent). The Citywide median *preferential* rent for these 892 units is $962 and the mean *preferential* rent is $1,005.

Table 3: 2014 Median and Mean "Actual"[24] Rents for Units Identified as Rent Stabilized (excludes exempt and vacant units)*

Borough	*# of Stabilized Units**	***Median****		***Mean****	
		Actual Rent Paid	*Legal Rent***	*Actual Rent Paid*	*Legal Rent***
Bronx	379	$233	-83%	$377	-74%
Brooklyn	304	$294	-72%	$443	-60%
Manhattan	2,224	$235	-80%	$419	-73%
Queens	84	$594	-59%	$730	-51%
Staten Island	27	$229	-73%	$239	-72%
Citywide	**3,018**	**$239**	**-81%**	**$424**	**-72%**

Source: 2014 DHCR Building and Apartment Registration filings

* Excludes units where the "actual" rent reported is equal to, or more than, the reported "legal" rent, and only includes those units reporting an "actual" rent.

**Refers to the legal rents of just those units that reported actual rents.

To show rents that landlords are actually receiving for rent stabilized hotel units, Table 4 shows median and mean "rent received," which uses a combination of preferential and legal rents to identify the rent actually being collected. For the purposes of this table, "rent received" is defined as the legal rent, unless a preferential rent is registered, in which case the preferential rent is used.

[24] See footnote #22.

Table 4: 2014 Median and Mean "Rent Received"[25] for Units Identified as Rent Stabilized (excludes exempt and vacant units)

Borough	*# of Stabilized Units*	***Median*** *"Rent Received"**	***Mean*** *"Rent Received"**
Bronx	859	$943	$987
Brooklyn	1,393	$1,050	$1,026
Manhattan	5,881	$850	$1,061
Queens	865	$1,238	$1,248
Staten Island	82	$796	$821
Citywide	**9,080**	**$894**	**$1,064**

Source: 2014 DHCR Building and Apartment Registration filings

*"Rent Received" refers to the preferential rent (if one is provided), or the legal rent (if a preferential rent is not provided)

An analysis was also done on a smaller sample of units that could be matched between the 2012 and 2014 DHCR registration databases. Of the 9,080 rent stabilized units in the 2014 registration database, 6,093 (67%) could be matched with 2012 data. For these units, the median and mean legal, preferential, actual, and "rent received" rents are reported in Table 5a, 5b, 5c, and 5d, for both 2012 and 2014. Due to the small number of units in some of the categories, interpret with caution.

Table 5a: Longitudinal Sample of 2012 and 2014 Median and Mean "Legal" Rents for Units Identified as Rent Stabilized (excludes exempt and vacant units)

Borough	***# of Stabilized Units***		***Median Legal Rent***		***Mean Legal Rent***	
	2012	*2014*	*2012*	*2014*	*2012*	*2014*
Bronx	652	652	$1,080	$1,161	$1,077	$1,147
Brooklyn	582	582	$935	$1,053	$1,031	$1,096
Manhattan	4,289	4,289	$962	$1,105	$1,308	$1,391
Queens	508	508	$1,250	$1,323	$1,241	$1,333
Staten Island	62	62	$808	$866	$833	$917
Citywide	**6,093**	**6,093**	**$1,015**	**$1,127**	**$1,247**	**$1,327**

Source: 2012 and 2014 DHCR Building and Apartment Registration filings

[25] See footnote #22

Table 5b: Longitudinal Sample of 2012 and 2014 Median and Mean "Preferential" Rents[26] for Units Identified as Rent Stabilized (excludes exempt and vacant units)

Borough	*# of Stabilized Units*		***Median** Preferential Rent*		***Mean** Preferential Rent*	
	2012	*2014*	*2012*	*2014*	*2012*	*2014*
Bronx	276	247	$988	$1,150	$929	$945
Brooklyn	251	268	$1,100	$1,073	$963	$944
Manhattan	1,181	1,259	$800	$875	$831	$771
Queens	108	120	$1,156	$1,191	$1,200	$1,245
Staten Island*	--	--	--	--	--	--
Citywide[27]	**1,818**	**1,902**	**$866**	**$906**	**$886**	**$848**

Source: 2012 and 2014 DHCR Building and Apartment Registration filings
*Too few records

Table 5c: Longitudinal Sample of 2012 and 2014 Median and Mean "Actual" Rents[28] for Units Identified as Rent Stabilized (excludes exempt and vacant units)

Borough	*# of Stabilized Units*		***Median** Actual Rent*		***Mean** Actual Rent*	
	2012	*2014*	*2012*	*2014*	*2012*	*2014*
Bronx	204	244	$232	$235	$372	$364
Brooklyn	101	112	$227	$235	$496	$419
Manhattan	1,920	2,088	$250	$237	$465	$436
Queens	67	69	$557	$557	$631	$684
Staten Island*	--	--	--	--	--	--
Citywide[29]	**2,295**	**2,541**	**$250**	**$239**	**$463**	**$433**

Source: 2012 and 2014 DHCR Building and Apartment Registration filings
*Too few records

Table 5d: Longitudinal Sample of 2012 and 2014 Median and Mean "Rent Received" Rents[30] for Units Identified as Rent Stabilized (excludes exempt and vacant units)

Borough	*# of Stabilized Units*		***Median** "Rent Received"**		***Mean** "Rent Received"**	
	2012	*2014*	*2012*	*2014*	*2012*	*2014*
Bronx	652	652	$843	$937	$827	$967
Brooklyn	582	582	$900	$952	$925	$946
Manhattan	4,289	4,289	$875	$872	$1,133	$1,130
Queens	508	508	$1,166	$1,191	$1,149	$1,221
Staten Island*	62	62	$808	$866	$815	$883
Citywide	**6,093**	**6,093**	**$888**	**$910**	**$1,078**	**$1,100**

Source: 2012 and 2014 DHCR Building and Apartment Registration filings
*"Rent Received" refers to the preferential rent (if one is provided), or the legal rent (if a preferential rent is not provided)

26 See footnote #22.
27 Because some units did not report "preferential" rents in both 2012 and 2014, the median and mean rents presented are based on different sample sizes. For the 1,452 units Citywide that reported a "preferential" rent in both 2012 and 2014, the median "preferential" rent in 2012 was $896 and was $893 in 2014. The mean "preferential" rent for these units in 2012 was $907, and was $848 in 2014.
28 See footnote #22.
29 Because some units did not report "actual" rents in both 2012 and 2014, the median and mean rents presented are based on different sample sizes. For the 2,092 units Citywide that reported an "actual" rent in both 2012 and 2014, the median "actual" rent in 2012 was $237 and was $239 in 2014. The mean "actual" rent for these units in 2012 was $444, and was $453 in 2014.

30 See footnote #22.

On May 27, 2015 the staff of the Rent Guidelines Board released a memo answering boardmember questions. Below is the memo in its entirety:

On May 18, the owner and tenant members emailed the RGB staff the following questions. Detailed answers are below.

1) How many rent stabilized buildings receive J-51, 421-a or 40-year tax abatements? When owners fill out the RPIE, do they record that they receive one of the above or do you have to cross HCR data with Department of Finance data?

The staff does not currently have this data. A request was made to the NYC Department of Finance (DOF) for the number of rental buildings containing rent stabilized units that receive J-51, 420c and 421- a tax abatements or exemptions, as well as nonprofits that receive a 40-year tax abatement under the Private Housing Finance Law (Section 577). We asked for this data by borough and Citywide. As of today, we are in the process of obtaining this data.

2) How many rent stabilized buildings have at least 70% of their units at rent stabilized? How many have at least 80% of their units rent stabilized?

The only source of a count of rent stabilized units, by building, are the annual registration files from the NYS Division of Housing and Community Renewal (DHCR). Owners register their rent stabilized units, as of April 1, with that agency each year. However, this database does not provide a count of all the units in each building, only those that are rent stabilized. To determine the proportion of units in each building that are rent stabilized, an outside data source is required. Using tax data from the NYC Dept. of Finance (DOF), which provides a count of residential units, and matching it based on Borough, Block, and Lot (BBL) to the same fields found in the DHCR data file, staff was able to determine the number of buildings that are at least 70% and 80% rent stabilized.

Note that of the 41,279 buildings registered in the 2014 DHCR building registration file, 32,871 were used for this analysis. Those buildings which self-identified as either a SRO/hotel/rooming house or a co- op/condo were removed from this analysis, as was any building which could not be matched to the DOF file. In addition, a certain number of buildings in the DHCR file had identical BBLs. This is because there were multiple buildings on the same lot, each registered separately in the DHCR file, but treated as a single property in the DOF file. Buildings with the same BBL were combined into one record for the purposes of this analysis, reducing the number of buildings with duplicated BBLs from approximately 3,500 to 874.

The table below details the number of buildings in each borough, and Citywide, that contain at least 70%/80% of units that are rent stabilized, as of April 1 of 2014. The data is based on owner registration forms with DHCR, and unit counts from DOF, and is only as accurate as those two sources.

Borough	Total # of Buildings	70% or more Units Rent Stabilized		80% or more Units Rent Stabilized	
		# of Buildings	% of Buildings	# of Buildings	% of Buildings
Manhattan	11,017	4,501	41%	3,933	36%
Bronx	5,122	4,914	96%	4,791	94%
Brooklyn	10,899	8,939	82%	8,602	79%
Queens	5,699	4,825	85%	4,638	81%
Staten Island	134	119	89%	115	86%
Citywide	32,871	23,298	71%	22,079	67%

Source: 2014 DHCR Building Registration File and 2015 DOF Tax Rolls for Rent Stabilized Apartments

3) Multiple people on the board agree that it would be useful if RPIE data could be collected sooner and disseminated to RGB earlier so that the RGB's data was from the previous year. What would it take to (a) change the deadline for RPIE from June 1 to April 1 and (b) distribute raw data to the RGB staff for its calculation prior to the preliminary vote? Would this require a change in the Local Law or is it and administrative decision?

Each year, owners of income-producing properties with an actual assessed value of more than $40,000 are required to file Real Property Income and Expense statements (RPIE) with the NYC Department of Finance. The submission deadline for all RPIE filings is June 1 of each year.

Local Law 63 of 1986 amended the Administrative Code of the City of New York by adding Subdivision A of Section 11-208.1, mandating that owner's of income-producing property "submit a statement of all income derived from and all expenses attributable to the operation of such property" to the City. Initially owners were required to submit these statements by September 1 of each year. In 2013, the City Council amended the Administrative Code to require owners to file by June 1. In order to move the date to April 1, the City Council would again need to amend the Administrative Code.

The RPIE data is privacy protected. The RGB staff does not receive the "raw" data, but instead receives summary data of rent, income and expenses per unit Citywide, by borough, building age and size. This past year, the first year when owners were required to file by June 1, the staff received this data in December. When the filing date was September 1, we normally received the data in February. If the date was changed to April 1, it is highly unlikely that we would receive the summary data prior to the preliminary vote, which is generally around May 1.

Adjustments for Units in the Category of Buildings
Covered by Article 7-C of The Multiple Dwelling Law (Lofts)

Section 286 sub-division 7 of the Multiple Dwelling Law states that the Rent Guidelines Board "shall annually establish guidelines for rent adjustments for the category of buildings covered by this article." In addition, the law specifically requires that the Board, "consider the necessity of a separate category for such buildings, and a separately determined guideline for rent adjustments for those units in which heat is not required to be provided by the owner, and may establish such separate category and guideline."

In 1986, Abt Associates Inc. conducted an expenditure study of loft owners to construct weights for the Loft Board's index of operating costs and to determine year-to-year price changes. In subsequent years, data from the PIOC for stabilized apartments was used to compute changes in costs and to update the loft expenditure weights. This is the procedure used this year.

The increase in the Loft Index this year was 0.4%, 5.3 percentage points lower than the 5.7% increase in 2014. Increases in costs were seen in seven of the eight components that make up this index. Insurance Costs witnessed the highest rise, increasing 7.2%. More moderate increases were seen in Taxes (4.2%), Utilities (2.4%) and Maintenance (2.7%). Labor Costs and Administrative Costs-Legal both increased by 4.0% and Administrative Costs-Other by 3.9%. These increases were offset by a decline in the Fuel component of 23.5%.

This year's guidelines for lofts are: 0.0% for a one-year lease and 2.0% for a two-year lease.

Table 9

Changes in the Price Index of Operating Costs for Lofts from 2014-2015	
	Loft O & M Price Index Change
All Buildings	0.4%

Source: 2015 Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City.

Special Guidelines for Vacancy Decontrolled Units
Entering the Stabilized Stock

Pursuant to Section 26-513(b) of the New York City Administrative Code, as amended, the Rent Guidelines Board establishes a special guideline in order to aid the State Division of Housing and Community Renewal in determining fair market rents for housing accommodations that enter the stabilization system. This year, the Board set the guidelines at the greater of the following:

1. 33% above the Maximum Base Rent, or
2. The Fair Market Rent for existing housing as established by the United States Department of Housing and Urban Development (HUD) for the New York City Primary Metropolitan Statistical Area pursuant to Section 8(c) (1) of the United States Housing Act of 1937 (42 U.S.C. section 1437f [c] [1]) and 24 C.F.R. Part 888, with such Fair Market Rents to be adjusted based upon whether the tenant pays his or her own gas and/or electric charges as part of his or her rent as such gas and/or electric charges are accounted for by the New York City Housing Authority.

The Board concluded that for units formerly subject to rent control, either an increase to rent levels reflecting the Fair Market Rent guidelines established by the U.S. Department of Housing and Urban Development (HUD), or 33% above the maximum base rent was a desirable minimum increase. Notably, the HUD guidelines differentiate minimum rents on the basis of bedroom count.

INCREASE FOR UNITS RECEIVING PARTIAL TAX EXEMPTION PURSUANT TO SECTION 421 AND 423 OF THE REAL PROPERTY TAX LAW

The guideline percentages for 421-A and 423 buildings were set at the same levels as for leases in other categories of stabilized apartments.

This Order does not prohibit the inclusion of the lease provision for an annual or other periodic rent increase over the initial rent at an average rate of not more than 2.2 per cent per annum where the dwelling unit is receiving partial tax exemption pursuant to Section 421-A of the Real Property Tax Law. The cumulative but not compound charge of up to 2.2 per cent per annum as provided by Section 421-A or the rate provided by Section 423 is in addition to the amount permitted by this Order.

Vacancy Allowance

As of June 15, 1997, Vacancy Allowances are now determined by a formula set forth in the State Rent Regulation Reform Act of 1997 and in Chapter 97 of the Laws of 2011.

Sublet Allowance

The increase landlords are allowed to charge under Order #47 when a rent stabilized apartment is sublet by the primary tenant to another tenant on or after October 1, 2015 and on or before September 30, 2016 shall be 10%.

Votes

The votes of the Board on the adopted motion pertaining to the provisions of Order #47 were as follows:

	Yes	No	Abstentions
Guidelines for Apartment Order #47	7	2	-

Dated: June 30, 2015
Filed with the City Clerk: July 1, 2015

____
Rachel D. Godsil
Chair
NYC Rent Guidelines Board

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Appendix N2

2015 Hotel Order #45

NEW YORK CITY RENT GUIDELINES BOARD

2015 Hotel Order #45

June 29, 2015

Order Number 45 - Hotels, Rooming Houses, Single Room Occupancy Buildings and Lodging Houses. Rent levels to be effective for leases commencing **October 1, 2015** through **September 30, 2016**.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY RENT GUIDELINES BOARD BY THE RENT STABILIZATION LAW OF 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended, and as implemented by Resolution No. 276 of 1974 of the New York City Council, and in accordance with the requirements of Section 1043 of the New York City Charter, that the Rent Guidelines Board hereby **adopts** the following levels of fair rent increases over lawful rents charged and paid on **September 30, 2015**.

APPLICABILITY

This order shall apply to units in buildings subject to the Hotel Section of the Rent Stabilization Law (Sections 26-504(c) and 26-506 of the N.Y.C. Administrative Code), as amended, or the Emergency Tenant Protection Act of 1974 (L.1974, c. 576 §4[§5(a)(7)]). With respect to any tenant who has no lease or rental agreement, the level of rent increase established herein shall be effective as of one year from the date of the tenant's commencing occupancy, or as of one year from the date of the last rent adjustment charged to the tenant, or as of **October 1, 2015**, whichever is later. This anniversary date will also serve as the effective date for all subsequent Rent Guidelines Board Hotel Orders, unless the Board shall specifically provide otherwise in the Order. Where a lease or rental agreement is in effect, this Order shall govern the rent increase applicable on or after **October 1, 2015** upon expiration of such lease or rental agreement, but in no event prior to one year from the commencement date of the expiring lease, unless the parties have contracted to be bound by the effective date of this Order.

RENT GUIDELINES FOR HOTELS, ROOMING HOUSES, SINGLE ROOM OCCUPANCY BUILDINGS AND LODGING HOUSES

Pursuant to its mandate to promulgate rent adjustments for hotel units subject to the Rent Stabilization Law of 1969, as amended, (§26-510(e) of the N.Y.C Administrative Code) the Rent Guidelines Board hereby **adopts** the following rent adjustments:

The allowable level of rent adjustment over the lawful rent actually charged and paid on **September 30, 2015** shall be:

1) Residential Class A (apartment) hotels -	**0%**
2) Lodging houses -	**0%**
3) Rooming houses (Class B buildings containing less than 30 units) -	**0%**
4) Class B hotels -	**0%**
5) Single Room Occupancy buildings (MDL section 248 SRO's) -	**0%**

NEW TENANCIES

No "vacancy allowance" is permitted under this order. Therefore, the rents charged for tenancies commencing on or after **October 1, 2015** and on or before **September 30, 2016** may not exceed the levels over rentals charged on **September 30, 2015** permitted under the applicable rent adjustment provided above.

ADDITIONAL CHARGES

It is expressly understood that the rents collectible under the terms of this Order are intended to compensate in full for all services provided without extra charge on the statutory date for the particular hotel dwelling unit or at the commencement of the tenancy if subsequent thereto. No additional charges may be made to a tenant for such services, however such charges may be called or identified.

STATEMENT OF BASIS AND PURPOSE

The Rent Guidelines Board is authorized to promulgate rent guidelines governing hotel units subject to the Rent Stabilization Law of 1969, as amended, and the Emergency Tenant Protection Act of 1974, as amended. The purpose of these guidelines is to implement the public policy set forth in Findings and Declaration of Emergency of the Rent Stabilization Law of 1969 (§26-501 of the N.Y.C. Administrative Code) and in the Legislative Finding contained in the Emergency Tenant Protection Act of 1974 (L.1974 c. 576, §4 [§2]).

Dated: June 29, 2015

____

Rachel D. Godsil
Chair
New York City Rent Guidelines Board

Appendix N3

Explanatory Statement
Hotel Order #45

EXPLANATORY STATEMENT - HOTEL ORDER #45

Explanatory Statement and Findings of the Rent Guidelines Board In Relation to 2015-16 Lease Increase Allowances for Hotels Under the Jurisdiction of the Rent Stabilization Law

Explanatory Statement and Findings of the Rent Guidelines Board Concerning Increase Allowances for Hotel Units Under the Jurisdiction of the Rent Stabilization Law, Pursuant to Hotel Order Number 45, Effective October 1, 2015 through and including September 30, 2016.[1]

Pursuant to the authority vested in it by the Rent Stabilization Law of 1969 and the Emergency Tenant Protection Act of 1974, implemented by Resolution Number 276 of 1974 of the New York City Council, and extended by the Rent Act of 2015, it is the responsibility of the Rent Guidelines Board to establish guidelines for hotel increases. Hotel Order Number 45, adopted on June 29, 2015, applies to stabilized hotel units occupied by non-transient tenants.

Hotel Order Number 45 provides for an allowable increase of 0% over the lawful rent actually charged and paid on September 30, 2015 for rooming houses, lodging houses, Class B hotels, single room occupancy buildings, and Class A residential hotels. The Order does not limit rental levels for commercial space, non-rent stabilized residential units, or transient units in hotel stabilized buildings during the guideline period. The Order also provides that for any dwelling unit in a hotel stabilized building which is voluntarily vacated by the tenant thereof, the level of rent increase governing a new tenancy shall be the same as the guideline for rent increases set forth above.

SPECIAL NOTE

In the past the Board has adopted rent increases to the rent stabilized hotel universe. In recent years, when increases were granted, the Board adopted a proviso that was designed to deny owners from taking these increases under certain conditions. Since the Board voted a 0% increase for all classifications of rent stabilized hotels, this proviso is not included in Hotel Order 45. In event that increases are considered for subsequent Hotel Orders, at such time the current members of the Rent Guidelines Board urge future Boards to consider reinstating this proviso or some form thereof. Below is the proviso and explanatory language previously adopted in Hotel Order 41:

> Rooming house, lodging house, Class B hotel, single room occupancy building, and Class A residential hotel owners shall not be entitled to any of the above rent adjustments, and shall receive a **0% percent adjustment** if permanent rent stabilized or rent controlled tenants paying no more than the legal regulated rent, at the time that any rent increase in this Order would otherwise be authorized, constitute fewer than **85%** of all units in a building that are used or occupied, or intended, arranged or designed to be used or occupied in whole or in part as the home, residence or sleeping place of one or more human beings.

[1] This Explanatory Statement explains the actions taken by the Board on individual points and reflects the general views of those voting in the majority. It is not meant to summarize all viewpoints expressed.

The following outlines the Rent Guidelines Board's intent of the above proviso:

The Board's intention for the meaning of this proviso is that ALL dwelling units in the hotel, whether occupied, vacant, rented to tourists, transients, contract clients, students or other non-permanent tenants, or to permanent rent stabilized tenants, be counted in the denominator of the calculation. The only type of units in the hotel that may be excluded from the denominator are units that are used as stores or for similar business purposes such as a doctor's office. The numerator of the calculation is the number of units occupied by permanent rent stabilized or rent controlled tenants.

Here are two examples. One: a hotel has 100 units and 2 stores. 32 units are rented to permanent rent stabilized tenants, 10 are vacant and 58 are rented to transients and tourists. The calculation is as follows, the denominator is 100 and the numerator is 32. This calculation results in an occupancy percentage of LESS than 85% under the formula (32%) and an increase CANNOT be taken for the permanent stabilized tenants.

Two: a hotel has 150 units, 2 of which are used by a dentist and a doctor for their businesses, 8 are rented to tourists, 5 are vacant and 135 are occupied by permanent rent stabilized tenants. The denominator would be 148 and the numerator would be 135. This calculation results in an occupancy percentage of GREATER than 85% under the formula (91%) and an increase CAN be taken for the permanent stabilized tenants.

DEFINITIONS

For the purpose of determining the appropriate classification of a hotel stabilized unit, the Board has set its definitions as follows:

- Residential hotels are "apartment hotels" which are designated as Class A multiple dwellings on the Certificate of Occupancy.
- Rooming houses are Class B multiple dwellings having fewer than thirty sleeping rooms as defined in Section 4(13) of the multiple dwelling law.
- A single room occupancy building is a Class A multiple dwelling which is either used in whole or in part for single room occupancy or as a furnished room house, pursuant to Section 248 of the multiple dwelling law.
- A Class B hotel is a hotel, which carries a Class B Certificate of Occupancy and contains units subject to rent stabilization.
- Lodging houses are those buildings designated as lodging houses on the Certificate of Occupancy.

BACKGROUND

Public meetings of the Board were held on March 12, April 2, 16 and 23, and May 28, 2015 following public notices. On April 29, the Board adopted proposed rent guidelines for hotels, apartments, and lofts.

Four public hearings were held on June 8, June 11, June 15, and June 18, 2015 to hear comments on the proposed rent adjustments for rent stabilized hotels and apartments. The hearings were held from 2:00 p.m. to 7:25 p.m. on June 8, 5:00 p.m. to 9:05 p.m. on June 11, 5:00 p.m. to 7:45 p.m. on June 15, and from 5:00 p.m. to 9:15 p.m. on June 18. The Board heard testimony from approximately 5 hotel tenants and tenant representatives, no hotel owners, and one public official. In addition, the Board's office received approximately 10 written statements from tenants and tenant representatives, one hotel owner, and one public official. On June 29, 2015, the guidelines set forth in Hotel Order Number 45 were adopted.

Selected Oral and Written Testimony from Tenants and Tenant Groups:

– "SROs are housing of last resort for low-income people who would otherwise be homeless. Thousands of hard-working people as well as a disproportionate number of elderly and disabled people call an SRO their home. If the economic situation is difficult for low-income New Yorkers, it is dire for most residents of SROs. Many rely on SSI, disability pensions, food stamps and other similar resources as their sole source of income. Tenants routinely report incomes as low as $10,000 per year. For many, the affordability of their SRO home means the difference between having a roof over their head and being homeless."

– "Rent increases for tenants cannot be justified in SRO buildings that are not fully occupied by permanent rent-stabilized tenants or where the building's income is dependent primarily on sources other than its rent rolls. Many SRO buildings earn the vast majority of their income from sources other than renting to permanent rent-stabilized tenants. Rental income from permanent tenants pales in comparison to income from lucrative contracts with City agencies to house the homeless, illegally-operated tourist hotels and the student dormitory operations that are present in many SROs. In the instances where there are no such operations, rental income could be increased by simply returning to the market all the warehoused units that currently sit vacant."

– "SRO Owners, on the other hand, continue to exploit profitable operating strategies, such as renting to transient guest and institutional tenants that will not be affected by the rent increases set by [the] Rent Guidelines Board. Furthermore, while even a slight increase to SRO rents can have a devastating impact on their very low income tenants, the benefit conferred to SRO owners would be negligible."

– "The majority of SRO tenants live below the poverty line. They pay an unconscionable percentage of the little income they have toward rent. Since the mid-1990s, SRO tenant's rent burdens have actually increased as rent increases have far outstripped income growth. The average SRO tenant now pay around 50% of his/her income toward rent and approximately one-quarter to one-third pay in excess of 70%."

– "We respectfully request that the Rent Guidelines Board decline to approve a rent increase for SRO units. SRO owners are not dependent upon the rents paid by the dwindling permanent tenant population to cover their overhead and make a profit. However, even the smallest rent increase will have a devastating impact upon tenant and will further exacerbate the City's homelessness crisis."

– "Rents have continued to rise over the years, and have contributed to the increase in homelessness. Oftentimes, tenants must choose whether to pay rent or put food on the table.

Tenants in all categories are struggling, and it would be corrupt to bless these landlords with an annual increase. ”

Selected Oral and Written Testimony from Owners and Owner Groups:

– “In my opinion, SRO STABILIZED BUILDING OWNERS have been discriminated against for far too many years; therefore, I am asking your esteemed intervention in this serious and important matter.”

– “The RENT GUIDELINES BOARD should consider the fact that whenever there are Buildings Operations Increases Demands from CON EDISON, PETRO OIL, WATER & SEWER DEPARTMENT ETC., including all the other NECESSARY OPERATING PERMITS which are mandated by the New York City Housing Laws and Regulations, definitely SRO OWNERS MUST COMPLY.”

– “Consequently, the ongoing practice of RENT INCREASE EXEMPTIONS BY THE RENT GUIDELINES BOARD, SRO OWNERS suffer tremendous financial hardship and emotional stress year after year.”

Selected Oral and Written Testimony from Public Officials:

– “Finally, I want to thank the Board for taking the position of maintaining a rent freeze on all SRO buildings. SRO units are home to many of the city’s most vulnerable low-income tenants who cannot bear any rent increases. The Board’s decision will help protect the diminishing supply of SRO housing.”

MATERIAL CONSIDERED BY THE BOARD

In addition to oral and written testimony presented at its public hearing, the Board’s decision is based upon material gathered from the *2015 Price Index of Operating Costs*, prepared by the staff of the Rent Guidelines Board, reports and testimony submitted by owner and tenant groups relating to the hotel sector, and reports submitted by public agencies. The Board heard and received written testimony from invited guest speakers on April 23, 2015. Guest speakers representing hotel tenants included Dan Evans, from the Goddard-Riverside SRO Law Project, Brian Sullivan from the SRO Law Project at MFY Legal Services, and Larry Wood from the Goddard Riverside Law Project and Family Council. There were no guest speakers representing hotel landlords at this meeting.

FINDINGS OF THE RENT GUIDELINES BOARD

Rent Guidelines Board Research

The Rent Guidelines Board based its determination on its consideration of the oral and written testimony noted above, as well as upon its consideration of statistical information prepared by the RGB staff set forth in these findings and the following reports:

1. *2015 Mortgage Survey Report*, March 2015 (An evaluation of recent underwriting practices, financial availability and terms, and lending criteria);

2. *2015 Income and Affordability Study,* April 2015 (Includes employment trends, housing court actions, changes in eligibility requirements and public benefit levels in New York City);

3. *2015 Price Index of Operating Costs,* April 2015 (Measures the price change for a market basket of goods and services which are used in the operation and maintenance of stabilized hotels);

4. *2015 Housing Supply Report*, May 2015 (Includes information on the conversion of Hotels to luxury apartments and transient use, new housing construction measured by certificates of occupancy in new buildings and units authorized by new building permits, tax abatement and exemption programs, and cooperative and condominium conversion and construction activities in New York City); and,

5. *Changes to the Rent Stabilized Housing Stock in NYC in 2014,* May 2015 (A report quantifying all the events that lead to additions to and subtractions from the rent stabilized housing stock).

The five reports listed above may be found in their entirety on the RGB's website, www.nycrgb.org, and are also available at the RGB offices, 51 Chambers St., Suite 202, New York, NY upon request.

Price Index of Operating Costs for Rent Stabilized Hotel Units

The Hotel Price Index includes separate indices for each of three categories of rent stabilized hotels (due to their dissimilar operating cost profiles) and a general index for all stabilized Hotels. The three categories of hotels are: 1) "traditional" hotels — a multiple dwelling which has amenities such as a front desk, maid or linen services; 2) Rooming Houses — a multiple dwelling other than a hotel with thirty or fewer sleeping rooms; and 3) single room occupancy hotels (SROs) — a multiple dwelling in which one or two persons reside separately and independently of other occupants in a single room.

The Price Index for all stabilized Hotels declined 0.2% this year, a 6.6 percentage point drop from the 6.4% rise in 2014. It is important to note that the Hotel PIOC was not re-weighted using the RPIE data. However, in order to maintain symmetry between indices, the expense items were aligned to the seven components now used in the Apartments PIOC. The realignment of the hotel expenditure items had no impact on the change in the overall PIOC, and would have still been -0.2% if the old components were used. As a result, the 2015 Hotel PIOC can be compared to previous price indices.

This year, the Hotel Fuel component declined 19.9%, due to significant declines in the cost of fuel oil and natural gas costs used for heating hotel buildings in NYC. The Fuel component accounts for nearly a quarter of the entire Hotel Index. The remaining six components witnessed cost increases, with Taxes having the highest rise of 8.7%, followed by Insurance at 7.2%. More moderate increases were seen in Labor Costs (4.2%), Maintenance (3.1%), Administrative Costs (2.9%) and Utilities (1.2%). See the table on the next page for changes in costs and prices for all rent stabilized hotels from 2014-2015.

Among the different categories of Hotels, the index for “traditional” hotels increased 3.2%, while Rooming Houses and SROs witnessed declines in costs of 1.2% and 3.9%, respectively.

Percent Change in the Components of the Price Index of Operating Costs
March 2014 to March 2015, By Hotel Type and All Hotels

Item Description	Hotel	RH	SRO	All Hotels
TAXES	11.9%	4.7%	6.2%	8.7%
LABOR COSTS	4.5%	4.1%	4.1%	4.2%
FUEL	-19.0%	-19.4%	-23.1%	-19.9%
UTILITIES	1.5%	0.9%	1.1%	1.2%
MAINTENANCE	3.1%	2.7%	3.1%	3.1%
ADMINISTRATIVE COSTS	2.7%	3.4%	3.4%	2.9%
INSURANCE COSTS	7.2%	7.2%	7.2%	7.2%
ALL ITEMS	**3.2%**	**-1.2%**	**-3.9%**	**-0.2%**

Source: *2015 Price Index of Operating Costs*

Changes in Housing Affordability

Preliminary results from the 2014 Housing and Vacancy Survey were released in February of 2015, and showed that the vacancy rate for New York City is 3.45%. Approximately 47% of renter households in NYC are rent stabilized, with a vacancy rate of 2.12%. The survey also shows that the median household income in 2013 was $40,600 for rent stabilized tenants, versus $41,500 for all renters. The median gross rent for rent stabilized tenants was also lower than that of all renters, at $1,300 versus $1,325 for all renters. And rent stabilized tenants saw a median gross rent-to-income ratio of 36.4% in 2014, compared to 33.8% for all renters.[2]

Looking at New York City’s economy during 2014, it showed many strengths as compared with the preceding year. Positive indicators include growing employment levels, which rose for the fifth consecutive year, increasing 3.0% in 2014.[3] The unemployment rate also fell, declining by 1.6 percentage points, to 7.2%.[4] Gross City Product (GCP) also increased for the fifth consecutive year, rising in real terms by 3.1% in 2014.[5] In addition, inflation-adjusted wages rose by 2.1% during the most recent 12-month period (the fourth quarter of 2013 through the third quarter of 2014)[6], and inflation slowed slightly.[7] The number of non-payment filings in

2 Selected Initial Findings of the 2014 New York City Housing and Vacancy Survey, NYC Dept. of Housing Preservation and Development, February 9, 2015.
3 NYS Dept. of Labor; http://www.labor.state.ny.us; Data accessed March 2015. Data is revised annually and may not match data reported in prior years.
4 NYS Dept. of Labor; http://www.labor.state.ny.us; Data accessed March 2015. Data is revised annually and may not match data reported in prior years.
5 Data from the NYC Comptroller’s Office as of March, 2015. GCP figures are adjusted annually by the New York City Comptroller’s Office. The figures in this report are the latest available estimate from that office, based on inflation adjusted 2009 chained dollars.
6 NYS Dept. of Labor; http://www.labor.state.ny.us; Data accessed March 2015. Data is revised annually and may not match data reported in prior years.
7 Bureau of Labor Statistics; http://www.bls.gov; Data accessed March, 2015.

Housing Court fell by 3.4%,[8] while evictions fell by 6.9%.[9] And public assistance caseloads fell for the first time since 2008, by 3.9%,[10] while Supplemental Nutrition Assistance Program (SNAP) caseloads fell for the first time since 2002, by 5.6%.[11]

Negative indicators include a 4.0% increase in the number of non- payment cases "calendared" in housing court,[12] as well as the sixth consecutive year of increase in homeless levels, which rose to an average of more than 54,000 persons a night, an increase of 9.5% over 2013 levels.[13]

The most recent numbers, from the fourth quarter of 2014 (as compared to the fourth quarter of 2013), show that homeless levels were up 10.8%, cash assistance levels were up 0.7%, and the number of calendared cases in Housing Court were up 2.7%.1 However, most indicators were positive, with employment levels up 2.6%, the unemployment rate down 1.9 percentage points, non-payment housing court filings down 11.3%, and SNAP recipients down 5.6%. Fourth quarter GCP also rose, by 2.6% in real terms, and inflation was lower than that of the last quarter of 2013, rising by 0.8%, as compared to 1.3%.

Consumer Price Index

The Board reviewed the Consumer Price Index. The table that follows shows the percentage change for the NY-Northeastern NJ Metropolitan area since 2007.

Percentage Changes in the Consumer Price Index
for the New York City - Northeastern New Jersey Metropolitan Area, 2007-2015
(For "All Urban Consumers")

	2007	2008	2009	2010	2011	2012	2013	2014	2015
1st Quarter Avg.[14]	2.9%	3.7%	1.3%	2.1%	2.0%	2.7%	2.1%	1.4%	-0.2%
Yearly Avg.	2.8%	3.9%	0.4%	1.7%	2.8%	2.0%	1.7%	1.3%	-

Source: U.S. Bureau of Labor Statistics.

8 Civil Court of the City of New York data.
9 NYC Department of Investigation, Bureau of Auditors data.
10 New York City Human Resources Administration. HRA Charts (Cash Assistance Recipients): http://www.nyc.gov/html/hra/html/facts/charts.shtml
11 New York City Human Resources Administration. HRA Charts (SNAP Recipients): http://www.nyc.gov/html/hra/html/facts/charts.shtml
12 Civil Court of the City of New York data.
13 Data is a mix from the Policy & Planning Office of DHS, reports generated pursuant to Local Law 37 of 2011, and monthly Citywide Performance Reporting reports. Note that the NYC Department of Housing Preservation and Development, the NYC Department of Youth and Community Development, and the NYC Human Resources Administration also operate emergency shelters, which house approximately 5,000 persons per night.
14 1st Quarter Average refers to the change of the CPI average of the first three months of one year to the average of the first three months of the following year.

Effective Rates of Interest

The Board took into account current mortgage interest rates and the availability of financing and refinancing. It reviewed the staff's *2015 Mortgage Survey Report* of lending institutions. The table below gives the reported rate and points for the past ten years as reported by the *Mortgage Survey*.

2015 Mortgage Survey[15] Average Interest Rates and Points for New and Refinanced Permanent Mortgage Loans 2005-2014										
New Financing of Permanent Mortgage Loans, Interest Rate and Points										
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Avg. Rates	6.3%	6.3%	5.8%	6.5%	6.3%	5.8%	4.6%	4.4%	4.9%	4.3%
Avg. Points	0.44	0.61	0.47	0.62	0.79	0.61	0.63	0.59	0.54	0.70
Refinancing of Permanent Mortgage Loans, Interest Rate and Points										
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Avg. Rates	6.3%	6.2%	5.8%	6.5%	6.3%	5.7%	4.7%	4.4%	4.9%	--*
Avg. Points	0.44	0.61	0.44	0.62	0.83	0.61	0.63	0.40	0.50	--*

Source: 2006–2015 *Annual Mortgage Surveys*, RGB.
* Questions specific to refinancing are no longer asked on the survey.

Hotel Conversion

Conversion of single room occupancy (SRO) buildings also continued over the past year. SRO owners may convert SRO housing to other uses after obtaining a "Certificate of No Harassment" (CONH) from HPD. Following two consecutive years of increase, approved CONH applications fell, down 16.3% from 129 CONH in 2013 to 108 in 2014.[16]

Efforts are also underway to ensure that SROs are used for permanent housing rather than as transient hotels. As of May 1, 2011, laws were newly passed strengthening the City's ability to crack down on housing being used illegally for transient occupancy. Transient occupancy is now clearly defined as stays of less than 30 days, and between May of 2011 and April of 2012 1,820 violations (ranging from $800 to $2,000) were issued to illegal hotel operators (including private apartments, hostels, and SROs).[17] More than 4,400 violations have been issued since (including 1,076 between May 1, 2014 and April 30, 2015),[18] and in late 2012, the City Council strengthened this law even further, increasing fines to up to $25,000 for repeat offenders.[19]

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15 Institutions were asked to provide information on their "typical" loan to rent stabilized buildings. Data for each variable in any particular year and from year to year may be based upon responses from a different number of institutions.
16 NYC Department of Housing Preservation and Development.
17 Mayor Bloomberg Announces Results of City's Efforts to Curb Dangerous Illegal Hotels in New York City After State Legislation Enhances Enforcement Abilities." Mayor's Office Press Release 157-12. April 27, 2012.
18 Office of the Criminal Justice Coordinator, Mayor's Office of Special Enforcement. Inclusive of data through April 30, 2015.
19 "Illegal Hotel Fines Could Skyrocket," The Real Deal. September 12, 2012.

In an effort to stop illegal hotel rentals, the NYS Attorney General (AG), at the end of May, 2014, announced a data sharing agreement with Airbnb, a company who facilitates short-term rentals in private residences. Airbnb agreed to provide the AG's office with anonymous information about their "host's" rental activities and if the AG can identify illegal activity within one year from receipt of the data, Airbnb will provide the identity of the hosts.[20]

The AG's office used this data to publish a report in October of 2014 detailing Airbnb rental activity. In part, the report found that of the more than 35,000 listing analyzed, up to 72% were illegal. The report also found that a disproportionate number of units were being rented out by commercial users, as opposed to private homeowners or renters. While 94% of Airbnb hosts offered at most two unique units during the study period, the other 6% of hosts offered hundreds of unique units for rent, comprising 36% of all bookings and 37% of all revenue. The AG's office also found that at least 200 of these units were being used as illegal hostels, and that 4,600 units were being booked for stays of three months a year or more (including 2,000 of these that were rented for at least six months of the year). Most rentals were found to be in Manhattan and Brooklyn, with only 3% of the total revenue made by hosts emanating from rentals in Queens, Staten Island, or the Bronx.[21]

OTHER RELEVANT INFORMATION

On May 22, 2015, staff released a memo to the Board analyzing hotel data contained in the NYS Division of Housing and Community Renewal's 2014 apartment and building registration databases. Below is the memo in its entirety.

This memo is an update to staff memos released June 4, 2007, June 4, 2009, June 12, 2012, and June 4, 2013, which analyzed hotel registration data filed with the NYS Division of Housing and Community Renewal (DHCR) in 2005, 2008, 2011, and 2012, respectively. Staff members recently analyzed the 2014 DHCR registration database for data related to hotels, SROs, and rooming houses (hereafter referred to only as "hotels").

In 2014, 529 buildings identified by owners as hotels registered units with DHCR, eight more than in 2012.[22] Within these 529 buildings, 14,554 individual apartment registrations were filed (1,709 less than in 2012). Owners identified a total of 9,080 of the registered units as being "rent stabilized" (1,381 less than in 2012) and the balance (5,474 units) were identified as being either "permanently exempt," "temporarily exempt," or "vacant." Of these 529 buildings, 52 (9.8% of the total) consisted entirely of exempt and/or vacant units. In addition, 214 buildings (40.5% of the total buildings) contain less than 85% permanently stabilized units. These 214 buildings contain 1,662 rent stabilized units, 18.3% of the total stabilized units.

Building owners/managers were asked to identify which of their units were temporarily or permanently exempt from rent stabilization laws. In 2014, 112 units were reported as being permanently exempt (0.8% of the total number of registered hotel units). Among permanently exempt units, 59 (52.6% of these units) were reported as being deregulated due to High Rent/Vacancy or High Rent/High Income Decontrol, with the rest reported as being deregulated

20 "Airbnb Will Hand Over Host Data to New York," NY Times, May 21, 2014.

21 "Airbnb in the City," NYC Attorney General, October 2014 and press release, "A.G. Schneiderman Releases Report Documenting Widespread Illegality Across Airbnb's NYC Listings; Site Dominated by Commercial Users," October 16, 2014.

22 All data in this memo is based on owner-reported information as reported to DHCR in their 2014 registration database.

due to substantial rehabilitation and a few other isolated reasons. There were also 3,772 units reported as temporarily exempt (25.9% of the total number of registered hotel units). The most commonly reported reason for being temporarily exempt is “Hotel/SRO (Transient)” status, as was the classification given to 2,533 (67.2%) of the temporarily exempt units. Less common was “Not Prime Residence” (837 units, or 22.5%, a sharp increase from 6.5% in 2012) and “Owner Occupancy/Employee,” “Other,” and “Commercial/Professional.” In general, units that are temporarily exempt are either rented at what the market will bear, for as little as one night, or rented to government agencies, not-for-profit organizations, or universities as temporary housing. In addition, 1,590 units (10.9% of total units) were registered with DHCR as “Vacant.”

The analysis starts by looking at the reported legal rents of those units identified as “rent stabilized” by building owners. The legal rents are the maximum amount that a landlord is able to charge to tenants (or government agencies subsidizing tenants), but do not necessarily reflect what a tenant is actually paying. Owners can choose to charge tenants a lower rent than legally allowed (known as a “preferential rent”) and owners are also asked to provide DHCR with data for subsidized tenants, whose “actual” rents are the rents actually paid out of pocket by tenants, with the balance being made up by various government agencies and programs. As noted in Footnote #22, all data is owner-reported and cannot be verified for accuracy.

See the tables below for detailed information on legal, preferential, and actual rents paid by rent stabilized hotel tenants.

Table 1 shows the number of rent stabilized units and buildings that registered legal rents with DHCR in 2014. It also provides the median and mean legal rents for these units, by borough, and Citywide. These rents reflect the maximum amount that owners could charge for their units, as of April 2014.

Table 1: 2014 Median and Mean “Legal” Rents for Units Identified as Rent Stabilized (excludes exempt and vacant units)

Borough	*# of Stabilized Units*	*# of Stabilized Buildings*	***Median** Legal Rent*	***Mean** Legal Rent*
Bronx	859	52	$1,109	$1,135
Brooklyn	1,393	132	$1,161	$1,153
Manhattan[23]	5,881	225	$1,037	$1,281
Queens	865	63	$1,250	$1,312
Staten Island	82	5	$796	$847
Citywide	**9,080**	**477**	**$1,106**	**$1,246**

Source: 2014 DHCR Building and Apartment Registration filings

23 In the 2013 version of this memo, Manhattan figures included a hotel in Manhattan with close to 200 rent stabilized units, almost all with legal rents in excess of $4,000 (which skewed the median and mean legal rents upwards). An endnote (Endnote #3 of the June 4, 2013 memo) was included in that memo explaining that this particular hotel had not registered units in the prior year, so data should be compared between the two years with caution. This particular hotel registered no hotel units in 2014. This may be the case for other buildings as well, but data was not analyzed with regards to this.

Table 2 illustrates the median and mean "preferential" rents for the over one-quarter (29.0%) of *rent stabilized* units that reported charging one. Also shown is the percentage difference from the median and mean legal rents of *just those units with reported preferential rents*. The median Citywide *legal* rent for these units is $1,386 and the mean *legal* rent is $1,545.

Table 2: 2014 Median and Mean "Preferential" [24] Rents for Units Identified as Rent Stabilized (excludes exempt and vacant units)*

Borough	*# of Stabilized Units*	***Median***		***Mean***	
		Preferential Rent	*% Difference from Legal Rent***	*Preferential Rent*	*% Difference from Legal Rent***
Bronx	276	$1,004	-28%	$942	-33%
Brooklyn	616	$1,183	-12%	$1,048	-25%
Manhattan	1,549	$872	-37%	$772	-52%
Queens	184	$1,191	-31%	$1,248	-30%
Staten Island	8	$623	-14%	$726	-26%
Citywide	**2,633**	**$906**	**-35%**	**$888**	**-43%**

Source: 2014 DHCR Building and Apartment Registration filings
*Only for those units reporting a preferential rent.
**Refers to the legal rents of just those units that reported preferential rents.

Table 3 shows the median and mean "actual" rents paid by a reported 33.2% of *rent stabilized* hotel tenants. These are the rents that are paid by tenants out of pocket, with the balance being paid by government programs such as Section 8, Shelter Plus or SCRIE. Also shown is the percentage difference from the median and mean legal rents of *just those units with reported actual rents*. Theoretically, the owners of the 3,018 units reporting actual rents can receive the difference between the actual and legal rents from government programs, and in fact, 70% of these units do not report any "preferential" rents, implying that in most cases owners do receive the full legal rent for these units. The median Citywide *legal* rent for these units is $1,240 and the mean *legal* rent is $1,507. Not reported here are detailed statistics for the 892 units that report both actual and preferential rents (which would indicate that the owners of these units *do not* receive the full legal rent). The Citywide median *preferential* rent for these 892 units is $962 and the mean *preferential* rent is $1,005.

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24 Upon a close examination of the DHCR apartment registration file, 180 units in three buildings (two in Brooklyn, and one in Queens) were found to have erroneously registered all the "preferential" rents in their buildings as "actual" rents. In these 180 cases, the "actual" rent that they registered was either $1,191, or $1,183 (which were the HUD Fair Market Rent levels for studio apartments in FY 2012 and 2014, respectively). These building owners identified their tenants as receiving subsidies from a variety of government programs, including principally Shelter Plus and Section 8. By knowing that these tenants were part of government subsidy programs, we can infer that they actually paid significantly less than the HUD Fair Market Rent a month (although the owner did receive this amount through a combination of payments from the tenant and the government). As such, the records of these 180 units were altered to make the relevant HUD FMR the "preferential" rent, while the "actual" rent field was modified to be blank, as we do not know the true out-of-pocket rents for these tenants. Absent these modifications, the means and medians reported in Tables 2-4 would be somewhat different. Note that the balance of units in the DHCR registration files may or may not have been registered correctly. DHCR registration files are submitted by owners, and staff cannot verify the accuracy of every record. For the purposes of this memo, we are assuming that all other registrations were accurate.

Table 3: 2014 Median and Mean "Actual" [25] Rents for Units Identified as Rent Stabilized (excludes exempt and vacant units)*

Borough	*# of Stabilized Units**	***Median****		***Mean****	
		Actual Rent Paid	*Legal Rent***	*Actual Rent Paid*	*Legal Rent***
Bronx	379	$233	-83%	$377	-74%
Brooklyn	304	$294	-72%	$443	-60%
Manhattan	2,224	$235	-80%	$419	-73%
Queens	84	$594	-59%	$730	-51%
Staten Island	27	$229	-73%	$239	-72%
Citywide	**3,018**	**$239**	**-81%**	**$424**	**-72%**

Source: 2014 DHCR Building and Apartment Registration filings
* Excludes units where the "actual" rent reported is equal to, or more than, the reported "legal" rent, and only includes those units reporting an "actual" rent.
**Refers to the legal rents of just those units that reported actual rents.

To show rents that landlords are actually receiving for rent stabilized hotel units, Table 4 shows median and mean "rent received," which uses a combination of preferential and legal rents to identify the rent actually being collected. For the purposes of this table, "rent received" is defined as the legal rent, unless a preferential rent is registered, in which case the preferential rent is used.

Table 4: 2014 Median and Mean "Rent Received" [26] for Units Identified as Rent Stabilized (excludes exempt and vacant units)

Borough	*# of Stabilized Units*	***Median** "Rent Received"**	***Mean** "Rent Received"**
Bronx	859	$943	$987
Brooklyn	1,393	$1,050	$1,026
Manhattan	5,881	$850	$1,061
Queens	865	$1,238	$1,248
Staten Island	82	$796	$821
Citywide	**9,080**	**$894**	**$1,064**

Source: 2014 DHCR Building and Apartment Registration filings
*"Rent Received" refers to the preferential rent (if one is provided), or the legal rent (if a preferential rent is not provided)

An analysis was also done on a smaller sample of units that could be matched between the 2012 and 2014 DHCR registration databases. Of the 9,080 rent stabilized units in the 2014 registration database, 6,093 (67%) could be matched with 2012 data. For these units, the median and mean legal, preferential, actual, and "rent received" rents are reported in Table 5a, 5b, 5c, and 5d, for both 2012 and 2014. Due to the small number of units in some of the categories, interpret with caution.

[25] See footnote #24.
[26] See footnote #24.

Table 5a: Longitudinal Sample of 2012 and 2014 Median and Mean "Legal" Rents for Units Identified as Rent Stabilized (excludes exempt and vacant units)

Borough	***# of Stabilized Units***		***Median Legal Rent***		***Mean Legal Rent***	
	2012	*2014*	*2012*	*2014*	*2012*	*2014*
Bronx	652	652	$1,080	$1,161	$1,077	$1,147
Brooklyn	582	582	$935	$1,053	$1,031	$1,096
Manhattan	4,289	4,289	$962	$1,105	$1,308	$1,391
Queens	508	508	$1,250	$1,323	$1,241	$1,333
Staten Island	62	62	$808	$866	$833	$917
Citywide	**6,093**	**6,093**	**$1,015**	**$1,127**	**$1,247**	**$1,327**

Source: 2012 and 2014 DHCR Building and Apartment Registration filings

Table 5b: Longitudinal Sample of 2012 and 2014 Median and Mean "Preferential" Rents[27] for Units Identified as Rent Stabilized (excludes exempt and vacant units)

Borough	*# of Stabilized Units*		***Median** Preferential Rent*		***Mean** Preferential Rent*	
	2012	*2014*	*2012*	*2014*	*2012*	*2014*
Bronx	276	247	$988	$1,150	$929	$945
Brooklyn	251	268	$1,100	$1,073	$963	$944
Manhattan	1,181	1,259	$800	$875	$831	$771
Queens	108	120	$1,156	$1,191	$1,200	$1,245
Staten Island*	--	--	--	--	--	--
Citywide[28]	**1,818**	**1,902**	**$866**	**$906**	**$886**	**$848**

Source: 2012 and 2014 DHCR Building and Apartment Registration filings
*Too few records

27 See footnote #24.

28 Because some units did not report "preferential" rents in both 2012 and 2014, the median and mean rents presented are based on different sample sizes. For the 1,452 units Citywide that reported a "preferential" rent in both 2012 and 2014, the median "preferential" rent in 2012 was $896 and was $893 in 2014. The mean "preferential" rent for these units in 2012 was $907, and was $848 in 2014.

Table 5c: Longitudinal Sample of 2012 and 2014 Median and Mean "Actual" Rents[29] for Units Identified as Rent Stabilized (excludes exempt and vacant units)

Borough	*# of Stabilized Units*		***Median** Actual Rent*		***Mean** Actual Rent*	
	2012	*2014*	*2012*	*2014*	*2012*	*2014*
Bronx	204	244	$232	$235	$372	$364
Brooklyn	101	112	$227	$235	$496	$419
Manhattan	1,920	2,088	$250	$237	$465	$436
Queens	67	69	$557	$557	$631	$684
Staten Island*	--	--	--	--	--	--
Citywide[30]	**2,295**	**2,541**	**$250**	**$239**	**$463**	**$433**

Source: 2012 and 2014 DHCR Building and Apartment Registration filings
*Too few records

Table 5d: Longitudinal Sample of 2012 and 2014 Median and Mean "Rent Received" Rents[31] for Units Identified as Rent Stabilized (excludes exempt and vacant units)

Borough	*# of Stabilized Units*		***Median** "Rent Received"**		***Mean** "Rent Received"**	
	2012	*2014*	*2012*	*2014*	*2012*	*2014*
Bronx	652	652	$843	$937	$827	$967
Brooklyn	582	582	$900	$952	$925	$946
Manhattan	4,289	4,289	$875	$872	$1,133	$1,130
Queens	508	508	$1,166	$1,191	$1,149	$1,221
Staten Island*	62	62	$808	$866	$815	$883
Citywide	**6,093**	**6,093**	**$888**	**$910**	**$1,078**	**$1,100**

Source: 2012 and 2014 DHCR Building and Apartment Registration filings
*"Rent Received" refers to the preferential rent (if one is provided), or the legal rent (if a preferential rent is not provided)

29 See footnote #24.

30 Because some units did not report "actual" rents in both 2012 and 2014, the median and mean rents presented are based on different sample sizes. For the 2,092 units Citywide that reported an "actual" rent in both 2012 and 2014, the median "actual" rent in 2012 was $237 and was $239 in 2014. The mean "actual" rent for these units in 2012 was $444, and was $453 in 2014.

31 See footnote #24.

The NYS Division of Housing and Community Renewal released a memo to the Board dated June 2, 2015 in which they outline information from their registration database relating to Hotels/SROs/Rooming Houses. The following is an excerpt from that memo (Pages 3-4):

11. What is the total number of SRO/Hotel units registered with the DHCR in 2014? How many of these units are rent stabilized? How many are temporarily and permanently exempt? How many are registered as transient? How many as vacant?

Rent Stabilized Units	**12,810**
Vacant Units	**1,973**
Temporary Exempts Units	**3,889**
***of these 2,735 are Transient Units**	
Permanent Exempt Units	**115**
Total Number of Units	**18,787**

12. What is the total number of SRO/Hotel units registered with the DHCR in each of the following years: 2009, 2010, 2011, 2012 and 2013?

- **In 2009 the total number of units registered was 22,250**
- **In 2010 the total number of units registered was 22,587**
- **In 2011 the total number of units registered was 22,254**
- **In 2012 the total number of units registered was 21,473**
- **In 2013 the total number of units registered was 17,792**

13. What is the average and median rent for rent stabilized SRO/Hotel units in 2014?

- **The average rent stabilized rent in buildings due to SRO/Hotel is $2,471; the median rent is $1,316.**

14. When a hotel tenant files an overcharge complaint, does DHCR look at the number of units rented to permanent tenants per the RGB Order and how does DHCR calculate the number of units rented to permanent stabilized tenants?

- **Yes, where applicable. This requirement is not in every RGB Hotel Order. The onus is on the owner to prove the status of the subject units. A "permanent tenant" is defined in Fact Sheet #42 (Hotels, SROs and Rooming Houses) as an individual or his or her family member residing with such individual, who: (1) has continuously resided in the same building as a principal residence for a period of at least six months; or (2) who requests a lease of six months or more, which the owner must provide within 15 days; or (3) who is in occupancy pursuant to a lease of six months or more even if actual occupancy is less than six months.**

VOTE

The vote of the Rent Guidelines Board on the adopted motion pertaining to the provisions of Order Number 45 was as follows:

	Yes	No	Abstentions
Guidelines for Hotels	**7**	**-**	**2**

Dated: June 30, 2015
Filed with the City Clerk: July 1, 2015

Rachel D. Godsil
Chair
NYC Rent Guidelines Board

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Written submissions by tenants, tenant organizations, owners, and owner organizations.

Appendix O

Rent Stabilization Law of 1969

§ 26-513 Application for adjustment of initial rent

a. The tenant or owner of a housing accommodation made subject to this law by the emergency tenant protection act of nineteen seventy-four[172] may, within sixty days of the local effective date of this section or the commencement of the first tenancy thereafter. Whichever is later, file with the commissioner an application for adjustment of the initial legal regulated rent for such housing accommodation. The commissioner may adjust such initial legal regulated rent upon a finding that the presence of unique or peculiar circumstances materially affecting the initial legal regulated rent has resulted in a rent which is substantially different from the rents generally prevailing in the same area for substantially similar housing accommodations.

b. 1. The tenant of a housing accommodation that was regulated pursuant to the city rent and rehabilitation law[173] or this law prior to July first, nineteen hundred seventy-one and that became vacant on or after January first, nineteen hundred seventy-four may file with the commissioner within ninety days after notice has been received pursuant to subdivision d of this section, an application for adjustment of the initial legal regulated rent for such housing accommodation. Such tenant need only allege that such-rent is in excess of the fair market rent and shall present such facts which, to the best of his or her information and belief, support such allegation. The rent guidelines board shall promulgate as soon as practicable after the local effective date of the emergency tenant protection act of nineteen seventy-four guidelines for the determination of fair market rents for housing accommodations as to which any application may be made pursuant to this subdivision. In rendering a determination on an application filed pursuant to this subdivision b the commissioner shall be guided by such guidelines and by the rents generally prevailing in the same area for substantially similar housing accommodations. Where the commissioner has determined that the rent charged is in excess of the fair market rent he or she shall, in addition to NY other penalties or remedies permitted by law, order a refund of any excess paid since January first, nineteen hundred seventy-four or the date of the commencement of the tenancy, whichever is later. Such refund shall be made by the landlord in cash or a credit against future rents over a period not in excess of six months.

2. The provisions of paragraph mph one of this subdivision shall not apply to a tenant of a housing accommodation for which the initial legal regulated rent is no greater than the maximum rent that would have been in effect under this law on December thirty-first, nineteen hundred seventy-three, or for the period commencing January first, nineteen hundred seventy-four and ending December thirty-first, nineteen hundred seventy-five as calculated pursuant to the city rent and rehabilitation law (if no such maximum rent has been calculated for a particular unit for the period commencing January first, nineteen hundred seventy-four and ending December thirty-first. nineteen hundred seventy-five, he

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[172] Section 8621 et seq., post.

[173] Section 26-01 et seq., ante.

division of housing and community renewal shall calculate such a rent), as the case may be, if such apartment had not become vacant on or after January first, nineteen hundred seventy-four, plus the amount of any adjustment which would have been authorized under this law for renewal leases or other rental agreement, whether or not such housing accommodation was subject to this law, for leases or other rental agreement commencing on or after July first, nineteen hundred seventy-four.

c. Upon receipt of any application filed pursuant to this section, the commissioner shall notify the owner or tenant as the case may be and provide a copy to him or her of such application. Such owner or tenant shall be afforded a reasonable opportunity to respond to the application. A hearing may be held upon the request of either patty, or the commission may hold a hearing on his or her own motion. The commissioner shall issue a written opinion to both the tenant and the owner upon rendering his or her determination.

d. Within thirty days after the local effective date of the emergency tenant protection act of nineteen seventy-four the owner of housing accommodations as to which an application for adjustment of the initial legal regulated rent may be made pursuant to subdivision b of this section shall give notice in writing by certified mail to the tenant of each such housing accommodation on a form prescribed by the commissioner of the initial legal regulated rent for such housing accommodation and of such tenant-s right to file an application for adjustment of the initial legal regulated rent of such housing accommodation.

e. Notwithstanding any contrary provision in this law an application for an adjustment pursuant to this section must be filed within ninety days from the initial registration this subdivision shall not extend any other time limitations imposed by this law.

(L.1985, c. 907, § 1.)

Appendix P

Excerpts from J-51 & 421-a regulations

J 51 Regulations

Section 2.6 Rent Regulatory Requirements

(1) Rent Regulation Generally Mandatory. In order to be eligible to receive tax benefits under the Act and for at least so long as a building is receiving the benefits of the Act, except for dwelling units which are exempt from such requirement pursuant to paragraph (2) below, all dwelling units in buildings or structures converted, altered or improved shall be subject to rent regulation pursuant to:

(i) the City Rent and Rehabilitation Law (§26-401 et seq. of the Administrative Code); or
(ii) the Rent Stabilization Law of 1969 (§26-501 et seq. of the Administrative Code); or
(iii) the Private Housing Finance Law; or
(iv) any federal law providing for rent supervision or regulation by HUD or any other federal agency; or
(v) the Emergency Tenant Protection Act of 1974.

(2) (i) Exemption from Rent Regulation. Notwithstanding paragraph (1) above, dwelling units in multiple dwellings which are owned as cooperatives or condominiums and which are not regulated pursuant to any of such laws shall not be required to be subject to rent regulation.

(ii) Newly created dwelling units in a building for which a prospectus for condominium or cooperative formation has been submitted to the Attorney General at the time of application for benefits to the Office shall not be required to registered with DHCR, unless a plan of cooperative or condominium ownership has not been declared effective within fifteen (15) months of the date of the acceptance for filing of the plan of cooperative or condominium ownership with the Attorney General.

(3) Deregulation of units.

(i) With respect to a dwelling unit in any building receiving benefits under the Act,

(A) such unit shall remain subject to rent regulation until the occurrence of the first vacancy after tax benefits are no longer being received for the building at which time the unit shall be deregulated, unless the unit is otherwise subject to rent regulation; or

(B) if each lease and renewal thereof for such unit for the tenant in residence at the time of the expiration of the tax benefits has included a notice in at least twelve-point type informing such tenant that the unit shall become subject to deregulation upon the expiration of the tax benefits and stating the approximate date on which tax benefits are to expire, such dwelling unit shall be deregulated after tax benefits are no longer being received for the building, unless the unit is otherwise subject to rent regulation.

(ii) As provided in §39-03, rent regulation shall not be terminated by the waiver or revocation of tax benefits.

(iii) Rent regulation of dwelling units shall not be exempted or terminated other than as set forth in this subdivision (f) as long as benefits are in force.

(4) *Permanent residential use*. All dwelling units must be leased for permanent residential purposes for a term of not less than one year so long as tax benefits are in effect. Permanent residential use shall not include use as a hotel, dormitory, employee residence or facility, fraternity or sorority house, resort housing or any similar type of non-permanent housing. For purposes of this chapter, a "hotel" shall mean (i) any Class B multiple dwelling, as such term is defined in the Multiple Dwelling Law, (ii) any structure or part thereof containing living or sleeping accommodations which is used or intended to be used for transient occupancy, (iii) any apartment hotel or transient hotel as defined in the Zoning Resolution, or (iv) any structure or part thereof which is used to provide short term rentals or owned or leased by an entity engaged in the business of providing short term rentals. For purposes of this definition, a lease, sublease, license or any other form of rental agreement for a period of less than six months shall be deemed to be a short term rental. Notwithstanding the foregoing, (i) a structure or part thereof owned or leased by a not-for-profit corporation for the purpose of providing governmentally funded emergency housing shall not be considered a hotel for purposes of this chapter, and (ii) benefits may be pro-rated by deducting out work attributable to Class B units in a building containing both Class A and Class B units, provided that all units in a building are registered with DHCR as rent stabilized or rent controlled units, and are utilized for permanent residential use.

(5) *Escalation clauses in leases.* Except for the notice referred to in subparagraph (i)(B) above, no lease for dwelling units which are registered with DHCR shall contain escalation clauses for real estate taxes or any other provisions for increasing the rent set forth in the lease, other than permitting an increase in rent pursuant to an order of DHCR or the Rent Guidelines Board.

(6) *Partial waiver of rent adjustments attributable to major capital improvements.*

(i) As a requirement for claiming or receiving any tax abatement attributable to a major capital improvement, the owner of the property shall file with the Office, on the date any application for benefits is made, a declaration stating that in consideration of any tax abatement benefits which may be received pursuant to such application for alterations or improvements constituting a major capital improvement, such owner agrees to waive the collection of a portion of the total annual amount of any rent adjustment attributable to such major capital improvement which may be granted by DHCR pursuant to the rent stabilization code equal to one-half of the total annual amount of the tax abatement benefits which the property receives pursuant to such application with respect to such alterations or improvements. For example, an owner receiving a total rent adjustment over eighty-four months equal to $100,000 for a major capital improvement along with tax abatement of $100,000 for the same improvement would waive collection of $50,000 during such period. Such waiver shall commence on the date of the first collection of such rent adjustment, provided that, in the event that such tax abatement benefits were received prior to such first collection, the amount waived shall be increased to account for such tax abatement benefits so received. The entire amount shall be applied against the first annual rent adjustment, including any retroactive rent adjustments which maybe granted by the applicable DHCR order, unless the amount exceeds such adjustments, in which event the excess shall be carried forward. The calculation of the amount attributable to the waiver shall be against the total rent adjustment for the eighty-four-month period prior to the application of any annual percentage limitation applied by DHCR to defer collection of the total rent adjustment. In calculating rental adjustments pursuant to Rent Guidelines Board orders, the amount of the waived rent shall not be included in the base rent. Following the expiration of a tax abatement for alterations or improvements constituting a major capital improvement for which a rent adjustment has been granted by DHCR, the owner may collect the full amount of annual rent permitted pursuant to such rent adjustment. A copy of such declaration shall be filed simultaneously with DHCR. Such declaration shall be binding upon such owner and his or her successors and assigns.

(ii) The provisions of subparagraph (i) shall not apply to substantial rehabilitation of buildings vacant when alterations or improvements are commenced or to buildings rehabilitated with substantial governmental assistance.

421-a Regulations

Section 2.7 Rent Regulatory Requirements

To be eligible for partial tax exemption the land upon which the eligible project is located must meet the following letting, rental and occupancy requirements:

(1) If a building which, on December 31, 1974, contained more than twenty-five occupied dwelling units administered under the City Rent and Rehabilitation Law, the Rent Stabilization Law of nineteen hundred sixty-nine, or the Emergency Tenant Protection Act of nineteen hundred seventy-four, is displaced, or any unit therein is displaced, the new multiple dwelling will be eligible for partial tax exemption only if a Certificate of Eviction was issued for at least one dwelling unit in the displaced building. If only one unit is displaced as the result of eligible construction, the Certificate of Eviction must pertain to that displaced unit. Notwithstanding the foregoing, the sale, transfer or utilization of air rights over residential buildings which were not demolished shall not be construed as a displacement within the purview of this subdivision (g).

(2) Notwithstanding the provisions of any local law for the stabilization of rents in multiple dwellings or the Emergency Tenant Protection Act of 1974, the rents of a unit shall be fully subject to regulation under such local law or such Act, unless exempt under such local law or such act from regulation by reason of the cooperative or condominium status of the unit, for the entire period during which the property is receiving tax benefits pursuant to the Act, or for the period any such applicable local law or such Act is in effect, whichever is shorter. Thereafter, such rents shall continue to be subject to such regulation to the same extent and in the same manner as if this subdivision (g) had never applied thereto, except that for dwelling units in buildings completed, as that term is defined herein, on or after January 1, 1974, such rents shall be deregulated if:

(i) with respect to dwelling units located in multiple dwellings completed after January 1, 1974 such unit becomes vacant after the expiration of the lease for the unit in effect when such benefit period or applicable law or Act expires, provided, however, such unit shall not be deregulated if the Commissioner of the New York State Division of Housing and Community Renewal or a court of competent jurisdiction finds the unit became vacant because the owner thereof or any person acting on his or her behalf engaged in any course of conduct, including but not limited to, interruption or discontinuance of essential services which interfered with or disturbed or was intended to interfere with or disturb the comfort, repose, peace or quiet of the tenant in his use or occupancy of such unit, and that upon such finding in addition to being subject to any other penalties or remedies permitted by law, the owner of such unit shall be barred from collecting rent for such unit in excess of that charged to the tenant, if the tenant so desires, in which case the rent of such tenant shall be established as if such tenant had not vacated such unit, or compliance with such other remedy, including, but not limited to, all remedies provided for by the emergency tenant protection act of nineteen seventy-four for rent overcharge or failure to comply with any order of the Commissioner of the New York State Division of Housing and Community Renewal, as shall be determined by said Commissioner to be appropriate; provided, however, that if a tenant fails to accept any such offer of restoration of possession, such unit shall return to rent stabilization at the previously regulated rent.

ii) with respect to dwelling units located in multiple dwellings with became subject to the rent stabilization provisions of the Act on or after July 1, 1984, the lease for the unit expires after such tax benefit period expires, provided that each lease and renewal thereof for such unit for the tenant entitled to a lease at the time of such deregulation contained a notice in at least twelve (12) point type informing such tenant that the unit shall be subject to deregulation upon the expiration of such benefit period and stated the approximate date on which such benefit period was expected to expire. If each lease and renewal thereof has not contained such notice, a unit covered by such lease shall be subject to subdivision (i) above even though it became subject to the rent stabilization provisions of the Act on or after July 1, 1984. This subdivision (ii) shall not apply to any unit in any multiple dwelling which was subject to the rent stabilization provisions of the Act prior to July 1, 1984, notwithstanding any contrary provision in any lease or renewal thereof.

(3) Notwithstanding paragraph (2) above, dwelling units in multiple dwellings owned as cooperatives or condominiums which are exempt from such provisions of law shall not be required to be subject to the provisions of law set forth in that paragraph (2) during the time period specified therein. Newly created dwelling units in a building for which a prospectus for condominium or cooperative formation has been submitted to the Attorney General at the time of application for benefits to the Office, shall not be required to be registered with the New York State Division of Housing and Community Renewal, provided that an affidavit has been filed with the Office stating that the sponsor will register the building and all units as they become occupied, with the New York State Division of Housing and Community Renewal within fifteen months from the date of issuance of a Final Certificate of Eligibility if a cooperative or condominium plan has not been declared effective by that time.

(4) The offering by the owner to all tenants in rental dwelling units in the multiple dwelling, of an initial lease of at least two years; unless the dwelling unit's rent is regulated by local laws, such as §26-401 of the Administrative Code, which do not provide for the offering of leases for fixed terms. This requirement shall not preclude a shorter lease where requested by the tenant, or where a lease of at least two years is specifically prohibited by the terms of a Department of Housing and Urban Development regulatory agreement for an insured subsidized project, or where, through foreclosure, title to a building eligible for partial tax exemption pursuant to the Act is held subsequently by the Department of Housing and Urban Development.

(5) No lease for dwelling units subject to the Rent Stabilization Law or Emergency Tenant Protection Act which are registered with the New York State Division of Housing and Community Renewal shall contain escalation clauses for real estate taxes or any other provisions for increasing the rent set forth in the lease other than permitting an increase in rent pursuant to an order of the New York State Division of Housing and Community Renewal or the Rent Guidelines Board; or an increase of 2.2 percent pursuant to §6-04(b) of this chapter.

TITLE 4: DETERMINATION OF INITIAL RENT; RENT INCREASES

§6-04 Determination of Initial Rent; Rent Increases.

(a) *Determining the initial adjusted monthly rent and the comparative adjusted monthly rent for rental dwelling units.* No certification of eligibility shall be issued by the Department until the Department determines the initial adjusted monthly rent to be paid by tenants residing in rental dwelling units contained within the multiple dwelling. Except for affordable units, the initial adjusted monthly rent is determined in accordance with the provisions of paragraph (3) below.

(1) The total expenses of the multiple dwelling shall be determined by the Department in order to calculate the initial adjusted monthly rent. Total expenses shall mean the annual total of the following:

(i) An amount for the annual cost of operation and maintenance, as established pursuant to the Annual Schedule of Reasonable Costs; plus,

(ii) An amount for vacancies, contingency reserves and management fees as established pursuant to the Annual Schedule of Reasonable Costs; plus,

(iii) Projected real property taxes to be levied on the multiple dwelling and the land on which it is situated at the time of estimated initial occupancy; plus,

(iv) Fourteen percent of the total project cost, as determined pursuant to §6-05(b)(1)(i) and the Annual Schedule of Reasonable Costs, which amount will include debt service; less,

(v) The estimated annual income to be derived from any Floor Area of Commercial, Community Facilities, and Accessory Use Space in the multiple dwelling.

(2) The adjusted monthly rent per room shall be determined by the Department by dividing the total expenses as determined pursuant to paragraph (1) above by twelve (12) and then dividing that amount by the Room Count as defined in subdivision (c) of §6-01 of this chapter; i.e.,

Total Expenses 12	=	Total Monthly Expenses	Total Monthly Expenses Room Count	=	Adjusted Monthly Rent Per Room

(3) The The initial adjusted monthly rent for each dwelling unit shall be determined by the Department by multiplying the adjusted monthly rent per room to be determined pursuant to paragraph (2) above by the Room Count, as defined in subdivision (c) of §6-01 of this chapter, of each rental dwelling unit. Adjustments to the initial adjusted monthly rent per room to be determined pursuant to paragraph (2) above by the Room Count, as defined in subdivision (c) of §6-01 of this chapter, of each rental dwelling unit. Adjustments to the initial adjusted monthly rent for any dwelling unit may be allowed by the Department provided that the total of the rentals charged in the multiple dwelling do not exceed the total expenses of such multiple dwelling, as determined pursuant to paragraph (1) above; i.e.,

Adjusted Monthly Rent Per Room x Room Count Per Dwelling Unit	=	Initial Adjusted Monthly Rent for Such Dwelling Unit

(b) Rent increases.

The owner of a multiple dwelling receiving partial tax exemption may insert in each lease to be effective during the period of gradual diminution of tax exemption, as defined in §6-06(e) of this chapter, a provision for an annual rent increase over the initial adjusted monthly rental at a rate not to exceed 2.2 percent per annum on the anniversary date of the first lease for the unit provided, however, that no increase shall be permitted pursuant to this subdivision (b) unless specifically provided for in each affected lease, and provided further that no more than one such increase per unit may be charged or collected in each given year regardless of the number of lease renewals or new leases which may pertain to that unit. The initial 2.2 percent escalation and all subsequent escalations shall be based solely on the actual rental amount in effect (regardless of whether the legal regulated rent may be greater) at the commencement of the period during which the increase may be charged and shall not be compounded from year to year but rather shall remain constant based on said rent. In addition, the increase shall be independent of any other escalation authorized by the Rent Guidelines Board and shall not be considered or included when a Rent Guidelines Board increase is effected, making the latter increase effective upon the base rent, excluding the 2.2 percent escalation. The maximum increase permitted by this subdivision (b) is 19.8 percent over the actual rental amount in effect at the commencement of the period during which the increase may be charged. The maximum increase permitted by this subdivision (b) may be charged in each year following the expiration of the tax benefit period, but shall not exceed 19.8 percent, or that amount charged in the last year of the exemption period, and shall not become part of the base rent.

(c) Annual rent schedule.

Each year the owner shall make available to the Office a schedule of rents for each unit in the building.

Report on Rent Stabilized Hotels

Summary

The data in this study raises some troubling questions about the implementation of rent regulation in the hotel sector. Given the low rate of registration and the possibility that many owners may derive a small percentage of revenue from permanent tenants one might argue that the impact of the regulatory system on this vital housing resource is rapidly diminishing.

As our registration study will show, a very large proportion of hotel buildings and units which should have registered with DHCR have failed to do so. In fact, using a *very conservative* approach, we estimate that 40% of all hotel-type units which should have registered between 1984 and 1989 did not register even once. The non-registration rate for the 1987-1989 period is even higher.

The hotel I&E portion of this study indicates that "apartment" rental income represents less than half of all income for hotel-type
lings as a group. For
ls and SROs the percentage of income from apartment rental is even less - about one-third. The I&E form includes separate categories for "apartment" rental income and "other" rental income under the heading "Rental from Tenants." If owners considered the apartment rental income category to include rents from permanent tenants and "other rental income" to refer to transient tenants, the implications of the above findings would be dramatic. However, it must be said that the I&E form is not tailored to the needs of hotel owners. There is enough ambiguity in the form (and how the owners may have approached the form) to make conclusive statements about the exact percentage of income from permanent tenants difficult.

Between 1985 and 1990 nearly a third of hotel buildings became luxury hotels or motels, were converted to co-ops or condominiums, became vacant, or changed use in some other manner. The disappearance of single room occupancy hotel rooms described in USR&E's *Single Room Occupancy in New York City* continues.

Although the stabilization system does protect a dwindling number of tenants, one might ask at what cost. Landlords who follow the RGB guidelines have received very modest rent increases since 1983. It is obvious that market, institutional and regulatory forces encourage owners to leave the stabilization system. It is not clear, however, if this loss would have occurred differently in the absence of rent regulation.

Finally, it must be pointed out that 25% of the buildings in this study reported O&M to income ratios of more than 100% (vs. 10% in the apartment I&E study). Over one-third of rooming house operators reported O&M to income ratios of over 100%.

Introduction

Background

The most recent and comprehensive hotel research dates from the mid-80's. The studies of particular interest to the Board were both undertaken by USR&E: *Single Room Occupancy in New York City* and the *1985 Hotel Expenditure Study*. The primary objective of *Single Room Occupancy* was to estimate the number and type of hotel units in the city; however, a module on owner operating costs and income was also part of the study. The object of the hotel expenditure study was to provide a reliable estimate of average operating costs by expenditure category for the hotel PIOC.

The Hotel Expenditure Study was conducted in the first four months of 1985. The sample frame for the study was the Metropolitan Hotel Industry Association (METHISA) membership list. All of the 647 establishments registered with METHISA were contacted and 134 responded to the survey, including 14 hotels (44% of units), 104 rooming houses (37% of units), and 15 SROs (19% of units). USR&E used the survey responses to devise expenditure weights for the Hotel PIOC. Weights were computed for four categories: Hotels, Rooming Houses, SROs and "All."

Single Room Occupancy in New York City was commissioned by HPD to help the city devise policies to combat the loss of SROs. One major goal was simply to establish a reasonable estimate of the remaining population of SRO-type units. After a lengthy analysis of the Master Building File and visits by HPD inspectors to buildings likely to contain SRO units, HPD and USR&E determined the number of units which were extant. The percent-age breakdown of these units, excluding the "other" category, was: Hotels (42%), Rooming Houses (42%) and SROs (15%).

In another portion of the SRO study USR&E surveyed the owners of SRO-type buildings; 193 responses to the survey were received. Over 90% of the <u>units</u> represented in the owner survey were hotels or SROs while a mere 10% were rooming houses. However, a majority of BUILDING responses were from rooming houses. Usable financial information was gathered for 66 buildings. Due to the extremely small size of the Hotel and SRO samples (12 and 10 buildings respectively) the information does not appear to be reliable.

Apart from the USR&E studies, only one other major effort has been made in the last 6 years to quantify the remaining population of hotels. In preparation for the 1991 Housing and Vacancy Survey (HVS), HPD staff prepared a SRO sample frame for use by the U.S. Census Bureau. The sample frame is HPD's best estimate of the remaining universe of SRO-type units. Although the list should not be used to arrive at a numerical estimate of SROs (the HVS will do this) it may give us some idea how the distribution of units within this sector has changed in the past few years. According to HPD the 1990 breakdown (excluding "other" SROs) is as follows: Hotel (33%), Rooming House (50%) and Section 248 SRO (16%).

It is interesting to compare the breakdown of units in the 1985 SRO study and HPD's most recent effort. The total number of units is comparable but rooming houses are a substantially greater proportion of the stock in 1990 (i.e. about 50% of units) while both the number and percentage of hotel units has declined substantially. As we shall see, the decline in the number of hotel units is largely a result of hotel owners converting their buildings to luxury hotels or co-ops/condominiums.

The two hotel studies undertaken in the mid-80's suffer from a common problem - poor survey results. For instance, the Hotel Expenditure Study received only 14 responses from hotels. Yet, due to the way in which the weights for the Hotel PIOC were calculated, these 14 hotels account for MORE THAN HALF of the entire index. Only 22 SROs and hotels responded to USR&E's owner survey but these buildings contained over 90% of the units on which the per unit net operating income (NOI) figures were based. The I&E portion of the current study, which is based on a carefully chosen sample of properties, will attempt to address the problem of poor financial survey statistics.

Before we delve into the issues, a note on terminology would be useful. The RGB has used the term "hotel guidelines" to cover all hotel-type units covered by the Board's orders, including apartment hotels, SROs and rooming houses. In some years separate rent guidelines have been formulated for the various sub-categories. This paper tries to use the word "hotel-type" as a generic term to refer to all three categories. To make matters a little more confusing, HPD (and the reports commissioned by HPD) most often uses the term "SRO" or "SRO-type units" as a generic term to cover all three types of "hotels" (as defined by the RGB). Hopefully the context will be sufficient to allow the reader to decipher the appropriate meaning of all terms.

Issues

In the *1985 Price Index of Operating Costs for Hotel Stabilized Units in New York City* it was noted that

> *When buildings are sorted according to the Multiple Dwelling Law classification into three groups (Hotels, Rooming Houses, and SROs), it is apparent that their operating characteristics are quite dissimilar. Accordingly, separate price indexes have been constructed for each class of building.*

Despite the apparent effort by USR&E to emphasize the *variety* of the housing stock in the hotel sector, hotel guidelines in the 80's were shaped largely by conditions in Manhattan hotels and SROs. The guidelines largely reflected testimony of hotel tenants about poor living conditions and a presumption that hotel owners were collecting adequate rents by making units available to transient tenants. Most of the evidence presented to the Board was circumstantial, and very little of it concerned rooming houses, apart from the testimony of a few rooming house operators.

This study is an attempt to gather some quantifiable evidence to supplement the vast amount of anecdotal material the Board has received over the past few years. In particular, there are five main areas of concern:

1. Reliability of the Hotel PIOC;
2. Overall financial condition of hotel-type buildings;
3. Registration issues;
4. Housing conditions;
5. Differences between sectors of the hotel stabilized stock.

Over the past eight years the hotel PIOC has been overtaken by other considerations in the determination of hotel guidelines. With numerous and pressing research needs and limited resources, examination of the reliability of the hotel PIOC has not been a top research priority. The recent availability of the Finance Department I&E data has made it now possible to evaluate the reliability of the hotel PIOC expenditure weights.

The financial condition of hotel-type buildings is a matter of greater dispute. Although it has been assumed that many hotel owners are renting units on a "transient" basis, the relative importance of income derived from these rentals has been a matter of speculation. In addition, it has never been possible to evaluate the notion that while some owners (e.g. hotel) benefit substantially from transient income others might not (e.g. rooming house operators). This study presents up-to-date information on the O&M to income ratio for the various categories of hotels.

The registration of hotel buildings and units is an issue that is closely tied to the financial condition of owners. Owners who do not register their buildings may be more likely to rent units on a "transient" basis. Some owners may have never registered in order to evade rent regulations entirely. It is possible that others, discouraged by low rent increases in recent years, no longer register their buildings, recognizing that in the event of enforcement, the only penalty for failing to register is no rent increases.

It has proven impossible to make a direct connection between DHCR's rent registration data and the Finance Department's I&E files. Even so, this data is a good start.

Registration Study

In the 1985 SRO study (*Single Room Occupancy Housing in New York City, USR&E, 1986*) a serious attempt was made to determine the size of the SRO housing stock. After choosing a sample of buildings which were thought to contain SRO units, HPD inspectors visited each building to determine whether this was the case. Of the original sample of over 1,100 buildings, 794 were determined to contain SRO units.

The purpose of this registration study is to examine these 794 buildings in detail. More specifically, we attempt to answer the following questions:

1. How many of the buildings are part of the stabilized stock and are required to register with DHCR? How many actually did register at least once between 1984 and 1989?
2. What has become of these buildings since 1985? For instance, how many of the buildings are now vacant or converted to co-ops or condominiums?
3. Has registration been affected by the low rent guidelines of the past several years?

In order to answer the first question, the 1985 list was tailored to exclude buildings which did not contain stabilized units. The 1985 buildings did not include institutional SRO buildings (e.g. college dormitories, nurses residences), luxury hotels, vacant buildings, and residences operated by the city, state or another government entity. However, the list did contain some buildings with less than 6 units. After excluding the 22 buildings with less than 6 units, we were left with 772 buildings containing SRO-type units; these are buildings which should have registered with DHCR (Seven of these buildings had less than six units in our files but also registered with DHCR. We assume that they were required to register.)

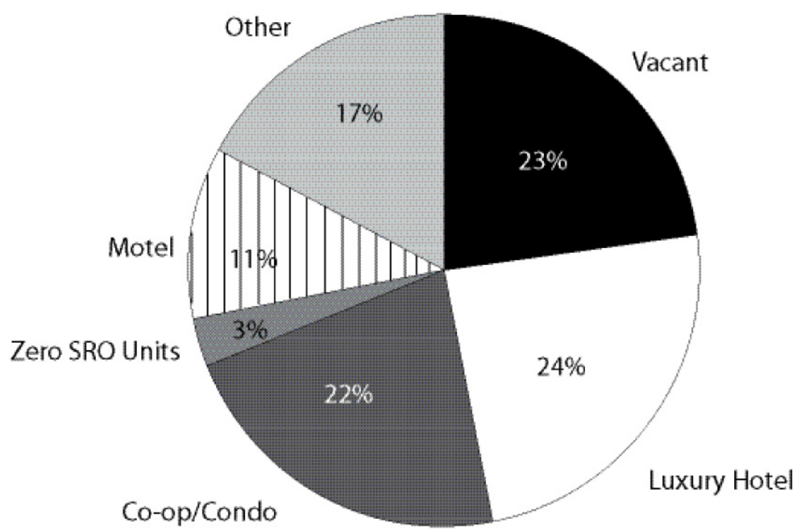
In order to develop a conservative estimate of non-registration which takes into consideration developments in the stock since 1985, two additional adjustments to the data were made. First, it was presumed that all buildings which were <u>in-rem</u> in 1991 (27 buildings) were not required to register in any year. Second, some of the buildings in the 1985 group (of 772) were excluded by HPD from their 1990 list for various reasons. It was assumed that NONE of these buildings were required to register in any year between 1984 and 1989.

Of the 772 buildings from the 1985 SRO study, 92 were excluded from HPD's 1990 sample frame. The reasons for exclusion were diverse and include the following: Vacant, dormitory, luxury hotel, co-op/condo, zero SRO units, motel, miscellaneous other reasons. The chart on page Q-5 shows the breakdown of excluded buildings by the reason for exclusion.

Nearly one-third of the hotel buildings on the 1985 list (60 buildings) were excluded by HPD in 1990. Over half of these buildings were classified as either luxury hotels or as motels in 1990; the next largest group of excluded buildings included co-ops or condos. About one-tenth of the rooming houses and SROs on the 1985 list were excluded; "vacant" and "co-op/condo" were the most frequent explanations.

In excluding buildings from the 1985 sample, HPD did

Distribution of the 92 Buildings Excluded by HPD on the 1991 HVS List



Source: NYC Department of Housing Preservation and Development.

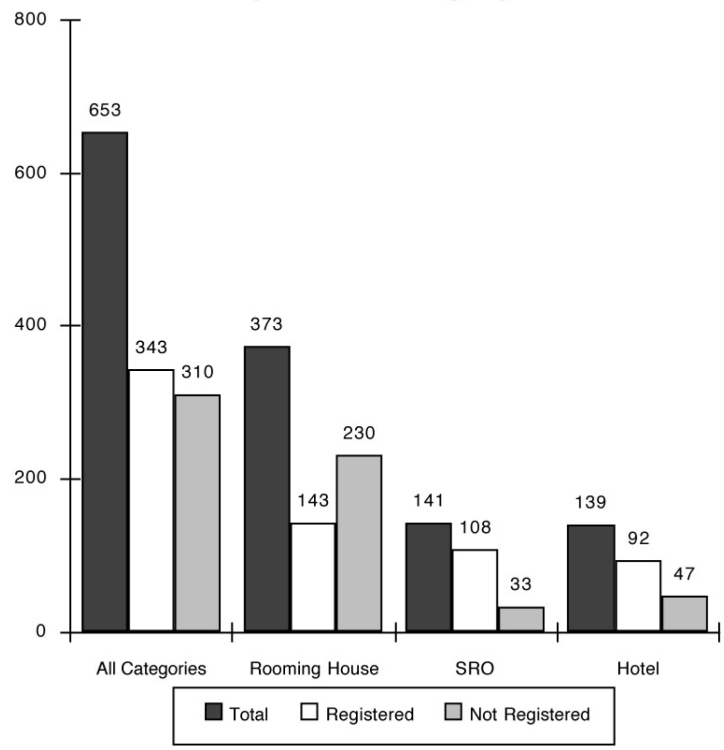
Note: The category "other" includes buildings that are dormitories, buildings with certain types of informational housing code violations, and buildings rejected in the 1985 SRO Survey.

not necessarily determine that the excluded buildings contained NO SRO-type units. HPD's primary aim was to include buildings which were SROs (although the buildings may also contain some type A housing units) and to exclude buildings which were likely to have few or no SROs. It is reasonable to assume, for instance, that some of the co-ops excluded from HPD's SRO sample frame were converted under noneviction plans and still contain SRO-type units.

The assumption that NONE of the buildings excluded by HPD were required to register is a very conservative approach. This will be considered a low bound for non-registration. Using the 653 buildings which remain (original 772 minus 27 in-rem, minus 92 excluded by HPD), we see that 47% of all buildings failed to register, including 34% of hotels, 23% of SROs and fully 62% of rooming houses.

The picture is somewhat different if we look at units registered rather than buildings. Using the conservative approach once again, 59% of rooming house units in our sample are unregistered, 29% of hotel units, and 18% of SRO units. Since the 1985 sample is not representative of the hotel stock as a whole, it has been weighted to arrive at an estimate of the total number of hotel-type units in the city which have not registered since 1984. **It appears that at least 40% of all**

Registered and Non-Registered Buildings by Hotel Category



Source: NYS Division of Housing and Community Renewal, 1985 SRO Study, and NYC Department of Housing Preservation and Development.

(potential) stabilized hotel-type units have not been registered even once since 1984.

And what of the buildings which have registered? Have they continued to register even though the rent guidelines were extremely low throughout the 80's? The chart on this page shows registration trends for the 1984 to 1989 period.

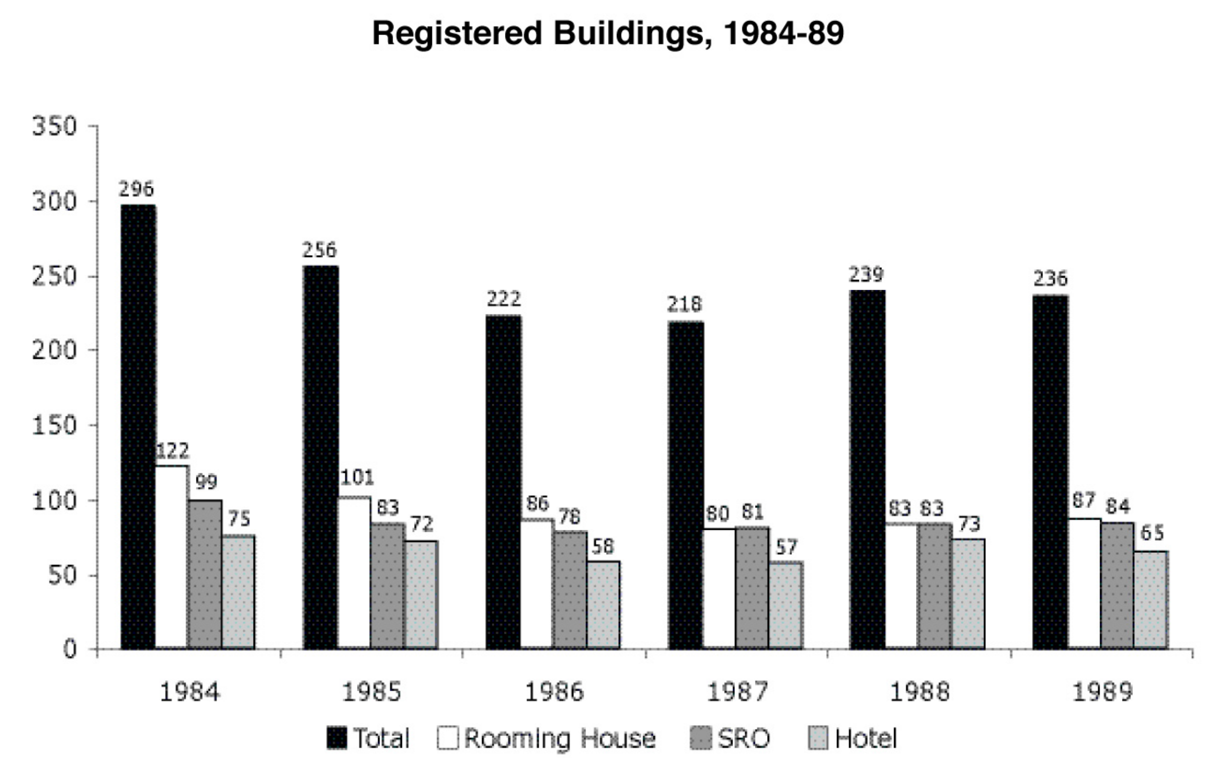
The peak year for registration was in 1984. During the next three years registration for all types of hotel-type buildings declined steadily, reaching a level of 218 buildings in 1987. During the next two years registration levels improved somewhat. Even so, the non-registration rate for buildings was 64% in 1989 using our most **conservative** assumptions and over 75% among rooming houses.

The patterns in registration rates do not directly parallel low rent allowances. If low allowances were the sole factor influencing registration rates one might have expected an uninterrupted decline in registration. Instead, registration seems to follow trends in the New York City economy (in an inverse fashion) with declining registration during the prosperous mid-80's and registration improving somewhat as the economy softened.

The correlation between the economy and registration rates could be entirely coincidental, although it does seem reasonable to assume that enhanced economic opportunities for landlords might lead to lower registration rates. Other factors which may have had a more direct impact on registration include DHCR enforcement efforts, the activities of tenant groups, and tenants' knowledge of the rent registration system.

The data does not, of course, reveal WHY non-registration rates differ for the various classes of buildings, though it does provide some hints. Building size, location, and building type all appear to be important factors in determining whether a building will register.

There are enormous differences in building size



Source: NYS Division of Housing and Community Renewal, 1985 SRO Study.

among the three categories of hotels. While rooming houses contain an average of 13 units per building, hotels have 162 units. SROs are in between with 70 units. Within each of the three groups, buildings which are registered are, on average, larger than those which have not registered. For instance, among Manhattan SROs, registered buildings average 92 units per building while non-registered buildings have only 66 units per building.

Location also seems to be very important. Manhattan is the only borough with a majority of registered buildings. The "close in" boroughs follow with substantially lower registration rates. Amazingly enough, in Queens only 3 of 74 buildings were registered. It seems as if distance from Manhattan is directly correlated with the likelihood of registration.

The RGB also gathered information on tax arrears and housing code violations for the buildings in our sample. Average arrears for rooming houses (1.26 quarters) were double the rate for SROs and hotels (.63 quarters). Rooming houses also had substantially more housing code violations per unit (1.72) than either SROs (.7) or hotels (.26). The average number of violations per building for rooming houses was half that of hotels; however, hotels are on average more than 10 times larger.

The data on arrears and violations was also tabulated for buildings which registered and buildings which did not. Average arrears are not significantly different for the two groups. This may indicate that regulated rents are not a significant factor in the financial stress experienced by some of these buildings.

Violations per unit are higher for **registered** buildings than non-registered buildings in the hotel and rooming house sectors but lower for SROs. The most serious (i.e. "C") violations follow the same pattern. High registration levels and large number of violations in certain locations and building types may reflect pressure from local advocacy and enforcement organizations such as the West and East Side SRO Law Projects. The higher violation count may relate to a greater frequency of inspections in closely monitored buildings, brought on by such organizations. Without more specific information, however, this data is largely inconclusive.

I&E Study

Sample Frame

A comprehensive sample frame for the hotel income and expense study was not readily available, therefore staff was faced with the necessity of developing one. To compile a comprehensive sample frame of stabilized hotels, RGB used USR&E's list from the 1985 SRO Study and a listing developed by HPD for the 1991 Housing and Vacancy Survey (HVS). The original sample of hotels chosen by HPD in 1985 consisted of 1138 buildings. In the 1985 survey HPD inspectors determined that 794 buildings contained hotel units. These 794 buildings provided the initial basis for the sample frame.

To prepare the sample frame for the I&E study the 794 buildings from the 1985 list were matched with the updated list for the 1991 HVS. Staff found that 785 buildings matched with the 1991 list. All but one of the nine excluded buildings were in Staten Island.

This matched list was the starting point for staff to work toward a "cleaner" sample frame by excluding certain types of buildings. Based on additional information in the 1991 list, some of the reasons for excluding additional buildings were: vacant, dormitory, luxury hotel, co-op/condo & non-residential, building used for specialized social services, multiple dwelling converted to a private dwelling without a properly authorized certificate of occupancy, dwellings not inspected since 1970.

RGB staff excluded 125 buildings which were in one of the above specified categories. Most of the excluded buildings fell in the co-op/condo category (30 buildings), followed by vacant buildings (27 buildings) and luxury hotels (25 buildings). Twenty out of the 27 vacant buildings were in Manhattan. There existed a similar relationship in the co-op/condo category. However, 48% of the luxury hotels were in Queens (12 out of 25 buildings). RGB staff excluded an additional 200 buildings because the number of units was less than 11. A total of 325 buildings, containing 10,859 units, were excluded.

After these adjustments, the resulting sample frame included 460 buildings with a total of 36,254 units. These buildings were determined to have stabilized hotel units in 1985 and 1991. Also, the list consisted only of hotel buildings required to file I&E forms with the Finance Department.

Sample Size and Selection

The characteristics of the stabilized stock of hotels and staff's sample frame dictated the specification of the categories and the distribution of sample units among them. At the outset, the sample size was set at 250. The first step in drawing the sample was to make sure it reflected the Hotel Section of the Rent Stabilization Law. Therefore, staff divided the sample frame into three distinct categories: Hotels, rooming houses and single room occupancy (SRO) buildings.

The next step was to distribute the sample size of 250 buildings among the 3 categories. The allocation reflects the importance of each building type in the sample frame. The number of sample buildings desired within each category were as follows:

Hotels	67
SROs	68
Rooming Houses	115
Total	250

No information pertaining to the buildings' assessed value was readily available. Thus, staff did not know what proportion of buildings in the list would meet the basic criterion of an assessed value of at least $40,000. Also, due to the likelihood that some I&E forms might be incomplete, or the possibility that some landlords did not file their I&E statements, RGB wanted to give Finance as many buildings as possible in order to obtain data for the target sample size of 250. Since the sample frame was somewhat small (containing only 460 buildings), the entire list was randomized and sent to Finance.

Data Collection and Summary Statistics

The major changes made in the I&E study of stabilized apartments have been incorporated into the hotel study. Briefly recapitulating these changes, staff requested that Finance exclude buildings with short accounting periods and with no rental income. In addition, assessors examined the miscellaneous category. Also, the assessors reclassified miscellaneous expenses if the owner provided enough information for them to do so. The Finance Department produced additional summary output for buildings without commercial space, and for those buildings with an O&M to income ratio greater than or equal to 100%.

Due to time constraints there was not any replacement if Finance did not find I&E forms for all 250 buildings. In fact, Finance could only locate and provided summary statistics for the following:

Hotels	66
SROs	67
Rooming Houses	45
Total	178

Finance staff provided the RGB with summary data on the number of buildings for which I&E forms could not be located. The large shortfall in the number of rooming houses was due mainly to the fact that over 60% of those buildings did not meet the minimum assessed value of $40,000.

There is no detailed data for stabilized hotels in the triennial HVS. The most comprehensive study, to date, is the 1985 SRO Study. However, the list prepared for the 1991 HVS also includes estimates of the weights for the three types of hotel units. Staff decided that the best alternative was to use both the 1985 and 1991 weights in order to estimate a range of values for citywide rents and expenses. The weight assigned to each category was equivalent to the citywide share of all stabilized hotel units in that cell.

After aggregating the raw data with both sets of weights, there was not any major difference between the two figures. The difference was $4 for overall O&M costs. Therefore, only the estimates using the 1985 weights are discussed in this report.

The data is taken from the I&E forms filed with the Finance Department by September 1990. Most owners do file statements for calendar year 1989, but there may be some who reported income and expenses for later fiscal years. As a result, the average O&M expenses and income are for Fall 1989.

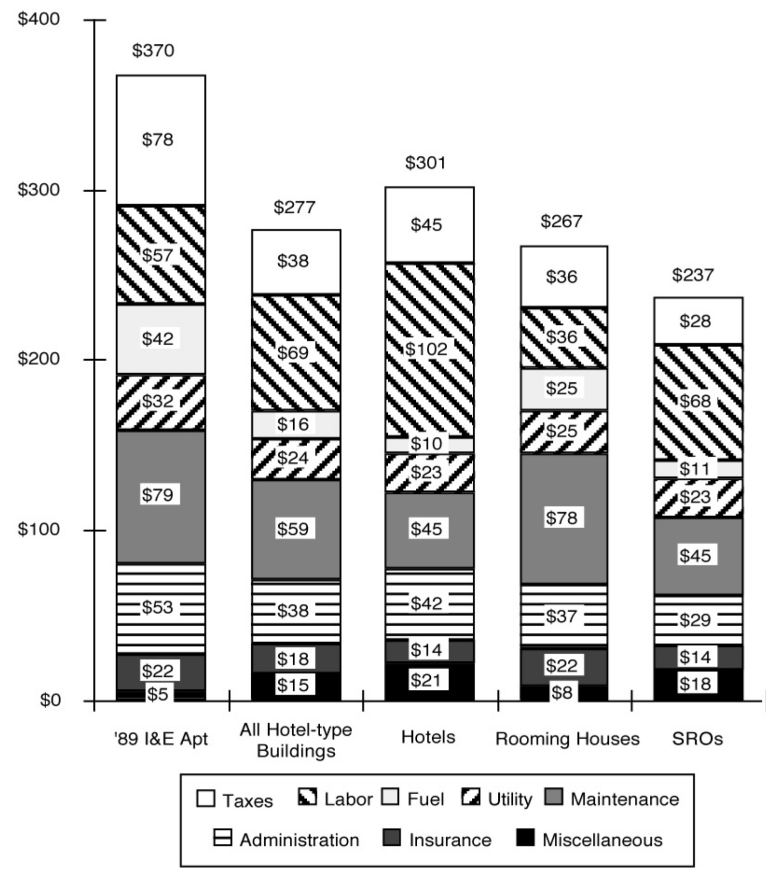
Operating & Maintenance Costs

The chart shows average O&M expenses for all stabilized hotel units, and for each of the three hotel groups: rooming houses, SROs, and hotels. In addition, we included the figures from the '89 I&E Study for the apartments. These figures have been included in order to allow for some comparisons between the two studies.

Average monthly O&M costs are estimated to be $277 for all hotel type units. The average for rooming houses and SROs are lower than the average, $267 and $237 respectively. The average monthly expenses for hotels is much higher at $301 per month. Labor and maintenance account for most of the difference in overall cost levels between the three groups.

The most obvious and striking difference is the wide difference in estimated labor costs. Hotels' labor costs averaged $102 per month, followed by $68 per month for SROs, and rooming houses averaged only $36 per month for labor expenses. It is also interesting to note that there is a wide gap in maintenance expenses. In rooming house

Comparison of 1989 I&E Study of Hotels with the 1989 I&E Study of Apartments



Source: Income and Expense Filings. Note: Totals may not add due to rounding.

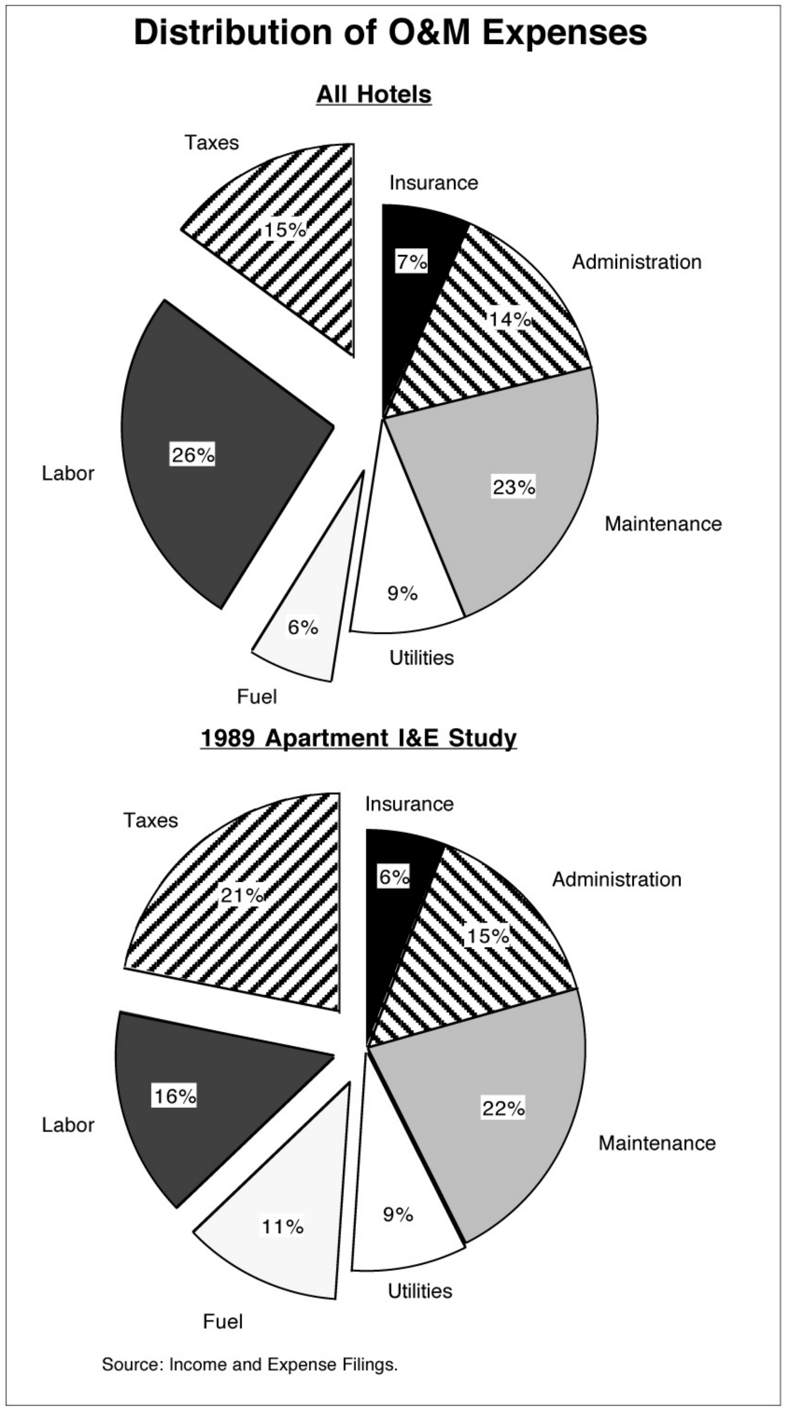
units these expenses are 32% higher than the overall average maintenance costs for all stabilized hotel units, $78 versus $59. In fact, the $78 seems surprisingly high and raises some concern about the accuracy of this figure. In most of the other components, the average costs for rooming houses are about equal to or lower than the overall average.

Although overall O&M is substantially different for hotels and SROs, many of the component costs are in fact remarkably similar. For instance, average expenses for utilities, maintenance, and insurance are the same; fuel expenses only differ by $1. The major differences can be attributed to labor costs and taxes and to a lesser extent administration.

The best explanation for the huge difference in labor costs between hotels and rooming houses is in building size. A rooming house can not have more than 29 units whereas hotels have a minimum of 30 units. Hence, due to labor expenses such as front desk clerks, maid services and superintendents, labor costs would tend to be higher for hotels.

Overall expenses for apartments is $370, or $93 higher than O&M costs for all stabilized hotel units. In terms of overall cost levels, taxes, fuel, and maintenance account for most of the difference. One would, in fact, expect all three of these categories to be substantially higher for apartments than for hotel units since hotel rooms are much smaller than apartments and often lack amenities such as kitchen facilities or even bathrooms. This difference is quite apparent in hotel fuel costs which are only 38% of the apartment average.

Although overall cost levels vary, the weight of most components, with the exception of the three just discussed, is



quite similar for hotels and apartments. Insurance, administration, maintenance, and utilities have the same weights for both types of units. Taxes and labor do show a wide difference. In the apartment study taxes accounted for 21% of costs and 14% for hotel units. Also, labor's weight in the overall costs for all hotel units is 25% and 15% for apartments.

O&M Costs for Buildings Without Commercial Space

Average expenses for residential buildings is $253. This is approximately 9% lower than the average for all buildings. This difference between the two figures can be attributed to the small percentage of buildings with commercial units. About 16% of the buildings had commercial units. Most of the commercial units are located in SRO buildings which play a relatively small role in the computation of overall average O&M costs. Based on data from the 1985 SRO Study, SRO units accounted for only 15% of all hotel units.

One would expect buildings with commercial units to have higher expenses. However, this is not the case for each of the hotel groups. The difference between O&M costs for all buildings versus all residential buildings is somewhat inconsistent and unusual. For hotels and SROs, overall expenses for residential buildings are higher than those for all buildings.

Income

The definitions of rent and income remain unchanged from the I&E study of apartments. Rent is defined as payments collected from tenants plus governmental rent subsidies

Average Rental Income and Total Income per Dwelling Unit by Hotel Category

Source: Income and Expense Filings.

(i.e., SCRIE and Section 8). Rental income is defined as apartment rent plus rent from offices, retail space, garage/parking, and industrial space. Total income is apartment rent plus commercial rent plus other sources of revenue such as the sale of utilities and laundry services.

In the schedule of income and expenses, no specific instructions were provided for hotel owners. In particular, the income section did not specify if the definition of "apartments" included hotel-type units, which are technically individual rooms. Therefore, the decision as to where to include rent from rooms becomes crucially important.

According to Finance Department staff, on many of the forms a substantial amount of income was reported on the line "other" rental income. It is uncertain exactly how much of this income is from transient tenants and whether landlords reported rent from permanent tenants on this line.

Unfortunately, since RGB does not have access to the raw data, we can not state what proportion of forms listed rent from rooms as "apartment" rental income, nor can we report if major reallocations should or would have been done. However, staff will attempt to obtain additional information from Finance to clarify this matter.

O&M Ratio

The overall O&M to gross income ratio for all stabilized hotel units is .76. For SROs and hotels the ratio is lower, .71 and .74 respectively, while the rooming house O&M ratio (.81) is higher. The O&M to gross income ratio for all residential units is also .76.

These O&M to income ratios are substantially higher than those found in the apartment sector (e.g. the .65 for all stabilized apartments). The higher O&M to income ratio for hotels could reflect either lower debt levels or lower profit margins. Anecdotal evidence and the 1985 SRO survey suggest that many hotel-type buildings have long term owners who may have little mortgage debt.

The overall O&M to income ratio (.76) is comparable to the O&M to rent ratio in Table 2 of the Board's Explanatory Statement for hotels (.74). The latter ratio was originally developed by USR&E in 1985 and has been updated each year since then. The similarity between the two figures appears to be largely a matter of coincidence, however, since none of the individual hotel sectors are similar. For instance, the O&M to income ratio for SROs in this study is .71 while the figure in the explanatory statement is .57.

A strong case could be made to replace the (updated) 1985 O&M ratios with those developed in this study. As pointed out in the introduction, the 1985 study is based on a very small sample of buildings. In addition, the current data is fresher and makes no artificial distinction between rents and income. Of course, the weakness in the current data is the absence of rooming houses with fewer than 11 units or with assessed values of less than $40,000. Nonetheless, this study includes far more hotel stabilized properties than the 1985 study.

O&M to Income Ratio Over 100%

In the recent apartment I&E study we found that about 10% of the buildings in the sample had an O&M to income ratio of 100% or more. In the current study 25% of the hotel-type buildings reported a ratio of 100% or more including 16% of SROs, 26% of hotels and 36% of rooming houses.

Among the high ratio buildings income per unit was substantially below average ($263 vs. $363 for all hotels) while expenses were well above average ($363 vs. $277). It should be noted that labor costs in these buildings are extremely high - $123 vs. $69 for the sample as a whole. In fact, labor costs account for two-thirds of the difference in the average O&M figures. The remainder of the difference is spread among many of the components.

TRANSIENT RENTALS IN SRO-TYPE BUILDINGS

Summary

The purpose of this study is to determine the proportion of rent hotel owners derive from "transient" tenants. In this paper we compare data derived from Department of Finance I&E statements with DHCR rent rolls. For buildings which are registered with DHCR, it appears that hotel owners derive a considerable proportion of their revenue (40% or more) from transient rentals. Registered rooming houses and SROs, on the other hand, seem to have little or no transient income.

[Editor's Note: One of the major issues the Rent Guidelines Board has debated over the past several years is "transient income" in hotels. Tenant advocacy groups have argued that owners benefit greatly by short term rentals not subject to stabilization regulations. Hence, no rent increases for stabilized tenants are necessary. Owner groups contend that such a policy merely punishes the "good" owners who rent to long-term stabilized tenants (i.e. not to transients). This study contains the only concrete evidence presented to the Board regarding the extent of transient rentals.]

Background

Last year's research consisted of two hotel studies. In the first of these, the so-called "Registration Study," staff attempted to estimate the number of SRO-type buildings which should have registered with DHCR from 1984 to 1989, and the percentage of buildings and units which actually did register. Using very conservative assumptions, it was estimated that almost half of all buildings and 40% of all units were not registered even once during the period. Based on this analysis we concluded that

> "The data ... raises some troubling questions about the implementation of rent regulation in the hotel sector. Given the low rate of registration and the possibility that many owners may derive a small percentage of revenue from permanent tenants one might argue that the impact of the regulatory system on this vital housing resource is rapidly diminishing."[1]

The second hotel study analyzed income and expenses in hotel buildings using the Finance Department's Local Law 63 filings. Although this study did allow us to compute averages for O&M expense, income, and the O&M to income ratio, it proved to be impossible to estimate how much income landlords derived from "transient" (i.e. non-stabilized) tenants.

In April the RGB gained access to DHCR's "on-line" rent registration records, thereby making it possible to compare the total amount of income reported by landlords to the Department of Finance with the aggregate amount of rent registered with DHCR. The difference between these two figures can be considered a <u>rough</u> estimate of income derived from non-registered units, some of which may be rented on a "transient" basis.[2]

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[1] *Rent Stabilized Housing in New York City: A Summary of Rent Guidelines Board Research*, 1991, p.74.

[2] "Rental income" reported to the Department of Finance includes rent from all "apartment units" (SRO-type or regular) as well as rent from commercial units (e.g. stores, parking). It is a measure of rent collected rather than rent charged. Registered DHCR rents, on the other hand, are rents charged and account for vacancy losses (in our study) but they do not account for collection losses. If commercial rent constitutes 10% of total income (as in the apartment I&E study) and collection losses average 10%, these factors would more or less cancel out, making the two sources of data roughly comparable.

The income and expense study included data from 178 buildings, including 66 hotels, 67 SROs, and 45 Rooming Houses. After a comprehensive search of the DHCR registration records, we found that only 107 of these buildings registered between 1988 and 1991.[3] In short, 40% of the buildings were unregistered compared to 47% in the previously mentioned registration study. Registration rates ranged from 67% of SROs, to 58% of rooming houses, and 55% of hotels.

Addresses for the 107 registered buildings were transmitted to the Finance Department. Finance staff then "matched" these buildings with last year's computer file to produce income and expense data for the registered buildings. RGB staff undertook the task of manually entering the DHCR data (comprising 107 rent rolls and about 7700 units) into spreadsheets and deriving estimates of rent.

[3] Last year's I&E study was largely comprised of income and expense filings for calendar 1989. The most directly comparable DHCR rent information is from April 1989.

Findings

The table below shows the characteristics of the buildings in our study. In order to allow direct comparisons between the amount of rent reported to DHCR and the amount of income reported to the Department of Finance, buildings with commercial units have been eliminated. This allows us to compare income reported to Finance (nearly all of which presumably comes from residential unit rents) with rents registered with DHCR.

Although all of these owners registered their buildings with DHCR, the percentage of units which were registered varies considerably.[4] In the rooming house and SRO sectors it appears that 95% and 88% of the units (respectively) were registered.[5] In the hotel sector, on the other hand only 57% of units were registered.

The table also indicates the percentage of registered units which are labelled "stabilized" in the DHCR files. Between 87% and 91% of all the units are registered as "stabilized" units. The other two categories are "exempt" (indicating that the unit is either temporarily or permanently exempt from rent stabilization) and "vacant." Very few units are registered "exempt." The vast majority of

[4] This percentage is the sum of all units registered with DHCR (whether "stabilized," "exempt" or "vacant") divided by the number of units reported on the Finance Department income and expense form. It should be kept in mind that ALL of these figures were reported by owners to the respective government departments.

[5] Some of the units are certainly owner-occupied and not required to register. As a result, the percentage of units which should have been registered and were actually registered is slightly higher than indicated by the table.

Buildings Registered with DHCR Which Also Filed I&E Forms

	% Units Registered	% Registered Units registered "Stabilized"	% Income from Registered units*
Rooming Houses	95%	87%	112%
SROs	88%	91%	104%
Hotels	57%	88%	60%

* Defined as registered rent divided by rents reported to the Department of Finance.

Source: NYS Division of Housing and Community Renewal, NYC Department of Finance.

the registered units not registered as "stabilized" are in the "vacant" category. Vacant units account for about 10% of all registered units.

The fact that few units are registered as exempt does NOT mean that transient occupancy is a rare phenomenon. As we noted previously, 40% of the buildings in the I&E sample did not register at all and a large percentage of hotel units are unregistered. Some portion of these may be rented on a transient basis. In addition, according to testimony heard by the board this year some landlords also rent out units registered as "stabilized" on a transient basis.

The last column of the table is the amount of registered rent divided by the amount of income reported to the Department of Finance.[6] In the rooming house sector this figure is 112% - in other words, DHCR rents actually exceed income reported to Finance. Part of the difference between the DHCR and Finance figures is due to collection losses. If collection losses of 10% are included, the figure would approximate 100%. It is conceivable that some of the rent paid by tenants to small landlords is in cash and that not all is reported. Note from the table that the characteristics of SROs are similar to rooming houses.

Hotels derive approximately 60% of their income from registered units.[7] Since we have excluded buildings with commercial units from our sample, the remaining 40% of the income must be derived from the unregistered units (43% of all hotel units), some portion of which may be rented on a transient basis. **It seems clear that hotels have a very different income structure from rooming houses and SROs. The figures cited here suggest that transient income is probably an important factor in the hotel industry.** Rooming houses, on the other hand, may derive little if any income from transient tenants. SROs are between the two extremes but appear to be more akin to rooming houses than hotels.

One final aspect of these figures is worth noting. The average monthly rent for non-registered hotel units is $351, or less than the average for registered stabilized units ($455). Since one might expect unregistered units to rent for more than the registered units, the only plausible explanation is that a large number of units are unoccupied - either through deliberate warehousing or because of inability to rent them to transients. ❍

[6] DHCR rents are annualized to arrive at a figure comparable to the Department of Finance figures. Included in the DHCR figure are all unit rents classified as "stabilized" or "exempt" but NOT those classified as "vacant." By excluding the vacant units we assume that this "snapshot" of the vacancy rate would hold true for the entire year.

[7] The figure may be somewhat less since collection losses are not considered.

Appendix R

What to Do With the Price Index?
Dr. Anthony Blackburn

Brief History of the Price Index of Operating Costs

The Price Index of Operating Costs (PIOC) was constructed for the first time in 1970 by the Bureau of Labor Statistics (BLS), U.S. Department of Labor, under contract to the City of New York. The first BLS PIOC report provided estimates of price index change for the 3 years 1967-1970.[174] The BLS continued to provide annual PIOC reports through 1981, at which time reductions in force mandated by the Reagan administration compelled BLS to decline further PIOC responsibilities. From 1982-1991, RGB contracted with private consulting firms to prepare the annual PIOC. Annual PIOC reports from 1992 onwards have been prepared by RGB staff with modest levels of outside consulting assistance.

The PIOC is a "base-weighted index of the prices of various cost components."[175] "Base-weighted" in this context means that the quantities of goods and services used in the base year operation of apartment buildings are assumed to remain unchanged over time.

The relative importance of each component of the index, as measured by the expenditure weights, changes over time as some prices grow faster than others. Thus, the expenditure weights are updated annually, but the implicit base year quantities (i.e. gallons of fuel oil per unit per annum) remain fixed. The expenditure weights are combined with the changing prices of goods and services purchased by landlords to arrive at an estimate of changes in operating costs over time. As BLS pointed out in its first PIOC report, "The index is a price index and not a cost index. To the degree that the base-period market basket becomes unrepresentative because landlords choose to purchase more or fewer units of the same item, the index would to some extent lose its appropriateness as a measure of changing cost."[176]

The usefulness of the PIOC to RGB is, however, based solely on its presumed accuracy in measuring changes in operating costs over time. For this reason, the RGB has been periodically concerned to make sure that the base-year market basket is indeed representative of the current pattern of landlords' expenditures.

In 1974, BLS re-surveyed a subsample of its 1970 landlords at RGB's request and concluded that the expenditure weights had remained reliable, and a full-scale expenditure survey to update the

[174] The decision to commission a specific price index for apartment buildings evidently reflected a concern for insuring the high quality of information used by RGB. The CPI, which is a poor indicator of changes in rental operating costs, was used extensively in other communities as a basis for rent adjustments. (See Monica Lett, Rent Control: Concepts, Realities, and Mechanisms. Center for Urban Policy Research, 1976.)

[175] A Price Index of Operating Costs for Uncontrolled Apartment Houses in New York City, U.S. Department of Labor, Bureau of Labor Statistics, Middle Atlantic Office, Regional Report No. 17. February 1971, p. 4.

[176] Op.Cit., p.4

weights was not warranted at that time.[177] In 1980, during a three-year period of extraordinary increases in the price of heating oils, the RGB itself made an ad hoc reduction of 10% in the fuel expenditure weight to incorporate the estimated effects of landlords' fuel conservation efforts. In 1980, BLS again re-surveyed a subsample of its 1970 landlords, and this time concluded that there was a need to revise the expenditure weights, particularly with respect to utilities and fuel.

In 1983, RGB commissioned its PIOC contractor to perform a new survey of rent stabilized landlords' 1982 expenditure patterns. The updated weights, which were first used in construction of the 1982-1983 PIOC, confirmed the BLS suspicion that the major differences between the 1969 and 1982 market baskets were in the fuel and utilities components.[178] It was also apparent from the 1982 updated fuel weight that RGB's 1980 10% reduction in the fuel weight had substantially underestimated the effect of conservation.

Seventeen years have now elapsed since the PIOC weights were last updated. The passage of time does not by itself mean that the expenditure weights are no longer accurate, particularly if relative prices have been fairly stable and the underlying technology of apartment building operations is essentially unchanged. However, the fact that so many years have passed since the last update does at least raise the possibility that the PIOC may no longer provide an accurate measure of change in apartment operating costs.

The accuracy of the PIOC in the future will depend on whether the items priced, and the weights attached to those prices (the market basket), are representative of landlords' actual expenditure patterns. A market basket must specify the relative importance of the major components and sub-components of landlords' expenditures in the new base year, based on data on landlord expenditures. Within these major components and sub-components, a list of items representative of goods and services purchased by landlords, together with precise specifications of each item and an attached “item weight” is then developed, and the new market basket is complete. It should be noted that the items included in the index are a representative sample of goods and services purchased by landlords, not an exhaustive list.

Sources of Change in Expenditure Weights

In a world in which technology, regulation, and relative prices were unchanging over time, there would be no reason for landlords to adjust their expenditure patterns. This is not the world we live in, however.

Changes in the relative prices create incentives for landlords to economize on goods and services whose prices increase faster than average. The sharp increase in fuel prices in the late 1970s was, as is well documented, accompanied by a sharp reduction in fuel use. Landlords' ability to substitute less expensive for more expensive inputs in order to enhance return on investment means that a price index, in which inputs are not substituted for one another, will tend to overestimate actual changes in costs. Changes in technology, such as more energy efficient appliances, more

[177] 1981 Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City, U.S. Department of Labor, Bureau of Labor Statistics, p. 87.
[178] *Report on the 1983 Expenditure Study and Analysis*, Urban Systems Research & Engineering, April 1983, pp. 4-5.

reliable elevators, cheaper PC-based accounting systems, will tend to reduce the cost of required inputs (or they would not be adopted). Such advances contribute to price index overestimates of cost changes.

Offsetting the effect of changing relative prices and technological change may be the effect of increased regulatory requirements. Increased regulatory requirements typically force landlords to purchase goods and services not previously needed. These increases in required inputs are not captured by a price index, and, as a result, a price index will tend to underestimate actual changes in costs when the regulatory burden is increasing.

It should also be noted that the inventory of rent stabilized buildings today is not the same as it was in 1983 when the expenditure weights were last updated. Between 1981 and 1996, the number of pre-1947 stabilized units increased by approximately 130,000, while the number of post-1946 stabilized units fell by about 30,000.[179] Given the known differences in expenditure patterns between older and newer buildings, this shift might by itself lead to progressive inaccuracy in the expenditure weights.

For all these reasons, the market basket that was constructed in 1983 may no longer be representative of landlords' expenditure patterns. Landlords may be purchasing more of some items and less of others; furthermore, there may be some new items (fees, computers, etc.) that did not exist 17 years ago, but which now account for significant shares of building operating costs.

Price and Cost Indexes

A price index, such as the PIOC, directly measures change in a weighted average of a set of prices paid for goods and services. To the extent that the weights correspond to the relative importance of these goods and services in providing a service, such as rental housing, the price index will provide an accurate measure of change in costs. However, if the relative importance of the goods and services being priced is changing while the weights are fixed, the price index may not provide an accurate measure of change in costs.

A cost index, on the other hand, directly measures costs, rather than base-weighted prices, at different points in time. At each point in time, costs are the sum of the product of prices paid and quantities purchased; unlike a price index, in a cost index the quantities purchased may vary over time.

For the purpose of regulating rents, an index that directly measures costs is clearly preferable to a price index, other things being equal. However, it is generally the case that a price index is much cheaper to construct, because it is much easier to collect price data than to obtain detailed expenditure data from less-than-cooperative landlords. To construct a price index, it is necessary to collect the detailed expenditure data from landlords only when the weights are updated. To construct an annual cost index, it would normally be necessary to conduct a major expenditure study every year.

[179] *Housing New York City 1993*, Table 4.11, and *Housing New York City 1996*, Table 4.25.

There is another practical reason why a price index approach might be preferred. Landlords surveyed to find out how much their costs had risen over time would have powerful reasons to exaggerate the increase in their costs. In contrast, if data supplied by landlords are used simply to update price index expenditure weights, these incentives would not exist.

It should be noted at this point that, while the PIOC is for the most part a pure price index, it contains some important elements that would also show up in a cost index.

The most important of these is the Real Estate Tax component, accounting for about 25% of aggregate operating costs. This is currently measured by real estate taxes levied on rent stabilized buildings. This information is provided by the Department of Finance, and would presumably be corroborated if it were instead obtained through a survey of landlords' expenditures. The same reasoning holds for water and sewer costs, which account for a further 6% of operating costs.[180] Thus, approximately one-third of the operating costs covered by the PIOC would be treated identically in a cost index.

The current treatment of fuel oil and gas used for space heating in the PIOC is also somewhat anomalous for a price index. Through 1985, the fuel oil and gas price relatives were conventionally estimated on a "point-to-point" basis; i.e. as the ratio of the prices in successive April's. From 1986 onwards, at the request of the Board, the PIOC fuel oil and gas price relatives were calculated by estimating the ratio of total costs in successive years. The construction of price ratios involves combining monthly climatic data (heating degree days) with monthly prices so that the price relative is typically higher when cold years follow warm years, and vice versa.

These fuel and gas components may look a little like components of a cost index, but actually they are not because they implicitly assume that base-year consumption levels correspond to current average yearly consumption levels. To the extent that the underlying fuel oil and gas weights may have become less accurate with the passage of time (possibly as a result of on-going conservation efforts), changes in these components of the PIOC may no longer accurately measure actual changes in cost.

Notwithstanding the somewhat anomalous treatment of fuel oil and gas heating in the PIOC, the decision of the Board to convert from a "point-to-point" price relative to what might reasonably be called an annual "cost relative" clearly improved the PIOC's ability to track annual changes in apartment operating costs over time. All other price relatives except taxes and water and sewer are calculated on a point-to-point basis.

Accuracy of the PIOC

The PIOC is intended to provide a reliable estimate of the annual percentage change in the aggregate operating costs of rent stabilized apartment buildings. To assess the accuracy of the PIOC over time, it would be necessary to determine average costs per unit in the base year, as measured by

[180] Real estate taxes are the same in both price and cost indexes because there is no "quantity" variation. The same is true for water and sewer frontage costs. This is not true however for metered water costs, which, because the PIOC uses actual bill amounts, incorporate varying water use just like a cost index.

an expenditure survey, use the PIOC to predict average costs per unit in a subsequent year, and compare this prediction with actual costs in the same year, as measured by a second expenditure survey.

It is possible to use the 1982 expenditure survey results to assess the reliability of the BLS price index as a measure of costs over the period 1969-1982. The BLS price index "predicted" monthly operating costs for post-1946 units to be $328 in 1982. By contrast, the 1982 expenditure study estimated annual operating costs for post-1946 units to be $262. Of the $66 (25%) overestimate, $48 (73%) was accounted for by two components: - fuel and utilities ($27) and taxes ($20). The overestimate of fuel and utilities resulted from reduced fuel use in response to rapidly rising oil prices that led RGB to reduce the fuel weight by 10%. The overestimate of taxes cannot be explained in the same way because there is no baseline "quantity" for taxes. The overestimate of 1982 taxes can most probably be attributed to statistical sampling error resulting from the use of a rather small sample of establishments to calculate the tax price relative over the 1969-1982 period.

To assess the accuracy of the PIOC between 1983 and 1999, absent data from a new expenditure study of the type performed in 1983, recourse may be had to the I&E data that was first made available to RGB in 1990. The I&E survey respondents are not a completely representative sample of the rent stabilized universe, but RGB staff correctly re-weight the I&E data to insure that building types and geographic areas are not underrepresented.

Over the eight years since the I&E data became available, RGB staff research has shown that there is a high level of agreement between growth in the PIOC and growth in I&E-based costs. Between 1990 and 1998, the PIOC increased by 26.5%, while I&E costs increased by 26.0%.[181]

In 1997, the most recent year for which I&E data are available, the average monthly operating cost per I&E unit was $458. If this is adjusted downwards by 8% to reflect the findings of the 1992 I&E audit study, average monthly operating expense would be $421.[182] The comparable PIOC estimate of average monthly operating costs over the 12 months April 1997 to 1998 was $419.

This extraordinary degree of agreement does not necessarily imply that the PIOC has functioned like a precision instrument for the last 17 years, but rather than its errors have tended to offset one another. To see this, compare the PIOC expense projections for the year ending 3/31/98 with the 1997 I&E breakdown.[183]

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[181] *2000 Income & Expense Study*, NYC Rent Guidelines Board, p. 10.
[182] *Rents, Markets & Trends 1999*, NYC Rent Guidelines Board, p. 32.
[183] The I&E figures incorporate downward adjustments of 11% to Maintenance, 25% to Administration, 37% to Miscellaneous, and 1% to all other categories to reflect the findings of the Audit Study (*Rent, Markets & Trends, 1997*, p. 42). The Maintenance category incorporates the Contractor Services, Parts & Supplies, and Replacement Costs components of the PIOC. All Miscellaneous expenses in the I&E data have been allocated to the combined Maintenance and Admin. Category.

	PIOC		I&E		Variance
Taxes	$107	(25.5%)	$107	(25.4%)	$0
Labor	70	(16.7%)	64	(15.2%)	+6
Fuel	44	(10.5%)	43	(10.2%)	+1
Utilities	60	(14.3%)	47	(11.2%)	+13
Insurance	27	(6.4%)	23	(5.5%)	+4
Maintenance & Admin.	110	(26.3%)	137	(32.5%)	-27
TOTAL	$419		$421		-$2

(Numbers do not sum exactly because of rounding error.)

It will be apparent that, if the I&E data are accurate, the PIOC has overpredicted combined Labor, Fuel, Utilities, and Insurance costs by about $25 per month and underpredicted, by a similar amount, Maintenance and Administrative costs. The underprediction of maintenance and administrative costs is consistent with the owners' claims of an increased regulatory burden; the overprediction of utilities may be evidence of ongoing energy conservation. In any event, it is clear that there is significant deviation between the two sets of weights, particularly for Utilities, which is a fairly volatile component, and for Maintenance and Administration.

Should the PIOC Expenditure Weights be Revised?

Notwithstanding the remarkable degree of agreement between the aggregate expense estimates from the two sources, it is apparent that the possibility now exists for the PIOC to mis-estimate future change in operating costs. This will certainly happen if utility prices increase faster or slower than the All-Items change or if the prices of maintenance and administration items increase faster or slower than the All-Items change.

For example, if utility prices were to increase by 10% while all other prices increased by around 2%, the All-Items PIOC price relative would over-estimate actual price change by about one quarter of one percent. If, in the same year, Maintenance/Admin costs increased by only 1%, the PIOC over-estimate would be about one third of one percent (3.2% vs. 2.9%).

The basic case for updating the PIOC rests on the importance of its accuracy in measuring changes in operating costs. Statistical analysis of the relationship between the one-year rent guideline and the PIOC All-Items price index change over the 23-year period 1975-1997 indicates that each one-percent increase in the PIOC translates into a one-half-percent increase in the one-year rent guideline. Given an aggregate rent roll of $8 billion for the stabilized inventory, a one-percent error in the PIOC would translate into a $40 million transfer in one direction or another between landlords and tenants in the first year. The present value of this indefinite stream discounted at 5 percent is therefore around $800 million.[184] This simple arithmetic is the most powerful reason for trying to enhance the reliability of the PIOC as a measure of operating costs.

[184] This is certainly an overestimate because stabilized rents exceed market rents in many areas of the City.

Alternative Approaches to Revising the PIOC

Two alternative approaches are available. The most obvious is to replicate the 1983 Expenditure Survey. This would support estimates of new component weights, would assist in the specification of items to be priced, and would provide a basis for the new item weights.

There are two problems with this approach. The first problem is that it is expensive. In 1983, the cost of the Expenditure Survey was $235,000, and by now this cost would certainly be much higher. Given the importance of accuracy in the PIOC, such an expense may again be justifiable.

The second problem concerns the statistical reliability of the findings of both the 1983 Expenditure Survey and any similar survey that the RGB might commission. Notwithstanding an extraordinarily intense effort to survey the owners/managers of almost 2,500 buildings (mailings, postcard reminders, and over 13,000 telephone callbacks), the number of completed responses was just 398, a response rate of only 17 percent. The low response rate may be partially attributed to factors that could be avoided in any future survey. These include fielding the survey in the holiday season, augmenting the basic survey with a long survey of mortgage financing, and the refusal of RSA to supply a letter of endorsement. None of these hindrances were present when the survey was pre-tested, but even then the response rate achieved was only 26 percent.

The problem with such a low response rate is possible self-selection bias. We cannot know whether owners who differ in their willingness to respond also differ in the way they operate their buildings. Notwithstanding the seeming reliability of the 1982-based PIOC, the accuracy of the 1982 expenditure weights, given the 17% response rate, are necessarily suspect.

Lastly, it should be noted that a revised PIOC, even with initially accurate expenditure weights, would continue to have the same drawbacks as any price index, in that actual utilization patterns may change over time, while the base year market basket does not.

The alternative approach is to use the I&E data to update the component weights. Simply comparing sample sizes, it is clear that the I&E data is greatly preferable. The 1983 Expenditure Survey was based on data from 398 buildings accounting for about 24,000 units. The 1998 I&E data, by contrast, are based on data from 12,383 buildings accounting for 569,042 units. The 1983 Expenditure Survey response rate was 17 percent. The 1998 I&E data contained information on approximately 60 percent of all rent stabilized buildings required to file. These buildings account for 51 percent of all rent stabilized units registered with DHCR, and 56 percent of all rent stabilized units in buildings required to file. On grounds of sample size, response rate, and coverage, the I&E database is clearly superior to any data which might be acquired through a replication of the 1983 Expenditure Survey.

It is the nature of things that we cannot know whether owners who respond to an expenditure survey or who submit RPIE filings have different expenditure patterns than those who do not respond. If they do, the resulting expenditure weight estimates will be biased. The extent of this bias is inversely related to the response rate. Since the I&E response rate is 3.5 times higher than the 1983 Expenditure Survey response rate, weights based on the I&E data are, other things being equal, likely to be much less biased than weights based on expenditure study data.

In one respect, and only one respect, an expenditure survey approach is to be preferred over an I&E approach to revising the weights. The I&E data excludes data on buildings with 10 or fewer units, whereas the expenditure study sample universe includes all rent stabilized buildings. The I&E data also excludes buildings with assessed values of $80,000 or less, of which there are very few.

The problem of the 6-10 unit buildings is not as serious as it might seem because of the way that the expenditure weights are constructed. Buildings with 10 or fewer units account for just 10 percent of all rent stabilized units and probably somewhere around 10 percent of aggregate operating costs. Because the expenditure weight estimates are equal to the share of each component of aggregate expenditure, the exclusion of a relatively small portion of aggregate expenditures would not greatly bias the estimates. In any event, a statistical analysis of the relationship between building size and expenditure patterns would support a simple adjustment to remove what relatively little bias might be introduced by the unavailability of data on the smallest stabilized buildings.

It should be acknowledged that the I&E buildings are known to be somewhat unrepresentative of the rent-stabilized universe, particularly in terms of the under-representation of buildings in distressed areas of the City. RGB staff currently deal with this problem by weighting the data at the borough level. It would certainly be possible to refine this procedure by going to a higher level of geographic disaggregation; i.e. the 55 sub-boroughs used in the Housing and Vacancy Survey (HVS).

It may be argued that the I&E data, being essentially unaudited, are inherently unreliable. This argument can be countered in two ways. In the first place, I&E filings, which are legal documents with owner/agent signatures, are probably at least as reliable as expenditure survey data to which no penalties for providing false information are attached. Secondly, the evidence of the 50-building audit study of 1990 I&E filings is generally reassuring, especially for taxes, labor, fuel, utilities, and insurance, which currently account for 62% of all operating costs.

For many years, tenant representatives have argued for the use of audited expense data from all stabilized landlords as a basis for estimating annual change in operating costs. As a practical matter, comprehensive audited financial data are not going to become available on an annual basis, and even if they were, the elapsed time between fiscal year ends and the completion of the audit process and data analysis would mean that such information could not be obtained in time to meet the need for annual rent guidelines that are not hopelessly out-dated.

A case could be made for commissioning a one-time comprehensive audit study of a large number of RPIE filings and using the results to re-estimate the expenditure weights. This would undoubtedly be an expensive undertaking and, in any event, the findings of such an audit study would be better applied to make adjustments to the much larger data set of unaudited filings. An updated audit study of the type performed by the Finance Department in 1992 would be an extremely valuable contribution if the PIOC is to be revised using the I&E data.

Concerns that the I&E buildings may not be representative of the rent stabilized universe in terms of location or building characteristics should be alleviated by the knowledge that RGB staff already re-weight the data to deal with this problem.

For the reasons outlined above, it should be apparent that the I&E data would support more reliable estimates of the expenditure weights than would a new expenditure study of the type performed in 1983.

There is an additional, and perhaps even more compelling, reason for constructing an index based on the I&E data. The I&E weights will change each year, albeit with a lag, not only because of changing prices, but also because the base-year quantities may be changing. In this way, an I&E-based index would approximate a true cost index, without the drawback of fixed base-year quantities. It was precisely this drawback that caused the 1969-based index to overestimate the change in operating costs in the 1970s.

Specifying Items to be Priced and Assigning Item Weights

The I&E data, unlike expenditure survey data, do not include information that can be used to estimate item weights. There is no real reason for supposing that the existing item weights are unsatisfactory, except in the area of administrative costs, where information technology has been completely revolutionized since 1982, and in the area of taxes, fees, and permits, where additional regulatory requirements have been imposed over the years. It would be desirable to introduce a number of new items into the administrative cost index component, such as personal computers, printers, accounting software, etc., and also to include the various fees referenced in RSA's May 1999 submission to RGB.

This could be best accomplished by conducting a relatively small survey of landlord/building managers to find out what they have been purchasing and how much they have been spending on such items. This survey, administered to a sample of 50-100 owners of buildings stratified by size and location, would be designed to elicit information on outlays for such items as computer equipment, lead paint abatement, recycling, etc. The survey could be conducted by telephone and/or mail, using RGB staff resources. It would also be desirable to determine the continued representativeness of other items through an informal survey of vendors.

It is important that RGB members understand that introducing new items into the market basket will not lead to an increase in the PIOC estimate of operating costs. For example, any additional fees and charges that are not included in the current index would simply appear as new items to be priced in a re-based PIOC. To the extent that these fees and charges do not increase over time as fast as other items, their inclusion will tend to reduce rather than increase the rate of growth of the All-Items price index.

Summary

The PIOC appears to have provided quite accurate estimates of changes in operating costs over the last 17 years, in part because its errors have been offsetting. It also appears that, because of drift in the expenditure weights, there is now a potential for the PIOC to misestimate future changes in operating costs.

For this reason, it is recommended that the PIOC be revised and that the new index be based on expenditure weights estimated using I&E data. The I&E 1999 weights, for example, would be updated using the 1999-2000 price relatives for use in estimating the 2000-2001 PIOC change. The resulting index would approximate a cost index for all price index components, thereby avoiding the well-known drawbacks of a base-weighted price index. A similar approach could be adopted to update the Hotel Price Index based on hotel-specific tabulations of the I&E data.

Attachment A

Issues Raised by Mr. Lubell

Is there any rationale for having some utility measured on a point-to-point basis while others are measured in a cost-weighted basis? Wouldn't it be more accurate to have all elements measured on a cost-weighted basis? Since utility costs usually have fuel-cost adjustments associated with them, aren't owners disadvantaged if utilities are measured on a point-to-point basis (April to April) when fuel costs have been driven up during the winter?

In 1986, the Board decided to abandon the traditional point-to-point method of calculating the price relatives for all three grades of heating oil and for the two gas bills used for space heating in favor of a more complex “cost-relative” approach. The objective was to achieve a more accurate estimate of year-to-year change in heating costs.

Mr. Lubell has raised the possibility of extending this approach to cover additional utility bills (electricity, gas used for cooking). His reasoning is that, while usage for non-space heating purposes may not exhibit much inter-year and seasonal variation, the rates charged for these utility items may well vary from month to month because of fuel adjustments. Mr. Lubell is quite correct in making this suggestion, and it would not be difficult to incorporate such a change in future PIOC calculations. I do suspect, however, that the change in method will not change the numbers very much.

I do not share his view that seasonal variation in utility prices means that April-to-April calculations of price change are unfair to owners. April prices may tend to be below the year-round average, but over the years they will be below the year-round average in the same degree. This means that the point-to-point method will generally provide an unbiased estimate of the change in costs.

Doesn't it make sense for the RGB to at least consider the real estate tax increase for the “average” building alongside the traditional “aggregate” increase in real estate taxes measured by the PIOC?

This same question was also raised in a recent letter to the RGB Chairman by Mr. Lubell, in which he requested that certain alternative methods of calculating the change in real estate taxes be considered for the 2000 PIOC. Specifically, Mr. Lubell requested that “the staff calculate an average and a median per-building increase in real estate taxes” and that, in addition to reporting the standard PIOC results, supplementary PIOCs be calculated which incorporate these alternative methods of computing the tax price relative.

In general, I would support Mr. Lubell's request for mean and median per-building tax changes on the grounds that the more information the Board has, the better will be its decisions on rent guidelines. I would, however, argue strongly against using these numbers to construct alternative PIOCs.

Basic price index methodology mandates the use of the traditional “aggregate” calculation of the tax price relative, which is used implicitly for all other components of the PIOC. To substitute an alternative method for taxes would mean that the PIOC could no longer be described as a price index in the terminology of economics, but rather as some sort of hybrid index. It would also mean that the PIOC could no longer be used as it has been in the past to set rent guidelines.

Over the years, the Board has commonly considered rent increases that will, at a minimum, indemnify building owners for increases in costs. This was the purpose of the “traditional” commensurate rent increase calculation, although the Board also took into account other factors. Using the standard PIOC tax price relative methods would insure that, if aggregate real estate taxes levied on rent stabilized buildings increased by, say, 5% or $50 million, the resulting commensurate rent increase would allow a $50 million increase in rental income.

As Mr. Lubell has correctly pointed out, taking the average percentage tax increase across buildings will almost certainly yield a different number for the tax price relative, say 7.5% in this example. The total tax increase is still $50 million, however. But plugging the 7.5% into the commensurate rent increase calculation would then lead to a $75 million increase in rental income. The argument is similar if the median percentage tax increase is used.

It should be noted, however, that the average percentage tax increase across buildings may be either greater or less than the standard PIOC tax increase. The standard PIOC tax increase implicitly weights each building's tax relative by its share of aggregate base-year taxes. The average percentage tax increase across buildings gives each building's tax relative equal weight. If buildings with smaller base-year taxes tend to have larger than average percentage tax increase, the average percent tax increase will exceed the PIOC price relative, as in the above example. Conversely, if percentage tax increases are positively correlated with base-year taxes, the reverse is true.

New York City Rent Guidelines Board
51 Chambers Street, Suite 202 • New York, NY 10007 • (212) 385-2934
Fax: (212) 385-2554 • Web: nycrgb.org

Chair
Rachel D. Godsil

Executive Director
Andrew McLaughlin

Memo

To: Board Members
From: Andrew McLaughlin
Date: April 24, 2014
Re: Calculating the *Price Index of Operating Costs (PIOC)* Using Component Weights from the RPIE data presented in the *Income and Expense Study*

Introduction

The NYC Rent Guidelines Board (RGB) *Price Index of Operating Costs (PIOC)* gathers prices for a market basket of goods and services used in the operation and maintenance of rent stabilized buildings in NYC and uses these prices to estimate cost changes from one year to the next. This is the same approach used by the Consumer Price Index (CPI) and other similar indices, but the PIOC specifically analyzes the goods and services typically purchased by building owners. Every PIOC in the last 30 years, including the most recent Index, is based on expenditure patterns of owners from 1983. Although these expenditure weights are revised each year, and there have been some changes to expenditure items since 1983, the PIOC may no longer represent expenditure patterns that are prevalent today. In fact, the RGB report that measures recent owner-reported expenses, the *Income and Expense Study (I&E)*, shows that increases in overall operating costs have been smaller than those shown by the PIOC in recent years.

In the fall of 2013, the RGB commissioned Dr. James Hudson to study this issue and to offer suggestions on how to use the NYC Department of Finance Real Property Income and Expense (RPIE) data presented in the *RGB Income and Expense Studies* to update the expenditure patterns in the PIOC. The results of Dr. Hudson's analysis were released in his paper entitled *Comparing the Price Index of Operating Costs (PIOC) and the RGB Income and Expense Study* and were presented to the Board on March 27. Dr. Hudson concluded that the main cause of the differences between the PIOC and the I&E is "how owners change their spending in response to changes in prices and the goods and services that are available." These changes are not captured in the PIOC. He proposed two approaches to address the divergence between these indices:

- Use the most recent I&E to create the component weights for each year's PIOC. This will connect the PIOC much more closely to what owners have actually been buying so that we can better estimate the overall effect of price changes.

- Annually survey owners about their costs for various items within a single component, to update the item weights and allow development of improved items and specifications. Since this is not necessary for taxes and insurance (which have one item each in their components), it should allow updates of items weights across the PIOC every 5-6 years.

In an attempt to update the PIOC to reflect current expenditure patterns, Dr. Hudson, along with assistance from the RGB staff, used the expenditure patterns presented in the *2014 Income and Expense Study* to update the component weights for the *2014 PIOC*. In addition, a historical analysis was conducted to gauge the impact of using the I&E component weights in PIOCs dating back to 1999. The results of these analyses are presented in this memo. Note that this analysis does not alter the items priced in the PIOC, which may be updated by staff at a later date.

Updating the 2014 PIOC Using Weights from the 2014 I&E

Data used to update the component weights for the *2014 PIOC* is contained in the *2014 RGB Income and Expense Study*. The I&E used summary data from the NYC Department of Finance RPIE filings to report on owner expense. Data from the 2013 RPIE filings were used and represent owner reported expenses from calendar year 2012.

In order to update the PIOC component weights, there were two technical issues involved in using the I&E weights that had to be addressed.

First, the individual items in the PIOC needed to be allocated to the corresponding I&E components. The current PIOC contains nine components and the I&E data is categorized into eight components. Using the Expense Categories Chart of items in the 2013 RPIE Worksheet, PIOC expense items were allocated to the corresponding I&E expense categories. For example, the Fuel component in the I&E includes natural gas costs, fuel oil and steam. Therefore the gas and steam heating items from the PIOC Utilities component and the Fuel Oil component items were put into one component labeled Fuel. This same procedure was used with other PIOC items and I&E expense components. There were a few items that did not fit into any of the I&E expense categories, such as the PIOC items that priced air conditioners, so they were not included in this update. These items carried minimal weight in the PIOC so the effect of not including them was negligible. Furthermore, there were no items priced in the PIOC that fit into the I&E expense category of Miscellaneous, so that component is not included in this analysis. Therefore, seven components are used in this I&E weight-based 2014 PIOC.

Second, the I&E weights are from a year earlier than the PIOC. So those data needed to be updated based on the previous PIOC prices. For example, for 2014 this involved:

- Taking the I&E costs per component from 2012
- Updating those to estimated 2013 costs based on the 2013 PIOC
- Adjusting the weights based on those 2013 costs

This is the same methodology used in the PIOC to update weights each year. The only difference is using the I&E component weights as the starting point.

After applying the methodology outlined above, the impact of using I&E component weights with *2014 PIOC* price relatives resulted in lowering the Price Index for Apartments from 5.7% to 5.2%. Below is a table that compares the component weights in each index.

A Comparison of Component Weights, 2014 I&E-Based PIOC vs. the 2014 PIOC, Apartments

2014 I&E-Based PIOC Components	**Weight**	**2014 PIOC Components**	**Weight**
Taxes	26.6%	Taxes	28.7%
Labor	11.6%	Labor	12.5%
Fuel	15.9%	Fuel Oil	14.9%
Utilities	11.8%	Utilities	16.4%
Administration	16.3%	Administration	6.9%
Insurance	4.9%	Insurance	6.9%
Maintenance	13.0%	Contractor Services	11.7%
		Parts & Supplies	1.4%
		Replacement Costs	0.6%
Total	100%	Total	100%

Source: *2014 PIOC* and 2014 *I&E Study*

In this table, note that the weight in the I&E "Fuel" component (including Oil and Natural Gas) is similar to the weight in the PIOC for Fuel Oil alone. The I&E-based approach also shows Insurance as a smaller portion of expenditures and Administration as a larger one, compared to the 2014 PIOC.

It is important to note that this new methodology still uses the same prices and costs as reported in the 2014 PIOC. Therefore, the individual price relatives do not change from one to the other. Real estate taxes increased 5% in the 2014 PIOC. This same increase is used in the 2014 I&E-Based PIOC. What differs is the *importance* of these changes in price from one index to the other. Taxes represent 28.7% of the 2014 PIOC and 26.6% of the 2014 I&E-Based PIOC. Below is a table that outlines the price relative for the seven components in the 2014 I&E-Based PIOC.

2014 I&E - Based PIOC Components	**Price Relative**
Taxes	5.0%
Labor	3.0%
Fuel	9.5%
Utilities	6.0%
Administration	2.0%
Insurance	9.3%
Maintenance	3.9%
Total	**5.2%**

Since 1983, the PIOC has calculated separate indices for different types of buildings that contain rent stabilized units. In addition to the all Apartment PIOC, separate indices for buildings constructed before 1947 (pre-1947) and for buildings constructed in 1947 or later (post-1946) as well as gas-heated and oil-heated can also be calculated using I&E component weights. The master-metered building index cannot be calculated using this methodology because there is no usable data for calculating expenditure weights. Below is a table that compares these separate indices using the 2014 PIOC and the 2014 I&E-Based PIOC.

Price Indices for Different Building Types, 2014 PIOC vs. 2014 I&E- Based PIOC

	2014 PIOC	2014 I&E-BasedPIOC
All Apartments	5.7%	5.2%
Pre-1947	6.2%	5.2%
Post-1946	5.2%	5.2%
Gas Heated	6.2%	6.0%
Oil Heated	5.6%	4.9%

Source: *2014 PIOC* and 2014 *I&E Study*

After all is said and done, there are still limitations using this methodology. First, the PIOC still measures prices, not costs. It can be expected to slightly overestimate changes in costs. Secondly, the Hotel and Loft Indices cannot be updated using the I&E weights.

Historic Analysis

Now that a methodology is in place to update the PIOC expenditure weights using I&E data, we can go review previous Apartment PIOC indices, comparing these new I&E-based PIOCs with the traditional methodology. Below is a table that tracks these changes.

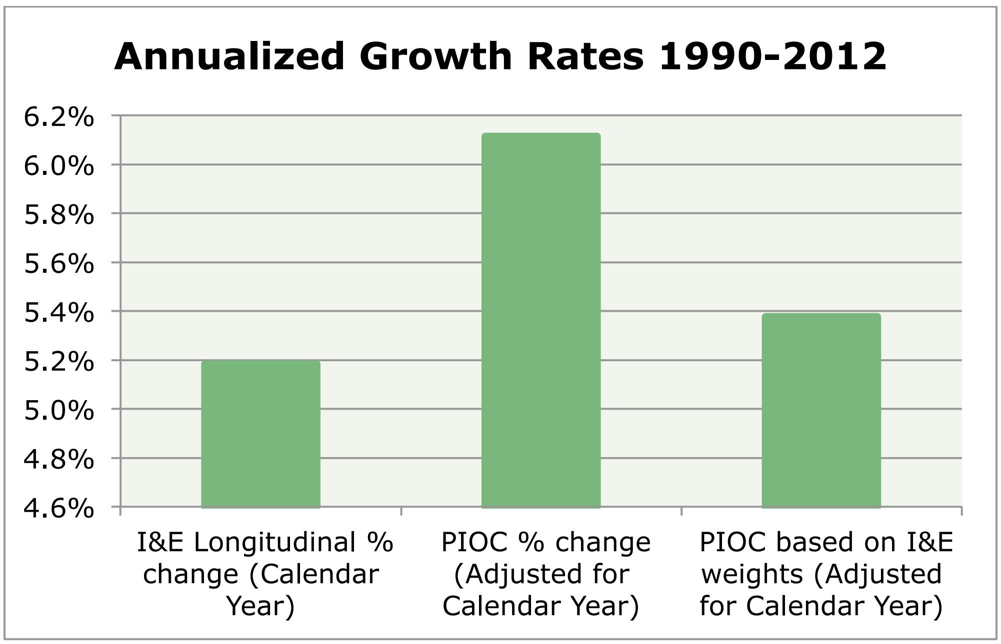
PIOC vs. I&E-Based PIOC, Apartments, 2000-2014

Year	PIOC	I&E-Based PIOC
2000	7.8%	6.5%
2001	8.7%	7.0%
2002	-1.6%	-0.8%
2003	16.9%	12.8%
2004	6.9%	5.5%
2005	5.8%	N/A
2006	7.8%	7.0%
2007	5.1%	5.2%
2008	7.8%	7.0%
2009	4.0%	4.5%
2010	3.4%	4.0%
2011	6.1%	3.5%
2012	2.8%	3.5%
2013	5.9%	5.2%
2014	5.7%	5.2%

N/A: I&E data not available
Source: *PIOCs* 2000-2014 and RGB *Income and Expense Studies*, 2000-2014

As the table illustrates, there are years in which the I&E-based changes exceed expense growth of the PIOC and other years where the PIOC grew faster. This comes from the differences in weights. For example, the 2014 I&E-based PIOC had a lower weight for fuel oil items (Specs 301, 302 and 303) than the PIOC, and that pattern shows up in the other years. So, in years when fuel oil increased faster than the overall PIOC, the I&E-based approach would typically show a lower increase; in years where fuel oil increased slower than the overall PIOC, the I&E-based approach would tend to be higher. Differences in weights for Insurance, Administration, and other areas will tend to lower or raise the I&E-based increase compared to the PIOC.

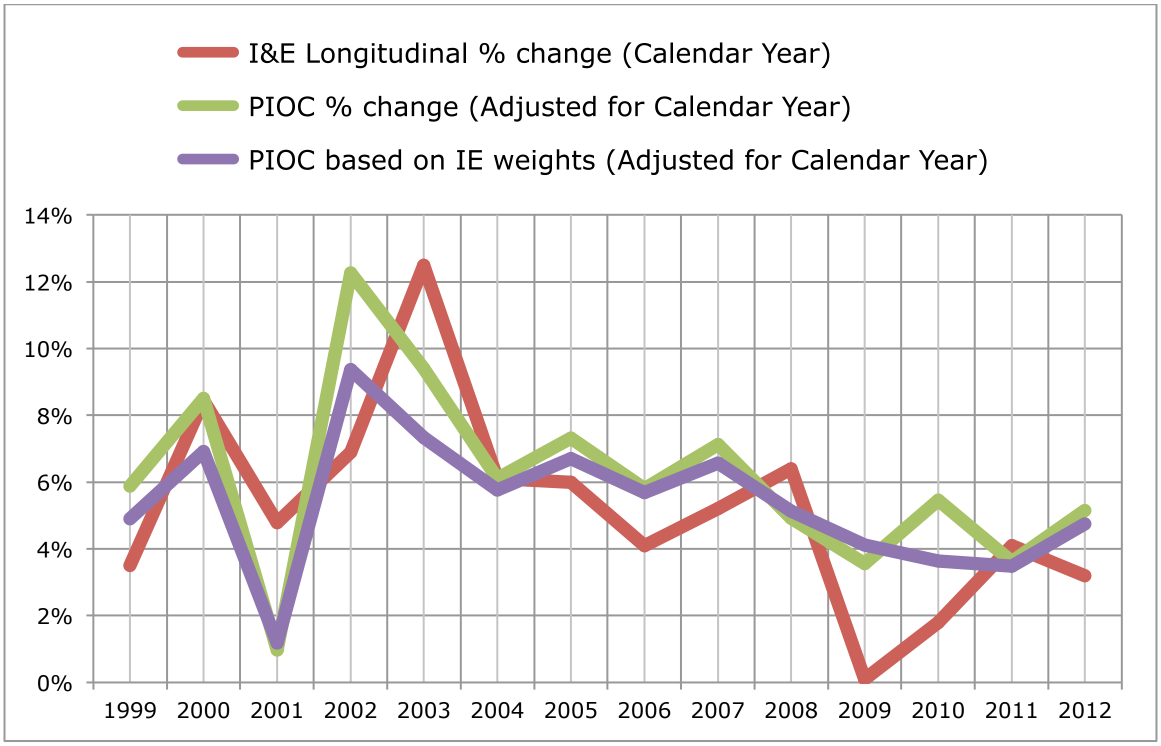
The more useful analysis is to examine the growth in expense from the I&E with both the PIOC and I&E-based PIOC over time. In order to do this analysis, we first needed to adjust the PIOC time frame to that of the I&E. The PIOC tracks price data from March to March while the RPIE data is based on a calendar year. Once this adjustment was made, the annualized growth rate for all three indices was computed. From 1999 to 2012, the PIOC witnessed an annualized growth rate of 6.1%. The I&E-based PIOC annualized growth rate was less, 5.4%, and more in line with that of the RPIE expense growth of 5.2%. See graph below.



Note: Since no longitudinal data was available to calculate a cost change for the I&E in 2004, the PIOC percent change of 6.1% was used to calculate annualized growth rates for all three indices.
Source: PIOC, 1999-2012 and Income and Expense Studies, 2001-2014

The graph below outlines annual longitudinal percent cost changes reported in the RGB *Income and Expense Studies* along with annual changes in the PIOC and I&E-Based PIOC from 1999 to 2012.

Percent Change in I&E Longitudinal Annual Cost Change vs. that of the PIOC and the I&E-Based PIOC Annual Price Change, 1999-2012



Note: Since no longitudinal data was available to calculate a cost change for the I&E in 2004, the PIOC percent change of 6.1% was used.
Source: PIOC, 1999-2012 and Income and Expense Studies, 2001-2014

Appendix T

PIOC Projections 1975-2016

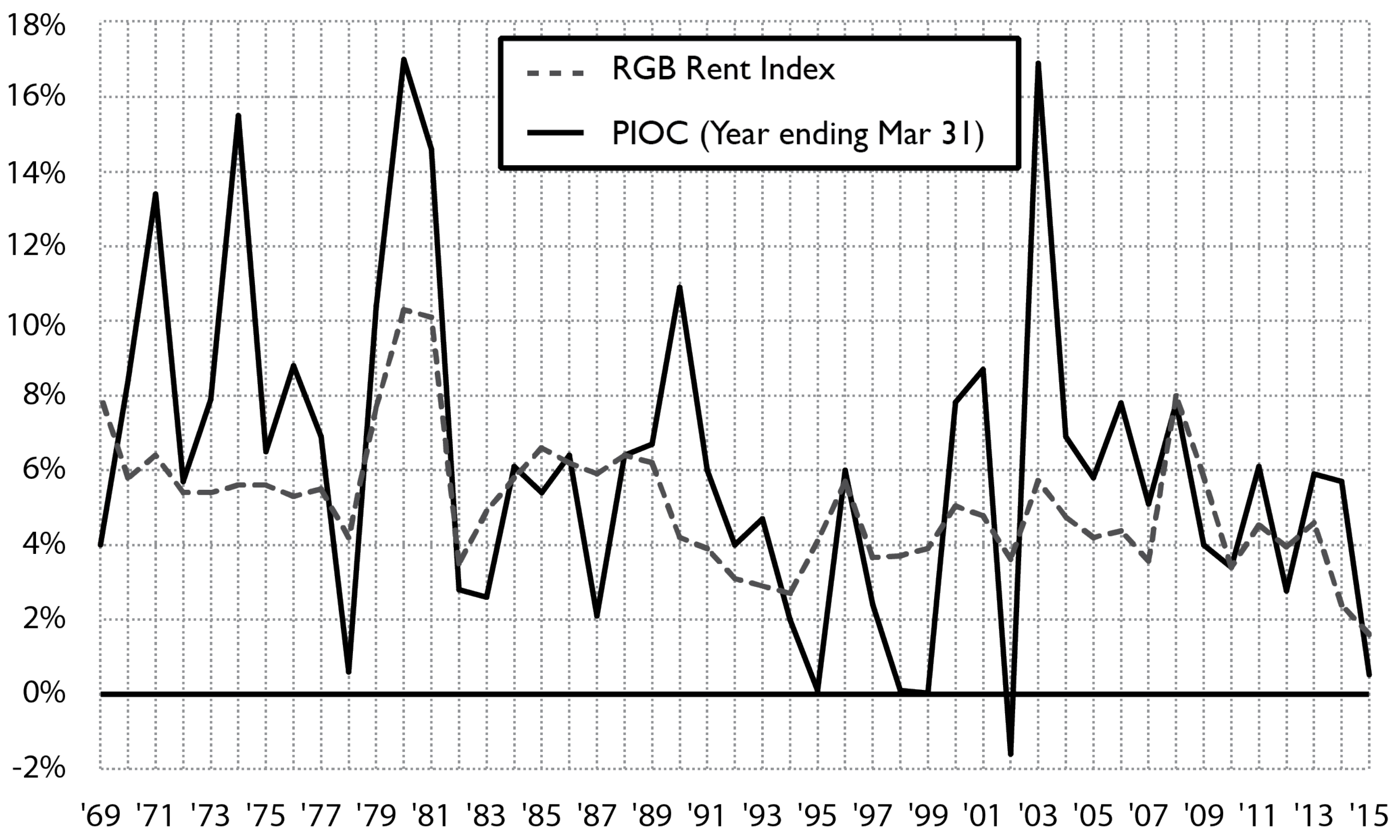
Comparison of percentage changes in actual PIOC and 1-year and 2-year projections

Year	1 Yr. Proj.	2 Yr. Proj.	Actual	1 Yr. Diff.	2 Yr. Diff.
‘75	6.8		6.5	0.3	
‘76	10.3		8.8	1.5	
‘77	6.6	8.7	7.5	-0.9	1.2
‘78	6.0	7.7	0.6	5.4	7.1
‘79	5.7	6.9	10.4	-4.7	-3.5
‘80	8.3	7.5	17.0	-8.7	-9.5
‘81	9.8	5.8	14.6	-4.8	-8.8
‘82	9.5	8.6	2.8	6.7	5.8
‘83	5.8	8.9	2.6	3.2	6.3
‘84	6.8	5.6	6.3	0.5	-0.7
‘85	6.7	6.5	5.4	1.3	1.1
‘86	5.4		6.4	-1.0	
‘87	9.1		2.1	7.0	
‘88	7.0		6.4	0.6	
‘89	6.6		6.7	-0.1	
‘90	7.5		10.9*	-3.4	
‘91	6.0		6.0**	0.0	
‘92	5.2		4.0	1.2	
‘93	5.3		4.7	0.6	
‘94	3.1		2.0	1.1	
‘95	3.4		0.1	3.3	
‘96	3.2		6.0	-2.8	
‘97	2.7		2.4	0.3	
‘98	1.8		0.1	1.7	
‘99	3.5		0.03	3.2	
‘00	5.3		7.8	-2.5	
‘01	3.8		8.7	-4.9	
‘02	2.1		-1.6	3.7	
‘03	6.4		16.9	-10.5	
‘04	6.4		6.9	0.5	
‘05	3.6		5.8	-1.8	
‘06	6.7		7.8	-1.1	
‘07	6.2		5.1	1.1	
‘08	8.5		7.8	0.7	
‘09	7.3		4.0	3.4	
‘10	2.2		3.4	-1.2	
’11	6.7		6.1	0.6	
’12	7.4		2.8	4.6	
’13	7.0		5.9	1.1	
’14	2.6		5.7	-3.1	
’15	1.7		0.5	1.2	
’16	4.2				

*I&E data indicated a 7.7% rise
**Revised

Note: Since 1984, owners have not been able to offer three year leases. Consequently, the RGB staff ceased two year projections.

Stabilized Rent Increases and Price Index Changes, 1969—2015



Year	Rent Index	PIOC
1969	8.0%	4.0%
70	5.8%	8.4%
71	6.4%	13.4%
72	5.4%	5.7%
73	5.4%	7.9%
74	5.6%	15.5%
75	5.6%	6.5%
76	5.3%	8.8%
77	5.5%	6.9%
78	4.2%	0.6%
79	7.7%	10.4%
80	10.3%	17.0%
81	10.1%	14.6%
82	3.5%	2.8%
83	4.9%	2.6%
84	5.8%	6.1%
85	6.6%	5.4%
86	6.2%	6.4%
87	5.9%	2.1%
88	6.4%	6.4%
89	6.2%	6.7%
90	4.2%	10.9%
91	3.9%	6.0%
92	3.1%	4.0%
93	2.9%	4.7%
94	2.7%	2.0%
95	4.1%	0.1%
96	5.7%	6.0%
97	3.7%	2.4%
98	3.7%	0.1%
99	3.9%	0.03%
00	5.0%	7.8%
01	4.8%	8.7%
02	3.6%	-1.6%
03	5.7%	16.9%
04	4.8%	6.9%
05	4.2%	5.8%
06	4.4%	7.8%
07	3.6%	5.1%
08	8.0%	7.8%
09	5.8%	4.0%
10	3.4%	3.4%
11	4.5%	6.1%
12	4.0%	2.8%
13	4.6%	5.9%
14	2.4%	5.7%
15	1.6%	0.5%

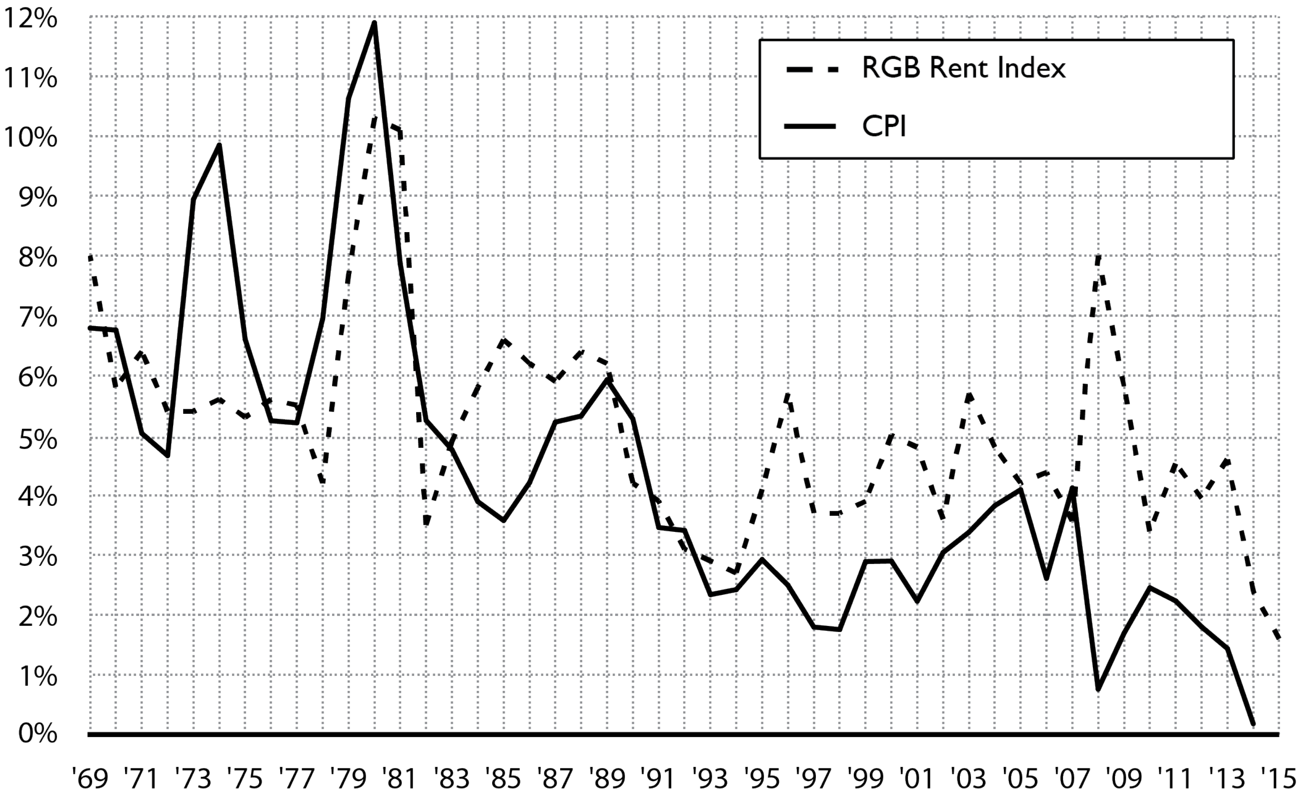
Appendix V

The Rent Guidelines Board (RGB) Rent Index

The RGB Rent Index estimates the overall effect of the Board's annual rent increases and vacancy increases on stabilized contract rents each guideline year (October 1 to September 30). The RGB Rent Index includes the percentage increases for one- and two-year leases, the estimated increase for vacancy leases and increases, if applicable, due to the low rent supplement or the minimum rent. Rents can increase due to other factors not included in the RGB Rent Index, e.g., increases for Major Capital Improvements or individual apartment improvements.

Order No.	RGB Year	Rent Index	Order No.	RGB Year	Rent Index
1	1969-70	8.0%	25	1993-94	2.9%
2	1970-71	5.8%	26	1994-95	2.7%
3	1971-72	6.4%	27	1995-96	4.1%
4	1972-73	5.4%	28	1996-97	5.7%
5	1973-74	5.4%	29	1997-98	3.7%
6	1974-75	5.6%	30	1998-99	3.7%
7	1975-76	5.6%	31	1999-2000	3.9%
8	1976-77	5.3%	32	2000-01	5.0%
9	1977-78	5.5%	33	2001-02	4.8%
10	1978-79	4.2%	34	2002-03	3.6%
11	1979-80	7.7%	35	2003-04	5.7%
12	1980-81	10.3%	36	2004-05	4.8%
13	1981-82	10.1%	37	2005-06	4.2%
14	1982-83	3.5%	38	2006-07	4.4%
15	1983-84	4.9%	39	2007-08	3.6%
16	1984-85	5.8%	40	2008-09	8.0%
17	1985-86	6.6%	41	2009-10	5.8%
18	1986-87	6.2%	42	2010-2011	3.4%
19	1987-88	5.9%	43	2011-2012	4.5%
20	1988-89	6.4%	44	2012-2013	4.0%
21	1989-90	6.2%	45	2013-2014	4.6%
22	1990-91	4.2%	46	2014-2015	2.4%
23	1991-92	3.9%	47	2015-2016	1.6%
24	1992-93	3.1%			

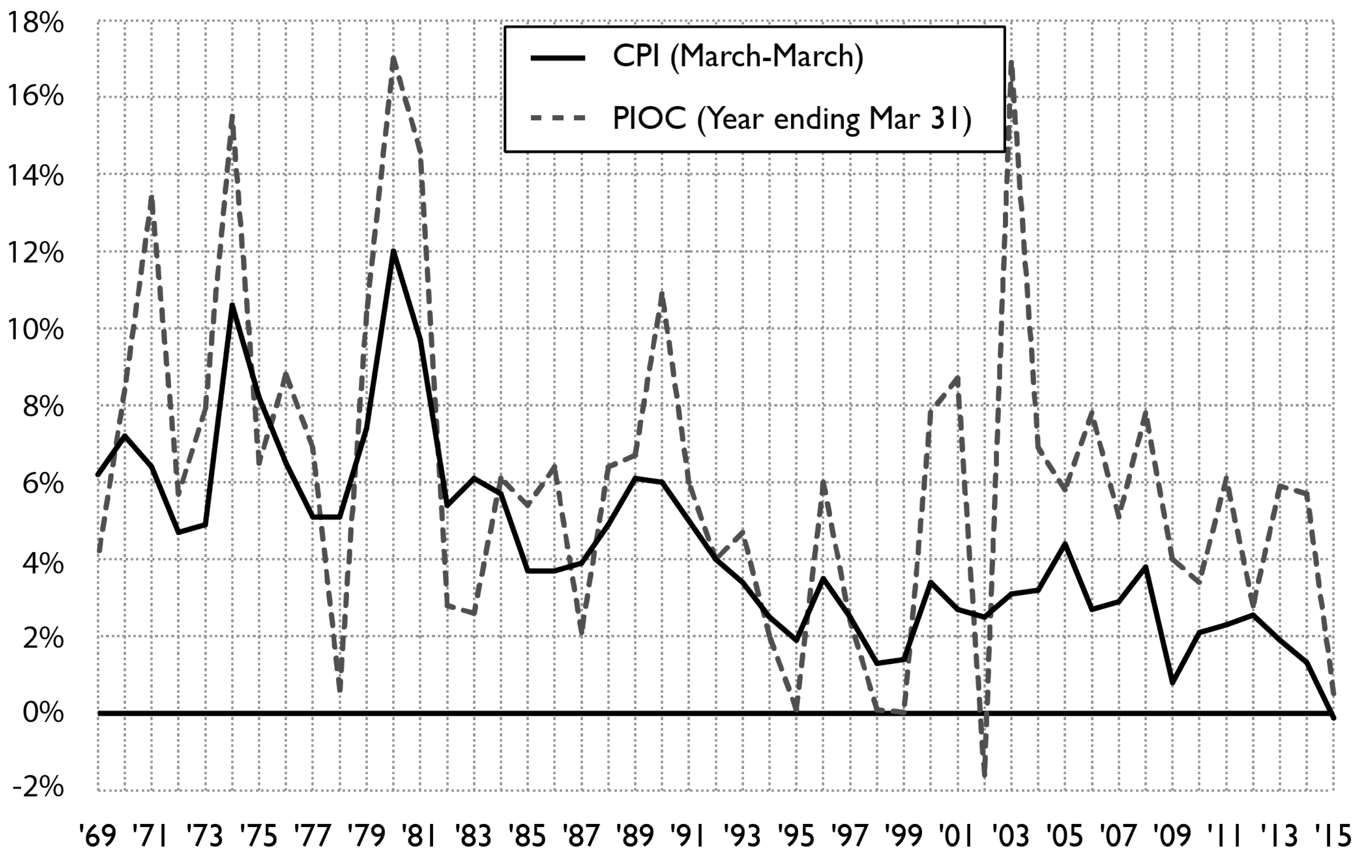
Consumer Price Index and Stabilized Rent Increases, 1969-2015



Note: The CPI is for all Urban consumers in the New York, Northeastern New Jersey region as reported by the Bureau of Labor Statistics for the same periods as the RGB Rent Index. The RGB Rent Index covers different terms, 7/1 to 6/30 from 1969-80; from 7/1/80 to 9/30/81, and from 10/1 to 9/30, 1981 to present.

Year	RGB Rent Index	CPI
1969	8.0%	6.8%
70	5.8%	6.8%
71	6.4%	5.0%
72	5.4%	4.7%
73	5.4%	8.9%
74	5.6%	9.8%
76	5.3%	6.6%
75	5.6%	5.2%
77	5.5%	5.2%
78	4.2%	7.0%
79	7.7%	10.6%
80	10.3%	11.9%
81	10.1%	7.9%
82	3.5%	5.2%
83	4.9%	4.8%
84	5.8%	3.9%
85	6.6%	3.6%
86	6.2%	4.2%
87	5.9%	5.2%
88	6.4%	5.3%
89	6.2%	5.9%
90	4.2%	5.3%
91	3.9%	3.5%
92	3.1%	3.4%
93	2.9%	2.3%
94	2.7%	2.4%
95	4.1%	2.9%
96	5.7%	2.5%
97	3.7%	1.8%
98	3.7%	1.8%
99	3.9%	2.9%
00	5.0%	2.9%
01	4.8%	2.2%
02	3.6%	3.0%
03	5.7%	3.4%
04	4.8%	3.8%
05	4.2%	4.1%
06	4.4%	2.6%
07	3.6%	4.1%
08	8.0%	0.8%
09	5.8%	1.7%
10	3.4%	2.5%
11	4.5%	2.2%
12	4.0%	18%
13	4.6%	1.4%
14	2.4%	0.2%
15	1.6%	

Consumer Price Index (March-March)* and PIOC Increases, 1969-2015



*Note: The CPI is for all Urban consumers in the New York, Northeastern New Jersey region as reported by the Bureau of Labor Statistics point-to-poinr from March to March. The POIC "year" measures price changes of owner costs from March to March.

Year	CPI (Mar-Mar)	PIOC
1969	6.2%	4.0%
70	7.2%	8.4%
71	6.4%	13.4%
72	4.7%	5.7%
73	4.9%	7.9%
74	10.6%	15.5%
75	8.2%	6.5%
76	6.5%	8.8%
77	5.1%	6.9%
78	5.1%	0.6%
79	7.4%	10.4%
80	12.0%	17.0%
81	9.7%	14.6%
82	5.4%	2.8%
83	6.1%	2.6%
84	5.7%	6.1%
85	3.7%	5.4%
86	3.7%	6.4%
87	3.9%	2.1%
88	4.9%	6.4%
89	6.1%	6.7%
90	6.0%	10.9%
91	5.0%	6.0%
92	4.0%	4.0%
93	3.4%	4.7%
94	2.5%	2.0%
95	1.9%	0.1%
96	3.5%	6.0%
97	2.5%	2.4%
98	1.3%	0.1%
99	1.4%	0.03%
00	3.4%	7.8%
01	2.7%	8.7%
02	2.5%	-1.6%
03	3.1%	16.9%
04	3.2%	6.9%
05	4.4%	5.8%
06	2.7%	7.8%
07	2.9%	5.1%
08	3.8%	7.8%
09	0.8%	4.0%
10	2.1%	3.4%
11	2.3%	6.1%
12	2.6%	2.8%
13	1.9%	5.9%
14	1.3%	5.7%
15	-0.1%	0.5%

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Appendix X

Open Meetings Law §§ 103 & 104 (Updated 1/2016)

§103. Open meetings and executive sessions.

(a) Every meeting of a public body shall be open to the general public, except that an executive session of such body may be called and business transacted thereat in accordance with section one hundred five of this article.
(b) Public bodies shall make or cause to be made all reasonable efforts to ensure that meetings are held in facilities that permit barrier-free physical access to the physically handicapped, as defined in subdivision five of section fifty of the public buildings law.
(c) A public body that uses videoconferencing to conduct its meetings shall provide an opportunity to attend, listen and observe at any site at which a member participates.
(d) Public bodies shall make or cause to be made all reasonable efforts to ensure that meetings are held in an appropriate facility which can adequately accommodate members of the public who wish to attend such meetings.
1. Any meeting of a public body that is open to the public shall be open to being photographed, broadcast, webcast, or otherwise recorded and/or transmitted by audio or video means. As used herein the term "broadcast" shall also include the transmission of signals by cable.
2. A public body may adopt rules, consistent with recommendations from the committee on open government, reasonably governing the location of equipment and personnel used to photograph, broadcast, webcast, or otherwise record a meeting so as to conduct its proceedings in an orderly manner. Such rules shall be conspicuously posted during meetings and written copies shall be provided upon request to those in attendance.
(e) Agency records available to the public pursuant to article six of this chapter, as well as any proposed resolution, law, rule, regulation, policy or any amendment thereto, that is scheduled to be the subject of discussion by a public body during an open meeting shall be made available, upon request therefor, to the extent practicable as determined by the agency or the department, prior to or at the meeting during which the records will be discussed. Copies of such records may be made available for a reasonable fee, determined in the same manner as provided therefor in article six of this chapter. If the agency in which a public body functions maintains a regularly and routinely updated website and utilizes a high speed internet connection, such records shall be posted on the website to the extent practicable as determined by the agency or the department, prior to the meeting. An agency may, but shall not be required to, expend additional moneys to implement the provisions of this subdivision.

§104. Public notice.

1. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before such meeting.
2. Public notice of the time and place of every other meeting shall be given, to the extent practicable, to the news media and shall be conspicuously posted in one or more designated public locations at a reasonable time prior thereto.

3. The public notice provided for by this section shall not be construed to require publication as a legal notice.
4. If videoconferencing is used to conduct a meeting, the public notice for the meeting shall inform the public that videoconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations.
5. When a public body has the ability to do so, notice of the time and place of a meeting given in accordance with subdivision one or two of this section, shall also be conspicuously posted on the public body's internet website.

Appendix Y

NYC Charter- 1041-1045 (updated 1/2016)

CHAPTER 45
CITY ADMINISTRATIVE PROCEDURE ACT

§ 1041. Definitions. As used herein, the term

1. "Adjudication" means a proceeding in which the legal rights, duties or privileges of named parties are required by law to be determined by an agency on a record and after an opportunity for a hearing.

2. "Agency" means any one or more of the elected or appointed officers provided for in this charter and any other official or entity which is acting (1) under the direction of one or more of such officers, (2) under the direction of one or more other officials who are appointed by, or appointed on the recommendation of, such officers, or (3) under the direction of a board, the majority of whose members are appointed by, or appointed upon the recommendation of, one or more of such officers, but shall not include the city council.

3. "Compilation" means the Compilation of city rules required to be published under section one thousand forty-five.

4. "Law" means federal, state and local law, this charter and rules issued pursuant thereto.

5. "Rule" means the whole or part of any statement or communication of general applicability that (i) implements or applies law or policy, or (ii) prescribes the procedural requirements of an agency including an amendment, suspension, or repeal of any such statement or communication.

a. "Rule" shall include, but not be limited to, any statement or communication which prescribes (i) standards which, if violated, may result in a sanction or penalty; (ii) a fee to be charged by or required to be paid to an agency; (iii) standards for the issuance, suspension or revocation of a license or permit; (iv) standards for any product, material, or service which must be met before manufacture, distribution, sale or use; (v) standards for the procurement of goods and services; (vi) standards for the disposition of public property or property under agency control; or (vii) standards for the granting of loans or other benefits.

b. "Rule" shall not include any (i) statement or communication which relates only to the internal management or personnel of an agency which does not materially affect the rights of or procedures available to the public; (ii) form, instruction, or statement or communication of general policy, which in itself has no legal effect but is merely explanatory; (iii) statement or communication concerning the allocation of agency resources or personnel; (iv) statement or communication for guiding, directing or otherwise regulating vehicular and pedestrian traffic, including but not limited to any statement or communication controlling parking, standing, stopping or a construction detour, the contents of which is indicated to the public in signs, signals, markings and similar devices, the determination and installation of which is based on engineering or other technical considerations not involving substantial policy considerations; (v) statement or communication effecting a non-continuous closing of a street; or (vi) statement or communication adopted pursuant to sections fifty-one, one hundred ninety-seven-a except pursuant to the first sentence of subdivision b or the third sentence of subdivision c of section one hundred ninety-seven-a, one hundred ninety-seven-c except pursuant to subdivisions i and l of section one hundred ninety-seven-c, one hundred ninety-nine, two hundred, two hundred one, two hundred two and seven hundred five of this charter.

§ 1042 Regulatory agenda. a. Each agency shall publish by the first day of May annually, a regulatory agenda which shall contain:

1. a brief description of the subject areas in which it is anticipated that rules may be promulgated during the next fiscal year, including a description of the reasons why action by the agency is being considered;

2. a summary, to the extent known, of the anticipated contents of each such proposed rule, its objectives and legal basis;

3. a description of the types of individuals and entities likely to be subject to the rule;

4. an identification, to the extent practicable, of all relevant federal, state, and local laws and rules, including those which may duplicate, overlap or conflict with the proposed rule; and

5. an approximate schedule for adopting the proposed rule, and the name and telephone number of an agency official knowledgeable about each subject area involved.

b. Each agency the single head of which is appointed by the mayor shall forward to the mayor its regulatory agenda. The mayor shall review such regulatory agenda to determine whether regulations contemplated by city agencies are consistent with the policy objectives of the administration.

c. Failure to include an item in a regulatory agenda shall not preclude action thereon. If rulemaking is undertaken on a matter not included in the regulatory agenda the agency shall include in the notice of proposed rulemaking the reason the rule was not anticipated. The inadvertent failure to provide the reason such rule was not included in the regulatory agenda shall not serve to invalidate the rule.

§ 1043 Rulemaking. a. Authority. Each agency is empowered to adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law. No agency shall adopt a rule except pursuant to this section. Each such rule shall be simply written, using ordinary language where possible.

b. Notice. 1. Each agency shall publish the full text of the proposed rule in the City Record at least thirty days prior to the date set for a public hearing to be held pursuant to the requirements of subdivision e of this section or the final date for receipt of written comments, whichever is earlier. A proposed rule amending an existing rule shall contain in brackets any part to be deleted and shall have underlined or italicized any new part to be added. A proposed rule repealing an existing rule shall contain in brackets the rule to be repealed, or if the full text of the rule was published in the Compilation required to be published pursuant to section one thousand forty-five, shall give the citation of the rule to be repealed and a summary of its contents. Such published notice shall include a draft statement of the basis and purpose of the proposed rule, the statutory authority, including the particular sections and subdivisions upon which the action is based, the time and place of public hearing, if any, to be held or the reason that a public hearing will not be held, and the final date for receipt of written comments. If the proposed rule was not included in the regulatory agenda, such notice shall also include the reason the rule was not anticipated, as required in subdivision c of section one thousand forty-two of this chapter.

2. Copies of the full text of the proposed rule shall be electronically transmitted to the office of the speaker of the council, the council's office of legislative documents, the corporation counsel, each council member, the chairs of all community boards, the news media and civic organizations no later than the date the proposed rule is transmitted to the City Record for publication pursuant to paragraph one of subdivision b of this section; provided that an inadvertent failure to fully comply with the notice requirements of this paragraph shall not serve to invalidate any rule.

3. (a) News media, for the purposes of this subdivision, shall include (i) all radio and television stations broadcasting in the city of New York, all newspapers published in the city of New York having a city-wide or borough-wide circulation, and any newspaper of any labor union or trade association representing an industry affected by such rule, and (ii) any community newspaper or any other publication that requests such notification on an annual basis.

(b) Civic organizations, for the purposes of this subdivision, shall include any city-wide or borough-wide organization or any labor union, trade association or other group that requests such notification on an annual basis.

c. Review of statutory authority. The corporation counsel shall review the proposed rule to determine whether it is within the authority delegated by law to the agency proposing the rule. If the corporation counsel determines that the proposed rule is not within the agency's delegated authority, the corporation counsel shall notify the agency in writing prior to the publication of the final rule in the City Record.

d. (1) The law department and the mayor's office of operations shall review each proposed rule prior to publication of such proposed rule in the City Record. At the conclusion of its review, the law department shall state whether each proposed rule: (i) is drafted so as to accomplish the purpose of the authorizing provisions of law; (ii) is not in conflict with other applicable rules; (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule. As part of its review, the mayor's office of operations shall analyze each proposed rule and state: (a) whether such rule is understandable and written in plain language; (b) how the drafting process of the rule, to the extent practicable and appropriate, included analysis sufficient to minimize the compliance costs for the discrete regulated community or communities, to the extent one exists, consistent with achieving the stated purpose of the rule; and (c) why, in the event such rule involves the establishment of a violation, modification of a violation or modification of the penalties associated with a violation without also including a cure period, or other opportunity for ameliorative action by the party or parties subject to enforcement, such cure period or other opportunity for ameliorative action was not included. Provided, however, that if the proposed rule solely establishes or modifies the amount of a monetary penalty or penalties then the law department statement required by this paragraph shall not be required and the analysis of the office of operations may be limited to the reason or reasons a cure period or other opportunity for ameliorative action was not included.

(2) After completing the review as set forth in paragraph one of this subdivision, the law department and the mayor's office of operations shall certify that they have performed such review, and shall promptly transmit a copy of such certification, including the analysis performed by the mayor's office of operations, to the relevant agency. Such agency shall annex such certification and analysis to the full text of the proposed rule as published in the City Record. Such certification and analysis shall also be made available to the public on the city's website and transmitted to the speaker of the city council at the time of publication. In no event shall a proposed rule be submitted for initial publication in the City Record unless the law department and the mayor's office of operations have issued such certification and analysis.

(3) This subdivision shall not be construed to create a private right of action to enforce its provisions. Inadvertent failure to comply with this subdivision shall not result in the invalidation of any rule.

(4) This subdivision shall not apply to rules that: (i) are promulgated pursuant to the emergency procedures set forth in subdivision i of this section; (ii) are solely concerned with the establishment or modification of the amount of a monetary penalty or penalties, and the underlying violation or a modification of the penalties associated with such violation has previously been analyzed in accordance with paragraph one of this subdivision; (iii) are solely concerned with the establishment or modification of the amount of a fee or fees or (iv) implement particular mandates or standards set forth in newly enacted federal, state, or local laws, regulations or other requirements with only minor, if any, exercise of agency discretion in interpreting such mandates or standards. If an analysis of a proposed rule is not performed pursuant to the exceptions noted in this paragraph, such fact shall be noted and the note annexed to the full text of the proposed rule as published in the City Record.

e. Opportunity for and consideration of agency and public comment. The agency shall provide the public an opportunity to comment on the proposed rule (i) through outreach to the discrete regulated community or communities, if one exists, provided that this clause shall not be construed to create a private right of action to enforce this requirement; (ii) through submission of written data, views, or arguments, and (iii) at a public hearing unless it is determined by the agency in writing, which shall be published in the notice of proposed rulemaking in the City Record, that such a public hearing on a proposed rule would serve no public purpose. All written comments and a summary of oral comments concerning a proposed rule received from the public or any agency shall be placed in a public record and be made readily available to the public as soon as practicable and in any event within a reasonable time, not to be delayed because of the continued pendency of consideration of the proposed rule. After consideration of the relevant comments presented, the agency may adopt a final rule pursuant to subdivision f of this section. Such final rule may include revisions of the proposed rule, and such adoption of revisions based on the consideration of relevant agency or public comments shall not require further notice and comment pursuant to this section.

f. Effective date. 1. No rule shall be effective until

(a) the rule is filed by the agency with the corporation counsel for publication in the Compilation,

(b) the rule and a statement of basis and purpose is transmitted to the council for its information, and

(c) the rule and a statement of basis and purpose have been published in the City Record and thirty days have elapsed after such publication. The requirement that thirty days shall first elapse after such publication shall not apply where a finding that a substantial need for the earlier implementation of a program or policy has been made by the agency in writing and has been approved by the mayor prior to the effective date of the rule and such finding and approval is contained in the notice.

2. A rule shall be void if it is not published in the next supplement to the Compilation in which its publication is practicable; provided, however, that in the case of an inadvertent failure to publish a rule in such supplement, the rule shall become effective as of the date of its publication, if it is published within six months of the date the corporation counsel receives notice of its omission; and further provided that any judicial or administrative action or proceeding, whether criminal or civil, commenced under or by virtue of any provision of a rule voided pursuant to this section and pending prior to such voidance, may be prosecuted and defended to final effect in the same manner as they might if such rule had not been so voided.

g. Petition for rules. Any person may petition an agency to consider the adoption of any rule. Within sixty days after the submission of a petition, the agency shall either deny such petition in writing, stating the reasons for denial, or state the agency's intention to initiate rulemaking, by a specified date, concerning the subject of such petition. Each agency shall prescribe by rule the procedure for submission, consideration and disposition of such petitions. In the case of a board, commission or other body that is not headed by a single person, such rules of procedure may authorize such body to delegate to its chair the authority to reject such petitions. Such decision shall be within the discretion of the agency and shall not be subject to judicial review.

h. Maintenance of comments. Each agency shall establish a system for maintaining and making available for public inspection all written comments received in response to each notice of rulemaking.

i. Emergency procedures. 1. Notwithstanding any other provision of this section, an agency may adopt a rule prior to the notice and comment otherwise required by this section if the immediate effectiveness of such rule is necessary to address an imminent threat to health, safety, property or a necessary service. A finding of such imminent threat and the specific reasons for the finding must be made in writing by the agency adopting such rule and shall be approved by the mayor before such rule may be made effective. In the event that an elected official other than the mayor has the authority to promulgate rules, such official may make such findings without prior mayoral approval. The rule and accompanying finding shall be made public forthwith and shall be published in the City Record as soon as practicable. Agencies shall also electronically transmit all emergency rules adopted pursuant to this paragraph to the office of the speaker of the council, the council's office of legislative documents, the corporation counsel, each council member, the chairs of all community boards, the news media and civic organizations, as such term is defined in subdivision b of this section, no later than the date the emergency rules are transmitted to the City Record for publication pursuant to this paragraph.

2. A rule adopted on an emergency basis shall not remain in effect for longer than sixty days unless the agency has initiated notice and comment otherwise required by this section within such sixty day period and publishes with such notice a statement that an extension of such rule on an emergency basis is necessary for an additional sixty days to afford an opportunity for notice and comment and to adopt a final rule as required by this section; provided that no further such finding of an emergency may be made with respect to the same or a substantially similar rule.

§ 1044 Review of previously adopted rules. a. Submission of previously adopted rules.

1. By the tenth day of August, nineteen hundred eight-nine, each agency shall send to the corporation counsel a copy of each rule, as defined in subdivision five of section one thousand forty-one, in force as of the first day of January of nineteen hundred eight-nine. Each such rule shall be identified by the agency as one of the following:

(a) a rule which should be continued in its present form;

(b) a rule which should be continued with amendments; or

(c) a rule which should be repealed.

2. Any amendment or repeal of a rule described in paragraph one of this subdivision, shall be subject to the provisions set forth in section one thousand forty-three.

b. In regard to all rules submitted pursuant to subdivision a of this section, the corporation counsel shall

1. include such rules in the Compilation required to be published pursuant to section one thousand forty-five; provided, however, that each rule which the agency identifies as a rule which should be continued but with amendments, and each rule which the agency identifies as a rule which should be repealed, shall be published in the Compilation with an appropriate notation as to the agency's comments and intentions. Such notations shall be provided for informational purposes only and such rule in its present form shall remain in full force and effect until and unless such rule is amended or repealed pursuant to the procedures set forth in section one thousand forty-three, and

2. submit to the City Record for publication by the first day of September, nineteen hundred ninety, a list of rules submitted pursuant to subdivisions a and e of this section, except for rules

contained in the health code. Such list shall include for each rule a short descriptive title, as well as any available identifying names, numbers, adoption dates or similar information regarding such rule; and an indication of the agency's intention to continue such rule without amendments, to continue it with amendments or to repeal it.

c. No rule, as defined in subdivision five of section one thousand forty-one, which is in force as of the first day of January, nineteen hundred eighty-nine shall have any force or effect on or after the tenth day of August, nineteen hundred and eighty-nine unless it is submitted by the agency to the corporation counsel by such date.

d. Except as provided in subdivision e, no rule adopted by any agency prior to the effective date of this chapter shall have any force or effect after the first day of July, nineteen hundred ninety-one unless it is included in the Compilation required to be published by that date pursuant to section one thousand forty-five; provided however that in the case of an inadvertent failure to publish a rule in such Compilation, the rule shall become effective as of the date of its publication, if it is published within six months from the date the corporation counsel received notice of its omission, and further provided that any judicial or administrative action or proceeding, whether criminal or civil, commenced under or by virtue of any provision of a rule voided pursuant to this section and pending prior to such voidance, may be prosecuted and defended to final effect in the same manner as they might if such rule had not been so voided.

e. On or before a date one hundred eighty days after the publication date of the Compilation required to be published pursuant to section one thousand forty-five, any person may submit to the agency involved a copy or a description of a rule which such person believes to be in force as of the effective date of this chapter. Upon the receipt of a description or copy of such a rule, the agency shall endeavor to verify the existence of such rule and upon identifying such rule, if such rule was in force and effect as of the effective date of this chapter and has not been submitted to the corporation counsel pursuant to subdivision a of this section, the agency shall take the actions required pursuant to subdivision a of this section, and notwithstanding the provisions of subdivisions c and d of this section, such rule shall remain in force and effect until or unless amended or repealed pursuant to section one thousand forty-three.

§ 1045 Compilation of city rules. a. The corporation counsel shall publish a Compilation of city rules and thereafter keep such Compilation up to date through supplements issued at least every six months and at such other times as the corporation counsel shall determine. The Compilation and its supplements shall be certified by the corporation counsel and shall include every rule currently in effect. The Compilation and its supplements may contain such other information as the corporation counsel deems necessary and appropriate for full understanding of any rule or which the corporation counsel in his or her discretion determines may be of interest or assistance to the public. The Compilation and its supplements shall be organized by agency and indexed by subject matter. An indexed edition of the Compilation shall be published by the first day of July, nineteen hundred and ninety-one, which date shall be deemed the publication date of the Compilation, and shall be updated and republished by the first day of March of every fourth year thereafter.

b. The rules contained within the Compilation and its supplements shall be certified by the corporation counsel and shall be the rules of the city unless added to, amended or repealed in accordance with section ten hundred forty-three of the charter. Materials included in the Compilation may be edited, rearranged and updated for clarity, accuracy and reorganization without change in substance. Section numbers, stylistic and organizational formats and other non-substantive revisions to the rules effected by the law department pursuant to this subdivision shall become effective on the publication date of the Compilation and upon the publication of each supplement.

c. Documents submitted by an agency pursuant to subdivision a of section ten hundred forty-four of the charter which were not formally adopted by the agency as rules pursuant to section eleven hundred five of the charter as in effect prior to November eighth, nineteen hundred eighty-eight shall either be included in the Compilation or filed in the municipal reference and research center in the manner provided below. All documents which the corporation counsel, in his or her discretion, determines should not be included in the Compilation shall be organized by agency and subject matter in a form which shall be easily accessible to the public and filed by the corporation counsel in the municipal reference and research center on or prior to July first nineteen hundred ninety-one. Notice of such filing and a list of the documents filed shall be published in the City Record. Notwithstanding any inconsistent provision of section ten hundred forty-four of the charter, any of such documents so filed shall, if otherwise valid, continue to be effective provided, however, that the amendment or repeal of any document which is within the definition of rule set forth in subdivision five of section ten hundred forty-one of the charter shall be in accordance with section ten hundred forty-three of the charter.

Appendix Z

Selected Initial Findings of the 2014 York City Housing and Vacancy Survey

(prepared by the NYC Dept. of Housing Preservation and Development)

Selected Initial Findings of the 2014 New York City Housing and Vacancy Survey

Prepared by
Elyzabeth Gaumer, Assistant Commissioner and Sheree West, PhD, Sr. Housing Analyst
Housing Policy Analysis and Statistical Research
New York City Department of Housing Preservation and Development
February 9, 2015

Below are the initial findings of the 2014 New York City Housing and Vacancy Survey (HVS).

All findings of this report are based on data from the 2011 and 2014 HVSs, which are sample surveys. Findings are, thus, subject to sampling and non-sampling errors.[1] For this reason, it is generally appropriate to qualify findings by noting that they are "estimates" of the true value of the variables, which are unknown. For example, we should refer to the rental vacancy rate as the "estimated rental vacancy rate." However, we will not do so in this report, because repeated use of the word "estimate" for so many figures would make the report unreasonably cumbersome.

In this report, data from the 2014 HVS are sometimes compared with data from the 2011 HVS. The samples for both the 2014 and 2011 HVSs were drawn from the same sample frame, initially based on the 2010 decennial census, and then updated to the survey year. Both samples for the 2011 and 2014 HVSs were updated for units created through new construction, alterations and conversions.

A. Housing Inventory

1. The total number of housing units in New York City in 2014 was 3,400,093, an increase of 48,000 over the number in 2011, and the largest housing stock for New York City in the forty-nine-years since the HVS was first conducted in 1965 (Table 1). This number includes all occupied housing units, all vacant for rent and vacant for sale units, and units that are vacant but not available for sale or for rent.[2]

2. Of the City's 3,400,000 housing units, 1,008,000 or 30 percent were located in Brooklyn. Manhattan (854,000) and Queens (842,000) each account for one quarter of the City's housing units. The Bronx includes 518,000 or 15 percent and Staten Island, with 178,000 units, comprises 5 percent of the City's housing units (Table 2). Each borough maintained the same proportion of the City's units in 2014 as in 2011.

3. The number of rental units (occupied and vacant available) was 2,184,297, comprising 64 percent of the housing stock in 2014 (Table 1).[3] Owner units numbered 1,033,226 or 30 percent of the housing stock.

4. In 2014 there were 1,030,000 rent-stabilized units (occupied and vacant available), comprising 47 percent of the rental stock (Table 3). This number reflects an updated methodology that improves the accuracy of estimates of the number of rental units by rent regulation categories. If applied to the 2011 HVS data, the revised methodology would have estimated about 34,000 more rent stabilized units than previously reported, largely consisting of higher rent units that previously would have been coded as deregulated by virtue of high rent vacancy deregulation, but in fact were still listed by DHCR as stabilized. To enable comparison with 2014 data, revised 2011 data are presented in the accompanying tables.

5. Rent-controlled units numbered 27,000 or 1.2 percent of the rental stock in 2014, continuing the long-term gradual decline of these units (Table 3).

6. The total number of owner units (occupied plus vacant for sale) rose by 18,000 to 1,033,000 units in 2014. However, the number of owner occupied units rose by 31,000, while the number of vacant for sale units dropped by 13,000 (Table 1).

7. The citywide homeownership rate was 32.5 percent in 2014. The homeownership rate in Staten Island was 64.6 percent, still the highest among the five boroughs. It was 44.3 percent in Queens. Ownership rates for Brooklyn (29.0 percent), Manhattan (24.8 percent), and the Bronx (21.2 percent) were lower than the city-wide rate (Table 4B). In Manhattan, 91 percent of owner units were either condominium or cooperative units, while in Staten Island the same percentage are conventionally owned.[4]

B. Rental Vacancies

1. The 2014 HVS reports a city-wide rental vacancy rate of 3.45 percent during the period between February and May 2014. The 2014 rental vacancy rate is, therefore, significantly lower than 5 percent (Table 5).

   Since the first HVS in 1965, the Census Bureau has applied the same definition and equation, without exception, in estimating the rental vacancy rate in New York City, using data from the HVS, as specified in the following:

$$\frac{\text{Number of Vacant Non-Dilapidated Units Available for Rent}}{\text{Number of Vacant Non-Dilapidated Units Available for Rent} + \text{Number of Renter-Occupied Units, Dilapidated and Non-Dilapidated}}$$

   Starting with the first HVS in 1965, the Census Bureau has treated dilapidated vacant units as unavailable for rent and has excluded them in counting the number of vacant units available for rent and, thus, in estimating the rental vacancy rate. On the other hand, in counting the number of occupied rental units, the Census Bureau has counted all occupied rental units, whether or not they are dilapidated.

The rental vacancy rate of 3.45 percent in 2014 was estimated using data from the 2014 HVS on each item in the above equation, as follows:

$$75{,}458 / (75{,}458 + 2{,}108{,}838) \times 100 = 3.45\%$$

Since the HVS is a sample survey, the rental vacancy rate of 3.45 percent is subject to sampling and non-sampling errors. The results of the 2014 HVS show that the standard error of estimate (SEE)[5] of the rental vacancy rate of 3.45 percent is 0.21. This means that the chances are 95 out of 100 that the actual rental vacancy rate would vary from the estimated rental vacancy rate of 3.45 percent by no more than two standard errors, or by plus or minus 0.41 percent (1.96 x 0.21). That is to say that, given the 2014 estimated rental vacancy rate of 3.45 percent, the chances are 95 out of 100 that the actual rental vacancy rate is between 3.04 percent and 3.86 percent ($3.45\% \pm 1.96 \times 0.21$).

2. In 2014, the vacancy rate in Staten Island was 5.50 percent. However, the number of vacant units in the borough is small, so the sampling error of this vacancy rate is likely to be large and interpretation of the rate should be done with caution. The rental vacancy rate in Manhattan was found to be 4.07 percent. The vacancy rate in the Bronx was 3.77 percent, while in Brooklyn it was 3.06 percent. In Queens the rental vacancy rate was only 2.69 percent (Table 5).

3. The vacancy rate in 2014 for rent-stabilized units as a whole was 2.12 percent. Availability of vacant rental units and vacancy rates differed by the era of building construction. The vacancy rate for rent-stabilized units in buildings built before 1947 was 2.29 percent, while it was 1.63 percent for post-1947 rent-stabilized units (Table 6). About four times as many vacant units were available in pre-1947 buildings as in newer buildings.

4. The vacancy rate for private non-regulated units (were never rent-controlled or rent-stabilized, were decontrolled, including those in buildings with five or fewer units, and unregulated units in cooperative or condominium buildings) was 5.60 percent, the highest of all major rental categories (Table 6).

5. The vacancy rate for All Other Rental units as a whole (including Public Housing, Mitchell-Lama, *In Rem,* HUD-regulated, Article 4, Loft Board, and Municipal Loan units) was 2.20 percent (Table 6).

6. Vacant units available for low rents were extremely scarce. The rental vacancy rate in 2014 for units with asking rents of less than $800 was just 1.80 percent (Table 7).

   Availability of vacant rental units with asking rents in the $800-$999 range was 3.73 percent in 2014. The vacancy rate for units with asking rents of $1,000-$1,499 was

3.13 percent. For units with an asking rent level of $1,500-$1,999 the rate was 3.22 percent (Table 7).

7. However, above $2,000 asking rent, the number of vacant rental units jumped by 81 percent, from 12,902 to 23,290 and the rental vacancy rate moved up from 4.38 percent to 6.26 percent, between 2011 and 2014. Above $2,500 asking rent, the vacancy rate went from 5.02 percent to 7.32 percent, the highest vacancy rate for a rent level in the City (Table 7). The high rent vacancy decontrol threshold was raised from $2,000 to $2,500 effective June 2011 just after completion of the 2011 HVS.

8. The number of vacant available rental units in 2014 was 75,000, compared to 68,000 in 2011. The **rental vacancy rate in 2014 was 3.45 percent**, well below the statutorily relevant rate of 5.00%. The 2011 vacancy rate was 3.12 percent (Tables 1 and 5).

9. The number of vacant units available for sale in 2014 was 18,000, a drop of 13,000 from 2011.

10. The number of vacant units not available for sale or rent was 183,000 in 2014, up yet again by 18,000 or 11 percent, since 2011 from 164,000, which had been the highest number since the first HVS in 1965 (Table 1).

    Of the 183,000 vacant units not available for sale or rent, 61,000 or 33.6 percent, were unavailable because they were undergoing or awaiting renovation. This number was up from 48,000 units in 2011. As previous HVSs have shown, most of these units undergoing or awaiting renovation will be either occupied or vacant available for sale or rent by the next HVS in 2017 (Table 8).

    Vacant units that were unavailable because of occasional, seasonal, or recreational use numbered 55,000 or 30.2 percent in 2014, down somewhat from 65,000, or 39.5 percent in 2011 (Table 8). Of the units in this category, 68 percent were located in Manhattan. Of the units held for occasional, seasonal or recreational use in Manhattan, 77 percent were in cooperative or condominium buildings.[6]

C. Incomes

Incomes are reported for 2010 and 2013, while housing data are for 2011 and 2014. Incomes were little changed from 2010 to 2013.

1. The median annual income for <u>all households</u> (renters and owners combined) was $48,040 in 2010 dollars or $51,225 in inflation-adjusted terms. It was $50,400 in 2013 (Table 9).

2. The median annual 2010 income for renter households was $38,500 in 2010 dollars, or $41,053 in inflation adjusted dollars. In 2013 it was $41,500 (Table 9).

3. The median annual income for homeowners was $75,000 in 2010 dollars, or $79,972 in inflation-adjusted dollars; in 2013 it was $80,000, virtually the same. Owners' median income was almost twice the median income of renter households in 2013 (Table 9).

4. The 2013 median income of rent-controlled households was $29,000 (Table 10).

5. The median 2013 income of rent-stabilized households as a whole was $40,600. (Table 10).

6. The median income of households in pre-1947 rent-stabilized units was $40,000 in 2013, while the median income of households in post-1947 rent-stabilized units was $46,000 (Table 10).

7. The 2013 median income of households in private non-regulated rental units (units that were never rent controlled or rent stabilized, units that were decontrolled, and unregulated rental units in cooperative or condominium buildings) was $58,000, which was 40 percent higher than the median income of all renter households (Table 10).

8. The median income of households in All Other Rental Units as a whole (includes Public Housing, Mitchell-Lama, *In Rem,* HUD-regulated, Article 4, Municipal Loan, and Loft Board units) was extremely low: only $18,296, less than half of the median 2013 income of all renter households (Table 10).

D. Rents

1. In 2014, the median monthly **contract** rent, which excludes tenant payments for utilities,[7] was $1,200, while the median monthly **gross** rent, which includes utility payments,[8] was $1,325 (Table 11). In inflation-adjusted terms, the contract rent was up 3.4 percent from 2011, while the gross rent rose by 4.3 percent.

2. The median asking rent for a vacant unit was $1,400 in 2014, up by 2.1 percent from 2011 in inflation-adjusted terms. The asking rent for vacant for-rent housing units is the rent asked for the unit at the time of interview, which may differ from the rent paid at the time the unit is occupied. Asking rent may or may not include utilities (Table 11).

3. The median contract rent of rent-controlled units was $900 in 2014 (Table 12).

4. The median contract rent of rent-stabilized units as whole was $1,200 in 2014. It was $1,153 for pre-1947 rent-stabilized units, while it was $1,300 for post-1947 rent-stabilized units (Table 12).

5. The median contract rent for private, non-regulated units (units that were never rent controlled or rent stabilized, units that were decontrolled, and unregulated rental units in cooperative or condominium buildings) was $1,500 in 2014 (Table 12).

6. On the other hand, the median contract rent for All Other Rental units as a whole (including Public Housing, Mitchell-Lama, *In Rem,* HUD-regulated, Article 4, Municipal Loan, and Loft Board units) was extremely low: a mere $583, and the lowest by far among the major rental categories in 2014 (Table 12).

7. The median gross rent of rent-controlled units was $1,020 in 2014 (Table 13).

8. The median gross rent of all rent-stabilized units was $1,300 in 2014. The gross rent for pre-1947 rent-stabilized units was $1,266; for post-1947 rent-stabilized units it was $1,413 in 2014 (Table 13).

9. For private non-regulated units (units that were never rent controlled or rent stabilized, units that were decontrolled, and unregulated rental units in cooperative or condominium buildings) the median gross rent in 2014 was $1,625 (Table 13).

10. Similarly to contract rent, the median gross rent of All Other Rental Units as a whole (Public Housing, Mitchell-Lama, *In Rem,* HUD-regulated, Article 4, Municipal Loan, and Loft Board units) was very low, at $595 in 2014 (Table 13).

11. About 18 percent of rental units in the City had a contract rent of less than $800 in 2014; only 8 percent had a contract rent of less than $500. Almost half (48 percent) of rental units were in the $800-$1,499 range. The contract rents of the remaining 34 percent of rental units were $1,500 or more, with 17 percent renting for $2,000 or more, including 11 percent renting for $2,500 or more in 2014. The number of units with contract rent of $2,000 or more was up by 24 percent, even after adjusting for inflation from 2011, and the number of units with contract rent of $2,500 or more increased by 37 percent (Table 14).

12. About 15 percent of the City's rental units had a gross rent of less than $800 in 2014, while 46 percent had a gross rent in the $800-$1,499 range. The gross rent of the remaining two-fifths of rental units was $1,500 or more, with one-fifth at $2,000 or more, including 12 percent at $2,500 or more. The number of units with gross rents less than $1,500 was down by 96,000 or 7.1 percent from 2011, even after adjusting 2011 rents for inflation. The number with gross rent of $1,500 or more increased by 92,000 or 13 percent in the same period (Table 15).

E. Rent-Income Ratios (proportion of household income tenants spend for rent)

1. The median contract rent-income ratios were little changed from 2011. The median **contract** rent-income ratio was 31.2 percent in 2014, while it was 30.9 percent in 2011 (Table 16). (Rent data are for the survey years of 2011 and 2014, while income data are for 2010 and 2013).

2. About three in ten renter households in the City paid 50 percent or more of their household's income for contract rent in both survey years (Table 16).

3. The median **gross** rent-income ratio was 33.8 percent in the City in both 2011 and 2014 (Table 16).

   Contract rent does not include additional separate charges to the tenant for fuel and utilities, while gross rent includes such charges, so the gross rent is always higher than the contract rent. Thus, the median gross rent/income ratio is higher than the contract rent/income ratio.

4. One third of renter households in the City paid 50 percent or more of their household income for gross rent in both 2011 and 2014 (Table 16).

5. In 2014, households in the publicly assisted/regulated category of All Other Rental housing (Public Housing, Mitchell-Lama, *In Rem*, HUD-regulated, Article 4, Municipal Loan and Loft Board) paid the lowest proportion of their income for contract rent: 29.5 percent (Table 17).

6. The contract rent/income ratio for controlled units was 30.7 percent; the gross rent/income ratio was 35.5 percent.

7. Households in rent-stabilized units as a whole paid 33.1 percent of their income for contract rent. The median contract rent-income ratio for pre-1947 units was 33.4 percent, while it was 32.4 percent for post-1947 units in 2014 (Table 17).

8. The median **contract** rent-income ratio for private non-regulated units (units that were never rent controlled or rent stabilized, units that were decontrolled, and unregulated rental units in cooperative or condominium buildings) in the City was 30.0 percent in 2014 (Table 17).

9. Among households in all major rental categories, households in All Other Rental housing (Public Housing, Mitchell-Lama, *In Rem*, HUD-regulated, Article 4, Municipal Loan and Loft Board) paid the lowest proportion of their income for **gross** rent in 2014: 30.3 percent (Table 17).

10. Households in rent-stabilized units as a whole in the City paid 36.4 percent of their income for gross rent in 2014. The median gross rent-income ratio for pre-1947 units was 37.0 percent, while it was 34.7 percent for post-1947 units (Table 17).

11. Rent controlled households paid a median ratio of 35.5% of their income for gross rent (Table 17).

12. Households in private non-regulated units (units that were never rent controlled or rent stabilized, that were decontrolled, and unregulated rental units in cooperative or condominium buildings) in the City paid 33.0 percent of their income for gross rent in 2014 (Table 17).

F. Housing and Neighborhood Conditions

In 2014, housing and neighborhood conditions in the City were good.

1. In 2014 most occupied housing units in the City were situated in **structurally decent** buildings.

   Of all occupied units (renter occupied and owner occupied together), 0.4 percent were in **dilapidated** buildings in 2014. This is an extremely small percentage; however, the number of such units increased significantly from 6,745 to 12,640 units between 2011 and 2014. For renter-occupied units the dilapidation rate was 0.5 percent (Table 18).

   The percentage of renter occupied units in buildings with **no building defects** went from 88.8 percent to 91.8 percent (Table 18).

2. Housing **maintenance** conditions were very good.

   The proportion of renter-occupied units with five or more of the seven maintenance deficiencies measured by the 2014 HVS remained extremely low: only 4.3 percent in both 2011 and 2014, among the lowest ever recorded since these conditions were first measured in 1991 (Table 18).

3. **Neighborhood quality** was also very good.
   Two indicators of housing quality are used in the HVS: One is an interviewer observation of the condition of buildings on the block of the sample unit. Another asks the respondent's assessment of the quality of residential structures in the neighborhood.

   a. The proportion of renter households living near buildings with broken or boarded-up windows on the street was only 5.8 percent in 2014, even lower than the 7.3 percent in 2011 (Table 18).

   b. The proportion of renter households that rated the quality of neighborhood residential structures as "good" or "excellent" was very high: 71.7 percent in 2014, compared to 70.4 percent reported in 2011 (Table 18).

G. Crowding (more than one person per room).

The crowding situation in the City continued to be serious in 2014.

1. The proportion of renter households that were crowded in 2014 was 12.2 percent (Table 19).

2. The crowding situation in rent-stabilized units, particularly in pre-1947 rent-stabilized units, was much more serious, with rates of 14.9 percent for all stabilized units and 15.0 percent for pre-1947 units (Table 19).

3. Crowding situations in rent-controlled units were very rare. The number of crowded rent-controlled units was too few to report in 2014 (Table 19).

4. Crowding in private non-regulated units occurred at a rate of 11.3% in 2014 (Table 19).

5. The crowding situation in All Other Rental units (including Public Housing, Mitchell-Lama, *In Rem,* HUD-regulated, Article 4, Municipal Loan, and Loft Board units) continued to be very low. Only 5.5 percent of such units were crowded, substantially lower than the rate for all renter households in 2014 (Table 19).

Technical Notes

[1] Further information on the statistical reliability of data from the 2014 HVS, except for the City's rental vacancy rate is expected to be available to the public in the summer of 2015.
[2] Since the first HVS, the Census Bureau excludes housing units in "special places." "Special places" include transient hotels and motels, institutions, prisons, dormitories, hospitals, nursing homes, and shelters. The 2010 Census, as for all decennial censuses, includes housing units in special places as long as they meet the definition of a housing unit as separate living quarters. For the 2010 Census, separate living quarters were those that had direct access from outside the building or through a common hall. Therefore, the numbers of housing units the decennial censuses report are higher than the number of housing units the HVS reports.
[3] Percents in this report are calculated based on unrounded numbers. Column numbers may not add to total due to rounding.
[4] U.S. Bureau of the Census, 2014 New York City Housing and Vacancy Survey.
[5] The Standard Error of Estimate (SEE) is a statistical measure most commonly used to approximate sampling error. Non-sampling errors can come from many sources, including if any units were erroneously classified as occupied or vacant. However, the incidence of non-sampling errors made in estimating the rental vacancy rate is likely to be low for the HVS, since the primary purpose of the HVS is to estimate the rental vacancy rate accurately.
[6] U.S. Bureau of the Census, 2014 New York City Housing and Vacancy Survey.
[7] Contract rent is the amount tenants agree to pay owners for the units they occupy, as contracted between the tenant and the owner in the lease; it includes fuel and utilities, if they are provided by the owner without additional, separate charges to the tenant.
[8] Gross rent is the contract rent plus any additional charges for fuel and utilities paid separately by the tenant.

Table 1
Housing Inventory by Tenure and Occupancy
New York City 2011 and 2014

	Housing Units[a]			
	2011		2014	
	Number	Percent	Number	Percent
Total housing units	3,352,041	100.0%	3,400,093	100.0%
Total rental units	2,172,634	64.8%	2,184,297	64.2%
Occupied	2,104,816	62.8%	2,108,838	62.0%
Vacant, available for rent	67,818	2.0%	75,458	2.2%
Total owner units	1,014,940	30.3%	1,033,226	30.4%
Occupied	984,066	29.4%	1,015,299	29.9%
Vacant, available for sale	30,875	0.9%	17,926	0.5%
Vacant units, not available for sale or rent	164,467	4.9%	182,571	5.4%

Sources: U.S. Bureau of the Census, 2011 and 2014 New York City Housing and Vacancy Surveys.

Notes:
(a) In this report, numbers may not add up to the total due to rounding.

Table 2
Total Housing Units by Borough
New York City 2011 and 2014

	Housing Units[a]			
	2011		2014	
Boroughs	**Number**	**Percent**	**Number**	**Percent**
All	3,352,041	100.0%	3,400,093	100.0%
Bronx	510,347	15.2%	518,140	15.2%
Brooklyn	997,495	29.8%	1,007,856	29.6%
Manhattan	840,676	25.1%	853,865	25.1%
Queens	828,446	24.7%	841,768	24.8%
Staten Island	175,077	5.2%	178,463	5.2%

Sources: U.S. Bureau of the Census, 2011 and 2014 New York City Housing and Vacancy Surveys.

Note: [a] Includes all occupied, vacant for rent, vacant for sale and vacant not available for sale or rent.

Table 3
Rental Housing Inventory by Rent Regulation Status
New York City 2011 and 2014

	2011* Rental Units		2014 Rental Units	
	Number	Percent	Number	Percent
All rental units (occupied and vacant available)	2,172,634	100.0%	2,184,297	100.0%
Rent controlled	37,764[c]	1.7%	27,039[c]	1.2%
Rent stabilized	1,020,727	47.0%	1,029,918	47.2%
Pre-1947 stabilized	767,521	35.3%	766,296	35.1%
Post-1947 stabilized	253,206	11.7%	263,621	12.1%
Private non-regulated units[a]	816,522	37.6%	848,721	38.9%
All other rental units[b]	297,620	13.7%	278,618	12.8%

Sources: U.S. Bureau of the Census, 2011 and 2014 New York City Housing and Vacancy Surveys.

Notes:
(a) "Private non-regulated" consists of units that were never rent controlled or rent stabilized, units that were decontrolled (including those in buildings with five or fewer units), and unregulated rental units in cooperative or condominium buildings.
(b) "All other rental units" includes Public Housing, Mitchell-Lama, *In Rem*, HUD-regulated, Article 4, Municipal Loan and Loft Board units.
(c) Occupied Only
* Revised: For the 2014 HVS the rent regulation coding sequence was adjusted to give higher priority to DHCR's reported rent regulation status than in the past. If applied to 2011 HVS data, about 34,000 more rent stabilized units than previously reported would result, largely consisting of higher rent units that previously would have been coded as deregulated by virtue of high rent vacancy deregulation, but in fact were still listed by DHCR as stabilized. To enable comparison with 2014 data, the revised 2011 data are presented here.

Table 4A
Owner-Occupied Units, Owner Units Vacant for Sale and Home Ownership Rates by Borough
New York City 2014

Borough	Number of Owner-Occupied Units	Number of Owner Units Vacant for Sale	Home Ownership Rate[a]
All	1,015,299	17,926	32.5%
Bronx	102,231	(c)	21.2%
Brooklyn	270,647	(c)	29.0%
Manhattan	189,100	4,833(b)	24.8%
Queens	347,567	5,416	44.3%
Staten Island	105,754	(c)	64.6%

Source: U.S. Bureau of the Census, 2014 New York City Housing and Vacancy Survey.

Notes:

(a) The home ownership rate is the proportion of total occupied units (owner and renter units together) that are owner-occupied units.

(b) In this report, figures such as the number of housing units or households, that are less than 4,000 are not reported in the tables; and numbers between 4,000 and 4,999 are qualified by warning the reader to interpret them with caution. Dollar figures, such as rents and incomes, based on a small number of cases are treated following the same guidelines. Similarly, percentages in which the numerator is less than 3,000 are not reported; and percentages in which the numerator is between 3,000 and 3,999 are qualified by warning the reader to interpret them with caution.

(c) Too few units to report.

Table 4B
Owner-Occupied Units and Home Ownership Rates by Borough
New York City 2011 and 2014

Borough	Number of Owner-Occupied Units 2011	Number of Owner-Occupied Units 2014	Home Ownership Rate[a] 2011	Home Ownership Rate[a] 2014
All	984,066	1,015,299	31.9%	32.5%
Bronx	98,166	102,231	20.7%	21.2%
Brooklyn	256,130	270,647	27.6%	29.0%
Manhattan	181,606	189,100	24.1%	24.8%
Queens	337,775	347,567	43.9%	44.3%
Staten Island	110,389	105,754	67.5%	64.6%

Sources: U.S. Bureau of the Census, 2011 and 2014 New York City Housing and Vacancy Surveys.

Note:

(a) The home ownership rate is the proportion of total occupied units (owner and renter units together) that are owner-occupied units.

Table 5
Rental Units and Vacancy Rates by Borough
New York City 2014

	All Rental Units	Renter Occupied Units	Vacant Units Available for Rent	Net Vacancy Rate[(a)]
All	2,184,297	2,108,838	75,458	3.45%
Bronx	394,955	380,084	14,871	3.77%
Brooklyn	682,441	661,545	20,896	3.06%
Manhattan	596,423	572,169	24,254	4.07%
Queens	449,274	437,204	12,070	2.69%
Staten Island	61,204	57,836	[(c)]	5.50%[(b)]

Source: U.S. Bureau of the Census, 2014 New York City Housing and Vacancy Survey.

Notes:

(a) The vacancy rate is calculated by dividing vacant available for rent units that are not dilapidated by the sum of vacant available for rent units that are not dilapidated plus renter-occupied units (dilapidated and not dilapidated).

(b) Since the number of units is small, interpret with caution. The New York City Housing and Vacancy Survey is a sample survey. Since the number of vacant units available for rent in this category is small, the sampling error of the vacancy rate is likely to be large. Thus, interpretation of the vacancy rate should be done with caution.

(c) Too few units to report.

Table 6
Vacant for Rent Units and Vacancy Rates by Rent Regulation Status
New York City 2011 and 2014

	2011*		2014	
	Vacant Units Available for Rent	Net Vacancy Rate[(a)]	Vacant Units Available for Rent	Net Vacancy Rate[(a)]
All Vacant for Rent Units	67,818	3.12%	75,458	3.45
Rent Stabilized Units	26,003	2.55%	21,822	2.12
Pre-1947 Stabilized	19,457	2.54%	17,535	2.29
Post-1947 Stabilized	6,546	2.59%	4,287[(d)]	1.63
Private non-regulated units[(b)]	37,643	4.61%	47,518	5.60
All other rental units[(c)]	4,172[(d)]	1.40%	6,119	2.20

Sources: U.S. Bureau of the Census, 2011 and 2014 New York City Housing and Vacancy Surveys.

Notes:

(a) The vacancy rate is calculated by dividing vacant available for rent units that are not dilapidated by the sum of vacant available for rent units that are not dilapidated plus renter-occupied units (dilapidated and not dilapidated).

(b) "Private non-regulated" consists of units that were never rent controlled or rent stabilized, units that were decontrolled (including those in buildings with five or fewer units), and unregulated rental units in cooperative or condominium buildings.

(c) "All other rental units" includes Public Housing, Mitchell-Lama, *In Rem*, HUD-regulated, Article 4, Municipal Loan and Loft Board units.

(d) Since the number of units is small, interpret with caution.

* Revised: For the 2014 HVS the rent regulation coding sequence was adjusted to give higher priority to DHCR's reported rent regulation status than in the past. If applied to 2011 HVS data, about 34,000 more rent stabilized units than previously reported would result, largely consisting of higher rent units that previously would have been coded as deregulated by virtue of high rent vacancy deregulation, but in fact were still listed by DHCR as stabilized. To enable comparison with 2014 data, the revised 2011 data are presented here.

Table 7
Vacant for Rent Units and Net Vacancy Rate
by Monthly Rent Level
New York City 2011 and 2014

Monthly Rent Level[b] [c]	Vacant Units Available for Rent		Net Vacancy Rate[a]	
	2011[c]	2014	2011	2014
All Rental Units	67,818	75,458	3.12%	3.45%
Less than $800	4,924[d]	6,658	1.15%	1.80%
$800 to $999	8,540	10,387	2.77%	3.73%
$1,000 to $1, 499	28,370	23,482	3.58%	3.13%
$1,000 - $1,249	11,229	14,155	2.66%	3.05%
$1,250 - $1,499	17,141	9,326	4.64%	3.26%
$1,500 to $1,999	13,082	11,642	4.30%	3.22%
$2,000 or more	12,902	23,290	4.38%	6.26%
$2,000 - $2,499	4,241[d]	5,600	3.48%	4.30%
$2,500 or more	8,661	17,689	5.02%	7.32%

Sources: U.S. Bureau of the Census, 2011 and 2014 New York City Housing and Vacancy Surveys.

Notes:
(a) The vacancy rate is calculated by dividing vacant available for rent units that are not dilapidated by the sum of vacant available for rent units that are not dilapidated plus renter-occupied units (dilapidated and not dilapidated).
(b) Asking rents for vacant units and contract rents for occupied units. Asking rent is the amount of rent asked for vacant units by owners. Contract rent is the amount tenants agree to pay owners for the units they occupy, as contracted between the tenant and the owner in the lease; including fuel and utilities if they are provided by the owner without additional, separate charges to the tenant.
(c) 2011 rents are in 2014 dollars. The ratio of the April 2014 over the April 2011 Consumer Price Index values (CPI-U) for New York-Northeast New Jersey-Long Island (259.99/246.49) was used to convert nominal 2011 rents into rents measured in 2014 dollars.
(d) Since this is a small number of units, interpret with caution.

Table 8
Number of Vacant Units Unavailable for Rent or Sale by Reason for Unavailability New York City 2011 and 2014

	2011		2014	
Reason Unavailable	**Number**	**Percent**	**Number**	**Percent**
Total	164,467	100.0%	182,571	100.0%
Dilapidated	(a)	(a)	(a)	1.9%[(b)]
Rented, Not Yet Occupied	7,553	4.6%	5,213	2.9%
Sold, Not Yet Occupied	7,084	4.3%	6,570	3.6%
Undergoing Renovation	29,087	17.8%	42,434	23.4%
Awaiting Renovation	19,043	11.6%	18,524	10.2%
Held for Occasional, Seasonal or Recreational Use	64,590	39.5%	54,764	30.2%
Used/Converted to Non-Residential Use	(a)	(a)	(a)	(a)
In Legal Dispute	13,904	8.5%	10,860	6.0%
Awaiting Conversion/ Being Converted to Coop/Condo	(a)	(a)	(a)	(a)
Held Pending Sale of Building	(a)	(a)	7,940	4.4%
Owner's Personal Problems (age, illness, etc.)	10,465	6.4%	18,079	10.0%
Held for Planned Demolition	(a)	(a)	(a)	(a)
Held for Other Reasons	5,591	3.4%	9,485	5.2%
Reason not reported	(a)	--	(a)	--

Sources: U.S. Bureau of the Census, 2011 and 2014 New York City Housing and Vacancy Surveys.

Note: (a) Too few units to report.
(b) Since the number of units is small, interpret with caution.

Table 9
Median Household Incomes
New York City 2010 and 2013

	2010	2013	Percent Change 2010-2013
In current dollars			
All households	$48,040	$50,400	+4.9%
All renters	$38,500	$41,500	+7.8%
All owners	$75,000	$80,000	+6.7%
CPI[a]	240.86	256.83	+6.6%
In 2013 dollars[b]			
All households	$51,225	$50,400	-1.6%
All renters	$41,053	$41,500	+1.1%
All owners	$79,972	$80,000	0.0%

Sources: U.S. Bureau of the Census, 2011 and 2014 New York City Housing and Vacancy Surveys.

Notes:
(a) The Consumer Price Index for All Urban Consumers for New York-Northeast New Jersey-Long Island, yearly average, Bureau of Labor Statistics, U.S. Department of Labor.
(b) Income data are for the year before the survey.

Table 10
Median Renter Household Incomes by Rent Regulation Status
New York City 2010 and 2013
(Constant 2013 dollars) [a]

	Median Household Income[(a)]		Percent Change
	2010*	2013	2010 - 2013
All Renters	$41,053	$41,500	+1.1%
Rent Controlled	$30,070	$29,000	-3.6%
Rent Stabilized	$40,703	$40,600	-0.3%
Pre-1947 Stabilized	$39,082	$40,000	+2.3%
Post-1947-Stabilized	$45,851	$46,000	+0.3%
Private Non-Regulated[(b)]	$53,848	$58,000	+7.7%
All Other Rental Units[(c)]	$18,891	$18,296	-3.1%

Sources: U.S. Bureau of the Census, 2011 and 2014 New York City Housing and Vacancy Surveys.

Notes:

(a) Incomes are reported for the year before each survey, 2010 and 2013. 2010 data are updated to 2013 using the Consumer Price Index for All Urban Consumers for New York- Northeast New Jersey-Long Island, CPI-U, yearly average, Bureau of Labor Statistics.

(b) "Private non-regulated" consists of units that were never rent controlled or rent stabilized, units that were decontrolled, including those in buildings with five or fewer units, and unregulated rentals in cooperative or condominium buildings.

(c) "All other rental units" includes Public Housing, Mitchell-Lama, *In Rem*, HUD-regulated, Article 4, Municipal Loan and Loft Board units.

* Revised: For the 2014 HVS the rent regulation coding sequence was adjusted to give higher priority to DHCR's reported rent regulation status than in the past. If applied to 2011 HVS data, about 34,000 more rent stabilized units than previously reported would result, largely consisting of higher rent units that previously would have been coded as deregulated by virtue of high rent vacancy deregulation, but in fact were still listed by DHCR as stabilized. To enable comparison with 2014 data, the revised 2011 data are presented here.

Table 11
Median Rents, All Renter-Occupied Units
New York City 2011 and 2014

In current dollars	2011	2014	Percent Change 2011-2014
Median gross rent[(a)]	$1,204	$1,325	+10.0%
Median contract rent[(b)]	$1,100	$1,200	+9.1%
Median asking rent[(c)]	$1,300	$1,400	+7.7%
CPI[(d)]	246.5	260.0	+5.5%
In April 2014 dollars			
Median gross rent	$1,270	$1,325	+4.3%
Median contract rent	$1,160	$1,200	+3.4%
Median asking rent	$1,371	$1,400	+2.1%

Sources: U.S. Bureau of the Census, 2011 and 2014 New York City Housing and Vacancy Surveys.

Notes:

(a) Gross rent is the contract rent plus any additional charges for fuel and utilities paid separately by the tenant.

(b) Contract rent is the amount tenants agree to pay owners for the units they occupy, as contracted between the tenant and the owner in the lease, including fuel and utilities if they are provided by the owner without additional, separate charges to the tenant.

(c) Asking rent for vacant and contract rents for occupied units. Asking rent is the amount of rent asked for vacant units by owners. Contract rent is the amount tenants agree to pay owners for the units they occupy, as contracted between the tenant and the owner in the lease; including fuel and utilities if they are provided by the owner without additional, separate charges to the tenant.

(d) Consumer Price Index for all Urban Consumers for New York-Northeast New Jersey-Long Island, April of each year, Bureau of Labor Statistics, U.S. Department of Labor.

Table 12
Median Contract Rent by Rent Regulation Status
New York City 2011 and 2014
(Constant April 2014 Dollars[c])

	Median Monthly Contract Rent[(c)]		Percent Change
	2011*[(c)]	2014	2011-2014
All Renters	$1,160	$1,200	+3.4%
Rent Controlled	$844	$900	+6.6%
Rent Stabilized	$1,129	$1,200	+6.3%
Pre-1947 Stabilized	$1,104	$1,153	+4.4%
Post-1947 Stabilized	$1,191	$1,300	+9.2%
Private Non-Regulated[(a)]	$1,424	$1,500	+5.3%
All Other Rental Units[(b)]	$623	$583	-6.4%

Sources: U.S. Bureau of the Census, 2011 and 2014 New York City Housing and Vacancy Surveys.

Notes:
(a) "Private non-regulated" consists of units that were never rent-controlled or rent-stabilized, units that were decontrolled (including those in buildings with five or fewer units), and unregulated rental units in cooperative or condominium buildings.
(b) "All other rental units" includes Public Housing, Mitchell-Lama, *In Rem,* HUD-regulated, Article 4, Municipal Loan and Loft Board units.
(c) Constant 2014 dollars are derived by multiplying 2011 rents by the ratio of the April 2014 CPI over the April 2011 CPI (259.99/246.49). Consumer Price Index for All Urban Consumers (CPI-U) for New York-Northern New Jersey-Long Island, Bureau of Labor Statistics, U.S. Department of Labor.
* Revised: For the 2014 HVS the rent regulation coding sequence was adjusted to give higher priority to DHCR's reported rent regulation status than in the past. If applied to 2011 HVS data, about 34,000 more rent stabilized units than previously reported would result, largely consisting of higher rent units that previously would have been coded as deregulated by virtue of high rent vacancy deregulation, but in fact were still listed by DHCR as stabilized. To enable comparison with 2014 data, the revised 2011 data are presented here.

Table 13
Median Gross Rent by Rent Regulation Status
New York City 2011 and 2014
(Constant April 2014 Dollars[c])

	Median Monthly Gross Rent		Percent Change
	2011*(c)	2014	2011-2014
All Renters	$1,270	$1,325	+4.3%
Rent Controlled	$944	$1,020	+8.1%
Rent Stabilized	$1,234	$1,300	+5.3%
Pre-1947 Stabilized	$1,218	$1,266	+3.9%
Post-1947-Stabilized	$1,292	$1,413	+9.4%
Private Non-Regulated[a]	$1,582	$1,625	+2.7%
All Other Rental Units[b]	$633	$595	-6.0%

Sources: U.S. Bureau of the Census, 2011 and 2014 New York City Housing and Vacancy Surveys.
Notes:

(a) "Private non-regulated" consists of units that were never rent-controlled or rent-stabilized, units that were decontrolled (including those in buildings with five or fewer units), and unregulated rental units in cooperative or condominium buildings.

(b) "All other rental units" includes Public Housing, Mitchell-Lama, *In Rem,* HUD-regulated, Article 4, Municipal Loan and Loft Board units.

(c) Constant 2014 dollars are derived by multiplying 2011 rents by the ratio of the April 2014 CPI over the April 2011 CPI (259.99/246.49). Consumer Price Index for All Urban Consumers (CPI-U) for New York-Northern New Jersey-Long Island, Bureau of Labor Statistics, U.S. Department of Labor.

* Revised: For the 2014 HVS the rent regulation coding sequence was adjusted to give higher priority to DHCR's reported rent regulation status than in the past. If applied to 2011 HVS data, about 34,000 more rent stabilized units than previously reported would result, largely consisting of higher rent units that previously would have been coded as deregulated by virtue of high rent vacancy deregulation, but in fact were still listed by DHCR as stabilized. To enable comparison with 2014 data, the revised 2011 data are presented here.

Table 14
Monthly Contract Rent in Renter Occupied Housing
New York City 2011 and 2014
(Constant April 2014 Dollars[a])

Monthly Contract rent April 2014 Dollars	2011[a] Number	2011[a] Percent	2014 Number	2014 Percent	Percent Change in Number 2011-2014
Total	2,104,816	100.0%	2,108,838	100.0%	+0.2%
Less than $500	161,841	7.9	164,837	8.0	(b)
$500-$799	260,439	12.6	198,153	9.6	-23.9%
$500-$699	151,132	7.3	106,552	5.2	-29.5%
$700-$799	109,307	5.3	91,601	4.5	-16.2%
$800-$999	299,731	14.6	268,185	13.1	-10.5%
$800-$899	158,456	7.7	116,622	5.7	-26.4%
$900-$999	141,274	6.9	151,563	7.4	+7.3%
$1,000 - $1,499	764,065	37.1	726,114	35.3	-5.0%
$1,000-$1,249	411,423	20.0	449,585	21.9	+9.3%
$1,250-$1,499	352,642	17.1	276,529	13.5	-21.6%
$1,500 - $1,999	291,023	14.1	349,532	17.0	+20.1%
$1,500-$1,749	195,249	9.5	236,568	11.5	+21.2%
$1,750 -$1,999	95,773	4.7	112,963	5.5	+17.9%
$2,000+	281,530	13.7	348,628	17.0	+23.8%
$2,000-$2,499	117,520	5.7	124,691	6.1	+6.1%
$2,500+	164,010	8.0	223,936	10.9	+36.5%
No rent	46,188	--	53,391	--	--

Sources: U.S. Bureau of the Census, 2011 and 2014 New York City Housing and Vacancy Surveys.

Notes:
(a) Constant 2014 dollars are derived by multiplying 2011 rents by the ratio of the April 2014 CPI over the April 2011 CPI (259.99/246.49). Consumer Price Index for All Urban Consumers (CPI-U) for New York-Northern New Jersey-Long Island, Bureau of Labor Statistics, U.S. Department of Labor.
(b) Too few units change to report.
(c) Since the number of units change is small, interpret with caution.

Table 15
Monthly Gross Rent in Renter Occupied Housing
New York City 2011 and 2014
(Constant April 2014 Dollars[a])

Monthly Gross Rent	2011[(a)] Number of Renter Occupied Units	Percent	2014 Number of Renter Occupied Units	Percent	Percent Change 2011-2014
Total	2,104,816	100.0%	2,108,838	100.0%	
Less than $500	139,811	6.8%	150,483	7.3%	+7.6%
$500-$799	186,488	9.1%	148,395	7.2%	-20.4%
$500-$699	112,365	5.5%	86,079	4.2%	-23.4%
$700-$799	74,123	3.6%	62,316	3.0%	-15.9%
$800-$999	232,815	11.3%	199,998	9.7%	-14.1%
$800-$899	106,655	5.2%	84,810	4.1%	-20.5%
$900-$999	126,160	6.1%	115,188	5.6%	-8.7%
$1000 - $1,499	785,320	38.1%	749,901	36.5%	-4.5%
$1,000-$1,249	426,517	20.7%	396,715	19.3%	-7.0%
$1,250-$1,499	358,803	17.4%	353,186	17.2%	-1.6%
$1,500 - $1,999	376,099	18.3%	405,468	19.7%	+7.8%
$1,500-$1,749	231,023	11.2%	251,925	12.3%	+9.0%
$1,750-$1,999	145,076	7.0%	153,543	7.5%	+5.8%
$2,000+	338,095	16.4%	401,202	19.5%	+18.7%
$2,000 - $2,499	153,919	7.5%	154,749	7.5%	(c)
$2,500+	184,176	8.9%	246,453	12.0%	+33.8%
No rent[(b)]	46,188	--	53,391	--	

Sources: U.S. Bureau of the Census, 2011 and 2014 New York City Housing and Vacancy Surveys.

Note:

(a) Constant 2014 dollars are derived by multiplying 2011 rents by the ratio of the April 2014 CPI over the April 2011 CPI (259.99/246.49). Consumer Price Index for All Urban Consumers (CPI-U) for New York-Northern New Jersey-Long Island, Bureau of Labor Statistics, U.S. Department of Labor.

(b) Number not included in total for calculation of percent.

(c) Too few units change to report.

Table 16
Median Gross Rent/Income and Contract Rent/Income Ratios and Proportion of Renter Households Paying 50 percent of Income or More for Each New York City 2011 and 2014

	2011	2014
Contract Rent/Income Ratio		
Median **Contract** Rent/Income Ratio (proportion of income households pay for **contract** rent) [(a)]	30.9%	31.2%
Proportion of households paying 50 percent or more of household income for **contract** rent	29.6%	30.1%
Gross Rent/Income Ratio		
Median **Gross** Rent/Income Ratio (proportion of income households pay for **gross** rent) [(b)]	33.8%	33.8%
Proportion of households paying 50 percent or more of household income for **gross** rent	33.1%	33.5%

Sources: U.S. Bureau of the Census, 2011 and 2014 New York City Housing and Vacancy Surveys.

Notes:
(a) Contract rent is the amount tenants agree to pay owners for the units they occupy, as contracted between the tenant and the owner in the lease; it includes fuel and utilities if they are provided by the owner without additional, separate charges to the tenant.
(b) Gross rent is the contract rent plus any additional charges for fuel and utilities paid separately by the tenant.

Table 17
Median Contract Rent/Income and Gross Rent/Income Ratios
by Rent Regulation Status
New York City 2011 and 2014

	2011*		2014	
Regulatory Status	Median Contract Rent/Income Ratio	Median Gross Rent/Income Ratio	Median Contract Rent/Income Ratio	Median Gross Rent/Income Ratio
All	30.9%	33.8%	31.2%	33.8%
Rent Controlled	27.6%	31.7%	30.7%	35.5%
Rent Stabilized	31.9%	34.8%	33.1%	36.4%
Pre-1947 Stabilized	32.0%	35.5%	33.4%	37.0%
Post-1947-Stabilized	31.3%	33.8%	32.4%	34.7%
Private Non-Regulated[a]	30.6%	33.7%	30.0%	33.0%
All Other Rental[b]	29.8%	30.9%	29.5%	30.3%

Sources: U.S. Bureau of the Census, 2011 and 2014 New York City Housing and Vacancy Surveys.

Notes:

(a) "Private non-regulated" consists of units that were never rent controlled or rent stabilized, units that were decontrolled (including those in buildings with five or fewer units), and unregulated rental units in cooperative or condominium buildings.

(b) "All other rental units" includes Public Housing, Mitchell-Lama, *In Rem*, HUD-regulated, Article 4, Municipal Loan and Loft Board.

* Revised: For the 2014 HVS the rent regulation coding sequence was adjusted to give higher priority to DHCR's reported rent regulation status than in the past. If applied to 2011 HVS data, about 34,000 more rent stabilized units than previously reported would result, largely consisting of higher rent units that previously would have been coded as deregulated by virtue of high rent vacancy deregulation, but in fact were still listed by DHCR as stabilized. To enable comparison with 2014 data, the revised 2011 data are presented here.

Table 18
Housing and Neighborhood Conditions
New York City 2011 and 2014

Residential Building Condition	**Number or Percent of Households**	
	2011	**2014**
All occupied units (renter and owner units) in dilapidated buildings[(a)]		
Number	6,745	12,640
Percent	0.2%	0.4%
Renter-occupied units in dilapidated buildings[(a)]		
Number	5,858	9,679
Percent	0.3%	0.5%
Renter-occupied units in Buildings with no building defects		
Number	1,707,836	1,727,822
Percent	88.8%	91.8%
Housing Unit Maintenance Conditions		
Renter-occupied units with 5 or more of 7 maintenance deficiencies[(b)]	76,180 4.3%	78,654 4.3%
Renter-occupied units with no maintenance deficiencies[(b)]	719,506 41.0%	807,987 44.2%
Renter-occupied units with heating breakdowns (4 or more times)	129,807 7.2%	128,644 6.8%
Renter-occupied units with no heating breakdowns	1,511,211 83.3%	1,589,036 83.4%
Neighborhood Condition		
Rating of Quality of Neighborhood Residential Structures:		
Renter household opinion of good/excellent quality	1,290,114 70.4%	1,370,730 71.7%
Renter household opinion of poor quality	105,351 5.7%	105,232 5.5%
Renter households with any building with broken or boarded-up windows on same street	151,355 7.3%	119,274 5.8%

Sources: U.S. Bureau of the Census, 2011 and 2014 New York City Housing and Vacancy Surveys.

Notes:(a) A structure was rated dilapidated if it showed one or more critical defects or a combination of intermediate defects or inadequate original construction.

(b) Maintenance deficiencies include: 1) additional heating required in winter; 2) heating breakdown; 3) cracks or holes in interior walls, ceilings, or floors; 4) presence of rodents; 5) presence of broken plaster or peeling paint; 6) toilet breakdown; 7) water leakage into unit.

Table 19
Crowding Rates in Renter Occupied Units
by Rent Regulation Status
New York City 2011 and 2014

Regulatory Status	2011* Percent Crowded (>1 person per room)	2011* Percent Severely Crowded >1.5 persons per room)	2014 Percent Crowded (>1 person per room)	2014 Percent Severely Crowded >1.5 persons per room)
All	11.5%	4.3%	12.2%	4.7%
Rent-controlled	(c)	(c)	(c)	(c)
Rent-stabilized	13.8%	5.7%	14.9%	6.0%
Pre-1947	14.6%	5.8%	15.0%	6.1%
Post-1947	11.5%	5.1%	14.6%	5.5%
Private non-regulated[a]	10.9%	3.7%	11.3%	4.2%
All other rental units[b]	6.1%	1.7%	5.5%	1.8%

Sources: U.S. Bureau of the Census, 2011 and 2014 New York City Housing and Vacancy Surveys.

Notes:

(a) "Private non-regulated" consists of units that were never rent controlled or rent stabilized, units that were decontrolled (including those in buildings with five or fewer units), and unregulated rental units in cooperative or condominium buildings.

(b) "All other rental units" includes Public Housing, Mitchell-Lama, *In Rem*, HUD-regulated, Article 4, Municipal Loan and Loft Board.

(c) Too few households to report.

* Revised: For the 2014 HVS the rent regulation coding sequence was adjusted to give higher priority to DHCR's reported rent regulation status than in the past. If applied to 2011 HVS data, about 34,000 more rent stabilized units than previously reported would result, largely consisting of higher rent units that previously would have been coded as deregulated by virtue of high rent vacancy deregulation, but in fact were still listed by DHCR as stabilized. To enable comparison with 2014 data, the revised 2011 data are presented here.