



Definitions of Rent Regulation Status

2011 NYC Housing and Vacancy Survey

Prepared by New York City Department of Housing Preservation and
Development (HPD) Division of Housing Policy Analysis and Statistical Research

For purposes of the New York City Housing and Vacancy Survey (HVS), the Census Bureau draws a scientifically selected sample of New York City housing units from among all those possible; i.e., the sample frame. The 2011 New York City Housing and Vacancy Survey (HVS) used a sample based primarily on the 2010 Census and updated for units added by new construction or through alteration or conversion. The 2008, 2005 and 2002 HVSs used a sample based primarily on Census 2000 and updated for units added by new construction or through alteration or conversion. The 1991, 1993, 1996, and 1999 HVSs were based on a sample taken originally from the 1990 Census. The five HVSs from 1975 to 1987 used a sample originally drawn from the 1970 Census. Each rental unit in the sample must be assigned a rent regulation status. The following describes both the two-phase coding procedure applied to determine rent regulation status in the 2011 HVS, and brief definitions of these rent regulation status categories under current law and regulations.

The following two-phase coding procedure allowed the U.S. Census Bureau to assign a regulation status to each rental unit selected for the 2011 sample.

First Phase - Address Lists

The Census Bureau first looks for a match of each apartment name and/or building address of a sample unit with any of several address lists supplied by HPD. These lists are obtained from the administrative records of the various federal, state and city agencies responsible for rent regulation. They are geo-coded (to identify valid, duplicate and alias addresses) and prepared in a format that the Census Bureau can use. These lists include the following: the computerized apartment and building registration files from the New York State Division of Housing and Community Renewal (DHCR) for rent stabilized and rent controlled units, the addresses of public housing buildings owned and managed by the New York City Housing Authority, buildings regulated by New York State or New York City under the Mitchell-Lama program, buildings held and managed by the City under the *in rem* program, units whose rents are regulated by the New York City Loft Board, buildings whose rents are regulated under programs of the federal Department of Housing and Urban Development (HUD), and those regulated under Article 4 of the Private Housing Finance Law (PHFL) or under the City's Municipal Loan Program.

The largest of these lists contains the records for rent stabilized and rent controlled units. Under the Omnibus Housing Act of 1983, administration of rent control and rent stabilization in New York City became the responsibility of the New York State Division of Housing and Community Renewal

(DHCR). In April 1984, owners of rent controlled units in buildings of six or more units were required to register these units and provide information on their tenancy and unit characteristics to DHCR. Owners of rent stabilized units are required to file registrations annually.

For the 2011, 2008, 2005 and 2002 HVSs, HPD compiled as complete a list of rent controlled and rent stabilized units as possible by integrating several address list files provided by the state DHCR. In order to do this, HPD obtained from DHCR and merged the annual unit and building rent registration files covering the preceding five-year period (2006 – 2010), and selected the most recent registration status available for each unit. The annual apartment registration files include records of units classified as stabilized, exempt, or vacant. HPD also obtained from DHCR records of units known to be controlled as of March 2011, based on records where building owners had requested an increase in the Maximum Base Rent or requested a Fuel Cost Adjustment. The file of controlled units excluded those that had been controlled at one time but were decontrolled because of the death of a tenant, relocation of a tenant, high income-high rent decontrol, or high rent vacancy. Based on these records provided by DHCR, HPD provided the most recent available rent regulation status (controlled, stabilized or exempt) for a unit to the Census Bureau for its coding of regulatory status through subsequent procedures.

Second phase - Supplementary Information

However, relying exclusively on DHCR administrative records of rent controlled and rent stabilized units to determine regulation status may be problematic for a number of reasons:

First, although the Omnibus Housing Act of 1983 required owners with rent controlled and rent stabilized apartments to register with the DHCR, 100 percent compliance by owners is unlikely. **The Rent Regulation Reform Act of 1993 substantially eased penalties for failing to register in a given year, so it is unlikely that all owners of stabilized units do register their buildings and units annually.** Owners of buildings with rent-controlled units are not required to register those units annually.

Second, the Rent Regulation Reform Acts of 1993 and 1997 provided owners with certain terms and conditions related to vacancy, monthly rent levels and leaseholder incomes that allowed them to decontrol both rent controlled and rent stabilized units. This meant that annual registration information could be over-ridden by subsequent decontrol on the part of the owner.

Third, rent controlled units can be passed to a next generation of close relatives or domestic partners who have shared the unit for a period of years with the original leaseholder.

Fourth, **units in buildings receiving J-51 or 421-a tax benefits are supposed to operate under rent stabilization while the building continues to receive tax benefits. Such buildings should be, but are not always, included on DHCR's address lists.**

For units with no match on any of the publicly regulated address lists, and for units matching the rent controlled or rent stabilized lists, the Census Bureau then applies a further algorithm to incorporate, as much as data and information are available, the major definitional criteria covered in the Local Emergency Rent Control Act of 1962, the 1969 Rent Stabilization Law, the 1974 Emergency Tenant Protection Act, the Omnibus Housing Act of 1983 and the Rent Regulation Reform Acts of 1993 and 1997. This phase determines whether a unit 1) should have been listed as controlled or stabilized but

was not, or, 2) was at one point controlled or stabilized but should not have been by the time of the HVS interview; and 3) if identified as rent stabilized, should be coded as pre-1947 or post-1947, since this information does not appear on the DHCR files. For example, this supplementary procedure identifies units registered as controlled in 1984 that changed tenancy since then but for which no change in registration was filed, or units in cooperative or condominium buildings that were regulated at the time of a prior registration but changed tenancy since conversion, and exempt units whose owners have not registered them as exempt. The major definitional criteria covered in state and local rent control and rent stabilization laws that were applied in the Census Bureau's rent regulation status classification procedure include age of building, number of units in the building, move-in date of the current tenant, whether the building receives a 421-a or J-51 tax reduction benefit, whether the building is a cooperative or a condominium, whether the tenant moved in after date of coop/condo conversion, and if the contract rent level was greater than \$2,000 at the time of the 2011 HVS.

Below are descriptions of the rent control and rent stabilization categories, followed by descriptions of the other rent regulation categories covered in the HVS.

Rent Controlled

Rent controlled units are subject to the provisions of the Rent Control Law and Regulations, which have jurisdiction over some occupied private rental units. All increases in rent are set and must be approved by the state DHCR. The following units are classified as rent controlled: units in buildings with three or more units constructed before February 1, 1947, where the tenant moved in before July 1, 1971 or units substantially rehabilitated prior to January 1, 1976 under the provisions of J-51, which were initially occupied by the current tenant prior to January 1, 1976; units in buildings with one or two units constructed before February 1, 1947 which were initially occupied by the current tenant prior to April 1953. Some controlled units may remain controlled by limited right of succession by a close family member or domestic partner. Some controlled units may remain in buildings converted to cooperatives or condominiums.

In addition, the rents of units in rental buildings aided by a loan under the Municipal Loan Program prior to September 1, 1986 are under statutory rent control, though not under the Maximum Base Rent system. In rental buildings aided by a loan after September 1, 1986, the units are subject to the Rent Stabilization Law. Municipal loan units are covered in the second phase of the HVS coding procedure where they are treated similarly to "Other Regulated."

Under law, all rent controlled apartments that are voluntarily vacated after June 30, 1971 are no longer subject to the jurisdiction of the Rent Control Law. If the unit is in a building with fewer than six units, it becomes decontrolled; if the unit is in a building with six units or more, it becomes rent stabilized.

Rent Stabilized

The rent stabilized category is divided into two parts: units built pre-1947 and units built in or post-1947.

Pre-1947 Stabilized

The following units are classified as pre-1947 stabilized units: units in buildings with six or more units constructed before February 1, 1947 where the current tenant moved in on or after July 1, 1971; units that had been rent controlled but were decontrolled prior to July 1, 1971 under the luxury decontrol provisions of city rent regulations unless the current tenant moved in after the effective date of a cooperative or condominium conversion (if any).

In buildings that contained six or more units at the time stabilization went into effect, which were converted to five or fewer units at a later date, units would remain stabilized. If a landlord failed to properly register one of these units as stabilized, the DHCR does not correct it, and thus, it would be inaccurately coded as "other" for the purposes of this survey.

Post-1947 Stabilized

The following units were classified as post-1947 stabilized: units in buildings with six or more units which were constructed between 1947 and 1973 or after 1974 if the units received a 421-a or J-51 conversion tax abatement that is still in effect (some previously tax-abated or -exempt units are no longer rent stabilized after the expiration of tax benefits) and the current tenant moved in prior to a cooperative or condominium conversion (if any); units in buildings occupied prior to 1974 under the Mitchell-Lama program which have been "bought out" of the program. In addition, some housing units subject to regulation by virtue of various governmental supervision or tax benefit programs are subject to rent regulatory status pursuant to Section 2521.1(k) of the Rent Stabilization Code.

Public Housing

Rental units in structures owned and managed by the New York City Housing Authority are classified as Public Housing. Only households with specified low- or moderate-income levels may qualify as tenants. The Authority regulates terms and conditions of occupancy. Private housing leased by the Authority is not classified here as Public Housing.

Mitchell-Lama Rental

Rental units in buildings constructed under the provisions of Article 2 of the PHFL are classified as Mitchell-Lama Rental. Units in the sample are coded by the Census Bureau based on administrative records from the state and city agencies (DHCR and HPD) that are responsible for supervising these developments.

The Mitchell-Lama program is primarily housing for moderate and middle-income tenants; therefore, occupancy is restricted to households meeting certain income limitations. The mechanisms employed to keep rents at affordable levels include tax exemption, state- or city-provided low interest mortgages, and limitations of return on equity. In certain instances, federal subsidy programs are combined with the state and local assistance measures to achieve the program's objectives. Rents are directly regulated; adjustments are based on changes in operating costs, debt structure, and profitability in the particular project and must be approved by the appropriate state or city agency. Certain Mitchell-Lama projects were refinanced under 223F, National Housing Act, and rents are regulated by the U.S. Department of Housing and Urban Development (HUD).

Other Regulated Rental Housing

This category in tables of HVS data prepared by the Census Bureau encompasses all other government-regulated units excluded from the control status classifications described above. It includes the following categories which can be isolated separately when using HVS microdata files prepared by the Census Bureau for the HVS.

(a) *In Rem*

In Rem includes units located in structures owned by the City of New York as a result of an *in rem* proceeding initiated by the city after the owner failed to pay tax on the property for 3 or more years for 1- and 2-family dwellings, or one or more years for a multiple dwelling. Though many of these units in multiple dwellings had previously been subject to either rent control or rent stabilization, they are exempt from both regulatory systems during the period of city ownership. Since 1997 the City no longer takes direct possession of such tax delinquent, distressed properties. After an *in rem* judgment of foreclosure by the court, the City transfers title of such residential properties from the former owner to a new responsible, pre-qualified owner, without ever taking title to the property. A not-for-profit entity acts as an interim holding company to assist the transition.

(b) HUD Regulated

Unit is in a building which received a subsidy through a federal program which requires HUD to regulate rents in the building. These programs include Section 8 New Construction, Substantial and Moderate Rehabilitation as well as other subsidized construction and rehabilitation programs. They do not include units in buildings which receive federal mortgage guarantees; nor, because the HUD lists used for the HVSs were organized by building, not unit, do they include units whose tenants receive Section 8 existing certificates or rent vouchers unless the entire building is receiving federal subsidy. Moreover, some units that receive subsidies from more than one government source may be listed under another control category such as Mitchell-Lama. Thus, the HVS data on HUD Federal Subsidy should not be used to study units or occupants of units participating in these programs.

(c) Article 4

Unit is in a building that was constructed under Article 4 of the PHFL and which is still covered by the provisions of the article. This program built limited-profit rental buildings for occupancy by households with moderate incomes.

(d) Loft Board Regulated Buildings

Unit is located in a building originally intended as commercial loft space, is occupied as rented residential space and has its rent regulated by the New York City Loft Board, as indicated by Loft Board records.

(e) Municipal Loan Program

Unit is in a building rehabilitated under Article 8 of the PHFL, whose rents are set by DHCR upon HPD's recommendation, based on operating and maintenance costs and a limited profit allowance.

Other Regulated as a category in tables in the published comprehensive report includes HUD-regulated, Article 4 and New York City Loft Board-regulated units, described above. In tables where Mitchell-Lama or *in rem* units are not categorized separately, they may also be included in "Other Regulated."

Not Regulated

Units with no current governmental restrictions or regulation on rents or rental conditions or type of tenancy are included in this category, comprised of the following units:

- (a) Units regulated in the past and deregulated under the provisions of vacancy decontrol. For the most part these units are in buildings with five or fewer units built before 1947.
- (b) Cooperative or condominium units that are renter occupied by tenants who moved into them after the buildings were converted to cooperatives or condominiums.
- (c) Units that were never subject to government rent regulation. Units in this category are mainly located in structures of fewer than six units that were completed on or after February 1, 1947, or in rental buildings constructed after January 1, 1974 which did not receive 421-a or J-51 tax benefits, or are in buildings originally constructed as cooperatives or condominiums.
- (d) Units that were deregulated by order of the DHCR because of monthly contract rent of \$2,000 or more and annual tenant income of \$175,000 or more, under provisions of the Rent Regulation Reform Act of 1997. These units were identified from a list of such units provided by the DHCR. Note: The Rent Act of 2011 raised these thresholds to \$2,500 in rent and \$200,000 in annual income, but these provisions were not effective until July 1, 2011, after the 2011 HVS was completed.
- (e) Units whose tenants took occupancy in 1994 or later, if the rent is \$2,000 or more and the building is not currently under the 421-a or J-51 program. This high rent vacancy deregulation threshold was raised to \$2,500, also effective after the 2011 HVS was completed.

Definition of Program Status Input

This variable is only used as part of the control status recode programming sequence that identifies the rent regulation status of a unit. For reasons of confidentiality, units in buildings receiving benefits from more than one program are only listed for one program by the Census Bureau. Thus, the variable does not give complete data for all programs and should not be used to study characteristics of units in the various programs. Definitions of programs used in this control status recode are the same as those described above, with the addition of the following two programs:

421-a

Unit is in a building which receives or received 421-a tax benefits from the City of New York. This program provides real estate tax exemptions to newly constructed units. Because of constraints placed on the data for reasons of confidentiality, the Census Bureau may not list as receiving 421-a tax benefits some units that do receive 421-a tax benefits but also receive benefits under other programs. Therefore, HVS data on 421-a should not be used to study the size, effects, or beneficiaries of the 421-a tax exemption program.

J-51

Unit is in a building that receives or received J-51 tax benefits from the City of New York, based on most recent available expiration date. This program provides real estate tax exemptions and abatements to existing residential buildings that are renovated or rehabilitated in ways conforming to the requirements of the statute. It also provides these benefits to residential buildings that were converted from commercial or other non-residential structures. The HVS data on J-51 should not be used to study size, effects, or beneficiaries of the J-51 program because, for reasons of confidentiality, some units receiving J-51 benefits as well as other benefits are not listed as receiving J-51 benefits by the Census Bureau.