Changes to the Rent Stabilized Housing Stock in New York City in 2003

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highlights

✔ The study finds a net estimated loss of 7,556 rent stabilized units in 2003

✔ In 2003, the largest source of additions to the rent stabilized stock are newly constructed rental units receiving 421-a tax exemption benefits.

✔ High rent/vacancy decontrol makes up the largest category of subtractions from the stabilized stock in 2003.

Introduction

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. 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.

This report is an update of last year's study, which analyzed the changes in New York City's rent stabilized housing stock from 1994 to 2002. The figures in this study represent statistics as gathered from various city and state agencies.

Additions to the Rent Regulated Housing Stock

Since newly constructed or substantially rehabilitated units are exempt from rent regulation, increases to the regulated housing stock are often a result of owners "voluntarily" placing these new units under rent stabilization. These owners choose to place units under rent stabilization because of cost/benefit analyses that have led them to the conclusion that regulation, for a period of time, with tax benefits is more profitable than free market rents without tax benefits. Events that lead to the addition of stabilized units are the following:

A. Section 421-a Program
B. J-51 Program
C. Mitchell-Lama buyouts
D. Lofts converted to rent stabilized units
E. Other Additions
F. Rent controlled apartments converting to rent stabilization

Section 421-a and J-51

The New York City Department of Housing Preservation and Development (HPD) administers programs to increase the supply of affordable rental housing. Two of these programs have a significant impact on the inventory of stabilized housing: the Section 421-a Program and the J-51 Program. Under Section 421-a of the Real Property Tax Law, newly constructed dwellings in New York City receive real estate tax exemptions. For the duration of the benefits, at least, the newly built apartments are subject to rent stabilization. In 2003, an estimated total of 1,929 units were added to the rent stabilized stock through the 421-a program.

The J-51 Program provides real estate tax exemptions and abatements to existing residential buildings which are renovated or rehabilitated. This program also provides these benefits to residential buildings converted from commercial structures. In consideration of receiving these benefits, owners of these buildings agree to place under rent stabilization, those apartments which otherwise would not be subject to regulation. The apartments remain stabilized, at least, until the benefits expire. The J-51 program added 171 units to the rent stabilized stock in 2003. (See Appendix 1.)

Mitchell-Lama Buyouts

Where rents are regulated in a building directly by the Federal, State or City government these apartments are exempt from rent stabilization and control laws. However, when these government-aided developments are no longer directly administered by a governmental entity, they may become subject to the rent stabilization laws. These federally regulated projects include Section 236 financed buildings and project-based Section 8 buildings.

Mitchell-Lama developments are constructed under the provisions of Article 2 of the Private Housing Finance Law (PHFL). This program is primarily designed to increase the supply of housing affordable to middle-income households. Approximately 75,000 rental apartments and 50,000 cooperative units were constructed under the program from the 1950's through the 1970's. For these units to be affordable, the State or City provided low interest mortgages, real estate tax abatements and the owners agreed to limit their return on equity.

While, in general, the State and City mortgages are for a term of 40 or 50 years, the PHFL allows owners to "buy-out" of the program after 20 years. If an owner of a rental development buys-out of the program and the development was occupied prior to January 1,1974, the apartments may become subject to rent stabilization. One Mitchell-Lama rental development containing 278 apartments became rent stabilized in 2003. (See Appendix 1.)

Loft Units

The New York City Loft Board, under Article 7-C of the Multiple Dwelling Law regulates rents in buildings originally intended as commercial loft space that have been converted to residential housing. When the units are brought up to code standard, they become stabilized. A total of 20 loft units entered the rent stabilization system in 2003. (See Appendix 1.)

Other Additions to the Housing Stock

Additionally, several other events can increase the rent stabilized housing stock: tax incentive programs such as 421-g and 420-c, "deconversion," returned losses, and the sub-division of large units into two or more smaller units. The 421-g tax incentive program is designed for conversion of units in Lower Manhattan from non-residential to residential use. The 421-g program added 41 rent stabilized units to the housing stock in 2003. An additional 740 units were converted to residential rental use during the year, however, their initial rent levels exceeded $2,000 per month and these units were subject to High Rent/Vacancy decontrol upon occupancy.[1]

The 420-c program, a tax exemption program for low income housing projects that are developed in conjunction with the Low Income Housing Tax Credit program also adds units to the rent stabilized stock. An estimated 1,781 units were added to the rent stabilized stock in 2003 through the 420-c program.[2]

Deconversion occurs when a building converted to cooperative status reverts to rental status because of financial difficulties. Returned losses include abandoned buildings that are returned to habitable status without being substantially rehabilitated, or City-owned *in rem* buildings being returned to private ownership. These latter events do not generally add a significant number of units to the rent stabilized stock and were not quantified in this study.

An estimated total of 1,822 units were added to the rent stabilized stock through the 421-g and 420-c tax incentive programs in 2003. (See Appendix 1.)

Changes in Regulatory Status

Chapter 371 of the Laws of 1971 provided for the decontrol of rent controlled units that were voluntarily vacated on or after July 1, 1971. Since the enactment of vacancy decontrol, the number of rent controlled units has fallen from over one million to under 60,000. When a rent controlled unit becomes vacated it either becomes rent stabilized or leaves the regulatory system.

If the vacated unit is in a rental building with six or more units and the incoming tenant pays less than $2,000 per month, the apartment becomes stabilized. This process results in a diminution of the controlled stock and an increase in the stabilized stock. According to rent registration filings with the NYS Division of Housing and Community Renewal (DHCR), in 2003, 916 units were decontrolled and became rent stabilized.

Subtractions from the Rent Regulated Housing Stock

Deregulation of rent controlled and stabilized units occur because of statutory requirements or because of physical changes to the residential dwellings. Events that lead to the removal of stabilized units are the following:

A. **High Rent/High Income Decontrol**
B. **High Rent/Vacancy Decontrol**
C. **Cooperative/Condominium Conversions**
D. **Expiration of 421-a Benefits**
E. **Expiration of J-51 Benefits**
F. **Substantial Rehabilitation**
G. **Conversion to Commercial or Professional Status**
H. **Other Losses to the Housing Stock – Demolitions, Condemnations, Mergers, etc.**

High Rent/High Income Decontrol

The Rent Regulation Reform Act (RRRA) of 1993 permitted the deregulation of occupied apartments renting for $2,000 or more in which the tenants in occupancy had a combined household income in excess of $250,000 in each of the immediately two preceding years. The 1997 RRRA reduced the income threshold to $175,000. Deregulation would occur upon application by the owner and upon the expiration of the rent stabilized lease. This income-based decontrol process, which is administered by the NYS Division of Housing and Community Renewal (DHCR), relies upon data furnished to the NYS Department of Taxation and Finance as part of the verification process. Please note that both the rent level and household income criteria had to be met for decontrol to take place. If households earning at least $175,000 paid less than $2,000 per month, rent regulation would remain in effect. Also please note that the owner must apply to DHCR in order to decontrol the unit. If the owner did not submit a decontrol application, the occupying tenant would remain regulated regardless of rent level and household income. Because DHCR has to approve the orders of deregulation, an exact accounting exists of units leaving regulation as a result of High Rent/High Income decontrol. Based on DHCR processing records, High Rent/High Income decontrol affected a total of 198 apartments in 2003.[3] (See Appendix 2.)

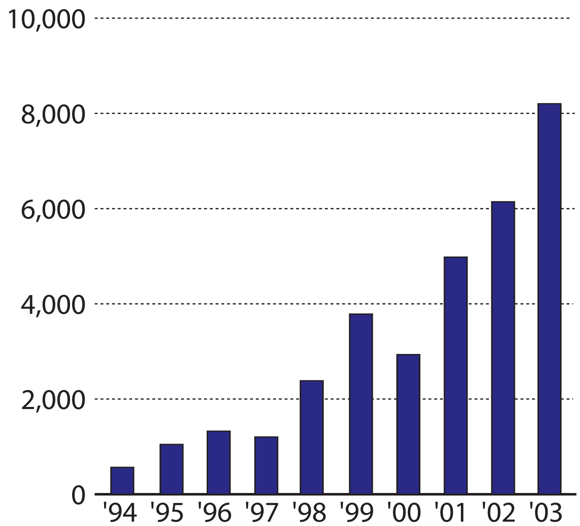
High Rent/Vacancy Decontrol

In the 1993 RRRA, the New York State legislature reinstituted High Rent/Vacancy decontrol.[4] This initial statute has since been changed several times. First, the 1993 RRRA decontrolled vacant apartments and occupied regulated apartments that subsequently were vacated, that rented for $2,000 or more per month between July 7 and October 1, 1993. Second, the New York City Council allowed for the deregulation of apartments on vacancy on or after April 1, 1994, if these units rented for $2,000 or more. Thus, the original dates in the RRRA of 1993 establishing the parameters for decontrol were no longer applicable. DHCR interpreted the $2,000 rent threshold as follows: if upon vacancy, the owner undertook individual apartment improvements that increased the legal regulated rent to $2,000 or more, and the incoming tenant agreed to pay $2,000 or more, the unit would be deregulated.

In a third stage, in early 1997, the City Council amended the Rent Stabilization Law to **only** allow for vacancy deregulation of the apartment if the vacating tenant's legal regulated rent was $2,000 or more. Finally, in June of 1997, with the passage of the RRRA the state overrode the new City regulation. The determining factor was no longer the *outgoing* tenant's legal regulated rent but the *incoming* tenant's calculated legal regulated rent. Owners, upon a vacancy, could now apply a combination of allowable increases to reach the $2,000 deregulation level: standard vacancy increases, special vacancy increases and individual apartment improvement increases. This calculated rent for a hypothetical incoming tenant was the determining factor, not the rent the incoming tenant actually paid. In fact, after a stabilized unit is deregulated by this calculation, the actual deregulated rent the new tenant pays can be less than $2,000 per month. According to DHCR rent registration records, 8,204 units were

Subtractions to the Stabilized Housing Stock due to High Rent/Vacancy Decontrol, 1994-2003

Number of Units Deregulated due to High Rent/Vacancy Continues to Increase



Note: Registration of deregulated units with DHCR was voluntary and not required from 1994-2000. These totals represent a 'floor' or minimum count of the actual number of deregulated units in these years. The NYC City Council required proof of registration with DHCR of the unit as exempt to be sent to the tenant beginning in March 2000 (see Endnote 5).

Source: NYS Division of Housing and Community Renewal annual registration data.

deregulated in 2003 under the High Rent/Vacancy decontrol provisions of the RRRA. (See graph on this page and Appendix 3.)

Cooperative & Condominium Conversions

When rent regulated housing is converted to ownership status, there is a small immediate decrease in the rental stock, but over time there is a significantly larger decrease. Tenants that choose to purchase their apartments after a cooperative or condominium plan is approved by the New York State Attorney General's Office are immediately removed from rent regulation. These units are no longer rentals. In eviction conversion plans, non-purchasing tenants may continue in residence until the expiration of their lease. In non-eviction plans (which are the overwhelming majority of approved plans) the regulated tenants have the right to remain in occupancy until they voluntarily leave their apartments. When a tenant leaves a regulated unit, the apartment in many cases becomes deregulated, regardless if the incoming tenant purchases or rents.[6] In 2003, 1,474 units located in co-ops or condos left the stabilized housing stock. (See Appendix 4.)

Expiration of Section 421-a and J-51 Benefits

As stated in the "Additions" section, buildings receiving Section 421-a and J-51 benefits remain stabilized, at least, until the benefits expire. Therefore, these units enter the stabilized system for a prescribed time period and then exit the system. The number of units leaving the stabilization system is directly dependent upon those units previously entering the system. Expiration of 421-a and J-51 benefits has resulted in a total of 651 and 854 units removed from the rent regulatory system respectively in 2003. (See Appendix 4.)

Substantial Rehabilitation

The Emergency Tenant Protection act of 1974 exempts apartments in buildings that have been substantially rehabilitated on or after January 1, 1974. DHCR processes applications by owners seeking exemption from rent regulation based on the substantial rehabilitation of their properties. Owners must replace at least 75% of building-wide and apartment systems (i.e., plumbing, heating, electrical wiring, windows, floors, kitchens, bathrooms, etc.). In general, buildings that are substantially rehabilitated have been vacated and tended to have been stabilized properties. Therefore, when these buildings are substantially rehabilitated, the apartments are no longer subject to regulation and are counted like new construction. This counts as a subtraction from the regulated stock. Notably, these properties do not receive J-51 tax incentives for rehabilitation. During 2003, 340 units have been removed from stabilization through substantial rehabilitation. (See Appendix 4.)

Conversion to Commercial or Professional Status

Space converted from residential to nonresidential use is no longer subject to rent regulation. In 2003, 59 units were converted to nonresidential use. (See Appendix 4.)

Other Losses to the Housing Stock

Owners may register units as permanently exempt when smaller units are merged into larger ones, or when the building is condemned, demolished or boarded-up/burnt-out. DHCR annual registration data shows that 912 units were removed from the stabilized housing stock in 2003 due to these reasons. (See Appendix 4.)

Summary

In 2003, approximately 12,692 housing units left rent stabilization, while approximately 5,136 units initially entered the stabilization system. The built-in fluidity of the system resulted in a net loss of an estimated 7,556 regulated stabilized units to the rent stabilized housing stock.[7] (See Summary Table on next page)

The largest source of additions to the stabilized stock in 2003 were new rental units built with 421-a real estate tax exemptions, equaling about 38%. Meanwhile, high rent/vacancy decontrol was the largest source of subtractions from the rent stabilized housing stock in 2003, accounting for 65% of the total number of subtractions. ❒

Endnotes

1. The 421-g tax incentive program provides 14-year tax exemption and abatement benefits for the conversion of commercial buildings to multiple dwellings in Downtown Manhattan. All rental units in the project become subject to rent stabilization for the duration of the benefits. These units are subject to High Rent/Vacancy decontrol if the initial rent level is $2,000 or more. Also, an additional 19 rental units were created in 2003, but their regulatory status could not be determined.

2. The 420-c tax incentive program provides a complete exemption from real estate taxes for the term of the regulatory agreement (up to 30 years). Eligible projects are owned or controlled by a not-for-profit Housing Development Fund Company, subject to an HPD regulatory agreement which requires use as low-income housing and are financed in part with a loan from the City or State in conjunction with federal low-income housing tax credits.

3. The final count for petitions for High Rent/High Income decontrol may be slightly reduced as they are subject to appeal or in some cases, to review by a court of competent jurisdiction.

4. Decontrol of certain high rent apartments was instituted in New York City twice before, in 1964 and in 1968.

5. In March 2000, the City Council passed Local Law Intro No. 669-A, which amended the administrative code of the City of New York, in relation to extending the rent stabilization laws with certain amendments to such laws and the rent control law.

6. A recent court decision affecting units in Brooklyn and Queens ruled that apartments in buildings that have converted to co-op/condo status may remain rent stabilized for a new rental tenant even after a stabilized tenant vacates the apartment.

7. Almost the entire number of the estimated net loss of 7,556 units to the rent stabilized housing stock will remain as housing units in New York City. These units would convert from rent stabilization to either forms of ownership or to non-regulated rental units unless they are demolished.

Summary Table on Additions and Subtractions to the Rent Stabilized Housing Stock in 2003

Program	*Number of Units*
ADDITIONS	
421-a	+ 1,929
J-51 conversions	+ 171
Mitchell-Lama buyouts	+ 278
Loft conversions	+ 20
Other Additions	+ 1,822
CHANGES	
Rent control to rent stabilization	+ 916
Subtotal Additions & Changes	**+ 5,136**
SUBTRACTIONS	
Co-op and Condo subtractions	- 1,474
High Rent/Vacancy Decontrol	- 8,204
High Rent/High Income Decontrol	- 198
421-a Expiration	- 651
J-51 Expiration	- 854
Substantial Rehabilitation	- 340
Commercial/Professional conversion	- 59
Other Subtractions	- 912
Subtotal Subtractions	**- 12,692**
NET TOTAL	
Net Estimated Loss	**- 7,556**

Sources: Department of Housing Preservation and Development, Office of Development, Division of Housing Finance, Tax Incentive Programs; NYS Division of Housing and Community Renewal annual registration data; NYC Loft Board; and Department of Housing Preservation and Development, Office of Housing Operations, Division of Housing Supervision, Mitchell-Lama.

Appendix: Changes to the Rent Stabilized Housing Stock

1. Additions to the Stabilized Housing Stock, 1994-2003

Year	421-a	J-51	Mitchell-Lama Buyouts State	Mitchell-Lama Buyouts City	Lofts	421-g	420-c	Total
1994	-	114	0	0	-	-	-	114
1995	-	88	306	0	-	-	-	394
1996	-	8	0	0	-	-	-	8
1997	-	38	323	0	-	-	-	361
1998	-	135	574	1,263	64	-	-	2,036
1999	-	33	286	0	71	-	-	390
2000	-	224	0	0	96	-	-	320
2001	-	494	0	0	56	-	-	550
2002	-	260	0	232	16	-	-	508
1994-2002	**20,240**	**1,394**	**1,489**	**1,495**	**303**	**865**	**5,500**	**31,286**
2003	**1,929**	**171**	**0**	**278**	**20**	**41**	**1,781**	**4,220**

421-a Notes: A count of 26,987 421-a units includes co-op and condo units that were created under the 421-a program. Analysis of the RPAD database shows that on average from 1994 to 2002, 25% of 421-a units were owner units and 75% were rental units. Therefore an estimated 20,240 units were added to the rent stabilized stock. In 2003, 51% of 421-a units were rental units, therefore, of the 3,782 units created under the 421-a program in 2003, 1,929 were rentals that are rent stabilized.

J-51 Notes: The numbers represent units that were not rent stabilized prior to entering the J-51 Program. Most units participating in the J-51 Program were rent stabilized prior to their J-51 status and therefore are not considered additions to the rent stabilized stock.

Loft Notes: Loft conversion counts are not available from 1994 to 1997.

421-g and 420-c Notes: Counts for each year between 1994 and 2002 are not available; only an aggregate is available.

Sources: Department of Housing Preservation and Development, Office of Development, Division of Housing Finance, Tax Incentive Programs; NYS Division of Housing and Community Renewal annual registration data; NYC Loft Board; and Department of Housing Preservation and Development, Office of Housing Operations, Division of Housing Supervision, Mitchell-Lama.

2. Subtractions to the Stabilized Housing Stock due to High Rent/High Income Decontrol by Borough, 1994-2003

Year	Bronx	Brooklyn	Manhattan	Queens	S.I.	Total
1994	0	0	904	0	0	904
1995	0	0	346	0	0	346
1996	1	0	180	4	0	185
1997	1	0	157	2	0	160
1998	3	0	366	3	0	372
1999	2	1	279	1	0	283
2000	2	1	227	0	0	230
2001	3	0	209	2	0	214
2002	1	1	258	2	0	262
1994-2002	**13**	**3**	**2,926**	**14**	**0**	**2,956**
2003	**2**	**13**	**177**	**6**	**0**	**198**

Source: NYS Division of Housing and Community Renewal annual registration data, grants by year of filing petition cycle.

3. Subtractions to the Stabilized Housing Stock due to High Rent/Vacancy Decontrol by Borough, 1994-2003

Year	Bronx	Brooklyn	Manhattan	Queens	S.I.	Total
1994	3	9	544	9	0	565
1995	1	111	927	8	0	1,047
1996	10	106	1,203	6	0	1,325
1997	6	77	1,121	0	0	1,204
1998	7	116	2,247	14	0	2,384
1999	11	151	3,586	37	0	3,785
2000	7	279	2,586	62	0	2,934
2001	53	294	4,490	145	0	4,982
2002	64	391	5,431	251	7	6,144
1994-2002	**162**	**1,534**	**22,135**	**532**	**7**	**24,370**
2003	**83**	**640**	**7,048**	**416**	**17**	**8,204**

Note: Registration of deregulated units with DHCR was voluntary and not required from 1994-2000. These totals represent a 'floor' or minimum count of the actual number of deregulated units in these years. The NYC City Council required proof of registration with DHCR of the unit as exempt to be sent to the tenant beginning in March 2000 (see Endnote 5).

Source: NYS Division of Housing and Community Renewal annual registration data.

4. Subtractions from the Stabilized Housing Stock, 1994-2003

Year	High Rent/ High Income Decontrol	High Rent/ Vacancy Decontrol	Co-op/Condo Conversion	421-a Expiration	J-51 Expiration	Commercial/ Substantial Rehab	Professional Conversion	Other	Total
1994	904	565	5,584	2,005	1,345	332	139	1,904	12,778
1995	346	1,047	4,784	990	1,440	334	113	1,670	10,724
1996	185	1,325	4,733	693	1,393	601	117	1,341	10,388
1997	160	1,204	3,723	1,483	1,340	368	109	1,365	9,752
1998	372	2,384	3,940	2,150	1,412	713	78	1,916	12,965
1999	283	3,785	2,822	3,514	1,227	760	110	1,335	13,836
2000	230	2,934	3,147	3,030	884	476	729	1,372	12,802
2001	214	4,982	2,153	770	1,066	399	88	1,083	10,755
2002	262	6,144	1,774	653	1,081	508	45	954	11,421
1994-2002	**2,956**	**24,370**	**32,660**	**15,288**	**11,188**	**4,491**	**1,528**	**12,940**	**105,421**
2003	**198**	**8,204**	**1,474**	**651**	**854**	**340**	**59**	**912**	**12,692**

Co-op/Condo Note: Subtractions from the stabilized stock in co-ops and condos are due to two factors: (1) stabilized tenants vacating rental units in previously converted buildings and (2) new conversions of stabilized rental units to ownership.

High Rent/Vacancy Decontrol Note: See Appendix 3 note above.

Source: NYS Division of Housing and Community Renewal annual registration data.