

**POLICY BRIEF**

June 2009

# DESTABILIZED RENTS

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**The Impact of Vacancy Decontrol on Low-Income Communities**

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# DESTABILIZED RENTS: THE IMPACT OF VACANCY DECONTROL ON LOW-INCOME COMMUNITIES

By Tom Waters & Victor Bach

**Rent-regulated housing is the single most important component of New York City's housing stock for low-wage workers. More than a million low-income people (in households with incomes below twice the poverty line) live in rent-regulated housing, compared to a little over half a million in public and subsidized housing combined.**

Rent regulation is a vital protection for these tenants. Under rent regulation, landlords cannot terminate a tenancy without good cause, even at the end of a lease. Nor can they use rent increases to effectively terminate a tenancy. This gives tenants greater security in their homes. It gives tenants in buildings with poor conditions or inadequate maintenance greater freedom to seek repairs or improved service without fear of retaliation. Regulation also provides tenants with better affordability<sup>1</sup> and helps to preserve a stock of affordable housing for the future.

Unfortunately, legal provisions for the deregulation of vacant units, known as vacancy decontrol, and rising rents in the regulated stock itself are undermining the effectiveness of rent regulation in promoting affordability. Vacancy decontrol is a process created through 1993 and 1997 legislation by the New

York state legislature and 1994 legislation by the New York City Council, which allows for the deregulation of apartments when their legal rents reach \$2,000 a month during a vacancy. Because other provisions allow for large increases during a vacancy, any vacant apartment can be deregulated in this way. In recent years, vacancy decontrol has been the dominant force effecting change in the regulated stock.

This report uses data from the 2008 New York City Housing and Vacancy Survey (HVS), recently released by the U.S. Census Bureau, to examine recent shifts in the affordable rental stock and their relation to vacancy decontrol.

## Who lives in rent regulated housing?

In 2008, New York City contained over 3.1 million dwelling units, of which 87 percent were apartments in buildings of two or more units. More than a million of these apartments were subject to rent control or rent stabilization, the city's two forms of rent regulation. The tenants who live in rent-regulated hous-

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<sup>1</sup>Victor Bach and Tom Waters, *Making the Rent, 2002 to 2005: Changing Rent Burdens & Housing Hardships Among Low-Income New Yorkers*, CSS Policy Report, December 2006. Victor Bach and Tom Waters, *Making the Rent: Who's At Risk?*, CSS Policy Report, May 2008. A forthcoming CSS report will update the analysis of these reports using the 2008 New York City Housing and Vacancy Survey.

The **Community Service Society of New York** (CSS) is an informed, independent, and unwavering voice for positive action representing low-income New Yorkers. CSS addresses the root causes of economic disparity through research, advocacy, and innovative program models that strengthen and benefit all New Yorkers.

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## About the Authors

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ing had lower incomes, were more likely to be people of color, and were more likely to be immigrants than other New Yorkers.

Rent regulation was conceived as a program to prevent the excessive rents that can result from the city’s chronic hous-

**Tenants who live in New York City’s more than 1 million rent-regulated apartments have lower incomes, are more likely to be people of color, and are more likely to be immigrants than other New Yorkers.**

ing shortage rather than as a low-income housing program. Nevertheless, it does reach a population whose incomes suggest a greater need for protection than the city as a whole.

**Changes in the regulated stock**

In 1974, the Emergency Tenant Protection Act placed all privately owned apartments occupied before January 1 of that year under rent stabilization, except those already subject to rent control and those in buildings with fewer than six apartments. Since

then, apartments have been removed from and added to the rent-regulated stock by many different mechanisms, with important implications for the size and the affordability of the stock.

The major mechanisms for removing apartments from the regulated stock are:

- Deregulation of rent-controlled and rent-stabilized apartments through “vacancy decontrol.”
- Deregulation of rent-controlled and rent-stabilized apartments in connection with coop or condo conversion.
- Deregulation of rent-stabilized apartments after tax exemptions expire.

The major mechanisms for adding apartments to the regulated stock are:

- Construction of new apartments that are subject to rent stabilization because they receive the 421a tax exemption for new construction.
- Construction of new apartments with subsidies from the federal Low Income Housing Tax Credit program.
- Rehabilitation of existing unregulated apartments that then become subject to rent stabilization because they receive the J-51 tax exemption for improvements.

**Table 1**  
Characteristics of tenant households

	Rent-regulated tenant	Unregulated tenant	All NYC households <sup>1</sup>
Number of households	1,023,000	745,000	3,102,000
Median income	\$38,000	\$50,200	\$48,900
Median rent	\$910	\$1,200	\$950 <sup>2</sup>
Households below poverty threshold	22 %	15 %	19 %
Households from 100 to 199 percent of poverty	21 %	16 %	17 %
Households from 200 to 399 percent of poverty	27 %	28 %	26 %
Immigrant head of household <sup>3</sup>	36 %	42 %	33 %
White head of household	37 %	46 %	43 %
Black head of household	22 %	20 %	23 %
Latino head of household	32 %	21 %	23 %
Asian head of household	9 %	12 %	11 %

Source: U.S. Census Bureau, New York City Housing and Vacancy Survey, 2008.  
<sup>1</sup>Includes owners and public and subsidized tenants as well as regulated and unregulated tenants.  
<sup>2</sup>Tenant households only.  
<sup>3</sup>Includes heads of household born in Puerto Rico.

- Removal of existing apartments from Mitchell-Lama or other subsidy programs, which then become subject to rent stabilization if they were occupied before January 1, 1974.

In addition, most rent-controlled apartments switch to rent stabilization upon vacancy, which does not change the size of the regulated stock as a whole.

In recent years, the most important of these mechanisms of change has been vacancy decontrol. Since 1993, landlords have been able to deregulate rent-stabilized apartments and some rent-controlled apartments upon vacancy. By applying the “statutory vacancy bonus” rent increase to the previous stabilized rent and making “individual apartment improvements” to the vacant apartment, they can raise the legal rent for the apartment to \$2,000, at which point it becomes deregulated. For example, if an apartment renting for the median \$910 becomes vacant, the legal rent (for a two-year lease) will rise to \$1,092 based on the vacancy bonus. Individual apartment improvements can then add one dollar to the rent for every \$40 spent on improvements, so \$36,320 worth of improvements will result in a \$2,000 legal rent and a deregulated apartment. Although \$36,320 represents a very extensive apartment renovation, it makes good economic sense for a landlord to spend that amount if the market will support a \$2,000 rent for the renovated apartment, or even a somewhat lower amount.

Information provided by the state Division of Housing and Community Renewal to the New York City Rent Guidelines Board suggests that vacancy decontrol has resulted in the loss of about 29,597 apartments since 2005. Because this information relies on filings that many landlords do not make, this number is likely to be an underestimate. It can, however, be treated as a floor under the true number of losses.

The two major means by which apartments are being added to the regulated stock in recent years have been the 421a tax break program and the federal Low Income Housing Tax Credit program. Information provided by DHCR to the Rent Guidelines Board suggests that 8,482 and 6,020 apartments have been added by these programs, respectively, since 2005. While vacancy decontrol losses clearly outweigh these additions to the regulated stock, the question remains: Just how extensive are the effects of vacancy decontrol?

### **Measuring the loss of regulated apartments due to vacancy decontrol**

Vacancy decontrol is clearly having a significant impact on the city’s housing stock, but its impact is partially masked by other changes. Unfortunately, the New York City Housing and Vacancy Survey (HVS) does not make it possible to track these shifts directly over time. We can partially

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disentangle the various changes in the stock by controlling the analysis with respect to the decade in which regulated apartments were constructed. In addition, because the HVS is a sample survey, it can measure changes in the stock only with a rather large margin of error. This limits its effectiveness as a tool for understanding the rate at which the stock is changing.

In order to distinguish vacancy decontrol from other changes to the regulated stock, we divide rent-regulated apartments into two classes based on whether they were constructed before or after January 1, 1970—this is as clearly as the HVS will allow us to approximate the January 1, 1974 cutoff for rent-stabilization in the Emergency Tenant Protection Act. The class of rent-regulated apartments constructed before 1970 consists primarily of the “original” stock of regulated apartments, plus former Mitchell-Lama apartments and a few apartments in smaller buildings subjected to rent stabilization through the J-51 tax break. The class of rent-regulated apartments constructed in 1970 or later, on the other hand, consists primarily of apartments subjected to rent stabilization through the 421a tax break or the federal

LIHTC program, plus some apartments from the “original” regulated stock constructed from 1970 through 1973 and a few apartments subjected to rent stabilization through the J-51 tax break.

The class containing the older regulated apartments will capture most of the shrinkage of the regulated stock through vacancy decontrol, while the class containing the newer regulated apartments will capture most of the growth of the regulated stock due to new construction and the 421a tax break or LIHTC. Although each class is also affected by other mechanisms for adding to or subtracting from the regulated stock, it seems likely that in recent years at least, vacancy decontrol, 421a, and the LIHTC have been the major sources of change.

Tables 2 and 3 show how the two classes have evolved since 2002, along with the margins of error for the numbers of apartments in each survey year and for the changes from year to year.

These numbers are consistent with the widespread belief that the original rent-regulated stock is being deregulated at an increasing rate. What they do not show very well, however, is how fast they are being deregulated. The rate of deregulation between 2005 and 2008 thus appears to be somewhere between zero and 31,000 apartments per year. This range is more than wide enough to comfortably capture the minimum loss rate established by DHCR filings and the much higher estimates that have been offered by housing advocates.

It is safe to say that vacancy decontrol has generated substantial losses in the regulated stock, from at least the minimum established by DHCR records—3 percent in the three years from 2005 to 2008—to as much as 10 percent during the same period. This represents a rapid shift in a market that is meant to be “stabilized.”

**Table 2**  
Number of regulated apartments, 2002 to 2008

	Apartments in 2002	Plus or minus	Apartments in 2005	Plus or minus	Apartments in 2008	Plus or minus
Pre-1970 rent-regulated	1,012,291	35,276 <sup>1</sup>	1,006,426	34,891	961,459	34,402
Post-1969 rent-regulated	35,426	7,825	52,175	9,310	63,781	10,277
All rent-regulated	1,047,717	35,622	1,058,601	35,417	1,025,240	35,086

Source: U.S. Census Bureau, New York City Housing and Vacancy Survey, 2002, 2005, and 2008.

<sup>1</sup> Margins for error are based on a probability of 0.1. That is, there is a one in ten chance that the true value differs from the estimate by an amount greater than the margin for error shown. They are calculated according to formulas provided by the U.S. Census Bureau for the 2002 and 2005 surveys. The 2008 figures are calculated using the 2005 formula because the 2008 formula has not yet been published.

**Table 3**  
Change in the number of regulated apartments, 2002 to 2008

	Change from 2002 to 2005	Plus or minus	Change from 2005 to 2008	Plus or minus	Change from 2002 to 2008	Plus or minus
Pre-1970 rent-regulated	-5,865	49,616	-44,967	48,999	-50,832	49,273
Post-1969 rent-regulated	16,749	12,162	11,606	13,867	28,355	12,917
All rent-regulated	10,884	50,233	-33,361	49,854	-22,477	50,000

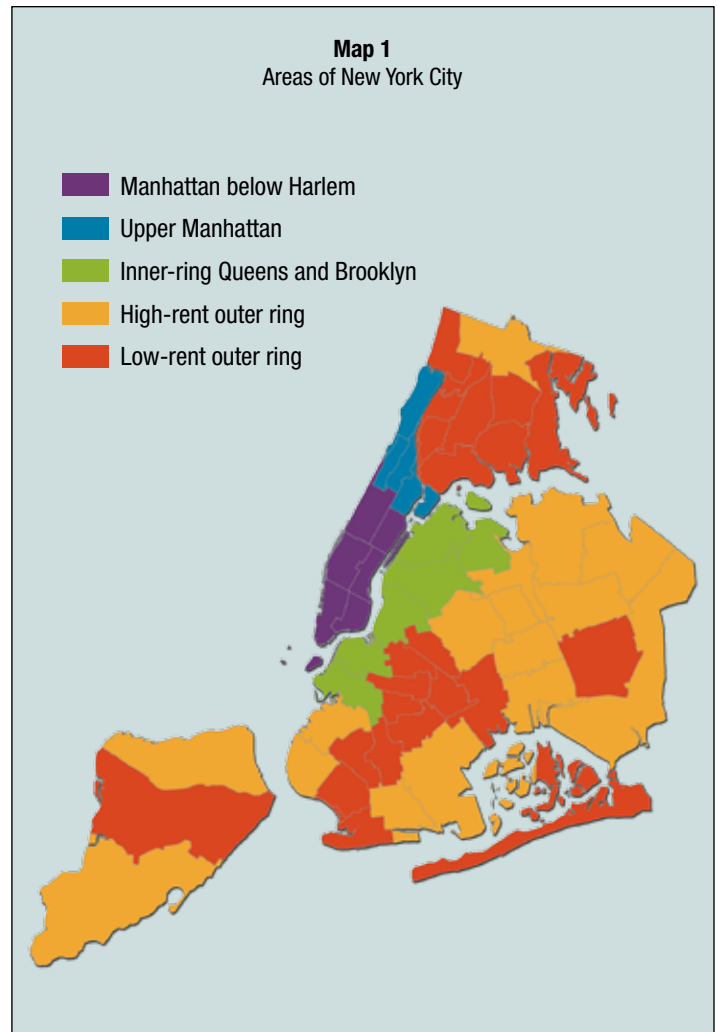
Source: U.S. Census Bureau, New York City Housing and Vacancy Survey, 2002, 2005, and 2008.

### Measuring the impact of vacancy decontrol on tenants

To shed light on the controversy over the effects of vacancy decontrol, then, we must turn away from the total number of regulated units and instead consider changes to the housing market as it is experienced by low-wage workers in the city’s neighborhoods. Despite its limited ability to measure the rate of loss of the original rent-regulated stock, the New York City Housing and Vacancy Survey remains a powerful tool to examine the impact of these changes on tenants.

Tenants experience these changes in several ways. First, they face a decreasing likelihood of finding a rent-regulated apartment. In the city’s core neighborhoods of Manhattan below Harlem, most apartments are now deregulated on vacancy, and those that remain regulated are likely to be small apartments not suited for families. In the city’s inner-ring neighborhoods of Upper Manhattan, Northwest Queens, North Brooklyn, and Brownstone Brooklyn, apartments are also being deregulated. This contributes to the gradual conversion of these neighborhoods for use by a higher-income population.

Second, the replacement of originally regulated apartments with regulated new construction results in significantly higher rents. Regulated new construction tends to have rents that are intermediate between those of the original regulated stock—not surprising given that some



**Table 4**  
Median contract rent by area and regulatory class, 2008

	Pre-1970 regulated	Post-1969 regulated	Unregulated
Manhattan below Harlem	\$1,250*	\$1,600	\$2,600*
Upper Manhattan	\$780	\$857	\$1,500*
Inner Queens and Brooklyn	\$970*	\$1,300	\$1,350*
High-rent outer ring	\$950*	\$1,200	\$1,100
Low-rent outer ring	\$860	\$804	\$1,000*
New York City	\$900*	\$1,100	\$1,200*

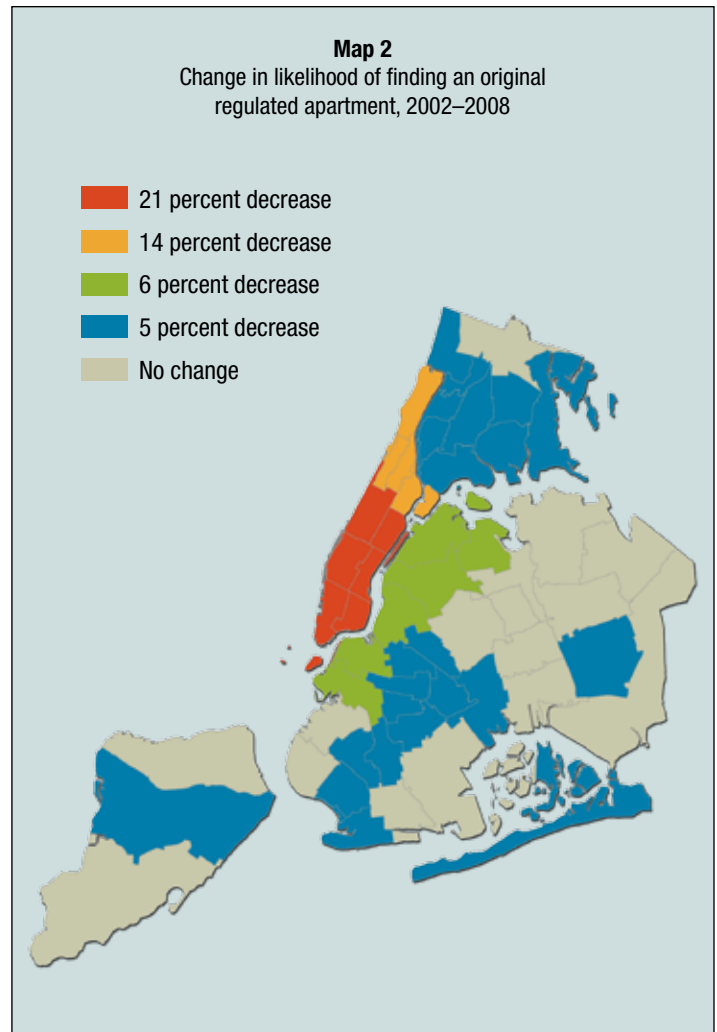
Source: U.S. Census Bureau, New York City Housing and Vacancy Survey, 2008.  
\*Asterisks indicate a significant difference ( $p < 0.05$ ) from the post-1969 regulated stock in that area. All differences between pre-1970 regulated and unregulated rents are significant.

of these units are constructed as part of subsidized affordable housing programs and some as part of market-oriented development.

Finally, vacancy decontrol may also have an indirect effect on rents by encouraging investors to undertake renovation projects oriented to attracting higher-income renters to neighborhoods currently used by lower-income communities. All of these effects combine with the trend toward higher rents even within the remaining original regulated stock to impose greater hardships on low-income renters.

Table 4 shows the median rent in 2008 for pre-1970 regulated, post-1969 regulated, and unregulated apartments in five areas of the city: Manhattan below Harlem; Upper Manhattan; inner-ring Queens and Brooklyn; a set of higher-rent outer-ring neighborhoods; and a set of lower-rent outer-ring neighborhoods. The last two areas are not contiguous; each consists of a scattered group of sub-borough areas, defined by the Census Bureau and sorted according to median unsubsidized rent in 2002. Map 1 shows the locations of these five areas.

These differences partly reflect differences in the nature of the apartments themselves, especially in outer-ring neighborhoods, where many of the unregulated apartments are in small buildings and not truly comparable to the regulated apartments. But in the core and in-



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

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

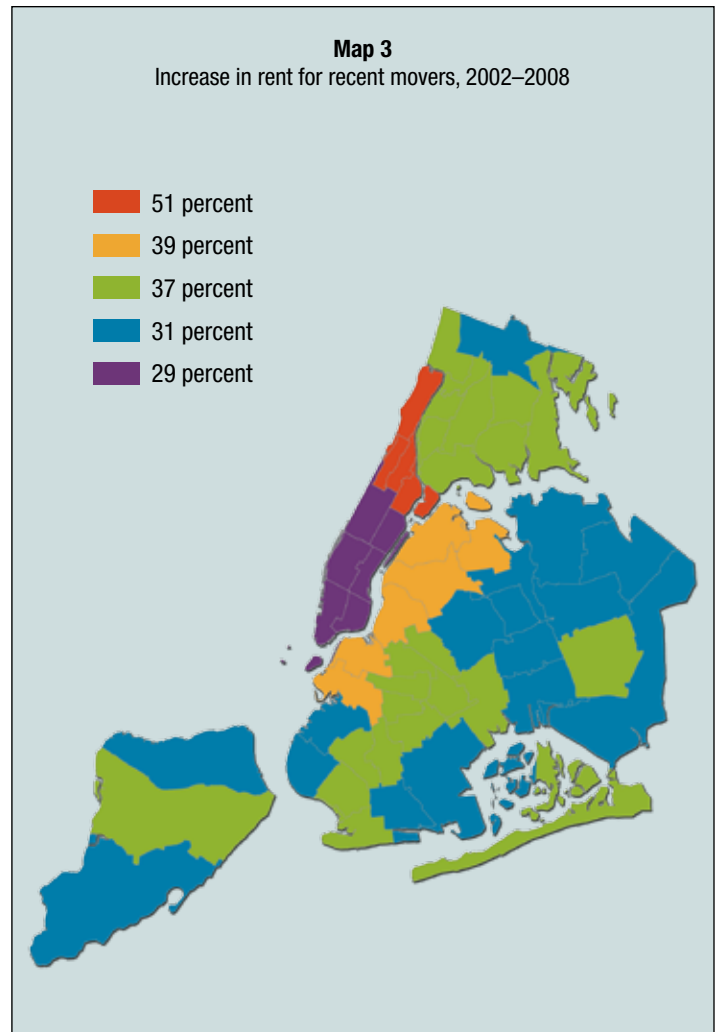
Source: U.S. Census Bureau, New York City Housing and Vacancy Survey, 2002, 2005, and 2008. Percentages represent the number of tenant households who moved into regulated apartments built before 1970 in the three-year period prior to each survey, divided by the number of all regulated or unregulated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

ner-ring areas, the rent differences probably also reflect dramatically different levels of affordability for similar apartments. And regardless of the reason, these differences indicate that the new regulated stock does not fully replace the lost original stock in terms of affordability for low-income households—especially in neighborhoods outside Manhattan.

Changes in the numbers of apartments in these three regulatory classes also had a strong geographic pattern. The loss of the original stock of regulated apartments was most pronounced in Manhattan below Harlem, but it was not confined to that area, especially during the period from 2005 to 2008. During that period, 15 percent of the original stock of regulated apartments were lost in Manhattan below Harlem and 2 percent were lost in the rest of the city. The number of new-stock regulated apartments, on the other hand, grew fastest in Upper Manhattan, in the inner Queens and Brooklyn neighborhoods, and in the low-rent outer neighborhoods.

The effects of these shifts can be seen most clearly when we focus on recent movers—tenants who moved into their apartments during the three-year period just prior to each HVS. By looking at this subset of renters, we can see what choices were available to movers in terms of neighborhood, rent, and regulatory status during the period.

As Table 5 and Map 2 show, these movers experienced a dramatic decrease in the availability of original-stock regu-



**Table 6**  
Median rents for recent movers in regulated and unregulated apartments

	2002	2005	2008
Manhattan below Harlem	\$1,700	\$1,850	\$2,200
Upper Manhattan	\$780	\$990	\$1,179
Inner Queens and Brooklyn	\$1,000	\$1,139	\$1,390
High-rent outer ring	\$880	\$1,000	\$1,150
Low-rent outer ring	\$728	\$875	\$995
New York City	\$865	\$1,050	\$1,200

Source: U.S. Census Bureau, New York City Housing and Vacancy Survey, 2002, 2005, and 2008. All increases are statistically significant at  $p < 0.05$ .



lated apartments in Manhattan below Harlem and in Upper Manhattan, as well as significant decreases in inner Queens and Brooklyn and the low-rent outer-ring areas.

Not surprisingly, these changes had a pronounced effect on rents in the various neighborhoods in addition to the large increase that has occurred in rents within the regulated stock itself. Citywide, rents after inflation rose by 27 per-

**From 2002 to 2008, rents rose by 51% in Upper Manhattan; 39% in inner Queens and Brooklyn; and only 29% in Manhattan below Harlem. Vacancy decontrol is having an impact far beyond the city's high-income areas.**

cent in the combined regulated and unregulated stock from 2002 to 2008, compared to 19 percent in the regulated stock alone.

Table 6 and Map 3 show changes in the median rent for recent movers for each area, including both regulated and unregulated apartments.

The fastest rates of increase in rent are now found not in the core neighborhoods of Manhattan below Harlem, but in the city's inner ring of gentrifying neighborhoods. Rents rose by 51 percent over the six-year period in Upper Manhattan and by 39 percent in inner Queens and Brooklyn, compared to only 29 percent for Manhattan below Harlem. In the period from 2005 to 2008, the fastest increase occurred in inner Queens and Brooklyn—22 percent in just three years. This suggests that vacancy decontrol, along with other factors, is having an impact far beyond the high-income areas where its proponents claimed the effect would be concentrated.

## **Conclusions and recommendations**

The effects of vacancy decontrol are combining with rapidly rising rents within the regulated housing stock to create a dramatic loss of affordability for low-income households and indeed, for households well above 200 percent of poverty. This is occurring not only in the core neighborhoods of Manhattan below Harlem, but also in inner-ring neighborhoods of Upper Manhattan, Queens, and Brooklyn, and even in outer-ring neighborhoods. This pattern suggests that two policy responses are needed—one to eliminate vacancy decontrol and one to slow the rent increases on the regulated stock.

**1. Repeal vacancy decontrol.** The New York State Assembly has already passed Assembly Bill 2005, sponsored by Assembly Member Linda Rosenthal and others, which repeals vacancy decontrol as it applies to New York City and the suburban counties of Nassau, Westchester and Rockland, for both rent-controlled and rent-stabilized apartments. It also re-regulates some deregulated apartments. The New York State Senate should pass Senate Bill 2237-A, the companion sponsored by Senator Andrea Stewart-Cousins and others, and Governor Paterson should sign it into law.

**2. Reduce allowable increases on the regulated stock.** Current law allows large rent increases on vacant apartments based on improvements to the apartments. This provision was originally intended to provide landlords an incentive to improve the quality of the housing stock, but today it is resulting in many unnecessary improvements whose sole purpose is to raise rents. The New York State Assembly has already passed Assembly Bill 5316, sponsored by Assembly Speaker Sheldon Silver and others, which would reform individual apartment improvement rent increases by lengthening the amortization period for such increases, allowing direct agency oversight to discourage fraud, and strengthening tenant notification of increases to improve oversight. The New York State Senate should pass Senate Bill 5296, the companion sponsored by Senator Daniel Squadron and others, and Governor Paterson should sign it into law. The legislature should also consider legislation to reduce or eliminate the “statutory vacancy bonus” increase that landlords can charge after a vacancy even without improvements.