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Laboratories of Regulation: Understanding the Diversity of Rent Regulation Laws

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LABORATORIES OF REGULATION: UNDERSTANDING THE DIVERSITY OF RENT REGULATION LAWS

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Introduction	1042
I. Understanding the Goals of Rent Regulation.....	1043
A. Stated Goals of Rent Regulation Programs.....	1043
B. Existing Research and Challenges.....	1046
II. Features and Trade-Offs of Rent Regulation: Defining the Regulated Universe	1048
A. Breadth of Program	1049
i. The Universe of Regulated Properties.....	1049
ii. Tenant Income Qualifications.....	1053
B. Deregulation	1055
C. Tracking and Enforcement.....	1057
III. Features and Trade-Offs of Rent Regulation: Setting Rent Increases	1059
A. Process of Setting Rent Increases	1059
B. Increases Beyond Annual Rate	1061

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i. Vacancy Bonuses	1061
ii. Capital Improvement	1063
ii. Rents Below the Legal Maximum	1065
B. Hardship Increases	1068
IV. Features and Trade-Offs of Rent Regulation: Additional Tenant Protections.....	1070
A. Protections Against Eviction and Harassment.....	1071
B. Special Provisions for Particular Tenants.....	1074
V. Recommendations for the Future	1076
Conclusion.....	1079

INTRODUCTION

Debates about rent regulation are not known for their nuance. The world tends to divide into fierce opponents and strong supporters. But within these debates, stakeholders and commentators rarely engage with the details of local ordinances, even though those details may significantly affect outcomes for tenants, landlords, and broader housing markets. This Article expands the landscape of contemporary rent regulation debates by articulating and cataloging the numerous choices jurisdictions must make in designing and implementing rent regulation programs. It shows that, far from being monolithic, rent regulation programs comprise a range of diverse schemes. The dearth of research examining the details of these schemes, however, has hindered policymakers from understanding their available choices and the trade-offs among them.

Part I of this Article reviews the overarching goals of rent regulation and explains how some of these goals may be in tension with each other. Parts II through IV outline the choices that local policymakers must make in enacting and implementing rent regulation ordinances and highlight the wide variety of regimes that jurisdictions with rent regulation have adopted in practice. Part II illustrates the choices that define the basic features of rent regulation: which units are to be regulated, how they become deregulated, and how jurisdictions implement and oversee these processes. Part III tackles the many components of annual rent increases, from how jurisdictions set annual, across-the-board increases to the exceptions and adjustments that may arise in cases of vacancy, building or unit improvements, or hardship. Part IV examines the ways in which rent regulation schemes interact with other tenant protections, chiefly safeguards against harassment and eviction, as well as protections for

vulnerable groups. Part V calls for new empirical research to study the effects of different regulatory features.

I. UNDERSTANDING THE GOALS OF RENT REGULATION

A. Stated Goals of Rent Regulation Programs

State and local governments have authorized or adopted rent regulations to serve a number of different goals. One objective of rent regulation is to protect existing tenants from rent increases that would make their housing unaffordable. New York City puts that goal most starkly, justifying its program as necessary 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.”¹ Similarly, Oakland, California states its purposes is to “provid[e] relief to residential tenants in Oakland by limiting rent increases for existing tenants.”² Washington, D.C. lists “protect[ing] low- and moderate-income tenants from the erosion of their income from increased housing costs” as the first of its five objectives.³ D.C. is unusual in specifying that its goal is to protect tenants with low and moderate incomes.⁴

Landlords’ ability to skimp on maintenance and repairs and arbitrarily evict tenants protected by rent regulations undermines the basic goal of protecting existing tenants. To address this issue and support tenant stability more generally, rent regulation programs aim to prevent evictions, harassment, and decreases in services or maintenance.⁵ New York City’s Rent Guidelines Board lists

1. N.Y.C. ADMIN. CODE § 26-501, *recodified in* § 26-502 (2018). The New York State legislature passed significant reforms to the rent regulation system in June 2019, S.B. S6548, 2019–20 Reg. Sess. (N.Y. 2019), as this Article was being written, and this Article makes efforts to address both the old and new systems.

2. OAKLAND, CAL., MUN. CODE § 8.22.010 (2019).

3. D.C. CODE § 42-3501.02 (1985).

4. CITY OF UNION CITY, N.J., ORDINANCE § 334-1(D) (2017). The stated purpose of Union City, New Jersey’s ordinance, by comparison, “is to maintain rental apartments that are affordable for mid and lower income residents of the City.” *Id.* § 334-1(F).

5. PRASANNA RAJASEKARAN ET AL., URB. INST., RENT CONTROL: WHAT DOES THE RESEARCH TELL US ABOUT THE EFFECTIVENESS OF LOCAL ACTION? 1 (2019) [hereinafter URB. INST.], https://www.urban.org/sites/default/files/publication/99646/rent_control_what_does_the_research_tell_us_about_the_effectiveness_of_local_action_1.pdf [https://perma.cc/SF2H-M4YX].

protecting “habitability and security of tenure” as one of its goals.⁶ One of the objectives in D.C.’s rent regulation statute is to “continue to improve the administrative machinery for the resolution of disputes and controversies between housing providers and tenants.”⁷ Union City, New Jersey’s ordinance explains that, at the time its passage, tenants were reluctant to complain about exorbitant rent increases or the deterioration of housing without protections like just cause eviction.⁸

A number of jurisdictions articulate a broader intent to avoid or alleviate the crisis in housing affordability. San Francisco’s Rent Board describes the purpose of its program as “alleviat[ing] the city’s housing crisis.”⁹ Union City’s rent regulation ordinance states that “[u]nless residential rents of tenants are regulated and controlled, there will be an inevitable housing crisis that will inevitably lead to homelessness.”¹⁰ Takoma Park, Maryland’s rent regulation website describes the program as “designed to preserve the city’s affordable housing stock.”¹¹

Some jurisdictions adopt rent regulations in part to preserve the diversity of their populations. Takoma Park’s rent regulations are designed in part to “maintain economic and ethnic diversity.”¹² Union City, New Jersey’s rent regulations are justified in part by “the public interest to have a cross section of people residing in Union City

6. N.Y.C. RENT GUIDELINES BD., MAIN FEATURES OF RENT STABILIZATION 59 (2010),

<https://www1.nyc.gov/assets/rentguidelinesboard/pdf/history/mainfeaturesofrs.pdf> [<https://perma.cc/Z5UK-CFAD>]. According to the Rent Guidelines Board, the purpose is three-fold: (1) to “preserve the basic affordability of rental housing;” (2) to protect “habitability and security of tenure;” and (3) to produce “fair returns for affected owners.” *Id.*

7. D.C. CODE § 42-3501.02 (1985).

8. UNION CITY, N.J., ORDINANCE § 334-1(D) (2017) (“The fear of being evicted without just cause and being forced to seek housing in such a market discourages Union City tenants from complaining about exorbitant increases in rent and about the continued deterioration of housing.”). New Jersey has since legislated just-cause eviction protections statewide. N.J. REV. STAT. §§ 2A:18-61.1–61.12 (1988) (“the Anti-Eviction Act”).

9. *The Mission of the Rent Board*, CITY & COUNTY OF S.F. RENT BOARD, <https://sfrb.org/mission-rent-board> [<https://perma.cc/A7WS-Q58J>] (last visited Oct. 2, 2019).

10. UNION CITY, N.J., ORDINANCE § 334-1(E) (2017).

11. *Rent Stabilization*, CITY OF TAKOMA PARK HOUSING & COMMUNITY DEV., <https://takomaparkmd.gov/government/housing-and-community-development/rental-housing/rent-stabilization/> [<https://perma.cc/KUW7-NJYG>] (last visited Oct. 2, 2019).

12. *Id.*

across all socio-economic backgrounds.”¹³ Oakland defines the purpose of its rent adjustment program as “foster[ing] fair housing for a diverse population of renters.”¹⁴

Some of these goals may be in tension. For example, protecting the affordability of the existing housing stock may make housing overall less affordable by discouraging, rather than encouraging, the construction of new rental housing;¹⁵ the continuing operation of rental properties as rentals;¹⁶ or adequate maintenance and rehabilitation of the rental stock.¹⁷ Additionally, protecting existing tenants may undermine, rather than advance, the diversity of the population.¹⁸ Further, rent regulation might facilitate discrimination by creating excess demand, thereby making it easier for landlords to handpick their tenants.¹⁹

Accordingly, jurisdictions try to balance the aim of providing tenants with stable and affordable housing with concern for market incentives and landlords’ abilities to earn fair returns on their investments. Some make a point of stating that the purposes of their rent regulation programs include “provid[ing] incentives for the construction of new rental units and the rehabilitation of vacant

13. UNION CITY, N.J., ORDINANCE § 334-1(D) (2017).

14. *Rent Adjustment Program*, CITY OF OAKLAND, <https://www.oaklandca.gov/topics/rent-adjustment-program> [<https://perma.cc/VN4P-CPRW>] (last visited Oct. 2, 2019).

15. See Richard Arnott, *Time for Revisionism on Rent Control?*, 9 J. ECON. PERSP. 99, 99 (1995). But see John I. Gilderbloom & Lin Ye, *Thirty Years of Rent Control: A Survey of New Jersey Cities*, 29 J. URB. AFF. 207, 211 (2007) (finding no statistically significant relationship between rent control policies and new construction in New Jersey between 1990 and 2000).

16. See generally Rebecca Diamond et al., *The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco* (Nat’l Bureau Econ. Research, Working Paper No. 24181, 2017).

17. See, e.g., Richard Arnott & Elizaveta Shevyakhova, *Tenancy Rent Control and Credible Commitment in Maintenance*, 47 REG’L SCI. & URB. ECON. 72, 82–83 (2014); David H. Autor et al., *Housing Market Spillovers: Evidence from the End of Rent Control in Cambridge, Massachusetts*, 122 J. POL. ECON. 661, 673–74 (2014); David P. Sims, *Out of Control: What Can We Learn from the End of Massachusetts Rent Control?*, 61 J. URB. ECON. 129, 143–46 (2007).

18. See Ed Glaeser, *Does Rent Control Reduce Segregation?*, 10 SWED. ECON. POL’Y REV. 179, 199 (2003); URB. INST., *supra* note 5, at 2, 7. But see Diamond et al., *supra* note 16, at 3. Diversity of the population depends on how the incomes, race, and ethnicity of renters whose buildings are rent regulated in a city compare with those of the renters in unregulated buildings, or those of newcomers who may have trouble securing a home to rent.

19. See Richard B. Mackenzie & Dwight R. Lee, *How Economists Understate the Damage from Rent Controls*, CATO INST., REG. 22, 22–23 (2019), <https://www.cato.org/sites/cato.org/files/serials/files/regulation/2018/12/regulation-v41n4-2.pdf> [<https://perma.cc/8BJC-8MKG>].

rental units”²⁰ or “encouraging rehabilitation of rental units” and “investment in new residential rental property.”²¹ Others specifically note the importance of allowing landlords subject to the regulation to make a “fair return,”²² “fair and adequate rents,”²³ or a “reasonable rate of return on their investments.”²⁴ Oakland states that its goals include “allowing efficient rental property owners the opportunity for both a fair return on their property and rental income sufficient to cover the increasing cost of repairs, maintenance, insurance, employee services, additional amenities, and other costs of operation.”²⁵

B. Existing Research and Challenges

Studying how well rent regulation serves the goals jurisdictions articulate for their programs is challenging. Chief among these obstacles is that rent regulation laws are relatively static, presenting few opportunities to examine the effects of a change in policy.²⁶ It is difficult to identify control groups when policies do change because the properties excluded from regulations within a jurisdiction are often idiosyncratic.²⁷ Comparisons between jurisdictions are problematic because cities that adopt changes to rent regulations may be experiencing very different market pressures than those that do not change or do not have rent regulation programs.²⁸ Even when plausible control groups do exist, data on rent and tenant outcomes are difficult to come by. Finally, because of the potential for variability in both regulations and market conditions, scholars must be cautious in assuming the evidence of the effects of rent regulations from one jurisdiction will generalize to another.

The best evidence we have on the impacts of rent regulation provides support for the idea that there are trade-offs among the goals jurisdictions articulate for their programs. Rebecca Diamond, Timothy McQuade, and Franklin Qian used uniquely comprehensive data to exploit an expansion of rent controls in San Francisco in

20. D.C. CODE § 42-3501.02 (1985).

21. OAKLAND, CAL., MUN. CODE § 8.22.010 (2019).

22. MAIN FEATURES OF RENT STABILIZATION, *supra* note 6, at 59.

23. S.F., CAL., ADMIN. CODE § 37.1(b)(6) (2001).

24. D.C. CODE § 42-3501.02 (1985).

25. OAKLAND, CAL., MUN. CODE § 8.22.010(C) (2019).

26. Diamond et al., *supra* note 16, at 7; *Rent Adjustment Program*, *supra* note 14.

27. See Diamond et al., *supra* note 16, at 7.

28. *Id.* at 2.

1994.²⁹ They found that tenants in rent-regulated units enjoyed lower rents and, on average, stayed in their homes longer.³⁰ However, rent regulation prompted some landlords to demolish their units to make way for new construction or to convert them into other uses.³¹ Ultimately, this led to a reduction in rental supply, a housing stock that served higher-income individuals, and higher rents citywide.³² Accordingly, sitting tenants generally benefited, but other renters and those wanting to move into the city encountered fewer units and higher rents.³³ Further, they found that tenants who lived in areas with the highest rent appreciation and who had only been at their current address for a few years were less likely to remain at their addresses than tenants in the control group of similar buildings not subject to the expansion of rent regulation.³⁴

Similarly, Brian Asquith used an instrumental variable approach³⁵ to study whether increases in San Francisco housing prices led owners of rent-regulated buildings or units to convert their properties to unregulated uses.³⁶ He found that landlords respond to rising prices by withdrawing their units and buildings from the rent-regulated system.³⁷ Specifically, landlords convert their properties to

29. *See id.* at 5.

30. *Id.* at 2.

31. *Id.* at 3.

32. *Id.* at 12, 26–27.

Taken together, we see rent control increased property investment, spurred the demolition and reconstruction of new buildings, generated conversion of rental units to owner occupied housing, and caused a decline of the number of renters per building. All of these responses lead to a housing stock which caters to higher income individuals. Rent control has actually fueled the gentrification of San Francisco, the exact opposite of the policy's intended goal.

Id. at 12.

33. *Id.* at 25–27.

34. *See generally id.*

35. Instrumental variable estimation is a statistical approach that helps to identify causal relationships. *See* Kenneth A. Bollen, *Instrumental Variables in Sociology and the Social Sciences*, 38 ANN. REV. SOC. 37, 38 (2012), <https://www.annualreviews.org/doi/pdf/10.1146/annurev-soc-081309-150141> [<https://perma.cc/P3EE-MPCV>]. A valid instrument is a variable that affects a key explanatory variable but only affects the outcome of interest indirectly, through that explanatory variable. *See id.* at 37.

36. *See generally* Brian Asquith, *Do Rent Increases Reduce the Housing Supply Under Rent Control? Evidence from Evictions in San Francisco* (Upjohn Inst. for Emp't Research, Working Paper No. 19-296, 2019), https://research.upjohn.org/cgi/viewcontent.cgi?article=1314&context=up_workingpapers [<https://perma.cc/4A9Q-QJ5H>].

37. *Id.* at 5, 8–9.

condominiums or other ownership forms, demolish them, or occupy them as their own homes.³⁸ Asquith also found that when the city tried to limit such conversions, landlords responded by taking more tenants to court for at-fault evictions.³⁹

David P. Sims used the end of rent control after a ballot referendum in Massachusetts to study the effects of rent control in the Boston metropolitan area.⁴⁰ He found that ending rent control had little effect on new construction in the years immediately following decontrol.⁴¹ But it resulted in many units switching from owner to tenant occupancy, suggesting that rent control had encouraged owners to convert rental units to other uses to avoid regulations.⁴² Although there was little evidence that the end of rent control was associated with a reduction in major maintenance problems such as plumbing and heating failures, it was associated with a reduction in “chronic aesthetic” issues, such as peeling paint, suggesting that rent control had discouraged maintenance of the regulated stock.⁴³

In sum, existing research suggests it can be difficult, if not impossible, both to protect existing tenants from rising rents and evictions and to ensure the affordability, quality, and longevity of the rental housing stock. Experimenting with different combinations of features and strategies might offer new insights that can help policymakers better balance these multiple goals, but exploring these possibilities first requires a detailed look at the design choices available.

II. FEATURES AND TRADE-OFFS OF RENT REGULATION: DEFINING THE REGULATED UNIVERSE

Observers, both critics and advocates, tend to regard the adoption of rent regulation as a binary choice; however, policymakers must make a host of decisions when enacting rent regulations. Legislators must decide, among other things, how broadly the program will apply; how annual increases will be determined; and the rights of tenants in regulated units. All of these choices involve difficult trade-offs.

38. *Id.*

39. *Id.* at 40–41.

40. *See generally* Sims, *supra* note 17.

41. *Id.* at 140–43.

42. *Id.* Note that effects found are a result of ending rent control and may not apply to the introduction or continuation of rent controls. *Id.*

43. *Id.* at 143–44.

Because many states prohibit or preempt rent regulation, the number of jurisdictions without rent regulations dwarfs the number with them. Thirty-two states expressly ban all forms of rent control, while nine others allow it in principle but have no rent-regulating jurisdictions.⁴⁴ Only California, the District of Columbia, Maryland, New Jersey, New York, and, very recently, Oregon, have any jurisdictions with rent regulation programs.⁴⁵ Nevertheless, as the following sections will illustrate, there is considerable diversity among the existing rent regulation programs.⁴⁶ The survey reveals that a wide range of programs fall under the umbrella of rent regulation, and shows that jurisdictions considering implementing new rent regulation programs have a variety of models to choose from.

This Article explores the policy choices jurisdictions with rent regulation programs have made, beginning with the choices that shape the basic features of a rent regulation program and the universe of regulated properties. Accordingly, this Part explores the breadth of rent regulation programs, the various ways in which units can become deregulated, and how different jurisdictions monitor and enforce the requirements of regulation.

A. Breadth of Program

i. The Universe of Regulated Properties

The first key decision is which properties to regulate. Casting a broader net protects more sitting tenants but risks discouraging investment in new construction.⁴⁷ Policymakers can restrict the scope of regulations by covering only those buildings built after a certain date;⁴⁸ by exempting small or owner-occupied buildings;⁴⁹ or by

44. NAT'L MULTIFAMILY HOUS. COUNCIL, RENT CONTROL BY STATE LAW (2019), <https://www.nmhc.org/globalassets/advocacy/rent-control/Rent-Control-by-State-Chart.pdf> [<https://perma.cc/2SQF-MNM2>].

45. *See id.*; *see, e.g.*, S. Res. 608, 80th Leg., Reg. Sess. (Or. 2019); URB. INST., *supra* note 5, at 3.

46. *See infra* Parts II–IV.

47. *See* Diamond et al., *supra* note 16, at 3 (explaining that San Francisco legislators exempted new construction from rent control due to concerns that rent control would discourage new development).

48. *See, e.g.*, OAKLAND, CAL., MUN. CODE § 8.22.030(A)(5) (2019); D.C. CODE § 42–3502.05(2) (1985); JERSEY CITY, N.J., CODE OF ORDINANCES § 260-1(A)(4) (2018).

49. *See, e.g.*, OAKLAND, CAL., MUN. CODE § 8.22.030(A)(8); D.C. CODE § 42–3502.05(3); JERSEY CITY, N.J., CODE OF ORDINANCES § 260-1(A)(1).

excluding high-rent units or high-income tenants from coverage.⁵⁰ Jurisdictions have made a variety of decisions about which homes to regulate. The proportion of all rental units that are rent-regulated varies considerably by city, from approximately 45% of rental units in New York City to 80% of multifamily units in Los Angeles.⁵¹ These figures are not static but rather a function of any given program's mechanisms for entry to and exit from the regulated market. Additional units may become regulated as a condition of participation for tax incentives or other programs designed to expand the supply of affordable or market rate housing.⁵² The deregulation mechanisms explored later in this Part allow units to exit the regulated market.

Regulating the rents charged in new buildings is particularly problematic, as such restrictions might encourage conversions to owner-occupied housing, leading to a reduced supply of affordable rental housing.⁵³ Further, the high cost of construction and the strong demand for housing in many cities means that unless new buildings are subsidized or built as part of an inclusionary housing program, they will rarely provide homes affordable to low- and moderate-income renters.⁵⁴ Regulating rents in new buildings thus will confer benefits on wealthier tenants least in need of protection.

Most systems do not cover new buildings, other than those accepting rent regulation as a condition for a benefit.⁵⁵ The date that

50. *High-Rent Vacancy and High-Rent High-Income Deregulation*, N.Y. STATE HOMES & COMMUNITY RENEWAL (2018), <https://hcr.ny.gov/high-rent-vacancy-high-income-deregulation> [<https://perma.cc/2A9L-ZAYL>].

51. *See Recommendation Report*, CITY OF L.A. DEP'T CITY PLANNING exhibit B.1, 7 (2018), <https://planning.lacity.org/ordinances/docs/HomeSharing/StaffRept.pdf> [<https://perma.cc/8WYN-4LQ6>]. In 2017, 44% of all New York City units were rent-stabilized and 1% were subject to rent control. *See id.* at 7, n.5; N.Y.C. DEP'T. OF HOUS. PRES. & DEV., SELECTED INITIAL FINDINGS OF THE 2017 NEW YORK CITY HOUSING AND VACANCY SURVEY 11 (2018), <https://www1.nyc.gov/assets/hpd/downloads/pdf/about/2017-hvs-initial-findings.pdf> [<https://perma.cc/TS22-JMCZ>].

52. N.Y. DIV. OF HOUS. & CMTY. RENEWAL, FACT SHEET #41 TAX ABATEMENTS (2019), https://hcr.ny.gov/system/files/documents/2019/09/FACT_20SHEET_2041.pdf [<https://perma.cc/SCV8-GBAZ>]. In New York, for example, rent stabilization applies to buildings that receive J-51 and 421-a tax benefits. N.Y. COMP. CODES R. & REGS. tit. 9, §§ 2520.11(o)–(p) (2014).

53. *See* Diamond et al., *supra* note 16, at 12, 30.

54. *See* JOINT CTR. FOR HOUS. STUDIES OF HARV. UNIV., AMERICA'S RENTAL HOUSING: EXPANDING OPTIONS FOR DIVERSE AND GROWING DEMAND 17 fig.14 (2015), https://www.jchs.harvard.edu/sites/default/files/americas_rental_housing_2015_web.pdf [<https://perma.cc/8AP3-R78E>].

55. For an example of a jurisdiction providing benefits in exchange for agreement to rent-regulated status, see New York's "421-a" tax abatement program. N.Y. COMP.

determines which existing units are covered is usually right before rent regulation legislation passed. The earliest of these is New York state, where rent stabilization does not apply to buildings built after 1974 unless those buildings receive certain property tax abatements,⁵⁶ while Oakland and Jersey City use 1983,⁵⁷ and Oregon's recently passed legislation exempts properties built in the last 15 years.⁵⁸

Other jurisdictions choose not to exclude new construction categorically and instead provide only an exemption period from regulation, after which new buildings enter the regulated market. Newark's rent regulation ordinance, for example, does not apply to newly-constructed multiple dwellings either for 30 years following construction completion or for the building's initial mortgage loan's amortization period, whichever is less.⁵⁹ Takoma Park grants a much shorter exemption of only five years.⁶⁰ Jersey City gives exemptions only to new buildings located in designated "redevelopment areas," intending to encourage the rehabilitation or replacement of substandard housing in existing communities.⁶¹ The extent to which these exemption periods help moderate the disincentive to build new

CODES R. & REGS. tit. 9, § 2520.11(p) (2014); FACT SHEET #41 TAX ABATEMENTS, *supra* note 52.

56. *See* Emergency Tenant Protection Act (ETPA) of 1974, N.Y. UNCONSOL. LAW § 5(a)(5) (2019).

57. *See* OAKLAND, CAL. MUN. CODE § 8.22.030 (2019); JERSEY CITY, N.J., CODE OF ORDINANCES § 260-1 (2018).

58. *See* S. Res. 608, 80th Leg., Reg. Sess. (Or. 2019).

59. NEWARK, N.J., ORDINANCE § 19:2-18.1 (2019).

60. TAKOMA PARK, MD., MUN. CODE § 6.20.030(A)(3) (2007).

61. JERSEY CITY, N.J., CODE OF ORDINANCES § 260-1(A)(4) (2018) (exempting "[n]ewly constructed dwellings with 25 or more dwelling units located within a redevelopment area as defined in Section 5 of the Redevelopment Agencies Law, N.J.S.A. 40:55C-5(o), for which the City Council has approved a redevelopment plan, in accordance with Section 17 of the Redevelopment Agencies Law, N.J.S.A. 40:55C-17."). The relevant section defines "Urban redevelopment area[s]" as "previously developed portions of areas: (1) Delineated on the State Plan Policy Map (SPPM) as the Metropolitan Planning Area (PA1), Designated Centers, Cores or Nodes; (2) Designated as CAFRA Centers, Cores or Nodes; (3) Designated as Urban Enterprise Zones; and (4) Designated as Urban Coordinating Council Empowerment Neighborhoods." *Id.* § 345-74(2); *see also* *Redevelopment*, N.J. FUTURE, <https://www.njfuture.org/issues/development/redevelopment/> [<https://perma.cc/T2AP-MTJJ>] (last visited Oct. 2, 2019) ("Redevelopment is reinvestment in neighborhoods and commercial areas to replace or repair previously developed buildings or plots of land that are in substandard condition or are no longer useful in their current state. Redevelopment sites can be found in urban, suburban and rural locations, as well as on 'brownfields' that may be contaminated by a previous industrial use. Redevelopment is a core component of smart growth because it promotes development in existing communities with infrastructure and away from critical environmental lands and resources.").

homes has not been well-researched. Furthermore, even categorically exempting new buildings may not address the disincentive to investment. Investment may still decrease if market actors fear the trigger will be moved forward with subsequent legislation.

Jurisdictions may also choose to exempt small rental buildings. Many exclude single-family homes.⁶² Others exclude dwellings below a certain size. For example, rent stabilization applies only to buildings with six or more units in New York City,⁶³ and four or more units in Jersey City.⁶⁴ Los Angeles differentiates between single-family homes occupying a single parcel, which are not subject to rent regulation, and those that are two or more to a parcel, which are.⁶⁵

The justification for such exemptions is that, unless they own many buildings, owners of small buildings generally have less market power over rents and should not be burdened with the administrative costs of regulation.⁶⁶ If they find regulations to be burdensome, owners of small rental properties may find it easier to convert their apartments into condominiums. In studying the expansion of rent regulation in San Francisco to some buildings with fewer than five apartments, Diamond, McQuade, and Qian found that newly covered buildings were 8% more likely to convert to a condominium or other form of for-sale unit than the small buildings that remained unregulated.⁶⁷

The D.C. Code distinguishes between corporate and individual owners and between number of units owned and building size, exempting rental buildings owned by individual — rather than

62. See, e.g., OAKLAND, CAL. MUN. CODE § 8.22.030 (2019) (exemptions in ordinances); D.C. CODE § 42-3502.05 (1985) (same); JERSEY CITY, N.J., CODE OF ORDINANCES § 260-1 (2018) (same).

63. See N.Y.C. ADMIN. CODE § 26-504 (2018); see also *Rent Stabilized Buildings List*, NYC RENT GUIDELINES BOARD, <https://www1.nyc.gov/site/rentguidelinesboard/resources/rent-stabilized-building-lists.page#tell> [<https://perma.cc/P8ZT-B9ZU>] (last visited Sept. 26, 2019).

64. JERSEY CITY, N.J., CODE OF ORDINANCES § 260-1 (2018).

65. The ordinance thus applies to duplex conversions to condominiums as well as garage conversions to residential occupancy. See L.A., CAL., MUN. CODE §§ 151.00–.30 (2011). California state law only allows jurisdictions to apply rent regulation to properties with two or more units. L.A., CAL., MUN. CODE § 151.07(A)(1)(a) (1989).

66. See Rebecca Diamond, *What Does Economic Evidence Tell Us About the Effects of Rent Control?*, BROOKINGS INST. (Oct. 18, 2018) [hereinafter Diamond, *Economic Evidence*], <https://www.brookings.edu/research/what-does-economic-evidence-tell-us-about-the-effects-of-rent-control/> [<https://perma.cc/HR33-Q9ZK>] (“Smaller multi-family buildings were exempt from this 1979 law change since they were viewed as more ‘mom and pop’ ventures, and did not have market power over rents.”).

67. Diamond et al., *supra* note 16, at 12.

corporate — landlords who own four or fewer units.⁶⁸ Until May 2019, by contrast, Oakland's ordinance distinguished based on owner occupancy, exempting two- or three-unit buildings for at least two years.⁶⁹

ii. Tenant Income Qualifications

One of the common goals of rent regulation programs is to provide affordable rental housing, a target that is particularly difficult to reach for lower-income households.⁷⁰ There is also a persistent public discomfort with wealthier households' benefiting from rent regulation.⁷¹ Despite this, there does not appear to be any jurisdiction that regulates rents only when tenants have lower incomes. Several arguments can be made for not targeting incomes, one being the risk that landlords will avoid renting to lower-income households. Means testing can also impose high administrative costs,⁷² many of which can be avoided by using proxies for wealth to limit the applicability of rent regulation, such as exemptions for

68. See D.C. CODE § 42-3502.05(a)(3) (1985).

69. See OAKLAND, CAL., MUN. CODE § 8.22.030 (2019); Ali Tadayon, *Oakland Scraps Rent Control Exemption for Owner-Occupied Duplexes*, EAST BAY TIMES (May 24, 2019, 4:16 AM) <https://www.eastbaytimes.com/2019/05/23/oakland-scraps-rent-control-exemption-for-owner-occupied-duplexes> [<https://perma.cc/8QX7-78AJ>].

70. In New York City, proportions of low-income households in rent stabilized housing are higher than in unregulated households and the proportions of rent burdened households are similar. See C.R. WAICKMAN ET AL., N.Y.C. DEP'T OF HOUS. PRES. & DEV., AFFORDABILITY OF RENT STABILIZED UNITS (2018), <https://www1.nyc.gov/assets/hpd/downloads/pdf/about/rent-regulation-memo-2.pdf> [<https://perma.cc/X7Z4-EVWK>].

71. See, e.g., Jeremiah Budin, *Millionaires Living in Rent-Stabilized Apartments*, CURBED N.Y. (Apr. 30, 2014, 2:25 PM), <https://ny.curbed.com/2014/4/30/10107290/millionaires-living-in-rent-stabilized-apartments> [<https://perma.cc/K8HN-PCHT>]; James Fanelli, *Rent-Stabilized Apartments Are Being Occupied by Millionaires, Records Show*, DNAINFO (Apr. 30, 2014, 6:41 AM), <https://www.dnainfo.com/new-york/20140430/new-york-city/rent-stabilized-apartments-are-being-occupied-by-millionaires-records-show/> [<https://perma.cc/6UVQ-4BT9>]; Scott James, *How the Rich Get Richer, Rental Edition*, N.Y. TIMES (Feb. 17, 2012), <https://www.nytimes.com/2012/02/17/us/san-francisco-rent-control-and-unintended-consequences.html> [<https://perma.cc/5TSZ-K377>]; Peter D. Salins & Gerard Mildner, *Does Rent Control Help the Poor?*, CITY J. (1991), <https://www.city-journal.org/html/does-rent-control-help-poor-12772.html> [<https://perma.cc/N9BV-N2GJ>].

72. See Timothy Besley, *Means Testing Versus Universal Provision in Poverty Alleviation Programs*, 57 ECONOMICA 119, 119–20 (1990); Wim Van Oorschot, *Targeting Welfare: On the Functions and Dysfunctions of Means Testing in Social Policy*, in WORLD POVERTY: NEW POLICIES TO DEFEAT AN OLD ENEMY 171, 174–75 (David Gordon & Peter Townsend eds., 2002).

single-family homes.⁷³ Choosing to forego means testing also has the potential to expand political support for rent regulation programs by increasing the number of households with a stake in those programs.⁷⁴

Although no jurisdictions currently means-test tenants moving into rent-regulated units, a bill was introduced in 2018 in the Illinois General Assembly that explored this possibility, overturning the state's ban on rent regulation and requiring means-tested rent regulation.⁷⁵ The provisions were eliminated from the version of the bill introduced in 2019,⁷⁶ but called for regional rent control boards to set targeted rent caps for "Tier 1" households earning 60% or less of a county's Area Median Income (AMI) and "Tier 2" households earning 120% or less of AMI.⁷⁷ The 2018 bill would also have also provided an income tax credit for landlords renting to Tier 1 or Tier 2 households,⁷⁸ which could reduce the likelihood that such measures would otherwise disincentivize landlords from accepting low-income tenants. Creating such a granular means-testing scheme would require substantial administrative investment.

Until recent reforms eliminated this method of decontrol,⁷⁹ New York State balanced the need to target benefits and the costs of administering means-testing by adopting a "high-rent/high-income" deregulation.⁸⁰ A unit became deregulated when the income of the

73. Some jurisdictions — including Maryland, New Jersey, and Indiana — provide benefits to low-income renters, such as renters' tax credits, that are conditioned on income, but do not impose means testing in their rent regulation programs. Because such credits typically are administered through the income tax system, conditioning them on income is relatively easy. See *NJ Income Tax Property Tax Deduction/Credit for Homeowners and Tenants*, N.J. DEP'T TREASURY, <https://www.state.nj.us/treasury/taxation/njit35.shtml> [<https://perma.cc/583F-QN6Q>] (last visited Oct. 2, 2019); *Renters' Tax Credits*, MD. DEP'T ASSESSMENTS & TAXATION, <https://dat.maryland.gov/realproperty/Pages/Renters'-Tax-Credits.aspx> [<https://perma.cc/WZ3E-XZGA>] (last visited Oct. 2, 2019); *Tax Deduction Details*, IND. DEP'T REVENUE, <https://www.in.gov/dor/5863.htm#renters> [<https://perma.cc/XVD5-W7SZ>] (last visited Oct. 2, 2019).

74. See, e.g., Theda Skocpol, *Targeting within Universalism: Politically Viable Policies to Combat Poverty in the United States*, in *THE URBAN UNDERCLASS* 428–29 (Christopher Jencks & Paul E. Peterson eds., 1991).

75. S.B. 3512, 100th Gen. Assemb., Reg. Sess. (Ill. 2018).

76. H.B. 2192, 101st Gen. Assemb., Reg. Sess. (Ill. 2019).

77. Ill. S.B. 3512 § 5.

78. *Id.* § 905.

79. As previously noted, the New York State legislature passed significant reforms to the rent regulation system in June 2019, S.B. S6548, 2019–20 Reg. Sess. (N.Y. 2019), as this Article was being written.

80. See N.Y. DEP'T OF HOMES & CMTY. RENEWAL, DEREGULATION RENT AND INCOME THRESHOLDS (2018),

household occupying the unit exceeded \$200,000 for the two preceding years, and the unit reached a Deregulation Rent Threshold (DRT).⁸¹ To initiate the deregulation process, the owner of a regulated apartment was required to serve a tenant with an Income Certification Form, which obligated the tenant to certify whether the household income exceeded \$200,000 in the two preceding years.⁸² If so, the owner could file an Owner's Petition for Deregulation with the Division of Housing and Community Renewal, which would issue an order deregulating the unit when the current lease expired.⁸³ Thus, New York's method of excluding high-income households from rent regulation was a blunt instrument that is relatively simple to administer. Additionally, this system removed a unit permanently from the regulated housing stock, even if a future tenant's income was lower than \$200,000.⁸⁴ This mechanism was done away with in June 2019, however, and there does not appear to be any other jurisdictions that deregulates units based on high rents or high household incomes.

B. Deregulation

The next set of relevant decisions concern when, if at all, landlords may be allowed to remove units from regulation. More lenient deregulation makes it easier to decrease the stock of rent-regulated housing. But providing more flexibility to landlords may help to limit the extent to which rent regulation dampens overall investment in housing. Jurisdictions may decide to condition deregulation on a landlord's paying tenants' relocation costs or contributing to a fund to support affordable housing. Deciding on the appropriate levels of compensation is challenging. Payments may be ineffective if they are too low, doing little to either slow the pace of deregulation or to contribute to addressing broader affordability challenges meaningfully. If they are too high, they are likely to discourage investment.

Rent regulation ordinances specify the mechanisms through which units leave the regulated market, and the scope of these provisions

<https://hcr.ny.gov/system/files/documents/2018/10/deregulationrentincomethreshold.pdf> [<https://perma.cc/R3ZY-ZZ3H>].

81. The DRT was \$2774.76 before it was abolished in 2019. *See id.*

82. *See* N.Y.C. ADMIN. CODE § 26-504.3 (repealed 2019) (providing an example of how courts apply the Income Certification Form requirement); DEREGULATION RENT AND INCOME THRESHOLDS, *supra* note 80 (providing 2019 DRT).

83. N.Y.C. ADMIN. CODE § 26-504.3 (repealed 2019).

84. *See* DEREGULATION RENT AND INCOME THRESHOLDS, *supra* note 80.

plays a significant role in shaping a jurisdiction's regulated housing stock. Until recently, New York City's high-rent and high-income deregulation⁸⁵ was an example of one such mechanism. A unit could also become deregulated if the rent reached a Deregulation Threshold, which was \$2774.76 as of early 2019.⁸⁶ In 2017, the median asking rent for units advertised for lease was \$2695.⁸⁷ The new law passed in June 2019 also eliminated this high-rent vacancy decontrol. Units in New York City may still become deregulated through conversion into a cooperative or condominium,⁸⁸ substantial rehabilitation of a substandard building,⁸⁹ conversion to commercial or professional use, condemnation, or demolition.⁹⁰ Finally, landlords may, in some cases, evict tenants if they move into the property themselves, and may offer their tenants "buyouts" or compensatory payments for leaving.⁹¹ Many of these provisions are common across jurisdictions. However, the Oakland City Council recently removed "substantial rehabilitation" as a mechanism for deregulation.⁹² The Ellis Act also plays a significant role in shaping deregulation in California, allowing owners to exit rent control if they take units off the rental market entirely to sell or live in.⁹³ A 2007 Los Angeles ordinance requires landlords who demolish rent-stabilized units under the Ellis Act and construct rental units on the same property within

85. See *supra* Part II.A.ii.

86. *High-Rent Vacancy and High-Rent High-Income Deregulation*, *supra* note 50.

87. NYU FURMAN CTR., STATE OF NEW YORK CITY'S HOUSING AND NEIGHBORHOODS IN 2017 24 (2017), http://furmancenter.org/files/sotc/SOC_2017_Full_2018-08-01.pdf [<https://perma.cc/FT6E-U6K2>].

88. Tenants whose buildings are being converted into cooperatives or condominiums must be offered an opportunity to purchase their units and, even following conversion, sitting tenants' units remain rent-regulated. See N.Y. COMP. CODES R. & REGS. tit. 13, §§ 18.1, 23.1 (2019).

89. N.Y. COMP. CODES R. & REGS. tit. 9, § 2520.11(e)(3) (2019).

90. N.Y.C. RENT GUIDELINES BD., CHANGES TO THE RENT STABILIZED HOUSING STOCK IN NEW YORK CITY IN 2017 5 (2018), <https://www1.nyc.gov/assets/rentguidelinesboard/pdf/changes18.pdf> [<https://perma.cc/B9QR-9PEJ>].

91. Diamond, *Economic Evidence*, *supra* note 66, at 3 ("In practice, these transfer payments from landlords are quite common and can be quite large.").

92. Ali Tadayon, *Oakland Moves Toward Ending Rent Control Exemption*, EAST BAY TIMES (Sept. 20, 2018), <https://www.eastbaytimes.com/2018/09/20/oakland-moves-toward-ending-rent-control-exemption/> [<https://perma.cc/23EO-OPBS>]; see also Oakland, Cal., Ordinance No. 13523 (Mar. 29, 2019) (amending Oakland Municipal Code § 8.22.030 to eliminate the substantially rehabilitation exemption).

93. See CAL. GOV'T CODE §§ 7060–7060.7 (2019).

five years to replace the demolished units with the same number of regulated units or 20% of all new units, whichever is greater.⁹⁴

Abolition of rent regulation is, of course, the most absolute form of deregulation. Such an abolition occurred in Massachusetts when voters approved a 1994 ballot referendum ending rent control statewide. At the time, three cities in Massachusetts — Boston, Cambridge, and Brookline — had rent regulation ordinances.⁹⁵

C. Tracking and Enforcement

Jurisdictions also need to decide how to monitor and enforce whatever regulations they choose to adopt. Monitoring and enforcement may take place at the state level, as in New York,⁹⁶ or through local governments, as in California and New Jersey.⁹⁷ Monitoring compliance requires a registry of rent-regulated units and an effective system for monitoring increases. Absent a registry of regulated buildings, it is difficult for tenants to know the level of rent they should be paying. In New York City, owners must register rent-stabilized buildings⁹⁸ and file annual rent registrations.⁹⁹ These reports are not public, which might undermine accountability. Oakland does not maintain any registry of rent-regulated buildings, posing substantial complications for enforcement efforts.¹⁰⁰

Jurisdictions must also determine what penalties to impose for noncompliance. In 2011, Hoboken residents voted to impose limits on a system under which tenants could collect retroactive rent

94. L.A., CAL. MUNICIPAL CODE §§ 151.28(A)–(B) (2007).

95. *Battle Goes on as Rent Control Is Defeated in Massachusetts*, N.Y. TIMES (Nov. 22, 1994), <https://www.nytimes.com/1994/11/22/us/battle-goes-on-as-rent-control-is-defeated-in-massachusetts.html> [<https://perma.cc/SS6N-4W9N>].

96. N.Y.C. ADMIN. CODE § 26-517 (2019).

97. *See, e.g.*, JERSEY CITY, N.J. CODE OF ORDINANCES § 260-1 (2018); *Rent Control*, CITY OF NEWARK, N.J., <https://www.newarknj.gov/departments/rentcontrol> [<https://perma.cc/42L5-4PVF>] (last visited Oct. 7, 2019); *The Mission of the Rent Board*, CITY & CTY. OF S.F. RENT BD., <https://sfrb.org/mission-rent-board> [<https://perma.cc/LN7X-L2BS>] (last visited Oct. 2, 2019).

98. N.Y.C. ADMIN. CODE § 26-517 (2019).

99. *Id.* § 26-517(f).

100. *See* Bigad Shaban et al., *Lack of Oversight May Be Allowing Some Oakland Landlords to Wrongfully Evict Families, Elderly*, NBC BAY AREA (Feb. 16, 2018), <https://www.nbcbayarea.com/investigations/Lack-of-Oversight-May-be-Allowing-Some-Oakland-Landlords-to-Wrongfully-Evict-Families-Elderly-474352123.html> [<https://perma.cc/7J44-MLXT>] (“Although copies of all eviction notices are kept on file at Oakland’s Department of Housing and Community Development, city officials tell the Investigative Unit no one is currently tracking how many owner move-in evictions occur each year, let alone attempt to determine how many of those evictions may be fraudulent.”).

overcharges from landlords.¹⁰¹ Under the old system, tenants who believed they were being overcharged could petition the Rent Leveling Board and, if successful, collect all past overcharges.¹⁰² Disputes between landlords and tenants commonly arose from a lack of documentation.¹⁰³ In 2006, the city began requiring landlords to file annual forms documenting the legal rents for their units.¹⁰⁴ The 2011 vote then limited the scope of the past overcharges tenants could collect to two years of rent.¹⁰⁵

The Office of Rent Administration within the Division of Housing and Community Renewal (DHCR) oversees New York's rent regulation program.¹⁰⁶ Based on DHCR findings, treble damages are available for many violations, including willful overcharges.¹⁰⁷ Tenants may also, of their own initiative, apply for rent reductions if landlords fail to provide services.¹⁰⁸

In San Francisco, imposing an unlawful increase is a misdemeanor punishable by a \$1000 mandatory fine and, potentially, up to six months of jail time, as is unlawfully recovering possession of a regulated apartment.¹⁰⁹ The city grants tenants a private right of action for injunctive relief and treble damages for both rent overcharges and harassment.¹¹⁰ The City Attorney can also bring civil actions against landlords.¹¹¹ Additionally, nonprofit tenants' rights organizations may sue for rent overcharges and harassment if neither the tenant nor the City Attorney has taken the case.¹¹²

101. See Heather Haddon, *New Jersey's Rent-Control Laws Fading*, WALL ST. J. (Nov. 12, 2011), <https://www.wsj.com/articles/SB10001424052970204358004577032473909862662> [<https://perma.cc/KN37-H6WW>].

102. See *id.*

103. See *id.*

104. See HOBOKEN, N.J., GEN. REG. § 155-4(A)(1) (2011).

105. See Haddon, *supra* note 101.

106. N.Y. DIV. OF HOUS. & CMTY. RENEWAL, FACT SHEET #1 RENT STABILIZATION AND RENT CONTROL 1 (2018), <https://hcr.ny.gov/system/files/documents/2019/03/fact-sheet-1-sj-final-12-19-18.pdf> [<https://perma.cc/82M2-7EXM>].

107. N.Y. COMP. CODES R. & REGS. tit. 9, § 2526.1 (2005).

108. N.Y.C. ADMIN. CODE § 26-514 (2019); FACT SHEET #1 RENT STABILIZATION AND RENT CONTROL, *supra* note 106, at 2. See generally N.Y. DIV. OF HOUS. & CMTY. RENEWAL, FACT SHEET #14 RENT REDUCTIONS FOR DECREASED SERVICES (2016), <https://hcr.ny.gov/system/files/documents/2018/12/orafac14.pdf> [<https://perma.cc/XM9Y-TN7B>].

109. S.F., CAL., ADMIN. CODE §§ 37.10B(c) (2019); 37.11A(a) (2017).

110. S.F., CAL., ADMIN. CODE § 37.11A(a).

111. *Id.*

112. *Id.*

III. FEATURES AND TRADE-OFFS OF RENT REGULATION: SETTING RENT INCREASES

Establishing permissible rent increases is the core task of rent regulation. Here, too, jurisdictions must make several decisions. First, jurisdictions must decide how annual, across-the-board increases will be determined. Numerous situations may also compel jurisdictions to allow increases beyond the annual rate. Jurisdictions may decide, for example, to compensate landlords for the costs of capital or other improvements through rent increases or instead to permit larger-than-usual rent increases when units become vacant. They must also decide whether landlords can “bank” unused increases and apply them in future years, and how to determine when a landlord has not received a fair rate of return on the property. This Part outlines the trade-offs that jurisdictions face at each of these junctures as well as the diversity of schemes that have arisen in response.

A. Process of Setting Rent Increases

A set of critical choices surrounds allowable annual rent increases. The first issue concerns the process. Jurisdictions can opt to use a pre-determined formula; or create an agency, board or other body; or charge an existing institution to set increases.¹¹³ Using a formula — for example, setting maximum rent increases by reference to a specified measure of inflation¹¹⁴ — simplifies the process considerably, but it may understate or overstate costs if changes in building operating costs diverge substantially from the index selected. An agency or board may be able to incorporate more information and be more nuanced, but that entity may be vulnerable to political or other pressures.

Even jurisdictions with annual increases fixed by or based on price indexes must choose which index to peg to and whether to increase or decrease from the index figure. There is substantial variation in the indices used to determine allowable annual rent increases. In D.C., for example, the Rental Housing Commission has determined that across-the-board increases to which landlords are entitled for rent-regulated units should equal the increase in the consumer price index

113. *See, e.g.*, D.C. CODE § 42-3502.08(h)(2)(A) (1985); N.Y.C. ADMIN. CODE § 26-510 (2006); WEST HOLLYWOOD, CAL., MUN. CODE § 17.36.020 (1997); MAIN FEATURES OF RENT STABILIZATION, *supra* note 6, at 75; *Rent Control*, *supra* note 97.

114. *See, e.g.*, D.C. CODE § 42-3502.08(h)(2)(A) (1985) (pegging annual increases to CPI); *Rent Control*, *supra* note 97 (same).

(CPI) plus 2%.¹¹⁵ In West Hollywood, it is 75% of the CPI for greater Los Angeles.¹¹⁶ In Jersey City, the annual increase, set by the City Council, is tied more directly to the increase in the cost of living during the lease term.¹¹⁷ The annual increase cannot exceed 4% or, alternatively, the percentage difference between the CPI three months before the lease expires and three months before the lease began, whichever is less.¹¹⁸

Many jurisdictions vest the determination of the annual rent increases in rent boards, which may be elected or appointed by local or regional authorities.¹¹⁹ In New York State, local Rent Guidelines Boards determine rates for increases each year.¹²⁰ New York City's Rent Guidelines Board has nine members, all appointed by the Mayor.¹²¹ Two members are appointed to represent tenant interests; two to represent the interests of property owners; and five to represent the general public.¹²² Under the Emergency Tenant Protection Act of 1974, the Boards outside of New York City have the same composition, but members are appointed by the Commissioner of the State Division of Housing and Community Renewal.¹²³

Rent boards also serve functions other than determining rent increases. In Newark, price increases are pegged to the consumer price index and cannot exceed 4%, so the Board does not set the base annual increase.¹²⁴ Instead, its central function is to oversee

115. D.C. CODE § 42-3502.08(h)(2)(A) (1985); *see also Rent Control CPI for 2019*, OFF. TENANT ADVOC., <https://ota.dc.gov/page/rent-control-cpi-2018> [<http://perma.cc/28ZB-AUHN>] (last visited Oct. 2, 2019) (explaining rent increases for rent controlled units). The consumer price index, produced by the Bureau of Labor Statistics, measures the average change in the price of a fixed bundle of goods. *Consumer Price Index*, U.S. DEP'T LAB., BUREAU LAB. STAT., <https://www.bls.gov/cpi/> [<https://perma.cc/KGU5-7RSF>] (last visited Sept. 26, 2019).

116. WEST HOLLYWOOD, CAL., MUN. CODE § 17.36.020 (1997).

117. JERSEY CITY, N.J., CODE OF ORDINANCES § 260-3(A) (2018).

118. *Id.*

119. Santa Monica serves as an example of an elected rent control board. *See Meet the Board*, CITY OF SANTA MONICA, https://www.smgov.net/Departments/Rent_Control/About_the_Rent_Control_Board/Meet_the_Board.aspx [<https://perma.cc/LV7K-RK5B>] (last visited Sept. 10, 2019).

120. N.Y.C. ADMIN. CODE § 26-510 (2006).

121. *Id.*

122. *Id.*

123. Emergency Tenant Protection Act (ETPA) of 1974, N.Y. UNCONSOL. LAW § 8621 (McKinney 1987).

124. *Rent Control*, *supra* note 97.

administrative hearings and mediation of landlord-tenant disputes arising under Newark's rent regulations.¹²⁵

B. Increases Beyond Annual Rate

i. Vacancy Bonuses

Legislators may want to allow higher rent increases when a tenant moves out. Proponents argue that such “vacancy bonuses” maintain protections for existing tenants and prevent landlords from being locked into low rents when those tenants leave.¹²⁶ However, generous vacancy allowances may also undermine the degree to which rent regulation can keep overall rents low. Furthermore, vacancy bonuses may encourage landlords to push out existing tenants, so they can replace them and charge higher rents. As noted earlier, two recent studies of the San Francisco housing market provide some evidence for this argument, finding higher rates of eviction and turnover in regulated units in areas with unusually high price appreciation.¹²⁷

Most jurisdictions allow landlords to increase rents beyond the annual increase when units become vacant,¹²⁸ but these bonuses vary substantially. In California, the Costa-Hawkins Rental Housing Act allows landlords to increase rent to the market rate when a new tenancy begins.¹²⁹ In some other jurisdictions, landlords can make more substantial increases upon vacancy than they are otherwise permitted but the vacancy bonus may not take the unit all the way up to the market rate. Until June 2019, for instance, in New York City, a landlord could increase rent by 20% of the legal regulated rent for an incoming tenant with a two-year lease, or slightly less for a tenant with a one-year lease; recent reforms eliminated this vacancy

125. *Id.*

126. See Mireya Navarro, *Tenant Advocates Want Rent Increases Tied to a Vacancy Stopped*, N.Y. TIMES (May 17, 2016), <https://www.nytimes.com/2016/05/18/nyregion/tenant-advocates-want-rent-increases-tied-to-a-vacancy-stopped.html> [<https://perma.cc/23Bx-G4UH>] (“The association said the vacancy allowance was written into law as a recognition that landlords might need to ‘catch up’ in rent revenue between tenants to help maintain the building, and as a way to have a new tenant bear the increase.”).

127. Asquith, *supra* note 36, at 27–30; Diamond et al., *supra* note 16, at 16–18.

128. See, e.g., Costa-Hawkins Rental Housing Act, CAL. CIV. CODE § 1954.52 (1996) (allowing landlords to increase rents without restriction between tenancies in all California cities); Vacancy Increase Reform Act of 2018, D.C. CODE § 42-3502.13 (2018).

129. CAL. CIV. CODE §§ 1954.52–53.

allowance.¹³⁰ D.C.'s Vacancy Increase Reform Act of 2018 instead pegs allowable increases to the duration of the previous tenant's occupation of the unit, and permits a landlord to increase the rent by 10% if a previous tenant occupied a unit for fewer than ten years and 20% if the previous tenancy lasted more than ten years.¹³¹ This measure restrained vacancy bonuses that previously went up to 30%.¹³²

Several jurisdictions impose conditions on vacancy bonuses that primarily concern improvements to the units in question. In early 2017, the Newark City Council reduced the amount that landlords were obligated to spend rehabilitating vacant apartments to raise rents by up to 20%.¹³³ Several months later, the vacancy reforms were essentially reversed and the city's rent regulation ordinance tightened.¹³⁴ The revised ordinance requires landlords to spend an amount equal to four months' rent on rehabilitating vacant apartments before they are eligible for vacancy bonuses of up to 10%, or eight months' rent to qualify for a 20% increase.¹³⁵ Jersey City similarly conditions a landlord's entitlement to a vacancy increase by pegging the increase amount to the amount the landlord has spent on

130. "For an incoming tenant who opts for a one-year lease, the vacancy allowance is 20% minus the percentage difference between the Rent Guidelines Board's (RGB's) then-current guidelines for a two-year and a one-year lease." *Glossary of Rent Regulation Terms*, NYC RENT GUIDELINES BOARD, <https://www1.nyc.gov/site/rentguidelinesboard/resources/glossary-of-rent-regulation-terms.page> [<https://perma.cc/R6CL-Y38G>] (search for "Vacancy allowance" definition) (last visited Oct. 4, 2019).

131. D.C. CODE § 42-3502.13 (2018).

132. Memorandum from Jeffrey S. DeWitt, Chief Fin. Officer, Gov't of D.C., Office of the Chief Fin. Officer., to Phil Mendelson, Chairman, Council of D.C., Fiscal Impact Statement – Vacancy Increase Reform Amendment Act of 2018 1 (Nov. 7, 2018), <http://lims.dccouncil.us/Download/37181/B22-0025-Fiscal-Impact-Statement1.pdf> [<https://perma.cc/Z46W-737J>].

133. Tenants' advocates decried the reform as "piece by piece deconstruction of rent control," while supporters argued that the reform "strengthened protections for tenants against slumlords and poor maintenance on buildings." Karen Yi, *New Rule 'Deconstruction of Rent Control' in Newark, Advocates Say*, NJ.COM (Mar. 7, 2017), https://www.nj.com/essex/index.ssf/2017/03/newark_rent_control_ordinance.html [<https://perma.cc/M5SQ-NKHY>].

134. Karen Yi, *Residents Win Rent Control Battle; Landlords Face Steeper Hurdle to Raise Rents*, NJ.COM (Sept. 10, 2017), https://www.nj.com/essex/2017/09/residents_win_rent_control.html [<https://perma.cc/W6VV-SSQT>].

135. *Id.*

capital improvements, though it does not go as far as Newark has in setting a requisite spending level.¹³⁶

ii. Capital Improvement

Another choice is the extent to which systems should compensate landlords for capital improvements through higher rents. Such increases help incentivize property maintenance and needed repairs, but can allow housing to become less affordable. Capital improvements may also encourage landlords to make investments that are not essential or desired by tenants, such as installing granite countertops. Therefore, providing any kind of capital improvement allowance should require monitoring and enforcement.

A landlord's ability to pass the costs of capital improvements in buildings or individual units along to existing tenants, as well as the duration of the resulting rent increases and whether they can be applied retroactively, varies by jurisdiction. Under Los Angeles's Rent Stabilization Ordinance (RSO), landlords may pass on approximately 50% of the improvement costs to both individual units and common areas to tenants over time.¹³⁷ This is done by dividing 50% of the improvement costs over rental payments for a period not exceeding six years.¹³⁸ By contrast, until June 2019, New York State's rent regulation program allowed owners to recover 100% of their investments in improvements.¹³⁹ New York's rent regulation scheme distinguishes Major Capital Improvements (MCIs), covering building-

136. JERSEY CITY, N.J., CODE OF ORDINANCES § 260-5 (2018); NEWARK, N.J., ORDINANCE § 19:2-7.1 (2017).

137. L.A., CAL., MUN. CODE § 151.07(A)(1)(a) (1989) ("the landlord shall only be entitled to a temporary monthly rent increase of 1/60th of fifty percent (50%) of the average per unit capital improvement cost"). The Rent Stabilization Ordinance defines a capital improvement as:

The addition or replacement of the following improvements to a rental unit or common areas of the housing complex containing the rental unit, providing such new improvement has a useful life of five (5) years or more: roofing, carpeting, draperies, stuccoing the outside of a building, air conditioning, security gates, swimming pool, sauna or hot tub, fencing, garbage disposal, washing machine or clothes dryer, dishwasher, children's play equipment permanently installed on the premises, the complete exterior painting of a building, and other similar improvements as determined by the Commission.

L.A., CAL., MUN. CODE § 151.02 (1989).

138. L.A., CAL. MUN. CODE § 151.07(A)(1)(a).

139. See Kevin Sun, *Analysis: Here's What the New Rent Law Will Do to the Average Stabilized Apartment*, REAL DEAL (June 18, 2019), <https://therealdeal.com/2019/06/18/analysis-heres-what-the-new-rent-law-will-do-to-the-average-stabilized-apartment/> [<https://perma.cc/Z4QU-X6YN>].

wide improvements — such as new windows, boilers, or roofs¹⁴⁰ — and Individual Apartment Improvements (IAIs), covering upgrades to individual apartments, such as installing a new dishwasher.¹⁴¹

The Office of Rent Administration in the New York State's Division of Housing and Community Renewal must approve any requested rent increases based on MCIs.¹⁴² IAIs do not require DHCR approval and landlords are only required to provide “detailed” cost explanations.¹⁴³ Rent increases based on MCIs are calculated by amortizing the approved costs of the improvements over 12.5 years for buildings with more than 35 units and over 12 years for buildings with 6 to 35 units, subject to a 2% cap on annual rent increases.¹⁴⁴ Until June 2019, the cap was 6%.¹⁴⁵ These increases of 1/108th or 1/96th of the approved costs of the MCI, respectively, become parts of the legal base rent for 30 years.¹⁴⁶ The cost is divided by the total number of rooms in the building to arrive at a per-room, per-month increase applied to the tenant's rent.¹⁴⁷ MCIs cover only new installations and complete replacements, not repairs of old equipment.¹⁴⁸

Pursuant to New York's recent reforms,¹⁴⁹ the owner of a building with more than 35 units can collect a permanent monthly rent increase equal to 1/180th of the cost of an IAI. For owners of

140. N.Y.C. ADMIN. CODE § 2522.4(a)(2)(i) (2019).

141. N.Y. DIV. OF HOUS. & CMTY. RENEWAL, FACT SHEET #26 GUIDE TO RENT INCREASES FOR RENT STABILIZED APARTMENTS IN NEW YORK CITY 6 (2018) [hereinafter FACT SHEET #26 (2018)], <https://hcr.ny.gov/system/files/documents/2018/09/orafac26.pdf> [https://perma.cc/DWT2-MV2A].

142. An owner may file an application to increase the legal regulated rents of the building or building complex on forms prescribed by the DHCR. N.Y. COMP. CODES R. & REGS. tit. 9, § 2522.4(a)(1) (2019).

143. See S.B. S6548, 2019–20 Reg. Sess. (N.Y. 2019). For previous system, see FACT SHEET #26 (2018), *supra* note 141, at 6.

144. See FACT SHEET #26 (2018), *supra* note 141, at 3.

145. N.Y. DIV. OF HOUS. & CMTY. RENEWAL, FACT SHEET #24 MAJOR CAPITAL IMPROVEMENTS 3 (2014), https://www.msnhlaw.com/docs/fact_sheet_24_20140416125002.pdf [https://perma.cc/CGC2-QSNZ].

146. N.Y. DIV. OF HOUS. & CMTY. RENEWAL, FACT SHEET #26 GUIDE TO RENT INCREASES FOR RENT STABILIZED APARTMENTS 3 (2019), https://hcr.ny.gov/system/files/documents/2019/09/FACT_20SHEET_2026.pdf [https://perma.cc/TUM9-9UW5].

147. *Id.*

148. N.Y.C. ADMIN. CODE § 2522.4 (2019).

149. See S.B. 6458, 2019–20 Reg. Sess. (N.Y. 2019).

buildings with 35 or fewer units, the increase is 1/168th.¹⁵⁰ Increases based on IAIs were uncapped until June 2019 and are now capped at \$15,000.¹⁵¹ Landlords must provide current tenants with explanations of costs related to IAIs, but the process requires only that landlords self-certify these expenses with DHCR. Landlords are not required to seek approval from new tenants for IAIs made during vacancy.¹⁵² Before June 2019, capital improvement increases taking place upon vacancy were added to the legal rent after vacancy bonuses were calculated.¹⁵³

San Francisco permits landlords of buildings with five or fewer units to pass the full costs of capital improvements on to sitting and future tenants that have benefited from the improvements.¹⁵⁴ This is subject to a 5% annual cap on any increase in base rent.¹⁵⁵ Landlords of buildings with more than five units can only pass 50% of their costs, subject to a 10% annual cap on base rents.¹⁵⁶ D.C. sets higher limits, permitting increases of up to 20% for building-wide improvements and up to 15% for other improvements.¹⁵⁷

ii. Rents Below the Legal Maximum

Additional questions arise when a landlord charges a tenant a rent below the legal maximum or, in some jurisdictions, when a landlord

150. *Id.*

151. *Id.*; see also Justin R. La Mort, *The Theft of Affordable Housing: How Rent-Stabilized Apartments Are Disappearing from Fraudulent Individual Apartment Improvements and What Can be Done to Save Them*, 40 N.Y.U. REV. L. & SOC. CHANGE 351, 369–70 (2016) (arguing that IAIs should follow MCIs and be subject to a 6% cap).

152. N.Y. DIV. OF HOUS. & CMTY. RENEWAL, OPERATIONAL BULLETIN 2016-1 (REVISED): INDIVIDUAL APARTMENT IMPROVEMENTS 1 (2017), <https://hcr.ny.gov/system/files/documents/2018/09/orao20161.pdf> [<https://perma.cc/BS6E-ETKR>] (outlining certification process).

153. See FACT SHEET #26 (2018), *supra* note 141, at 5.

154. *Supervisor Ammiano Introduces Capital Improvement Passthrough Compromise Ord. 050702*, CITY & CTY. OF S.F., <https://sfrb.org/supervisor-ammiano-introduces-capital-improvement-passthrough-compromise-ord-050702> [<https://perma.cc/G6J8-LK6S>] (last visited Sept. 10, 2019).

155. *Id.*

156. Two exceptions are seismic work required by law and energy conservation work, for which landlords may pass 100% of their costs through to tenants. See *Fact Sheet 5 - Landlord Petitions and Passthroughs*, CITY & CTY. OF S.F. (Apr. 2010), <https://sfrb.org/fact-sheet-5-landlord-petitions-and-passthroughs> [<https://perma.cc/MAP4-FKRP>]. In addition, “a majority of the tenants in any unit may elect an alternative passthrough method based on 100% of the certified capital improvements costs, to be imposed at the rate of 5% of the tenant’s base rent per year, with the total passthrough limited to 15% of the tenant’s base rent.” *Id.*

157. D.C. CODE § 42-3502.10 (1985).

declines to increase a tenant's rent by the maximum allowable increase.¹⁵⁸ A landlord might do this because the market will not support the legal maximum rent or to keep desirable tenants in their buildings. While policymakers should not discourage landlords from setting rents that are lower than the allowable rents, allowing them to bank increases creates the risk that landlords will impose banked rent increases suddenly, burdening tenants with large and unexpected rent increases.¹⁵⁹ Some rent regulation proponents worry that landlords game these banked rents by charging "teaser" rents to attract tenants, then increasing rents sharply in order to get rid of tenants they do not like, or taking advantage of increases allowed upon vacancy.¹⁶⁰

Jurisdictions have taken different approaches to rent banking. Until recently, in New York City, a landlord charging a "preferential" rent — anything lower than the legal maximum, or the base rent plus all allowable increases — was able to revoke the preferential rent and begin charging the higher, legal regulated rent upon either lease renewal or vacancy.¹⁶¹ They were, however, required to provide tenants with written notice of the legal regulated rent in both the original and renewal leases.¹⁶² Furthermore, landlords and tenants

158. See, e.g., CITY OF WEST HOLLYWOOD RENT STABILIZATION & HOUS. DIV., GUIDE: RENT STABILIZATION 8 (Nov. 2018), <https://www.weho.org/home/showdocument?id=15066> [<https://perma.cc/M3MW-QRQV>]; N.Y. DIV. HOUS. & CMTY. RENEWAL, FACT SHEET #40 PREFERENTIAL RENTS 1 (2019), <http://www.nyshcr.org/Rent/FactSheets/orafac40.pdf> [<https://perma.cc/W35M-335E>]; *Fact Sheet 7 - Annual Allowable Rent Increases and Banked Rent Increases*, CITY & CTY. OF S.F. (2010), <https://sfrb.org/fact-sheet-7-annual-allowable-rent-increases-and-banked-rent-increases> [<https://perma.cc/CV5G-JS7W>].

159. Cezary Podkul, *New York Landlords Exploit Loophole to Hike Rents Despite Freeze*, PROPUBLICA (Apr. 25, 2017), <https://www.propublica.org/article/new-york-landlords-exploit-loophole-to-hike-rents-despite-freeze> [<https://perma.cc/HSP9-AJWB>].

160. See, e.g., *id.*; Amy Plitt, *How New York's Preferential Rent Loophole Is Unfairly Used Against Tenants*, CURBED N.Y. (Apr. 25, 2017), <https://ny.curbed.com/2017/4/25/15425058/nyc-rent-stabilization-loophole-landlords> [<https://perma.cc/XK3S-F6E4>]; Steven Wishnia, *'Preferential Rent': How Landlords Kill NYC's Affordable Apartments and Get Away With It*, VILLAGE VOICE (July 6, 2017), <https://www.villagevoice.com/2017/07/06/preferential-rent-how-landlords-kill-nycs-affordable-apartments-and-get-away-with-it/> [<https://perma.cc/H8UB-QZLJ>]; *Preferential Rents*, METRO. COUNCIL ON HOUSING, http://metrocouncilonhousing.org/help_and_answers/preferential_rents [<https://perma.cc/E7MC-SEJE>] (last visited July 25, 2019).

161. FACT SHEET #40, *supra* note 158.

162. *Id.*

were able to contract to apply a preferential rent for the duration of a tenancy.¹⁶³

In D.C., a similar system prevailed until 2018. D.C. Attorney General Karl Racine challenged the practice of basing rent increases on legal maximum rents, rather than the preferential rents tenants actually pay, as a deceptive business practice.¹⁶⁴ In 2018, the D.C. Housing Commission ruled in favor of the Attorney General.¹⁶⁵ The Rent Charged Definition Clarification Amendment Act of 2018 codified this decision, requiring landlords to base rent increases on the amount a tenant actually pays rather than the legal maximum rent.¹⁶⁶ And in June 2019, the New York state legislature changed its system and became more like D.C.'s, making preferential rents the new base rents for increases during the term of a tenancy.¹⁶⁷

San Francisco allows landlords to apply banked rent increases to future years,¹⁶⁸ while West Hollywood¹⁶⁹ and Los Angeles explicitly prohibit this practice.¹⁷⁰ East Palo Alto prohibited banking after a

163. *Id.*

164. See Complaint at 3–4, *District of Columbia v. Equity Residential Mgmt.*, 2018 D.C. Super. LEXIS 3 (D.C. Super. Ct. 2018) (Case No. 2017 CA 008334 B); Press Release, Office of Att’y Gen. for D.C., Attorney General Racine Files Suit Against Landlord for Circumventing District’s Rent Control Laws (Dec. 13, 2017), <https://oag.dc.gov/release/attorney-general-racine-files-suit-against> [<https://perma.cc/AS4K-T8AT>].

165. Jon Steingart, *The DC Council Will Likely Pass Legislation to Fight Sharp Price Increases for Tenants*, GREATER GREATER WASH. (Nov. 20, 2018), <https://ggwash.org/view/69920/the-dc-council-will-likely-pass-rent-concession-legislation-intended-to-end-sharp-price-increases-for-tenants> [<https://perma.cc/DK9W-K4HG>].

166. See *id.*; Jon Steingart, *Legislation Intended to End Sharp Rent Increases Lands in the DC Council*, GREATER GREATER WASH. (Oct. 8, 2018), <https://ggwash.org/view/69358/legislation-intended-to-end-sharp-rent-increases-lands-in-the-dc-council> [<https://perma.cc/8DWV-EU9R>]; Jon Steingart, *A Lawsuit Alleging a DC Landlord Uses Discounts to Circumvent Rent Control May Have Gotten a Boost*, GREATER GREATER WASH. (Mar. 26, 2018), <https://ggwash.org/view/66994/lawsuit-going-after-dc-landlords-offering-rent-concessions-gets-boost> [<https://perma.cc/PN9A-DQXY>].

167. S.B. 6458, 2019 Reg. Sess. § 2 (N.Y. 2019) (“Any tenant who is subject to a lease on or after the effective date of a chapter of the laws of two thousand nineteen which amended this paragraph, or is or was entitled to receive a renewal or vacancy lease on or after such date, upon renewal of such lease, the amount of rent for such housing accommodation that may be charged and paid shall be no more than the rent charged to and paid by the tenant prior to that renewal.”).

168. *Fact Sheet 7*, *supra* note 158.

169. GUIDE: RENT STABILIZATION, *supra* note 158, at 8.

170. Nicolas Traylor, “Banking” Annual General Adjustment Rent Increases: Policy Considerations, CITY OF RICHMOND RENT PROGRAM 30 (Aug. 19, 2017), https://www.ci.richmond.ca.us/DocumentCenter/View/43859/Item-H-2-Presentation_8_23_17?bidId= [<https://perma.cc/L3PS-FGR3>].

large housing provider increased its rents by 40% after several years of foregoing rent increases but subsequently moved to a system allowing banking subject to a 10% annual cap on rent increases.¹⁷¹ Richmond, California similarly allows landlords to bank rent increases, but subjects increases to a 5% annual cap.¹⁷²

B. Hardship Increases

Rent regulation systems generally allow a landlord to apply for a hardship variance if the annual increases provided do not allow the landlord to receive a fair income after operating expenses. Permitting hardship increases thus allows jurisdictions to avoid Fifth Amendment takings claims that would arise from depriving landlords of fair rates of return.¹⁷³

171. The prohibition, however, made administering the program more difficult because many more landlords filed for rent increases every year (knowing they would otherwise lose the opportunity to take them), and it became more cumbersome to calculate permissible rent levels and track the maximum legal rent for each tenancy. The city subsequently eased the prohibition, allowing banking subject to a 10% annual cap on rent increases. The Los Angeles Rent Board, by contrast, decided in 2009 to prohibit banking, citing fidelity to the goal of protecting against sudden rent increases. The Board also noted that it used a simpler rent registration system — tracking rents only at the unit level, rather than for each new tenancy — than East Palo Alto that was unlikely to be similarly burdened by a banking prohibition. *See* Memorandum from Nicolas Traylor, Exec. Dir., City of Richmond Rent Program, to Chair Gray & Members of Rent Bd., Report on Banking of Annual General Adjustments and Draft Regulation 10 (Aug. 23, 2017), https://www.ci.richmond.ca.us/DocumentCenter/View/43834/8_23_17-Item-H-2?bidId= [https://perma.cc/38YJ-TX5R]; Memorandum from Nicolas Traylor, Exec. Dir., City of Richmond Rent Program, to Chair Gray & Members of Rent Bd., Proposed Revisions to Regulation 602, Regarding “Banking” of Annual General Adjustment Rent Increases (Nov. 14, 2018), https://www.ci.richmond.ca.us/DocumentCenter/View/47907/COMPILED-ITEM-I-1_11-14-18 [https://perma.cc/N2F5-L3B7]; Traylor, *supra* note 170, at 32.

172. The Board considered the arguments against banking, observing that, in California, “most landlords are able to receive large rent increases through vacancy decontrol” over the long run, and suggested that a landlord who declines to take an annual increase is likely already receiving a fair rate of return for that year, negating the need to allow the landlord to take the increase later. Nevertheless, Richmond ultimately adopted banking, citing the likelihood that landlords will choose to raise rents every year if they know they will forfeit increases otherwise as well as the potential administrative costs of prohibiting banking. Memorandum from Nicholas Traylor (Nov. 14, 2018), *supra* note 171, at 2–3.

173. U.S. CONST. amend. V (“No person shall . . . be deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation.”); *id.* amend. XIV, § 1 (“[N]or shall any State deprive any person of . . . property, without due process of law.”); *id.*; Penn Cent. Transp. Co. v. New York City, 438 U.S. 104, 149 (1978) (“[T]he inability of the owner to make a reasonable return on his property requires compensation under the Fifth Amendment.”).

Jurisdictions estimate the rate of return a landlord derives on a given property by examining the income the landlord receives from that property after approved operating expenses relative to the property's valuation.¹⁷⁴ The range of what rent boards consider a fair return varies. In D.C., it is 12%, while under a similar formula, New York considers 8.5% a fair return.¹⁷⁵ New York also allows landlords to claim an alternative form of hardship if their total annual gross income exceeds their total annual operating expenses by less than 5%.¹⁷⁶ The Jersey City Rent Board considers whether a landlord will be unable to make mortgage payments without a hardship increase.¹⁷⁷ Other jurisdictions use formulas in place of fixed rates,¹⁷⁸ which may offer more nuances but can make it more difficult for landlords and tenants to understand the hardship increase to which a landlord may be entitled. Both the Newark and Hoboken Rent Boards will deny hardship increases if a landlord purchased a building for an inflated

174. Under New York's rent control laws (which are stricter and cover a smaller share of the housing stock than rent stabilization), for example, a "fair return" requires a "net annual return" (income minus operating expenses) of 7.5% of the valuation of the property for owners outside of New York City and 8.5% for owners inside New York City, measured as the current valuation "properly adjusted by applying thereto the ratio which such assessed valuation bears to the full valuation as determined by the State Board of Equalization and Assessment on the basis of the assessment rolls of cities, towns and villages for the year 1954." N.Y. COMP. CODES R. & REGS. tit. 9, § 2102.3(f)(5) (2019).

175. See D.C. CODE § 42-3502.12 (1985); S.B. 6458, 2019 Sen., Reg. Sess. (N.Y. 2019); see also *Glossary of Rent Regulation Terms*, N.Y.C. RENT GUIDELINES BD., <https://www1.nyc.gov/site/rentguidelinesboard/resources/glossary-of-rent-regulation-terms.page#hardship> [<https://perma.cc/CY7R-QE7E>] (last visited Oct. 2, 2019).

176. N.Y. DIV. OF HOUS. & CMTY. RENEWAL, INSTRUCTIONS FOR FILING AN OWNER'S APPLICATION FOR RENT INCREASE BASED ON ALTERNATIVE HARDSHIP 3 (1995), <https://hcr.ny.gov/system/files/documents/2018/10/formrtp45iinstructionsrentincreasealternativhardship.pdf> [<https://perma.cc/FF79-3Y6S>]; see also *Glossary of Rent Regulation Terms*, *supra* note 175.

177. JERSEY CITY, N.J., CODE OF ORDINANCES § 260-10(a) (amended by Ordinance No. 19-044 2019).

178. See, e.g., FAIR LAWN, N.J. BOROUGH CODE § 177-11(A)(4) (1984) ("If the most recent year's percentage of net operating expenses to total gross income exceeds the average of the prior applicable years and the most recent year's percentage of net operating expenses to total gross income exceeds 60%, the applicant shall receive a hardship rent increase sufficient to restore the percentage of net operating expenses to total gross income of the most recent year to the average of the prior applicable years."); *id.* § 177-11(C) ("The formula for figuring the hardship increase, if the Board has determined there is a hardship, is as follows: Net operating expense (4th year)/three-year average (as a decimal) = New rental to cure hardship.").

price and thus could not reasonably have expected to receive a fair return on that investment.¹⁷⁹

Some jurisdictions condition hardship increases upon a showing that landlords comply with health and safety obligations.¹⁸⁰ In Jersey City, a landlord must produce an inspection report showing that the building is in “substantial compliance” with applicable building codes — or submit to inspection within six months — to be eligible for a hardship increase.¹⁸¹ These processes are one way to ensure a balance between landlords’ entitlements to fair returns and their obligations to provide habitable dwellings. But landlords whose buildings are losing money may lack the available cash to make necessary repairs, further compounding their difficulties. Hardship increases may also allow jurisdictions more flexibility in responding to the risk that across-the-board increases will leave some landlords with too little revenue. If the standards for challenges are lax, such challenges will add administrative costs as staff is forced to assess the merits of a large number of individual claims. And of course, overly generous waivers will ultimately undermine the affordability protections provided.

IV. FEATURES AND TRADE-OFFS OF RENT REGULATION: ADDITIONAL TENANT PROTECTIONS

Rent regulation schemes are often coupled with protections for tenants.¹⁸² Many schemes grant tenants in regulated units special protections against eviction and harassment, which owners of regulated units might be more likely to practice because of the value of creating a vacancy in these units. Such protections may also ensure extra security for particularly vulnerable populations.

The trade-off here is clear. Additional rights, such as just cause eviction rules or expanded access to counsel in housing court proceedings, can protect tenants from being harassed to leave their units and help prevent arbitrary or unexplained evictions.¹⁸³

179. See HOBOKEN, N.J., GEN. REGS., Art. II § 155-14 (1984) (“It is not the intention of this chapter to permit a hardship rental increase when the landlord has not made a reasonably prudent investment.”).

180. See, e.g., JERSEY CITY, N.J., CODE OF ORDINANCES § 260-1.

181. *Id.*

182. See, e.g., BERKELEY, CAL., MUN. CODE IX § 13.76; OAKLAND, CAL., MUN. CODE § 8.22.360; S.F., CAL., ORDINANCE § 37.9.

183. See, e.g., LEE ANNE FENNELL, *THE UNBOUNDED HOME* (2009); Margaret Jane Radin, *Residential Rent Control*, 15 PHIL. & PUB. AFF. 350, 372 (1986); Kenneth Salzberg & Audrey A. Zibelman, *Good Cause Eviction*, 21 WILLAMETTE L. REV. 61, 62–63 (1985). See generally Andrew Scherer, *Gideon’s Shelter: The Need to*

However, they can also increase landlords' costs of removing tenants when warranted, ultimately raising the cost for all tenants and discouraging investment in rental properties.¹⁸⁴ Further, they can cause landlords to conduct additional screening to minimize the risk of problematic tenants.¹⁸⁵

A. Protections Against Eviction and Harassment

Rent regulation provisions designed to protect tenants from unjust evictions or landlord misconduct may take the form of just cause eviction statutes and other anti-harassment or anti-displacement protections. Rent regulation programs may also require landlords to pay relocation expenses for tenants under some circumstances.¹⁸⁶

Just cause statutes limit the bases on which landlords may evict tenants to statutorily-specified grounds.¹⁸⁷ For example, in D.C., Oakland, San Francisco, and throughout New Jersey,¹⁸⁸ where just cause eviction protections exist, acceptable causes for eviction include nonpayment of rent, violation of a lease obligation, sale or conversion of the unit, or discontinued housing use, among others.¹⁸⁹

Some jurisdictions provide eviction protections to all tenants,¹⁹⁰ while others, like New York City and San Francisco, provide them

Recognize a Right to Counsel for Indigent Defendants in Eviction Proceedings, 23 HARV. C.R.-C.L. L. REV. 557 (1988).

184. *See, e.g.*, W. DENNIS KEATING, RENT CONTROL 50 (1998) (discussing higher rent in return for security from eviction, so that long stay tenants benefit in time); Karl Manheim, *Tenant Eviction Protections and the Takings Clause*, 1989 WIS. L. REV. 925, 959–60 (1993); J.R. Miron, *Security of Tenure, Costly Tenants and Rent Regulation*, 27 URB. STUD. 167, 168 (1990); Diamond, *Economic Evidence*, *supra* note 66, at 2.

185. Landlords screening due to difficulty of eviction is discussed in David P. Sims, *Rent Control Rationing and Community Composition: Evidence from Massachusetts*, 11 B.E. J. ECON. ANALYSIS & POL'Y 6, 24 (2011); *see also* Meredith Greif, *Regulating Landlords: Unintended Consequences for Poor Tenants*, 17 CITY & COMMUNITY 658, 666–67 (2018).

186. *See, e.g.*, OAKLAND, CAL., MUN. CODE § 8.22.360 (2003); S.F., CAL., ORDINANCE § 37.9 (2017).

187. “Just Cause” Eviction Policies, LOCAL HOUSING SOLUTIONS 1, <https://www.localhousingsolutions.org/act/housing-policy-library/just-cause-eviction-policies-overview/just-cause-eviction-policies/?pdf=2067> [https://perma.cc/K45K-5GTV] (last visited Oct. 2, 2019).

188. N.J. STAT. ANN. §§ 2A:18-53–84 (2008).

189. NYU FURMAN CTR., GENTRIFICATION RESPONSE: A SURVEY OF STRATEGIES TO MAINTAIN NEIGHBORHOOD ECONOMIC DIVERSITY 17 (2016), http://furmancenter.org/files/NYUFurmanCenter_GentrificationResponse_26OCT2016.pdf [https://perma.cc/Z3E6-2SPA].

190. *See, e.g.*, BERKELEY, CAL., MUN. CODE IX § 13.76 (2018); OAKLAND, CAL., MUN. CODE § 8.22.360 (“No landlord shall endeavor to recover possession, issue a

only to tenants in rent-regulated units.¹⁹¹ At the universalist end of the spectrum, D.C. extends just cause eviction protections to all units;¹⁹² Seattle's just cause ordinance expressly extends this protection even to month-to-month and verbal lease agreements;¹⁹³ and Oregon voters elected to impose just-cause eviction protections statewide.¹⁹⁴

Berkeley and Oakland also extend just cause protections to all units.¹⁹⁵ A key limitation on these protections concerning rent regulated units in California, however, is the potential for eviction under the statewide Ellis Act.¹⁹⁶ The Ellis Act allows an owner of a rent-regulated building to evict tenants in order to remove the building from the rental market.¹⁹⁷

Landlords seeking to evict tenants may also be required to pay relocation expenses to minimize the costs and disruptive effects of moving for tenants. In 2018, the Oakland City Council passed the Uniform Relocation Ordinance, which increased the relocation payments landlords are required to pay tenants in rent-regulated units in all no-fault evictions and pegged these payments to the CPI.¹⁹⁸ The Ordinance also expanded the relocation payment requirement to apply to owners seeking to evict tenants in order to move back into

notice terminating tenancy, or recover possession of a rental unit in the city of Oakland unless the landlord is able to prove the existence of one of the following grounds.”).

191. See S.F., CAL., ORDINANCE § 37.9.

192. D.C. CODE § 42-3505.01 (2019).

193. *Just Cause Eviction Ordinance*, SEATTLE DEP'T CONSTR. & INSPECTIONS, [http://www.seattle.gov/sdci/codes/codes-we-enforce-\(a-z\)/just-cause-eviction-ordinance](http://www.seattle.gov/sdci/codes/codes-we-enforce-(a-z)/just-cause-eviction-ordinance) [<https://perma.cc/5L9M-XVMC>] (last visited Oct. 2, 2019).

194. Sasha Ingber, *Oregon Set to Pass the First Statewide Rent Control Bill*, NAT'L PUB. RADIO (Feb. 27, 2019), <https://www.npr.org/2019/02/27/698509957/oregon-set-to-pass-the-first-statewide-rent-control-bill> [<https://perma.cc/9RAF-D4BR>].

195. BERKELEY, CAL., MUN. CODE IX § 13.76.030 (2018); OAKLAND, CAL., MUN. CODE 8.22.360 (2019) (“No landlord shall endeavor to recover possession, issue a notice terminating tenancy, or recover possession of a rental unit in the city of Oakland unless the landlord is able to prove the existence of one of the following grounds.”).

196. CAL. GOV'T CODE § 12.75 (2000).

197. *Id.*

198. OAKLAND, CAL., MUN. CODE § 13468 (2017); Ali Tadayon, *Oakland Landlords Will Have to Pay Thousands if They Evict Tenants to Move Back In*, MERCURY NEWS (Jan. 27, 2018), <https://www.mercurynews.com/2018/01/24/oakland-landlords-will-have-to-pay-thousands-if-they-evict-tenants-to-move-back-in/> [<https://perma.cc/842B-453K>].

their units.¹⁹⁹ Los Angeles and San Francisco also require landlords to pay relocation expenses for evictions for which there is no just cause; New York City does not.²⁰⁰

Harassment aimed at pushing tenants to vacate their units is a risk when market conditions and vacancy bonuses allow regulated landlords to collect higher rents through turnover. A series of legislative efforts in 2017 expanded harassment protections for tenants in New York City.²⁰¹ Laws prohibit landlords from harassing tenants by way of threats, intimidation, or tactics such as disrupting services or failing to complete repairs.²⁰² These expansions also limited the circumstances under which landlords can communicate with tenants about buyouts.²⁰³

Causes of action and remedies vary across jurisdictions. New York City tenants can initiate harassment cases in housing court and can potentially receive civil penalties and/or compensatory damages, attorneys' fees and/or punitive damages.²⁰⁴ San Francisco's tenant harassment law generally offers the same protections as New York City's, but it does not similarly limit landlords' abilities to contact tenants about buyouts.²⁰⁵ In San Francisco, a tenant who successfully sues for harassment can collect the greater of treble damages or \$1000 for each offense under local law,²⁰⁶ and \$2000 in statutory damages for each threat of harassment under state law.²⁰⁷ In harassment cases, both the Rent Board and the City Attorney can pursue civil litigation against landlords for civil penalties and injunctive relief or to refer cases to the District Attorney.²⁰⁸

New York City also designates "anti-harassment zones,"²⁰⁹ in which an owner seeking a permit for construction or renovation must

199. OAKLAND, CAL., MUN. CODE §§ 8.22.850, 8.22.300–.390; Barbara J. Parker, *Frequently Asked Questions, IV.1.*, OFF. CITY ATT'Y (Mar. 6, 2018), <https://cao-94612.s3.amazonaws.com/documents/OAK071011.pdf> [<https://perma.cc/B3B2-9AJZ>].

200. L.A., CAL. MUN. CODE § 151.30 (2007); S.F., CAL. ADMIN. CODE § 37.9C (2017).

201. *Protecting Tenants*, N.Y.C. COUNCIL, <https://council.nyc.gov/reports/speakers-2017-annual-report/protecting-tenants/> (last visited Sept. 5, 2019).

202. *Id.*

203. *Id.*

204. N.Y.C. ADMIN. CODE § 27-2115(o) (2017).

205. *See* S.F., CAL., ADMIN. CODE § 37.10B (2017).

206. *Id.* § 37.10B(c).

207. CAL. CIV. CODE § 1940.2(b) (2018).

208. Any person, including the City, may enforce the provisions of this Section by means of a civil action. *Id.* § 37.11A (2017).

209. *Certification of No Harassment*, N.Y.C. DEP'T HOUSING PRESERVATION & DEV., <https://www1.nyc.gov/site/hpd/owners/certification-of-no-harassment.page>

first obtain a “certification of no harassment,” or a waiver, by submitting documentation about the owners or members of a corporate entity, and any rental history to the city’s Department of Housing Preservation and Development.²¹⁰ The city then commences a period of notice, outreach, and investigation into any past harassment, including soliciting feedback from tenants and community groups.²¹¹ If the investigation reveals allegations of harassment, an administrative body reviews the case to determine whether the agency can refuse to grant a certificate.²¹²

In Oakland, enforcement power is vested in the City Attorney to pursue actions against landlords displaying a pattern or practice of harassment, rather than relying on individual tenants to raise these claims.²¹³ This system provides the advantage of lowering the burden on tenants and also makes it easier for the City Attorney to identify patterns of harassment.²¹⁴ East Palo Alto and West Hollywood have protection against harassment, but do not provide for treble damages or attorneys’ fees.²¹⁵

B. Special Provisions for Particular Tenants

Even if policymakers choose not to provide additional protections to all rent regulated tenants, they may decide to offer them to vulnerable groups, such as seniors, people with disabilities, or low-income households with children. Often these protections involve subsidies that cover rent increases for such tenants, essentially limiting the tenants’ contributions to rent.²¹⁶ The argument for such protections is that these vulnerable populations are often on fixed incomes and have limited or no ability to increase earnings in order to handle higher rents. Furthermore, these subsidies can shift the cost of

[<https://perma.cc/G5T5-SMMA>] (last visited Oct. 2, 2019). The Certification of No Harassment requirements apply to five geographic areas and to all single room occupancy multiple dwellings (SROs). *Id.*

210. *Id.*

211. *Id.*

212. *See* GENTRIFICATION RESPONSE, *supra* note 189, at 19.

213. OAKLAND, CAL., MUN. CODE § 8.22.150(c) (2019).

214. *See id.*

215. *Tenant Harassment Prohibition*, CITY OF WEST HOLLYWOOD, <https://www.weho.org/city-government/rent-stabilization-housing/rent-stabilization/tenant-faqs/tenant-harassment-prohibition> [<https://perma.cc/CB9D-SURR>] (last visited Oct. 2, 2019); EAST PALO ALTO, CAL., ORDINANCE §§ 14.02.100, 14.02.170(B) (2019).

216. *See, e.g.*, D.C. CODE § 42-3502.24 (1985); N.Y.C. ADMIN. CODE § 26-509 (repealed 2019).

alleviating rent burdens from landlords to the government. However, these subsidies involve taxpayer dollars and can be costly to administer and enforce. Policymakers should also consider the potential risk of moral hazard if it is possible for tenants to change their reported income, household composition, or some other malleable attribute in order to qualify for benefits. Landlords may also be subject to moral hazard, raising rents on tenants beyond what they would otherwise have asked, because the government, not the tenant, is paying for the increase.

Many jurisdictions provide no such protections, although they may provide these groups with benefits outside of rent regulation programs. Both New York and D.C. extend additional protections from rent increases to tenants of rent-regulated apartments who are elderly or have disabilities.²¹⁷ In both cities, tenants must register in order to receive these subsidies.²¹⁸ New York City's Senior Citizen Rent Increase Exemption (SCRIE) and the Disabled Rent Increase Exemption (DRIE)²¹⁹ freeze rents at their current level for tenants with combined household incomes of \$50,000 or less who pay one-third or more of their monthly household income in rent.²²⁰ Going forward, a property tax credit to the landlord will cover the difference between the legal rent and the frozen rate the tenant pays.²²¹ Tenants are responsible for applying to the program and periodically reestablishing their eligibility.²²² Public awareness and uptake have been low since the program's inception,²²³ prompting the city to

217. D.C. CODE § 42-3502.24; N.Y.C. ADMIN. CODE § 26-509 (repealed 2019).

218. See *Freeze Your Rent: A Guide for Tenants*, N.Y.C. DEP'T FIN. 1, 9–10 (Nov. 2017), <https://www1.nyc.gov/assets/finance/downloads/pdf/brochures/scrriedriebrochure.pdf> [<https://perma.cc/5SEX-ZTKH>]; *Elderly and Disability Tenant Rent Control Registration Clinic*, D.C. OFFICE OF THE TENANT ADVOCATE, <https://ota.dc.gov/page/elderly-and-disability-tenant-rent-control-registration-clinic> [<https://perma.cc/M8HQ-HUFQ>] (last visited July 20, 2019).

219. *Rent Freeze for People with Disabilities: Disability Rent Increase Exemption (DRIE) Program*, N.Y.C. DEP'T FIN. & N.Y.C. HOUSING PRESERVATION & DEV., <https://access.nyc.gov/programs/disability-rent-increase-exemption-drie/> [<https://perma.cc/E2WU-ZZNV>] (last visited July 18, 2019).

220. *Freeze Your Rent*, *supra* note 218, at 2.

221. *Id.* at 14.

222. *Id.* at 15.

223. See Erica Byfield, *NYC Program Helps Seniors Freeze Their Rent, But 'Tens of Thousands' Don't Know About It*, NBC N.Y. (July 14, 2017, 10:32 PM), <https://www.nbcnewyork.com/news/local/NYC-Program-Helps-Seniors-Freeze-Their-Rent-But-Many-Dont-Know-About-It-Thousands-Dont-Know-About-This-NYC-Rent-Freezing-Program-434590073.html> [<https://perma.cc/E8F6-33ZE>]. New York City Councilmember Helen Rosenthal's office has been trying to raise awareness of

engage in public outreach to make potential applicants aware of their eligibility.²²⁴ In D.C., the Elderly Tenant and Tenant With a Disability Protection Amendment Act of 2016 caps annual rent increases for eligible tenants at the lowest of the Social Security Cost-of-Living Adjustment, the CPI, or 5% of the rent the tenant currently pays.²²⁵

New York's SCRIE and DRIE programs fix rents at lower levels while keeping the amount of rent the landlord receives the same.²²⁶ As a result, these programs are also relatively costly to the city government, which makes up the difference between the frozen rent and the legal maximum rent.²²⁷ Under D.C.'s scheme, landlords must absorb the difference between the 5% cap on rent increases for tenants who are elderly or have disabilities and 10% cap for all other tenants.²²⁸ But landlords receive property tax credits for the costs of capital improvements to properties housing elderly or disabled tenants.²²⁹ Thus both systems contain at least some provisions to encourage landlords to continue to accept elderly and disabled tenants even though they may pay lower out-of-pocket rents.

V. RECOMMENDATIONS FOR THE FUTURE

In a policymaker's ideal world, research would show the effect of each of the various decisions that have to be made in designing a rent regulation program. Presently, however, there is little rigorous

SCRIE and locate more seniors to apply. *Id.* So far, they have signed up about 1400 people. *Id.* "Reimbursement is not the issue. Money from the city isn't the issue," Rosenthal said. "The issue is tens of thousands of people qualify for the program but don't know about it." *Id.* A similar rent freeze program, DRIE, is targeted toward people with disabilities. Both programs require residents to reapply each year to ensure they don't earn more than \$50,000 per year. *Id.*; Mireya Navarro, *Albany Expands Effort to Cap Regulated Rents for Older Tenants*, N.Y. TIMES (May 20, 2014), <https://www.nytimes.com/2014/05/21/nyregion/albany-expands-effort-to-cap-regulated-rents-for-older-tenants.html> [<https://perma.cc/75VX-YUG6>].

224. Sarina Trangle, *City Goes Door-To-Door in Effort to Enroll More Senior Citizens in Rent Freeze Program*, AM N.Y. (July 9, 2017), <https://www.amny.com/real-estate/city-goes-door-to-door-in-effort-to-enroll-more-senior-citizens-in-rent-freeze-program-1.13790667> [<https://perma.cc/2CF8-BUPE>] ("At that time, the city estimated that 69,000 eligible households were not benefitting from SCRIE and nearly 25,000 qualified families were not receiving DRIE.").

225. D.C. CODE § 42-3502.24 (1985).

226. N.Y.C. ADMIN. CODE § 26-509 (repealed 2019).

227. *Id.*

228. D.C. CODE § 42-3502.24.

229. *Id.*

research about modern-day rent regulation programs²³⁰ and even less about which particular features drive the effects rent regulation may have upon the housing market. Without changes in policies that allow researchers to isolate the effects of various features, it will be difficult to specify what kinds of reforms might lead to more effective and efficient policies. But some jurisdictions are considering changes in particular elements of their rent regulation programs,²³¹ and research should follow those reforms carefully. Further, this Article focused on programs in the United States, but it would also be helpful to survey the design of programs around the world and better understand what research shows about those programs and how those lessons might apply in the United States.

Jurisdictions considering new rent regulation programs, as well as those thinking about how to reform existing systems, should think carefully about the range of options available. These jurisdictions should talk with people familiar with various jurisdictions' programs to learn more about the implications and unintended consequences of various design elements. Jurisdictions also should consider how their rental markets are changing and whether their rent regulation programs are keeping up. As more single-family homes are rented, for example, and more of those are owned by companies that manage

230. Of the reviewed studies, most use data from the 1990s. *See* Autor et al., *supra* note 17, at 32; Diamond et al., *supra* note 16, at 6; Gilderbloom & Yee, *supra* note 15, at 219. Only the few studies which consider changes in regulations in San Francisco and Massachusetts use data up to 2000, one study goes up to 2005; only Asquith, *supra* note 36, uses data solely from after 2000.

231. For examples of proposed legislation currently under consideration in state legislatures, see, for example, A.B. 1482, 2019–20 Leg., Reg. Sess. (Cal. 2019) (amending Costa-Hawkins Act to allow rent stabilization for certain single-family homes); A.B. 1110, 2019–20 Leg., Reg. Sess. (Cal. 2019) (extending notice period required for month-to-month leases based on amount of proposed rent increase); A.B. 724, 2019–20 Leg., Reg. Sess. (Cal. 2019) (creating online rental registry); S.B. 19-225, 72d Gen. Assemb., 1st Reg. Sess. (Colo. 2019); H.B. 0255, 101st Gen. Assemb. (Ill. 2019) (repealing statewide ban on rent regulation); H.B. 2192, 101st Gen. Assemb. (Ill. 2019) (establishing statewide rent regulation program); H.B. 1316, 191st Gen. Assemb., Reg. Sess. (Mass. 2019) (allowing jurisdictions to impose local limits on rent increases); S.B. 5040, Reg. Sess. (N.Y. 2019) (allowing additional New York State jurisdictions to enact rent regulation laws); S.B. 2591A, Reg. Sess. (N.Y. 2019) (amending rent stabilization high-rent deregulation provisions); S.B. 2845, Reg. Sess. (N.Y. 2019) (prohibiting landlords from revoking preferential rents upon lease termination); S.B. 185, Reg. Sess. (N.Y. 2019) (eliminating 20% vacancy bonus for rent stabilized units); N.Y. S.B. 3693/A.B. 6322 (N.Y. 2019) (eliminating permanent increases for major capital improvements); S.B. 3770, Reg. Sess. (N.Y. 2019) (repealing provisions of rent stabilization law relating to individual apartment improvement increase); S.B. 299A, Reg. Sess. (N.Y. 2019) (limiting scope of fuel pass-along charges for rent-stabilized units); S.B. 5600, 66th Leg., Reg. Sess. (Wash. 2019) (increasing notice period for termination of residential leases).

hundreds or thousands of units, the exemption for single-family rentals may no longer be warranted in some cities.²³² Similarly, as more tenants use home-sharing platforms to sublet their units for short-term visitors,²³³ the interaction of rent regulation and home-sharing regulations may require attention. More jurisdictions are funding legal assistance for renters facing eviction, and that change may require rethinking some aspects of rent regulation programs.²³⁴

Given the crisis in housing affordability that almost every major metropolitan area faces,²³⁵ the pressure to regulate rents will likely increase in the coming years. Further, residents are likely to call for rent regulation to counter their concerns about the effects new investments in neighborhoods may have in increasing rents or prompting displacement.²³⁶ Policymakers and researchers should

232. See CAROLINA K. REID ET AL., TERNER CTR., THE RISE OF SINGLE-FAMILY RENTALS AFTER THE FORECLOSURE CRISIS: UNDERSTANDING TENANT PERSPECTIVES 1–2, 16 (2018) http://ternercenter.berkeley.edu/uploads/Single-Family_Renters_Brief.pdf [<https://perma.cc/QC2K-NYSD>]. See generally James Mills et al., *Large-Scale Buy-to-Rent Investors in the Single-Family Housing Market: The Emergence of a New Asset Class*, 47 REAL ESTATE ECON. 399 (2019) (exploring potential factors behind the rise of investor-owned single-family rental housing).

233. See generally DAVID WACHSMUTH ET AL., URB. POLITICS & GOVERNANCE RESEARCH GRP., MCGILL UNIV. SCH. OF URBAN PLANNING, THE HIGH COST OF SHORT-TERM RENTALS IN NEW YORK CITY (2018); Alastair Boone, *What Airbnb Did to New York City*, CITYLAB (Mar. 5, 2018), <https://www.citylab.com/equity/2018/03/what-airbnb-did-to-new-york-city/552749/> [<https://perma.cc/F6JM-WWMG>].

234. Soni Sangha, *Eviction on Trial: Cities from New York to Minneapolis are Providing Free Attorneys to Low-Income Tenants Facing Eviction*, U.S. NEWS & WORLD REP. (Jan. 22, 2019), <https://www.usnews.com/news/cities/articles/2019-01-22/cities-provide-lawyers-to-tenants-facing-eviction> [<https://perma.cc/KE29-Z6NX>].

235. “Every major metropolitan area in the U.S. has a shortage of affordable and available rental homes for extremely low-income renters.”, NAT’L LOW INCOME HOUS. COAL., THE GAP: A SHORTAGE OF AFFORDABLE HOMES 8 (2019), https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2019.pdf [<https://perma.cc/7XYK-AGYU>]. The same is true for every state. *Id.* at 1. In large metropolitan areas, the shortage severity ranges from 13 affordable and available rental homes to 51 for every 100 extremely low-income rent households. *Id.* at 8. In states, the range is from 19/100 to 66/100. *Id.* at 1. There are more than 18 million rent burdened households across the country of which nearly 10.7 million are severely rent burdened. *Id.* at 5. “[R]enters with incomes below eighty percent of AMI account for ninety-two percent of all cost-burdened renters.” *Id.*

236. Vicki Been, *City NIMBYs*, 33 J. LAND USE & ENVTL. L. 217, 242–45 (2017); John Mangin, *The New Exclusionary Zoning*, 25 STAN. L. & POL’Y REV. 91, 107–08 (2014). See generally Michael Hankinson, *When Do Renters Behave Like Homeowners? High Rent, Price Anxiety, and Nimbysism*, 112 AM. POL. SCI. REV. 473, 484 (2018) (arguing that development “presents a downside risk” to renters in the form of the risk of displacement).

focus on analyzing how best to design and test modern rent regulation systems that enhance stability for current tenants while minimizing adverse effects on investment in both new and existing rental housing.

CONCLUSION

In contrast to current debates that have largely left the particulars of rent regulation unexamined, this Article centers on the details of rent regulation ordinances, showing how different jurisdictions have balanced the trade-offs inherent in rent regulation. This balancing can be seen at all phases of rent regulation, from program design to enforcement. Jurisdictions must decide how broadly to regulate; how deregulation will occur; what kinds of costs and inflation will be reflected in rent increases; and how to respond to both landlord and tenant concerns. Jurisdictions must also decide the degree to which rent regulation should be paired with other tenant protections — such as harassment and eviction protections — that can potentially increase tenant stability but make regulation more costly and less flexible for landlords. Future research will hopefully help practitioners, advocates, and policymakers better understand the magnitude of these trade-offs in different market settings and guide them towards more informed policy choices.