EXPLANATORY STATEMENT - APARTMENT ORDER #35

Explanatory Statement and Findings of the Rent Guidelines Board In Relation to 2003-04 Lease Increase Allowances for Apartments and Lofts under the Jurisdiction of the Rent Stabilization Law[1]

Summary of Order No. 35

The Rent Guidelines Board (RGB) by Order No. 35 has set the following maximum rent increases for leases subject to renewal on or after October 1, 2003 and on or before September 30, 2004 for **apartments** under its jurisdiction:

LEASE RENEWALS

1 Year	2 Years
4 ½%	**7 ½%**

VACANCY ALLOWANCE

The vacancy allowance is now determined by a formula set forth in the State Rent Regulation Reform Act of 1997 and in Chapter 82 of the Laws of 2003, not by the Orders of the Rent Guidelines Board.

SUPPLEMENTAL ADJUSTMENT

There shall be **no supplemental adjustment** for apartments renting below any specified amount for renewal leases.

There shall be **no equalization allowance** for apartments continuously occupied for a specified period of time for renewal leases.

SUBLET ALLOWANCE

The increase landlords are allowed to charge when a rent stabilized apartment is sublet by the primary tenant to another tenant on or after October 1, 2003 and on or before September 30, 2004 shall be **10%**.

ADJUSTMENTS FOR LOFTS

For **Loft units** to which these guidelines are applicable in accordance with Article 7-C of the Multiple Dwelling Law, the Board established the following maximum rent increases for increase periods commencing on or after October 1, 2003 and on or before September 30, 2004. No vacancy allowance or low rent allowance is included for lofts.

1 Year	2 Years
4%	**7%**

[1] This Explanatory Statement explains the actions taken by the Board members on individual points and reflects the general views of those voting in the majority. It is not meant to summarize all the viewpoints expressed.

The guidelines do not apply to hotel, rooming house, and single room occupancy units that are covered by separate Hotel Orders.

Any increase for a renewal lease may be collected no more than once during the guideline period governed by Order No. 35.

SPECIAL GUIDELINES

Leases for units subject to rent control on September 30, 2003 that subsequently become vacant and then enter the stabilization system are not subject to the above adjustments. Such newly stabilized rents are subject to review by the State Division of Housing and Community Renewal (DHCR). In order to aid DHCR in this review the Rent Guidelines Board has set a special guideline of whichever is greater:

1. **50%** above the maximum base rent, or

2. The Fair Market Rent for existing housing as established by the United States Department of Housing and Urban Development (HUD) for the New York City Primary Metropolitan Statistical Area pursuant to Section 8(c) (1) of the United States Housing Act of 1937 (42 U.S.C. section 1437f [c] [1]) and 24 C.F.R. Part 888, with such Fair Market Rents to be adjusted based upon whether the tenant pays his or her own gas and/or electric charges as part of his or her rent as such gas and/or electric charges are accounted for by the New York City Housing Authority.

Such HUD-determined Fair Market Rents will be published in the Federal Register, to take effect on October 1, 2003.

All rent adjustments lawfully implemented and maintained under previous apartment Orders and included in the base rent in effect on September 30, 2003 shall continue to be included in the base rent for the purpose of computing subsequent rents adjusted pursuant to this Order.

Background of Order No. 35

The Rent Guidelines Board is mandated by the Rent Stabilization Law of 1969 (Section 26-510(b) of the NYC Administrative Code) to establish annual guidelines for rent adjustments for housing accommodations subject to that law and to the Emergency Tenant Protection Act of 1974. In order to establish guidelines the Board must consider, among other things:

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

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

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

The Board gathered information on the above topics by means of public meetings and hearings, written submissions by the public, and written reports and memoranda prepared by the Board's staff. The Board calculates rent increase allowances on the basis of cost increases experienced in the past year, its forecasts of cost increases over the next year, its determination of the relevant operating and maintenance cost-to-rent ratio, and other relevant information concerning the state of the residential real estate industry.

Material Considered by the Board

Order No. 35 was issued by the Board following one public hearing, six public meetings, its review of written submissions provided by the public, and a review of research and memoranda prepared by the Board's staff. A total of 96 written submissions were received at the Board's offices from many individuals and organizations including public officials, owners and owner groups, and tenants and tenant groups. The Board members were provided with copies of public comments received by the **June 16th, 2003** deadline. All of the above listed documents were available for public inspection.

Open meetings of the Board were held following public notice on April 15th, April 25th, May 1st, and June 3rd, 2003. A written transcription or audio recording was made of all proceedings. On **May 5th, 2003**, the Board adopted proposed rent guidelines for apartments, lofts, and hotels.

A public hearing was held on **June 17th, 2003** pursuant to Section 1043 of the New York City Charter and Section 26-510(h) of the New York City Administrative Code. Testimony on the proposed rent adjustments for rent-stabilized apartments and lofts was heard from 1:15 p.m. to 6:00 p.m., and from 8:15 p.m. to 11:20 p.m. on June 17th, 2003. Testimony from members of the public speaking at these hearings was added to the public record. The Board heard testimony from 94 apartment tenants and tenant representatives, 45 apartment owners and owner representatives and 9 public officials. On **June 19th, 2003** the guidelines set forth in Order No. 35 were adopted.

<u>PRESENTATIONS BY HOUSING EXPERTS INVITED BY MEMBERS OF THE BOARD</u>

Each year the staff of the New York City Rent Guidelines Board is asked to prepare numerous reports containing various facts and figures relating to conditions within the residential real estate industry. The Board's analysis is supplemented by testimony from industry and tenant representatives, housing experts, and by various articles and reports gathered from professional publications.

Listed below are the other experts invited and the dates of the public meetings at which their testimony was presented:

Meeting Date / Name	*Affiliation*
April 15th, 2003:	Staff presentation, *2003 Mortgage Survey*
	Staff presentation, *2003 Income & Expense Study*
April 25th, 2003:	Staff presentation, *2003 Income & Affordability Study*
	Staff presentation, *2003 Price Index of Operating Costs*
1. Martha Stark	Commissioner, New York City Department of Finance
May 1st, 2003:	Invited Testimony from Groups Representing Owners and Tenants
	<u>Tenant group testimony:</u>
1. Timothy L. Collins, Esq.	Former Executive Director and Counsel, NYC Rent Guidelines Board
2. James Parrott	Chief Economist and Deputy Director – Fiscal Policy Institute
3. Victor Bach	Senior Policy Analyst, Community Service Society
4. Greg Mihailovich	New York Public Interest Research Group

May 1st, 2003 (continued):		Invited Testimony from Groups Representing Owners and Tenants
		Owner group testimony:
1.	Jack Freund	Executive Vice President, Rent Stabilization Association
2.	Dan Margulies	Executive Director, Community Housing Improvement Program
3.	Jimmy Silber	Vice President – Small Property Owners of New York
4.	Andrew Hoffman	Owner and Property Manager, Hoffman Management

June 3rd, 2003:		Staff presentation, *2003 Housing Supply Report*
		Staff presentation, *Changes to the Rent Stabilized Housing Stock, 1994-2002*

The NYS Division of Housing and Community Renewal (DHCR):

1.	Paul Roldan	Deputy Commissioner of Rent Administration, NYS Division of Housing and Community Renewal, DHCR
2.	David Cabrera	Deputy Counsel/Assistant Commissioner, DHCR
3.	Claudia Justy	Bureau Chief of SCORE/Assistant Commissioner, DHCR

Panel presentation: *Operating Costs in Co-ops, Condominiums & Non-profit Housing Developments*

1.	Mary Ann Rothman	Executive Director, Council of New York Cooperatives & Condominiums
2.	Jack Levy	Senior Managing Director, Rose Associates, Inc.
3.	Deborah Howard	Housing Director, Pratt Area Community Council
4.	Robin LeBaron	Program Manager, Community Association of Tenants in Controlled Housing (CATCH)

Guest Speakers:

1.	Mark Levitan	Senior Policy Analyst, Community Service Society
2.	Daniel L. Greenberg	President and Attorney-in-Chief, The Legal Aid Society

SELECTED EXCERPTS FROM ORAL AND WRITTEN TESTIMONY FROM TENANTS AND TENANT GROUPS[2]

Comments from tenants and tenant groups included:

"The entire rent guidelines system in New York City is stacked against tenants. The principal reason for this is the use of an invalid methodology, the Price Index of Operating Costs. Until this study is discontinued and replaced with a methodology based on actual income and expenditure data, tenants will continue to be cheated. While there are many problems with the price index methodology, its fundamental flaw is its one-sided character. No study that deals only with landlords' operating costs while ignoring their income, and therefore profits, can ever be fair. In the three suburban counties, the Rent Guidelines Boards use current income and expenditure data. There is no misleading Price Index study. Consequently, rent adjustments are lower than in New York City in virtually every year."

"The poor tax, a 'supplementary' rent hike of an additional $15 per month for 'low rent' apartments that the RGB had imposed for many years…has been enormously harmful to low-income tenants and has been a big factor in reducing the supply of moderately priced housing in the city…Reimposing a poor tax would be enormously damaging to the tenants who can least afford additional rent increases. Data from the New York City Housing and Vacancy Survey shows a clear correlation between low rents and low incomes."

"In the final analysis, the primary consequence of deregulation would be large rent increases. This translates into a multi-billion dollar transfer of wealth from over one million households to some 25,000 landlords. The median income of rent-stabilized households in New York City is only $32,000 per year. The landlords who would benefit from this windfall already include some of the wealthiest individuals on the planet."

[2] Sources: Submissions by tenant groups and testimony by tenants.

"Lower income tenants now have a far more urgent need for emergency rent protections that they have in recent decades. Until the mid-1990s rents in lower income and minority communities were depressed, due to 'weak' competing demand for housing and limits on what residents could pay, even at unaffordable rent burdens. Median rents often fell below regulated rent ceilings that could legally be charged. It could be said that tenants in those neighborhoods were less affected by rent regulation or RGB decisions. That situation has now changed, due to the late-1990s economic boom and rent inflation spurred by rising demand from better-off in-movers...Owners of rent stabilized properties are now about to raise rents to the ceilings set by RGB without risking vacancies. As a result, it is more important than before that RGB handle its guideline decisions sensitively—balancing the needs of tenants and owners—or the results could be disastrous."

Selected Excerpts from Oral and Written Testimony from Owners and Owner Groups[3]

Comments from owners and owner groups included:

"Increases of 5.5% for one year leases don't cover owner's increased costs even for tenants who have leases expiring and choosing a one year lease. Increases of 8.5% for those who choose a two-year lease won't cover last year's cost increases, nor will they cover your staff's projection for next year's increases in costs. And about one third of tenants won't have leases expiring under Guideline 35. They get pretty much a free ride."

"Tenants should be required to pay for rent at least 25% of the combined income of all adult tenants in each apartment for rent, the standard that the banks and many unregulated landlords use to measure affordability. It seems unconscionable that while a landlord can virtually subsidize the rents in his/her building, a rent controlled/stabilized tenant can pay less than a minimum percentage for rent. Just as the landlord's income is limited by the rent guidelines and yet is required to submit documentation to the city to justify his/her status, the tenants should be required to disclose their income as reported in their tax returns. In a city where capitalism, backed by the financial markets, moves our economy, it is incredible that such a large and important segment of our economy is not also subject to those same laws of supply and demand."

"In summary: my costs are up–my market-value rents are down. The building is losing money. There is not money for needed repairs. The rent stabilized tenants are not carrying their weight. Please move towards correcting this unfair situation by granting a substantial increase. The tenants can afford it and the building desperately needs it."

"It is time for you new members to take a fresh look at what's becoming an ancient problem. It is time for annual increases that reflect real cost increases. It is time to eliminate the favorable treatment for two year leases. There may be some justification for giving a tenant a deal for a long term commitment in a free market, but it adds insult to injury under rent regulation. Tenants will argue that they are suffering an economic recession. So are owners. The difference is that we've been suffering real cost inflation for more than a year already. It is time to share that burden.

Selected Excerpts from Oral and Written Testimony from Public Officials[4]

Comments from public officials included:

"In past years, the RGB justified high, permanent increases in rents by citing unusual temporary price surges reflected in the Price Index of Operating Costs (PIOC). But in other years, the Board authorized rent increases in spite of the fact that landlords' costs did not rise <u>at all</u>. Last year, the Board approved rent increases despite the fact that the Price Index had <u>fallen</u>! This pattern defies logic, and invites the conclusion

[3] Sources: Submissions by owner groups and testimony by owners
[4] Sources: Submissions by public officials.

that the RGB seeks to raise rents, regardless of any justification. The Board should be enacting a rent freeze this year, or at least dramatically scaling back its proposed increases."

"I join with tenants in urging the Board to approve guidelines significantly lower than those approved in the preliminary vote. I understand that owners are facing large increases in property taxes this year as a result of the City and State's severe fiscal crisis. The large increases proposed are on top of increases granted during the boom years of 1995-2002. It's time for everyone, including landlords, to shoulder their fair share of this economic crisis. The burden should not be transferred solely onto the backs of tenants, most of whom are low- and middle-income families who have already been hit with increased taxes and fees on everything from subway fare to CUNY tuition."

"I also call on you to take official notice of the fact that over the past few years tens of thousands of formerly rent regulated apartments have been removed both legally and illegally from the system and are now being rented at market rents. The substantial additional income realized by owners from these units should be factored into annual guidelines as an offset to rising costs."

"Thousands of tenants are being forced out of homes that they have lived in for generation after generation. Landlords are trying to weaken rent laws which threaten to end protection for all tenants and raise rents to $2000, where apartments will no longer be regulated. Since 1994, more than 100,000 apartments in New York City have been deregulated due to high-rent and high-income vacancy decontrol. Tenants are being forced out of deregulated apartments because they cannot afford them. High-rent and high-income vacancy decontrol and excessive annual increases by the RGB will result in the loss of all rent stabilized and rent controlled units within 10 years."

RENT GUIDELINES BOARD RESEARCH

The Rent Guidelines Board also based its determination on its consideration of the following reports and information prepared by the RGB's staff:

(1) *2003 Mortgage Survey Report,* April, 2003, (An evaluation of recent underwriting practices, financial availability and terms, and lending criteria);

(2) *2003 Owner Income and Expense Study*, April, 2003, (Based on income and expense data provided by the Finance Department, the Income and Expense Study measures rents, operating costs and net operating income in rent stabilized buildings);

(3) *2003 Tenant Income and Affordability Study*, April, 2003, (Includes employment trends, housing court actions, changes in eligibility requirements and public benefit levels in New York City);

(4) *2003 Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City,* April, 2003, (Measures the price change for a market basket of goods and services which are used in the operation and maintenance of stabilized buildings);

(5) *2003 Housing Supply Report,* June, 2003, (Includes new housing construction measured by certificates of occupancy in new buildings and units authorized by new building permits, tax abatement and exemption programs, and cooperative and condominium conversion and construction activities in New York City); and,

(6) *Changes to the Rent Stabilized Housing Stock, 1994-2002,* June 2003, (A new report quantifying all the events that lead to additions to and subtractions from the rent stabilized housing stock).

The Board also examined the 2002 New York City Housing and Vacancy Survey data on vacancy rates. The information showed that the vacancy rate for stabilized units was lower in 2002 (2.94%) than it was in 1999 (3.19%).

2003 Price Index of Operating Costs For Rent Stabilized Apartment Houses in New York City

The 2003 Price Index of Operating Costs For Rent Stabilized Apartment Houses in New York City found a 16.9% increase in costs for the period between April, 2002 and April, 2003.

This year, the PIOC for rent stabilized apartment buildings increased by 16.9%, eighteen and one-half percentage points above the PIOC percent change from the year before (-1.6% in 2002). The PIOC has been performed since 1969—this is the second highest Price Index increase in the 35-year history of the survey, just under the 17.0% increase found in 1980.[5] Since 1990, in years the Price Index rose rapidly, the survey has generally measured either high fuel prices and/or property tax increases. This year is no exception. Fuel prices, insurance costs, utility rates and real estate taxes in rent stabilized buildings all increased in 2003 at either the highest or among the highest rates ever measured in the history of the Price Index. Among the remaining components, Contractor Services and Administrative Costs experienced the highest increases since 1991 and 1990 respectively. Only Labor Costs, Parts and Supplies and Replacement Costs rose at rates more typically seen in recent years.

The "core" PIOC, which excludes the erratic changes in fuel oil, natural gas and electricity costs, is useful for analyzing long-term inflationary trends. The core PIOC rose by 10.6% this year, propelled mainly by tax and insurance increases, and outpaced the growth in the Consumer Price Index (CPI) (2.8%), by almost 8 percentage points.

Overall, the PIOC is expected to grow by 6.4% from 2003 to 2004 due to a 16.6% projected increase in Taxes, a 19.7% estimated increase in Insurance Costs, and the projected growth in Contractor Services and Administrative Costs. Labor Costs are projected to increase by 3.8%. The core PIOC is projected to rise more rapidly than the overall PIOC, by 9.4%, as the energy-related costs that are predicted to decline sharply are eliminated.

[5] The Price Index has resulted in double-digit increases seven times in 35 years of the survey (1969-2003): 1971 (13.4%), 1974 (15.5%), 1979 (10.4%), 1980 (17.0%), 1981 (14.6%), 1990 (10.9%) and 2003 (16.9%).

Table 1 details the expenditure weights, the percentage change and weighted percentage change by component for the 2003 Price Index.

Table 1

2002-03 Percentage Changes in Components of the Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City[6]			
Item	Expenditure Weights	2002-03 Percentage Δ	2002-03 Weighted Percentage Δ
Taxes	26.55%	14.80%	3.93 %
Labor Costs	16.96	3.45	0.59
Fuel Costs	7.56	66.91	5.06
Utility Costs	14.91	21.71	3.24
Contractor Services	15.26	4.81	0.73
Administrative Costs	8.69	5.40	0.47
Insurance Costs	7.09	40.46	2.87
Parts & Supplies	2.10	0.41	0.01
Replacement Costs	0.89	1.41	0.01
All Items	**100.00**	**-**	**16.91**

Source: 2003 Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City.
Note: The Δ symbol means change.

LOCAL LAW 63/ INCOME & EXPENSE REVIEW

Following computerization of I&E filings, the sample size for the I&E study has been greatly increased to over 10,000 buildings. This is the eleventh year that staff has been able to obtain longitudinal data in addition to cross-sectional data. The RGB staff found the following average monthly (per unit) operating and maintenance (O&M) costs in 2002 Real Property Income and Expense (RPIE) statements for the year 2001:

Table 2

2002 Income and Expense Study Average Monthly Operating and Maintenance Costs Per Unit[7]			
	Pre '47	**Post '46**	**All Stabilized**
Taxes	$104	$143	$114
Labor	58	105	70
Fuel	58	44	54
Utilities	53	60	55
Maintenance	106	96	104
Administration	65	70	66
Insurance	26	20	24
Miscellaneous	42	46	43
Total	**$512**	**$586**	**$531**

Source: 2003 Income and Expense Study, from 2002 Real Property Income and Expense filings for 2001, NYC Department of Finance.

[6] Totals may not add due to weighting and rounding.
[7] Totals may not add due to weighting and rounding.

In 1992, the Board benefited from the results of audits conducted on a stratified sample of 46 rent stabilized buildings by the Department of Finance. Audited income and expense figures were compared to statements filed by owners. On average the audits showed an 8% over reporting of expenses. The categories, which accounted for nearly all of the expense over reporting, were maintenance, administration, and "miscellaneous." The largest over reporting was in miscellaneous expenses.

If we assume that an audit of this year's income and expense data would yield similar findings to the 1992 audit, one would expect the average O&M cost for stabilized buildings to be $488, rather than $531. As a result, the following relationship between operating costs and residential rental income was suggested by the Local Law 63 data:

Table 2(a)

2001 Operating Cost to Rent/Income Ratio Adjusted to 1992 Audit					
	O&M Costs[8]	**Rent**	**O&M to Rent Ratio**	**Income**	**O&M to Income Ratio**
All stabilized	$488	$781	0.62	$868	0.56
Stabilized Pre'47	$470	$726	0.65	$812	0.58
Stabilized Post'46	$538	$932	0.58	$1,022	0.53

Source: 2003 Income and Expense Study, from 2002 Real Property Income and Expense filings for 2001, NYC Department of Finance.

FORECASTS OF OPERATING AND MAINTENANCE PRICE INCREASES FOR 2003-04

In order to decide upon the allowable rent increases for two-year leases, the Rent Guidelines Board considers price changes for operating costs likely to occur over the next year. In making its forecasts the Board relies on expert assessments of likely price trends for the individual components, the history of changes in prices for the individual components and general economic trends. The Board's projections for 2003-04 are set forth in Table 3, which shows the Board's forecasts for price increases for the various categories of operating and maintenance costs.

Table 3

Year-to-Year Percentage Changes in Components of the Price Index of Operating Costs: Actual 2002-03 and Projected 2003-04		
	Price Index 2002-03	**Projected Price Index 2003-04**
Taxes	14.8%	16.6%
Labor Costs	3.5	3.8
Fuel Costs	66.9	-18.5
Utility Costs	21.7	1.8
Contractor Services	4.8	4.1
Administrative Costs	5.4	4.7
Insurance Costs	40.5	19.7
Parts & Supplies	0.4	0.7
Replacement Costs	1.4	0.9
Total (Weighted)	**16.9%**	**6.4%**

Source: 2003 Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City, which includes the 2004 PIOC Projection.

[8] Overall O&M expenses were adjusted according to the findings of an income and expenses audit conducted by the Department of Finance in 1992. The unadjusted **O&M to Rent** ratios would be 0.68 (All), 0.71 (Pre-47), and 0.63 (Post-46), respectively. The unadjusted **O&M to Income** ratios would be 0.61 (All), 0.63 (Pre-47), and 0.57 (Post-46).

Overall, the PIOC is expected to grow by 6.4% from 2003 to 2004 due to a 16.6% projected increase in Taxes, a 19.7% estimated increase in Insurance Costs, and the projected growth in Contractor Services and Administrative Costs. Labor Costs are projected to increase by 3.8%. This projection includes the wage and benefit increases for 2004 in the tentative agreement announced by the Local 32BJ Bargaining Committee on April 23rd, 2003 and other labor contract increases that have already been ratified for 2004. These increases in cost are expected to be offset by decreases in Fuel (-18.5%) and energy-related utility costs. The overall Utilities component is expected to increase by 1.8% in 2004 because water and sewer rates are expected to rise by 6.5% and will offset the anticipated decreases in electricity and gas charges. The above table shows the predicted changes in the PIOC components for 2004.

COMMENSURATE RENT ADJUSTMENT

Throughout its history, the Rent Guidelines Board has used a formula, known as the commensurate rent adjustment, to help determine annual rent guidelines for rent stabilized apartments. In essence, the "commensurate" combines various data concerning operating costs, revenues, and inflation into a single measure indicating how much rents would have to change for net operating income (NOI) in stabilized buildings to remain constant. The different types of "commensurate" adjustments described below are primarily meant to provide a foundation for discussion concerning prospective guidelines.

In its simplest form, the commensurate rent adjustment is the amount of rent change needed to maintain landlords' current dollar NOI at a constant level. In other words, the formula provides a set of one- and two-year renewal rent increases or guidelines that will compensate owners for the change in prices measured by the PIOC and keep net operating income "whole".

The first commensurate method is called the "Net Revenue" approach. While this formula takes into consideration the types of leases actually signed by tenants, it does NOT adjust landlords' NOI for inflation. The "Net Revenue" formula is presented in two ways, first adjusting for the mix of lease terms and second, adding an assumption for stabilized apartment turnover and the impact of revenue from vacancy increases. Under the "Net Revenue" formula, a guideline that would preserve NOI in the face of this year's 16.9% increase in the PIOC, is 15% for a one-year lease and 20% for a two-year lease. Guidelines using this formula and adding assumptions for the impact of vacancy increases on revenues when apartments experience turnover are 12% for one-year leases and 16% for two-year leases.

The second commensurate method considers the mix of lease terms while adjusting NOI upward to reflect general inflation, keeping both O&M and NOI constant. This is commonly called the "CPI-Adjusted NOI" formula. A guideline that would preserve NOI in the face of the 2.8% increase in the Consumer Price Index and the 16.9% increase in the PIOC is 16% for a one-year lease and 23% for a two-year lease. Guidelines using this formula and adding the estimated impact of vacancy increases are 13.5% for one-year leases and 18% for two-year leases.[9]

The original formula that has been in use since the inception of the Rent Guidelines Board, is called the "traditional" commensurate adjustment. The "traditional" commensurate yields 10.4% for a one-year lease and 12.6% for a two-year lease, given the increase in operating costs of 16.9% found in the 2003 PIOC, and the projection of a 6.4% increase next year.[10]

[9] The following assumptions were used in the computation of the commensurates: (1) the required change in landlord revenue is 61% of the 2003 PIOC increase of 16.9%, or 10.4%. The 61% figure is the most recent ratio of average operating costs to average income in stabilized buildings; (2) for the "CPI-Adjusted NOI" commensurate, the increase in revenue due to the impact of inflation on NOI is 39% times the latest 12-month increase in the CPI ending March 2003 (2.78%) or 1.1%; (3) these lease terms are only illustrative. Other combinations of one- and two-year guidelines could produce the adjustment in revenue; (4) assumptions regarding lease renewals and turnover were derived from the 1999 Housing and Vacancy Survey; (5) for the commensurate formulae including a vacancy assumption, the 18.0% median increase in vacancy leases found in the rent stabilized apartments that reported a vacancy lease in the 2001 Apartment registration file from the Division of Housing and Community Renewal was used.

[10] The collectability of legally authorized adjustments is assumed. Calculating the "traditional" commensurate rent adjustment requires an assumption about next year's PIOC. In this case, the 6.4% PIOC projection for 2004 is used.

As a means of compensating for cost changes, this “traditional” commensurate rent adjustment has two major flaws. First, although the formula is supposed to keep landlords' current dollar income constant, the formula does not consider the mix of one- and two-year lease renewals. Since only about three-fifths of leases are renewed in any given year, with a preponderance of leases having a two-year duration, the formula does not necessarily accurately estimate the amount of income needed to compensate landlords for operating and maintenance (O&M) cost changes.

A second flaw of the “traditional” commensurate formula is that it does not consider the erosion of landlords' income by inflation. By maintaining current dollar NOI at a constant level, adherence to the formula may cause profitability to decline over time. However, such degradation is not an inevitable consequence of using the “traditional” commensurate formula.[11]

All of these methods have their limitations. The “traditional” commensurate formula is artificial and does not consider the impact of lease terms or inflation on landlords’ income. The “Net Revenue” formula does not attempt to adjust NOI based on changes in interest rates or deflation of landlord profits. The “CPI-Adjusted NOI” formula inflates the debt service portion of NOI, even though interest rates have been generally falling, rather than rising over recent years. Including a consideration of the amount of income owners receive on vacancy assumes both that vacancy increases are charged and collected, and that turnover rates are constant across the City.

Finally, it is important to note that only the “traditional” commensurate formula uses the PIOC projection and that this projection is not used in conjunction with or as part of the “Net Revenue” and “CPI-Adjusted NOI” formulas. As stated previously, all three formulas attempt to compensate owners for the adjustment in their operating and maintenance costs measured each year in the PIOC. The “Net Revenue” and the “CPI-Adjusted NOI” formulas attempt to compensate owners for the adjustment in O&M costs by using ONLY the known PIOC change in costs (+16.9%). The traditional method differs from the other formulas in that it uses both the PIOC’s actual change in costs as well as the PROJECTED change in costs (6.4%). If the change in projected costs, which may not end up being an accurate estimate of owner’s costs, is added to the “Net Revenue” and “CPI-Adjusted NOI” formulas, the resulting guidelines will likely over- or under-compensate for the change in costs.

[11] Whether profits will actually decline depends on the level of inflation, the composition of NOI (i.e. how much is debt service and how much is profit), changes in tax laws, and interest rates.

Consideration of Other Factors

Before determining the guideline, the Board considered other factors affecting the rent stabilized housing stock and the economics of rental housing.

EFFECTIVE RATES OF INTEREST

The Board took into account current mortgage interest rates and the availability of financing and refinancing. It reviewed the staff's *2003 Mortgage Survey* of lending institutions. Table 4 gives the reported rate and points for the past nine years as reported by the mortgage survey.

Table 4

2003 Mortgage Survey[12] Average Interest Rates and Points for New and Refinanced Permanent Mortgage Loans 1995-2003									
New Financing of Permanent Mortgage Loans, Interest Rate and Points									
	1995	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**
Avg. Rates	10.1%	8.6%	8.8%	8.5%	7.8%	8.7%	8.4%	7.4%	6.2%
Avg. Points	1.28	1.32	1.34	1.02	1.01	0.99	0.99	0.79	0.81
Refinancing of Permanent Mortgage Loans, Interest Rate and Points									
	1995	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**
Avg. Rates	10.1%	8.5%	8.4%	8.5%	7.2%	8.6%	8.0%	7.4%	6.2%
Avg. Points	1.25	1.21	1.15	0.99	0.92	1.01	1.06	0.83	0.78

Source: 1995–2003 Annual Mortgage Surveys, RGB.

CONDITION OF THE RENT STABILIZED HOUSING STOCK

The Board reviewed the number of buildings owned by the City following *in rem* actions and the number of units that are moving out of the rental market due to cooperative and condominium conversion.

Table 5

City-Owned Properties in Central Management Occupied and Vacant Building Counts, Fiscal Years 1995-2002								
	1995	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**
Occupied Bldgs.	2,885	2,684	2,484	2,232	1,905	1,730	1,203	919
Vacant Bldgs.	1,521	1,349	1,139	1,021	869	805	633	524

Source: NYC Department of Housing Preservation and Development, Office of Property Management.

[12] Institutions were asked to provide information on their "typical" loan to rent stabilized buildings. Data for each variable in any particular year and from year to year may be based upon responses from a different number of institutions.

Table 6

Number of Cooperative / Condominium Plans[13] Accepted for Filing, 1994-2002									
	1994	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**
New Construction	14	17	16	34	69	50	87	145	136
Conversion Non-Eviction	10	9	8	4	40	12	9	12	14
Conversion Eviction	11	5	1	1	0	27	9	2	15
Rehabilitation	45	56	10	37	48	30	15	13	20
Total	**80**	**87**	**35**	**76**	**157**	**119**	**120**	**172**	**185**
Subtotal:									
HPD Sponsored Plans	48	41	0	21	24	26	8	2	15

Source: New York State Attorney General's Office, Real Estate Financing.

CONSUMER PRICE INDEX

The Board reviewed the Consumer Price Index. Table 7 shows the percentage change for the NY-Northeastern NJ Metropolitan area since 1996.

Table 7

Percentage Changes in the Consumer Price Index for the New York City - Northeastern New Jersey Metropolitan Area, 1996-2003 (For "All Urban Consumers")								
	1996	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**
1st Quarter Avg.	3.5%	2.5%	1.3%	1.4%	3.4%	2.7%	2.5%	3.1%
Yearly Avg.	2.9%	2.3%	1.6%	2.0%	3.1%	2.5%	2.6%	--

Source: U.S. Bureau of Labor Statistics.

CALCULATING OF THE CURRENT OPERATING AND MAINTENANCE EXPENSE TO RENT RATIO

Each year the Board estimates the current average proportion of the rent roll which owners spend on operating and maintenance costs. This figure is used to ensure that the rent increases granted by the Board compensate owners for the increases in operating and maintenance expenses. This is commonly referred to as the O&M to rent ratio.

Over the first two decades of rent stabilization, the change in the O&M to rent ratio contained in Table 8 (hereinafter, referred to as "Table 14" - its past designation) was updated each year to reflect the changes in operating costs as measured by the PIOC and changes in rents as measured by staff calculations derived from guideline increases. Over the years, some Board members and other housing experts have challenged the price index methodology and the soundness of the assumptions used in calculating the O&M to rent ratio in "Table 14". Several weaknesses in the table have been acknowledged for some time.

The first problem with "Table 14" is that the calculation does not account for the changes in the housing stock and market factors which have certainly affected the relationship between rents and operating costs to

[13] The figures given above for eviction and non-eviction plans include those that are abandoned because an insufficient percentage of units were sold within the 15 month deadline. In addition, some of the eviction plans accepted for filing may have subsequently been amended or resubmitted as non-eviction plans and therefore may be reflected in both categories. HPD sponsored plans are a subset of the total plans.

some degree. Next, for the purpose of measuring the relationship between legal regulated rents and operating cost changes, the usefulness of "Table 14" is also limited. The rent index contained in the table does not adjust for administrative rent increases (MCI's and Apartment Improvement increases) and rents charged below established guidelines (preferential).

The operating cost index contained in the table is more troublesome. The .55 base contained in the table reflects an estimate concerning nearly all post-war units. The vast majority of stabilized units (about 7 out of 10) are now in pre-war buildings, which had higher O&M ratios in 1970. The cost index was adjusted (departing from the PIOC) in the 1970's in an attempt to accommodate for this influx of pre-war buildings into the stabilized sector. This attempt was misguided. The rent index reflects changes in rents initially in the post-war sector - so adjustments to the cost index to reflect the influx of pre-war units' results in a one-sided distortion of the changing relationship between costs and rents.

Staff's research suggests that the PIOC may overstate actual cost increases. While most of this bias occurred in the 1970 - 1982 period, recent comparative evidence from the Income and Expense studies suggests that a gradual overstatement of operating costs may still occur under the PIOC. From 1990-91 to 2000-01, the I&E and the adjusted PIOC each rose 48%. What remains clear, however, is that "Table 14," in its current form, presents a highly misleading picture of the changing relationship of operating costs to rents over time.

Table 8 (Formerly Table 14)

Calculation of Operating and Maintenance Cost Ratio For Rent Stabilized Buildings from 1970 to 2003						
Period	Percent O&M[14] Increase	O&M Index	Period	Percent Rent[15] Increase	Rent Index	O&M/Rent Ratio
4/1/70-3/31/71	-	55	7/1/71-6/30/72	-	100	0.55
4/1/71-3/31/72	5.7	58.14	7/1/72-6/30/73	5.4	105.40	0.55
4/1/72-3/31/73	7.9	62.73	7/1/73-6/30/74	5.4	111.09	0.56
4/1/73-3/31/74	15.5	72.45	7/1/74-6/30/75	5.64	117.36	0.62
4/1/74-3/31/75	6.5	77.16	7/1/75-6/30/76	5.62	123.95	0.62
4/1/75-3/31/76	8.8	83.95	7/1/76-6/30/77	5.33	130.56	0.64
4/1/76-3/31/77	6.9	89.74	7/1/77-6/30/78	5.49	137.73	0.65
4/1/77-3/31/78	0.6	90.28	7/1/78-6/30/79	4.23	143.55	0.63
4/1/78-3/31/79	10.4	99.67	7/1/79-6/30/80	7.73	154.65	0.64
4/1/79-3/31/80	17.0	116.61	7/1/80-9/30/81	10.28	170.55	0.68
4/1/80-3/31/81	14.6	133.64	10/1/81-9/30/82	10.11	187.79	0.71
4/1/81-3/31/82	2.8	137.38	10/1/82-9/30/83	3.52	194.40	0.71
4/1/82-3/31/83	2.6	140.95	10/1/83-9/30/84	4.93	203.98	0.69
4/1/83-3/31/84	6.3	149.83	10/1/84-9/30/85	5.82	215.86	0.69
4/1/84-3/31/85	5.4	157.92	10/1/85-9/30/86	6.55	229.99	0.69
4/1/85-3/31/86	6.4	168.03	10/1/86-9/30/87	6.18	244.21	0.69
4/1/86-3/31/87	2.1	171.56	10/1/87-9/30/88	5.87	258.54	0.66
4/1/87-3/31/88	6.4	182.54	10/1/88-9/30/89	6.39	275.06	0.66
4/1/88-3/31/89	6.7	194.77	10/1/89-9/30/90	6.16	292.01	0.67
4/1/89-3/31/90	10.9	216.00	10/1/90-9/30/91	4.15	304.13	0.71
4/1/90-3/31/91	6.0	228.96	10/1/91-9/30/92	3.93	316.08	0.72
4/1/91-3/31/92	4.0	238.12	10/1/92-9/30/93	3.11	325.91	0.73
4/1/92-3/31/93	4.7	249.31	10/1/93-9/30/94	2.93	335.46	0.74
4/1/93-3/31/94	2.0	254.30	10/1/94-9/30/95	2.73	344.62	0.74
4/1/94-3/31/95	0.1	254.55	10/1/95-9/30/96	4.10	358.74	0.71
4/1/95-3/31/96	6.0	269.82	10/1/96-9/30/97	5.72	379.26	0.71
4/1/96-3/31/97	2.4	276.30	10/1/97-9/30/98	3.66	393.16	0.70
4/1/97-3/31/98	0.1	276.58	10/1/98-9/30/99	3.71	407.75	0.68
4/1/98-3/31/99	0.03	276.65	10/1/99-9/30/00	3.91	423.70	0.65
4/1/99-3/31/00	7.8	298.23	10/1/00-9/30/01	5.04	445.04	0.67
4/1/00-3/31/01	8.7	324.18	10/1/01-9/30/02	4.78	466.29	0.70
4/1/01-3/31/02	-1.6	318.99	10/1/02-9/30/03	3.61[16]	483.10	0.66
4/1/02-3/31/03	16.9	372.90	10/1/03-9/30/04	5.72[17]	510.72	0.73

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14 Estimate of percentage increases are based on the Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City for the relevant year and adjustments made by the Rent Guidelines Board; detailed explanations are available in the individual Explanatory Statements of the Board.

15 For explanation of the derivation of individual percentage rent increases see the Explanatory Statements of the Board's previous Orders.

16 The **3.61%** increase in rent roll estimated for leases signed during the period 10/1/02-9/30/03 under Order 34 reflects the following: (1) Renewal guidelines are estimated to contribute a **0.584%** and **1.171%** increase in the rent roll with 29.2% of all units experiencing a one-year lease signing (2%) and 29.3% of all units experiencing two-year lease signings (4%). These figures are derived from the 1999 Housing and Vacancy Survey (HVS), Table 10058 which gives reported lease terms. "Less than one year" was assumed to be a one-year lease and "More than one year" and "More than two years" were assumed to be a two-year lease. These figures for renewal leases (33% of stabilized households have a one-year lease and 67% have two-year leases) were reduced by the turnover rate of 12.3%, derived from the average households who moved in the 1999 HVS (125,134 is the average number of stabilized households that moved annually1996-98) and taken as percentages of all stabilized lease signers (1,020,588); (2) the vacancy allowance of 15.1%, which is the mean increase found on vacancy in the *1998 Recent Mover Survey* is estimated to increase overall rent rolls by **1.851%** when multiplied by the HVS turnover rate (12.3%), which estimates the percentage of rent stabilized units that will enter into vacancy leases under Order 34.

17 The **5.72%** increase in rent roll estimated for leases signed during the period 10/1/02-9/30/03 under Order 35 reflects the following: (1) Renewal guidelines are estimated to contribute a **1.313%** and **2.196%** increase in the rent roll with 29.2% of all units experiencing a one-year lease signing (4.5%) and 29.3% of all units experiencing two-year lease signings (7.5%). These figures are derived from the 1999 Housing and Vacancy Survey (HVS), Table 10058 which gives reported lease terms. "Less than one year" was assumed to be a one-year lease and "More than one year" and "More than two years" were assumed to be a two-year lease. These figures for renewal leases (33% of stabilized households have a one-year lease and 67% have two-year leases) were reduced by the turnover rate of 12.3%, derived from the average households who moved in the 1999 HVS (125,134 is the average number of stabilized households that moved annually1996-98) and taken as percentages of all stabilized lease signers (1,020,588); (2) the vacancy allowance of 18.0%, which is the median vacancy increase found in the 2001 annual DHCR rent registration data for apartments is estimated to increase overall rent rolls by **2.207%** when multiplied by the HVS turnover rate (12.3%), which estimates the percentage of rent stabilized units that will enter into vacancy leases under Order 35.

For years the staff has expressed serious reservations about the usefulness and accuracy of "Table 14". With current longitudinal income and expense data staff has constructed a new and far more reliable index, using 1989 as a base year. Except for the most recent year and the coming year, this new index measures changes in building income and operating expenses as reported in annual income and expense statements. The second to last year in the table will reflect actual PIOC increases and projected rent changes. The last year in the table **-** projecting into the future **-** will include staff projections for both expenses and rents. The proposed new index is in Table 9.

While we believe this to be a more reliable index, it is not without limitations. First, as noted, for the past and coming year the index will continue to rely upon the price index and staff rent and cost projections. Second, while the new table looks at the overall relationship between costs and income, it does not measure the specific impact of rent regulation on that relationship. This new table is listed below as Table 9.

Table 9

Revised Calculation of Operating and Maintenance Cost Ratio for Rent Stabilized Buildings from 1989 to 2004			
	Average Monthly O & M Per d.u.[18]	**Average Monthly Income Per d.u.**	**Average O & M to Income Ratio**
1989	$370 ($340)	$567	.65 (.60)
1990	$382 ($351)	$564	.68 (.62)
1991	$382 ($351)	$559	.68 (.63)
1992	$395 ($363)	$576	.69 (.63)
1993	$409 ($376)	$601	.68 (.63)
1994	$415 ($381)	$628	.66 (.61)
1995	$425 ($391)	$657	.65 (.59)
1996	$444 ($408)	$679	.65 (.60)
1997	$458 ($421)	$724	.63 (.58)
1998	$459 ($422)	$755	.61 (.56)
1999	$464 ($426)	$778	.60 (.55)
2000	$503 ($462)	$822	.61 (.56)
2001	$531 ($488)	$868	.61 (.56)
2002[19]	$522 ($480)	$911	.57 (.53)
2003[20]	$611 ($561)	$950	.64 (.59)
2004[21]	$650 ($597)	$992	.65 (.60)

Source: RGB Income and Expense Studies, 1989-2003, Price Index of Operating Costs 1992 - 2003, RGB Rent Index for 1992 - 2004 (see Table 8).

[18] Operating and expense data listed is based upon unaudited filings with the Department of Finance. Audits of 46 buildings conducted in 1992 suggest that expenses may be overstated by 8% on average. See Rent Stabilized Housing in New York City, A Summary of Rent Guidelines Board Research 1992, pages 40-44. Figures in parentheses are adjusted to reflect these findings.

[19] Estimated expense figure includes the 2001 I&E expense figure updated by the PIOC for the period from 4/1/01 through 3/31/02 (-1.61%). Income includes the I&E income figure for 2001 updated by staff estimate based upon renewal guidelines and choice of lease terms for a period from 4/1/01 through 3/31/02 (4.93% - i.e., the 10/1/00 to 9/30/01 rent projection (5.04) times (.583), plus the 10/1/00 to 9/30/01 rent projection (4.78) times (.417)).

[20] Estimated expense figure includes 2002 expense estimate updated by the PIOC for the period from 4/1/02 through 3/31/03 (+16.9%). Income includes the income estimate for 2002 updated by staff estimate based upon renewal guidelines and choice of lease terms for a period from 4/1/02 through 3/31/03 (4.29% - i.e., the 10/1/01 to 9/30/02 rent projection (4.78) times (.583), plus the 10/1/01 to 9/30/02 rent projection (3.61times (.417)).

[21] Estimated expense figure includes 2003 expense estimate updated by the staff PIOC projection for the period from 4/1/03 through 3/31/04 (6.4%). Income includes the income estimate for 2003 updated by staff estimate based upon renewal guidelines and choice of lease terms for a period from 4/1/03 through 3/31/04 (4.49% - i.e., the 10/1/01 to 9/30/02 rent projection (3.61) times (.583), plus the 10/1/02 to 9/30/03 rent projection (5.72 times (.417)).

CHANGES IN HOUSING AFFORDABILITY

After experiencing the grief of the events of September 11th, 2001, New York City continued to feel the pain of ground zero recovery and of a second year of recession in 2002. A 2.2% decline in the City's Gross City Product indicates that NYC remains in a recession. The unemployment rate increased, climbing 1.8 percentage points to 7.9%. New Housing and Vacancy Survey data revealed that the vacancy rate remains well below the 5% threshold, at 2.94% citywide. On a positive note, inflation-adjusted wages, which are reported on a one-year lag, increased 3.0% in 2001, and the number of individuals receiving public assistance declined. However, 2002 also saw increases in homelessness, poverty and non-payment filings in housing court, as well as a growing City budget crisis.

BUILDINGS WITH DIFFERENT FUEL AND UTILITY ARRANGEMENTS

The Board was also informed of the circumstances of buildings with different fuel and utility arrangements including buildings that are master metered for electricity and that are heated with gas versus oil, and where heat is not a service provided by the owner but is paid for separately by tenants (see Table 10). Under some of the Board's Orders in the past, separate adjustments have been established for buildings in certain of these categories where there were indications of drastically different changes in costs in comparison to the generally prevailing fuel and utility arrangements. This year the Board made no distinction between guidelines for buildings with different fuel and utility arrangements under Order 35.

Table 10

Changes in Price Index of Operating Costs for Apartments in Buildings with Various Heating Arrangements, 2002-03, and Commensurate Rent Adjustment

Index Type	2002-03 Price Index Change	One-Year Rent Adjustment Commensurate With Adjusted O&M to Income Ratio of .61
All Dwelling Units Individually Metered for Electricity:	16.90%	10.31%
Pre 1947	18.35	11.19
Post 1946	16.15	9.85
Oil Used for Heating	18.33	11.18
Gas Used for Heating	15.43	9.41
Master Metered for Electricity:	16.76	10.22

Source: RGB's 2003 Price Index of Operating Costs for Rent Stabilized Apartment Houses in New York City.

ADJUSTMENTS FOR UNITS IN THE CATEGORY OF BUILDINGS COVERED BY ARTICLE 7-C OF THE MULTIPLE DWELLING LAW (LOFTS)

Section 286 sub-division 7 of the Multiple Dwelling Law states that the Rent Guidelines Board "shall annually establish guidelines for rent adjustments for the category of buildings covered by this article." In addition, the law specifically requires that the Board, "consider the necessity of a separate category for such buildings, and a separately determined guideline for rent adjustments for those units in which heat is not required to be provided by the owner, and may establish such separate category and guideline."

In 1986, Abt Associates Inc. conducted an expenditure study of loft owners to construct weights for the Loft Board's index of operating costs and to determine year-to-year price changes. In subsequent years, data from the PIOC for stabilized apartments was used to compute changes in costs and to update the loft expenditure weights. This is the procedure used this year.

The increase in the Loft Index this year was 17.9%, three percentage points higher than the increase for apartments. This difference is explained primarily by the fact that Insurance Costs, which increased by 40.5%, are much more important for lofts than for apartments and placed more upward pressure on the Loft Index.

This year's guidelines for lofts are: **4%** for a one-year lease and **7%** for a two-year lease.

Table 11

Changes in the Price Index of Operating Costs for Lofts from 2001-02	
	Loft O & M Price Index Change
All Buildings	17.9%

Source: 2003 Price Index of Operating Costs for Rent Stabilized Lofts in New York City.

Special Guidelines for Vacancy Decontrolled Units Entering the Stabilized Stock

Pursuant to Section 26-513(b) of the New York City Administrative Code, as amended, the Rent Guidelines Board establishes a special guideline in order to aid the State Division of Housing and Community Renewal in determining fair market rents for housing accommodations which enter the stabilization system. This year, the Board set the guidelines at the greater of the following:

(1) 50% above the Maximum Base Rent, or

(2) The Fair Market Rent for existing housing as established by the United States Department of Housing and Urban Development (HUD) for the New York City Primary Metropolitan Statistical Area pursuant to Section 8(c) (1) of the United States Housing Act of 1937 (42 U.S.C. section 1437f [c] [1]) and 24 C.F.R. Part 888, with such Fair Market Rents to be adjusted based upon whether the tenant pays his or her own gas and/or electric charges as part of his or her rent as such gas and/or electric charges are accounted for by the New York City Housing Authority.

The Board concluded that for units formerly subject to rent control, either an increase to rent levels reflecting the Fair Market Rent guidelines established by the U.S. Department of Housing and Urban Development (HUD), or 50% above the maximum base rent was a desirable minimum increase. Notably, the HUD guidelines differentiate minimum rents on the basis of bedroom count.

Increase for Units Receiving Partial Tax Exemption Pursuant to Section 421 and 423 of the Real Property Tax Law

The guideline percentages for 421-A and 423 buildings were set at the same levels as for leases in other categories of stabilized apartments.

This Order does not prohibit the inclusion of the lease provision for an annual or other periodic rent increase over the initial rent at an average rate of not more than 2.2 per cent per annum where the dwelling unit is receiving partial tax exemption pursuant to Section 421-A of the Real Property Tax Law. The cumulative but not compound charge of up to 2.2 per cent per annum as provided by Section 421-A or the rate provided by Section 423 is in addition to the amount permitted by this Order.

VACANCY ALLOWANCE

As of June 15, 1997, Vacancy Allowances are now determined by a formula set forth in the State Rent Regulation Reform Act of 1997 and in Chapter 82 of the Laws of 2003.

SUPPLEMENTAL ADJUSTMENT

There shall be **no supplemental adjustment** for apartments renting below any specified amount for renewal leases.

There shall be **no equalization allowance** for apartments continuously occupied for a specified period of time for renewal leases.

SUBLET ALLOWANCE

The increase landlords are allowed to charge under Order 35 when a rent stabilized apartment is sublet by the primary tenant to another tenant on or after October 1, 2003 and on or before September 30, 2004 shall be **10%**.

VOTES

The votes of the Board on the adopted motion pertaining to the provisions of Order #35 were as follows:

	Yes	No	Abstentions
Guidelines for Apartment Order #35	5	4	-

Dated: June 23, 2003
Filed with the City Clerk: July 1, 2003

Marvin Markus, Chair
Rent Guidelines Board

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