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Rent Regulation for the 21st Century: Pairing Anti-Gouging with Targeted Subsidies

A central purpose of rent regulation is to provide stability against unexpected increases in rent. Low-income renters are especially vulnerable to rent shocks. Most rent regulation systems, however, confer the largest benefits on higher-income renters, prompting the question of how rent regulation can offer more effective protection to lower-income households. Expanding rent regulation to impose tighter rent restrictions on more of the housing stock has adverse consequences for housing markets; meanwhile, means testing rent-regulated housing would be highly burdensome and potentially counterproductive.
In this brief, we argue that pairing anti-gouging rent regulation with shallow, targeted subsidies to low-income renters is a better way to ensure that the benefits of rent regulation reach vulnerable households.

Introduction

Rent regulation debates have intensified in recent years, especially in jurisdictions where increased demand for rental housing has led to unprecedented rent increases.[1] Although low-income renters are particularly vulnerable to the harms that rent regulations aim to mitigate, most of the protections of rent regulations are not targeted and may not reach these renters.[2] This brief addresses the question of how rent regulations can better achieve their goals of protecting low-income households.

A central purpose of rent regulation is to provide stability against large and unexpected increases in rent. To this end, rent regulations limit the rate at which landlords can increase rents. These limits serve to protect households against the financial hardships that rent shocks cause for households unable to afford those increases. Rent regulations also aim to prevent displacement—a source of both economic and psychological hardship—which may result from unexpected rent increases. By disallowing rent increases above a regulated limit, and requiring that tenants have the choice to renew leases, rent regulation can alleviate rent burdens over time and offer increased stability for households that are able to live in regulated units.

We argue that neither expanding rent regulation to impose tighter rent restrictions across more of the housing market nor means testing regulated units is an optimal way to achieve rent regulation's aim of preserving housing stability for low-income households. Instead, a more efficient way to ensure that low-income households receive the benefits of rent regulation is to pair broad-based, anti-gouging rent regulation with targeted subsidies that reduce housing costs for low-income tenants.

Rent regulation systems offer greater benefits to higher-income renters over time

Low-income renters are especially vulnerable to rent shocks. A 2015 survey found that financial shocks were far more likely to be destabilizing for low-income households than for higher-income households, which are better equipped to handle unexpected financial setbacks.[3] This vulnerability extends to housing, where low-income households tend to be rent-burdened and thus subject to "higher eviction rates, increased financial fragility, and wider use of social safety net programs" than other renters.[4] In a 2010 analysis, Wyly and his co-authors found that amid the turbulent rental market in the years leading up to 2008, low-income New York City households with high rent burdens were 1.8 times more vulnerable to displacement than other groups.[5] Indeed, in the New York City region, low-income renters "are the most likely to be displaced due to increasing rents."[6]

1 California, for example, approved a statewide rent regulation program in 2019 in response to dramatic rent increases over the last decade. *California Approves Statewide Rent Control to Ease Housing Crisis*, N.Y. TIMES (Sept. 11, 2019), https://www.nytimes.com/2019/09/11/business/economy/california-rent-control.html; Jack Flemming, *L.A. Rent Rose 65% Over the Last Decade, Study Shows*, L.A. TIMES (Dec. 27, 2019), https://www.latimes.com/business/real-estate/story/2019-12-27/l-a-rent-rose-65-percent-over-the-last-decade-study-shows.

2 See, e.g., Peter Linneman, *The Effect of Rent Control on the Distribution of Income Among New York City Renters*, 22 J. OF URB. ECON. 14, 21-29 (1990); Edward L. Glaeser & Erzo F.P. Luttmer, *The Misallocation of Housing Under Rent Control*, 93 AM. ECON. REV. 1027, 1044 (2003); David P. Sims, *Out of Control: What Can We Learn from the End of Massachusetts Rent Control?*, 61 J. OF URB. ECON. 129, 148 (2007).

3 Pew Charitable Trusts, *How Do Families Cope With Financial Shocks?* 7 (2015).

4 Pew Charitable Trusts, *American Families Face a Growing Rent Burden* 4 (2018).

5 Elvin Wyly et al., *Displacing New York*, 42 ENV'T AND PLAN. A 2602, 2616 (2010). The authors also noted that this analysis may have significantly underrepresented displacements of low-income renters, estimating that 12 out of every 13 displacements in New York City were not quantified in their dataset. *Id.* at 2607.

6 Regional Plan Association, Pushed Out: Housing Displacement in an Unaffordable Region 7 (2017).

However, the lowest-income renters do not necessarily receive rent regulation's stabilizing protection against rent increases over time. A recent study by Diamond, McQuade, and Qian examined a 1994 policy change in San Francisco that expanded rent regulation to small multifamily buildings built prior to 1980.[7] Because of the design of San Francisco's rent regulation scheme–which addressed only some of the city's housing stock–the authors were able to draw quasi-experimental comparisons between the protected and unprotected tenant populations. Ultimately, the study found that in the long run, more regulated properties were eventually occupied by higher-income tenants than unregulated properties, contrary to the policy's objectives.

Diamond, McQuade, and Qian observed that the protected group in their study was more likely to remain at their address in the decade following the 1994 law change, and that a large share of the protected tenants who remained would have left San Francisco if not for expansion of rent regulation. This indicates that the rent regulation expansion was successful in limiting rent increases and providing stability to the initial protected tenants, who were less likely to experience displacement. However, the distributional impacts of the change to rent regulation are more complex. Among older protected renters, those who had lived at their addresses for more than four years before the enaction of the regulations were more likely to remain than shorter-tenured protected renters. Because housing tenure tends to correlate with income, the benefits of rent regulation thus likely accrued to wealthier renters. Furthermore, in the geographic areas with the highest increases in unregulated rent, older short-tenured protected renters were even less likely to remain than similar unprotected tenants, suggesting that landlords may actively seek to remove tenants in areas where the benefits of the rent regulation were strongest.

The idea that rent regulation systems tend to provide greater benefits to relatively higher-income tenants over time is not new. In 1990, Linneman found that although New York City rent regulations "induce a slightly more equal distribution" of resources to low-income renters, "the targeting efficiency of these transfers is extremely poor."[8] In 2007, Sims found that 30 percent of rent controlled apartments in Massachusetts were occupied by renters in the top half of the household income distribution, compared with just 26 percent of units occupied by renters in the bottom quartile.[9] In New York City, renters in rent-stabilized units do have lower median incomes than renters in private, non-regulated housing.[10] However, renters do not benefit equally from rent stabilization over time. Most recently, a *Wall Street Journal* analysis of the New York City rental market found that high-income renters in rent-regulated apartments paid 39 percent less than they would have for a similar unregulated unit, compared to just a 15 percent difference for low-income renters.[11]

7 Rebecca Diamond, Tim McQuade, & Franklin Qian, *The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco*, 109 AM. ECON. REV. 3365 (2019).

8 Peter Linneman, *The Effect of Rent Control on the Distribution of Income Among New York City Renters*, 22 J. OF URB. ECON. 14, 21-29 (1990). See also Glaeser & Luttmer, supra note 2, at 1044.

9 David P. Sims, *Out of Control: What Can We Learn from the End of Massachusetts Rent Control?*, 61 J. OF URB. ECON. 129, 148 (2007).

10 N.Y. City Dep't. Hous. Pres. & Dev. *Sociodemographics of Rent Stablized Tenants* (2018), https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/rent-regulation-memo-1.pdf. Using data from 2017, the City reports a median income of $44,560 for renters in rent-stabilized units and $67,000 for renters in private, non-regulated units. However, an estimated 36% of tenants in regulated units had incomes above 80% of HUD income limits.

11 Josh Barbanel, *Wealthy, Older Tenants in Manhattan Get Biggest Boost From Rent Regulations*, WALL ST. J. (June 12, 2019), https://www.wsj.com/articles/wealthy-older-tenants-in-manhattan-get-biggest-boost-from-rent-regulations-11560344400

Broad, strict rent regulation has potentially undesirable consequences

Policymakers could attempt to extend the benefits of rent regulation to lower-income renters by imposing stricter limits on landlords' abilities to increase rents across more of the housing stock.[12] But as rent regulations become more stringent, they cause larger distortions in housing markets. "Deep" rent regulations—that is, those that more stringently limit landlords' abilities to increase rents—may discourage investment in the regulated stock, as regulated landlords earn lower returns on their invested capital. Deep rent regulations may also decrease the overall housing supply by discouraging new construction and leading owners to remove existing rental housing from the market.[13] These effects compromise the availability and affordability of rental housing. Extending strict regulation to the entire rental market will exacerbate these supply effects, while leaving certain rentals uncovered may cause significant harm to unprotected households in the form of higher price premiums on unregulated properties. To the extent that many low-income renters reside in the unregulated stock, this effect directly undermines the goal of rent regulation.[14]

Rent regulation is also costly, although its toll is not directly reflected in local government budgets. Landlords bear most of the costs of rent regulation, receiving less in rent than the market would otherwise allow. As these costs increase, the argument for shifting financial burdens to the government rather than to landlords becomes more compelling, suggesting a role for subsidies rather than expanded rent regulation.

Means testing is prohibitively burdensome and potentially counterproductive

If expanding rent regulation to reach lower-income renters has undesirable consequences, it might be appealing to consider conditioning access to rent-regulated housing on income. A means-testing scheme could attach regulated status to the unit (permitting only low-income renters to occupy) or to the household (such that a unit becomes deregulated once the occupying household's income increases beyond eligibility limits). In practice, however, means testing rent-regulated housing under either system is likely to pose challenges that render it infeasible and potentially counterproductive.

Means testing could operate by attaching regulated status to particular units and allowing only income-qualified renters to occupy those units. Implementing such a scheme would create significant administrative challenges. At minimum, even the simplest means-tested rent regulation scheme must be able to determine a household's eligibility when first renting a unit, likely based on factors including local income distributions and the size of the household. After an initial eligibility determination, periodic recertification would be needed to ensure that only eligible tenants remain in rent-regulated units. This raises

12 In addition to differences in the character of rent regulations, coverage varies widely between cities; for instance, approximately 45% of rental units are covered in New York City, compared to 80% of multifamily units in Los Angeles. Vicki Been, Ingrid Gould Ellen, & Sophia House, *Laboratories of Regulation: Understanding the Diversity of Rent Regulation Laws*, 46 FORDHAM URB. L.J. 1041, 1050 (2019), https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2772&context=ulj.

13 Blair Jenkins, *Rent Control: Do Economists Agree?*, 6 ECON. J. WATCH 73 (2009).

14 Diamond et al., *supra* note 7.

difficult questions about whether tenants whose incomes surpass the eligibility threshold should be displaced from their units, thus undermining rent regulation's stability objectives. Such a system might also provide a much more limited set of options in the housing market for eligible renters.

Alternatively, rent-regulated status could be tied to the household rather than the unit. Under this kind of system, changes in household income or other eligibility criteria would not require a tenant to move; instead, a unit could simply become deregulated. The administrative burdens of creating such a system, however, are still likely to be significant, requiring both initial eligibility determinations and periodic recertification of a household's eligibility. More importantly, such a system would disincentivize landlords from renting to lower-income tenants when they could otherwise avoid rent regulation, thus directly undermining the goal of means testing.

Any means testing scheme will also create enforcement costs. Even if initial income determinations are easy to discern from tax returns, information that is less reliably determined or subject to change, such as occupancy based on family size or roommates, increases enforcement costs. Jurisdictions also must choose—and in some cases create—mechanisms for certification, enforcement, and dispute resolution. The burdens of certification and compliance might cause landlords to remove units from the rental stock, even if problems of disincentivizing rentals to lower-income tenants are separately addressed.

Combining Broad-Based, Anti-Gouging Rent Regulation with Targeted Subsidies

A better way to ensure that low-income renters receive both the financial and stabilizing benefits of rent regulation is to combine anti-gouging regulations—broad-based rent regulation systems that set a relatively high cap on all landlords' ability to increase rents—with targeted subsidies to low-income tenants. Because they are attached to people rather than housing units, subsidies can more easily be targeted to low-income tenants than rent-regulated housing, while anti-gouging protections prevent landlords from raising rents in ways that greatly increase the costs of these subsidies or act as displacement mechanisms.

Broad-based protections for all renters against rent gouging and arbitrary evictions provide protections to all renters, offering many of the advantages of traditional rent regulation while limiting its inefficiencies. California and Oregon recently adopted broad-based anti-gouging regulations that limit allowable rent increases to a few percentage points above the consumer price index. These schemes prevent unfair rent gouging and sudden, drastic rent increases while eliminating drawbacks of sub-inflationary rent growth for occupied rentals that distort the rental market, reduce available rental housing supply, and drive up housing costs for non-protected tenants.

Under an anti-gouging approach, as with traditional rent regulation, rent-burdened low-income households will still face affordability challenges. To address these affordability concerns and ensure that low-income renters receive additional protection, we recommend pairing anti-gouging regulations with rental subsidies for lower-income renters. Subsidies targeted by income would further constrain the rents paid by the lowest-income households, beyond what is accomplished with market-wide anti-gouging restrictions. Subsidies could then make up the difference between lowest-income tenants' ability to pay and any increased rent allowable under an anti-gouging scheme. Combining subsidies with broad-based anti-gouging rent regulations means that over time, the subsidies would likely become relatively cheaper due to both the constraints on rent growth and the reduction in pressure on rental supply.

Relying on targeted subsidies, rather than introducing means testing to rent regulation, also reduces the administrative burdens of such a system. Means testing of targeted subsidies to help particularly vulnerable populations afford housing is often easier to administer—because local governments already have the infrastructure in place to administer direct cash subsidies. Subsidies are also simpler to phase out for wealthier tenants than means testing of rent-regulated housing; if a tenant's income increases beyond eligibility limits, program administrators can decrease or eliminate the tenant's subsidy without requiring the tenant to relocate or deregulating a housing unit.

Subsidies can be paid to renters or to landlords and can take various forms, including cash, vouchers, and tax credits. Below, we briefly outline considerations for several forms of subsidies that jurisdictions seeking to protect low-income renters under anti-gouging regulations might consider, drawing on examples of existing or proposed subsidy vehicles as starting points.

Direct Subsidies to Renters

A renters' tax credit—similar to credits that have been proposed on the federal level—is one mechanism that takes advantage of existing tax infrastructure to administer subsidy payments.[15] Current federal proposals center on a refundable federal tax credit that would be provided to low-income renters to repay rent payments in excess of some portion of income and phase out for higher incomes. For example, then-Senator Kamala Harris' proposed Rent Relief Act of 2018 specifies that households earning less than $25,000 would receive a tax credit of 100% for rent payments made in excess of 30% of income, and phase out with the credit covering a reduced percentage of the eligible payments up to incomes of $100,000 or $125,000 in high cost areas.[16] To link the maximum rent that is covered to local market rents, the total tax credit for a household is capped at 150% of the area fair market rent.[17]

State and local governments could adjust each of these parameters, choosing to target a narrower set of renters or to provide a shallower subsidy to lower the budgetary costs of a credit. To ensure that they reach the lowest-income renters, who may not owe taxes, tax credits would need to be refundable. The ability of state and local governments to provide a version of a renter tax credit, even if refundable, may be more limited due to local tax frameworks. A key consideration for jurisdictions considering credits is that federal proposals generally do not provide for making advance payments, which could challenge low-income renters who may not have access to credit.

15 See Rent Relief Act of 2018, S. 3250, 115th Cong. (2018). See also Shane Goldmacher & Conor Dougherty, *Cory Booker's Housing Plan Offers Tax Credit to Millions of Renters*, N.Y. TIMES (June 5, 2019), https://www.nytimes.com/2019/06/05/us/politics/booker-renters-credit.html

16 S. 3250, § 2.

17 *Id.*

Jurisdictions might instead choose to provide subsidies in the form of cash payments distributed directly to renters. The administrative costs of providing subsidies in this form will largely depend on jurisdictions' capacity to assess eligibility and make use of existing channels for distributing subsidies. While developing new institutional mechanisms will, of course, take more time and generate more administrative costs, some jurisdictions may find direct cash subsidies easier to administer relative to refundable tax credits.

Direct Subsidies to Landlords

Subsidies could also be paid to landlords in the form of vouchers, akin to the existing federal Housing Choice Voucher program, in which administrative agencies make subsidy payments to landlords on behalf of tenants.[18] Administering vouchers through local housing agencies raises the question of whether to adopt other administrative features of the Housing Choice Voucher program which will likely add administrative costs and may dampen landlord participation. Additionally, it is legal in most states for landlords to refuse to rent to households using vouchers. As a result, providing the subsidy as a voucher may decrease overall participation in the program.

Alternatively, landlord subsidies might take the form of property tax credits. Since property taxes (and credits) are usually administered locally, using property tax credits may provide municipalities with more flexibility. New York City operates two programs, the **Senior Citizen Rent Increase Exemption (SCRIE)** and the **Disabled Rent Increase Exemption (DRIE)**, that rely on local property tax credits to provide housing subsidies for specific low-income populations who live in rent-regulated housing. Specifically, the programs freeze rents for qualifying renters and compensate landlords via a refundable property tax credit in lieu of the tenant paying increased rents.[19] Because these programs are conditioned on age or disability status, jurisdictions implementing similar systems must either create a new administrative system for eligibility determinations or make use of a preexisting administrative mechanism. Upon qualifying (based on age or disability, income, and occupancy of a rent-regulated apartment), a tenant's rent is frozen if it exceeds one-third of their income. Going forward, the difference between the frozen rent and the maximum legal rent of the regulated unit is awarded to the property owner via a quarterly property tax credit. SCRIE and DRIE—as well as similar programs in Washington, D.C.—provide examples of targeting a subsidy to specific low-income households within a rent-regulated housing stock.

In addition to being paired with anti-gouging rent regulations, the maximum allowable rents for participating households' units should be linked to measures of local fair market rents, and reviewed to ensure that units are not over-subsidized. Regardless of the form of the subsidy, funding is a key challenge. Aside from enforcement costs, rent regulation does not require direct funding from the government, while making expenditures for subsidies directly pressures municipal budgets. Municipalities' abilities to generate revenue for these subsidies and administer them depends on different legal frameworks and varies across states.

18 *See* 42 U.S.C. §1437 (2018).

19 *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/scriedriebrochure.pdf To be eligible, renters must either be above 62 years of age or qualify for federal disability. Additionally, renters' annual household income must be below $50,000, live in a rent-regulated apartment, and spend more than 1/3 of their income on rent.

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Final Considerations and Future Research Directions

The combination of broad-based anti-gouging rent regulation and targeted subsidies recommended here might be difficult for state and local governments to implement in the short term. Two issues that might affect jurisdictions' appetites for such an approach include potential effects on local property taxes and whether lower-income renters will take up (or participate in) a subsidy program. The former provides an opportunity for modeling by public finance researchers. Jurisdictions like New York City and Washington, D.C. that offer targeted rent credits may offer lessons that could shed light on the latter question. More broadly, the recent implementation of statewide anti-gouging protections in Oregon and California also provide opportunities for examining the effectiveness of such regimes. These states also provide a context in which future targeted subsidies could be tested for securing the benefits of rent regulation for low-income households.

Research of this kind is crucial to supporting rent regulation regimes that live up to the goal of providing increased housing security and financial stability to vulnerable renters—an objective that has proven elusive to many existing rent regulation systems. Although many rent regulation systems aim to protect low-income renters, in practice, rent regulation alone may prove too blunt an instrument to reach these households. Expanding rent regulation or, alternatively, means testing rent-regulated housing both raise serious concerns. Instead, in considering how rent regulation can better meet its aims, we suggest that pairing broad-based anti-gouging rent regulation systems with narrow, targeted subsidies as a long-term mechanism for increased housing affordability and stability for low-income renters.

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