

Date of Hearing: August 30, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Christopher M. Ward, Chair

AB 846 (Bonta) – As Amended August 23, 2024

SUBJECT: Housing programs: rent increases.

SUMMARY: Requires the California Tax Credit Allocation Committee (TCAC), by June 30, 2025, to adopt regulations to establish a limit on annual rent increases for tenants in existing properties that were allowed a low-income housing tax credit (LIHTC), and requires TCAC to annually assess the rent increase limit, as specified. Specifically, **this bill:**

- 1) Requires TCAC, on or before June 30, 2025, to adopt regulations limiting annual rent increases for tenants in properties that received a LIHTC before April 3, 2024, and are subject to a regulatory agreement.
- 2) Requires TCAC, on or before June 30, 2026 and annually thereafter, to assess the limit established in 1) above, and permit TCAC to adjust the limit if the committee deems it necessary based on the assessment.
- 3) Provides that “affordable rent” in projects dedicating at least 80% of the units to lower income households and receiving a federal tax credit or bond award or any local, state, or federal loans or grants on or after January 1, 2025 shall not exceed the rent prescribed in the deed restrictions or regulatory agreements pursuant to the terms of the public financing or public financial assistance for that housing development, as specified.

EXISTING LAW:

- 1) Provides a LIHTC for the costs of constructing, rehabilitating, or acquiring low-income housing. (Internal Revenue Code Section 42)
- 2) Grants states the ability to establish procedures and requirements LIHTC owners must follow and to administer the program in a way that advances the state’s housing priorities. (26 USC § 42(m))
- 3) Sets a maximum rent formula that caps rent in a LIHTC development at 30% of the applicable income limitation for a particular unit in the development. (26 USC § 42(g)(2)(A))
- 4) Establishes TCAC to administer the LIHTC program and grants it authority to adopt rules and regulations governing the program. (Chapter 3.6 of Part 1 of Division 31 of the Health and Safety Code)
- 5) Establishes the Tenant Protection Act (TPA) of 2019 which applies to certain rental agreements and includes the following provisions:
 - a) Caps rent increases in a 12-month period to five percent plus the change in the consumer price index, up to a maximum cap of 10%;
 - b) Requires landlords to have and to state a “just cause” for terminating a tenancy; and

- c) Exempts certain rental properties from its provisions, including units constructed in the last 15 years, tenancies of less than 12 months, deed-restricted affordable housing units, units subject to a more protective local policy, and single-family homes and condominiums unless owned by a real estate investment trust or corporation. (Civil Code (CC) Section 1946.2 and 1947.12)
- 6) Prohibits LIHTC projects receiving an award and projects that request an ownership transfer on or after April 3, 2024 from raising rents in excess of the following in any 12-month period: the lesser of five percent plus the percentage increase in the cost of living as defined in the TPA, or 10% of the lowest rental rate charged for that household at any time during the 12 months prior to the effective date of the increase. (California Code of Regulations (CCR) 4 § 10328(a)(4) and 10320(b)(1)(D))
- 7) Allows the Executive Director of TCAC to grant a waiver to exceed the limit in 6) above provided that a LIHTC owner shows that the proposed rent increase is necessary to ensure financial stability or fiscal integrity of the property. (4 CCR § 10328(a)(4)(A))
- 8) Allows a LIHTC owner to exceed the limit in 6) above in the following circumstances:
 - a) To increase the rent up to 30% of the monthly income of the household occupying the unit;
 - b) For projects with terminated project-based rental assistance or operating subsidy, as specified; and
 - c) For a transfer of a household to another unit in the same property that has a different bedroom count or transfer to a higher area median income (AMI) designation due to a change in the household's income or occupancy from initial qualification. (4 CCR § 10328(a)(4)(B))

FISCAL EFFECT:

According to the Senate Appropriations Committee:

- 1) TCAC indicates that one-time costs to revise regulations establishing rent caps on existing properties by June 30, 2025 would be minor and absorbable. TCAC notes that it recently adopted policies for new tax credit reservations, so applying it more broadly would not require significant workload. (Tax Credit Allocation Fee Account)
- 2) TCAC estimates ongoing costs in the range of \$141,000 to \$328,000 annually for 1.0 - 3.0 PY of new staff to field increased tenant inquiries, track and verify compliance, and take negative actions against project sponsors for noncompliance, such as imposing fines or issuing negative points on a current or future application. Actual costs and staffing needs would depend upon the volume of inquiries and incidences of noncompliance. Costs to annually assess the limits on rent increases to determine whether to adjust those limits would be minor and absorbable. (Tax Credit Allocation Fee Account)

COMMENTS:

Author's Statement: According to the author, “Low-income tenants often wait years to secure a coveted spot in affordable housing, only to be surprised, frustrated, and disappointed to learn there is little to stop their rent from rising well above what they can actually afford. LIHTC rents are set based on AMI, this structure essentially punishes low-wage earners because high-wage earners change the balance scale. In an era of ever-rising income inequality, this makes little sense and undermines the entire purpose of the LIHTC program, which is to provide affordable housing for lower-income families. Despite living in affordable housing, they are not living in housing they can afford. AB 846 is a common-sense solution. AB 846 directs the California Tax Credit Allocation Committee to adopt regulations that establish a cap on rent increases in existing LIHTC properties. All tenants in LIHTC properties should have the same protections from significant annual rent increases to ensure that they are not displaced by unpredictable rent hikes that they cannot afford.”

Background on the LIHTC Program: The LIHTC is an indirect federal subsidy developed in 1986 to incentivize the private development of affordable rental housing for low-income households. The federal LIHTC program enables affordable housing sponsors and developers to raise financing through the allocation of tax benefits to investors. TCAC administers the program and awards credits to qualified developers who can then sell those credits to private investors who use the credits to reduce their federal tax liability. The developer in turn invests the capital into the affordable housing project.

In 1987, the Legislature authorized a state LIHTC program to augment the federal tax credit program. The amount of state LIHTC that is statutorily authorized and allocated by TCAC is limited to \$70 million, adjusted for inflation. In 2020, the total credit amount available for allocation was about \$100 million plus any unused or returned credit allocations from previous years. In 2019, AB 101 (Committee on Budget, Chapter 159) was signed into law, providing an additional \$500 million in “enhanced” state LIHTCs in 2020 and future years, subject to appropriation. This year’s 2024-25 enacted budget provided \$500 million for an additional year of enhanced state LIHTC.

Rent Restrictions in LIHTC Properties: To qualify for occupancy in a LIHTC unit, a household’s income must be at or below the income level for that unit’s income category at the time of occupancy – but the tenant’s actual income does not determine the rent. Instead, federal law establishes a maximum rent for LIHTC units that is 30% of AMI for the income category the unit is deed-restricted to serve, adjusted for household size. As AMI fluctuates over time, federal and state rules allow for adjustments to the rent dependent on how much AMI has increased (or decreased, or stayed the same) year over year. However, these rules only apply to units that are already charging the maximum allowable rental rate under TCAC’s rent limits.

AB 1482 (Chiu), Chapter 597, enacted the TPA of 2019, which caps rent increases in certain types of housing in a 12-month period to the lower of five percent plus the change in the consumer price index, up to a maximum hard cap of 10%. The TPA specifically exempted deed-restricted affordable housing from these caps because an existing policy controls maximum rents on these units. However, a number of other states have enacted rules limiting the allowable annual rent increases in LIHTC properties or creating a process for evaluating increases that exceed certain thresholds, including New Jersey, Wisconsin, Montana, Idaho, Oregon, Michigan, Minnesota, and Georgia. Most of those states also limit increases to once per year.

Earlier this year, TCAC adopted regulations establishing rent caps on newly funded state LIHTC projects. Similar to AB 1482 (Chiu), the regulations condition tax credit awards by requiring projects not to exceed the lesser of 5% plus the change in the consumer price index, or 10% of the lowest rental rate charged for that household at any time during the year prior to the effective date of the increase. These rent caps may be waived by the TCAC Executive Director upon a showing that the increase is necessary to ensure financial stability or fiscal integrity of the property, as specified. Additionally, the regulations apply the rent cap retroactively on projects that are seeking ownership transfers; in these cases, in order for the Executive Director to approve the ownership transfer, the owners must not have increased the rent for any low-income household in excess of this regulatory cap in the past five years. However, TCAC was not able to apply the regulations retroactively to existing properties in general.

This bill codifies the authority for TCAC to establish rent caps in the state LIHTC program through their existing regulatory authority, and requires those regulations to apply to retroactively to tenants in existing properties that were funded by LIHTC. TCAC must assess the rent limit each year and can adjust the limit if necessary. These regulations must be adopted by June 30, 2025.

Affordable Rent: Health & Safety Code (HSC) Section 50053 sets formulas for calculating affordable housing rents for acutely low-, extremely low-, very low-, low-, and moderate-income households. Affordable housing rents are a calculation of residential rent pricing not to exceed 30% of the AMI thresholds set by affordability levels. For example, the “affordable housing rent” for low-income households is defined as not more than the product of 30% times 60% of the AMI adjusted for family size appropriate to the unit.

However, the median income in HSC Section 50053 can at times differ from the State Income Limits set by the Department of Housing and Community Development (HCD), pursuant to HSC 50093 and based on HUD revisions to the Public Housing and Section 8 Income Limits, which HUD updates annually to reflect changes in median family income levels for different size households and income limits for extremely low-, very low-, and low-income households. HUD can apply adjustments to areas with unusually high or low family income, uneven housing-cost-to income relationship, or other reasons to ensure that the income limit for areas reflects the realities of the housing market.

According to affordable housing developers, these two rent limits can cause confusion because different affordable housing programs or policies cite one limit or the other. This becomes a problem when an individual development utilizes multiple funding sources or land use tools and both limits apply, causing unnecessary confusion and compliance challenges.

Recent amendments to the bill resolve this conflict by deferring to the income and rent limits of the public funding or financing program. More specifically, the bill provides that “affordable rent” in affordable housing projects receiving a federal tax credit or bond award or any local, state, or federal loans or grants after January 1, 2025 shall not exceed rents prescribed in the deed restrictions or regulatory agreements pursuant to the terms of the public financing or public financial assistance for that housing development.

Arguments in Support: According to a coalition of cosponsors including the Western Center on Law and Poverty and Public Advocates, “While these new regulations are a welcome change, because they are largely prospective the hundreds of thousands of existing renters in current LIHTC properties are still vulnerable to high rent increases. AB 846 closes this gap by directing

CTCAC to adopt regulations establishing a cap on rent increases in existing LIHTC properties. Effectively, the bill requires CTCAC to extend its recently adopted rent cap policy to all properties. The existing regulations recognize that there may be circumstances where a property's financial condition necessitates higher rent increase to avoid the property going into foreclosure and losing it from the state's affordable housing stock altogether. This waiver should be sufficient to address concerns from some affordable housing developers about a rent cap's impact on their ability to address financial challenges.”

Arguments in Opposition: According to the California Council for Affordable Housing, “Under the provisions of the bill, if each city were to pass its own rent cap, it would lead to a patchwork of standards, creating further uncertainty for affordable housing owners. The bill will also create unintended consequences for tenants given it will cause affordable housing developers to end practices that keep rents low for tenants. During the time of an ongoing housing crisis, now is not the time to impose a policy that would create uncertainty and detrimental effects for both affordable housing developers and tenants alike.”

Related Legislation:

AB 1482 (Chiu), Chapter 597, Statutes of 2019: Established the Tenant Protection Act of 2019, which caps rent increases in a 12-month period to five percent plus the change in the consumer price index up to a maximum cap of 10 percent, but does not apply to deed-restricted affordable housing.

REGISTERED SUPPORT / OPPOSITION:

Support

California Rural Legal Assistance Foundation (Co-Sponsor)
 Public Advocates (Co-Sponsor)
 Western Center on Law & Poverty (Co-Sponsor)
 52nd District
 ACCE Action
 AIDS Healthcare Foundation
 All Rise Alameda
 Bay Area Legal Aid
 Building the Base Face to Face
 California Democratic Party
 California Democratic Renters Council
 Change Begins With Me
 Cloverdale Indivisible
 Contra Costa MoveOn
 Defending Our Future: Indivisible in Ca
 Disability Rights California
 East Valley Indivisibles
 El Cerrito Progressives
 Feminists in Action Los Angeles
 Hillcrest Indivisible
 Housing Now! CA
 Indi Squared
 Indian Valley Indivisibles

Indivisible 30/keep Sherman Accountable
Indivisible 36
Indivisible 41
Indivisible Auburn CA
Indivisible Beach Cities
Indivisible CA StateStrong
Indivisible Ca-25 Simi Valley Porter Ranch
Indivisible Ca-29
Indivisible Ca-3
Indivisible Ca-37
Indivisible Ca-39
Indivisible Ca-43
Indivisible Ca-7
Indivisible Claremont/inland Valley
Indivisible Colusa County
Indivisible East Bay
Indivisible El Dorado Hills
Indivisible Elmwood
Indivisible Euclid
Indivisible Lorin
Indivisible Los Angeles
Indivisible Manteca
Indivisible Marin
Indivisible Media City Burbank
Indivisible Mendocino
Indivisible Normal Heights
Indivisible North Oakland Resistance
Indivisible North San Diego County
Indivisible OC 46
Indivisible OC 48
Indivisible Petaluma
Indivisible Sacramento
Indivisible San Bernardino
Indivisible San Jose
Indivisible San Pedro
Indivisible Santa Barbara
Indivisible Santa Cruz County
Indivisible Sausalito
Indivisible Sebastopol
Indivisible Sf
Indivisible Sf Peninsula and Ca-14
Indivisible Sonoma County
Indivisible South Bay LA
Indivisible Stanislaus
Indivisible Suffragists
Indivisible Ventura
Indivisible Westside LA
Indivisible Windsor
Indivisible Yolo

Indivisible: San Diego Central
Indivisibles of Sherman Oaks
Leadership Counsel for Justice & Accountability
Livermore Indivisible
Mill Valley Community Action Network
Mountain Progressives
Movement Legal
National Housing Law Project
Nothing Rhymes With Orange
Orchard City Indivisible
Orinda Progressive Action Alliance
Our Revolution Long Beach
Pico California
PowerCA Action
Public Interest Law Project
RiseUp
Rooted in Resistance
Ross Valley Indivisible
San Diego Indivisible Downtown
SFV Indivisible
Tehama Indivisible
Tenants Together
The Resistance Northridge
Together We Will Contra Costa
Together We Will/indivisible - Los Gatos
Vallejo-Benicia Indivisible
Venice Resistance
Women's Alliance Los Angeles
Yalla Indivisible

Opposition

California Council for Affordable Housing
Housing California
Southern California Association of Non-profit Housing (SCANPH)

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