

Date of Hearing: September 10, 2021

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 447 (Grayson) – As Amended September 3, 2021

**SUBJECT:** California Debt Limit Allocation Committee: income taxes: low-income housing tax credits

**SUMMARY:** Makes changes to the state low income housing tax credit (LIHTC) program at the California Tax Credit Allocation Committee (CTCAC) in the State Treasurer's Office.

Specifically, **this bill:**

- 1) Updates the list of federal programs that allow a property to be considered “at risk of conversion” for the purposes of the state LIHTC.
- 2) Adds to the LIHTC “at risk of conversion” definition the following forms of assistance provided by local governments in exchange for restrictions on rent levels and tenant income:
  - a) Loans or grants provided using tax increment financing pursuant to the Community Redevelopment Law;
  - b) Local housing trust funds;
  - c) The sale or lease of public property at or below market rates; and
  - d) The granting of density bonuses under state density bonus law.
- 3) States that “government assistance” does not include the use of tenant-based housing choice vouchers. Further specifies that restrictions do not include any rent control or rent stabilization ordinance imposed by a local government.
- 4) Provides that the requirement for rent and income restrictions to terminate within five years of the date of an application to CTCAC does not include specified situations and interim or acquisition financing.
- 5) Specifies that if the housing development is subject to restrictions on rent and income levels, 50 percent of the units must also be restricted to initial occupancy by lower income households, as specified.
- 6) Requires that the entity acquiring the property deemed “at risk of conversion” enters into a regulatory agreement that mandating that the property to be operated in accordance with state and federal LIHTC programs.
- 7) States that for eligible projects, certain LIHTC funds, that are made available beginning in the 2020 calendar year also include any retrofitting and repurposing of existing nonresidential structures, including, but not limited to, hotels and motels, that were converted to residential use within the previous five years from the date of the application.

- 8) Revises legislative findings and declarations related to the state's volume ceiling for private activity bonds.

**EXISTING LAW:**

- 1) Provides that there shall be allowed as a credit against certain taxes a state low-income housing tax credit (LIHTC) in an amount computed in accordance with Section 42 of the Internal Revenue Code, relating to low-income housing credit. (Revenue and Taxation Code Sections 12206(a)(1), 17058(a)(1), and 23610.5(a)(1))
- 2) Specifies that the amount of the credit allocated to any housing sponsor shall be authorized by the CTCAC based on a project's need for the credit for economic feasibility in accordance with specified requirements. (Revenue and Taxation Code Sections 12206(b)(1), 17058(b)(1), and 23610.5(b)(1))
- 3) Imposes the following requirements for low-income housing projects receiving the LIHTC:
  - a) The project must be located in California and meet either of the following requirements:
    - i. The project's housing sponsor has been allocated by the CTCAC a credit for federal income tax purposes under Section 42 of the Internal Revenue Code, relating to low-income housing credit, unless it is for farmworker housing; or
    - ii. It qualifies for a credit under Section 42(h)(4)(B) of the Internal Revenue Code, relating to special rule where 50 percent or more of building is financed with tax-exempt bonds subject to volume cap. (Revenue and Taxation Code Sections 12206(b)(1)(A)(i)-(ii), 17058(b)(1)(A)(i)-(ii), and 23610.5(b)(1)(A)(i)-(ii))
- 4) Defines the term "at risk of conversion," with respect to an existing property to mean a property that satisfies all of the following criteria:
  - a) The property is a multifamily rental housing development in which at least 50 percent of the units receive governmental assistance pursuant to any of the following:
    - i. New construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance pursuant to specified federal law;
    - ii. The Below-Market-Interest-Rate Program under specified federal law;
    - iii. Section 236 of the National Housing Act, Section 1715z-1 of Title 12 of the United States Code;
    - iv. Certain programs for rent supplement assistance pursuant to specified federal law;

- v. Programs pursuant to Section 514 of the Housing Act of 1949, Section 1484 of Title 42 of the United States Code, as amended, and Section 515 of the Housing Act of 1949, Section 1485 of Title 42 of the United States Code, as amended;
  - vi. The low-income housing credit program set forth in Section 42 of the Internal Revenue Code, relating to low-income housing credit; and
  - vii. Programs for loans or grants administered by the Department of Housing and Community Development.
- b) The restrictions on rent and income levels will terminate or the federally insured mortgage or rent subsidy contract on the property is eligible for prepayment or termination any time within five years before or after the date of application to the CTCAC.
  - c) The entity acquiring the property enters into a regulatory agreement that requires the property to be operated in accordance with certain requirements for a period equal to the greater of 55 years or the life of the property.
  - d) The property satisfies the requirements of Section 42(e) of the Internal Revenue Code, relating to rehabilitation expenditures treated as separate new building, except as specified. (Revenue and Taxation Code Sections 12206(c)(5), 17058(c)(5), and 23610.5(c)(5))
- 5) Provides that the CTCAC must allocate the housing credit on a regular basis consisting of two or more periods in each calendar year during which applications may be filed and considered. (Revenue and Taxation Code Sections 12206(j)(1), 17058(j)(1), and 23610.5(j)(1))
- 6) Establishes the California Debt Limit Allocation Committee, consisting of six members as follows:
- a) The Treasurer, or their designee;
  - b) The Controller, or their designee;
  - c) The Governor, or their designee;
  - d) The Director of Housing and Community Development, as a nonvoting member;
  - e) The Executive Director of the California Housing Finance Agency, as a nonvoting member; and
  - f) A representative from local government who shall be a nonvoting member, selected by two voting members of the committee. (Government Code Section 8869.83(a)(1)-(6))

**FISCAL EFFECT:** According to the Senate Appropriations Committee, “this bill expands the scope of projects eligible for newly authorized LIHTCs relative to current law, thereby creating a General Fund cost pressure. The TCAC indicates that this bill would not result in new costs to the State. In addition, this bill would not directly impact the annual amount allocated for the LIHTC; thus, this bill would not have an impact on state revenues.”

## COMMENTS:

**Author’s statement:** According to the author, “AB 447 resolves three technical issues that have arisen with respect to state law governing the Low-Income Housing Tax Credit (LIHTC) Program. It adds missing programs from the Preservation Notice Law into the LIHTC statutes to facilitate the preservation of all at-risk properties by allowing TCAC to fund currently omitted at-risk properties and making these developments eligible for TCAC’s at-risk set aside; it excludes an HCD or other regulatory agreement recorded in connection with interim or acquisition financing from consideration when TCAC determines a property’s at-risk status; and, it defines new construction to include adaptive reuse, thereby allowing adaptive reuse developments to utilize these additional state credits.”

**Background on LIHTC:** The Tax Reform Act of 1986 established the federal LIHTC program the largest federal program that funds low-income housing to support the development of affordable rental housing. Nationally the LIHTC provides the equivalent of approximately \$8 billion in annual budget authority to states to issue tax credits for the acquisition, rehabilitation, or new construction of rental housing for lower-income households. According to the federal Department of Housing and Urban Development (HUD), an average of 1,400 projects and 106,400 units were created annually through the LIHTC program between 1995 and 2018.

The tax credits are awarded to affordable rental housing developers through an application process. Developers that receive tax credits sell the credits to investors who can claim them to lower their tax liability over a 10 year period following the completion of the housing development. Typically, the eligible basis is 100 percent of the expenses related to construction and development costs other than land and certain transaction costs. Projects located in certain difficult development areas or qualified census tracts are eligible to receive a “basis boost” which allows credits to be issued that equal 130 percent of the development’s eligible basis.

In California, the Treasurer’s office allocates LIHTCs through the CTCAC. From the beginning of the LIHTC program in 1987, CTCAC has supported more than 478,000 affordable rental units with tax credit awards. In 1987, the Legislature created a state version of the tax credit that supplements the federal LIHTC program. The state LIHTC program generally mirrors the federal program except that it requires the housing development to be located in California. In order to receive state LIHTCs, housing projects must have also received, or are simultaneously receiving, an allocation of the federal LIHTCs. Last year CTCAC awarded \$581.2 million in state tax credits to 91 affordable rental housing developments.

**Updating requirements for “at risk of conversion” projects:** For the state LIHTC program, CTCAC allocates tax credits to a number of different types of housing developments including projects which are deemed “at risk of conversion”. In order to be considered “at risk of conversion” the affordability requirements on the units must be set to expire within five years of the application date. Additionally, at least half of the units in the development must receive

certain types of federal or state assistance that allow for the units to be provided at affordable rents for low-income households.

However, the current list of eligible federal and state assistance programs that trigger the “at risk” designation is out of date. For example, federal programs left out of the statute include Community Development Block Grants (CDBG) and funds from the HOME Investment Partnership Program. Additionally, the “at risk” designation does not include government assistance from local funds, land donations, or affordability requirements provided through Density Bonus Law. This bill revises and updates the list of eligible government assistance programs that count towards the “at risk” designation under the state LIHTC program. This bill would allow CTCAC to allocate tax credits to a wider range of affordable housing developments that are at risk of losing their affordability requirements and converting to market rate housing.

***Clarifying the Interaction between LIHTC and the Preservation Notice Law:*** According to the Department of Housing and Community Development (HCD), the state has “approximately 149,000 units of privately owned, federally assisted, multifamily rental housing, plus additional tax-credit and mortgage-revenue bond properties, many with project-based rental assistance. A large percentage of these units may convert to market rate as subsidy contracts or regulatory agreements expire.” For affordable housing developments that receive eligible federal assistance, state law requires owners to take steps to attempt to preserve longer-term affordability before regulatory or subsidy agreements expire. Specifically, California’s Preservation Notice Law (Government Code Section 65863.10 *et seq.*) requires owners of certain federally-assisted housing developments to provide notice to affected households and public agencies six months and 12 months before affordability ends.

As part of the Preservation Notice Law, affordable housing developers get the chance to purchase the housing project in order to keep the units affordable to low-income households going forward. However, when a developer purchases an affordable housing development this way HCD requires a 30-year affordability restriction to be placed on the deed. This 30-year deed restriction could be interpreted as no longer making the property “at risk of conversion”, thus making the project ineligible for “at risk” LIHTCs. Since developers frequently need interim or bridge financing to take over an affordable property that is in jeopardy of converting to market rate, they face greater risk if LIHTC financing is uncertain or impossible. This bill seeks to exempt such agreements with HCD or other regulatory agreements for interim or acquisition financing from the types of assistance CTCAC uses to determine eligibility for its “at risk” set aside of LIHTCs.

***Updating state LIHTC eligibility for adaptive reuse:*** When a non-residential structure such as a hotel, store, or office building is repurposed for a residential use, this is referred to as “adaptive reuse.” While the CTCAC and the Debt Limit Allocation Committee (CDLAC) both generally designate adaptive reuse as new construction, the recent statute which increased the state LIHTC by \$500 million in 2020 did not specify that adaptive reuse could also be considered new construction. Instead, that statute only mentions, “newly constructed buildings” and does not explicitly cover adaptive reuse developments. This bill updates the definition of new construction to include adaptive reuse, thereby allowing adaptive reuse developments to take advantage of these state LIHTCs.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Housing Partnership Corporation (sponsor)  
California State Treasurer Fiona Ma

**Opposition**

None on file.

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