
SENATE COMMITTEE ON HOUSING
Senator Nancy Skinner, Chair
2023 - 2024 Regular

Bill No: AB 846 **Hearing Date:** 6/24/2024
Author: Bonta
Version: 6/10/2024
Urgency: No **Fiscal:** Yes
Consultant: Alison Hughes

SUBJECT: Low-income housing credit: rent increases

DIGEST: This bill requires the California Tax Credit Allocation Committee (TCAC), on or before 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, and requires TCAC to annually assess the limit, as specified.

ANALYSIS:

Existing law:

- 1) Provides, pursuant to federal law, a low income housing tax credit (LIHTC) for the costs of constructing, rehabilitating, or acquiring low-income housing. 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.
- 2) Allows a state LIHTC for costs related to construction, rehabilitation, or acquisition of low-income housing. This credit, which mirrors the federal LIHTC, may be used by taxpayers to offset the tax under the Personal Income Tax, the Corporation Tax, and the Insurance Tax laws.
- 3) Requires TCAC, under the State Treasurer's Office, to annually allocate the California LIHTC based upon specified qualifications of the applicant and proposed project. The California LIHTC is available only to projects that receive an allocation of the federal LIHTC.
- 4) Limits the annual aggregate amount of the state LIHTC to \$70 million, as adjusted for an increase in the California consumer price index, plus any unused LIHTC from the preceding calendar year and any LIHTC returned in the calendar year. The state LIHTC awarded may be claimed as a credit over a four-year period.

- 5) Establishes the Tenant Protection Act 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 percent;
 - 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.

This bill:

- 1) Requires TCAC, on or before June 30, 2025, to adopt regulations to establish a limit on annual rent increases for tenants in existing properties that were allowed a LIHTC.
- 2) Requires TCAC, on or before June 30, 2026 and annually thereafter, to assess the limit established in (1), and may lower the limit, through regulations, if the committee deems it necessary based on the assessment.

COMMENTS:

- 1) *Author’s statement.* “Lower-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 frustrates the entire purpose of the LIHTC program to provide affordable housing for lower-income families. AB 846 is a common-sense approach already employed in a number of states to address the problematic rent-setting formula established in federal law. The bill will impose a cap on rent increases in LIHTC properties to provide greater housing stability for low-income tenants while still ensuring that affordable housing properties can remain financially viable over time.”
- 2) *Background of the federal 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 low-income housing sponsors and developers to raise project equity

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.

Two types of federal tax credits are available: the 9% and 4% credits. These terms refer to the approximate percentage of a project's "eligible basis" a taxpayer may deduct from his/her annual federal tax liability in each of 10 years. "Eligible basis" means the cost of development excluding land, transaction costs, and costs incurred for work outside the property boundary. For projects that are not financed with a federal subsidy, the applicable rate is 9%. For projects that are federally subsidized (including projects financed more than 50% with tax-exempt bonds), the applicable rate is 4%. Although the credits are known as the "9% and 4% credits," the actual tax rates fluctuate every month, based on the determination made by the Internal Revenue Service on a monthly basis. Generally, the 9% tax credit amounts to 70% of a taxpayer's eligible basis and the 4% tax credit amounts to 30% of a taxpayer's eligible basis, spread over a 10-year period.

Each year, the federal government allocates funding to the states for LIHTC on the basis of a per-resident formula. Only rental housing buildings, which are either undergoing rehabilitation or newly constructed, are eligible for the LIHTC. In addition, the qualified low-income housing projects must comply with both rent and income restrictions.

Each state receives an annual ceiling of 9% federal tax credits and they are oversubscribed by a 2:1 ratio. Unlike 9% LIHTC, federal 4% tax credits are not capped; however, they must be used in conjunction with tax-exempt private activity mortgage revenue bonds, administered by CDLAC, which are capped. In 2020, the state ceiling for private activity bonds was set at \$4 billion. The value of the 4% tax credits is less than half of the 9% tax credits and, as a result, 4% federal credits are generally used in conjunction with another funding source, like state housing bonds or local funding sources.

- 3) *Background of the state LIHTC program.* In 1987, the Legislature authorized a state LIHTC program to augment the federal tax credit program. State tax credits can only be awarded to projects that have also received, or are concurrently receiving, an allocation of the federal LIHTC. The amount of state LIHTC that may be annually allocated by the TCAC is limited to \$70 million, adjusted for inflation. In 2020, the total credit amount available for allocation was \$111 million plus any unused or returned credit allocations from

previous years. Current state tax law generally conforms to federal law with respect to the LIHTC, except that it is limited to projects located in California.

- 4) *Rent restrictions in LIHTC projects.* 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 the area median income (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.

AB 1482 (Chiu, Chapter 597, Statutes of 2019) 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 percent. AB 1482 (Chiu) specifically exempted deed-restricted affordable housing from these caps because, as detailed above, 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 proposed 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. More specifically, the regulations condition reservations upon projects that do not exceed rental increases over a year the lesser of 5% plus the increase in the cost of living, as specified, 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 (ED) 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 this case, in order for the ED to approve the ownership transfer, the owners shall not have increased the rent for any low-income household in excess of regulatory caps.

This bill seeks to codify the authority for TCAC to establish rent caps in the state LIHTC program through their existing regulatory authority, and permit those regulations to apply to retroactively to tenants in existing properties that were funded by LIHTC.

- 5) *Flexibility in the regulations.* The bill requires TCAC to review the rent limit on an annual basis and allows the regulations to reduce the cap. **The author has agreed to amend the bill to give TCAC flexibility to “adjust” the limit as necessary, rather than only reduce.**
- 6) *Opposition.* The California Housing Consortium is opposed, unless amended to preempt local governments from passing their own local ordinance to impose rent caps on projects funded by Low-Income Housing Tax Credits (LIHTCs). CHC notes that “[i]f each city passed its own rent cap, it would create a patchwork of standards, creating additional uncertainty for affordable housing owners. It is also unknown if the ordinances would be as carefully crafted as the TCAC regulations. The amendment we as are asking for would provide certainty to affordable housing owners and would allow them to adjust to the new changes and plan accordingly.” Housing California has an oppose position because they are “concerned that AB 846 will have unintended consequences for tenants because a rent cap will force non-profit, mission-driven affordable housing developers to end practices that keep rents low for tenants.” They are also concerned about the precedent set by applying the regulations retroactively.
- 7) *Double-referral.* This bill was also referred to the Judiciary Committee.

RELATED LEGISLATION:

AB 3160 (Gabriel, 2024) — provides that an additional \$500 million to the LIHTC program is not subject to an appropriation in the annual Budget Act for the 2025 – 2030 calendar years. *This bill is pending in the Senate Appropriations Committee.*

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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

POSITIONS: (Communicated to the committee before noon on Wednesday, June 19, 2024.)

SUPPORT:

California Rural Legal Assistance Foundation (Co-Sponsor)
 Public Advocates (Co-Sponsor)
 Western Center on Law & Poverty (Co-Sponsor)

ACCE Action
AIDS Healthcare Foundation
Bay Area Legal Aid
California Democratic Party
Disability Rights California
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Leadership Counsel for Justice & Accountability
Movement Legal
National Housing Law Project
Pico California
PowerCA Action
Public Interest Law Project
Tenants Together

OPPOSITION:

California Housing Consortium
Housing CA

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