



Low-Income Housing Tax Credit (LIHTC) Rent Requirement: Frequently Asked Questions (FAQ)

The California Tax Credit Allocation Committee (CTCAC) administers the federal and state Low-Income Housing Tax Credit (LIHTC) Programs. Both programs were created to promote private investment in affordable rental housing for low-income Californians. CTCAC allocates state and federal tax credits to qualifying affordable housing developments as well as oversees a 55-year Compliance period for each project receiving credits. These Frequently Asked Questions (FAQs) should help explain how rents are determined, CTCAC's monitoring responsibilities as well as some other requirements of the LIHTC program.

Q: What is the Low-Income Housing Tax Credit (LIHTC) program?

A: Congress enacted the Low-Income Housing Tax Credit (LIHTC) program in 1986. This program developed under Internal Revenue Service's (IRS) Internal Revenue Code Section 42 provides incentives for the investment of private equity capital to develop affordable rental housing. The LIHTC program reduces the federal tax liability in exchange for the acquisition, rehabilitation, or construction of affordable rental housing units that will remain income and rent restricted over a long period (55 years for California). The amount of tax credit allocated is based on the number of qualified low-income units that meet federal rent and income targeting requirements.

Q: What is CTCAC's monitoring role for the LIHTC program?

A: Through a compliance monitoring process, CTCAC enforces the IRS rules of the LIHTC program to ensure properties are renting to income-eligible households, rents are restricted at or below the maximum allowed by the program, and that the property units are maintained in safe, sanitary, and good condition. Each property is inspected every three to five years, for 30 or 55 years, depending on when they originally received credits. Owners must certify every year that they are meeting the program requirements including charging appropriate rents.

Q: What are the eligibility criteria for developers or owners in the LIHTC program?

A: Developers/owners of LIHTC properties must develop a minimum number of units at a property and restrict income and the rents at certain amounts. These are called “set-asides” as the owner is setting aside a certain number of units on the property for the LIHTC program. These set-asides are federally determined and reportable to the IRS. The set-asides the owner is required to restrict the units to households that are:

- 40% of the units at or below 60% Area Median Income (AMI)
- 20% of the units at or below 50% AMI
- 40% of the units at or below 60% AMI and may have units up to 80% AMI, if the average of those units is at or below 60% AMI

In addition to the federal set-aside requirements, some LIHTC properties have additional state deeper targeting requirements, which may restrict a specific number of units to households at 30% AMI, 35% AMI, 40% AMI, etc.

Since state deeper targeting is an additional requirement beyond the federal minimum, once the required number of deeper targeted units has been met for the property, the owner is not obligated to add additional units, even if an applicant may meet the eligibility requirements of a deeper targeted unit.

- Example: John Smith and Mary Johnson both receive Social Security as their sole source of income and would qualify to occupy a 30% AMI unit. Happy Place Apartments is required to have 10 units rented to households at or below 30% AMI. Currently, nine of the 10 30% AMI units have been leased up leaving one remaining 30% AMI unit needed to meet the requirement. John completes the application and turns in all his required documents and qualifications at 9 a.m. and Mary submits her documents at 3 p.m. John was offered the 30% AMI unit as he was earlier in submitting his documentation. It would not be a violation for CTCAC if Mary was offered a 40% AMI unit or greater, as the required number of 30% AMI (10 units) were leased or in the process of being leased when Mary submitted her documentation despite being eligible for a 30% AMI unit.

Q: How are rents determined?

A: The federal regulations for the LIHTC program require rents to be based on the federally published Area Median Income (AMI) for the county the property is located in. This is different than subsidy-based programs such as Section 8 or Housing Choice Vouchers where the tenant paid portion of the rent is based directly on tenant's income.

Q: Who determines the Area Median Income (AMI) figures?

A: The Department of Housing and Urban Development (HUD) releases the [Multi-family Tax Subsidy Program](#) (MTSP) limits specifically for the LIHTC program every year. These limits are different than the limits for the Section 8 program. CTCAC does not have any ability to modify or change the MTSP Limits published by HUD.

Q: If the AMI increases for a county, does CTCAC require the owner of a property to increase rents as well?

A: No. CTCAC will never require an owner of a LIHTC property to raise rents. However, the LIHTC program does allow for rents to be increased, as needed, if there is an increase in the AMI to offset increased management and operating costs, if the rent remains under the rent limits.

During the COVID Pandemic and continuing through the current economy of rapidly rising inflation, CTCAC requested that owners and property management companies consider that rent increases be "reasonable" for the tenant population. If proper notice of the rent increase is given to the tenant, it is not a violation of the program to increase the rents.

Q: Is there a maximum amount or maximum percentage on a rental increase that an owner can charge?

A: Neither the LIHTC program nor CTCAC have authority to limit the rent increase amount an owner or property management company can give. The only federal LIHTC requirement for rent increases is the owner cannot charge rent exceeding the maximum gross rent limit unless the tenant is receiving at least \$1 in Section 8 rental subsidy.

Additionally, in California, the owner must provide the tenant proper notice before increasing the rent.

Q: What is considered “proper notice” for rental increases?

A: Effective January 1, 2020, Assembly Bill 1110 (AB 1110) requires that in California, a 30-day notice be provided for any rent increase of 10% or less. If a rent increase exceeds 10%, then a minimum of a 90-day notice must be provided before the rent may be increased.

Q: Does [AB 1482](#) – The California Tenant Protection Act – restrict the amount that rents can be increased?

A: No. Per Section 3 1947.12(d)(1) of the legislation, the Tenant Protection Act does not apply to “Housing restricted by deed, regulatory restriction contained in an agreement with a government agency, or other recorded document as affordable housing for persons and families of very low, low, or moderate income ... or subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income....”

Since the LIHTC program is a federal regulatory restriction, with a recorded Regulatory Agreement, by a government agency (CTCAC) for affordable housing for households that are considered low or very low income (50%-60% AMI), the protections under AB 1482 do not apply.

Q: What is “gross rent”?

A: The term “gross rent” refers to the maximum amount of rent that can be charged to a unit for the LIHTC program and includes the amount of tenant paid rent, a utility allowance (if the tenant is paying utilities directly to a utility provider), and any mandatory or required fees for the residing on the property.

Q: Can the property manager charge fees in addition to rent?

A: There are Mandatory Fees and Optional Fees:

- Mandatory fees are fees required by management in addition to the lease. These fees apply to all tenants and may include requiring renter’s insurance, an internet/cable package specific to a property, washer/dryer hook-up fees, access fees, etc. All mandatory fees are required to be included in the gross rent calculation.

- Optional fees are not required and may be charged in addition to the rent. They are not included in the gross rent calculation for purposes of meeting the rent and income limits. An example of this would be charging for an enclosed garage unit if open parking or assigned parking is available.

Q: Can an owner or property management company ever charge rent exceeding the maximum LIHTC rent limit?

A: Yes. An owner or property management company may charge more than the maximum gross rent to a tenant of a LIHTC property, if the tenant is also receiving at least \$1 in Section 8 rental assistance and the determined tenant paid portion exceeds the LIHTC limit. However, if at any time, the household no longer receives the Section 8 rental assistance, the rent must be immediately reduced to at or below the required LIHTC maximum.

- Example: The Thomas household lives at Garden Valley Apartments in Orange County and is receiving Section 8 rental assistance through a project-based voucher (PBV). They are in a two-bedroom unit. The Orange County Public Housing Authority (PHA), who oversees Section 8 for the county, will pay the owner of property up to \$2,130 for a two-bedroom unit. The \$2,130 includes both the tenant paid portion and the PHA subsidized portion. Garden Valley Apartments also received an award of LIHTCs and for the LIHTC program, the maximum gross rent for a two-bedroom unit in Orange County is \$1,830. The Section 8 voucher is based on the tenant's household income so based on the PHA's calculation, the tenant rent portion is \$1,980. Despite exceeding the LIHTC maximum rent of \$1,830, this is not a violation of the LIHTC program as the household is still receiving \$150 in subsidy.
- This exception only applies to the Section 8 program or any comparable federal, state, or local government program and does not include private rental assistance programs.

Q: Is it a violation if rents are increased during a lease term or more than once a year?

A: No. This does not violate CTCAC or LIHTC rules. The requirement of the LIHTC program is rents must remain at or below the maximum gross rent for the county and project. When updated MTSP rent and income limits are released by HUD around April/May, it is common to see changes to align with the updated limits. Updates to the utility allowance figures from city or county also impact the rents. If rents are at the rent maximums and the utility allowance for a property increases, the owner is required to reduce the tenant paid rent to remain at or below

the maximum. Alternatively, if utility allowance figures decrease, the owner may increase tenant paid rent accordingly. It is not a violation for the LIHTC program if either situation occurs mid-lease cycle, so long as proper notice is given to the tenant of an increase.

Q: What is a Utility Allowance?

A: If the tenants are paying for basic utility services (gas, electric, water) directly to a third-party provider (PG&E, SMUD, Southern California Edison, etc.), the owner must provide an allowance to the tenant to offset the cost of utilities in the gross rent calculation. The amount of the allowance is determined by a third-party authorized agency (public housing authority, utility company, HUD Utility Model) or determined by HUD or the U.S. Department of Agriculture Rural Development (RD). The utility allowance is designed to offset or reduce the tenant paid portion of the gross rent to account for required utilities and is not a direct payment to the tenant.

Q: Can a tenant be evicted for non-payment of rent?

A: Yes, however, Section 42 of the IRC and LIHTC program rules require that an owner cannot evict a tenant for anything other than “good cause”. The IRS does not define “good cause”. “Good cause” is determined by a judge and the courts in the county or municipality where the property is located. In general, “good cause” may include, but is not limited to, failure to provide accurate income information (eligibility), violations of the lease or house rules, or non-payment of rent.

During the COVID pandemic (2020-2021), the Governor of California issued a moratorium on evictions for non-payment of rent. As of the date of these FAQs, the moratorium has ended in the state. However, some cities, counties, or municipalities may still have eviction protections in place for non-payment of rent. These protections are outside the monitoring scope of CTCAC and the LIHTC program and not enforced by CTCAC.

Q: If a tenant receives an eviction notice, can the tenant contact CTCAC for help?

A: No. CTCAC cannot get involved in evictions. “Good Cause” for eviction is determined by a judge and the courts of the city, county, or municipality where the property is located. CTCAC’s only involvement is monitoring the requirement that the tenant receive written notice of the reason for the eviction. If an owner or property management company fails to provide a reason

in writing, CTCAC will require the eviction notice be rescinded and a new notice be issued with the reason clearly stated.

Q: Where can a tenant find out about their rights as a tenant in California?

A: The California Department of Real Estate has published a Guide to Residential Tenants' and Landlord's Rights and Responsibilities that can be found [here](#). This guide applies to all residential rental tenants in California and is not exclusive to the LIHTC program.