



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.

Q1: What is the Low-Income Housing Tax Credit (LIHTC) program?

A1: 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.

Q2: What is CTCAC's monitoring role for the LIHTC program?

A2: 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.

Q3: What are the eligibility criteria for developers or owners in the LIHTC program?

A3: 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.

Q4: How are rents determined?

A4: 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.

Q5: Who determines the Area Median Income (AMI) figures?

A5: The Department of Housing and Urban Development (HUD) releases the [Multifamily 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.

Q6: Is there a maximum amount or maximum percentage on a rental increase that an owner can charge?

A6: For projects awarded prior to 2024, 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.

For projects awarded in or after 2024, the rents for a low-income household shall not increase in any 12-month period more than the lesser of five percent plus the percentage increase in the cost of living as defined in paragraph (3) of subdivision (g) of Section 1947.12 of the Civil Code or ten percent of the lowest rental rate charged for that household at any time during the 12 months prior to the effective date of the increase. The rent increase limit in CTCAC Regulations Section 10325(a)(4) was adopted by the Committee on April 3, 2024. CTCAC Regulations Section 10328(a)(4) provides exceptions to the limit in paragraphs (A) and (B) in that subsection. CTCAC published a guidance memorandum regarding the rent increase limit on the CTCAC website at:

https://www.treasurer.ca.gov/ctcac/2024/supplemental/2024/rent_increase.pdf

Q7: Does the rent increase limit only apply to those projects awarded in or after 2024?

A7: While the rent increase limit applies to projects awarded in or after 2024, CTCAC Regulations Sections 10320(b)(1)(D) and (E) apply the rent increase limit provision in CTCAC Regulations Section 10328(a)(4) to all ownership or tax credit transfers of existing CTCAC projects requested after April 3, 2024. The regulations state, "The Executive Director shall not approve a transfer if, in any of the five calendar years prior to the transfer date or in the year to date of the transfer but not earlier than April 3, 2024, the owner has increased the rent for any low-income household in excess of the amounts described in Section 10328(a)(4)."

Q8: If the AMI increases for a county, does CTCAC require the owner of a property to increase rents as well?

A8: 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.

Q9: What is considered “proper notice” for rental increases?

A9: 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.

Q10: Does [AB 1482](#) – The California Tenant Protection Act – restrict the amount that rents can be increased?

A10: No. Per Section 3 1947.12(d)(1) of the Civil Code, 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, as defined in Section 50093 of the Health and Safety Code, or subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code or comparable federal statutes.”

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 very low or low income (50%-60% AMI), the protections under AB 1482 do not apply. However, CTCAC adopted changes to the regulations on April 3, 2024 establishing rent increase limits as referenced in the responses to Questions 6 and 7 on Page 3 of this memo. As previously stated, CTCAC published a guidance memorandum regarding the rent increase limit on the CTCAC website at:

https://www.treasurer.ca.gov/ctcac/2024/supplemental/2024/rent_increase.pdf

Q11: What is “gross rent”?

A11: 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 those residing at the property.

Q12: Can the property manager charge fees in addition to rent?

A12: There are both mandatory fees and optional fees. Mandatory fees are required by management in addition to the lease that 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.