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DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF STATE FINANCIAL ASSISTANCE
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GAVIN NEWSOM, Governor

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MEMORANDUM FOR: Sponsors, Borrowers and Management Agents of Rental Projects

FROM: Jennifer Seeger, Deputy Director
Division of State Financial Assistance

Lindy Suggs, Branch Chief
Asset Management and Compliance

ADMINISTRATIVE NOTICE: Notice Number: DSFA 25-06

SUBJECT: Rent Increase Limit Policy and Waiver (Assembly Bill 846)

Administrative Notice: This Administrative Notice establishes a formal written notification of administrative guidelines and policies that affect the operation of Department financing programs. This format is used to identify, clarify, and record administrative guidelines and interpretations of public interest.

This Administrative Notice ("Notice") sets forth and establishes the Department's Rent Increase Limit Waiver Policy applicable to rental housing developments based on Health and Safety Code Rents. This Notice provides guidance to Sponsors, Borrowers, and Management Agents on

1. rent limit standards established in accordance with [Assembly Bill 846](#) (Chapter 674, Statutes 2024); and
2. process for requesting rent increase limit waivers, including submission requirements and evaluation criteria.

For questions related to the applicability of rent increase limits for your project, please submit any inquiries to your assigned AMC Occupancy Representative and/or the AMC Branch general inbox: AMCBranch@hcd.ca.gov.

Background

Signed by the Governor in September 2024, AB 846 amended the California Health and Safety Code, effective January 1, 2025, to strengthen rent protections in certain rental housing developments, ensuring that affordable housing remains accessible to low-income tenants.

Description of Guideline/Regulatory Change

On December 11, 2024, the California Tax Credit Allocation Committee (CTCAC) adopted regulations to limit annual rent increases for rental housing developments receiving an allocation of housing tax credits. CTCAC administers both federal and state Low Income Housing Tax Credit (LIHTC) programs, which are key funding sources for many HCD rental housing developments. CTCAC was required to adopt regulations limiting annual rent increases for tenants in properties that received an allocation of low-income housing tax credit, prior to April 3, 2024. Additionally, AB 846 requires CTCAC to annually adopt regulations to assess annual rent increases by June 30th each year.

Given the collaborative relationship between CTCAC and HCD, these programs are closely aligned to streamline financing and compliance for rental housing developments funded with tax credits and Multifamily Housing Programs (MHP) loans. Following CTCAC's recent guidance on rent increase limit waivers, HCD is hereby adopting a similar process to promote consistency in monitoring processes for rental housing developments co-funded by HCD and CTCAC.

Applicability

AB 846 adds Health and Safety Code section 50199.25 to impose a rent increase limit for LIHTC projects awarded before April 3, 2024, pursuant to CTCAC adopted regulations. (See Section 10336 of Title 4, Division 17, Chapter 1 of the California Code of Regulations.) Such limits would also be applicable to:

- Certain HCD projects required to operate under CTCAC rent limits, regardless of whether CTCAC credits are applicable, such as projects utilizing HCD's MHP Guidelines as a basis for their regulation.

Projects funded by HCD legacy programs without a CTCAC regulatory agreement are not subject to the policies outlined in this Administrative Notice, unless otherwise specified in the applicable HCD Regulatory Agreement.

AB 846 also amends Health and Safety Code section 50053 to establish a new "affordable rent" limit applicable to rental housing developments that meet the following conditions:

- at least 80 percent of units dedicated to lower-income households, and
- awarded federal or state low-income housing tax credits, tax-exempt private activity or general obligation bonds, or local, state, or federal loans or grants on or after January 1, 2025. (See Health and Safety Code section 50053).

For qualifying rental housing developments that meet the above criteria, annual rent increases are effectively limited in accordance with applicable CTCAC regulations and published rent and income limits. Such awards would trigger new deed restrictions, covenants and/or regulatory agreements. The new rent limits become effective upon recording of the first new deed restriction, covenant and/or regulatory agreement. The CTCAC rent requirements supersede the rent methodology in Health and Safety Code section 50093, as may be specified in prior deed restrictions, covenants and/or regulatory

agreements. Such provisions also apply to all income-restricted developments meeting the above criteria and which utilize the rent methodology in Health and Safety Code section 50093.

As of the release date of this Administrative Notice, the Department is implementing this Rent Increase Limit ("Rent Cap") and Waiver policy on applicable projects, pursuant to Health and Safety Code section 50199.25.

Policy Requirements

Rent Increase Limit Standard

Under the Rent Cap, Sponsors, Borrowers and Management Agents may increase gross rent for a low-income household provided that in any 12-month period the increase does not exceed the lesser of five (5) percent plus the percentage increase in the cost of living¹ or ten (10) percent of the lowest rental rate charged for that household at any time during the twelve (12) months prior to the effective date of the increase².

The cost of living is measured by using the Consumer Price Index (CPI) information which is published by either using the United States Bureau of Labor Statistics or the California Department of Industrial Relations. The determination is dependent on the area or county in which the project is located.

Rent Caps may be exceeded without a waiver in the following circumstances:

- To increase the gross rent up to 30 percent of the monthly income of the household occupying the unit;
- For projects with terminated project-based rental assistance or operating subsidies, as described in the Regulatory Agreement between the Department and the Sponsor; or
- 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, as required by any applicable funding regulations or deed restrictions.

While a waiver request is not required, the Sponsor shall submit the Schedule of Rental Income (SRI) for the circumstances outlined above to HCD for review and approval. Upon the termination of any project-based assistance and/or operating subsidies, the Sponsor shall submit a written notice to HCD. Exceeding the Rent Cap under any other circumstance requires a waiver from the Asset Management and Compliance (AMC) Branch Chief or designee.

Rent Increase Limit Waiver

Rent increase limit waivers may be granted to maintain financial feasibility, support property rehabilitation or capital improvements, adjust to changes in funding structures, and/or align with other regulatory requirements.

¹ As defined in paragraph (3) of subdivision (g) of Section 1947.12 of the Civil Code

² CTCAC Regulation Section [Proposed]

Rent Increase Limit Waiver Requests – Deference to CTCAC

If a rent increase limit waiver request is submitted to CTCAC for a development funded by both CTCAC and HCD, a separate waiver request to HCD is not required. HCD will defer to CTCAC's determination. If approved by CTCAC, the written waiver approval from CTCAC along with the SRI must be submitted to HCD.

Rent Increase Limit Waiver Requests to the Department

Sponsors, Borrowers and Management Agents must comply with the following:

1. Notify tenants of their intent to request a rent increase limit waiver at least thirty (30) calendar days before submitting the waiver request. The notice must inform tenants of their right to submit comments to HCD at AMCBranch@hcd.ca.gov with the subject heading "Rent Increase Limit Waiver Comments – (Insert Name of the Development)"; and
2. Submit the waiver request no more than once every 12 months, and no later than the due date of the SRI to the AMC Branch Chief or designee at AMCBranch@hcd.ca.gov.

To initiate the waiver request, emails must be sent to AMCBranch@hcd.ca.gov with the following information:

1. **Narrative:** An explanation justifying the rent increase waiver request, including a) the project's financial stability, b) project's current fiscal integrity, c) potential future risks to fiscal integrity, d) impact of the proposed rent increase on tenants, e) how additional rental income will support capital needs, and f) any unique circumstances (i.e. habitability issues, increased staffing costs, increased insurance premiums, damage from natural disasters, unforeseen situations, etc.) supporting the waiver request, if applicable.
2. **Other Supporting Documentation:** Any additional relevant information to support the waiver request, such as habitability concerns, increased insurance premiums, damage from natural disasters, etc.
3. **Certification by the Sponsors:** Acknowledgement from the sponsors that tenants were notified in a timely manner about the intent to request a rent increase limit waiver, along with a copy of the notice provided to the tenants.

Evaluation Criteria

Upon reviewing the waiver request, the AMC Branch Chief or designee may approve a Rent Cap waiver if the applicant demonstrates, to HCD's satisfaction, in its Rent Increase Limit Waiver Request documentation that the proposed increase is necessary to maintain the project's financial stability or fiscal integrity and does not significantly impact existing residents (further details are provided below).

- *Financial stability* refers to the project's overall financial health, including how past financial decisions impact the project's current fiscal integrity and how projected needs may impact the project's future fiscal integrity.
- *Fiscal integrity* is determined when the project's total operating income, along with funds from the operating reserve, are sufficient to cover all current operating expenses, debt service (excluding deferred interest), reserve accounts (except the operating reserve), and other costs permitted by the HCD Regulatory Agreement. This evaluation does not consider the ability to pay any permitted annual distributions.

- *Impact on residents* is reflected through the vacancy rates and rent burden analysis. A household is considered rent burdened if they spend 30% or more of their income on housing costs and severely rent burdened if they spend more than 50%.

To determine the need for the proposed rent limit increase, the AMC Branch Chief or designee shall evaluate the waiver request based on the following factors:

1. **Narrative:** A brief narrative explaining the request, reasoning and supporting documentation.
2. **Rent Comparison:** A comparison of the request to the maximum allowable program rent.
3. **Fiscal Integrity:** The project's fiscal integrity, including past, current, and future financial stability.
4. **Cash Flow Analysis:** A review of cash flow trends, including cash flow before obligations.
5. **Current Rents and Utilities:** A review of current rents, utility allowances, subsidy information and household income.
6. **Vacancy History:** A review of the property's vacancy rate history and extended unit vacancies.
7. **Occupancy Rate:** An assessment of whether the project can maintain an occupancy rate of 97% or higher for over 12 months, or if the proposed rental increase will have minimal impact on vacancy rates.
8. **Reserves:** An assessment of project resources, including operating and replacement reserves.
9. **Negative Points Assessment:** A review of any unresolved issues to ensure compliance with applicable funding regulations.
10. **Annual Reporting Requirements:** A review of the project's submission of required HCD reports, including the Combined Operating Budget, Schedules of Rental Income, Annual Reports, Audited Financial Statements, Required Insurance Certificates, Reserve Withdrawal Requests and any other required program reports.
11. **Cost Burden:** An analysis of how many tenants may become cost burdened or severely cost burdened by the proposed rent increase.
12. **Impact on Existing Residents:** An evaluation of the percentage of residents considered rent burdened (over 30% of income towards housing costs).
13. **Other Supporting Documentation:** HCD also reserves the right to request additional information on a case-by-case basis to ensure the financial integrity of the project.

The AMC Branch Chief or designee may consider any other factors relevant to the waiver request. However, no waiver may be approved that exceeds the maximum allowable program rents.

Waiver Determination

The AMC Branch Chief or designee shall issue a decision within thirty (30) business days of receiving the waiver request. If clarification or additional information is required, the Sponsor shall be notified of any timeline extensions.

If HCD determines a project has impermissibly increased rents above allowable limits, it may, at its sole discretion, require the Sponsor to refund the excess rent collected by the project to the tenants. Proof of rent credits or refunds is required, and the Sponsor will be subject to [HCD's Negative Points Policy](#).

Appeal Process

If the Sponsor, Borrower and Management Agent submits a rent limit waiver request and is denied, HCD will send a notification in writing. The notification shall include the reason for the determination, and instructions for submitting an appeal. Written appeals must be submitted to the Director or his/her/their designee. The Director or his/her/their designee shall communicate the disposition of the written appeal in writing to the Sponsor, Borrower and Management Agents. This disposition shall be final and may only be overturned by the Director of the Department or their delegated Authority.