

March 15, 2024

Assemblymember Mia Bona  
1021 O Street, Suite 5620  
Sacramento, CA 95814

**Re: Tenant Rights Groups Oppose AB 846 Unless Amended**

Dear Assemblymember Bonta:

We write with concern about Assembly Bill 846 (Low income housing credit: rent increases). As community organizations, tenant rights advocates, and attorneys who represent low-income tenants, we appreciate your attempt to protect tenants but believe there are misconceptions about what this bill would accomplish. Instead of limiting rent increases to no more than 30 percent of household income, it would grant private investors permission to impose abusively high rent increases that they would otherwise not consider.

The bill provides a framework by which high rent increases can be imposed on low income tenants in housing subject to the Low Income Housing Tax Credit (LIHTC). It does not fix the main issue currently facing LIHTC tenants, which is corporate investor-driven increases designed to force low-income tenants into paying far more than 30 percent of their income in rent. This bill can easily be amended to create a rent limit of 30 percent of income--at which point it would have our support.

**I. Background**

The Low Income Housing Tax Credit, or LIHTC, has been the main government program for affordable housing units in the United States since the 1980s—replacing public housing and other federal subsidized programs. LIHTC is less government-regulated than other programs and the buildings are often run by for-profit companies. LIHTC landlords in California receive millions in federal tax credits intended to allow them to provide affordable housing to tenants.

However, LIHTC rents do not depend on an individual tenant's household income. A tenant household must income qualify for the housing, but unlike other models of affordable housing, like public housing, rents do not depend on individual household income. Rather, in LIHTC housing there is a maximum rent for each unit size, referred to as the maximum gross rent limit. This maximum rent comes from the AMI calculated by the federal Department of Housing and Urban Development and can increase from year to year. This limit is often high relative to market rents. The maximum rent limit is not a percent limit for yearly rent increases—it is solely a rent maximum.

As LIHTC properties are currently exempt from the Tenant Protection Act's rent gouging protections, tenants whose rents were previously below the maximum limit sometimes receive 30 or even 40 percent rent increases. These increases also result in many LIHTC tenants paying significantly more than 30 percent of their income in rent. Tenants who are unable to pay their rent are often evicted or otherwise forced to leave their homes.

There is currently no statewide percent increase limit for LIHTC units, which are exempt from the Tenant Protection Act. The reason that LIHTC units are not covered under the Tenant Protection Act rent cap limits is because of the assumption that affordable housing landlords would never increase rents that high. While many mission-driven nonprofits do ensure that rents are not raised higher than 30 percent of a tenant household's income, they are an increasingly smaller portion of LIHTC landlords: now roughly 20 percent statewide. The other 80 percent are corporate actors who own the majority of "affordable" housing in California.

In some cases, tenants in comparable rent-controlled units in the same city are paying rents below those of LIHTC tenants, without the accompanying federal tax credits to private investors. To ensure tenants are not worse off in "affordable" housing, some local jurisdictions have applied their rent control laws to LIHTC buildings to limit yearly rent increases.

## **II. What California Tenants are Doing About LIHTC Rent Increases**

Many California tenants have chosen to oppose large LIHTC rent increases driven by investors. In some situations, tenants have been able to force their landlords to rescind high rent increases or have passed local rent control ordinances that apply to LIHTC properties. This organizing has been successful at preventing abusive rent increases from taking effect. For example, tenants in the city of Antioch, California passed a rent control ordinance in 2022 that limits rent increases, including at LIHTC properties, to 60% CPI or 3%, whichever is lower.

Even where tenants are not winning these statutory protections, they are often protected by the shared belief that tenants in subsidized housing should not be paying more than 30 percent of their income in rent. In the face of high rent increases, many elected officials and housing departments around the state have stepped in to convince or even force the landlords rescind the increases.

Codifying the framework in AB 846 undermines these efforts and suggests that rent increases that bring rent to a level above 30 percent of a tenant's household income is not predatory behavior, but rather legally sanctioned.

### **III. Issues with the Proposed Solution**

AB 846 will not solve the problem of high LIHTC rent increases.

While AB 846 sets some rent increase limits, it also provides a way for landlords to circumvent them. In doing so, it codifies a framework that allows landlords to legally increase rents far beyond what low income tenants can afford, leaving them with little recourse.

AB 846 lets landlords choose which type of rent increase they want to give a tenant: either the same limits from the Tenant Protection Act (CPI + 5 percent, up to 10 percent) or up to 30 percent of the household income. This means that landlords are explicitly permitted to increase the rent up to ten percent in one year, even if a tenant is already paying more than 30% of their income. It also means that if the rent is already more affordable to the tenant household (less than 30 percent of income), the landlord can choose the other option and raise the rent above 10%. The landlord would get this choice every year, allowing them to increase rents up to the maximum amount possible. Either way, the tenant loses.

This means that a landlord could choose to raise the rent thirty percent one year, on grounds that the rent was below 30 percent of the household income. The next year, the rent could be increased a further 10 percent without even considering the tenant's income. Low income tenants, many of whom live paycheck to paycheck or are on fixed incomes, cannot afford these amounts.

### **IV. How to Amend the Bill**

A better option would be a bill that limited rent increases to no more than a percent increase and also did not allow any tenant household to pay more than 30% of their income in rent. We believe that this is what some current supporters of the bill erroneously believe AB 846 provides.

We would support AB 846 if it included this amendment. Attached is a redline version which would include this change.

### **V. Conclusion**

Bad policy begets bad policy. The AB 846 language has now been mirrored in a proposed rule change by the California Tax Credit Allocation Committee (CTCAC) that would apply its language specifically to projects seeking approval for ownership or tax credit transfers. Although CTCAC is charged with overseeing a program intended to create affordable housing for low-income California tenants, the proposed rule would instead codify abusive practices by bad actors that result in unaffordable housing.

We write not as organizations who believe that every housing bill will provide a perfect solution to the housing affordability crisis. Rather, we feel that we cannot afford to codify solutions into law that would grant permission to bad actors to raise the rents by amounts that the State of California otherwise considers “rent gouging.” (Cal. Civ. Code, § 1947.12 subd. (m).) Low income tenants in affordable housing should never be paying more than 30 percent of their income in rent. We cannot support a bill that codifies corporations’ right to “rent gouge” these tenants at the taxpayers’ expense.

Sincerely,

SECTION 1. Section 50199.24 is added to the Health and Safety Code, immediately following Section 50199.23, to read:

50199.24. (a) For the purposes of this section, “percentage change in the cost of living” means the same as in paragraph (3) of subdivision (g) of Section 1947.12 of the Civil Code.

(b) An owner of a project that received an allocation of housing credit pursuant to this chapter or Section 12206, 17058, or 23610.5 of the Revenue and Taxation Code and that is subject to a regulatory agreement shall not, over the course of any 12-month period, increase rent for a unit more than the lesser of the following:

(1) The amount permitted by this chapter as a result of an increase in the area median gross income.

(2) Five percent plus the percentage change in the cost of living.

(3) Ten percent of the lowest rental rate charged for that unit at any time during the 12 months prior to the effective date of the increase.

(c) Notwithstanding subdivision (b), an owner of a project may not increase the rent up to or require a household to pay a rent amount greater than 30 percent of the monthly income of the household occupying the unit.

(d) This section shall not apply when the committee or the department allows for a rent increase ~~due to the termination or exhaustion of project-based rental assistance or operating subsidy or~~ to ensure financial stability, as determined by the committee, or fiscal integrity, as determined by the department.

~~(e)~~(d) Nothing in this section authorizes a local government to establish limitations on any rental rate increases not otherwise permissible under Chapter 2.7 (commencing with Section 1954.50) of Title 5 of Part 4 of Division 3 of the Civil Code, or affects the existing authority of a local government to adopt or maintain rent controls or price controls consistent with that chapter.