



March 18, 2024

**Anthony Zeto, Deputy Executive Director  
California Tax Credit Allocation Committee  
901 P Street, Suite 213A  
Sacramento, CA 95814**

**Re: Comments on the Proposed Regulation Change to Section 10328(a)(4): Limiting Rent Increases**

Dear Mr. Zeto:

On behalf of the members of the Novogradac's Income Limits Working Group (the Working Group), we appreciate the opportunity to comment on the proposed regulation change to Section 10328(a)(4): Limiting rent increases (Proposed Regulations). The members of the Working Group are stakeholders in the affordable housing community who work together to help resolve technical issues involving HUD's income limit policies as well as other income and rent limit issues impacting the affordable housing industry. The Working Group is comprised of nonprofit and for-profit developers, syndicators, investors, lenders, lawyers and other affordable housing professionals.

The members of the Working Group are keenly aware of the large increases in income and rent limits over the last few years and understand the impact increased rents have on existing tenants in LIHTC properties. Working Group members are encouraged to not always increase to max rents without first examining their tenant population and operational needs. However, the Working Group is opposed to the Proposed Regulation change for following reasons:

- Beginning with Income Limits for FY 2024 HUD has implemented a ceiling on income limit growth that already achieves the goals of the Proposed Regulation change without the additional administrative burden of the Proposed Regulations
- The current proposal is administratively burdensome and does not contain sufficient guidance for owners properly to implement the new rent cap
- Economic studies have found that rent control leads to less affordable housing

**HUD's Cap On Increases Already Address the Issue**

HUD, who oversees the income limits for Section 8 and LIHTC, has been sensitive to the large income limit increases we have seen over the last few years. In response to this, they have refined and expanded their methodology<sup>1</sup> for capping income limit increases starting with the limits that will be published for FY2024 in April. While HUD does not publish rent limits, under Internal Revenue Code (IRC) section 42 – the rent limit for LIHTC properties is directly tied to the HUD published income limits.

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<sup>1</sup> <https://www.federalregister.gov/documents/2024/01/10/2024-00279/changes-to-the-methodology-used-for-calculating-section-8-income-limits-under-the-united-states>



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The HUD cap on year over year income limit (and rent limit) increases is greater of 5% or two times the change in national median income – with a ceiling of 10%. Although slightly different than the Proposed Regulation changes it mirrors the intent of the Proposed Regulation. It will not allow an area to have an increase of greater than 10% in any given year – and in years when national median income growth is slower than 5% the cap will be even lower. The main difference is that instead of looking at CPI it looks at the change in national median income.

Comparing the caps under the HUD method and the Proposed Regulation for the last three years shows that the HUD method has been lower than the method under Proposed Regulations except for 2022. However, under HUD’s new methodology the HUD cap for 2022 would have been the same as the Proposed Regulations. In addition, excluding three areas in 2022 (which under the HUD new rules would have been equal to the Proposed Regulation) the HUD published increase in income and rent limits was less than the proposed TCAC cap.

	2021			2022				2023		
	TCAC Proposal	HUD CAP - Actual	Actual HUD Income Limit Change for Area	TCAC Proposal	HUD CAP - Actual	HUD CAP - Using New Methodology	Actual HUD Income Limit Change for Area	TCAC Proposal	HUD CAP - Actual	Actual HUD Income Limit Change For Area
Los Angeles	8.60%	5.00%	4.97%	10.00%	11.89%	10.00%	0.76%	9.20%	5.92%	5.88%
Orange	8.60%	5.00%	5.00%	10.00%	11.89%	10.00%	0.74%	8.80%	5.92%	5.90%
Riverside	8.60%	5.00%	4.91%	10.00%	11.89%	10.00%	11.39%	9.60%	5.92%	5.91%
San Bernadino	8.60%	5.00%	4.91%	10.00%	11.89%	10.00%	11.39%	9.60%	5.92%	5.91%
San Diego	9.10%	5.00%	4.94%	10.00%	11.89%	10.00%	7.34%	10.00%	5.92%	5.92%
San Francisco	8.80%	5.00%	5.00%	10.00%	11.89%	10.00%	2.03%	9.20%	5.92%	-0.32%
Santa Clara	9.00%	5.00%	4.94%	10.00%	11.89%	10.00%	1.69%	9.20%	5.92%	5.88%
Ventura	9.00%	5.00%	-0.71%	10.00%	11.89%	10.00%	11.86%	8.80%	5.92%	5.90%

The HUD cap accomplishes the same goal as the TCAC cap, is already implemented for 2024 and is easier for property managers and TCAC staff to implement as HUD will do the calculation and publish the limits. There is no need for TCAC to implement a confusing rule that will cause additional time, money and effort to implement when HUD has already implemented a cap that achieves the same goal.

**Administratively Burdensome**

LIHTC property management and compliance is already very complicated and inside of this complying with the rent and income limits is very technically complicated. To add a rent cap that is applied on a unit-by-unit basis will make compliance with the rules administratively burdensome not just for property managers but for TCAC compliance inspectors. As opposed to tracking rent and income limits for the various set-asides in the property, owners would need to track increases for each unit. Many property managers are dependent on software to assist with navigating the rent labyrinth and the software will not be equipped to handle this additional

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complexity.

If TCAC decides to go forward with the Proposed Regulations, there are many technical questions that are not addressed in the regulations such as:

- The Proposed Regulations appear to apply increases to a low-income unit and not to the household occupying the units. The Proposed Regulations state “rents in a Low-Income Unit...”
  - If the limit is truly unit based and not tenant based, the Proposed Regulations do not address how to handle changes in designations in average income properties.
  - If the limit is truly unit based and not tenant based, the Proposed Regulations do not address how to handle tenants who request a unit transfer.
  - The Proposed Regulations do not address how to handle vacant units.
- The Proposed Regulations does not provide adequate guidance on what is rent – is it gross rent as defined under IRC sect. 42(g)(2) or tenant paid rent?
  - The Proposed Regulations do not address how changes in utility allowances are handled in the cap.
  - The Proposed Regulations do not address if a tenant is receiving rental assistance under other state or local programs and if that assistance is included in rent.
    - If the rental assistance received by the owner increases by more than the limit, but the tenant paid portion stays the same, is that allowable?
    - Does the source of the rental assistance matter? For example, the definition of gross rent does not include Section 8 and other similar rental assistance, but has separate rules for USDA rental assistance and does not exclude assistance under HOPWA and other state and local programs
    - If the rental assistance is not specifically excluded from gross rent under IRC sect. 42(g), how is that handled?

As illustrated above, the Proposed Regulations need more time to be duly understood, studied, and documented so that owners can avoid non-compliance with the rules. As the Proposed Regulations are currently written it is hard to even provide a comment on how it will impact the industry because it is difficult to understand how it will mechanically work. Additionally, there may be unintended consequences of the implementation – if the limit is on rent increases – owners will be incentivized to always keep the rent limits at the max. In 2020 and 2022 when there were large increases in rents, many owners phased in the increases over time. However, under the Proposed Regulations – owners will feel compelled to raise to the maximum allowed because if they do not increase to the max they will lose that increase in future years.

### **Rent Control is an Ineffective Public Policy**

Rent control has been proven to be an ineffective public policy. An article from the National; Multifamily

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Housing Council (NMHC) does a good job of summarizing the research and harm caused by rent control.<sup>2</sup> Rent control caused harm to all three parties involved in the proposed rent control – it will result in substantial administrative costs to TCAC and property owners, reduced mobility to tenants as even moving to a similar affordable unit may result in an increase in their rents, reduced operating revenue for property owners. It has also been shown that rent control can result in owners choosing to leave the LIHTC program when the regulatory agreement expires.

Due to the issues pointed out in the above and in the full article from NMHC, the Proposed Regulations will make it harder for developers to sell properties at the end of the compliance period. It may also result in owners eschewing resyndication in favor of letting the extended use period expire, which over time could result in less available affordable housing. Also, as less owners choose resyndicate properties it can lead to a deterioration of the quality of affordable housing units.

### **Monitoring Compliance With Requirement**

The Proposed Regulations will create a whole new compliance regime for TCAC compliance staff to monitor and property owners to implement. As mentioned before many owners are dependent on third party software to manage rent compliance with the various regulatory agreements. The software will not be equipped to handle the level of complexity included in the Proposed Regulations. In addition, TCAC staff will need write/update compliance manuals or other guidance to address how the implementation should be handled. As noted above – there are many questions unanswered in the Proposed Regulations that will have to be settled before owners can comply with the Proposed Regulations and TCAC staff can monitor for the Proposed Regulations. We would suggest allowing more time for study and robust conversations about how the Proposed Regulations would be implemented before adopting the rules. Adopting the rules without further discussion and input will result in a rule that is not well understood and may not work within the already heavily regulated rent environment for affordable housing projects in CA.

### **Other Factors to Consider**

LIHTC owners are facing unprecedented increases in insurance, ndp | analytics conducted a survey of housing providers that found that “Affordable housing providers are experiencing higher premiums across multiple lines of insurance. For 2022-23 policy renewals, 29% of housing providers experienced premium increases of 25% or more compared to 17% in the prior year.”<sup>3</sup>

In addition, although inflation has slowed down, owners are struggling to catch up on deferred maintenance that was foregone due to increased costs.

Owners are facing strong economic pressures that are making it more difficult to finance and build affordable housing. Adding another regulation that makes it difficult to understand, underwrite and manage rent at a project, when the Proposed Regulation does not achieve significantly different results than the current rules implemented by HUD does not make long-term sense.

Although the Proposed Regulations include a clause to waive the requirement to ensure financial stability there

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<sup>2</sup> <https://www.nmhc.org/news/articles/the-high-cost-of-rent-control/>

<sup>3</sup> <https://ndpanalytics.com/wp-content/uploads/NDP-NLHA-Housing-Provider-Insurance-Costs-Report-Oct-2023-final.pdf>

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is concern among Working Group members that there is no guidance on what this means and how onerous the approval process will be.

### **Conclusion**

We thank you for your time in reviewing this comment letter. As we have outlined, the Proposed Regulations are not needed as HUD ha already addressed the issue. In addition, the Proposed Regulations as currently written do not provide enough guidance for owners to be able to implement the new rules or provide adequate feedback on the impact of the new rules.

Yours very truly, Novogradac  
& Company LLP



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