

115TH CONGRESS
2D SESSION

S.

To amend the Internal Revenue Code of 1986 to provide a credit for middle-income housing, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Internal Revenue Code of 1986 to provide a credit for middle-income housing, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Middle-Income Hous-
5 ing Tax Credit Act of 2018”.

6 **SEC. 2. SENSE OF THE SENATE RELATING TO THE LOW-IN-**
7 **COME HOUSING TAX CREDIT.**

8 (a) **FINDINGS.**—The Senate makes the following
9 findings:

1 (1) The low-income housing tax credit under
2 section 42 of the Internal Revenue Code of 1986 is
3 one of the Federal Government's primary policy
4 tools for encouraging the development and rehabili-
5 tation of affordable rental housing.

6 (2) Since 1986, when the low-income housing
7 tax credit was first enacted, the credit has financed
8 about 3,000,000 affordable homes in the United
9 States for roughly 7,000,000 households. In Oregon,
10 the program has financed nearly 40,000 affordable
11 homes, providing housing to over 92,000 low-income
12 households.

13 (3) While the low-income housing tax credit has
14 been remarkably successful, the Nation still faces an
15 affordable housing crisis. Today, more than 1 in 4
16 renter households in the United States—roughly
17 11,100,000—spend more than half of their income
18 on rent, leaving too little for other necessities like
19 food, medical care, and transportation. Meanwhile,
20 only 1 in 4 eligible low-income households receives
21 any housing assistance, and we continue to lose af-
22 fordable housing from our Nation's stock. In Or-
23 egon, a minimum wage worker has to work 72 hours
24 per week to afford a modest one-bedroom apartment.

1 (4) In Oregon, where housing affordability is an
2 acute problem, demand for low-income housing tax
3 credits exceeds supply by more than 2 to 1.

4 (5) In March of 2017, the Affordable Housing
5 Credit Improvement Act of 2017 was introduced to
6 expand the supply of greatly needed affordable hous-
7 ing. Among other provisions, the Affordable Housing
8 Credit Improvement Act of 2017 would strengthen
9 the low income housing tax credit by increasing the
10 annual per capita credit allocation and small State
11 minimum by 50 percent, phased in over 5 years. In
12 March 2018, several provisions of the Affordable
13 Housing Credit Improvement Act of 2017 were en-
14 acted as part of the Consolidated Appropriations
15 Act, 2018 (Public Law 115-141).

16 (b) SENSE OF THE SENATE.—It is the sense of the
17 Senate that—

18 (1) the low-income housing tax credit under
19 section 42 of the Internal Revenue Code of 1986 is
20 a critically important Federal Government policy
21 tool to encourage the production of affordable hous-
22 ing for low-income families; and

23 (2) Congress should further improve and en-
24 hance the low-income housing tax credit by passing

1 the remaining provisions of the Affordable Housing
2 Credit Improvement Act of 2017.

3 **SEC. 3. MIDDLE-INCOME HOUSING TAX CREDIT.**

4 (a) **IN GENERAL.**—Subpart D of part IV of sub-
5 chapter A of chapter 1 of the Internal Revenue Code of
6 1986 is amended by inserting after section 42 the fol-
7 lowing new section:

8 **“SEC. 42A. MIDDLE-INCOME HOUSING CREDIT.**

9 **“(a) IN GENERAL.**—For purposes of section 38, the
10 amount of the middle-income housing credit determined
11 under this section for any taxable year in the credit period
12 shall be an amount equal to—

13 “(1) the applicable percentage of

14 “(2) the qualified basis of each qualified mid-
15 dle-income building.

16 **“(b) APPLICABLE PERCENTAGE.**—

17 **“(1) DETERMINATION OF APPLICABLE PER-**
18 **CENTAGE.**—For purposes of this section—

19 **“(A) IN GENERAL.**—The term ‘applicable
20 percentage’ means, with respect to any building,
21 the appropriate percentage prescribed by the
22 Secretary for the earlier of—

23 **“(i) the month in which such building**
24 **is placed in service, or**

1 “(ii) at the election of the taxpayer,
2 the month in which the taxpayer and the
3 housing credit agency enter into an agree-
4 ment with respect to such building (which
5 is binding on such agency, the taxpayer,
6 and all successors in interest) as to the
7 housing credit dollar amount to be allo-
8 cated to such building.

9 A month may be elected under clause (ii) only
10 if the election is made not later than the 5th
11 day after the close of such month. Such an elec-
12 tion, once made, shall be irrevocable.

13 “(B) METHOD OF PRESCRIBING PERCENT-
14 AGES.—The percentages prescribed by the Sec-
15 retary for any month shall be percentages which
16 will yield over a 15-year period amounts of
17 credit under subsection (a) which have a
18 present value equal to 50 percent of the quali-
19 fied basis of a new building.

20 “(C) METHOD OF DISCOUNTING.—The
21 present value under subparagraph (B) shall be
22 determined—

23 “(i) as of the last day of the 1st year
24 of the 15-year period referred to in sub-
25 paragraph (B),

1 “(ii) by using a discount rate equal to
2 72 percent of the average of the annual
3 Federal mid-term rate and the annual
4 Federal long-term rate applicable under
5 section 1274(d)(1) to the month applicable
6 under clause (i) or (ii) of subparagraph
7 (A) and compounded annually, and

8 “(iii) by assuming that the credit al-
9 lowable under this section for any year is
10 received on the last day of such year.

11 “(2) MINIMUM CREDIT RATE.—The applicable
12 percentage for any building shall not be less than 5
13 percent.

14 “(3) CROSS REFERENCES.—

15 “(A) For treatment of certain rehabilita-
16 tion expenditures as separate new buildings, see
17 subsection (e).

18 “(B) For determination of applicable per-
19 centage for increases in qualified basis after the
20 1st year of the credit period, see subsection
21 (f)(3).

22 “(C) For authority of housing credit agen-
23 cy to limit applicable percentage and qualified
24 basis which may be taken into account under

1 this section with respect to any building, see
2 subsection (h)(6).

3 “(c) QUALIFIED BASIS; QUALIFIED MIDDLE-INCOME
4 BUILDING.—For purposes of this section—

5 “(1) QUALIFIED BASIS.—

6 “(A) DETERMINATION.—The qualified
7 basis of any qualified middle-income building
8 for any taxable year is an amount equal to—

9 “(i) the applicable fraction (deter-
10 mined as of the close of such taxable year)
11 of

12 “(ii) the eligible basis of such building
13 (determined under subsection (d)).

14 “(B) APPLICABLE FRACTION.—For pur-
15 poses of subparagraph (A), the term ‘applicable
16 fraction’ means the smaller of the unit fraction
17 or the floor space fraction.

18 “(C) UNIT FRACTION.—For purposes of
19 subparagraph (B), the term ‘unit fraction’
20 means the fraction—

21 “(i) the numerator of which is the
22 number of middle-income units in the
23 building, and

1 “(ii) the denominator of which is the
2 number of residential rental units (whether
3 or not occupied) in such building.

4 “(D) FLOOR SPACE FRACTION.—For pur-
5 poses of subparagraph (B), the term ‘floor
6 space fraction’ means the fraction—

7 “(i) the numerator of which is the
8 total floor space of the middle-income units
9 in such building, and

10 “(ii) the denominator of which is the
11 total floor space of the residential rental
12 units (whether or not occupied) in such
13 building.

14 “(2) QUALIFIED MIDDLE-INCOME BUILDING.—
15 The term ‘qualified middle-income building’ means
16 any building which is part of a qualified middle-in-
17 come housing project at all times during the pe-
18 riod—

19 “(A) beginning on the 1st day in the credit
20 period on which such building is part of such a
21 project, and

22 “(B) ending on the last day of the credit
23 period with respect to such building.

24 “(d) ELIGIBLE BASIS.—For purposes of this sec-
25 tion—

1 “(1) NEW BUILDINGS.—The eligible basis of a
2 new building is its adjusted basis as of the close of
3 the 1st taxable year of the credit period.

4 “(2) EXISTING BUILDINGS.—

5 “(A) IN GENERAL.—The eligible basis of
6 an existing building is—

7 “(i) in the case of a building which
8 meets the requirements of subparagraph
9 (B), its adjusted basis as of the close of
10 the 1st taxable year of the credit period,
11 and

12 “(ii) zero in any other case.

13 “(B) REQUIREMENTS.—A building meets
14 the requirements of this subparagraph if—

15 “(i) the building is acquired by purchase
16 (as defined in section 179(d)(2)),

17 “(ii) there is a period of at least 10
18 years between the date of its acquisition by
19 the taxpayer and the date the building was
20 last placed in service,

21 “(iii) the building was not previously
22 placed in service by the taxpayer or by any
23 person who was a related person with respect
24 to the taxpayer as of the time previously
25 placed in service, and

1 “(iv) except as provided in subsection
2 (f)(5), a credit is allowable under sub-
3 section (a) by reason of subsection (e) with
4 respect to the building.

5 “(C) ADJUSTED BASIS.—For purposes of
6 subparagraph (A), the adjusted basis of any
7 building shall not include so much of the basis
8 of such building as is determined by reference
9 to the basis of other property held at any time
10 by the person acquiring the building.

11 “(D) SPECIAL RULES.—

12 “(i) SPECIAL RULES FOR CERTAIN
13 TRANSFERS.—For purposes of determining
14 under subparagraph (B)(ii) when a build-
15 ing was last placed in service, there shall
16 not be taken into account any placement in
17 service—

18 “(I) in connection with the acqui-
19 sition of the building in a transaction
20 in which the basis of the building in
21 the hands of the person acquiring it is
22 determined in whole or in part by ref-
23 erence to the adjusted basis of such
24 building in the hands of the person
25 from whom acquired,

11

1 “(II) by a person whose basis in
2 such building is determined under sec-
3 tion 1014(a) (relating to property ac-
4 quired from a decedent),

5 “(III) by any governmental unit
6 or qualified nonprofit organization if
7 the requirements of subparagraph
8 (B)(ii) are met with respect to the
9 placement in service by such unit or
10 organization and all the income from
11 such property is exempt from Federal
12 income taxation,

13 “(IV) by any person who ac-
14 quired such building by foreclosure
15 (or by instrument in lieu of fore-
16 closure) of any purchase-money secu-
17 rity interest held by such person if the
18 requirements of subparagraph (B)(ii)
19 are met with respect to the placement
20 in service by such person and such
21 building is resold within 12 months
22 after the date such building is placed
23 in service by such person after such
24 foreclosure, or

1

1 “(V) of a single-family residence
2 by any individual who owned and used
3 such residence for no other purpose
4 than as his principal residence.

5 “(ii) RELATED PERSON.—For pur-
6 poses of subparagraph (B)(iii), a person
7 (hereinafter in this subclause referred to as
8 the ‘related person’) is related to any per-
9 son if the related person bears a relation-
10 ship to such person specified in section
11 267(b) or 707(b)(1), or the related person
12 and such person are engaged in trades or
13 businesses under common control (within
14 the meaning of subsections (a) and (b) of
15 section 52).

16 “(3) SPECIAL RULES RELATING TO DETER-
17 MINATION OF ADJUSTED BASIS.—For purposes of
18 this subsection—

19 “(A) IN GENERAL.—Except as provided in
20 subparagraph (B), the adjusted basis of any
21 building shall be determined without regard to
22 the adjusted basis of any property which is not
23 residential rental property.

24 “(B) BASIS OF PROPERTY IN COMMON
25 AREAS, ETC., INCLUDED.—

13

1 “(i) IN GENERAL.—Except as pro-
2 vided in clause (ii), the adjusted basis of
3 any building shall be determined by taking
4 into account the adjusted basis of property
5 (of a character subject to the allowance for
6 depreciation) used in common areas or
7 provided as comparable amenities to all
8 residential rental units in such building.

9 “(ii) SPECIAL RULE.—In the case of
10 any building for which the low-income
11 housing tax credit is allowable under sec-
12 tion 42, the adjusted basis of the building
13 under this section shall be determined
14 without regard to property used in com-
15 mon areas or provided as comparable
16 amenities to all residential rental units in
17 such building.

18 “(C) NO REDUCTION FOR DEPRECIA-
19 TION.—The adjusted basis of any building shall
20 be determined without regard to paragraphs (2)
21 and (3) of section 1016(a).

22 “(4) CREDIT ALLOWABLE FOR CERTAIN BUILD-
23 INGS ACQUIRED DURING 10-YEAR PERIOD DE-
24 SCRIBED IN PARAGRAPH (2)(B)(II).—On application
25 by the taxpayer, the Secretary may waive paragraph

1 (2)(B)(ii) with respect to any building acquired from
2 an insured depository institution in default (as de-
3 fined in section 3 of the Federal Deposit Insurance
4 Act) or from a receiver or conservator of such an in-
5 stitution.

6 “(5) ACQUISITION OF BUILDING BEFORE END
7 OF PRIOR CREDIT PERIOD.—

8 “(A) IN GENERAL.—Under regulations
9 prescribed by the Secretary, in the case of a
10 building described in subparagraph (B) (or in-
11 terest therein) which is acquired by the tax-
12 payer—

13 “(i) paragraph (2)(B) shall not apply,
14 but

15 “(ii) the credit allowable by reason of
16 subsection (a) to the taxpayer for any pe-
17 riod after such acquisition shall be equal to
18 the amount of credit which would have
19 been allowable under subsection (a) for
20 such period to the prior owner referred to
21 in subparagraph (B) had such owner not
22 disposed of the building.

23 “(B) DESCRIPTION OF BUILDING.—A
24 building is described in this subparagraph if—

15

1 “(i) a credit was allowed by reason of
2 subsection (a) to any prior owner of such
3 building, and

4 “(ii) the taxpayer acquired such build-
5 ing before the end of the credit period for
6 such building with respect to such prior
7 owner (determined without regard to any
8 disposition by such prior owner).

9 “(e) REHABILITATION EXPENDITURES TREATED AS
10 SEPARATE NEW BUILDING.—

11 “(1) IN GENERAL.—Rehabilitation expenditures
12 paid or incurred by the taxpayer with respect to any
13 building shall be treated for purposes of this section
14 as a separate new building.

15 “(2) REHABILITATION EXPENDITURES.—For
16 purposes of paragraph (1)—

17 “(A) IN GENERAL.—The term ‘rehabilita-
18 tion expenditures’ means amounts chargeable to
19 capital account and incurred for property (or
20 additions or improvements to property) of a
21 character subject to the allowance for deprecia-
22 tion in connection with the rehabilitation of a
23 building.

24 “(B) COST OF ACQUISITION, ETC., NOT IN-
25 CLUDED.—Such term does not include the cost

1 of acquiring any building (or interest therein)
2 or any amount not permitted to be taken into
3 account under paragraph (3) of subsection (d).

4 “(C) CERTAIN RELOCATION COSTS.—In
5 the case of a rehabilitation of a building to
6 which section 280B does not apply, costs relat-
7 ing to the relocation of occupants, including—

8 “(i) amounts paid to occupants,

9 “(ii) amounts paid to third parties for
10 services relating to such relocation, and

11 “(iii) amounts paid for temporary
12 housing for occupants,

13 shall be treated as chargeable to capital account
14 and taken into account as rehabilitation ex-
15 penditures.

16 “(3) MINIMUM EXPENDITURES TO QUALIFY.—

17 “(A) IN GENERAL.—Paragraph (1) shall
18 apply to rehabilitation expenditures with respect
19 to any building only if—

20 “(i) the expenditures are allocable to
21 1 or more middle-income units or substan-
22 tially benefit such units, and

23 “(ii) the amount of such expenditures
24 during any 24-month period meets the re-
25 quirements of whichever of the following

1 subclauses requires the greater amount of
2 such expenditures:

3 “(I) The requirement of this sub-
4 clause is met if such amount is not
5 less than 20 percent of the adjusted
6 basis of the building (determined as of
7 the 1st day of such period and with-
8 out regard to paragraphs (2) and (3)
9 of section 1016(a)).

10 “(II) The requirement of this
11 subclause is met if the qualified basis
12 attributable to such amount, when di-
13 vided by the number of middle-income
14 units in the building, is equal to or
15 greater than the dollar amount in ef-
16 fect under section 42(e)(3)(A)(ii)(II)
17 for the calendar year in which such
18 expenditures are treated as placed in
19 service under paragraph (4).

20 “(B) DATE OF DETERMINATION.—The de-
21 termination under subparagraph (A) shall be
22 made as of the close of the 1st taxable year in
23 the credit period with respect to such expendi-
24 tures.

1

1 “(4) SPECIAL RULES.—For purposes of apply-
2 ing this section with respect to expenditures which
3 are treated as a separate building by reason of this
4 subsection—

5 “(A) such expenditures shall be treated as
6 placed in service at the close of the 24-month
7 period referred to in paragraph (3)(A), and

8 “(B) the applicable fraction under sub-
9 section (c)(1) shall be the applicable fraction for
10 the building (without regard to paragraph (1))
11 with respect to which the expenditures were in-
12 curred.

13 Nothing in subsection (d)(2) shall prevent a credit
14 from being allowed by reason of this subsection.

15 “(5) NO DOUBLE COUNTING.—Rehabilitation
16 expenditures may, at the election of the taxpayer, be
17 taken into account under this subsection or sub-
18 section (d)(2)(A)(i) but not under both such sub-
19 sections.

20 “(6) REGULATIONS TO APPLY SUBSECTION
21 WITH RESPECT TO GROUP OF UNITS IN BUILDING.—
22 The Secretary may prescribe regulations, consistent
23 with the purposes of this subsection, treating a
24 group of units with respect to which rehabilitation

1 expenditures are incurred as a separate new build-
2 ing.

3 “(f) DEFINITION AND SPECIAL RULES RELATING TO
4 CREDIT PERIOD.—

5 “(1) CREDIT PERIOD DEFINED.—For purposes
6 of this section, the term ‘credit period’ means, with
7 respect to any building, the period of 15 taxable
8 years beginning with—

9 “(A) the taxable year in which the building
10 is placed in service, or

11 “(B) at the election of the taxpayer, the
12 succeeding taxable year,

13 but only if the building is a qualified middle-income
14 building as of the close of the 1st year of such pe-
15 riod. The election under subparagraph (B), once
16 made, shall be irrevocable.

17 “(2) SPECIAL RULE FOR 1ST YEAR OF CREDIT
18 PERIOD.—

19 “(A) IN GENERAL.—The credit allowable
20 under subsection (a) with respect to any build-
21 ing for the 1st taxable year of the credit period
22 shall be determined by substituting for the ap-
23 plicable fraction under subsection (c)(1) the
24 fraction—

1 “(i) the numerator of which is the
2 sum of the applicable fractions determined
3 under subsection (c)(1) as of the close of
4 each full month of such year during which
5 such building was in service, and

6 “(ii) the denominator of which is 12.

7 “(B) DISALLOWED 1ST YEAR CREDIT AL-
8 LOWED IN 16TH YEAR.—Any reduction by rea-
9 son of subparagraph (A) in the credit allowable
10 (without regard to subparagraph (A)) for the
11 1st taxable year of the credit period shall be al-
12 lowable under subsection (a) for the 1st taxable
13 year following the credit period.

14 “(3) DETERMINATION OF APPLICABLE PER-
15 CENTAGE WITH RESPECT TO INCREASES IN QUALI-
16 FIED BASIS AFTER 1ST YEAR OF CREDIT PERIOD.—

17 “(A) IN GENERAL.—In the case of any
18 building which was a qualified middle-income
19 building as of the close of the 1st year of the
20 credit period, if—

21 “(i) as of the close of any taxable year
22 in the credit period (after the 1st year of
23 such period) the qualified basis of such
24 building exceeds

1 “(ii) the qualified basis of such build-
2 ing as of the close of the 1st year of the
3 credit period,
4 the applicable percentage which shall apply
5 under subsection (a) for the taxable year to
6 such excess shall be the percentage equal to $\frac{2}{3}$
7 of the applicable percentage which (after the
8 application of subsection (h)) would but for this
9 paragraph apply to such basis.

10 “(B) 1ST YEAR COMPUTATION APPLIES.—
11 A rule similar to the rule of paragraph (2)(A)
12 shall apply to any increase in qualified basis to
13 which subparagraph (A) applies for the 1st year
14 of such increase.

15 “(4) DISPOSITIONS OF PROPERTY.—If a build-
16 ing (or an interest therein) is disposed of during any
17 year for which credit is allowable under subsection
18 (a), such credit shall be allocated between the par-
19 ties on the basis of the number of days during such
20 year the building (or interest) was held by each.

21 “(5) CREDIT PERIOD FOR EXISTING BUILDINGS
22 NOT TO BEGIN BEFORE REHABILITATION CREDIT
23 ALLOWED.—

24 “(A) IN GENERAL.—The credit period for
25 an existing building shall not begin before the

1 1st taxable year of the credit period for reha-
2 bilitation expenditures with respect to the build-
3 ing.

4 “(B) ACQUISITION CREDIT ALLOWED FOR
5 CERTAIN BUILDINGS NOT ALLOWED A REHA-
6 BILITATION CREDIT.—

7 “(i) IN GENERAL.—In the case of a
8 building described in clause (ii)—

9 “(I) subsection (d)(2)(B)(iv)
10 shall not apply, and

11 “(II) the credit period for such
12 building shall not begin before the
13 taxable year which would be the 1st
14 taxable year of the credit period for
15 rehabilitation expenditures with re-
16 spect to the building under the modi-
17 fications described in clause (ii)(II).

18 “(ii) BUILDING DESCRIBED.—A build-
19 ing is described in this clause if—

20 “(I) a waiver is granted under
21 subsection (d)(4) with respect to the
22 acquisition of the building, and

23 “(II) a credit would be allowed
24 for rehabilitation expenditures with
25 respect to such building if subsection

1 (e)(3)(A)(ii)(I) did not apply and if
2 the dollar amount in effect under sub-
3 section (e)(3)(A)(ii)(II) were two-
4 thirds of such amount.

5 “(g) QUALIFIED MIDDLE-INCOME HOUSING
6 PROJECT.—For purposes of this section—

7 “(1) IN GENERAL.—The term ‘qualified middle-
8 income housing project’ means any project for resi-
9 dential rental property if—

10 “(A) 60 percent or more of the residential
11 units in such project are both rent-restricted
12 and occupied by individuals whose income is
13 100 percent or less of area median gross in-
14 come, and

15 “(B) such project is not federally sub-
16 sidized and is not financed with the proceeds of
17 any federally funded grant.

18 For purposes of subparagraph (A), residential units
19 in a building which is not a qualified middle-income
20 building by reason of subsection (c)(2)(B) shall not
21 be taken into account.

22 “(2) RENT-RESTRICTED UNITS.—

23 “(A) IN GENERAL.—For purposes of para-
24 graph (1), a residential unit is rent-restricted if
25 the gross rent with respect to such unit does

1 not exceed 30 percent of the imputed income
2 limitation applicable to such unit. For purposes
3 of the preceding sentence, the amount of the in-
4 come limitation under paragraph (1) applicable
5 for any period shall not be less than such limi-
6 tation applicable for the earliest period the
7 building (which contains the unit) was included
8 in the determination of whether the project is
9 a qualified middle-income housing project.

10 “(B) GROSS RENT.—For purposes of sub-
11 paragraph (A), gross rent—

12 “(i) includes any utility allowance de-
13 termined by the Secretary after taking into
14 account such determinations under section
15 8 of the United States Housing Act of
16 1937,

17 “(ii) does not include any fee for a
18 supportive service which is paid to the
19 owner of the unit (on the basis of the mid-
20 dle-income status of the tenant of the unit)
21 by any governmental program of assistance
22 (or by an organization described in section
23 501(c)(3) and exempt from tax under sec-
24 tion 501(a)) if such program (or organiza-
25 tion) provides assistance for rent and the

1 amount of assistance provided for rent is
2 not separable from the amount of assist-
3 ance provided for supportive services, and
4 “(iii) does not include any rental pay-
5 ment to the owner of the unit to the extent
6 such owner pays an equivalent amount to
7 the Farmers’ Home Administration under
8 section 515 of the Housing Act of 1949.

9 For purposes of clause (ii), the term ‘supportive
10 service’ means any service provided under a
11 planned program of services designed to enable
12 residents of a residential rental property to re-
13 main independent and avoid placement in a
14 hospital, nursing home, or intermediate care fa-
15 cility for the mentally or physically handi-
16 capped.

17 “(C) IMPUTED INCOME LIMITATION APPLI-
18 CABLE TO UNIT.—For purposes of this para-
19 graph, the imputed income limitation applicable
20 to a unit is the income limitation which would
21 apply under paragraph (1) to individuals occu-
22 pying the unit if the number of individuals oc-
23 cupying the unit were as follows:

24 “(i) In the case of a unit which does
25 not have a separate bedroom, 1 individual.

1 “(ii) In the case of a unit which has
2 1 or more separate bedrooms, 1.5 individ-
3 uals for each separate bedroom.

4 “(D) TREATMENT OF UNITS OCCUPIED BY
5 INDIVIDUALS WHOSE INCOMES RISE ABOVE
6 LIMIT.—

7 “(i) IN GENERAL.—Except as pro-
8 vided in clause (ii), notwithstanding an in-
9 crease in the income of the occupants of a
10 middle-income unit above the income limi-
11 tation applicable under paragraph (1),
12 such unit shall continue to be treated as a
13 middle-income unit if the income of such
14 occupants initially met such income limita-
15 tion and such unit continues to be rent-re-
16 stricted.

17 “(ii) NEXT AVAILABLE UNIT MUST BE
18 RENTED TO MIDDLE-INCOME TENANT IF
19 INCOME RISES ABOVE 140 PERCENT OF IN-
20 COME LIMIT.—If the income of the occu-
21 pants of the unit increases above 140 per-
22 cent of the income limitation applicable
23 under paragraph (1), clause (i) shall cease
24 to apply to such unit if any residential
25 rental unit in the building (of a size com-

1 parable to, or smaller than, such unit) is
2 occupied by a new resident whose income
3 exceeds such income limitation.

4 “(3) DATE FOR MEETING REQUIREMENTS.—

5 “(A) IN GENERAL.—Except as otherwise
6 provided in this paragraph, a building shall be
7 treated as a qualified middle-income building
8 only if the project (of which such building is a
9 part) meets the requirements of paragraph (1)
10 not later than the close of the 1st year of the
11 credit period for such building.

12 “(B) BUILDINGS WHICH RELY ON LATER
13 BUILDINGS FOR QUALIFICATION.—

14 “(i) IN GENERAL.—In determining
15 whether a building (hereinafter in this sub-
16 paragraph referred to as the ‘prior build-
17 ing’) is a qualified middle-income building,
18 the taxpayer may take into account 1 or
19 more additional buildings placed in service
20 during the 12-month period described in
21 subparagraph (A) with respect to the prior
22 building only if the taxpayer elects to apply
23 clause (ii) with respect to each additional
24 building taken into account.

1 “(ii) TREATMENT OF ELECTED
2 BUILDINGS.—In the case of a building
3 which the taxpayer elects to take into ac-
4 count under clause (i), the period under
5 subparagraph (A) for such building shall
6 end at the close of the 12-month period ap-
7 plicable to the prior building.

8 “(iii) DATE PRIOR BUILDING IS
9 TREATED AS PLACED IN SERVICE.—For
10 purposes of determining the credit period
11 for the prior building, the prior building
12 shall be treated for purposes of this section
13 as placed in service on the most recent
14 date any additional building elected by the
15 taxpayer (with respect to such prior build-
16 ing) was placed in service.

17 “(C) SPECIAL RULE.—A building—

18 “(i) other than the 1st building placed
19 in service as part of a project, and

20 “(ii) other than a building which is
21 placed in service during the 12-month pe-
22 riod described in subparagraph (A) with
23 respect to a prior building which becomes
24 a qualified middle-income building,

1 shall in no event be treated as a qualified mid-
2 dle-income building unless the project is a
3 qualified middle-income housing project (with-
4 out regard to such building) on the date such
5 building is placed in service.

6 “(D) PROJECTS WITH MORE THAN 1
7 BUILDING MUST BE IDENTIFIED.—For pur-
8 poses of this section, a project shall be treated
9 as consisting of only 1 building unless, before
10 the close of the 1st calendar year in the project
11 period (as defined in subsection (h)(1)(F)(ii)),
12 each building which is (or will be) part of such
13 project is identified in such form and manner
14 as the Secretary may provide.

15 “(4) CERTAIN RULES MADE APPLICABLE.—
16 Paragraphs (2) (other than subparagraph (A) there-
17 of), (3), and (7) of section 142(d), and section
18 6652(j), shall apply for purposes of determining
19 whether any project is a qualified middle-income
20 housing project and whether any unit is a middle-in-
21 come unit; except that, in applying such provisions
22 for such purposes—

23 “(A) the term ‘gross rent’ shall have the
24 meaning given such term by paragraph (2)(B)
25 of this subsection, and

1 “(B) the term ‘applicable income limit’
2 means the limitation under paragraph (1) of
3 this subsection.

4 “(5) ELECTION TO TREAT BUILDING AFTER
5 CREDIT PERIOD AS NOT PART OF A PROJECT.—For
6 purposes of this section, the taxpayer may elect to
7 treat any building as not part of a qualified middle-
8 income housing project for any period beginning
9 after the credit period for such building.

10 “(6) SPECIAL RULE WHERE DE MINIMIS EQ-
11 UITY CONTRIBUTION.—Property shall not be treated
12 as failing to be residential rental property for pur-
13 poses of this section merely because the occupant of
14 a residential unit in the project pays (on a voluntary
15 basis) to the lessor a de minimis amount to be held
16 toward the purchase by such occupant of a residen-
17 tial unit in such project if—

18 “(A) all amounts so paid are refunded to
19 the occupant on the cessation of his occupancy
20 of a unit in the project, and

21 “(B) the purchase of the unit is not per-
22 mitted until after the close of the credit period
23 with respect to the building in which the unit
24 is located.

1 Any amount paid to the lessor as described in the
2 preceding sentence shall be included in gross rent
3 under paragraph (2) for purposes of determining
4 whether the unit is rent-restricted.

5 “(7) SCATTERED SITE PROJECTS.—Buildings
6 which would (but for their lack of proximity) be
7 treated as a project for purposes of this section shall
8 be so treated if all of the dwelling units in each of
9 the buildings are rent-restricted (within the meaning
10 of paragraph (2)) residential rental units.

11 “(8) WAIVER OF CERTAIN RECERTIFI-
12 CATIONS.—On application by the taxpayer, the Sec-
13 retary may waive any annual recertification of ten-
14 ant income for purposes of this subsection, if the en-
15 tire building is occupied by middle-income tenants.

16 “(9) CLARIFICATION OF GENERAL PUBLIC USE
17 REQUIREMENT.—A project does not fail to meet the
18 general public use requirement solely because of oc-
19 cupancy restrictions or preferences that favor ten-
20 ants—

21 “(A) with special needs, or

22 “(B) who are members of a specified group
23 under a Federal program or State program or
24 policy that supports housing for such a speci-
25 fied group.

1 “(h) LIMITATION ON AGGREGATE CREDIT ALLOW-
2 ABLE WITH RESPECT TO PROJECTS LOCATED IN A
3 STATE.—

4 “(1) CREDIT MAY NOT EXCEED CREDIT
5 AMOUNT ALLOCATED TO BUILDING.—

6 “(A) IN GENERAL.—The amount of the
7 credit determined under this section for any
8 taxable year with respect to any building shall
9 not exceed the housing credit dollar amount al-
10 located to such building under this subsection.

11 “(B) TIME FOR MAKING ALLOCATION.—
12 Except in the case of an allocation which meets
13 the requirements of subparagraph (C), (D),
14 (E), or (F), an allocation shall be taken into ac-
15 count under subparagraph (A) only if it is
16 made not later than the close of the calendar
17 year in which the building is placed in service.

18 “(C) EXCEPTION WHERE BINDING COM-
19 MITMENT.—An allocation meets the require-
20 ments of this subparagraph if there is a binding
21 commitment (not later than the close of the cal-
22 endar year in which the building is placed in
23 service) by the housing credit agency to allocate
24 a specified housing credit dollar amount to such

33

1 building beginning in a specified later taxable
2 year.

3 “(D) EXCEPTION WHERE INCREASE IN
4 QUALIFIED BASIS.—

5 “(i) IN GENERAL.—An allocation
6 meets the requirements of this subpara-
7 graph if such allocation is made not later
8 than the close of the calendar year in
9 which ends the taxable year to which it will
10 1st apply but only to the extent the
11 amount of such allocation does not exceed
12 the limitation under clause (ii).

13 “(ii) LIMITATION.—The limitation
14 under this clause is the amount of credit
15 allowable under this section (without re-
16 gard to this subsection) for a taxable year
17 with respect to an increase in the qualified
18 basis of the building equal to the excess
19 of—

20 “(I) the qualified basis of such
21 building as of the close of the 1st tax-
22 able year to which such allocation will
23 apply, over

24 “(II) the qualified basis of such
25 building as of the close of the 1st tax-

1 able year to which the most recent
2 prior housing credit allocation with re-
3 spect to such building applied.

4 “(iii) HOUSING CREDIT DOLLAR
5 AMOUNT REDUCED BY FULL ALLOCA-
6 TION.—Notwithstanding clause (i), the full
7 amount of the allocation shall be taken
8 into account under paragraph (2).

9 “(E) EXCEPTION WHERE 10 PERCENT OF
10 COST INCURRED.—

11 “(i) IN GENERAL.—An allocation
12 meets the requirements of this subpara-
13 graph if such allocation is made with re-
14 spect to a qualified building which is
15 placed in service not later than the close of
16 the second calendar year following the cal-
17 endar year in which the allocation is made.

18 “(ii) QUALIFIED BUILDING.—For pur-
19 poses of clause (i), the term ‘qualified
20 building’ means any building which is part
21 of a project if the taxpayer’s basis in such
22 project (as of the date which is 1 year
23 after the date that the allocation was
24 made) is more than 10 percent of the tax-
25 payer’s reasonably expected basis in such

1 project (as of the close of the second cal-
2 endar year referred to in clause (i)). Such
3 term does not include any existing building
4 unless a credit is allowable under sub-
5 section (e) for rehabilitation expenditures
6 paid or incurred by the taxpayer with re-
7 spect to such building for a taxable year
8 ending during the second calendar year re-
9 ferred to in clause (i) or the prior taxable
10 year.

11 “(F) ALLOCATION OF CREDIT ON A
12 PROJECT BASIS.—

13 “(i) IN GENERAL.—In the case of a
14 project which includes (or will include)
15 more than 1 building, an allocation meets
16 the requirements of this subparagraph if—

17 “(I) the allocation is made to the
18 project for a calendar year during the
19 project period,

20 “(II) the allocation only applies
21 to buildings placed in service during
22 or after the calendar year for which
23 the allocation is made, and

24 “(III) the portion of such alloca-
25 tion which is allocated to any building

1 in such project is specified not later
2 than the close of the calendar year in
3 which the building is placed in service.

4 “(ii) PROJECT PERIOD.—For pur-
5 poses of clause (i), the term ‘project pe-
6 riod’ means the period—

7 “(I) beginning with the 1st cal-
8 endar year for which an allocation
9 may be made for the 1st building
10 placed in service as part of such
11 project, and

12 “(II) ending with the calendar
13 year the last building is placed in
14 service as part of such project.

15 “(2) ALLOCATED CREDIT AMOUNT TO APPLY
16 TO ALL TAXABLE YEARS ENDING DURING OR AFTER
17 CREDIT ALLOCATION YEAR.—Any housing credit dol-
18 lar amount allocated to any building for any cal-
19 endar year—

20 “(A) shall apply to such building for all
21 taxable years in the credit period ending during
22 or after such calendar year, and

23 “(B) shall reduce the aggregate housing
24 credit dollar amount of the allocating agency
25 only for such calendar year.

37

1 “(3) HOUSING CREDIT DOLLAR AMOUNT FOR
2 AGENCIES.—

3 “(A) IN GENERAL.—The aggregate hous-
4 ing credit dollar amount which a housing credit
5 agency may allocate for any calendar year is
6 the portion of the State housing credit ceiling
7 allocated under this paragraph for such cal-
8 endar year to such agency.

9 “(B) STATE CEILING INITIALLY ALLO-
10 CATED TO STATE HOUSING CREDIT AGEN-
11 CIES.—Except as provided in subparagraph
12 (D), the State housing credit ceiling for each
13 calendar year shall be allocated to the housing
14 credit agency of such State. If there is more
15 than 1 housing credit agency of a State, all
16 such agencies shall be treated as a single agen-
17 cy.

18 “(C) STATE HOUSING CREDIT CEILING.—
19 The State housing credit ceiling applicable to
20 any State for any calendar year shall be an
21 amount equal to the sum of—

22 “(i) the greater of—

23 “(I) \$1.00 multiplied by the
24 State population, or

25 “(II) \$1,140,000, plus

3

1 “(ii) the amount of State housing
2 credit ceiling returned in the calendar year.

3 For purposes of clause (ii), the amount of State
4 housing credit ceiling returned in the calendar
5 year equals the housing credit dollar amount
6 previously allocated within the State to any
7 project which fails to meet the 10 percent test
8 under paragraph (1)(E)(ii) on a date after the
9 close of the calendar year in which the alloca-
10 tion was made or which does not become a
11 qualified middle-income housing project within
12 the period required by this section or the terms
13 of the allocation or to any project with respect
14 to which an allocation is cancelled by mutual
15 consent of the housing credit agency and the al-
16 location recipient.

17 “(D) STATE MAY PROVIDE FOR DIF-
18 FERENT ALLOCATION.—Rules similar to the
19 rules of section 146(e) (other than paragraph
20 (2)(B) thereof) shall apply for purposes of this
21 paragraph.

22 “(E) POPULATION.—For purposes of this
23 paragraph, population shall be determined in
24 accordance with section 146(j).

25 “(F) COST-OF-LIVING ADJUSTMENT.—

39

1 “(i) IN GENERAL.—In the case of a
2 calendar year after 2019, the \$1,140,000
3 and \$1.00 amounts in subparagraph (C)
4 shall each be increased by an amount equal
5 to—

6 “(I) such dollar amount, multi-
7 plied by

8 “(II) the cost-of-living adjust-
9 ment determined under section 1(f)(3)
10 for such calendar year by substituting
11 ‘calendar year 2018’ for ‘calendar
12 year 2016’ in subparagraph (A)(ii)
13 thereof.

14 “(ii) ROUNDING.—

15 “(I) In the case of the
16 \$1,140,000 amount, any increase
17 under clause (i) which is not a mul-
18 tiple of \$5,000 shall be rounded to the
19 next lowest multiple of \$5,000.

20 “(II) In the case of the \$1.00
21 amount, any increase under clause (i)
22 which is not a multiple of 5 cents
23 shall be rounded to the next lowest
24 multiple of 5 cents.

1 “(4) PORTION OF STATE CEILING SET-ASIDE
2 FOR CERTAIN PROJECTS INVOLVING QUALIFIED
3 NONPROFIT ORGANIZATIONS.—

4 “(A) IN GENERAL.—Not more than 90
5 percent of the State housing credit ceiling (de-
6 termined without regard to paragraph (7)) for
7 any State for any calendar year shall be allo-
8 cated to projects other than qualified middle-in-
9 come housing projects described in subpara-
10 graph (B).

11 “(B) PROJECTS INVOLVING QUALIFIED
12 NONPROFIT ORGANIZATIONS.—For purposes of
13 subparagraph (A), a qualified middle-income
14 housing project is described in this subpara-
15 graph if a qualified nonprofit organization is to
16 own an interest in the project (directly or
17 through a partnership) and materially partici-
18 pate (within the meaning of section 469(h)) in
19 the development and operation of the project
20 throughout the credit period.

21 “(C) QUALIFIED NONPROFIT ORGANIZA-
22 TION.—For purposes of this paragraph, the
23 term ‘qualified nonprofit organization’ means
24 any organization if—

1 “(i) such organization is described in
2 paragraph (3) or (4) of section 501(c) and
3 is exempt from tax under section 501(a),

4 “(ii) such organization is determined
5 by the State housing credit agency not to
6 be affiliated with or controlled by a for-
7 profit organization; and

8 “(iii) one of the exempt purposes of
9 such organization includes the fostering of
10 middle-income housing.

11 “(D) TREATMENT OF CERTAIN SUBSIDI-
12 ARIES.—

13 “(i) IN GENERAL.—For purposes of
14 this paragraph, a qualified nonprofit orga-
15 nization shall be treated as satisfying the
16 ownership and material participation test
17 of subparagraph (B) if any qualified cor-
18 poration in which such organization holds
19 stock satisfies such test.

20 “(ii) QUALIFIED CORPORATION.—For
21 purposes of clause (i), the term ‘qualified
22 corporation’ means any corporation if 100
23 percent of the stock of such corporation is
24 held by 1 or more qualified nonprofit orga-

1 nizations at all times during the period
2 such corporation is in existence.

3 “(E) STATE MAY NOT OVERRIDE SET-
4 ASIDE.—Nothing in subparagraph (E) of para-
5 graph (3) shall be construed to permit a State
6 not to comply with subparagraph (A) of this
7 paragraph.

8 “(5) BUILDINGS ELIGIBLE FOR CREDIT ONLY
9 IF MINIMUM LONG-TERM COMMITMENT TO MIDDLE-
10 INCOME HOUSING.—

11 “(A) IN GENERAL.—No credit shall be al-
12 lowed by reason of this section with respect to
13 any building for the taxable year unless an ex-
14 tended middle-income housing commitment is in
15 effect as of the end of such taxable year.

16 “(B) EXTENDED MIDDLE-INCOME HOUS-
17 ING COMMITMENT.—For purposes of this para-
18 graph, the term ‘extended middle-income hous-
19 ing commitment’ means any agreement between
20 the taxpayer and the housing credit agency—

21 “(i) which requires that the applicable
22 fraction (as defined in subsection (c)(1))
23 for the building for each taxable year in
24 the extended use period will not be less
25 than the applicable fraction specified in

1 such agreement and which prohibits the
2 actions described in subclauses (I) and (II)
3 of subparagraph (E)(ii),

4 “(ii) which allows individuals who
5 meet the income limitation applicable to
6 the building under subsection (g) (whether
7 prospective, present, or former occupants
8 of the building) the right to enforce in any
9 State court the requirement and prohibi-
10 tions of clause (i),

11 “(iii) which prohibits the disposition
12 to any person of any portion of the build-
13 ing to which such agreement applies unless
14 all of the building to which such agreement
15 applies is disposed of to such person,

16 “(iv) which prohibits the refusal to
17 lease to a holder of a voucher or certificate
18 of eligibility under section 8 of the United
19 States Housing Act of 1937 because of the
20 status of the prospective tenant as such a
21 holder,

22 “(v) which is binding on all successors
23 of the taxpayer, and

1 “(vi) which, with respect to the prop-
2 erty, is recorded pursuant to State law as
3 a restrictive covenant.

4 “(C) ALLOCATION OF CREDIT MAY NOT
5 EXCEED AMOUNT NECESSARY TO SUPPORT
6 COMMITMENT.—The housing credit dollar
7 amount allocated to any building may not ex-
8 ceed the amount necessary to support the appli-
9 cable fraction specified in the extended middle-
10 income housing commitment for such building,
11 including any increase in such fraction pursu-
12 ant to the application of subsection (f)(3) if
13 such increase is reflected in an amended mid-
14 dle-income housing commitment.

15 “(D) EXTENDED USE PERIOD.—For pur-
16 poses of this paragraph, the term ‘extended use
17 period’ means the period—

18 “(i) beginning on the 1st day in credit
19 period on which such building is part of a
20 qualified middle-income housing project,
21 and

22 “(ii) ending on the later of—

23 “(I) the date specified by such
24 agency in such agreement, or

45

1 “(II) the date which is 15 years
2 after the close of the credit period.

3 “(E) EXCEPTIONS IF FORECLOSURE OR IF
4 NO BUYER WILLING TO MAINTAIN MIDDLE-IN-
5 COME STATUS.—

6 “(i) IN GENERAL.—The extended use
7 period for any building shall terminate—

8 “(I) on the date the building is
9 acquired by foreclosure (or instrument
10 in lieu of foreclosure) unless the Sec-
11 retary determines that such acquisi-
12 tion is part of an arrangement with
13 the taxpayer a purpose of which is to
14 terminate such period, or

15 “(II) on the last day of the pe-
16 riod specified in subparagraph (I) if
17 the housing credit agency is unable to
18 present during such period a qualified
19 contract for the acquisition of the
20 middle-income portion of the building
21 by any person who will continue to op-
22 erate such portion as a qualified mid-
23 dle-income building.

1 Subclause (II) shall not apply to the extent
2 more stringent requirements are provided
3 in the agreement or in State law.

4 “(ii) EVICTION, ETC. OF EXISTING
5 MIDDLE-INCOME TENANTS NOT PER-
6 MITTED.—The termination of an extended
7 use period under clause (i) shall not be
8 construed to permit before the close of the
9 3-year period following such termination—

10 “(I) the eviction or the termi-
11 nation of tenancy (other than for good
12 cause) of an existing tenant of any
13 middle-income unit, or

14 “(II) any increase in the gross
15 rent with respect to such unit not oth-
16 erwise permitted under this section.

17 “(F) QUALIFIED CONTRACT.—For pur-
18 poses of subparagraph (E), the term ‘qualified
19 contract’ means a bona fide contract to acquire
20 (within a reasonable period after the contract is
21 entered into) the nonmiddle-income portion of
22 the building for fair market value and the mid-
23 dle-income portion of the building for an
24 amount not less than the applicable fraction

1 (specified in the extended middle-income hous-
2 ing commitment) of—

3 “(i) the sum of—

4 “(I) the outstanding indebtedness
5 secured by, or with respect to, the
6 building,

7 “(II) the adjusted investor equity
8 in the building, plus

9 “(III) other capital contributions
10 not reflected in the amounts described
11 in subclause (I) or (II), reduced by

12 “(ii) cash distributions from (or avail-
13 able for distribution from) the project.

14 The Secretary shall prescribe such regulations
15 as may be necessary or appropriate to carry out
16 this paragraph, including regulations to prevent
17 the manipulation of the amount determined
18 under the preceding sentence.

19 “(G) ADJUSTED INVESTOR EQUITY.—

20 “(i) IN GENERAL.—For purposes of
21 subparagraph (F), the term ‘adjusted in-
22 vestor equity’ means, with respect to any
23 calendar year, the aggregate amount of
24 cash taxpayers invested with respect to the
25 project increased by the amount equal to—

4

1 “(I) such amount, multiplied by
2 “(II) the cost-of-living adjust-
3 ment for such calendar year, deter-
4 mined under section 1(f)(3) by sub-
5 stituting the base calendar year for
6 ‘calendar year 1987’.

7 An amount shall be taken into account as
8 an investment in the project only to the ex-
9 tent there was an obligation to invest such
10 amount as of the beginning of the credit
11 period and to the extent such amount is
12 reflected in the adjusted basis of the
13 project.

14 “(ii) COST-OF-LIVING INCREASES IN
15 EXCESS OF 5 PERCENT NOT TAKEN INTO
16 ACCOUNT.—Under regulations prescribed
17 by the Secretary, if the CPI for any cal-
18 endar year (as defined in section 1(f)(4))
19 exceeds the CPI for the preceding calendar
20 year by more than 5 percent, the CPI for
21 the base calendar year shall be increased
22 such that such excess shall never be taken
23 into account under clause (i).

24 “(iii) BASE CALENDAR YEAR.—For
25 purposes of this subparagraph, the term

1 ‘base calendar year’ means the calendar
2 year with or within which the 1st taxable
3 year of the credit period ends.

4 “(H) MIDDLE-INCOME PORTION.—For
5 purposes of this paragraph, the middle-income
6 portion of a building is the portion of such
7 building equal to the applicable fraction speci-
8 fied in the extended middle-income housing
9 commitment for the building.

10 “(I) PERIOD FOR FINDING BUYER.—The
11 period referred to in this subparagraph is the 1-
12 year period beginning on the date (after the
13 14th year of the credit period) the taxpayer
14 submits a written request to the housing credit
15 agency to find a person to acquire the tax-
16 payer’s interest in the middle-income portion of
17 the building.

18 “(J) EFFECT OF NONCOMPLIANCE.—If,
19 during a taxable year, there is a determination
20 that an extended middle-income housing agree-
21 ment was not in effect as of the beginning of
22 such year, such determination shall not apply to
23 any period before such year and subparagraph
24 (A) shall be applied without regard to such de-

1 termination if the failure is corrected within 1
2 year from the date of the determination.

3 “(K) PROJECTS WHICH CONSIST OF MORE
4 THAN 1 BUILDING.—The application of this
5 paragraph to projects which consist of more
6 than 1 building shall be made under regulations
7 prescribed by the Secretary.

8 “(6) SPECIAL RULES.—

9 “(A) BUILDING MUST BE LOCATED WITH-
10 IN JURISDICTION OF CREDIT AGENCY.—A hous-
11 ing credit agency may allocate its aggregate
12 housing credit dollar amount only to buildings
13 located in the jurisdiction of the governmental
14 unit of which such agency is a part.

15 “(B) AGENCY ALLOCATIONS IN EXCESS OF
16 LIMIT.—If the aggregate housing credit dollar
17 amounts allocated by a housing credit agency
18 for any calendar year exceed the portion of the
19 State housing credit ceiling allocated to such
20 agency for such calendar year, the housing
21 credit dollar amounts so allocated shall be re-
22 duced (to the extent of such excess) for build-
23 ings in the reverse of the order in which the al-
24 locations of such amounts were made.

1 “(C) CREDIT REDUCED IF ALLOCATED
2 CREDIT DOLLAR AMOUNT IS LESS THAN CREDIT
3 WHICH WOULD BE ALLOWABLE WITHOUT RE-
4 GARD TO PLACED IN SERVICE CONVENTION,
5 ETC.—

6 “(i) IN GENERAL.—The amount of
7 the credit determined under this section
8 with respect to any building shall not ex-
9 ceed the clause (ii) percentage of the
10 amount of the credit which would (but for
11 this subparagraph) be determined under
12 this section with respect to such building.

13 “(ii) DETERMINATION OF PERCENT-
14 AGE.—For purposes of clause (i), the
15 clause (ii) percentage with respect to any
16 building is the percentage which—

17 “(I) the housing credit dollar
18 amount allocated to such building
19 bears to

20 “(II) the credit amount deter-
21 mined in accordance with clause (iii).

22 “(iii) DETERMINATION OF CREDIT
23 AMOUNT.—The credit amount determined
24 in accordance with this clause is the
25 amount of the credit which would (but for

5

1 this subparagraph) be determined under
2 this section with respect to the building
3 if—

4 “(I) this section were applied
5 without regard to paragraphs (2)(A)
6 and (3)(B) of subsection (f), and

7 “(II) subsection (f)(3)(A) were
8 applied without regard to ‘the per-
9 centage equal to $\frac{2}{3}$ of’.

10 “(D) HOUSING CREDIT AGENCY TO SPECI-
11 FY APPLICABLE PERCENTAGE AND MAXIMUM
12 QUALIFIED BASIS.—In allocating a housing
13 credit dollar amount to any building, the hous-
14 ing credit agency shall specify the applicable
15 percentage and the maximum qualified basis
16 which may be taken into account under this
17 section with respect to such building. The appli-
18 cable percentage and maximum qualified basis
19 so specified shall not exceed the applicable per-
20 centage and qualified basis determined under
21 this section without regard to this subsection.

22 “(7) INCREASE IN STATE CEILING DEDICATED
23 TO CERTAIN RURAL DEVELOPMENT PROJECTS.—

24 “(A) IN GENERAL.—The State housing
25 credit ceiling for any calendar year shall be in-

5

1 “(ii) the individuals occupying such
2 unit meet the income limitation applicable
3 under subsection (g)(1) to the project of
4 which such building is a part.

5 “(B) EXCEPTIONS.—

6 “(i) EXCLUSION OF LOW-INCOME
7 UNITS.—A unit shall not be treated as a
8 middle-income unit if such unit is a low-in-
9 come unit (as defined under section
10 42(i)(3)).

11 “(ii) UNIT MUST BE SUITABLE FOR
12 PERMANENT OCCUPANCY.—

13 “(I) IN GENERAL.—A unit shall
14 not be treated as a middle-income
15 unit unless the unit is suitable for oc-
16 cupancy and used other than on a
17 transient basis.

18 “(II) SUITABILITY FOR OCCU-
19 PANCY.—For purposes of subclause
20 (I), the suitability of a unit for occu-
21 pancy shall be determined under regu-
22 lations prescribed by the Secretary
23 taking into account local health, safe-
24 ty, and building codes.

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1 “(III) SINGLE-ROOM OCCUPANCY
2 UNITS.—For purposes of subclause
3 (I), a single-room occupancy unit shall
4 not be treated as used on a transient
5 basis merely because it is rented on a
6 month-by-month basis.

7 “(C) SPECIAL RULE FOR BUILDINGS HAV-
8 ING 4 OR FEWER UNITS.—In the case of any
9 building which has 4 or fewer residential rental
10 units, no unit in such building shall be treated
11 as a middle-income unit if the units in such
12 building are owned by—

13 “(i) any individual who occupies a res-
14 idential unit in such building, or

15 “(ii) any person who is related (as de-
16 fined in subsection (d)(2)(D)(ii)) to such
17 individual.

18 “(D) RULES RELATING TO STUDENTS.—

19 “(i) IN GENERAL.—A unit occupied
20 solely by individuals who—

21 “(I) have not attained age 24,
22 and

23 “(II) are enrolled in a full-time
24 course of study at an institution of

5

1 higher education (as defined in section
2 3304(f)),
3 shall not be treated as a middle-income
4 unit.

5 “(ii) EXCEPTIONS.—Clause (i) shall
6 not apply to a unit occupied by an indi-
7 vidual who—

8 “(I) is married,

9 “(II) is a person with disabilities
10 (as defined in section 3(b)(3)(E) of
11 the United States Housing Act of
12 1937),

13 “(III) is a veteran (as defined in
14 section 101(2) of title 38, United
15 States Code),

16 “(IV) has one or more qualifying
17 children (as defined in section
18 152(c)), or

19 “(V) meets the income limitation
20 applicable under subsection (g)(1) to
21 the project of which the building is a
22 part and is, or was immediately prior
23 to attaining the age of majority—

24 “(aa) an emancipated minor
25 or in legal guardianship as deter-

1 mined by a court of competent
2 jurisdiction in the individual's
3 State of legal residence,

4 “(bb) under the care and
5 placement responsibility of the
6 State agency responsible for ad-
7 ministering a plan under part B
8 or part E of title IV of the Social
9 Security Act, or

10 “(cc) was an unaccompanied
11 youth (within the meaning of sec-
12 tion 725(6) of the McKinney-
13 Vento Homeless Assistance Act
14 (42 U.S.C. 11434a(6))) or a
15 homeless child or youth (within
16 the meaning of section 725(2) of
17 such Act (42 U.S.C.
18 11434a(2))).

19 “(E) OWNER-OCCUPIED BUILDINGS HAV-
20 ING 4 OR FEWER UNITS ELIGIBLE FOR CREDIT
21 WHERE DEVELOPMENT PLAN.—

22 “(i) IN GENERAL.—Subparagraph (C)
23 shall not apply to the acquisition or reha-
24 bilitation of a building pursuant to a devel-
25 opment plan of action sponsored by a

5

1 State or local government or a qualified
2 nonprofit organization.

3 “(ii) LIMITATION ON CREDIT.—In the
4 case of a building to which clause (i) ap-
5 plies, the applicable fraction shall not ex-
6 ceed 80 percent of the unit fraction.

7 “(iii) CERTAIN UNRENTED UNITS
8 TREATED AS OWNER-OCCUPIED.—In the
9 case of a building to which clause (i) ap-
10 plies, any unit which is not rented for 90
11 days or more shall be treated as occupied
12 by the owner of the building as of the 1st
13 day it is not rented.

14 “(2) NEW BUILDING.—The term ‘new building’
15 means a building the original use of which begins
16 with the taxpayer.

17 “(3) EXISTING BUILDING.—The term ‘existing
18 building’ means any building which is not a new
19 building.

20 “(4) APPLICATION TO ESTATES AND TRUSTS.—
21 In the case of an estate or trust, the amount of the
22 credit determined under subsection (a) shall be ap-
23 portioned between the estate or trust and the bene-
24 ficiaries on the basis of the income of the estate or
25 trust allocable to each.

5

1 “(5) IMPACT OF TENANT’S OPTION TO ACQUIRE
2 PROPERTY.—

3 “(A) IN GENERAL.—No Federal income
4 tax benefit shall fail to be allowable to the tax-
5 payer with respect to any qualified middle-in-
6 come building merely by reason of an option
7 held by the tenants (in cooperative form or oth-
8 erwise) or resident management corporation of
9 such building or by a qualified nonprofit organi-
10 zation or government agency to purchase the
11 property or a partnership interest relating to
12 the property after the close of the credit period
13 for a price which is not less than the minimum
14 purchase price determined under subparagraph
15 (B).

16 “(B) MINIMUM PURCHASE PRICE.—For
17 purposes of subparagraph (A), the minimum
18 purchase price under this subparagraph is an
19 amount equal to the sum of—

20 “(i) the principal amount of out-
21 standing indebtedness secured by the
22 building (other than indebtedness incurred
23 within the 5-year period ending on the date
24 of the sale to the tenants), and

1 “(ii) all Federal, State, and local
2 taxes attributable to such sale.

3 Except in the case of Federal income taxes,
4 there shall not be taken into account under
5 clause (ii) any additional tax attributable to the
6 application of clause (ii). In the case of a pur-
7 chase of a partnership interest, the minimum
8 purchase price is an amount equal to such in-
9 terest’s ratable share of the amount determined
10 under the first sentence of this subparagraph.

11 “(6) TREATMENT OF RURAL PROJECTS.—For
12 purposes of this section, in the case of any project
13 for residential rental property located in a rural area
14 (as defined in section 520 of the Housing Act of
15 1949), any income limitation measured by reference
16 to area median gross income shall be measured by
17 reference to the greater of area median gross income
18 or national non-metropolitan median income.

19 “(7) DETERMINATION OF WHETHER BUILDING
20 IS FEDERALLY SUBSIDIZED.—

21 “(A) IN GENERAL.—Except as otherwise
22 provided in this paragraph, for purposes of sub-
23 section (g)(1), a project shall be treated as Fed-
24 erally subsidized for any taxable year if, at any
25 time during such taxable year or any prior tax-

1 able year, there is or was outstanding any obli-
2 gation the interest on which is exempt from tax
3 under section 103 the proceeds of which are or
4 were used (directly or indirectly) with respect to
5 such project or the operation thereof.

6 “(B) SPECIAL RULE FOR SUBSIDIZED CON-
7 STRUCTION FINANCING.—Subparagraph (A)
8 shall not apply to any tax-exempt obligation
9 used to provide construction financing for any
10 building if—

11 “(i) such obligation (when issued)
12 identified the building for which the pro-
13 ceeds of such obligation would be used,
14 and

15 “(ii) such obligation is redeemed be-
16 fore such building is placed in service.

17 “(8) REDUCTION IN BASIS.—In the case of any
18 building for which a credit is allowable under this
19 section and section 42, the basis of the building shall
20 be reduced by the amount of such credit allowed
21 under subsection (a).

22 “(j) APPLICATION OF AT-RISK RULES.—For pur-
23 poses of this section—

24 “(1) IN GENERAL.—Except as otherwise pro-
25 vided in this subsection, rules similar to the rules of

1 section 49(a)(1) (other than subparagraphs
2 (D)(ii)(II) and (D)(iv)(I) thereof), section 49(a)(2),
3 and section 49(b)(1) shall apply in determining the
4 qualified basis of any building in the same manner
5 as such sections apply in determining the credit base
6 of property.

7 “(2) SPECIAL RULES FOR DETERMINING QUALI-
8 FIED PERSON.—For purposes of paragraph (1)—

9 “(A) IN GENERAL.—If the requirements of
10 subparagraphs (B), (C), and (D) are met with
11 respect to any financing borrowed from a quali-
12 fied nonprofit organization, the determination
13 of whether such financing is qualified commer-
14 cial financing with respect to any qualified mid-
15 dle-income building shall be made without re-
16 gard to whether such organization—

17 “(i) is actively and regularly engaged
18 in the business of lending money, or

19 “(ii) is a person described in section
20 49(a)(1)(D)(iv)(II).

21 “(B) FINANCING SECURED BY PROP-
22 ERTY.—The requirements of this subparagraph
23 are met with respect to any financing if such fi-
24 nancing is secured by the qualified middle-in-
25 come building, except that this subparagraph

1 shall not apply in the case of a federally as-
2 sisted building described in subsection (d)(5)(B)
3 if—

4 “(i) a security interest in such build-
5 ing is not permitted by a Federal agency
6 holding or insuring the mortgage secured
7 by such building, and

8 “(ii) the proceeds from the financing
9 (if any) are applied to acquire or improve
10 such building..

11 “(C) PORTION OF BUILDING ATTRIB-
12 UTABLE TO FINANCING.—The requirements of
13 this subparagraph are met with respect to any
14 financing for any taxable year in the credit pe-
15 riod if, as of the close of such taxable year, not
16 more than 60 percent of the eligible basis of the
17 qualified middle-income building is attributable
18 to such financing (reduced by the principal and
19 interest of any governmental financing which is
20 part of a wrap-around mortgage involving such
21 financing).

22 “(D) REPAYMENT OF PRINCIPAL AND IN-
23 TEREST.—The requirements of this subpara-
24 graph are met with respect to any financing if

1 such financing is fully repaid on or before the
2 earliest of—

3 “(i) the date on which such financing
4 matures,

5 “(ii) the 90th day after the close of
6 the credit period with respect to the quali-
7 fied middle-income building, or

8 “(iii) the date of its refinancing or the
9 sale of the building to which such financ-
10 ing relates.

11 In the case of a qualified nonprofit organization
12 which is not described in section
13 49(a)(1)(D)(iv)(II) with respect to a building,
14 clause (ii) of this subparagraph shall be applied
15 as if the date described therein were the 90th
16 day after the earlier of the date the building
17 ceases to be a qualified middle-income building
18 or the date which is 15 years after the close of
19 a credit period with respect thereto.

20 “(3) PRESENT VALUE OF FINANCING.—If the
21 rate of interest on any financing described in para-
22 graph (2)(A) is less than the rate which is 1 per-
23 centage point below the applicable Federal rate as of
24 the time such financing is incurred, then the quali-
25 fied basis (to which such financing relates) of the

1 qualified middle-income building shall be the present
2 value of the amount of such financing, using as the
3 discount rate such applicable Federal rate. For pur-
4 poses of the preceding sentence, the rate of interest
5 on any financing shall be determined by treating in-
6 terest to the extent of government subsidies as not
7 payable.

8 “(4) FAILURE TO FULLY REPAY.—

9 “(A) IN GENERAL.—To the extent that the
10 requirements of paragraph (2)(D) are not met,
11 then the taxpayer’s tax under this chapter for
12 the taxable year in which such failure occurs
13 shall be increased by an amount equal to the
14 applicable portion of the credit under this sec-
15 tion with respect to such building, increased by
16 an amount of interest for the period—

17 “(i) beginning with the due date for
18 the filing of the return of tax imposed by
19 chapter 1 for the 1st taxable year for
20 which such credit was allowable, and

21 “(ii) ending with the due date for the
22 taxable year in which such failure occurs,
23 determined by using the underpayment rate and
24 method under section 6621.

1 “(B) APPLICABLE PORTION.—For pur-
2 poses of subparagraph (A), the term ‘applicable
3 portion’ means the aggregate decrease in the
4 credits allowed to a taxpayer under section 38
5 for all prior taxable years which would have re-
6 sulted if the eligible basis of the building were
7 reduced by the amount of financing which does
8 not meet requirements of paragraph (2)(D).

9 “(C) CERTAIN RULES TO APPLY.—Rules
10 similar to the rules of subparagraphs (A) and
11 (D) of section 42(j)(4) shall apply for purposes
12 of this subsection.

13 “(k) CERTIFICATIONS AND OTHER REPORTS TO SEC-
14 RETARY.—

15 “(1) CERTIFICATION WITH RESPECT TO 1ST
16 YEAR OF CREDIT PERIOD.—Following the close of
17 the 1st taxable year in the credit period with respect
18 to any qualified middle-income building, the tax-
19 payer shall certify to the Secretary (at such time
20 and in such form and in such manner as the Sec-
21 retary prescribes)—

22 “(A) the taxable year, and calendar year,
23 in which such building was placed in service,

1 “(B) the adjusted basis and eligible basis
2 of such building as of the close of the 1st year
3 of the credit period,

4 “(C) the maximum applicable percentage
5 and qualified basis permitted to be taken into
6 account by the appropriate housing credit agen-
7 cy under subsection (h), and

8 “(D) such other information as the Sec-
9 retary may require.

10 In the case of a failure to make the certification re-
11 quired by the preceding sentence on the date pre-
12 scribed therefor, unless it is shown that such failure
13 is due to reasonable cause and not to willful neglect,
14 no credit shall be allowable by reason of subsection
15 (a) with respect to such building for any taxable
16 year ending before such certification is made.

17 “(2) ANNUAL REPORTS TO THE SECRETARY.—
18 The Secretary may require taxpayers to submit an
19 information return (at such time and in such form
20 and manner as the Secretary prescribes) for each
21 taxable year setting forth—

22 “(A) the qualified basis for the taxable
23 year of each qualified middle-income building of
24 the taxpayer,

1 “(B) the information described in para-
2 graph (1)(C) for the taxable year, and

3 “(C) such other information as the Sec-
4 retary may require.

5 The penalty under section 6652(j) shall apply to any
6 failure to submit the return required by the Sec-
7 retary under the preceding sentence on the date pre-
8 scribed therefor.

9 “(3) ANNUAL REPORTS FROM HOUSING CREDIT
10 AGENCIES.—Each agency which allocates any hous-
11 ing credit amount to any building for any calendar
12 year shall submit to the Secretary (at such time and
13 in such manner as the Secretary shall prescribe) an
14 annual report specifying—

15 “(A) the amount of housing credit amount
16 allocated to each building for such year,

17 “(B) sufficient information to identify each
18 such building and the taxpayer with respect
19 thereto, and

20 “(C) such other information as the Sec-
21 retary may require.

22 The penalty under section 6652(j) shall apply to any
23 failure to submit the report required by the pre-
24 ceding sentence on the date prescribed therefor.

1 “(1) RESPONSIBILITIES OF HOUSING CREDIT AGEN-
2 CIES.—

3 “(1) PLANS FOR ALLOCATION OF CREDIT
4 AMONG PROJECTS.—

5 “(A) IN GENERAL.—Notwithstanding any
6 other provision of this section, the housing cred-
7 it dollar amount with respect to any building
8 shall be zero unless—

9 “(i) such amount was allocated pursu-
10 ant to a qualified allocation plan of the
11 housing credit agency which is approved by
12 the governmental unit (in accordance with
13 rules similar to the rules of section
14 42(m)(1)) of which such agency is a part,

15 “(ii) such agency notifies the chief ex-
16 ecutive officer (or the equivalent) of the
17 local jurisdiction within which the building
18 is located of such project and provides
19 such individual a reasonable opportunity to
20 comment on the project,

21 “(iii) a comprehensive market study
22 of the housing needs of middle-income in-
23 dividuals in the area to be served by the
24 project is conducted before the credit allo-
25 cation is made and at the developer’s ex-

1 pense by a disinterested party who is ap-
2 proved by such agency, and

3 “(iv) a written explanation is available
4 to the general public for any allocation of
5 a housing credit dollar amount which is
6 not made in accordance with established
7 priorities and selection criteria of the hous-
8 ing credit agency.

9 “(B) QUALIFIED ALLOCATION PLAN.—For
10 purposes of this paragraph, the term ‘qualified
11 allocation plan’ means any plan—

12 “(i) which sets forth selection criteria
13 to be used to determine housing priorities
14 of the housing credit agency which are ap-
15 propriate to local conditions,

16 “(ii) which also gives preference in al-
17 locating housing credit dollar amounts
18 among selected projects to—

19 “(I) projects obligated to serve
20 qualified tenants for the longest peri-
21 ods,

22 “(II) projects in areas where
23 rents are unaffordable to median in-
24 come households,

1 “(III) projects which target hous-
2 ing to tenants at a range of incomes
3 between 60 and 100 percent of area
4 median gross income, taking local in-
5 come and market conditions into ac-
6 count, and

7 “(IV) projects located near tran-
8 sit hubs, and

9 “(iii) which provides a procedure that
10 the agency (or an agent or other private
11 contractor of such agency) will follow in
12 monitoring for noncompliance with the
13 provisions of this section and in notifying
14 the Internal Revenue Service of such non-
15 compliance which such agency becomes
16 aware of and in monitoring for noncompli-
17 ance with habitability standards through
18 regular site visits.

19 “(C) CERTAIN SELECTION CRITERIA MUST
20 BE USED.—The selection criteria set forth in a
21 qualified allocation plan must include—

22 “(i) project location,

23 “(ii) housing needs characteristics,

24 “(iii) project characteristics, including
25 whether the project includes the use of ex-

1 isting housing as part of a community re-
2 talization plan,

3 “(iv) sponsor characteristics,

4 “(v) tenant populations with special
5 housing needs,

6 “(vi) tenant populations of individuals
7 with children,

8 “(vii) projects intended for eventual
9 tenant ownership,

10 “(viii) the energy efficiency of the
11 project, and

12 “(ix) the historic nature of the
13 project.

14 “(D) CERTAIN SELECTION CRITERIA PRO-
15 HIBITED.—The selection criteria set forth in a
16 qualified allocation plan shall not include a re-
17 quirement of local approval or local contribu-
18 tions, either as a threshold qualification re-
19 quirement or as part of a point system to be
20 considered for allocations of housing credit dol-
21 lar amount. This subparagraph shall not apply
22 to the notice and opportunity to comment re-
23 quirement for chief executive officers (or the
24 equivalent) of local jurisdictions under subpara-
25 graph (A)(ii).

1 “(2) CREDIT ALLOCATED TO BUILDING NOT TO
2 EXCEED AMOUNT NECESSARY TO ASSURE PROJECT
3 FEASIBILITY.—

4 “(A) IN GENERAL.—The housing credit
5 dollar amount allocated to a project shall not
6 exceed the amount the housing credit agency
7 determines is necessary for the financial feasi-
8 bility of the project and its viability as a quali-
9 fied middle-income housing project throughout
10 the credit period.

11 “(B) AGENCY EVALUATION.—In making
12 the determination under subparagraph (A), the
13 housing credit agency shall consider—

14 “(i) the sources and uses of funds and
15 the total financing planned for the project,

16 “(ii) any proceeds or receipts expected
17 to be generated by reason of tax benefits,

18 “(iii) the percentage of the housing
19 credit dollar amount used for project costs
20 other than the cost of intermediaries, and

21 “(iv) the reasonableness of the devel-
22 opmental and operational costs of the
23 project.

24 Clause (iii) shall not be applied so as to impede
25 the development of projects in hard-to-develop

1 areas. Such a determination shall not be con-
2 strued to be a representation or warranty as to
3 the feasibility or viability of the project.

4 “(C) DETERMINATION MADE WHEN CRED-
5 IT AMOUNT APPLIED FOR AND WHEN BUILDING
6 PLACED IN SERVICE.—

7 “(i) IN GENERAL.—A determination
8 under subparagraph (A) shall be made as
9 of each of the following times:

10 “(I) The application for the
11 housing credit dollar amount.

12 “(II) The allocation of the hous-
13 ing credit dollar amount.

14 “(III) The date the building is
15 placed in service.

16 “(ii) CERTIFICATION AS TO AMOUNT
17 OF OTHER SUBSIDIES.—Prior to each de-
18 termination under clause (i), the taxpayer
19 shall certify to the housing credit agency
20 the full extent of all Federal, State, and
21 local subsidies which apply (or which the
22 taxpayer expects to apply) with respect to
23 the building.

24 “(m) REGULATIONS.—The Secretary shall prescribe
25 such regulations as may be necessary or appropriate to

1 carry out the purposes of this section, including regula-
2 tions—

3 “(1) dealing with—

4 “(A) projects which include more than 1
5 building or only a portion of a building,

6 “(B) buildings which are placed in service
7 in portions,

8 “(2) providing for the application of this section
9 to short taxable years,

10 “(3) preventing the avoidance of the rules of
11 this section, and

12 “(4) providing the opportunity for housing cred-
13 it agencies to correct administrative errors and omis-
14 sions with respect to allocations and record keeping
15 within a reasonable period after their discovery, tak-
16 ing into account the availability of regulations and
17 other administrative guidance from the Secretary.”.

18 (b) TREATMENT AS PART OF GENERAL BUSINESS
19 CREDIT.—Section 38(b) of the Internal Revenue Code of
20 1986 is amended by striking “plus” at the end of para-
21 graph (31), by striking the period at the end of paragraph
22 (32) and inserting “, plus”, and by adding at the end the
23 following new paragraph:

24 “(33) the middle-income housing credit deter-
25 mined under section 42A(a).”.

1 (c) UNUSED ALLOCATIONS CARRIED OVER TO LOW-
2 INCOME HOUSING CREDIT.—

3 (1) IN GENERAL.—Clause (i) of section
4 42(h)(3)(C) of the Internal Revenue Code of 1986
5 is amended—

6 (A) by striking “the unused” and inserting
7 “the sum of—

8 “(I) the unused”,

9 (B) by inserting “plus” after “calendar
10 year,”, and

11 (C) by adding at the end the following new
12 subclause:

13 “(II) the unused middle-income
14 State housing credit (if any) of such
15 State for the preceding calendar
16 year,”.

17 (2) UNUSED MIDDLE-INCOME STATE HOUSING
18 CREDIT.—The second sentence of section
19 42(h)(3)(C) of such Code is amended by inserting “,
20 and the unused middle-income State housing credit
21 for any calendar year is the excess (if any) of the
22 amount described in section 42A(h)(3)(C) (after ap-
23 plication of section 42A(h)(7)) for such State over
24 the aggregate amount of middle-income housing

1 credit dollar amount allocated by such State under
2 section 42A for such year” after “for such year”.

3 (3) UNUSED MIDDLE INCOME STATE HOUSING
4 CREDIT INCLUDED IN CARRYOVER ALLOCATION.—
5 Section 42(h)(3)(D)(ii) of such Code is amended—

6 (A) by inserting “the sum of” after “is the
7 excess (if any) of”, and

8 (B) by inserting “plus the unused middle-
9 income State housing credit (as so defined)”
10 after “as defined in subparagraph (C)(i)”.

11 (d) REDUCTION IN BASIS.—Section 1016(a) of the
12 Internal Revenue Code of 1986 is amended by striking
13 “and” at the end of paragraph (37), by striking the period
14 at the end of paragraph (38) and inserting “, and”, and
15 by adding at the end the following new paragraph:

16 “(39) to the extent provided in section
17 42A(i)(8).”.

18 (e) CONFORMING AMENDMENTS.—

19 (1) Section 55(c)(1) of the Internal Revenue
20 Code of 1986 is amended by inserting “42A(j),” be-
21 fore “45(e)(11)(C)”.

22 (2) Subsections (i)(3)(C), (i)(6)(B)(i), and
23 (k)(1) of section 469 of such Code are each amended
24 by inserting “or 42A” after “42”.

1 (3) Section 772(a) of such Code is amended by
2 redesignating paragraphs (8), (9), and (10) as para-
3 graphs (9), (10), and (11), respectively, and by in-
4 serting after paragraph (7) the following new para-
5 graph:

6 “(8) the middle-income housing credit deter-
7 mined under section 42A,”.

8 (4) The table of sections for subpart D of part
9 IV of subchapter A of chapter 1 of such Code is
10 amended by inserting after the item relating to sec-
11 tion 42 the following new item:

“Sec. 42A. Middle-income housing credit.”.

12 (f) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years ending after the
14 date of the enactment of this Act.