

## § 42. LOW-INCOME HOUSING CREDIT

CURRENT AS OF 1/1/10

### (a) In general

For purposes of section 38, the amount of the low-income housing credit determined under this section for any taxable year in the credit period shall be an amount equal to—

- (1) the applicable percentage of
- (2) the qualified basis of each qualified low-income building.

### (b) Applicable percentage: 70 percent present value credit for certain new buildings; 30 percent present value credit for certain other buildings

#### (1) Determination of applicable percentage

For purposes of this section, the term “applicable percentage” means, with respect to any building, the appropriate percentage prescribed by the Secretary for the earlier of—

- (i) the month in which such building is placed in service, or
- (ii) at the election of the taxpayer—
  - (I) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to such building (which is binding on such agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or
  - (II) in the case of any building to which subsection (h)(4)(B) applies, the month in which the tax-exempt obligations are issued. A month may be elected under clause (ii) only if the election is made not later than the 5th day after the close of such month. Such an election, once made, shall be irrevocable.

#### (B) 1 Method of prescribing percentages

The percentages prescribed by the Secretary for any month shall be percentages which will yield over a 10-year period amounts of credit under subsection (a) which have a present value equal to—

- (i) 70 percent of the qualified basis of a new building which is not federally subsidized for the taxable year, and
- (ii) 30 percent of the qualified basis of a building not described in clause (i).

#### (C) Method of discounting

The present value under subparagraph (B) shall be determined—

- (i) as of the last day of the 1st year of the 10-year period referred to in subparagraph (B),
- (ii) by using a discount rate equal to 72 percent of the average of the annual Federal mid-term rate and the annual Federal long-term rate applicable under section 1274 (d)(1) to the month applicable under clause (i) or (ii) of subparagraph (A) <sup>(1)</sup> and compounded annually, and
- (iii) by assuming that the credit allowable under this section for any year is received on the last day of such year.

#### (2) Temporary minimum credit rate for non-federally subsidized new buildings

In the case of any new building—

- (A) which is placed in service by the taxpayer after the date of the enactment of this paragraph and before December 31, 2013, and
- (B) which is not federally subsidized for the taxable year, the applicable percentage shall not be less than 9 percent.

#### (3) Cross references

- (A) For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e).
- (B) For determination of applicable percentage for increases in qualified basis after the 1st year of the credit period, see subsection (f)(3).
- (C) For authority of housing credit agency to limit applicable percentage and qualified basis which may be taken into account under this section with respect to any building, see subsection (h)(7).

**(c) Qualified basis; qualified low-income building**

For purposes of this section—

**(1) Qualified basis**

**(A) Determination**

The qualified basis of any qualified low-income building for any taxable year is an amount equal to—

- (i) the applicable fraction (determined as of the close of such taxable year) of
- (ii) the eligible basis of such building (determined under subsection (d)(5)).

**(B) Applicable fraction**

For purposes of subparagraph (A), the term “applicable fraction” means the smaller of the unit fraction or the floor space fraction.

**(C) Unit fraction**

For purposes of subparagraph (B), the term “unit fraction” means the fraction—

- (i) the numerator of which is the number of low-income units in the building, and
- (ii) the denominator of which is the number of residential rental units (whether or not occupied) in such building.

**(D) Floor space fraction**

For purposes of subparagraph (B), the term “floor space fraction” means the fraction—

- (i) the numerator of which is the total floor space of the low-income units in such building, and
- (ii) the denominator of which is the total floor space of the residential rental units (whether or not occupied) in such building.

**(E) Qualified basis to include portion of building used to provide supportive services for homeless**

In the case of a qualified low-income building described in subsection (i)(3)(B)(iii), the qualified basis of such building for any taxable year shall be increased by the lesser of—

- (i) so much of the eligible basis of such building as is used throughout the year to provide supportive services designed to assist tenants in locating and retaining permanent housing, or
- (ii) 20 percent of the qualified basis of such building (determined without regard to this subparagraph).

**(2) Qualified low-income building**

The term “qualified low-income building” means any building—

- (A) which is part of a qualified low-income housing project at all times during the period—
  - (i) beginning on the 1st day in the compliance period on which such building is part of such a project, and
  - (ii) ending on the last day of the compliance period with respect to such building, and
- (B) to which the amendments made by section 201(a) of the Tax Reform Act of 1986 apply.

**(d) Eligible basis**

For purposes of this section—

**(1) New buildings**

The eligible basis of a new building is its adjusted basis as of the close of the 1st taxable year of the credit period.

**(2) Existing buildings**

**(A) In general**

The eligible basis of an existing building is—

- (i) in the case of a building which meets the requirements of subparagraph (B), its adjusted basis as of the close of the 1st taxable year of the credit period, and
- (ii) zero in any other case.

**(B) Requirements**

A building meets the requirements of this subparagraph if—

- (i) the building is acquired by purchase (as defined in section 179(d)(2)),
- (ii) there is a period of at least 10 years between the date of its acquisition by the taxpayer and the date the building was last placed in service,
- (iii) the building was not previously placed in service by the taxpayer or by any person who was a related person with respect to the taxpayer as of the time previously placed in service, and
- (iv) except as provided in subsection (f)(5), a credit is allowable under subsection (a) by reason of subsection (e) with respect to the building.

**(C) Adjusted basis**

For purposes of subparagraph (A), the adjusted basis of any building shall not include so much of the basis of such building as is determined by reference to the basis of other property held at any time by the person acquiring the building.

**(D) Special rules for subparagraph (B)**

(i) Special rules for certain transfers For purposes of determining under subparagraph (B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service—

- (I) in connection with the acquisition of the building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom acquired,
- (II) by a person whose basis in such building is determined under section 1014 (a) (relating to property acquired from a decedent),
- (III) by any governmental unit or qualified nonprofit organization (as defined in subsection (h)(5)) if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such unit or organization and all the income from such property is exempt from Federal income taxation,
- (IV) by any person who acquired such building by foreclosure (or by instrument in lieu of foreclosure) of any purchase-money security interest held by such person if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such person and such building is resold within 12 months after the date such building is placed in service by such person after such foreclosure, or
- (V) of a single-family residence by any individual who owned and used such residence for no other purpose than as his principal residence.

(ii) Related person For purposes of subparagraph (B)(iii), a person (hereinafter in this subclause referred to as the “related person”) is related to any person if the related person bears a relationship to such person specified in section 267 (b) or 707 (b)(1), or the related person and such person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52).

**(3) Eligible basis reduced where disproportionate standards for units**

**(A) In general**

Except as provided in subparagraph (B), the eligible basis of any building shall be reduced by an amount equal to the portion of the adjusted basis of the building which is attributable to residential rental units in the building which are not low-income units and which are above the average quality standard of the low-income units in the building.

**(B) Exception where taxpayer elects to exclude excess costs**

(i) In general Subparagraph (A) shall not apply with respect to a residential rental unit in a building which is not a low-income unit if—

- (I) the excess described in clause (ii) with respect to such unit is not greater than 15 percent of the cost described in clause (ii)(II), and

(II) the taxpayer elects to exclude from the eligible basis of such building the excess described in clause (ii) with respect to such unit.

(ii) Excess The excess described in this clause with respect to any unit is the excess of—

(I) the cost of such unit, over

(II) the amount which would be the cost of such unit if the average cost per square foot of low-income units in the building were substituted for the cost per square foot of such unit.

The Secretary may by regulation provide for the determination of the excess under this clause on a basis other than square foot costs.

**(4) Special rules relating to determination of adjusted basis**

For purposes of this subsection—

**(A) In general**

Except as provided in subparagraphs (B) and (C), the adjusted basis of any building shall be determined without regard to the adjusted basis of any property which is not residential rental property.

**(B) Basis of property in common areas, etc., included**

The adjusted basis of any building shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation) used in common areas or provided as comparable amenities to all residential rental units in such building.

**(C) Inclusion of basis of property used to provide services for certain nontenants**

(i) In general The adjusted basis of any building located in a qualified census tract (as defined in paragraph (5)(C)) shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation and not otherwise taken into account) used throughout the taxable year in providing any community service facility.

(ii) Limitation The increase in the adjusted basis of any building which is taken into account by reason of clause (i) shall not exceed the sum of—

(I) 25 percent of so much of the eligible basis of the qualified low-income housing project of which it is a part as does not exceed \$15,000,000, plus

(II) 10 percent of so much of the eligible basis of such project as is not taken into account under subclause (I).

For purposes of the preceding sentence, all community service facilities which are part of the same qualified low-income housing project shall be treated as one facility.

(iii) Community service facility For purposes of this subparagraph, the term “community service facility” means any facility designed to serve primarily individuals whose income is 60 percent or less of area median income (within the meaning of subsection (g)(1)(B)).

**(D) No reduction for depreciation**

The adjusted basis of any building shall be determined without regard to paragraphs (2) and (3) of section 1016 (a).

**(5) Special rules for determining eligible basis**

**(A) Federal grants not taken into account in determining eligible basis**

The eligible basis of a building shall not include any costs financed with the proceeds of a federally funded grant.

**(B) Increase in credit for buildings in high cost areas**

(i) In general In the case of any building located in a qualified census tract or difficult development area which is designated for purposes of this subparagraph—

(I) in the case of a new building, the eligible basis of such building shall be 130 percent of such basis determined without regard to this subparagraph, and

(II) in the case of an existing building, the rehabilitation expenditures taken into account under subsection (e) shall be 130 percent of such expenditures determined without regard to this subparagraph.

**(ii) Qualified census tract**

(I) In general The term “qualified census tract” means any census tract which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent. If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts.

(II) Limit on MSA’s designated The portion of a metropolitan statistical area which may be designated for purposes of this subparagraph shall not exceed an area having 20 percent of the population of such metropolitan statistical area.

(III) Determination of areas For purposes of this clause, each metropolitan statistical area shall be treated as a separate area and all nonmetropolitan areas in a State shall be treated as 1 area.

**(iii) Difficult development areas**

(I) In general The term “difficult development areas” means any area designated by the Secretary of Housing and Urban Development as an area which has high construction, land, and utility costs relative to area median gross income.

(II) Limit on areas designated The portions of metropolitan statistical areas which may be designated for purposes of this subparagraph shall not exceed an aggregate area having 20 percent of the population of such metropolitan statistical areas. A comparable rule shall apply to nonmetropolitan areas.

**(iv) Special rules and definitions For purposes of this subparagraph—**

(I) population shall be determined on the basis of the most recent decennial census for which data are available,

(II) area median gross income shall be determined in accordance with subsection (g)(4),

(III) the term “metropolitan statistical area” has the same meaning as when used in section 143 (k)(2)(B), and

(IV) the term “nonmetropolitan area” means any county (or portion thereof) which is not within a metropolitan statistical area.

**(v) Buildings designated by State housing credit agency** Any building which is designated by the State housing credit agency as requiring the increase in credit under this subparagraph in order for such building to be financially feasible as part of a qualified low-income housing project shall be treated for purposes of this subparagraph as located in a difficult development area which is designated for purposes of this subparagraph. The preceding sentence shall not apply to any building if paragraph (1) of subsection (h) does not apply to any portion of the eligible basis of such building by reason of paragraph (4) of such subsection.

**(6) Credit allowable for certain buildings acquired during 10-year period described in paragraph (2)(B)(ii)**

**(A) In general**

Paragraph (2)(B)(ii) shall not apply to any federally- or State-assisted building.

**(B) Buildings acquired from insured depository institutions in default**

On application by the taxpayer, the Secretary may waive paragraph (2)(B)(ii) with respect to any building acquired from an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act) or from a receiver or conservator of such an institution.

**(C) Federally- or State-assisted building**

For purposes of this paragraph—

**(i) Federally-assisted building** The term “federally-assisted building” means any building which is substantially assisted, financed, or operated under section 8 of the United States Housing Act of 1937, section 221(d)(3), 221(d)(4), or 236 of the National Housing Act, section 515 of the Housing Act of 1949, or any other housing program administered by the Department of Housing and Urban Development or by the Rural Housing Service of the Department of Agriculture.

**(ii) State-assisted building** The term “State-assisted building” means any building which is substantially assisted, financed, or operated under any State law similar in purposes to any of the laws referred to in clause (i).

**(7) Acquisition of building before end of prior compliance period**

**(A) In general**

Under regulations prescribed by the Secretary, in the case of a building described in subparagraph (B) (or interest therein) which is acquired by the taxpayer—

**(i)** paragraph (2)(B) shall not apply, but

**(ii)** the credit allowable by reason of subsection (a) to the taxpayer for any period after such acquisition shall be equal to the amount of credit which would have been allowable under subsection (a) for such period to the prior owner referred to in subparagraph (B) had such owner not disposed of the building.

**(B) Description of building**

A building is described in this subparagraph if—

**(i)** a credit was allowed by reason of subsection (a) to any prior owner of such building, and

**(ii)** the taxpayer acquired such building before the end of the compliance period for such building with respect to such prior owner (determined without regard to any disposition by such prior owner).

**(e) Rehabilitation expenditures treated as separate new building**

**(1) In general**

Rehabilitation expenditures paid or incurred by the taxpayer with respect to any building shall be treated for purposes of this section as a separate new building.

**(2) Rehabilitation expenditures**

For purposes of paragraph (1)—

**(A) In general**

The term “rehabilitation expenditures” means amounts chargeable to capital account and incurred for property (or additions or improvements to property) of a character subject to the allowance for depreciation in connection with the rehabilitation of a building.

**(B) Cost of acquisition, etc,<sup>2</sup> not included**

Such term does not include the cost of acquiring any building (or interest therein) or any amount not permitted to be taken into account under paragraph (3) or (4) of subsection (d).

**(3) Minimum expenditures to qualify**

**(A) In general**

Paragraph (1) shall apply to rehabilitation expenditures with respect to any building only if—

- (i) the expenditures are allocable to 1 or more low-income units or substantially benefit such units, and
- (ii) the amount of such expenditures during any 24-month period meets the requirements of whichever of the following subclauses requires the greater amount of such expenditures:
  - (I) The requirement of this subclause is met if such amount is not less than 20 percent of the adjusted basis of the building (determined as of the 1st day of such period and without regard to paragraphs (2) and (3) of section 1016 (a)).
  - (II) The requirement of this subclause is met if the qualified basis attributable to such amount, when divided by the number of low-income units in the building, is \$6,000 or more.

**(B) Exception from 10 percent rehabilitation**

In the case of a building acquired by the taxpayer from a governmental unit, at the election of the taxpayer, subparagraph (A)(ii)(I) shall not apply and the credit under this section for such rehabilitation expenditures shall be determined using the percentage applicable under subsection (b)(2)(B)(ii).

**(C) Date of determination**

The determination under subparagraph (A) shall be made as of the close of the 1st taxable year in the credit period with respect to such expenditures.

**(D) Inflation adjustment**

In the case of any expenditures which are treated under paragraph (4) as placed in service during any calendar year after 2009, the \$6,000 amount in subparagraph (A)(ii)(II) shall be increased by an amount equal to—

- (i) such dollar amount, multiplied by
- (ii) the cost-of-living adjustment determined under section 1 (f)(3) for such calendar year by substituting “calendar year 2008” for “calendar year 1992” in subparagraph (B) thereof.

Any increase under the preceding sentence which is not a multiple of \$100 shall be rounded to the nearest multiple of \$100.

**(4) Special rules**

For purposes of applying this section with respect to expenditures which are treated as a separate building by reason of this subsection—

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

(B) the applicable fraction under subsection (c)(1) shall be the applicable fraction for the building (without regard to paragraph (1)) with respect to which the expenditures were incurred.

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

**(5) No double counting**

Rehabilitation expenditures may, at the election of the taxpayer, be taken into account under this subsection or subsection (d)(2)(A)(i) but not under both such subsections.

**(6) Regulations to apply subsection with respect to group of units in building**

The Secretary may prescribe regulations, consistent with the purposes of this subsection, treating a group of units with respect to which rehabilitation expenditures are incurred as a separate new building.

**(f) Definition and special rules relating to credit period**

**(1) Credit period defined**

For purposes of this section, the term “credit period” means, with respect to any building, the period of 10 taxable years beginning with—

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

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

but only if the building is a qualified low-income building as of the close of the 1st year of such period. The election under subparagraph (B), once made, shall be irrevocable.

## **(2) Special rule for 1st year of credit period**

### **(A) In general**

The credit allowable under subsection (a) with respect to any building for the 1st taxable year of the credit period shall be determined by substituting for the applicable fraction under subsection (c)(1) the fraction—

- (i) the numerator of which is the sum of the applicable fractions determined under subsection (c)(1) as of the close of each full month of such year during which such building was in service, and
- (ii) the denominator of which is 12.

### **(B) Disallowed 1st year credit allowed in 11th year**

Any reduction by reason of subparagraph (A) in the credit allowable (without regard to subparagraph (A)) for the 1st taxable year of the credit period shall be allowable under subsection (a) for the 1st taxable year following the credit period.

## **(3) Determination of applicable percentage with respect to increases in qualified basis after 1st year of credit period**

### **(A) In general**

In the case of any building which was a qualified low-income building as of the close of the 1st year of the credit period, if—

- (i) as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of such building exceeds
- (ii) the qualified basis of such building as of the close of the 1st year of the credit period, the applicable percentage which shall apply under subsection (a) for the taxable year to such excess shall be the percentage equal to 2/3 of the applicable percentage which (after the application of subsection (h)) would but for this paragraph apply to such basis.

### **(B) 1st year computation applies**

A rule similar to the rule of paragraph (2)(A) shall apply to any increase in qualified basis to which subparagraph (A) applies for the 1st year of such increase.

## **(4) Dispositions of property**

If a building (or an interest therein) is disposed of during any year for which credit is allowable under subsection (a), such credit shall be allocated between the parties on the basis of the number of days during such year the building (or interest) was held by each. In any such case, proper adjustments shall be made in the application of subsection (j).

## **(5) Credit period for existing buildings not to begin before rehabilitation credit allowed**

### **(A) In general**

The credit period for an existing building shall not begin before the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building.

### **(B) Acquisition credit allowed for certain buildings not allowed a rehabilitation credit**

- (i) In general In the case of a building described in clause (ii)—
  - (I) subsection (d)(2)(B)(iv) shall not apply, and
  - (II) the credit period for such building shall not begin before the taxable year which would be the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building under the modifications described in clause (ii)(II).
- (ii) Building described A building is described in this clause if—
  - (I) a waiver is granted under subsection (d)(6)(C) with respect to the acquisition of the building, and
  - (II) a credit would be allowed for rehabilitation expenditures with respect to such building if subsection (e)(3)(A)(ii)(I) did not apply and if the dollar amount in effect under subsection (e)(3)(A)(ii)(II) were two-thirds of such amount.

**(g) Qualified low-income housing project**

For purposes of this section—

**(1) In general**

The term “qualified low-income housing project” means any project for residential rental property if the project meets the requirements of subparagraph (A) or (B) whichever is elected by the taxpayer:

**(A) 20–50 test**

The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income.

**(B) 40–60 test**

The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income.

Any election under this paragraph, once made, shall be irrevocable. For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

**(2) Rent-restricted units**

**(A) In general**

For purposes of paragraph (1), a residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 30 percent of the imputed income limitation applicable to such unit. For purposes of the preceding sentence, the amount of the income limitation under paragraph (1) applicable for any period shall not be less than such limitation applicable for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low-income housing project.

**(B) Gross rent**

For purposes of subparagraph (A), gross rent—

- (i) does not include any payment under section 8 of the United States Housing Act of 1937 or any comparable rental assistance program (with respect to such unit or occupants thereof),
- (ii) includes any utility allowance determined by the Secretary after taking into account such determinations under section 8 of the United States Housing Act of 1937,
- (iii) does not include any fee for a supportive service which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 501 (c)(3) and exempt from tax under section 501 (a) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services, and
- (iv) does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers' Home Administration under section 515 of the Housing Act of 1949.

For purposes of clause (iii), the term “supportive service” means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single-room occupancy unit or a building described in subsection (i)(3)(B)(iii), such term includes any service provided to assist tenants in locating and retaining permanent housing.

**(C) Imputed income limitation applicable to unit**

For purposes of this paragraph, the imputed income limitation applicable to a unit is the income limitation which would apply under paragraph (1) to individuals occupying the unit if the number of individuals occupying the unit were as follows:

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

(ii) In the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom.

In the case of a project with respect to which a credit is allowable by reason of this section and for which financing is provided by a bond described in section 142 (a)(7), the imputed income limitation shall apply in lieu of the otherwise applicable income limitation for purposes of applying section 142 (d)(4)(B)(ii).

**(D) Treatment of units occupied by individuals whose incomes rise above limit**

(i) In general Except as provided in clause (ii), notwithstanding an increase in the income of the occupants of a low-income unit above the income limitation applicable under paragraph (1), such unit shall continue to be treated as a low-income unit if the income of such occupants initially met such income limitation and such unit continues to be rent-restricted.

(ii) Next available unit must be rented to low-income tenant if income rises above 140 percent of income limit If the income of the occupants of the unit increases above 140 percent of the income limitation applicable under paragraph (1), clause (i) shall cease to apply to such unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation. In the case of a project described in section 142 (d)(4)(B), the preceding sentence shall be applied by substituting "170 percent" for "140 percent" and by substituting "any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income" for "any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation".

**(E) Units where Federal rental assistance is reduced as tenant's income increases**

If the gross rent with respect to a residential unit exceeds the limitation under subparagraph (A) by reason of the fact that the income of the occupants thereof exceeds the income limitation applicable under paragraph (1), such unit shall, nevertheless, be treated as a rent-restricted unit for purposes of paragraph (1) if—

(i) a Federal rental assistance payment described in subparagraph (B)(i) is made with respect to such unit or its occupants, and

(ii) the sum of such payment and the gross rent with respect to such unit does not exceed the sum of the amount of such payment which would be made and the gross rent which would be payable with respect to such unit if—

(I) the income of the occupants thereof did not exceed the income limitation applicable under paragraph (1), and

(II) such units were rent-restricted within the meaning of subparagraph (A).

The preceding sentence shall apply to any unit only if the result described in clause (ii) is required by Federal statute as of the date of the enactment of this subparagraph and as of the date the Federal rental assistance payment is made.

**(3) Date for meeting requirements**

**(A) In general**

Except as otherwise provided in this paragraph, a building shall be treated as a qualified low-income building only if the project (of which such building is a part) meets the requirements of paragraph (1) not later than the close of the 1st year of the credit period for such building.

**(B) Buildings which rely on later buildings for qualification**

(i) In general In determining whether a building (hereinafter in this subparagraph referred to as the "prior building") is a qualified low-income building, the taxpayer may take into account 1 or more additional buildings placed in service during the 12-month period described in subparagraph (A) with respect to the prior building only if the taxpayer elects to apply clause (ii) with respect to each additional building taken into account.

(ii) Treatment of elected buildings In the case of a building which the taxpayer elects to take into account under clause (i), the period under subparagraph (A) for such building shall end at the close of the 12-month period applicable to the prior building.

(iii) Date prior building is treated as placed in service For purposes of determining the credit period and the compliance period for the prior building, the prior building shall be treated for purposes of this section as placed in service on the most recent date any additional building elected by the taxpayer (with respect to such prior building) was placed in service.

**(C) Special rule**

A building—

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

(ii) other than a building which is placed in service during the 12-month period described in subparagraph (A) with respect to a prior building which becomes a qualified low-income building, shall in no event be treated as a qualified low-income building unless the project is a qualified low-income housing project (without regard to such building) on the date such building is placed in service.

**(D) Projects with more than 1 building must be identified**

For purposes of this section, a project shall be treated as consisting of only 1 building unless, before the close of the 1st calendar year in the project period (as defined in subsection (h)(1)(F)(ii)), each building which is (or will be) part of such project is identified in such form and manner as the Secretary may provide.

**(4) Certain rules made applicable**

Paragraphs (2) (other than subparagraph (A) thereof), (3), (4), (5), (6), and (7) of section 142 (d), and section 6652 (j), shall apply for purposes of determining whether any project is a qualified low-income housing project and whether any unit is a low-income unit; except that, in applying such provisions for such purposes, the term “gross rent” shall have the meaning given such term by paragraph (2)(B) of this subsection.

**(5) Election to treat building after compliance period as not part of a project**

For purposes of this section, the taxpayer may elect to treat any building as not part of a qualified low-income housing project for any period beginning after the compliance period for such building.

**(6) Special rule where de minimis equity contribution**

Property shall not be treated as failing to be residential rental property for purposes of this section merely because the occupant of a residential unit in the project pays (on a voluntary basis) to the lessor a de minimis amount to be held toward the purchase by such occupant of a residential unit in such project if—

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

(B) the purchase of the unit is not permitted until after the close of the compliance period with respect to the building in which the unit is located.

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

**(7) Scattered site projects**

Buildings which would (but for their lack of proximity) be treated as a project for purposes of this section shall be so treated if all of the dwelling units in each of the buildings are rent-restricted (within the meaning of paragraph (2)) residential rental units.

**(8) Waiver of certain de minimis errors and recertifications**

On application by the taxpayer, the Secretary may waive—

(A) any recapture under subsection (j) in the case of any de minimis error in complying with paragraph (1), or

(B) any annual recertification of tenant income for purposes of this subsection, if the entire building is occupied by low-income tenants.

**(9) Clarification of general public use requirement**

A project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants—

(A) with special needs,

(B) who are members of a specified group under a Federal program or State program or policy that supports housing for such a specified group, or

(C) who are involved in artistic or literary activities.

**(h) Limitation on aggregate credit allowable with respect to projects located in a State**

**(1) Credit may not exceed credit amount allocated to building**

**(A) In general**

The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the housing credit dollar amount allocated to such building under this subsection.

**(B) Time for making allocation**

Except in the case of an allocation which meets the requirements of subparagraph (C), (D), (E), or (F), an allocation shall be taken into account under subparagraph (A) only if it is made not later than the close of the calendar year in which the building is placed in service.

**(C) Exception where binding commitment**

An allocation meets the requirements of this subparagraph if there is a binding commitment (not later than the close of the calendar year in which the building is placed in service) by the housing credit agency to allocate a specified housing credit dollar amount to such building beginning in a specified later taxable year.

**(D) Exception where increase in qualified basis**

(i) In general An allocation meets the requirements of this subparagraph if such allocation is made not later than the close of the calendar year in which ends the taxable year to which it will 1st apply but only to the extent the amount of such allocation does not exceed the limitation under clause (ii).

(ii) Limitation The limitation under this clause is the amount of credit allowable under this section (without regard to this subsection) for a taxable year with respect to an increase in the qualified basis of the building equal to the excess of—

(I) the qualified basis of such building as of the close of the 1st taxable year to which such allocation will apply, over

(II) the qualified basis of such building as of the close of the 1st taxable year to which the most recent prior housing credit allocation with respect to such building applied.

(iii) Housing credit dollar amount reduced by full allocation Notwithstanding clause (i), the full amount of the allocation shall be taken into account under paragraph (2).

**(E) Exception where 10 percent of cost incurred**

(i) In general An allocation meets the requirements of this subparagraph if such allocation is made with respect to a qualified building which is placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made.

(ii) Qualified building For purposes of clause (i), the term “qualified building” means any building which is part of a project if the taxpayer’s basis in such project (as of the date which is 1 year after the date that the allocation was made) is more than 10 percent of the taxpayer’s reasonably expected basis in such project (as of the close of the second calendar year referred to in clause (i)). Such term does not include any existing building unless a credit is allowable under subsection (e) for rehabilitation expenditures paid or incurred by the taxpayer with respect to such building for a taxable year ending during the second calendar year referred to in clause (i) or the prior taxable year.

**(F) Allocation of credit on a project basis**

(i) In general In the case of a project which includes (or will include) more than 1 building, an allocation meets the requirements of this subparagraph if—

- (I) the allocation is made to the project for a calendar year during the project period,
- (II) the allocation only applies to buildings placed in service during or after the calendar year for which the allocation is made, and
- (III) the portion of such allocation which is allocated to any building in such project is specified not later than the close of the calendar year in which the building is placed in service.

(ii) Project period For purposes of clause (i), the term “project period” means the period—

- (I) beginning with the 1st calendar year for which an allocation may be made for the 1st building placed in service as part of such project, and
- (II) ending with the calendar year the last building is placed in service as part of such project.

**(2) Allocated credit amount to apply to all taxable years ending during or after credit allocation year**

Any housing credit dollar amount allocated to any building for any calendar year—

- (A) shall apply to such building for all taxable years in the compliance period ending during or after such calendar year, and
- (B) shall reduce the aggregate housing credit dollar amount of the allocating agency only for such calendar year.

**(3) Housing credit dollar amount for agencies**

**(A) In general**

The aggregate housing credit dollar amount which a housing credit agency may allocate for any calendar year is the portion of the State housing credit ceiling allocated under this paragraph for such calendar year to such agency.

**(B) State ceiling initially allocated to State housing credit agencies**

Except as provided in subparagraphs (D) and (E), the State housing credit ceiling for each calendar year shall be allocated to the housing credit agency of such State. If there is more than 1 housing credit agency of a State, all such agencies shall be treated as a single agency.

**(C) State housing credit ceiling**

The State housing credit ceiling applicable to any State for any calendar year shall be an amount equal to the sum of—

- (i) the unused State housing credit ceiling (if any) of such State for the preceding calendar year,
- (ii) the greater of—
  - (I) \$1.75 (\$1.50 for 2001) multiplied by the State population, or
  - (II) \$2,000,000,

(iii) the amount of State housing credit ceiling returned in the calendar year, plus

(iv) the amount (if any) allocated under subparagraph (D) to such State by the Secretary.

For purposes of clause (i), the unused State housing credit ceiling for any calendar year is the excess (if any) of the sum of the amounts described in clauses (ii) through (iv) over the aggregate housing credit dollar amount allocated for such year. For purposes of clause (iii), the amount of State housing credit ceiling returned in the calendar year equals the housing credit dollar amount previously allocated within the State to any project which fails to meet the 10 percent test under paragraph (1)(E)(ii) on a date after the close of the calendar year in which the allocation was made or which does not become a qualified low-income housing project within the period required by this section or the terms of the allocation or to any project with respect to which an allocation is cancelled by mutual consent of the housing credit agency and the allocation recipient.

**(D) Unused housing credit carryovers allocated among certain States**

(i) In general The unused housing credit carryover of a State for any calendar year shall be assigned to the Secretary for allocation among qualified States for the succeeding calendar year.

(ii) Unused housing credit carryover For purposes of this subparagraph, the unused housing credit carryover of a State for any calendar year is the excess (if any) of—

(I) the unused State housing credit ceiling for the year preceding such year, over

(II) the aggregate housing credit dollar amount allocated for such year.

(iii) Formula for allocation of unused housing credit carryovers among qualified States The amount allocated under this subparagraph to a qualified State for any calendar year shall be the amount determined by the Secretary to bear the same ratio to the aggregate unused housing credit carryovers of all States for the preceding calendar year as such State's population for the calendar year bears to the population of all qualified States for the calendar year. For purposes of the preceding sentence, population shall be determined in accordance with section 146 (j).

(iv) Qualified State For purposes of this subparagraph, the term "qualified State" means, with respect to a calendar year, any State—

(I) which allocated its entire State housing credit ceiling for the preceding calendar year, and

(II) for which a request is made (not later than May 1 of the calendar year) to receive an allocation under clause (iii).

**(E) Special rule for States with constitutional home rule cities**

For purposes of this subsection—

(i) In general The aggregate housing credit dollar amount for any constitutional home rule city for any calendar year shall be an amount which bears the same ratio to the State housing credit ceiling for such calendar year as—

(I) the population of such city, bears to

(II) the population of the entire State.

(ii) Coordination with other allocations In the case of any State which contains 1 or more constitutional home rule cities, for purposes of applying this paragraph with respect to housing credit agencies in such State other than constitutional home rule cities, the State housing credit ceiling for any calendar year shall be reduced by the aggregate housing credit dollar amounts determined for such year for all constitutional home rule cities in such State.

(iii) Constitutional home rule city For purposes of this paragraph, the term "constitutional home rule city" has the meaning given such term by section 146 (d)(3)(C).

**(F) State may provide for different allocation**

Rules similar to the rules of section 146 (e) (other than paragraph (2)(B) thereof) shall apply for purposes of this paragraph.

**(G) Population**

For purposes of this paragraph, population shall be determined in accordance with section 146 (j).

**(H) Cost-of-living adjustment**

(i) In general In the case of a calendar year after 2002, the \$2,000,000 and \$1.75 amounts in subparagraph (C) shall each be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 2001" for "calendar year 1992" in subparagraph (B) thereof.

(ii) Rounding

(I) In the case of the \$2,000,000 amount, any increase under clause (i) which is not a multiple of \$5,000 shall be rounded to the next lowest multiple of \$5,000.

(II) In the case of the \$1.75 amount, any increase under clause (i) which is not a multiple of 5 cents shall be rounded to the next lowest multiple of 5 cents.

**(I) Increase in State housing credit ceiling for 2008 and 2009**

In the case of calendar years 2008 and 2009—

- (i) the dollar amount in effect under subparagraph (C)(ii)(I) for such calendar year (after any increase under subparagraph (H)) shall be increased by \$0.20, and
- (ii) the dollar amount in effect under subparagraph (C)(ii)(II) for such calendar year (after any increase under subparagraph (H)) shall be increased by an amount equal to 10 percent of such dollar amount (rounded to the next lowest multiple of \$5,000).

**(4) Credit for buildings financed by tax-exempt bonds subject to volume cap not taken into account**

**(A) In general**

Paragraph (1) shall not apply to the portion of any credit allowable under subsection (a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 if—

- (i) such obligation is taken into account under section 146, and
- (ii) principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing or such financing is refunded as described in section 146 (i)(6).

**(B) Special rule where 50 percent or more of building is financed with tax-exempt bonds subject to volume cap**

For purposes of subparagraph (A), if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed by any obligation described in subparagraph (A), paragraph (1) shall not apply to any portion of the credit allowable under subsection (a) with respect to such building.

**(5) Portion of State ceiling set-aside for certain projects involving qualified nonprofit organizations**

**(A) In general**

Not more than 90 percent of the State housing credit ceiling for any State for any calendar year shall be allocated to projects other than qualified low-income housing projects described in subparagraph (B).

**(B) Projects involving qualified nonprofit organizations**

For purposes of subparagraph (A), a qualified low-income housing project is described in this subparagraph if a qualified nonprofit organization is to own an interest in the project (directly or through a partnership) and materially participate (within the meaning of section 469 (h)) in the development and operation of the project throughout the compliance period.

**(C) Qualified nonprofit organization**

For purposes of this paragraph, the term “qualified nonprofit organization” means any organization if—

- (i) such organization is described in paragraph (3) or (4) of section 501 (c) and is exempt from tax under section 501 (a),
- (ii) such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization; <sup>[3]</sup> and
- (iii) 1 of the exempt purposes of such organization includes the fostering of low-income housing.

**(D) Treatment of certain subsidiaries**

- (i) In general For purposes of this paragraph, a qualified nonprofit organization shall be treated as satisfying the ownership and material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

(ii) Qualified corporation For purposes of clause (i), the term “qualified corporation” means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence.

**(E) State may not override set-aside**

Nothing in subparagraph (F) of paragraph (3) shall be construed to permit a State not to comply with subparagraph (A) of this paragraph.

**(6) Buildings eligible for credit only if minimum long-term commitment to low-income housing**

**(A) In general**

No credit shall be allowed by reason of this section with respect to any building for the taxable year unless an extended low-income housing commitment is in effect as of the end of such taxable year.

**(B) Extended low-income housing commitment**

For purposes of this paragraph, the term “extended low-income housing commitment” means any agreement between the taxpayer and the housing credit agency—

(i) which requires that the applicable fraction (as defined in subsection (c)(1)) for the building for each taxable year in the extended use period will not be less than the applicable fraction specified in such agreement and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii),

(ii) which allows individuals who meet the income limitation applicable to the building under subsection (g) (whether prospective, present, or former occupants of the building) the right to enforce in any State court the requirement and prohibitions of clause (i),

(iii) which prohibits the disposition to any person of any portion of the building to which such agreement applies unless all of the building to which such agreement applies is disposed of to such person,

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

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

(vi) which, with respect to the property, is recorded pursuant to State law as a restrictive covenant.

**(C) Allocation of credit may not exceed amount necessary to support commitment**

(i) In general The housing credit dollar amount allocated to any building may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building, including any increase in such fraction pursuant to the application of subsection (f)(3) if such increase is reflected in an amended low-income housing commitment.

(ii) Buildings financed by tax-exempt bonds If paragraph (4) applies to any building the amount of credit allowed in any taxable year may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building. Such commitment may be amended to increase such fraction.

**(D) Extended use period**

For purposes of this paragraph, the term “extended use period” means the period—

(i) beginning on the 1st day in the compliance period on which such building is part of a qualified low-income housing project, and

(ii) ending on the later of—

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

(II) the date which is 15 years after the close of the compliance period.

**(E) Exceptions if foreclosure or if no buyer willing to maintain low-income status**

(i) In general The extended use period for any building shall terminate—

(I) on the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period, or

(II) on the last day of the period specified in subparagraph (I) if the housing credit agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building.

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

(ii) Eviction, etc. of existing low-income tenants not permitted—The termination of an extended use period under clause (i) shall not be construed to permit before the close of the 3-year period following such termination—

(I) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or

(II) any increase in the gross rent with respect to such unit not otherwise permitted under this section.

#### **(F) Qualified contract**

For purposes of subparagraph (E), the term “qualified contract” means a bona fide contract to acquire (within a reasonable period after the contract is entered into) the nonlow-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the extended low-income housing commitment) of—

(i) the sum of—

(I) the outstanding indebtedness secured by, or with respect to, the building,

(II) the adjusted investor equity in the building, plus

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

(ii) cash distributions from (or available for distribution from) the project.

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

#### **(G) Adjusted investor equity**

(i) In general For purposes of subparagraph (E), the term “adjusted investor equity” means, with respect to any calendar year, the aggregate amount of cash taxpayers invested with respect to the project increased by the amount equal to—

(I) such amount, multiplied by

(II) the cost-of-living adjustment for such calendar year, determined under section 1 (f)(3) by substituting the base calendar year for “calendar year 1987”.

An amount shall be taken into account as an investment in the project only to the extent there was an obligation to invest such amount as of the beginning of the credit period and to the extent such amount is reflected in the adjusted basis of the project.

(ii) Cost-of-living increases in excess of 5 percent not taken into account Under regulations prescribed by the Secretary, if the CPI for any calendar year (as defined in section 1 (f)(4)) exceeds the CPI for the preceding calendar year by more than 5 percent, the CPI for the base calendar year shall be increased such that such excess shall never be taken into account under clause (i).

(iii) Base calendar year For purposes of this subparagraph, the term “base calendar year” means the calendar year with or within which the 1st taxable year of the credit period ends.

**(H) Low-income portion**

For purposes of this paragraph, the low-income portion of a building is the portion of such building equal to the applicable fraction specified in the extended low-income housing commitment for the building.

**(I) Period for finding buyer**

The period referred to in this subparagraph is the 1-year period beginning on the date (after the 14th year of the compliance period) the taxpayer submits a written request to the housing credit agency to find a person to acquire the taxpayer's interest in the low-income portion of the building.

**(J) Effect of noncompliance**

If, during a taxable year, there is a determination that an extended low-income housing agreement was not in effect as of the beginning of such year, such determination shall not apply to any period before such year and subparagraph (A) shall be applied without regard to such determination if the failure is corrected within 1 year from the date of the determination.

**(K) Projects which consist of more than 1 building**

The application of this paragraph to projects which consist of more than 1 building shall be made under regulations prescribed by the Secretary.

**(7) Special rules**

**(A) Building must be located within jurisdiction of credit agency**

A housing credit agency may allocate its aggregate housing credit dollar amount only to buildings located in the jurisdiction of the governmental unit of which such agency is a part.

**(B) Agency allocations in excess of limit**

If the aggregate housing credit dollar amounts allocated by a housing credit agency for any calendar year exceed the portion of the State housing credit ceiling allocated to such agency for such calendar year, the housing credit dollar amounts so allocated shall be reduced (to the extent of such excess) for buildings in the reverse of the order in which the allocations of such amounts were made.

**(C) Credit reduced if allocated credit dollar amount is less than credit which would be allowable without regard to placed in service convention, etc.**

(i) In general The amount of the credit determined under this section with respect to any building shall not exceed the clause (ii) percentage of the amount of the credit which would (but for this subparagraph) be determined under this section with respect to such building.

(ii) Determination of percentage For purposes of clause (i), the clause (ii) percentage with respect to any building is the percentage which—

- (I) the housing credit dollar amount allocated to such building bears to
- (II) the credit amount determined in accordance with clause (iii).

(iii) Determination of credit amount The credit amount determined in accordance with this clause is the amount of the credit which would (but for this subparagraph) be determined under this section with respect to the building if—

- (I) this section were applied without regard to paragraphs (2)(A) and (3)(B) of subsection (f), and
- (II) subsection (f)(3)(A) were applied without regard to “the percentage equal to 2/3 of”.

**(D) Housing credit agency to specify applicable percentage and maximum qualified basis**

In allocating a housing credit dollar amount to any building, the housing credit agency shall specify the applicable percentage and the maximum qualified basis which may be taken into account under this section with respect to such building. The applicable percentage and maximum qualified basis so specified shall not exceed the applicable percentage and qualified basis determined under this section without regard to this subsection.

## **(8) Other definitions**

For purposes of this subsection—

### **(A) Housing credit agency**

The term “housing credit agency” means any agency authorized to carry out this subsection.

### **(B) Possessions treated as States**

The term “State” includes a possession of the United States.

## **(i) Definitions and special rules**

For purposes of this section—

### **(1) Compliance period**

The term “compliance period” means, with respect to any building, the period of 15 taxable years beginning with the 1st taxable year of the credit period with respect thereto.

### **(2) Determination of whether building is federally subsidized**

#### **(A) In general**

Except as otherwise provided in this paragraph, for purposes of subsection (b)(1), a new building shall be treated as federally subsidized for any taxable year if, at any time during such taxable year or any prior taxable year, there is or was outstanding any obligation the interest on which is exempt from tax under section 103 the proceeds of which <sup>[4]</sup> are or were used (directly or indirectly) with respect to such building or the operation thereof.

#### **(B) Election to reduce eligible basis by proceeds of obligations**

A tax-exempt obligation shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude from the eligible basis of the building for purposes of subsection (d) the proceeds of such obligation.

#### **(C) Special rule for subsidized construction financing**

Subparagraph (A) shall not apply to any tax-exempt obligation used to provide construction financing for any building if—

- (i) such obligation (when issued) identified the building for which the proceeds of such obligation would be used, and
- (ii) such obligation is redeemed before such building is placed in service.

### **(3) Low-income unit**

#### **(A) In general**

The term “low-income unit” means any unit in a building if—

- (i) such unit is rent-restricted (as defined in subsection (g)(2)), and
- (ii) the individuals occupying such unit meet the income limitation applicable under subsection (g)(1) to the project of which such building is a part.

#### **(B) Exceptions**

- (i) In general A unit shall not be treated as a low-income unit unless the unit is suitable for occupancy and used other than on a transient basis.
- (ii) Suitability for occupancy For purposes of clause (i), the suitability of a unit for occupancy shall be determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes.
- (iii) Transitional housing for homeless For purposes of clause (i), a unit shall be considered to be used other than on a transient basis if the unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building—
  - (I) which is used exclusively to facilitate the transition of homeless individuals (within the meaning of section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302), as in effect on the date of the enactment of this clause) to independent living within 24 months, and
  - (II) in which a governmental entity or qualified nonprofit organization (as defined in subsection (h)(5)) provides such individuals with temporary housing and supportive

services designed to assist such individuals in locating and retaining permanent housing.

(iv) Single-room occupancy units For purposes of clause (i), a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.

**(C) Special rule for buildings having 4 or fewer units**

In the case of any building which has 4 or fewer residential rental units, no unit in such building shall be treated as a low-income unit if the units in such building are owned by—

- (i) any individual who occupies a residential unit in such building, or
- (ii) any person who is related (as defined in subsection (d)(2)(D)(iii)) to such individual.

**(D) Certain students not to disqualify unit**

A unit shall not fail to be treated as a low-income unit merely because it is occupied—

- (i) by an individual who is—
  - (I) a student and receiving assistance under title IV of the Social Security Act,
  - (II) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act, or
  - (III) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws, or
- (ii) entirely by full-time students if such students are—
  - (I) single parents and their children and such parents are not dependents (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents (as so defined) of another individual other than a parent of such children, or.<sup>[5]</sup>
  - (II) married and file a joint return.

**(E) Owner-occupied buildings having 4 or fewer units eligible for credit where development plan**

- (i) In general Subparagraph (C) shall not apply to the acquisition or rehabilitation of a building pursuant to a development plan of action sponsored by a State or local government or a qualified nonprofit organization (as defined in subsection (h)(5)(C)).
- (ii) Limitation on credit In the case of a building to which clause (i) applies, the applicable fraction shall not exceed 80 percent of the unit fraction.
- (iii) Certain unrented units treated as owner-occupied In the case of a building to which clause (i) applies, any unit which is not rented for 90 days or more shall be treated as occupied by the owner of the building as of the 1st day it is not rented.

**(4) New building**

The term “new building” means a building the original use of which begins with the taxpayer.

**(5) Existing building**

The term “existing building” means any building which is not a new building.

**(6) Application to estates and trusts**

In the case of an estate or trust, the amount of the credit determined under subsection (a) and any increase in tax under subsection (j) shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

**(7) Impact of tenant’s right of 1st refusal to acquire property**

**(A) In general**

No Federal income tax benefit shall fail to be allowable to the taxpayer with respect to any qualified low-income building merely by reason of a right of 1st refusal held by the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) or government agency to purchase the property after

the close of the compliance period for a price which is not less than the minimum purchase price determined under subparagraph (B).

**(B) Minimum purchase price**

For purposes of subparagraph (A), the minimum purchase price under this subparagraph is an amount equal to the sum of—

- (i) the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the 5-year period ending on the date of the sale to the tenants), and
- (ii) all Federal, State, and local taxes attributable to such sale.

Except in the case of Federal income taxes, there shall not be taken into account under clause (ii) any additional tax attributable to the application of clause (ii).

**(8) Treatment of rural projects**

For purposes of this section, in the case of any project for residential rental property located in a rural area (as defined in section 520 of the Housing Act of 1949), any income limitation measured by reference to area median gross income shall be measured by reference to the greater of area median gross income or national non-metropolitan median income. The preceding sentence shall not apply with respect to any building if paragraph (1) of section 42 (h) does not apply by reason of paragraph (4) thereof to any portion of the credit determined under this section with respect to such building.

**(9) Coordination with low-income housing grants**

**(A) Reduction in State housing credit ceiling for low-income housing grants received in 2009**

For purposes of this section, the amounts described in clauses (i) through (iv) of subsection (h)(3)(C) with respect to any State for 2009 shall each be reduced by so much of such amount as is taken into account in determining the amount of any grant to such State under section 1602 of the American Recovery and Reinvestment Tax Act of 2009.

**(B) Special rule for basis**

Basis of a qualified low-income building shall not be reduced by the amount of any grant described in subparagraph (A).

**(j) Recapture of credit**

**(1) In general**

If—

- (A) as of the close of any taxable year in the compliance period, the amount of the qualified basis of any building with respect to the taxpayer is less than
  - (B) the amount of such basis as of the close of the preceding taxable year,
- then the taxpayer's tax under this chapter for the taxable year shall be increased by the credit recapture amount.

**(2) Credit recapture amount**

For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of—

- (A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if the accelerated portion of the credit allowable by reason of this section were not allowed for all prior taxable years with respect to the excess of the amount described in paragraph (1)(B) over the amount described in paragraph (1)(A), plus
- (B) interest at the overpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

**(3) Accelerated portion of credit**

For purposes of paragraph (2), the accelerated portion of the credit for the prior taxable years with respect to any amount of basis is the excess of—

(A) the aggregate credit allowed by reason of this section (without regard to this subsection) for such years with respect to such basis, over

(B) the aggregate credit which would be allowable by reason of this section for such years with respect to such basis if the aggregate credit which would (but for this subsection) have been allowable for the entire compliance period were allowable ratably over 15 years.

#### **(4) Special rules**

##### **(A) Tax benefit rule**

The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

##### **(B) Only basis for which credit allowed taken into account**

Qualified basis shall be taken into account under paragraph (1)(B) only to the extent such basis was taken into account in determining the credit under subsection (a) for the preceding taxable year referred to in such paragraph.

##### **(C) No recapture of additional credit allowable by reason of subsection (f)(3)**

Paragraph (1) shall apply to a decrease in qualified basis only to the extent such decrease exceeds the amount of qualified basis with respect to which a credit was allowable for the taxable year referred to in paragraph (1)(B) by reason of subsection (f)(3).

##### **(D) No credits against tax**

Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter.

##### **(E) No recapture by reason of casualty loss**

The increase in tax under this subsection shall not apply to a reduction in qualified basis by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

##### **(F) No recapture where de minimis changes in floor space**

The Secretary may provide that the increase in tax under this subsection shall not apply with respect to any building if—

(i) such increase results from a de minimis change in the floor space fraction under subsection (c)(1), and

(ii) the building is a qualified low-income building after such change.

#### **(5) Certain partnerships treated as the taxpayer**

##### **(A) In general**

For purposes of applying this subsection to a partnership to which this paragraph applies—

(i) such partnership shall be treated as the taxpayer to which the credit allowable under subsection (a) was allowed,

(ii) the amount of such credit allowed shall be treated as the amount which would have been allowed to the partnership were such credit allowable to such partnership,

(iii) paragraph (4)(A) shall not apply, and

(iv) the amount of the increase in tax under this subsection for any taxable year shall be allocated among the partners of such partnership in the same manner as such partnership's taxable income for such year is allocated among such partners.

##### **(B) Partnerships to which paragraph applies**

This paragraph shall apply to any partnership which has 35 or more partners unless the partnership elects not to have this paragraph apply.

##### **(C) Special rules**

(i) Husband and wife treated as 1 partner For purposes of subparagraph (B)(i), a husband and wife (and their estates) shall be treated as 1 partner.

(ii) Election irrevocable Any election under subparagraph (B), once made, shall be irrevocable.

**(6) No recapture on disposition of building which continues in qualified use**

**(A) In general**

The increase in tax under this subsection shall not apply solely by reason of the disposition of a building (or an interest therein) if it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.

**(B) Statute of limitations**

If a building (or an interest therein) is disposed of during any taxable year and there is any reduction in the qualified basis of such building which results in an increase in tax under this subsection for such taxable or any subsequent taxable year, then—

(i) the statutory period for the assessment of any deficiency with respect to such increase in tax shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of such reduction in qualified basis, and

(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

**(k) Application of at-risk rules**

For purposes of this section—

**(1) In general**

Except as otherwise provided in this subsection, rules similar to the rules of section 49 (a)(1) (other than subparagraphs (D)(ii)(II) and (D)(iv)(I) thereof), section 49 (a)(2), and section 49 (b)(1) shall apply in determining the qualified basis of any building in the same manner as such sections apply in determining the credit base of property.

**(2) Special rules for determining qualified person**

For purposes of paragraph (1)—

**(A) In general**

If the requirements of subparagraphs (B), (C), and (D) are met with respect to any financing borrowed from a qualified nonprofit organization (as defined in subsection (h)(5)), the determination of whether such financing is qualified commercial financing with respect to any qualified low-income building shall be made without regard to whether such organization—

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

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

**(B) Financing secured by property**

The requirements of this subparagraph are met with respect to any financing if such financing is secured by the qualified low-income building, except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if—

(i) a security interest in such building is not permitted by a Federal agency holding or insuring the mortgage secured by such building, and

(ii) the proceeds from the financing (if any) are applied to acquire or improve such building.<sup>[6]</sup>

**(C) Portion of building attributable to financing**

The requirements of this subparagraph are met with respect to any financing for any taxable year in the compliance period if, as of the close of such taxable year, not more than 60 percent of the eligible basis of the qualified low-income building is attributable to such financing (reduced by the principal and interest of any governmental financing which is part of a wrap-around mortgage involving such financing).

**(D) Repayment of principal and interest**

The requirements of this subparagraph are met with respect to any financing if such financing is fully repaid on or before the earliest of—

- (i) the date on which such financing matures,
- (ii) the 90th day after the close of the compliance period with respect to the qualified low-income building, or
- (iii) the date of its refinancing or the sale of the building to which such financing relates.

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

### **(3) Present value of financing**

If the rate of interest on any financing described in paragraph (2)(A) is less than the rate which is 1 percentage point below the applicable Federal rate as of the time such financing is incurred, then the qualified basis (to which such financing relates) of the qualified low-income building shall be the present value of the amount of such financing, using as the discount rate such applicable Federal rate. For purposes of the preceding sentence, the rate of interest on any financing shall be determined by treating interest to the extent of government subsidies as not payable.

### **(4) Failure to fully repay**

#### **(A) In general**

To the extent that the requirements of paragraph (2)(D) are not met, then the taxpayer's tax under this chapter for the taxable year in which such failure occurs shall be increased by an amount equal to the applicable portion of the credit under this section with respect to such building, increased by an amount of interest for the period—

- (i) beginning with the due date for the filing of the return of tax imposed by chapter 1 for the 1st taxable year for which such credit was allowable, and
- (ii) ending with the due date for the taxable year in which such failure occurs, determined by using the underpayment rate and method under section 6621.

#### **(B) Applicable portion**

For purposes of subparagraph (A), the term "applicable portion" means the aggregate decrease in the credits allowed to a taxpayer under section 38 for all prior taxable years which would have resulted if the eligible basis of the building were reduced by the amount of financing which does not meet requirements of paragraph (2)(D).

#### **(C) Certain rules to apply**

Rules similar to the rules of subparagraphs (A) and (D) of subsection (j)(4) shall apply for purposes of this subsection.

## **(l) Certifications and other reports to Secretary**

### **(1) Certification with respect to 1st year of credit period**

Following the close of the 1st taxable year in the credit period with respect to any qualified low-income building, the taxpayer shall certify to the Secretary (at such time and in such form and in such manner as the Secretary prescribes)—

- (A) the taxable year, and calendar year, in which such building was placed in service,
- (B) the adjusted basis and eligible basis of such building as of the close of the 1st year of the credit period,
- (C) the maximum applicable percentage and qualified basis permitted to be taken into account by the appropriate housing credit agency under subsection (h),
- (D) the election made under subsection (g) with respect to the qualified low-income housing project of which such building is a part, and
- (E) such other information as the Secretary may require.

In the case of a failure to make the certification required by the preceding sentence on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, no credit shall be allowable by reason of subsection (a) with respect to such building for any taxable year ending before such certification is made.

**(2) Annual reports to the Secretary**

The Secretary may require taxpayers to submit an information return (at such time and in such form and manner as the Secretary prescribes) for each taxable year setting forth—

- (A) the qualified basis for the taxable year of each qualified low-income building of the taxpayer,
- (B) the information described in paragraph (1)(C) for the taxable year, and
- (C) such other information as the Secretary may require.

The penalty under section 6652 (j) shall apply to any failure to submit the return required by the Secretary under the preceding sentence on the date prescribed therefor.

**(3) Annual reports from housing credit agencies**

Each agency which allocates any housing credit amount to any building for any calendar year shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual report specifying—

- (A) the amount of housing credit amount allocated to each building for such year,
- (B) sufficient information to identify each such building and the taxpayer with respect thereto, and
- (C) such other information as the Secretary may require.

The penalty under section 6652 (j) shall apply to any failure to submit the report required by the preceding sentence on the date prescribed therefor.

**(m) Responsibilities of housing credit agencies**

**(1) Plans for allocation of credit among projects**

**(A) In general**

Notwithstanding any other provision of this section, the housing credit dollar amount with respect to any building shall be zero unless—

- (i) such amount was allocated pursuant to a qualified allocation plan of the housing credit agency which is approved by the governmental unit (in accordance with rules similar to the rules of section 147 (f)(2) (other than subparagraph (B)(ii) thereof)) of which such agency is a part,
- (ii) such agency notifies the chief executive officer (or the equivalent) of the local jurisdiction within which the building is located of such project and provides such individual a reasonable opportunity to comment on the project,
- (iii) a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project is conducted before the credit allocation is made and at the developer's expense by a disinterested party who is approved by such agency, and
- (iv) a written explanation is available to the general public for any allocation of a housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the housing credit agency.

**(B) Qualified allocation plan**

For purposes of this paragraph, the term "qualified allocation plan" means any plan—

- (i) which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions,
- (ii) which also gives preference in allocating housing credit dollar amounts among selected projects to—
  - (I) projects serving the lowest income tenants,
  - (II) projects obligated to serve qualified tenants for the longest periods, and
  - (III) projects which are located in qualified census tracts (as defined in subsection (d)(5)(C)) and the development of which contributes to a concerted community revitalization plan, and

(iii) which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.

**(C) Certain selection criteria must be used**

The selection criteria set forth in a qualified allocation plan must include

- (i) project location,
- (ii) housing needs characteristics,
- (iii) project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan,
- (iv) sponsor characteristics,
- (v) tenant populations with special housing needs,
- (vi) public housing waiting lists,
- (vii) tenant populations of individuals with children,
- (viii) projects intended for eventual tenant ownership,
- (ix) the energy efficiency of the project, and
- (x) the historic nature of the project.

**(D) Application to bond financed projects**

Subsection (h)(4) shall not apply to any project unless the project satisfies the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located.

**(2) Credit allocated to building not to exceed amount necessary to assure project feasibility**

**(A) In general**

The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

**(B) Agency evaluation**

In making the determination under subparagraph (A), the housing credit agency shall consider—

- (i) the sources and uses of funds and the total financing planned for the project,
- (ii) any proceeds or receipts expected to be generated by reason of tax benefits,
- (iii) the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries, and
- (iv) the reasonableness of the developmental and operational costs of the project.

Clause (iii) shall not be applied so as to impede the development of projects in hard-to-develop areas. Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project.

**(C) Determination made when credit amount applied for and when building placed in service**

(i) In general A determination under subparagraph (A) shall be made as of each of the following times:

- (I) The application for the housing credit dollar amount.
- (II) The allocation of the housing credit dollar amount.
- (III) The date the building is placed in service.

(ii) Certification as to amount of other subsidies Prior to each determination under clause (i), the taxpayer shall certify to the housing credit agency the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply) with respect to the building.

**(D) Application to bond financed projects**

Subsection (h)(4) shall not apply to any project unless the governmental unit which issued the bonds (or on behalf of which the bonds were issued) makes a determination under rules similar to the rules of subparagraphs (A) and (B).

**(n) Regulations**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

**(1) dealing with—**

- (A)** projects which include more than 1 building or only a portion of a building,
- (B)** buildings which are placed in service in portions,
- (2)** providing for the application of this section to short taxable years,
- (3)** preventing the avoidance of the rules of this section, and
- (4)** providing the opportunity for housing credit agencies to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after their discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.

Current as of 1/1/10