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S. 980

To amend the Internal Revenue Code of 1986 to improve the effectiveness of the low-income housing credit.

IN THE SENATE OF THE UNITED STATES

May 11 (legislative day, JANUARY 3), 1989

Mr. MITCHELL (for himself, Mr. DANFORTH, Mr. HEINZ, Mr. SANFORD, Mr. DODD, Mr. RIEGLE, Mr. KENNEDY, Mr. COHEN, Mr. LAUTENBERG, Mr. PELL, Mr. LEVIN, Ms. MIKULSKI, Mr. MOYNIHAN, Mr. SARBANES, Mr. D'AMATO, Mr. GORTON, Mr. DURENBERGER, Mr. KERRY, Mr. CHAFEE, Mr. LIEBERMAN, Mr. BOREN, Mr. BAUCUS, Mr. PRYOR, Mr. FORD, Mr. SPECTER, Mr. SHELBY, Mr. SASSER, Mr. ROCKEFELLER, Mr. BURDICK, Mr. SIMON, Mr. MCCAIN, Mr. BOND, Mr. INOUE, Mr. HARKIN, Mr. MCCONNELL, Mr. CRANSTON, Mr. ADAMS, Mr. BREAUX, Mr. JOHNSTON, Mr. COATS, Mr. CONRAD, Mr. BINGAMAN, Mr. LUGAR, Mr. SYMMS, Mr. DIXON, Mr. GORE, Mr. GRASSLEY, Mr. BUMPERS, Mr. RUDMAN, Mr. GRAHAM, Mr. LEAHY, Mr. DOLE, Mr. LOTT, and Mr. DASCHLE) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to improve the effectiveness of the low-income housing credit.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

(a) SHORT TITLE- This Act may be cited as the 'Low-Income Housing Credit Act of 1989'.

(b) AMENDMENT OF 1986 CODE- Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 2. CHANGES IN LOW-INCOME HOUSING CREDIT.

(a) CREDIT MADE PERMANENT- Section 42 (relating to low-income housing credit) is amended by striking subsection (n).

(b) 1-YEAR CARRYOVER OF UNUSED CREDIT AUTHORITY-

(1) IN GENERAL- Paragraph (3) of section 42(h) (relating to State housing credit ceiling) is amended by redesignating subparagraphs (D), (E), and (F) as subparagraphs (E), (F), and (G), respectively, and by striking subparagraph (C) and inserting the following new subparagraphs:

`(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) \$1.25 multiplied by the State population,

`(ii) the unused State housing credit ceiling (if any) of such State for the preceding calendar year, plus

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

For purposes of clause (ii), the unused State housing credit ceiling for any calendar year is the excess (if any) of the amount described in clause (i) over the aggregate housing credit dollar amount allocated for such year.

`(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 the unused State housing credit ceiling for such year (as defined in subparagraph (C)(ii)) over the excess (if any) of--

`(I) the aggregate housing credit dollar amount allocated for such year, over

`(II) the amount described in clause (i) of subparagraph (C).

`(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).'

(2) CONFORMING AMENDMENTS-

(A) Subparagraph (E) of section 42(h)(5) is amended by striking `subparagraph (E)' and inserting `subparagraph (F)'.

(B) Paragraph (6) of section 42(h) is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively.

(c) BUILDINGS ELIGIBLE FOR CREDIT ONLY IF MINIMUM 30-YEAR COMMITMENT TO LOW-INCOME HOUSING-

(1) IN GENERAL- Subsection (h) of section 42 is amended by redesignating paragraphs (6) and (7) as paragraphs (7) and (10), respectively, and by inserting after paragraph (5) the following new paragraph:

`(6) BUILDINGS ELIGIBLE FOR CREDIT ONLY IF MINIMUM 30-YEAR 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 beginning of such taxable year.

`(B) EXTENDED LOW-INCOME HOUSING COMMITMENT- For purposes of this paragraph, the term `extended low-income housing commitment' means any recorded 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,

`(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 same rights as such agency to enforce in any State court the requirement of clause (i), and

`(iii) which is binding on all successors of the taxpayer.

`(C) ALLOCATION OF CREDIT MAY NOT EXCEED AMOUNT NECESSARY TO SUPPORT COMMITMENT- 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.

`(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), 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--

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

`(II) any increase in the gross rent with respect to such unit in excess of that permitted under subsection (g),

so long as such tenant continues to meet the income limitation applicable under subsection (g) to such unit.

`(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 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) SALES OF LESS THAN LOW-INCOME PORTION OF BUILDING- In the case of a sale or exchange of only a portion of the low-income portion of the building, only the same portion (as the portion sold or exchanged) of the amount determined under subparagraph (F) shall be taken into account thereunder.

`(K) 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.

`(L) 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.'

(2) CONFORMING AMENDMENT- Subparagraph (C) of section 42(b)(3) is amended by striking `subsection (h)(6))' and inserting `subsection `(h)(7)'.

(d) CREDIT FOR ACQUISITION OF EXISTING BUILDING TO APPLY ONLY IF BUILDING TO BE REHABILITATED; INCREASE IN REQUIRED REHABILITATION EXPENDITURES-

(1) IN GENERAL- Subparagraph (B) of section 42(d)(2) is amended by striking `and' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting `, and', and by adding at the end thereof the following new clause:

`(iv) a credit is allowable under subsection (a) by reason of subsection (e) with respect to the building.'

(2) CREDIT PERIOD FOR EXISTING BUILDINGS NOT TO BEGIN BEFORE REHABILITATION CREDIT ALLOWED- Subsection (f) of section 42 (relating to definition and special rules relating to credit period) is amended by adding at the end thereof the following new paragraph:

`(4) CREDIT PERIOD FOR EXISTING BUILDINGS NOT TO BEGIN BEFORE REHABILITATION CREDIT ALLOWED- 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.'

(3) INCREASE IN REQUIRED REHABILITATION EXPENDITURES- Paragraph (3) of section 42(e) is amended--

(A) by striking `\$2,000' in the text of subparagraph (A) and inserting `\$3,000', and

(B) by striking `\$2,000' in the heading and inserting `\$3,000'.

(e) CHANGES IN RULES RELATING TO RENT RESTRICTIONS-

(1) REDUCTION IN AREA MEDIAN GROSS INCOME NOT TO REQUIRE REDUCTION OF RENT- Subparagraph (A) of section 42(g)(2) (relating to rent-restricted units) is amended by adding at the end thereof the following new sentence: `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.'

(2) HIGHER RENT PERMITTED FOR UNITS OCCUPIED BY HIGHER INCOME INDIVIDUALS IF PROJECT HAS OPERATING DEFICIT- Paragraph (2) of section 42(g) is amended by adding at the end thereof the following new subparagraph:

`(D) HIGHER RENT PERMITTED FOR UNITS OCCUPIED BY HIGHER INCOME INDIVIDUALS IF PROJECT HAS OPERATING DEFICIT-

`(i) IN GENERAL- A unit in a project described in clause (ii) shall be treated as a rent-restricted unit under paragraph (1) if--

`(I) the income of the occupants of the unit is more than 100 percent (but not more than 140 percent) of the income limitation applicable under paragraph (1) to such occupants, and

`(II) the gross rent with respect to such unit does not exceed 30 percent of the income of such occupants.

`(ii) PROJECT DESCRIBED- A project is described in this clause for any calendar year if--

`(I) the project would (without regard to the treatment under clause (i)) have an operating deficit for such calendar year,

`(II) the project's expenses for taxes, utilities (including garbage collection), operating maintenance services, and insurance are increasing in the aggregate at a rate (when compared to the preceding calendar year) in excess of the rate of increase of area median gross income, and

`(III) the housing credit agency for such project approves the treatment under clause (i).

`(iii) OPERATING DEFICIT- The term `operating deficit' means, with respect to any calendar year, an excess of--

`(I) the expenses necessary for the operation of the project (including

debt service) during such calendar year, over

`(II) the aggregate of the gross rent receipts (including amounts described in clauses (i) and (ii) of subparagraph (B)) attributable to such calendar year and other available funds (including operating reserves).'

(3) DETERMINATION OF APPLICABLE AREA MEDIAN GROSS INCOME-

(A) Subsection (g) of section 42 is amended by redesignating paragraphs (4), (5), and (6), as paragraphs (5), (6), and (7), respectively, and by inserting after paragraph (3) the following new paragraph:

`(4) INCOME OF INDIVIDUALS; AREA MEDIAN GROSS INCOME-

`(A) IN GENERAL- For purposes of this section, the income of individuals and area median gross income shall be determined by the Secretary in a manner consistent with determinations of lower income families and area median gross income under section 8 of the United States Housing Act of 1937 (or, if such program is terminated, under such program as in effect immediately before such termination).

`(B) AREA MEDIAN GROSS INCOME APPLICABLE TO UNIT BASED ON NUMBER OF BEDROOMS IN UNIT- Determinations under subparagraph (A) shall include adjustments for family size. For purposes of determining the income limitation applicable under subsection (g)(1) to individuals occupying a residential unit, there shall be deemed to be--

`(i) 1 individual occupying the unit if the unit does not have a separate bedroom, and

`(ii) 1.5 individuals occupying the unit for each separate bedroom in such unit.

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 preceding sentence shall also apply for purposes of the last sentence of section 142(d)(2)(B).'

(B) Paragraph (5) of section 42(g), as redesignated by subparagraph (A), is amended by striking `(2) (other than subparagraph (A) thereof).'

(4) USE OF STATE MEDIAN GROSS INCOME FOR DETERMINING QUALIFIED LOW-INCOME HOUSING PROJECT STATUS, ETC- Subsection (g) of section 42 (relating to qualified low-income housing projects) is further amended by adding at the end thereof the following new paragraph:

`(8) USE OF STATE MEDIAN GROSS INCOME IN CERTAIN CASES-

`(A) IN GENERAL- For purposes of this section, area median gross income shall be treated as not being less than State median gross income in the case of a building--

`(i) which was, immediately before its acquisition by the taxpayer, owned or financed by a Federal, State, or local governmental agency,

`(ii) which is a federally-assisted building described in clause (i), (ii), or (iii) of subsection (d)(6)(B)), and

`(iii) which is described in clause (i) or (ii) of subparagraph (B).

`(B) ADDITIONAL DESCRIPTION-

`(i) A building is described in this clause if the building is at least 6 months in arrears in payments on the mortgage loan thereon and the agency described in subparagraph (A)(i) with respect to such building makes a determination that--

`(I) the building requires substantial rehabilitation, and

`(II) pursuant to an analysis of certified financial statements relating to the building, the building is not then generating cash flow sufficient to pay costs of maintenance, operations, and payments of principal and interest on a current basis.

`(ii) A building is described in this clause if the building was acquired by a Federal, State, or local governmental agency by reason of foreclosure or instrument in lieu of foreclosure.'

(f) ADDITIONAL BUILDINGS ELIGIBLE FOR WAIVER OF 10-YEAR PERIOD APPLICABLE TO ACQUISITIONS OF EXISTING BUILDINGS-

(1) IN GENERAL- Subparagraph (A) of section 42(d)(6) is amended by striking `or' at the end of clause (i), by striking the period at the end of clause (ii) and inserting a comma, and by adding at the end thereof the following new clauses:

`(iii) to avert default on a loan made or held by any State or agency

thereof, or

`(iv) to facilitate the sale of the building if--

`(I) the mortgage loan on the building is held by the Department of Housing and Urban Development,

`(II) the building is owned by such Department following its acquisition (by such Department or the mortgage loan lender) by foreclosure (or by instrument in lieu of foreclosure), or

`(III) the building is owned by the Farmers Home Administration.'

(2) LOW-INCOME BUILDINGS WHERE MORTGAGE MAY BE PREPAID- Paragraph (6) of section 42(d) is amended by adding at the end thereof the following new subparagraph:

`(C) LOW-INCOME BUILDINGS WHERE MORTGAGE MAY BE PREPAID- A waiver may be granted under subparagraph (A) (without regard to any clause thereof) with respect to a federally-assisted building described in clause (ii) or (iii) of subparagraph (B) if--

`(i) at any time within 1 year after the date of the application by the taxpayer for such a waiver, the mortgage on such building is eligible for prepayment under subtitle B of the Emergency Low Income Housing Preservation Act of 1987 or under section 502(c) of the Housing Act of 1949, and

`(ii) the appropriate Secretary or Administrator certifies to the Secretary that it is reasonable to expect that such building will cease being a low-income building if the waiver is not granted, and

If a waiver is granted under subparagraph (A) with respect to such building, no person shall be eligible to prepay such mortgage without the approval of the appropriate Secretary.'

(3) CERTAIN MULTI-FAMILY HOUSING- Subparagraph (B) of section 42(d)(6) is amended by adding at the end thereof the following new sentence: 'Such term includes any building which has more than 4 residential rental units and the mortgage on which was originated by, or is insured or guaranteed by, the Federal Government.'

(g) ADDITIONAL TYPES OF HOUSING ELIGIBLE FOR CREDIT-

(1) SINGLE-ROOM OCCUPANCY UNITS RENTED ON A MONTHLY BASIS- Subparagraph (B) of section 42(i)(3) (relating to low income unit) is amended by adding at the end thereof the following new sentence: 'For purposes of the preceding sentence, 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.'

(2) SPECIAL NEEDS HOUSING-

(A) CONSIDERATION OF REQUIRED FEES FOR SUPPORTIVE SERVICES IN CALCULATION OF GROSS RENT- Subparagraph (B) of section 42(g)(2) (relating to gross rent) is amended--

(i) in clause (i), by striking 'and' at the end,

(ii) in clause (ii), by striking the period at the end and inserting ', and', and

(iii) by adding at the end the following new clause:

`(iii) includes any fee assessed for a supportive service (as defined in paragraph (9)) if payment of the fee is required as a condition of occupancy, unless--

`(I) the fee is paid by any governmental program of assistance in which the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services, or

`(II) the project would not be economically feasible without the required fee and a governmental agency regulates the fee to ensure that it is reasonable.'

(B) ELIGIBILITY OF SPECIAL NEEDS HOUSING- Subsection (g) of section 42 (relating to qualified low-income housing project) is further amended by adding at the end the following new paragraph:

`(9) ELIGIBILITY OF SPECIAL NEEDS HOUSING-

`(A) IN GENERAL- A residential rental property shall not be treated as failing to be a qualified low-income housing project for purposes of this section solely because individuals occupying residential units in the property are provided supportive services. The preceding sentence shall not apply if section 7872 does not apply to any individual occupying a residential unit in the property (or such individual spouse) by reason of subsection (g) thereof.

`(B) SUPPORTIVE SERVICE- For purposes of this paragraph, 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.'

(3) SCATTERED SITE PROJECTS- Subsection (g) of section 42 (defining qualified low-income housing project) is further amended by adding at the end thereof the following new paragraph:

`(10) 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.'

(h) ELIGIBLE BASIS FOR NEW BUILDINGS TO INCLUDE EXPENDITURES BEFORE CLOSE OF 1ST YEAR OF CREDIT PERIOD-

(1) NEW BUILDINGS- Paragraph (1) of section 42(d) (relating to eligible basis for new buildings) is amended by inserting before the period `as of the close of the 1st taxable year of the credit period'.

(2) EXISTING BUILDINGS- Subparagraph (A) of section 42(d)(2) (relating to eligible basis for existing buildings) is amended by striking `subparagraph (B)' and all that follows through the end of clause (i) and inserting `subparagraph (B), its adjusted basis as of the close of the 1st taxable year of the credit period, and'.

(3) CONFORMING AMENDMENTS-

(A) Subparagraph (C) of section 42(d)(2) is amended by striking `ACQUISITION COST' in the heading and inserting `ADJUSTED BASIS' and by striking `cost' in the text and inserting `adjusted basis'.

(B) Paragraph (5) of section 42(d) is amended by striking subparagraph (A), by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively, and by striking the paragraph heading and inserting the following:

`(5) SPECIAL RULES FOR DETERMINING ELIGIBLE BASIS- '.

(C) Paragraph (5) of section 42(e) is amended by striking `subsection (d)(2)(A)(i)(II)' and inserting `subsection (d)(2)(A)(i)'.

(i) CHANGES IN RULES LIMITING BENEFITS WHERE BUILDING FINANCED WITH TAX-EXEMPT BONDS OR BELOW MARKET LOANS-

(1) FEWER BUILDINGS TREATED AS FEDERALLY SUBSIDIZED-

(A) Subparagraph (A) of section 42(i)(2) is amended by adding at the end thereof the following: `The preceding sentence shall not apply if--

`(i) the aggregate of the obligations and loans referred to therein does not exceed 75 percent of the aggregate basis of the building and the land on which it is located (other than so much of such basis as is attributable to any developer fee), and

`(ii) any additional credit which is allowable under subsection (a) by reason of clause (i) is supported by an allocation of housing credit under subsection (h).'

(B) Subparagraph (D) of section 42(i)(2) (defining below market Federal loan) is amended by inserting `50 percent of' after `less than'.

(2) CREDIT VOLUME CAP NOT APPLICABLE TO BUILDING IF 50 PERCENT OR MORE OF BUILDING IS FINANCED WITH TAX-EXEMPT BONDS SUBJECT TO BOND VOLUME CAP- Subparagraph (B) of section 42(h)(4) is amended--

(A) by striking `70 percent' in the text and inserting `50 percent', and

(B) by striking `70 PERCENT' in the heading and inserting `50 PERCENT'.

(j) HOUSING CREDIT MAY BE ALLOCATED ON PROJECT BASIS-

(1) IN GENERAL- Paragraph (1) of section 42(h) is amended by adding at the end thereof the following new subparagraph:

`(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) CONFORMING AMENDMENT- Subparagraph (B) of section 42(h)(1) is amended
by striking `or (E)' and inserting `(E), or (F)'.

(3) PROJECTS WITH MORE THAN 1 BUILDING MUST BE IDENTIFIED- Paragraph (3)
of section 42(g) is amended by adding at the end thereof the following
new subparagraph:

` (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.'

(k) OWNER-OCCUPIED BUILDINGS HAVING 4 OR FEWER UNITS ELIGIBLE FOR CREDIT
WHERE DEVELOPMENT PLAN- Paragraph (3) of section 42(i) is amended by adding
at the end thereof the following new subparagraph:

` (D) 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.'

(l) ALLOCATION OF CREDIT AMONG PARTNERS- Paragraph (5) of section 42(j)
(relating to certain partnerships treated as the taxpayer) is amended by
redesignating subparagraph (C) as subparagraph (D) and by inserting after
subparagraph (B) the following new subparagraph:

` (C) ALLOCATION OF CREDIT AMONG PARTNERS- The allocation of the credit
determined under this section to a partner shall be treated as having
substantial economic effect for purposes of section 704(b) if--

` (i) such allocation is made on the basis of such partner's share of some
other substantial partnership item and such allocation has substantial
economic effect for such purposes, and

` (ii) appropriate adjustments are made under regulations prescribed by the
Secretary in the gain chargeback rules to take into account the amount of
such credit which is allowed to a partner during the period such partner's
capital account is negative.'

(m) CHANGES IN RULES RELATED TO DEEP RENT SKEWED PROJECTS-

(1) Clause (iii) of section 142(d)(4)(B) is amended by striking ` 1/3 '
and inserting ` 1/2 '.

(2) Paragraph (5) of section 42(g) (relating to certain rules made
applicable), as redesignated by subsection (e)(3), is further amended by
striking `(other than section 142(d)(4)(B)(iii))'.

(n) ADJUSTED GROSS INCOME PHASEOUT FOR \$25,000 EXCEPTION FROM PASSIVE LOSS
RULES TO APPLY BASED ON SUCH INCOME BEFORE INITIAL INVESTMENT- Paragraph
(3) of section 469(i) is amended by adding at the end thereof the following
new subparagraph:

` (C) YEAR-BY-YEAR TEST OF ADJUSTED GROSS INCOME NOT TO APPLY TO LOW-INCOME
HOUSING CREDIT- If any portion of the passive activity credit for the

taxable year is attributable to the credit determined under section 42 with respect to any project, the taxpayer's adjusted gross income for such year shall be treated for purposes of this subsection as being equal to the taxpayer's adjusted gross income for the last taxable year ending before the date of the taxpayer's earliest substantial investment in the project. The preceding sentence shall apply only with respect to investments the taxpayer was obligated (on a recourse basis) to make as of the close of such last taxable year.'

(o) HOUSING CREDIT AGENCIES MUST ADOPT PLANS FOR ALLOCATION OF CREDIT AMONG PROJECTS- Subsection (h) of section 42 (relating to limitation on aggregate credit allowable with respect to projects located in a State), as amended by subsection (c), is further amended by inserting after paragraph (7) the following new paragraph:

`(8) HOUSING CREDIT AGENCIES MUST ADOPT 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 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)) of which such agency is a part.

`(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, and

`(ii) which 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 provide the largest number of units per dollar of credit.

`(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,

`(iv) sponsor characteristics, and

`(v) tenant populations with special housing needs.

`(D) APPLICATION TO BOND FINANCED PROJECTS- Paragraph (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.'

(p) CREDIT ALLOCATED NOT TO EXCEED AMOUNT NECESSARY TO ASSURE PROJECT FEASIBILITY- Subsection (h) of section 42 is further amended by inserting after paragraph (8) the following new paragraph:

`(9) 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 compliance period or such longer period as such agency determines to be appropriate.

`(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, and

`(ii) any proceeds or receipts expected to be generated by reason of tax benefits.

Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project.

`(C) APPLICATION TO BOND FINANCED PROJECTS- Paragraph (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).'

(q) STUDENTS IN GOVERNMENT-SUPPORTED JOB TRAINING PROGRAMS NOT TO DISQUALIFY UNIT- Paragraph (3) of section 42(i), as amended by subsection (k), is further amended by adding at the end thereof the following new subparagraph:

`(E) STUDENTS IN GOVERNMENT-SUPPORTED JOB TRAINING PROGRAMS NOT TO DISQUALIFY UNIT- A unit shall not fail to be treated as a low-income unit merely because it is occupied by an individual who is enrolled in a job training program receiving assistance under Federal or State law or who is otherwise receiving job training assistance under Federal or State law.'

(r) CHANGES RELATING TO AT-RISK RULES-

(1) APPLICATION OF AT-RISK RULES WHERE HISTORIC REHABILITATION CREDIT ALLOWED- Paragraph (8) of section 46(c) (relating to certain nonrecourse financing excluded from credit base) is amended by adding at the end thereof the following new subparagraph:

`(G) SPECIAL RULES WHERE BOTH HISTORIC REHABILITATION CREDIT AND LOW-INCOME HOUSING CREDIT ALLOWED- In the case of a building with respect to which--

`(i) credit is allowable by section 38 which is attributable to the rehabilitation percentage in subsection (b)(4)(A)(ii), and

`(ii) credit is allowable by section 38 which is determined under section 42 (relating to low-income housing credit),

the provisions of this paragraph, paragraph (9), and section 47(d)(1) shall be applied as modified by section 42(k).'

(2) APPLICATION OF AT-RISK RULES WITH RESPECT TO CERTAIN FINANCING PROVIDED BY QUALIFIED NONPROFIT ORGANIZATIONS- Subparagraph (D) of section 42(k)(2) (relating to application of at-risk rules) is amended by adding at the end thereof the following new sentence:

`In the case of a qualified nonprofit organization which is not described in section 46(c)(8)(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.'

(s) CREDIT PERCENTAGES DETERMINED ON SEMIANNUAL BASIS- Subparagraph (C) of section 42(b)(2) is amended--

(1) by inserting 'for any month' after 'subparagraph (B)' in the material preceding clause (i),

(2) by striking clause (ii) and inserting the following:

`(ii) by using a discount rate equal to 72 percent of the average of the annual Federal mid-term rates and the annual Federal long-term rates applicable under section 1274(d)(1) to months during the most recent semiannual period ending before such month and compounded annually, and', and

(3) by adding at the end thereof the following new sentence:

`For purposes of clause (ii), the term 'semiannual period' means the 6-month period ending June 30 and the 6-month period ending December 31.'

(t) ACQUISITION OF PARTNERSHIP TREATED AS ACQUISITION OF BUILDING HELD BY PARTNERSHIP- Subparagraph (D) of section 42(d)(2) is amended by adding at the end thereof the following new clause:

`(iv) ACQUISITION OF PARTNERSHIP TREATED AS ACQUISITION OF BUILDING HELD BY PARTNERSHIP-

`(I) IN GENERAL- If 90 percent or more of the capital and profits interests in a partnership are acquired by purchase (within the meaning of subparagraph (B)(i)) in a single transaction within a 12-month period, the assets of such partnership shall be treated for purposes of subparagraph (B)(i) as so acquired.

`(II) CONTINUING PARTNERS NOT ALLOWED CREDIT- In a case to which subclause (I) applies, no credit shall be allowed by reason of this section to any person unless such person acquired his interest in the partnership by purchase (within the meaning of subparagraph (B)(i)) as part of or after the transaction referred to in subclause (I).'

(u) APPLICATION OF CREDIT TO ESTATES AND TRUSTS- Subsection (i) of section 42 (relating to special rules) is amended by adding at the end thereof

the following new paragraph:

`(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 credit recapture amount 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.'

(v) ADMINISTRATIVE PROVISIONS-

(1) CERTIFICATIONS WITH RESPECT TO 1ST YEAR OF CREDIT PERIOD MADE WITH INCOME TAX RETURNS- Paragraph (1) of section 42(1) (relating to certification with respect to 1st year of credit period) is amended by striking so much of the text as precedes 'the taxpayer shall' and inserting 'Not later than the last day prescribed by law for filing the return of tax for the 1st taxable year in a credit period (including extensions) with respect to any qualified low-income building,'.

(2) AUTHORITY TO PRESCRIBE PROCEDURES FOR HOUSING CREDIT AGENCIES TO CORRECT ERRORS- Subsection (m) of section 42 (relating to regulations) is amended by striking 'and' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ', and', and by adding at the end thereof the following new paragraph:

`(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.'

(w) INCREASE IN CREDIT FOR BUILDINGS IN HIGH COST AREAS- Paragraph (5) of section 42(d) is further amended by adding at the end thereof the following new subparagraph:

`(C) INCREASE IN CREDIT FOR BUILDINGS IN HIGH COST AREAS-

`(i) IN GENERAL- In the case of any building located in the portion of 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 area in which 50 percent or more of the families have an income which is less than 60 percent of the area median gross income.

`(II) LIMIT ON AREAS DESIGNATED- The portion of a qualified census tract which may be designated for purposes of this subparagraph shall not exceed an area having 20 percent of the population of such tract.

`(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 one 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- Only 20 percent of the metropolitan statistical areas in the United States may be designated for purposes of this subparagraph and only 20 percent of nonmetropolitan areas in the United States may be so designated.

`(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.'

(x) ELIGIBLE BASIS OF BUILDING ACQUIRED IN CERTAIN FORECLOSURES-

(1) IN GENERAL- Subsection (d) of section 42 (relating to eligible basis) is amended by adding at the end thereof the following new paragraph:

`(8) ELIGIBLE BASIS OF BUILDING ACQUIRED IN CERTAIN FORECLOSURES- The eligible basis of a building acquired as described in subsection (k)(3) shall be an amount equal to the lesser of--

`(A) the eligible basis calculated under this subsection without regard to this paragraph, or

`(B) the amount chargeable to capital account (before the close of the 1st taxable year of the credit period for such building) which is--

`(i) in connection with the actual construction and development of the building,

`(ii) of a character subject to the allowance for depreciation, and

`(iii) without regard to any--

`(I) basis adjustment resulting from a transaction in which a gain or loss is realized in connection with the building, or

`(II) section 754 basis adjustment in connection with such an acquisition or occurring thereafter.'

(2) APPLICATION OF AT-RISK RULES TO BUILDING ACQUIRED IN CERTAIN FORECLOSURES- Subsection (k) of section 42 (relating to application of at-risk rules) is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (2) the following new paragraph:

`(3) SPECIAL RULES FOR DETERMINING QUALIFIED PERSON IN THE EVENT OF FORECLOSURE- For purposes of paragraph (1)--

`(A) IN GENERAL- If--

`(i) the requirements of subparagraph (B) are met with respect to financing provided by any person who acquired a building by foreclosure (or by instrument in lieu of foreclosure) of any purchase money-security interest held by such person,

`(ii) such building is resold by the person within 12 months after the date of foreclosure (or instrument in lieu of foreclosure), and

`(iii) the requirements of paragraph (2)(D) regarding repayment of principal and interest are met with respect to such financing, except that the phrase `the date which is 10 years after the date of such financing' shall be substituted for clause (ii) of paragraph (2)(D),

then 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 person is a person described in section 46(c)(8)(D)(iv)(II).

`(B) PORTION OF BUILDING ATTRIBUTABLE TO FINANCING- The requirements of this subparagraph are met with respect to any financing of a building for any taxable year in the compliance period if, as of the close of such taxable year, not more than the lesser of--

`(i) 60 percent of the eligible basis of the qualified low-income building, or

`(ii) the amount of the purchase money-security interest upon which the person described in subparagraph (A) foreclosed (or accepted an instrument in lieu of foreclosure),

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).

`(C) DETERMINATION OF ELIGIBLE BASIS- The eligible basis of a building acquired as described in this paragraph shall be determined under subsection (d)(8).'

(3) PRESENT VALUE OF FINANCING- Section 42(k)(4) (relating to present value of financing), as redesignated by paragraph (2), is amended--

(A) by inserting after the first sentence: `If the rate of interest on any financing described in paragraph (3) is less than the rate which is 1 percentage point above 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 1 percentage point above such applicable Federal rate.'; and

(B) by striking 'the preceding sentence' in the last sentence and inserting 'this paragraph'.

(y) CERTAIN PURCHASE OPTIONS DISREGARDED- Subsection (i) of section 42 (relating to definitions and special rules) is further amended by adding at the end thereof the following new paragraph:

`(7) CERTAIN PURCHASE OPTIONS DISREGARDED- For purposes of this title, the determination of whether any qualified low-income building is owned by the taxpayer shall be made without regard to any option by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) to acquire such building at less than fair market value after the close of the compliance period if no financing with respect to such building is provided during such period by such organization (or a related person (as defined in subsection (d)(2)(D)(iii)) to such organization).'

(z) EFFECTIVE DATES-

(1) IN GENERAL- Except as otherwise provided in this subsection, the amendments made by this section shall apply to determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1989.

(2) BUILDINGS NOT SUBJECT TO ALLOCATION LIMITS- Except as otherwise provided in this subsection, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, the amendments made by this section shall apply to buildings placed in service after December 31, 1989.

(3) 1-YEAR CARRYOVER OF UNUSED CREDIT AUTHORITY- The amendments made by subsection (b) shall apply to calendar years after 1989, but clauses (ii) and (iii) of section 42(h)(3)(C) of such Code (as added by this section) shall not apply to unused allocations for 1989 or any preceding year.

(4) ADDITIONAL BUILDINGS ELIGIBLE FOR WAIVER OF 10-YEAR RULE- The amendments made by subsection (f) shall take effect on the date of the enactment of this Act.

(5) AMENDMENT TO PASSIVE LOSS RULES- The amendment made by subsection (n) shall apply to any investment in a project after December 31, 1989, but only if the taxpayer's earliest substantial investment in such project is after such date.

(6) DETERMINATION OF CREDIT PERCENTAGE- The amendment made by subsection (s) shall apply to months after December 1989.

(7) ACQUISITION OF PARTNERSHIP TREATED AS ACQUISITION OF BUILDING HELD BY PARTNERSHIP- The amendment made by subsection (t) shall apply to acquisitions after December 31, 1989.

(8) CERTIFICATIONS WITH RESPECT TO 1ST YEAR OF CREDIT PERIOD- The amendment made by subsection (v)(1) shall apply to taxable years ending on or after December 31, 1989.

(9) RULES RELATING TO PROPERTY ACQUIRED IN CERTAIN FORECLOSURES- The amendments made by subsection (x) shall apply to property placed in service after the date of the enactment of this Act.

(10) CERTAIN RULES WHICH APPLY TO BONDS- Paragraphs (8)(D) and (9)(C) of section 42(h) of such Code, as added by this section, shall apply to obligations issued December 31, 1989.

(11) CLARIFICATIONS- The following amendments shall apply as if included in the amendments made by section 252 of the Tax Reform Act of 1986:

(A) Paragraph (1) and (2) of subsection (g) (relating to units rented on a monthly basis and special needs housing).

(B) Subsection (h) (relating to eligible basis for new buildings to include expenditures before close of 1st year of credit period).

(C) Subsection (l) (relating to allocation of credit among partners).

(D) Subsection (q) (relating to students in government-supported job training programs not to disqualify unit).

(E) Subsection (u) (relating to application of credit to estates and trusts).

(F) Subsection (v)(2) (relating to authority to prescribe procedures for

housing credit agencies to correct errors).

(12) REGULATIONS ON DIFFICULT DEVELOPMENT AREAS- Not later than 180 days after the date of the enactment of this Act, the Secretary of Housing and Urban Development shall prescribe initial regulations on the designation of difficult development areas under section 42(d)(5)(C) of the Internal Revenue Code of 1986, as added by this section.