

## **§42. Low-income housing credit**

### **(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-

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

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) 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) 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) 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
- (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)(B)(ii)) 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., 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 2016" in subparagraph (A)(ii) 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  $\frac{2}{3}$  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)(B) 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), (B), or (C) 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.

**(C) Average income test**

**(i) In general**

The project meets the minimum requirements of this subparagraph if 40 percent or more (25 percent or more in the case of a project described in section 142(d)(6)) of the residential units in such project are both rent-restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit.

**(ii) Special rules relating to income limitation**

For purposes of clause (i)-

**(I) Designation**

The taxpayer shall designate the imputed income limitation of each unit taken into account under such clause.

**(II) Average test**

The average of the imputed income limitations designated under subclause (I) shall not exceed 60 percent of area median gross income.

**(III) 10-percent increments**

The designated imputed income limitation of any unit under subclause (I) shall be 20 percent, 30 percent, 40 percent, 50 percent, 60 percent, 70 percent, or 80 percent 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 clauses (ii), (iii), and (iv), 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) Rental of next available unit in case of 20–50 or 40–60 test**

In the case of a project with respect to which the taxpayer elects the requirements of subparagraph (A) or (B) of paragraph (1), 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.

**(iii) Rental of next available unit in case of average income test**

In the case of a project with respect to which the taxpayer elects the requirements of subparagraph (C) of paragraph (1), if the income of the occupants of the unit increases above 140 percent of the greater of-

- (I) 60 percent of area median gross income, or
- (II) the imputed income limitation designated with respect to the unit under paragraph (1)(C)(ii)(I),

clause (i) shall cease to apply to any 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 the limitation described in clause (v).

**(iv) Deep rent skewed projects**

In the case of a project described in section 142(d)(4)(B), clause (ii) or (iii), whichever is applicable, shall be applied by substituting "170 percent" for "140 percent", and-

- (I) in the case of clause (ii), 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 rental unit" and all that follows in such clause, and
- (II) in the case of clause (iii), by substituting "any low-income unit in the building is occupied by a new resident whose income exceeds the lesser of 40 percent of area median gross income or the imputed income limitation designated with respect to such unit under paragraph (1)(C)(ii)(I)" for "any residential rental unit" and all that follows in such clause.

**(v) Limitation described**

For purposes of clause (iii), the limitation described in this clause with respect to any unit is-

- (I) the imputed income limitation designated with respect to such unit under paragraph (1)(C)(ii)(I), in the case of a unit which was taken into account as a low-income unit prior to becoming vacant, and
- (II) the imputed income limitation which would have to be designated with respect to such unit under such paragraph in order for the project to continue to meet the requirements of paragraph (1)(C)(ii)(II), in the case of any other unit.

**(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 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 2016" in subparagraph (A)(ii) 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 2018, 2019, 2020, and 2021**

In the case of calendar years 2018, 2019, 2020, and 2021, each of the dollar amounts in effect under clauses (I) and (II) of subparagraph (C)(ii) for any calendar year (after any increase under subparagraph (H)) shall be increased by multiplying such dollar amount by 1.125.

**(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, 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 2016" in subparagraph (A)(ii) thereof.

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 C-CPI-U for any calendar year (as defined in section 1(f)(6)) exceeds the C-CPI-U for the preceding calendar year by more than 5 percent, the C-CPI-U for the base calendar year shall be increased such that such excess shall never be taken into account under clause (i). In the case of a base calendar year before 2017, the C-CPI-U for such year shall be determined by multiplying the CPI for such year by the amount determined under section 1(f)(3)(B).

**(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>1</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

(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)(C) 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.

**(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)(B)(ii)) 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.

(Added Pub. L. 99-514, title II, §252(a), Oct. 22, 1986, 100 Stat. 2189; amended Pub. L. 99-509, title VIII, §8072(a), Oct. 21, 1986, 100 Stat. 1964; Pub. L. 100-647, title I, §§1002(l)(1)-(25), (32), 1007(g)(3)(B), title IV, §§4003(a), (b)(1), (3), 4004(a), Nov. 10, 1988, 102 Stat. 3373-3381, 3435, 3643, 3644; Pub. L. 101-239, title VII, §§7108(a)(1), (b)-(e)(2), (f)-(m), (n)(2)-(q).

7811(a), 7831(c), 7841(d)(13)–(15), Dec. 19, 1989, 103 Stat. 2306–2321, 2406, 2426, 2429; Pub. L. 101–508, title XI, §§11407(a)(1), (b)(1)–(9), 11701(a)(1)–(3)(A), (4), (5)(A), (6)–(10), 11812(b)(3), 11813(b)(3), Nov. 5, 1990, 104 Stat. 1388–474, 1388–475, 1388–505 to 1388–507, 1388–535, 1388–551; Pub. L. 102–227, title I, §107(a), Dec. 11, 1991, 105 Stat. 1687; Pub. L. 103–66, title XIII, §13142(a)(1), (b)(1)–(5), Aug. 10, 1993, 107 Stat. 437–439; Pub. L. 104–188, title I, §1704(t)(53), (64), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 105–206, title VI, §6004(g)(5), July 22, 1998, 112 Stat. 796; Pub. L. 106–400, §2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 106–554, §1(a)(7) [title I, §§131(a)–(c), 132–136], Dec. 21, 2000, 114 Stat. 2763, 2763A–610 to 2763A–613; Pub. L. 107–147, title IV, §417(2), (3), Mar. 9, 2002, 116 Stat. 56; Pub. L. 108–311, title II, §207(8), title IV, §408(a)(3), Oct. 4, 2004, 118 Stat. 1177, 1191; Pub. L. 110–142, §6(a), Dec. 20, 2007, 121 Stat. 1806; Pub. L. 110–289, div. C, title I, §§3001–3002(b), 3003(a)–(g), 3004(a)–(g), 3007(b), July 30, 2008, 122 Stat. 2878–2884, 2886; Pub. L. 111–5, div. B, title I, §1404, Feb. 17, 2009, 123 Stat. 352; Pub. L. 112–240, title III, §302(a), Jan. 2, 2013, 126 Stat. 2328; Pub. L. 113–295, div. A, title I, §112(a), title II, §§212(a), 221(a)(7), Dec. 19, 2014, 128 Stat. 4014, 4033, 4038; Pub. L. 114–113, div. Q, title I, §131(a), (b), Dec. 18, 2015, 129 Stat. 3055; Pub. L. 115–97, title I, §11002(d)(1)(G), (3), Dec. 22, 2017, 131 Stat. 2060, 2061; Pub. L. 115–141, div. T, §§102(a), 103(a), (b), div. U, title IV, §401(a)(10)–(13), Mar. 23, 2018, 132 Stat. 1157, 1184, 1185.)

#### **INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS**

*For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.*

#### **REFERENCES IN TEXT**

The date of the enactment of this paragraph, referred to in subsec. (b)(2)(A), is the date of enactment of Pub. L. 110–289, which was approved July 30, 2008.

Section 201(a) of the Tax Reform Act of 1986, referred to in subsec. (c)(2)(B), is section 201(a) of Pub. L. 99–514, which amended section 168 of this title generally.

Section 3 of the Federal Deposit Insurance Act, referred to in subsec. (d)(6)(B), is classified to section 1813 of Title 12, Banks and Banking.

Section 8 of the United States Housing Act of 1937, referred to in subsecs. (d)(6)(C)(i), (g)(2)(B), and (h)(6)(B)(iv), is classified to section 1437f of Title 42, The Public Health and Welfare. Section 8(e)(2) of the Act was repealed by Pub. L. 101–625, title II, §289(b)(1), Nov. 28, 1990, 104 Stat. 4128, effective Oct. 1, 1991, but to remain in effect with respect to single room occupancy dwellings as authorized by subchapter IV (§11361 et seq.) of chapter 119 of Title 42. See section 12839(b) of Title 42.

Sections 221(d)(3), (4) and 236 of the National Housing Act, referred to in subsec. (d)(6)(C)(i), are classified to sections 1715l(d)(3), (4) and 1715z–1, respectively, of Title 12, Banks and Banking.

Sections 515, 502(c), and 520 of the Housing Act of 1949, referred to in subsecs. (d)(6)(C)(i), (g)(2)(B)(iv), and (i)(8), are classified to sections 1485, 1472(c), and 1490, respectively, of Title 42, The Public Health and Welfare.

The date of the enactment of this subparagraph, referred to in subsec. (g)(2)(E), is the date of enactment of Pub. L. 100–647, which was approved Nov. 10, 1988.

The date of the enactment of this clause, referred to in subsec. (i)(3)(B)(iii)(I), is date of enactment of Pub. L. 101–239, which was approved Dec. 19, 1989.

The Social Security Act, referred to in subsec. (i)(3)(D)(i)(I), (II), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title IV of the Act is classified generally to subchapter IV (§601 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Parts B and E of title IV of the Act are classified generally to parts B

(§620 et seq.) and E (§670 et seq.), respectively, of subchapter IV of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Job Training Partnership Act, referred to in subsec. (i)(3)(D)(i)(III), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, which was classified generally to chapter 19 (§1501 et seq.) of Title 29, Labor, and was repealed by Pub. L. 105-220, title I, §199(b)(2), (c)(2)(B), Aug. 7, 1998, 112 Stat. 1059, effective July 1, 2000. Pursuant to former section 2940(b) of Title 29, references to a provision of the Job Training Partnership Act, effective Aug. 7, 1998, were deemed to refer to that provision or the corresponding provision of the Workforce Investment Act of 1998, Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, and, effective July 1, 2000, were deemed to refer to the corresponding provision of the Workforce Investment Act of 1998. The Workforce Investment Act of 1998 was repealed by Pub. L. 113-128, title V, §511(a), July 22, 2014, 128 Stat. 1705, effective July 1, 2015. Pursuant to section 3361(a) of Title 29, references to a provision of the Workforce Investment Act of 1998 are deemed to refer to the corresponding provision of the Workforce Innovation and Opportunity Act, Pub. L. 113-128, July 22, 2014, 128 Stat. 1425, effective July 1, 2015. For complete classification of the Job Training Partnership Act and the Workforce Investment Act of 1998 to the Code, see Tables. For complete classification of the Workforce Innovation and Opportunity Act to the Code, see Short Title note set out under section 3101 of Title 29 and Tables.

Section 1602 of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (i)(9)(A), is section 1602 of Pub. L. 111-5, which is set out as a note below.

#### **PRIOR PROVISIONS**

A prior section 42, added Pub. L. 94-12, title II, §203(a), Mar. 29, 1975, 89 Stat. 29; amended Pub. L. 94-164, §3(a)(1), Dec. 23, 1975, 89 Stat. 972; Pub. L. 94-455, title IV, §401(a)(2)(A), (B), title V, §503(b)(4), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1555, 1562, 1834; Pub. L. 95-30, title I, §101(c), May 23, 1977, 91 Stat. 132, which related to general tax credit allowed to individuals in an amount equal to the greater of (1) 2% of taxable income not exceeding \$9,000 or (2) \$35 multiplied by each exemption the taxpayer was entitled to, expired Dec. 31, 1978, pursuant to the terms of: (1) Pub. L. 94-12, §209(a) as amended by Pub. L. 94-164, §2(e), set out as an Effective and Termination Dates of 1975 Amendment note under section 56 of this title; (2) Pub. L. 94-164, §3(b), as amended by Pub. L. 94-455, §401(a)(1) and Pub. L. 95-30, §103(a); and (3) Pub. L. 94-455, §401(e), as amended by Pub. L. 95-30, §103(c) and Pub. L. 95-600, title I, §103(b), Nov. 6, 1978, 92 Stat. 2771, set out as an Effective and Termination Dates of 1976 Amendment note under section 32 of this title.

Another prior section 42 was renumbered section 37 of this title.

#### **AMENDMENTS**

**2018-**Subsec. (d)(4)(C)(i). Pub. L. 115-141, §401(a)(11)(A), substituted "as defined in paragraph (5)(B)(ii)" for "as defined in paragraph (5)(C)".

Subsec. (e)(2)(B). Pub. L. 115-141, §401(a)(10), substituted "etc.," for "etc," in heading.

Subsec. (f)(5)(B)(ii)(I). Pub. L. 115-141, §401(a)(11)(B), substituted "(d)(6)(B)" for "(d)(6)(C)".

Subsec. (g)(1). Pub. L. 115-141, §103(a)(1), substituted "subparagraph (A), (B), or (C)" for "subparagraph (A) or (B)" in introductory provisions.

Subsec. (g)(1)(C). Pub. L. 115-141, §103(a)(2), added subpar. (C).

Subsec. (g)(2)(D)(i). Pub. L. 115-141, §103(b)(1), substituted "clauses (ii), (iii), and (iv)" for "clause (ii)".

Subsec. (g)(2)(D)(ii). Pub. L. 115–141, §103(b)(2), in heading, substituted "Rental of next available unit in case of 20–50 or 40–60 test" for "Next available unit must be rented to low-income tenant if income rises above 140 percent of income limit", and, in text, substituted "In the case of a project with respect to which the taxpayer elects the requirements of subparagraph (A) or (B) of paragraph (1), if" for "If" and struck out at end "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'."

Subsec. (g)(2)(D)(iii) to (v). Pub. L. 115–141, §103(b)(3), added cls. (iii) to (v).

Subsec. (h)(3)(I). Pub. L. 115–141, §102(a), amended subpar. (I) generally. Prior to amendment, subpar. (I) related to the increase in State housing credit ceiling for 2008 and 2009.

Subsec. (h)(5)(C)(ii). Pub. L. 115–141, §401(a)(12), substituted ", and" for "; and".

Subsec. (i)(3)(D)(ii)(I). Pub. L. 115–141, §401(a)(13), struck out period at end.

Subsec. (k)(2)(B). Pub. L. 115–141, §401(a)(11)(C)(i), substituted "(d)(6)(C)" for "(d)(6)(B)" in introductory provisions.

Subsec. (k)(2)(B)(ii). Pub. L. 115–141, §401(a)(11)(C)(ii), substituted "building." for "building.."

Subsec. (m)(1)(B)(ii)(III). Pub. L. 115–141, §401(a)(11)(D), substituted "as defined in subsection (d)(5)(B)(ii)" for "as defined in subsection (d)(5)(C)".

**2017**-Subsecs. (e)(3)(D)(ii), (h)(3)(H)(i)(II). Pub. L. 115–97, §11002(d)(1)(G), substituted "for 'calendar year 2016' in subparagraph (A)(ii)" for "for 'calendar year 1992' in subparagraph (B)".

Subsec. (h)(6)(G)(i)(II). Pub. L. 115–97, §11002(d)(3)(A), substituted "for 'calendar year 2016' in subparagraph (A)(ii) thereof" for "for 'calendar year 1987'".

Subsec. (h)(6)(G)(ii). Pub. L. 115–97, §11002(d)(3)(B), substituted "if the C-CPI-U for any calendar year (as defined in section 1(f)(6)) exceeds the C-CPI-U for the preceding calendar year by more than 5 percent, the C-CPI-U for the base calendar year shall be increased such that such excess shall never be taken into account under clause (i). In the case of a base calendar year before 2017, the C-CPI-U for such year shall be determined by multiplying the CPI for such year by the amount determined under section 1(f)(3)(B)." for "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)."

**2015**-Subsec. (b)(2). Pub. L. 114–113, §131(b), substituted "Minimum" for "Temporary minimum" in heading.

Subsec. (b)(2)(A). Pub. L. 114–113, §131(a), struck out "with respect to housing credit dollar amount allocations made before January 1, 2015" after "paragraph".

**2014**-Subsec. (b)(1). Pub. L. 113–295, §212(a), substituted "For purposes of this section-" for "For purposes of this section, the term", inserted subpar. (A) designation and heading, and inserted "The term" at beginning of subpar. (A).

Subsec. (b)(2)(A). Pub. L. 113–295, §112(a), substituted "January 1, 2015" for "January 1, 2014".

Subsec. (h)(3)(C)(ii)(I). Pub. L. 113–295, §221(a)(7), struck out "\$1.50 for 2001" after "\$1.75".

**2013-**Subsec. (b)(2)(A). Pub. L. 112–240 substituted "with respect to housing credit dollar amount allocations made before January 1, 2014" for "and before December 31, 2013".

**2009-**Subsec. (i). Pub. L. 111–5 added par. (9).

**2008-**Subsec. (b). Pub. L. 110–289, §3002(a), redesignated par. (2) as (1), in heading, substituted "Determination of applicable percentage" for "Buildings placed in service after 1987", in text, substituted "For purposes of this section, the term 'applicable percentage' means, with respect to any building, the appropriate percentage" for "(A) In general.-In the case of any qualified low-income building placed in service by the taxpayer after 1987, the term 'applicable percentage' means the appropriate percentage", "a new building which is not federally subsidized for the taxable year" for "a building described in paragraph (1)(A)", and "a building not described in clause (i)" for "a building described in paragraph (1)(B)", added par. (2), and struck out "For purposes of this section-" after subsec. heading and former par. (1) which related to buildings placed in service during 1987.

Subsec. (c)(2). Pub. L. 110–289, §3004(a), struck out concluding provisions which read as follows: "Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937 (other than assistance under the McKinney-Vento Homeless Assistance Act (as in effect on the date of the enactment of this sentence))."

Subsec. (d)(2)(B)(ii). Pub. L. 110–289, §3003(g)(1), substituted "the date the building was last placed in service," for "the later of-

"(I) the date the building was last placed in service, or

"(II) the date of the most recent nonqualified substantial improvement of the building,".

Subsec. (d)(2)(D). Pub. L. 110–289, §3003(e), (g)(2), redesignated cls. (ii) and (iii)(II) as (i) and (ii), respectively, in cl. (ii) struck out at end "For purposes of the preceding sentence, in applying section 267(b) or 707(b)(1), '10 percent' shall be substituted for '50 percent'." and struck out former cls. (i) and (iii)(I) which related to the term "nonqualified substantial improvement" and application of section 179 for purposes of subpar. (B)(i).

Subsec. (d)(4)(C)(ii). Pub. L. 110–289, §3003(c), substituted "shall not exceed the sum of-" for "shall not exceed 10 percent of the eligible basis of the qualified low-income housing project of which it is a part." and added subcls. (I) and (II).

Subsec. (d)(5)(A). Pub. L. 110–289, §3003(d), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: "If, during any taxable year of the compliance period, a grant is made with respect to any building or the operation thereof and any portion of such grant is funded with Federal funds (whether or not includible in gross income), the eligible basis of such building for such taxable year and all succeeding taxable years shall be reduced by the portion of such grant which is so funded."

Subsec. (d)(5)(B), (C). Pub. L. 110–289, §3003(g)(3), redesignated subpar. (C) as (B) and struck out heading and text of former subpar. (B). Text read as follows: "The eligible basis of any building shall not include any portion of its adjusted basis which is attributable to amounts with respect to which an election is made under section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)."

Subsec. (d)(5)(C)(v). Pub. L. 110–289, §3003(a), added cl. (v).

Subsec. (d)(6). Pub. L. 110–289, §3003(f), amended par. (6) generally. Prior to amendment, par. (6) consisted of subpars. (A) to (E) relating to general rule for waiver of par. (2)(B)(ii) with respect to any

federally-assisted building, definition of "federally-assisted building", waiver for buildings with low-income occupancy, waiver for buildings acquired from insured depository institutions in default, and definition of "appropriate Federal official".

Subsec. (e)(3)(A)(ii)(I). Pub. L. 110–289, §3003(b)(1)(A), substituted "20 percent" for "10 percent".

Subsec. (e)(3)(A)(ii)(II). Pub. L. 110–289, §3003(b)(1)(B), substituted "\$6,000" for "\$3,000".

Subsec. (e)(3)(D). Pub. L. 110–289, §3003(b)(2), added subpar. (D).

Subsec. (f)(5)(B)(ii)(II). Pub. L. 110–289, §3003(b)(3), substituted "if the dollar amount in effect under subsection (e)(3)(A)(ii)(II) were two-thirds of such amount." for "if subsection (e)(3)(A)(ii)(II) were applied by substituting '\$2,000' for '\$3,000'."

Subsec. (g)(9). Pub. L. 110–289, §3004(g), added par. (9).

Subsec. (h)(1)(E)(ii). Pub. L. 110–289, §3004(b), substituted "(as of the date which is 1 year after the date that the allocation was made)" for "(as of the later of the date which is 6 months after the date that the allocation was made or the close of the calendar year in which the allocation is made)".

Subsec. (h)(3)(I). Pub. L. 110–289, §3001, added subpar. (I).

Subsec. (h)(4)(A)(ii). Pub. L. 110–289, §3007(b), inserted "or such financing is refunded as described in section 146(i)(6)" before period at end.

Subsec. (i)(2)(A). Pub. L. 110–289, §3002(b)(1), struck out ", or any below market Federal loan," before "the proceeds of which".

Subsec. (i)(2)(B). Pub. L. 110–289, §3002(b)(2)(A), in heading, struck out "balance of loan or" before "proceeds" and in text, struck out "loan or" before "tax-exempt obligation" and substituted "for purposes of subsection (d) the proceeds of such obligation." for "for purposes of subsection (d)-

"(i) in the case of a loan, the principal amount of such loan, and

"(ii) in the case of a tax-exempt obligation, the proceeds of such obligation."

Subsec. (i)(2)(C). Pub. L. 110–289, §3002(b)(2)(B)(i), struck out "or below market Federal loan" after "tax-exempt obligation" in introductory provisions.

Subsec. (i)(2)(C)(i). Pub. L. 110–289, §3002(b)(2)(B)(ii), substituted "(when issued)" for "or loan (when issued or made)" and "the proceeds of such obligation" for "the proceeds of such obligation or loan".

Subsec. (i)(2)(C)(ii). Pub. L. 110–289, §3002(b)(2)(B)(iii), struck out ", and such loan is repaid," after "redeemed".

Subsec. (i)(2)(D), (E). Pub. L. 110–289, §3002(b)(2)(C), struck out subpars. (D) and (E) which related to below market Federal loan and buildings receiving HOME assistance or Native American housing assistance, respectively.

Subsec. (i)(3)(D)(i)(II), (III). Pub. L. 110–289, §3004(e), added subcl. (II) and redesignated former subcl. (II) as (III).

Subsec. (i)(8). Pub. L. 110–289, §3004(f), added par. (8).

Subsec. (j)(6). Pub. L. 110–289, §3004(c), amended par. (6) generally. Prior to amendment, text read as follows: "In the case of a disposition of a building or an interest therein, the taxpayer shall be discharged from liability for any additional tax under this subsection by reason of such disposition if-

"(A) the taxpayer furnishes to the Secretary a bond in an amount satisfactory to the Secretary and for the period required by the Secretary, and

"(B) 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."

Subsec. (m)(1)(C)(ix), (x). Pub. L. 110–289, §3004(d), added cls. (ix) and (x).

**2007**-Subsec. (i)(3)(D)(ii)(I). Pub. L. 110–142 amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: "single parents and their children and such parents and children 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, or".

**2004**-Subsec. (d)(2)(D)(iii)(I). Pub. L. 108–311, §408(a)(3), substituted "section 179(d)(7)" for "section 179(b)(7)".

Subsec. (i)(3)(D)(ii)(I). Pub. L. 108–311, §207(8), inserted ", determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof" after "section 152".

**2002**-Subsec. (h)(3)(C). Pub. L. 107–147, §417(2), substituted "the amounts described in clauses (ii) through (iv) over the aggregate housing credit dollar amount allocated for such year" for "the amounts described in clauses (ii) and (iii) over the aggregate housing credit dollar amount allocated for such year" in concluding provisions.

Subsec. (m)(1)(B)(ii)(II), (III). Pub. L. 107–147, §417(3), struck out second "and" at end of subcl. (II) and inserted "and" at end of subcl. (III).

**2000**-Subsec. (c)(2). Pub. L. 106–400 substituted "McKinney-Vento Homeless Assistance Act" for "Stewart B. McKinney Homeless Assistance Act" in concluding provisions.

Subsec. (d)(4)(A). Pub. L. 106–554, §1(a)(7) [title I, §134(a)(1)], substituted "subparagraphs (B) and (C)" for "subparagraph (B)".

Subsec. (d)(4)(C), (D). Pub. L. 106–554, §1(a)(7) [title I, §134(a)(2), (3)], added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (d)(5)(C)(ii)(I). Pub. L. 106–554, §1(a)(7) [title I, §135(b)], in first sentence, inserted "either" before "in which 50 percent" and "or which has a poverty rate of at least 25 percent" before period at end.

Subsec. (h)(1)(E)(ii). Pub. L. 106–554, §1(a)(7) [title I, §135(a)(1)], in first sentence, substituted "(as of the later of the date which is 6 months after the date that the allocation was made or the close of the calendar year in which the allocation)" for "(as of the close of the calendar year in which the allocation)".

Subsec. (h)(3)(C). Pub. L. 106–554, §1(a)(7) [title I, §136(b)], which directed the substitution of "clauses (i) through (iv)" for "clauses (i) and (iii)" in the first sentence of concluding provisions, could not be executed because the words "clauses (i) and (iii)" did not appear subsequent to the amendment by Pub. L. 106–554, §1(a)(7) [title I, §131(c)(1)(B)]. See below.

Pub. L. 106–554, §1(a)(7) [title I, §135(a)(2)], in last sentence of concluding provisions, substituted "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" for "project which".

Pub. L. 106-554, §1(a)(7) [title I, §131(c)(1)], in first sentence of concluding provisions, substituted "clause (i)" for "clause (ii)" and "clauses (ii)" for "clauses (i)".

Subsec. (h)(3)(C)(i), (ii). Pub. L. 106-554, §1(a)(7) [title I, §131(a)], amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

"(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,".

Subsec. (h)(3)(D)(ii). Pub. L. 106-554, §1(a)(7) [title I, §136(a)], substituted "the excess (if any) of-" for "the excess (if any) of the unused State housing credit ceiling for such year (as defined in subparagraph (C)(i)) over the excess (if any) of-" in introductory provisions, added subcls. (I) and (II), and struck out former subcls. (I) and (II) which read as follows:

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

"(II) the sum of the amounts described in clauses (ii) and (iii) of subparagraph (C)."

Pub. L. 106-554, §1(a)(7) [title I, §131(c)(2)], substituted "subparagraph (C)(i)" for "subparagraph (C)(ii)" in introductory provisions and "clauses (ii)" for "clauses (i)" in subcl. (II).

Subsec. (h)(3)(H). Pub. L. 106-554, §1(a)(7) [title I, §131(b)], added subpar. (H).

Subsec. (i)(2)(E). Pub. L. 106-554, §1(a)(7) [title I, §134(b)(2)], inserted "or Native American housing assistance" after "HOME assistance" in heading.

Subsec. (i)(2)(E)(i). Pub. L. 106-554, §1(a)(7) [title I, §134(b)(1)], inserted "or the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) (as in effect on October 1, 1997)" after "this subparagraph)".

Subsec. (i)(3)(B)(iii)(I). Pub. L. 106-400 substituted "McKinney-Vento Homeless Assistance Act" for "Stewart B. McKinney Homeless Assistance Act".

Subsec. (m)(1)(A)(iii), (iv). Pub. L. 106-554, §1(a)(7) [title I, §133(a)], added cls. (iii) and (iv).

Subsec. (m)(1)(B)(ii)(III). Pub. L. 106-554, §1(a)(7) [title I, §132(b)], added subcl. (III).

Subsec. (m)(1)(B)(iii). Pub. L. 106-554, §1(a)(7) [title I, §133(b)], inserted "and in monitoring for noncompliance with habitability standards through regular site visits" before period at end.

Subsec. (m)(1)(C)(iii). Pub. L. 106-554, §1(a)(7) [title I, §132(a)(1)], inserted ", including whether the project includes the use of existing housing as part of a community revitalization plan" before comma at end.

Subsec. (m)(1)(C)(v) to (viii). Pub. L. 106-554, §1(a)(7) [title I, §132(a)(2)], added cls. (v) to (viii) and struck out former cls. (v) to (vii) which read as follows:

"(v) participation of local tax-exempt organizations,

"(vi) tenant populations with special housing needs, and

"(vii) public housing waiting lists."

**1998-**Subsec. (j)(4)(D). Pub. L. 105-206 substituted "this chapter" for "subpart A, B, D, or G of this part".

**1996-**Subsec. (c)(2). Pub. L. 104–188, §1704(t)(64), struck out "of 1988" after "Homeless Assistance Act".

Subsec. (d)(5)(B). Pub. L. 104–188, §1704(t)(53), provided that section 11812(b)(3) of Pub. L. 101–508 shall be applied by not executing the amendment therein to the heading of subsec. (d)(5)(B) of this section. See 1990 Amendment note below.

**1993-**Subsec. (g)(8). Pub. L. 103–66, §13142(b)(3), added par. (8).

Subsec. (h)(6)(B)(iv) to (vi). Pub. L. 103–66, §13142(b)(4), added cl. (iv) and redesignated former cls. (iv) and (v) as (v) and (vi), respectively.

Subsec. (i)(2)(E). Pub. L. 103–66, §13142(b)(5), added subpar. (E).

Subsec. (i)(3)(D). Pub. L. 103–66, §13142(b)(2), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: "A unit shall not fail to be treated as a low-income unit merely because it is occupied by an individual who is-

"(i) a student and receiving assistance under title IV of the Social Security Act, or

"(ii) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws."

Subsec. (m)(2)(B)(iv). Pub. L. 103–66, §13142(b)(1), added cl. (iv).

Subsec. (o). Pub. L. 103–66, §13142(a)(1), struck out subsec. (o) which provided that subsec. (h)(3)(C)(i) would not apply to any amount allocated after June 30, 1992, and that subsec. (h)(4) would not apply to any building placed in service after June 30, 1992, with an exception for bond-financed buildings in progress.

**1991-**Subsec. (o)(1). Pub. L. 102–227, §107(a)(1), struck out ", for any calendar year after 1991" after "paragraph (2)" in introductory provisions, inserted "to any amount allocated after June 30, 1992" before comma at end of subpar. (A), and substituted "June 30, 1992" for "1991" in subpar. (B).

Subsec. (o)(2). Pub. L. 102–227, §107(a)(2), substituted "July 1, 1992" for "1992" in introductory provisions and subpar. (A), "June 30, 1992" for "December 31, 1991" and "June 30, 1994" for "December 31, 1993" in subpar. (B), and "July 1, 1994" for "January 1, 1994" in subpar. (C).

**1990-**Subsec. (b)(1). Pub. L. 101–508, §11701(a)(1)(B), struck out at end "A building shall not be treated as described in subparagraph (B) if, at any time during the credit period, moderate rehabilitation assistance is provided with respect to such building under section 8(e)(2) of the United States Housing Act of 1937."

Subsec. (c)(2). Pub. L. 101–508, §11701(a)(1)(A), inserted at end "Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937."

Pub. L. 101–508, §11407(b)(5)(A), inserted before period at end of last sentence "(other than assistance under the Stewart B. McKinney Homeless Assistance Act of 1988 (as in effect on the date of the enactment of this sentence))".

Subsec. (d)(2)(D)(i)(I). Pub. L. 101–508, §11812(b)(3), inserted "(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" after "section 167(k)."

Subsec. (d)(2)(D)(ii)(V). Pub. L. 101–508, §11407(b)(8), added subcl. (V).

Subsec. (d)(5)(B). Pub. L. 101-508, §11812(b)(3), which directed the insertion of "(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" after "section 167(k)", was executed to the text, and not the heading, of subpar. (B). See 1996 Amendment note above.

Subsec. (d)(5)(C)(ii)(I). Pub. L. 101-508, §11407(b)(4), inserted at end "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."

Pub. L. 101-508, §11701(a)(2)(B), inserted before period at end "for such year".

Pub. L. 101-508, §11701(a)(2)(A), which directed the insertion of "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," after "census tract", was executed by making the insertion after "any census tract" to reflect the probable intent of Congress.

Subsec. (g)(2)(B)(iv). Pub. L. 101-508, §11407(b)(3), added cl. (iv).

Subsec. (g)(2)(D)(i). Pub. L. 101-508, §11701(a)(3)(A), inserted before period at end "and such unit continues to be rent-restricted".

Subsec. (g)(2)(D)(ii). Pub. L. 101-508, §11701(a)(4), inserted at end "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'."

Subsec. (g)(3)(A). Pub. L. 101-508, §11701(a)(5)(A), substituted "the 1st year of the credit period for such building" for "the 12-month period beginning on the date the building is placed in service".

Subsec. (h)(3)(C). Pub. L. 101-508, §11701(a)(6)(A), substituted "the sum of the amounts described in clauses (i) and (iii)" for "the amount described in clause (i)" in second sentence.

Subsec. (h)(3)(D)(ii)(II). Pub. L. 101-508, §11701(a)(6)(B), substituted "the sum of the amounts described in clauses (i) and (iii)" for "the amount described in clause (i)".

Subsec. (h)(5)(B). Pub. L. 101-508, §11407(b)(9)(A), inserted "own an interest in the project (directly or through a partnership) and" after "nonprofit organization is to".

Subsec. (h)(5)(C)(i) to (iii). Pub. L. 101-508, §11407(b)(9)(B), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (h)(5)(D)(i). Pub. L. 101-508, §11407(b)(9)(C), inserted "ownership and" before "material participation".

Subsec. (h)(6)(B)(i). Pub. L. 101-508, §11701(a)(7)(A), inserted before comma at end "and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii)".

Subsec. (h)(6)(B)(ii). Pub. L. 101-508, §11701(a)(7)(B), substituted "requirement and prohibitions" for "requirement".

Subsec. (h)(6)(B)(iii) to (v). Pub. L. 101-508, §11701(a)(8)(A), added cl. (iii) and redesignated former cls. (iii) and (iv) as (iv) and (v), respectively.

Subsec. (h)(6)(E)(i)(I). Pub. L. 101-508, §11701(a)(9), inserted before comma "unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period".

Subsec. (h)(6)(E)(ii)(II). Pub. L. 101-508, §11701(a)(8)(C), inserted before period at end "not otherwise permitted under this section".

Subsec. (h)(6)(F). Pub. L. 101-508, §11701(a)(8)(D), inserted "the nonlow-income portion of the building for fair market value and" before "the low-income portion" in introductory provisions.

Subsec. (h)(6)(J) to (L). Pub. L. 101-508, §11701(a)(8)(B), redesignated subpars. (K) and (L) as (J) and (K), respectively, and struck out former subpar. (J) which related to sales of less than the low-income portions of a building.

Subsec. (i)(3)(D). Pub. L. 101-508, §11407(b)(6), substituted "Certain students" for "Students in government-supported job training programs" in heading and amended text generally. Prior to amendment, text read as follows: "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 the Job Training Partnership Act or under other similar Federal, State, or local laws."

Subsec. (i)(7). Pub. L. 101-508, §11701(a)(10), redesignated par. (8) as (7).

Subsec. (i)(7)(A). Pub. L. 101-508, §11407(b)(1), substituted "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" for "the tenants of such building".

Subsec. (i)(8). Pub. L. 101-508, §11701(a)(10), redesignated par. (8) as (7).

Subsec. (k)(1). Pub. L. 101-508, §11813(b)(3)(A), substituted "49(a)(1)" for "46(c)(8)", "49(a)(2)" for "46(c)(9)", and "49(b)(1)" for "47(d)(1)".

Subsec. (k)(2)(A)(ii), (D). Pub. L. 101-508, §11813(b)(3)(B), substituted "49(a)(1)(D)(iv)(II)" for "46(c)(8)(D)(iv)(II)".

Subsec. (m)(1)(B)(ii) to (iv). Pub. L. 101-508, §11407(b)(7)(B), redesignated cls. (iii) and (iv) as (ii) and (iii), respectively, and struck out former cl. (ii) which read as follows: "which gives the highest priority to those projects as to which the highest percentage of the housing credit dollar amount is to be used for project costs other than the cost of intermediaries unless granting such priority would impede the development of projects in hard-to-develop areas,".

Pub. L. 101-508, §11407(b)(2), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: "which provides a procedure that the agency will follow in notifying the Internal Revenue Service of noncompliance with the provisions of this section which such agency becomes aware of."

Subsec. (m)(2)(B). Pub. L. 101-508, §11407(b)(7)(A), added cl. (iii) and inserted provision that cl. (iii) not be applied so as to impede the development of projects in hard-to-develop areas.

Subsec. (o)(1). Pub. L. 101-508, §11407(a)(1)(A), substituted "1991" for "1990" wherever appearing.

Subsec. (o)(2). Pub. L. 101-508, §11407(a)(1)(B), added par. (2) and struck out former par. (2) which read as follows: "For purposes of paragraph (1)(B), a building shall be treated as placed in service before 1990 if-

"(A) the bonds with respect to such building are issued before 1990,

"(B) such building is constructed, reconstructed, or rehabilitated by the taxpayer,

"(C) more than 10 percent of the reasonably anticipated cost of such construction, reconstruction, or rehabilitation has been incurred as of January 1, 1990, and some of such cost is incurred on or after such date, and

"(D) such building is placed in service before January 1, 1992."

**1989**-Subsec. (b)(1). Pub. L. 101-239, §7108(h)(5), inserted at end "A building shall not be treated as described in subparagraph (B) if, at any time during the credit period, moderate rehabilitation assistance is provided with respect to such building under section 8(e)(2) of the United States Housing Act of 1937."

Subsec. (b)(3)(C). Pub. L. 101-239, §7108(c)(2), which directed amendment of subpar. (C) by substituting "subsection (h)(7)" for "subsection (h)(6)", was executed by substituting "subsection (h)(7)" for "subsection (h)(6)", as the probable intent of Congress.

Subsec. (c)(1)(E). Pub. L. 101-239, §7108(i)(2), added subpar. (E).

Subsec. (d)(1). Pub. L. 101-239, §7108(l)(1), inserted "as of the close of the 1st taxable year of the credit period" before period at end.

Subsec. (d)(2)(A). Pub. L. 101-239, §7108(l)(2), substituted "subparagraph (B), its adjusted basis as of the close of the 1st taxable year of the credit period, and" for "subparagraph (B), the sum of-

"(I) the portion of its adjusted basis attributable to its acquisition cost, plus

"(II) amounts chargeable to capital account and incurred by the taxpayer (before the close of the 1st taxable year of the credit period for such building) for property (or additions or improvements to property) of a character subject to the allowance for depreciation, and".

Subsec. (d)(2)(B)(iv). Pub. L. 101-239, §7108(d)(1), added cl. (iv).

Subsec. (d)(2)(C). Pub. L. 101-239, §7108(l)(3)(A), substituted "Adjusted basis" for "Acquisition cost" in heading and "adjusted basis" for "cost" in text.

Subsec. (d)(5). Pub. L. 101-239, §7108(l)(3)(B), substituted "Special rules for determining eligible basis" for "Eligible basis determined when building placed in service" in heading.

Subsec. (d)(5)(A). Pub. L. 101-239, §7108(l)(3)(B), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: "Except as provided in subparagraphs (B) and (C), the eligible basis of any building for the entire compliance period for such building shall be its eligible basis on the date such building is placed in service (increased, in the case of an existing building which meets the requirements of paragraph (2)(B), by the amounts described in paragraph (2)(A)(i)(II))."

Subsec. (d)(5)(B). Pub. L. 101-239, §7108(l)(3)(B), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Subsec. (d)(5)(C). Pub. L. 101-239, §7108(l)(3)(B), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Pub. L. 101-239, §7811(a)(1), inserted "section" before "167(k)" in heading.

Subsec. (d)(5)(D). Pub. L. 101-239, §7108(l)(3)(B), redesignated subpar. (D) as (C).

Pub. L. 101-239, §7108(g), added subpar. (D).

Subsec. (d)(6)(A)(i). Pub. L. 101-239, §7841(d)(13), substituted "Farmers Home Administration" for "Farmers' Home Administration".

Subsec. (d)(6)(C) to (E). Pub. L. 101-239, §7108(f), added subpars. (C) and (D) and redesignated former subpar. (C) as (E).

Subsec. (d)(7)(A). Pub. L. 101-239, §7831(c)(6), inserted "(or interest therein)" after "subparagraph (B)" in introductory provisions.

Subsec. (d)(7)(A)(ii). Pub. L. 101-239, §7841(d)(14), substituted "under subsection (a)" for "under subsection (a)".

Subsec. (e)(2)(A). Pub. L. 101-239, §7841(d)(15), substituted "to capital account" for "to capital account".

Subsec. (e)(3). Pub. L. 101-239, §7108(d)(3), substituted "Minimum expenditures to qualify" for "Average of rehabilitation expenditures must be \$2,000 or more" in heading, added subpars. (A) and (B), redesignated former subpar. (B) as (C), and struck out former subpar. (A) which read as follows: "Paragraph (1) shall apply to rehabilitation expenditures with respect to any building only if the qualified basis attributable to such expenditures incurred during any 24-month period, when divided by the low-income units in the building, is \$2,000 or more."

Subsec. (e)(5). Pub. L. 101-239, §7108(l)(3)(C), substituted "subsection (d)(2)(A)(i)" for "subsection (d)(2)(A)(i)(II)".

Subsec. (f)(4). Pub. L. 101-239, §7831(c)(4), added par. (4).

Subsec. (f)(5). Pub. L. 101-239, §7108(d)(2), added par. (5).

Subsec. (g)(2)(A). Pub. L. 101-239, §7108(e)(2), inserted at end "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."

Pub. L. 101-239, §7108(e)(1)(B), substituted "the imputed income limitation applicable to such unit" for "the income limitation under paragraph (1) applicable to individuals occupying such unit".

Subsec. (g)(2)(B). Pub. L. 101-239, §7108(h)(2), added cl. (iii) and concluding provisions which defined "supportive service".

Subsec. (g)(2)(C) to (E). Pub. L. 101-239, §7108(e)(1)(A), added subpars. (C) and (D) and redesignated former subpar. (C) as (E).

Subsec. (g)(3)(D). Pub. L. 101-239, §7108(m)(3), added subpar. (D).

Subsec. (g)(4). Pub. L. 101-239, §7108(n)(2), struck out "(other than section 142(d)(4)(B)(iii))" after "in applying such provisions".

Subsec. (g)(7). Pub. L. 101-239, §7108(h)(3), added par. (7).

Subsec. (h)(1)(B). Pub. L. 101-239, §7108(m)(2), substituted "(E), or (F)" for "or (E)".

Subsec. (h)(1)(F). Pub. L. 101-239, §7108(m)(1), added subpar. (F).

Subsec. (h)(3)(C) to (G). Pub. L. 101-239, §7108(b)(1), added subpars. (C) and (D), redesignated former subpars. (D) to (F) as (E) to (G), respectively, and struck out former subpar. (C) which read as follows: "The State housing credit ceiling applicable to any State for any calendar year shall be an amount equal to \$1.25 multiplied by the State population."

Subsec. (h)(4)(B). Pub. L. 101–239, §7108(j), substituted "50 percent" for "70 percent" in heading and in text.

Subsec. (h)(5)(D)(ii). Pub. L. 101–239, §7811(a)(2), substituted "clause (i)" for "clause (ii)".

Subsec. (h)(5)(E). Pub. L. 101–239, §7108(b)(2)(A), substituted "subparagraph (F)" for "subparagraph (E)".

Subsec. (h)(6). Pub. L. 101–239, §7108(c)(1), added par. (6). Former par. (6) redesignated (7).

Subsec. (h)(6)(B) to (E). Pub. L. 101–239, §7108(b)(2)(B), redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which provided that the housing credit dollar amount could not be carried over to any other calendar year.

Subsec. (h)(7), (8). Pub. L. 101–239, §7108(c)(1), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (i)(2)(D). Pub. L. 101–239, §7108(k), inserted at end "Such term shall not include any loan which would be a below market Federal loan solely by reason of assistance provided under section 106, 107, or 108 of the Housing and Community Development Act of 1974 (as in effect on the date of the enactment of this sentence)."

Subsec. (i)(3)(B). Pub. L. 101–239, §7108(i)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "A unit shall not be treated as a low-income unit unless the unit is suitable for occupancy (as determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes) and used other than on a transient basis. 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."

Pub. L. 101–239, §7831(c)(1), inserted "(as determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes)" after "suitable for occupancy".

Pub. L. 101–239, §7108(h)(1), inserted at end "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."

Subsec. (i)(3)(D). Pub. L. 101–239, §7831(c)(2), added subpar. (D).

Subsec. (i)(3)(E). Pub. L. 101–239, §7108(h)(4), added subpar. (E).

Subsec. (i)(6). Pub. L. 101–239, §7831(c)(3), added par. (6).

Subsec. (i)(8). Pub. L. 101–239, §7108(q), added par. (8).

Subsec. (k)(2)(D). Pub. L. 101–239, §7108(o), added provision at end relating to the applicability of cl. (ii) to qualified nonprofit organizations not described in section 46(c)(8)(D)(iv)(II) with respect to a building.

Subsec. (l)(1). Pub. L. 101–239, §7108(p), in introductory provisions, substituted "Following" for "Not later than the 90th day following" and inserted "at such time and" before "in such form".

Subsec. (m). Pub. L. 101–239, §7108(o), added subsec. (m). Former subsec. (m) redesignated (n).

Subsec. (m)(4). Pub. L. 101–239, §7831(c)(5), added par. (4).

Subsec. (n). Pub. L. 101–239, §7108(o), redesignated subsec. (m) as (n). Former subsec. (n) redesignated (o).

Pub. L. 101-239, §7108(a)(1), amended subsec. (n) generally. Prior to amendment, subsec. (n) read as follows: "The State housing credit ceiling under subsection (h) shall be zero for any calendar year after 1989 and subsection (h)(4) shall not apply to any building placed in service after 1989."

Subsec. (o). Pub. L. 101-239, §7108(o), redesignated subsec. (n) as (o).

**1988-**Subsec. (b)(2)(A). Pub. L. 100-647, §1002(l)(1)(A), substituted "for the earlier of-" for "for the month in which such building is placed in service" and added cls. (i) and (ii) and concluding provisions.

Subsec. (b)(2)(C)(ii). Pub. L. 100-647, §1002(l)(1)(B), substituted "the month applicable under clause (i) or (ii) of subparagraph (A)" for "the month in which the building was placed in service".

Subsec. (b)(3). Pub. L. 100-647, §1002(l)(9)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e)."

Subsec. (c)(2)(A). Pub. L. 100-647, §1002(l)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "which at all times during the compliance period with respect to such building is part of a qualified low-income housing project, and".

Subsec. (d)(2)(D)(ii). Pub. L. 100-647, §1002(l)(3), substituted "Special rules for certain transfers" for "Special rule for nontaxable exchanges" in heading and amended text generally. Prior to amendment, text read as follows: "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 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 [sic]."

Subsec. (d)(3). Pub. L. 100-647, §1002(l)(4), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "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."

Subsec. (d)(5)(A). Pub. L. 100-647, §1002(l)(6)(B), substituted "subparagraphs (B) and (C)" for "subparagraph (B)".

Pub. L. 100-647, §1002(l)(5), inserted "(increased, in the case of an existing building which meets the requirements of paragraph (2)(B), by the amounts described in paragraph (2)(A)(i)(II))" before period at end.

Subsec. (d)(5)(C). Pub. L. 100-647, §1002(l)(6)(A), added subpar. (C).

Subsec. (d)(6)(A)(iii). Pub. L. 100-647, §1002(l)(7), struck out cl. (iii) which related to other circumstances of financial distress.

Subsec. (d)(6)(B)(ii). Pub. L. 100-647, §1002(l)(8), struck out "of 1934" after "Act".

Subsec. (f)(1). Pub. L. 100-647, §1002(l)(2)(B), substituted "beginning with-" for "beginning with" and subpars. (A) and (B) and concluding provisions for "the taxable year in which the building is placed in service or, at the election of the taxpayer, the succeeding taxable year. Such an election, once made, shall be irrevocable."

Subsec. (f)(3). Pub. L. 100-647, §1002(l)(9)(A), amended par. (3) generally. Prior to amendment, par. (3) "Special rule where increase in qualified basis after 1st year of credit period" read as follows:

"(A) Credit increased.-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 any building exceeds

"(ii) the qualified basis of such building as of the close of the 1st year of the credit period,

the credit allowable under subsection (a) for the taxable year (determined without regard to this paragraph) shall be increased by an amount equal to the product of such excess and the percentage equal to 2/3 of the applicable percentage for such building.

"(B) 1st year computation applies.-A rule similar to the rule of paragraph (2)(A) shall apply to the additional credit allowable by reason of this paragraph for the 1st year in which such additional credit is allowable."

Subsec. (g)(2)(B)(i). Pub. L. 100-647, §1002(l)(10), struck out "Federal" after "comparable".

Subsec. (g)(2)(C). Pub. L. 100-647, §1002(l)(11), added subpar. (C).

Subsec. (g)(3). Pub. L. 100-647, §1002(l)(12), amended par. (3) generally, substituting subpars. (A) to (C) for former subpars. (A) and (B).

Subsec. (g)(4). Pub. L. 100-647, §1002(l)(13), inserted "; except that, in applying such provisions (other than section 142(d)(4)(B)(iii)) for such purposes, the term 'gross rent' shall have the meaning given such term by paragraph (2)(B) of this subsection" before period at end.

Subsec. (g)(6). Pub. L. 100-647, §1002(l)(32), added par. (6).

Subsec. (h)(1). Pub. L. 100-647, §1002(l)(14)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "No credit shall be allowed by reason of this section for any taxable year with respect to any building in excess of the housing credit dollar amount allocated to such building under this subsection. An allocation shall be taken into account under the preceding sentence only if it occurs not later than the earlier of-

"(A) the 60th day after the close of the taxable year, or

"(B) the close of the calendar year in which such taxable year ends."

Subsec. (h)(1)(B). Pub. L. 100-647, §4003(b)(1), substituted "(C), (D), or (E)" for "(C) or (D)".

Subsec. (h)(1)(E). Pub. L. 100-647, §4003(a), added subpar. (E).

Subsec. (h)(4)(A). Pub. L. 100-647, §1002(l)(15), substituted "if-" for "and which is taken into account under section 146" and added cls. (i) and (ii).

Subsec. (h)(5)(D), (E). Pub. L. 100-647, §1002(l)(16), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (h)(6)(B)(ii). Pub. L. 100-647, §1002(l)(14)(B), struck out cl. (ii) which read as follows:

"(ii) Allocation may not be earlier than year in which building placed in service.-A housing credit agency may allocate its housing credit dollar amount for any calendar year only to buildings placed in service before the close of such calendar year."

Subsec. (h)(6)(D). Pub. L. 100-647, §1002(l)(17), amended subpar. (D) generally. Prior to amendment, subpar. (D) "Credit allowable determined without regard to averaging convention, etc." read as follows: "For purposes of this subsection, the credit allowable under subsection (a) with respect to any building shall be determined-

"(i) without regard to paragraphs (2)(A) and (3)(B) of subsection (f), and

"(ii) by applying subsection (f)(3)(A) without regard to 'the percentage equal to 2/3 of'."

Subsec. (h)(6)(E). Pub. L. 100-647, §1002(l)(18), added subpar. (E).

Subsec. (i)(2)(A). Pub. L. 100-647, §1002(l)(19)(A), inserted "or any prior taxable year" after "such taxable year" and substituted "is or was outstanding" for "is outstanding" and "are or were used" for "are used".

Subsec. (i)(2)(B). Pub. L. 100-647, §1002(l)(19)(B), substituted "balance of loan or proceeds of obligations" for "outstanding balance of loan" in heading and amended text generally. Prior to amendment, text read as follows: "A loan shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude an amount equal to the outstanding balance of such loan from the eligible basis of the building for purposes of subsection (d)."

Subsec. (i)(2)(C). Pub. L. 100-647, §1002(l)(19)(C), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (i)(2)(D). Pub. L. 100-647, §1002(l)(19)(C), (D), redesignated former subpar. (C) as (D) and substituted "this paragraph" for "subparagraph (A)".

Subsec. (j)(4)(D). Pub. L. 100-647, §1007(g)(3)(B), substituted "D, or G" for "or D".

Subsec. (j)(4)(F). Pub. L. 100-647, §1002(l)(20), added subpar. (F).

Subsec. (j)(5)(B). Pub. L. 100-647, §4004(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "This paragraph shall apply to any partnership-

"(i) more than ½ the capital interests, and more than ½ the profit interests, in which are owned by a group of 35 or more partners each of whom is a natural person or an estate, and

"(ii) which elects the application of this paragraph."

Subsec. (j)(5)(B)(i). Pub. L. 100-647, §1002(l)(21), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "which has 35 or more partners each of whom is a natural person or an estate, and".

Subsec. (j)(6). Pub. L. 100-647, §1002(l)(22), inserted "(or interest therein)" after "disposition of building" in heading, and in text inserted "or an interest therein" after "of a building".

Subsec. (k)(2)(B). Pub. L. 100-647, §1002(l)(23), inserted before period at end ", except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if-" and cls. (i) and (ii).

Subsec. (l). Pub. L. 100-647, §1002(l)(24)(B), substituted "Certifications and other reports to Secretary" for "Certifications to Secretary" in heading.

Subsec. (l)(2), (3). Pub. L. 100-647, §1002(l)(24)(A), added par. (2) and redesignated former par. (2) as (3).

Subsec. (n). Pub. L. 100-647, §4003(b)(3), amended subsec. (n) generally, substituting a single par. for former pars. (1) and (2).

Subsec. (n)(1). Pub. L. 100-647, §1002(l)(25), inserted ", and, except for any building described in paragraph (2)(B), subsection (h)(4) shall not apply to any building placed in service after 1989" after "year after 1989".

**1986-Subsec. (k)(1).** Pub. L. 99-509 substituted "subparagraphs (D)(ii)(II) and (D)(iv)(I)" for "subparagraph (D)(iv)(I)".

#### **EFFECTIVE DATE OF 2018 AMENDMENT**

Pub. L. 115-141, div. T, §102(b), Mar. 23, 2018, 132 Stat. 1157, provided that: "The amendment made by this section [amending this section] shall apply to calendar years beginning after December 31, 2017."

Pub. L. 115-141, div. T, §103(c), Mar. 23, 2018, 132 Stat. 1159, provided that: "The amendments made by this section [amending this section] shall apply to elections made under section 42(g)(1) of the Internal Revenue Code of 1986 after the date of the enactment of this Act [Mar. 23, 2018]."

#### **EFFECTIVE DATE OF 2017 AMENDMENT**

Amendment by Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 11002(e) of Pub. L. 115-97, set out as a note under section 1 of this title.

#### **EFFECTIVE DATE OF 2015 AMENDMENT**

Pub. L. 114-113, div. Q, title I, §131(c), Dec. 18, 2015, 129 Stat. 3055, provided that: "The amendments made by this section [amending this section] shall take effect on January 1, 2015."

#### **EFFECTIVE DATE OF 2014 AMENDMENT**

Pub. L. 113-295, div. A, title I, §112(b), Dec. 19, 2014, 128 Stat. 4014, provided that: "The amendment made by this section [amending this section] shall take effect on January 1, 2014."

Pub. L. 113-295, div. A, title II, §212(d), Dec. 19, 2014, 128 Stat. 4033, provided that: "The amendments made by this section [amending this section and sections 121 and 168 of this title] shall take effect as if included in the provisions of the Housing Assistance Tax Act of 2008 [Pub. L. 110-289, div. C] to which they relate."

Amendment by section 221(a)(7) of Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

#### **EFFECTIVE DATE OF 2013 AMENDMENT**

Pub. L. 112-240, title III, §302(b), Jan. 2, 2013, 126 Stat. 2329, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Jan. 2, 2013]."

#### **EFFECTIVE DATE OF 2008 AMENDMENT**

Pub. L. 110-289, div. C, title I, §3002(c), July 30, 2008, 122 Stat. 2880, provided that: "The amendments made by this subsection [probably means this section, amending this section] shall apply to buildings placed in service after the date of the enactment of this Act [July 30, 2008]."

Pub. L. 110-289, div. C, title I, §3003(h), July 30, 2008, 122 Stat. 2882, provided that:

"(1) In general.-Except as otherwise provided in paragraph (2), the amendments made by this subsection [probably means this section, amending this section] shall apply to buildings placed in service after the date of the enactment of this Act [July 30, 2008].

"(2) Rehabilitation requirements.-

"(A) In general.-The amendments made by subsection (b) [amending this section] shall apply to buildings with respect to which housing credit dollar amounts are allocated after the date of the enactment of this Act [July 30, 2008].

"(B) Buildings not subject to allocation limits.-To the extent paragraph (1) of section 42(h) of the Internal Revenue Code of 1986 does not apply to any building by reason of paragraph (4) thereof, the amendments made by subsection (b) [amending this section] shall apply [to] buildings financed with bonds issued pursuant to allocations made after the date of the enactment of this Act [July 30, 2008]."

Pub. L. 110-289, div. C, title I, §3004(i), July 30, 2008, 122 Stat. 2884, provided that:

"(1) In general.-Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to buildings placed in service after the date of the enactment of this Act [July 30, 2008].

"(2) Repeal of bonding requirement on disposition of building.-The amendment made by subsection (c) [amending this section] shall apply to-

"(A) interests in buildings disposed [of] after the date of the enactment of this Act [July 30, 2008], and

"(B) interests in buildings disposed of on or before such date if-

"(i) it is reasonably expected that such building will continue to be operated as a qualified low-income building (within the meaning of section 42 of the Internal Revenue Code of 1986) for the remaining compliance period (within the meaning of such section) with respect to such building, and

"(ii) the taxpayer elects the application of this subparagraph with respect to such disposition.

"(3) Energy efficiency and historic nature taken into account in making allocations.-The amendments made by subsection (d) [amending this section] shall apply to allocations made after December 31, 2008.

"(4) Continued eligibility for students who received foster care assistance.-The amendments made by subsection (e) [amending this section] shall apply to determinations made after the date of the enactment of this Act [July 30, 2008].

"(5) Treatment of rural projects.-The amendment made by subsection (f) [amending this section] shall apply to determinations made after the date of the enactment of this Act [July 30, 2008].

"(6) Clarification of general public use requirement.-The amendment made by subsection (g) [amending this section] shall apply to buildings placed in service before, on, or after the date of the enactment of this Act [July 30, 2008]."

Pub. L. 110-289, div. C, title I, §3007(c), July 30, 2008, 122 Stat. 2886, provided that: "The amendments made by this section [amending this section and section 146 of this title] shall apply to repayments of loans received after the date of the enactment of this Act [July 30, 2008]."

#### **EFFECTIVE DATE OF 2007 AMENDMENT**

Pub. L. 110-142, §6(b), Dec. 20, 2007, 121 Stat. 1806, provided that: "The amendment made by this section [amending this section] shall apply to-

"(1) housing credit amounts allocated before, on, or after the date of the enactment of this Act [Dec. 20, 2007], and

"(2) buildings placed in service before, on, or after such date to the extent paragraph (1) of section 42(h) of the Internal Revenue Code of 1986 does not apply to any building by reason of paragraph (4) thereof."

#### **EFFECTIVE DATE OF 2004 AMENDMENT**

Amendment by section 207(8) of Pub. L. 108-311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108-311, set out as a note under section 2 of this title.

#### **EFFECTIVE DATE OF 2000 AMENDMENT**

Pub. L. 106-554, §1(a)(7) [title I, subtitle D, §131(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-611, provided that: "The amendments made by this section [amending this section] shall apply to calendar years after 2000."

Pub. L. 106-554, §1(a)(7) [title I, subtitle D, §137], Dec. 21, 2000, 114 Stat. 2763, 2763A-613, provided that: "Except as otherwise provided in this subtitle [amending this section and enacting provisions set out above], the amendments made by this subtitle shall apply to-

"(1) housing credit dollar amounts allocated after December 31, 2000; and

"(2) buildings placed in service after such date to the extent paragraph (1) of section 42(h) of the Internal Revenue Code of 1986 does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date."

#### **EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

#### **EFFECTIVE DATE OF 1993 AMENDMENT**

Pub. L. 103-66, title XIII, §13142(a)(2), Aug. 10, 1993, 107 Stat. 438, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to periods ending after June 30, 1992."

Pub. L. 103-66, title XIII, §13142(b)(6), Aug. 10, 1993, 107 Stat. 439, as amended by Pub. L. 104-188, title I, §1703(b), Aug. 20, 1996, 110 Stat. 1875, provided that:

"(A) In general.-Except as provided in subparagraphs (B) and (C), the amendments made by this subsection [amending this section] shall apply to-

"(i) determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings after June 30, 1992, or

"(ii) buildings placed in service after June 30, 1992, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

"(B) Full-time students, waiver authority, and prohibited discrimination.-The amendments made by paragraphs (2), (3), and (4) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 10, 1993].

"(C) HOME assistance.-The amendment made by paragraph (5) [amending this section] shall apply to periods after the date of the enactment of this Act."

#### **EFFECTIVE DATE OF 1991 AMENDMENT**

Pub. L. 102-227, title I, §107(b), Dec. 11, 1991, 105 Stat. 1688, provided that: "The amendments made by this section [amending this section] shall apply to calendar years after 1991."

#### **EFFECTIVE DATE OF 1990 AMENDMENT**

Pub. L. 101-508, title XI, §11407(a)(3), Nov. 5, 1990, 104 Stat. 1388-474, provided that: "The amendments made by this subsection [amending this section and repealing provisions set out below] shall apply to calendar years after 1989."

Pub. L. 101-508, title XI, §11407(b)(10), Nov. 5, 1990, 104 Stat. 1388-476, provided that:

"(A) In general.-Except as otherwise provided in this paragraph, the amendments made by this subsection [amending this section] shall apply to-

"(i) 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 1990, or

"(ii) buildings placed in service after December 31, 1990, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

"(B) Tenant rights, etc.-The amendments made by paragraphs (1), (6), (8), and (9) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].

"(C) Monitoring.-The amendment made by paragraph (2) [amending this section] shall take effect on January 1, 1992, and shall apply to buildings placed in service before, on, or after such date.

"(D) Study.-The Inspector General of the Department of Housing and Urban Development and the Secretary of the Treasury shall jointly conduct a study of the effectiveness of the amendment made by paragraph (5) [amending this section] in carrying out the purposes of section 42 of the Internal Revenue Code of 1986. The report of such study shall be submitted not later than January 1, 1993, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate."

Pub. L. 101-508, title XI, §11701(a)(3)(B), Nov. 5, 1990, 104 Stat. 1388-506, provided that: "In the case of a building to which (but for this subparagraph) the amendment made by subparagraph (A) [amending this section] does not apply, such amendment shall apply to-

"(i) determinations of qualified basis for taxable years beginning after the date of the enactment of this Act [Nov. 5, 1990], and

"(ii) determinations of qualified basis for taxable years beginning on or before such date except that determinations for such taxable years shall be made without regard to any reduction in gross rent after August 3, 1990, for any period before August 4, 1990."

Pub. L. 101-508, title XI, §11701(n), Nov. 5, 1990, 104 Stat. 1388-513, provided that: "Except as otherwise provided in this section, any amendment made by this section [amending this section and sections 148, 163, 172, 403, 1031, 1253, 2056, 4682, 4975, 4978B and 6038 of this title, and provisions set out as notes under this section and section 2040 of this title] shall take effect as if included in the provision of the Revenue Reconciliation Act of 1989 [Pub. L. 101-239, title VII] to which such amendment relates."

Pub. L. 101-508, title XI, §11812(c), Nov. 5, 1990, 104 Stat. 1388-536, provided that:

"(1) In general.-Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 56, 167, 168, 312, 381, 404, 460, 642, 1016, 1250, and 7701 of this title] shall apply to property placed in service after the date of the enactment of this Act [Nov. 5, 1990].

"(2) Exception.-The amendments made by this section shall not apply to any property to which section 168 of the Internal Revenue Code of 1986 does not apply by reason of subsection (f)(5) thereof.

"(3) Exception for previously grandfather expenditures.-The amendments made by this section shall not apply to rehabilitation expenditures described in section 252(f)(5) of the Tax Reform Act of 1986 [Pub. L. 99-514] (as added by section 1002(l)(31) of the Technical and Miscellaneous Revenue Act of 1988 [see Transitional Rules note below])."

Amendment by section 11813(b)(3) of Pub. L. 101-508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as a note under section 45K of this title.

#### **EFFECTIVE DATE OF 1989 AMENDMENT**

Pub. L. 101-239, title VII, §7108(r), Dec. 19, 1989, 103 Stat. 2321, as amended by Pub. L. 101-508, title XI, §11701(a)(11), (12), Nov. 5, 1990, 104 Stat. 1388-507; Pub. L. 104-188, title I, §1702(g)(5)(A), Aug. 20, 1996, 110 Stat. 1873, provided that:

"(1) In general.-Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 142 of this title] 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) One-year carryover of unused credit authority, etc.-The amendments made by subsection (b) [amending this section] shall apply to calendar years after 1989, but clauses (ii), (iii), and (iv) of section 42(h)(3)(C) of such Code (as added by this section) shall be applied without regard to allocations for 1989 or any preceding year.

"(4) Additional buildings eligible for waiver of 10-year rule.-The amendments made by subsection (f) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].

"(5) Certifications with respect to 1st year of credit period.-The amendment made by subsection (p) [amending this section] shall apply to taxable years ending on or after December 31, 1989.

"(6) Certain rules which apply to bonds.-Paragraphs (1)(D) and (2)(D) of section 42(m) of such Code, as added by this section, shall apply to obligations issued after December 31, 1989.

"(7) Clarifications.-The amendments made by the following provisions of this section shall apply as if included in the amendments made by section 252 of the Tax Reform Act of 1986 [Pub. L. 99-514, enacting this section and amending sections 38 and 55 of this title]:

"(A) Paragraph (1) of subsection (h) (relating to units rented on a monthly basis) [amending this section].

"(B) Subsection (l) (relating to eligible basis for new buildings to include expenditures before close of 1st year of credit period) [amending this section].

"(8) Guidance on difficult development areas and posting of bond to avoid recapture. -Not later than 180 days after the date of the enactment of this Act [Dec. 19, 1989]-

"(A) the Secretary of Housing and Urban Development shall publish initial guidance on the designation of difficult development areas under section 42(d)(5)(C) of such Code, as added by this section, and

"(B) the Secretary of the Treasury shall publish initial guidance under section 42(j)(6) of such Code (relating to no recapture on disposition of building (or interest therein) where bond posted)."

[ Pub. L. 104-188, title I, §1702(g)(5), Aug. 20, 1996, 110 Stat. 1873, provided that:

["(A) Paragraph (11) of section 11701(a) of the Revenue Reconciliation Act of 1990 (and the amendment made by such paragraph) [Pub. L. 101-508, which amended section 7108(r)(2) of Pub. L. 101-239, set out above, by inserting "but only with respect to bonds issued after such date" before the period at the end of such section 7108(r)(2)] are hereby repealed, and section 7108(r)(2) of the Revenue Reconciliation Act of 1989 [Pub. L. 101-239] shall be applied as if such paragraph (and amendment) had never been enacted.

["(B) Subparagraph (A) shall not apply to any building if the owner of such building establishes to the satisfaction of the Secretary of the Treasury or his delegate that such owner reasonably relied on the amendment made by such paragraph (11)."]

Amendment by section 7811(a) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

Amendment by section 7831(c) of Pub. L. 101-239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 7831(g) of Pub. L. 101-239, set out as a note under section 1 of this title.

#### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by sections 1002(l)(1)-(25), (32) and 1007(g)(3)(B) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Pub. L. 100-647, title IV, §4003(c), Nov. 10, 1988, 102 Stat. 3644, provided that: "The amendments made by this section [amending this section and provisions set out as a note under section 469 of this title] shall apply to amounts allocated in calendar years after 1987."

Pub. L. 100-647, title IV, §4004(b), Nov. 10, 1988, 102 Stat. 3644, provided that:

"(1) In general.-The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 252 of the Reform Act [section 252 of Pub. L. 99-514, enacting this section and amending sections 38 and 55 of this title].

"(2) Period for election.-The period for electing not to have section 42(j)(5) of the 1986 Code apply to any partnership shall not expire before the date which is 6 months after the date of the enactment of this Act [Nov. 10, 1988]."

#### **EFFECTIVE DATE OF 1986 AMENDMENT**

Pub. L. 99-509, title VIII, §8072(b), Oct. 21, 1986, 100 Stat. 1964, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendment made by section 252(a) of the Tax Reform Act of 1986 [enacting this section]."

#### **EFFECTIVE DATE**

Pub. L. 99-514, title II, §252(e), Oct. 22, 1986, 100 Stat. 2205, provided that:

"(1) In general.-The amendments made by this section [enacting this section and amending sections 38 and 55 of this title] shall apply to buildings placed in service after December 31, 1986, in taxable years ending after such date.

"(2) Special rule for rehabilitation expenditures.-Subsection (e) of section 42 of the Internal Revenue Code of 1986 (as added by this section) shall apply for purposes of paragraph (1)."

#### **SAVINGS PROVISION**

For provisions that nothing in amendment by sections 11812(b)(3) and 11813(b)(3) of Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

#### **GRANTS TO STATES FOR LOW-INCOME HOUSING PROJECTS IN LIEU OF LOW-INCOME HOUSING CREDIT ALLOCATIONS FOR 2009**

Pub. L. 111-5, div. B, title I, §1602, Feb. 17, 2009, 123 Stat. 362, provided that:

"(a) In General.-The Secretary of the Treasury shall make a grant to the housing credit agency of each State in an amount equal to such State's low-income housing grant election amount.

"(b) Low-Income Housing Grant Election Amount.-For purposes of this section, the term 'low-income housing grant election amount' means, with respect to any State, such amount as the State may elect which does not exceed 85 percent of the product of-

"(1) the sum of-

"(A) 100 percent of the State housing credit ceiling for 2009 which is attributable to amounts described in clauses (i) and (iii) of section 42(h)(3)(C) of the Internal Revenue Code of 1986, and

"(B) 40 percent of the State housing credit ceiling for 2009 which is attributable to amounts described in clauses (ii) and (iv) of such section, multiplied by

"(2) 10.

"(c) Subawards for Low-Income Buildings.-

"(1) In general.-A State housing credit agency receiving a grant under this section shall use such grant to make subawards to finance the construction or acquisition and rehabilitation of qualified low-income buildings. A subaward under this section may be made to finance a qualified low-income building with or without an allocation under section 42 of the Internal Revenue Code of 1986, except that a State housing credit agency may make subawards to finance qualified low-income buildings without an allocation only if it makes a determination that such use will increase the total funds available to the State to build and rehabilitate affordable housing. In complying with such determination requirement, a State housing credit agency shall establish a process in which applicants that are allocated credits are required to demonstrate good faith efforts to obtain investment commitments for such credits before the agency makes such subawards.

"(2) Subawards subject to same requirements as low-income housing credit allocations.-Any such subaward with respect to any qualified low-income building shall be made in the same manner and shall be subject to the same limitations (including rent, income, and use restrictions on such building) as an allocation of housing credit dollar amount allocated by such State housing credit agency under section 42 of the Internal Revenue Code of 1986, except that such subawards shall not be limited by, or otherwise affect (except as provided in subsection (h)(3)(J) of such section [section 42(h)(3) has no subpar. (J)]), the State housing credit ceiling applicable to such agency.

"(3) Compliance and asset management.-The State housing credit agency shall perform asset management functions to ensure compliance with section 42 of the Internal Revenue Code of 1986 and the long-term viability of buildings funded by any subaward under this section. The State housing credit agency may collect reasonable fees from a subaward recipient to cover expenses associated with the performance of its duties under this paragraph. The State housing credit agency may retain an agent or other private contractor to satisfy the requirements of this paragraph.

"(4) Recapture.-The State housing credit agency shall impose conditions or restrictions, including a requirement providing for recapture, on any subaward under this section so as to assure that the building with respect to which such subaward is made remains a qualified low-income building during the compliance period. Any such recapture shall be payable to the Secretary of the Treasury for deposit in the general fund of the Treasury and may be enforced by means of liens or such other methods as the Secretary of the Treasury determines appropriate.

"(d) Return of Unused Grant Funds.-Any grant funds not used to make subawards under this section before January 1, 2011, shall be returned to the Secretary of the Treasury on such date. Any subawards returned to the State housing credit agency on or after such date shall be promptly returned to the Secretary of the Treasury. Any amounts returned to the Secretary of the Treasury under this subsection shall be deposited in the general fund of the Treasury.

"(e) Definitions.-Any term used in this section which is also used in section 42 of the Internal Revenue Code of 1986 shall have the same meaning for purposes of this section as when used in such section 42. Any reference in this section to the Secretary of the Treasury shall be treated as including the Secretary's delegate.

"(f) Appropriations.-There is hereby appropriated to the Secretary of the Treasury such sums as may be necessary to carry out this section."

#### **ELECTION TO DETERMINE RENT LIMITATION BASED ON NUMBER OF BEDROOMS AND DEEP RENT SKEWING**

Pub. L. 103-66, title XIII, §13142(c), Aug. 10, 1993, 107 Stat. 439, provided that:

"(1) In the case of a building to which the amendments made by subsection (e)(1) or (n)(2) of section 7108 of the Revenue Reconciliation Act of 1989 [Pub. L. 101-239, amending this section] did not apply, the taxpayer may elect to have such amendments apply to such building if the taxpayer has met the requirements of the procedures described in section 42(m)(1)(B)(iii) of the Internal Revenue Code of 1986.

"(2) In the case of the amendment made by such subsection (e)(1), such election shall apply only with respect to tenants first occupying any unit in the building after the date of the election.

"(3) In the case of the amendment made by such subsection (n)(2), such election shall apply only if rents of low-income tenants in such building do not increase as a result of such election.

"(4) An election under this subsection may be made only during the 180-day period beginning on the date of the enactment of this Act [Aug. 10, 1993] and, once made, shall be irrevocable."

### **ELECTION TO ACCELERATE CREDIT INTO 1990**

Pub. L. 101-508, title XI, §11407(c), Nov. 5, 1990, 104 Stat. 1388-476, provided that:

"(1) In general.-At the election of an individual, the credit determined under section 42 of the Internal Revenue Code of 1986 for the taxpayer's first taxable year ending on or after October 25, 1990, shall be 150 percent of the amount which would (but for this paragraph) be so allowable with respect to investments held by such individual on or before October 25, 1990.

"(2) Reduction in aggregate credit to reflect increased 1990 credit.-The aggregate credit allowable to any person under section 42 of such Code with respect to any investment for taxable years after the first taxable year referred to in paragraph (1) shall be reduced on a pro rata basis by the amount of the increased credit allowable by reason of paragraph (1) with respect to such first taxable year. The preceding sentence shall not be construed to affect whether any taxable year is part of the credit, compliance, or extended use periods.

"(3) Election.-The election under paragraph (1) shall be made at the time and in the manner prescribed by the Secretary of the Treasury or his delegate, and, once made, shall be irrevocable. In the case of a partnership, such election shall be made by the partnership."

### **EXCEPTION TO TIME PERIOD FOR MEETING PROJECT REQUIREMENTS IN ORDER TO QUALIFY AS LOW-INCOME HOUSING**

Pub. L. 101-508, title XI, §11701(a)(5)(B), Nov. 5, 1990, 104 Stat. 1388-506, provided that: "In the case of a building to which the amendment made by subparagraph (A) [amending this section] does not apply, the period specified in section 42(g)(3)(A) of the Internal Revenue Code of 1986 (as in effect before the amendment made by subparagraph (A)) shall not expire before the close of the taxable year following the taxable year in which the building is placed in service."

### **STATE HOUSING CREDIT CEILING FOR CALENDAR YEAR 1990**

Pub. L. 101-239, title VII, §7108(a)(2), Dec. 19, 1989, 103 Stat. 2307, provided that in the case of calendar year 1990, section 42(h)(3)(C)(i) of the Internal Revenue Code of 1986 be applied by substituting "\$.9375" for "\$1.25", prior to repeal by Pub. L. 101-508, title XI, §11407(a)(2), (3), Nov. 5, 1990, 104 Stat. 1388-474, applicable to calendar years after 1989.

### **TRANSITIONAL RULES**

Pub. L. 99-514, title II, §252(f), Oct. 22, 1986, 100 Stat. 2205, as amended by Pub. L. 100-647, title I, §1002(l)(28)-(31), Nov. 10, 1988, 102 Stat. 3381, provided that:

"(1) Limitation to non-acrs buildings not to apply to certain buildings, etc.-

"(A) In general.-In the case of a building which is part of a project described in subparagraph (B)-

"(i) section 42(c)(2)(B) of the Internal Revenue Code of 1986 (as added by this section) shall not apply,

"(ii) such building shall be treated as not federally subsidized for purposes of section 42(b)(1)(A) of such Code,

"(iii) the eligible basis of such building shall be treated, for purposes of section 42(h)(4)(A) of such Code, as if it were financed by an obligation the interest on which is exempt from tax under section 103 of such Code and which is taken into account under section 146 of such Code, and

"(iv) the amendments made by section 803 [enacting section 263A of this title, amending sections 48, 267, 312, 447, 464, and 471 of this title, and repealing sections 189, 278, and 280 of this title] shall not apply.

"(B) Project described.-A project is described in this subparagraph if-

"(i) an urban development action grant application with respect to such project was submitted on September 13, 1984,

"(ii) a zoning commission map amendment related to such project was granted on July 17, 1985, and

"(iii) the number assigned to such project by the Federal Housing Administration is 023-36602.

"(C) Additional units eligible for credit.-In the case of a building to which subparagraph (A) applies and which is part of a project which meets the requirements of subparagraph (D), for each low-income unit in such building which is occupied by individuals whose income is 30 percent or less of area median gross income, one additional unit (not otherwise a low-income unit) in such building shall be treated as a low-income unit for purposes of such section 42.

"(D) Project described.-A project is described in this subparagraph if-

"(i) rents charged for units in such project are restricted by State regulations,

"(ii) the annual cash flow of such project is restricted by State law,

"(iii) the project is located on land owned by or ground leased from a public housing authority,

"(iv) construction of such project begins on or before December 31, 1986, and units within such project are placed in service on or before June 1, 1990, and

"(v) for a 20-year period, 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income.

"(E) Maximum additional credit.-The maximum present value of additional credits allowable under section 42 of such Code by reason of subparagraph (C) shall not exceed 25 percent of the eligible basis of the building.

"(2) Additional allocation of housing credit ceiling.-

"(A) In general.-There is hereby allocated to each housing credit agency described in subparagraph (B) an additional housing credit dollar amount determined in accordance with the following table:

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<b>"For calendar year:</b>	<b>The additional allocation is:</b>
1987	\$3,900,000
1988	\$7,600,000
1989	\$1,300,000.

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"(B) Housing credit agencies described.-The housing credit agencies described in this subparagraph are:

"(i) A corporate governmental agency constituted as a public benefit corporation and established in 1971 under the provisions of Article XII of the Private Housing Finance Law of the State.

"(ii) A city department established on December 20, 1979, pursuant to chapter XVIII of a municipal code of such city for the purpose of supervising and coordinating the formation and execution of projects and programs affecting housing within such city.

"(iii) The State housing finance agency referred to in subparagraph (C), but only with respect to projects described in subparagraph (C).

"(C) Project described.-A project is described in this subparagraph if such project is a qualified low-income housing project which-

"(i) receives financing from a State housing finance agency from the proceeds of bonds issued pursuant to chapter 708 of the Acts of 1966 of such State pursuant to loan commitments from such agency made between May 8, 1984, and July 8, 1986, and

"(ii) is subject to subsidy commitments issued pursuant to a program established under chapter 574 of the Acts of 1983 of such State having award dates from such agency between May 31, 1984, and June 11, 1985.

"(D) Special rules.-

"(i) Any building-

"(I) which is allocated any housing credit dollar amount by a housing credit agency described in clause (iii) of subparagraph (B), and

"(II) which is placed in service after June 30, 1986, and before January 1, 1987, shall be treated for purposes of the amendments made by this section as placed in service on January 1, 1987.

"(ii) Section 42(c)(2)(B) of the Internal Revenue Code of 1986 shall not apply to any building which is allocated any housing credit dollar amount by any agency described in subparagraph (B).

"(E) All units treated as low income units in certain cases.-In the case of any building-

"(i) which is allocated any housing credit dollar amount by any agency described in subparagraph (B), and

"(ii) which after the application of subparagraph (D)(ii) is a qualified low-income building at all times during any taxable year, such building shall be treated as described in section 42(b)(1)(B) of such Code and having an applicable fraction for such year of 1. The preceding sentence shall apply to any building only to the extent of the portion of the additional housing credit dollar amount (allocated to such agency under subparagraph (A)) allocated to such building.

"(3) Certain projects placed in service before 1987.-

"(A) In general.-In the case of a building which is part of a project described in subparagraph (B)-

"(i) section 42(c)(2)(B) of such Code shall not apply,

"(ii) such building shall be treated as placed in service during the first calendar year after 1986 and before 1990 in which such building is a qualified low-income building (determined after the application of clause (i)), and

"(iii) for purposes of section 42(h) of such Code, such building shall be treated as having allocated to it a housing credit dollar amount equal to the dollar amount appearing in the clause of subparagraph (B) in which such building is described.

"(B) Project described.-A project is described in this subparagraph if the code number assigned to such project by the Farmers' Home Administration appears in the following table:

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<b>"The code number is:</b>	<b>The housing credit dollar amount is:</b>
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(i) 49284553664	\$16,000
(ii) 4927742022446	\$22,000
(iii) 49270742276087	\$64,000
(iv) 490270742387293	\$48,000
(v) 4927074218234	\$32,000
(vi) 49270742274019	\$36,000
(vii) 51460742345074	\$53,000.

"(C) Determination of adjusted basis.-The adjusted basis of any building to which this paragraph applies for purposes of section 42 of such Code shall be its adjusted basis as of the close of the taxable year ending before the first taxable year of the credit period for such building.

"(D) Certain rules to apply.-Rules similar to the rules of subparagraph (E) of paragraph (2) shall apply for purposes of this paragraph.

"(4) Definitions.-For purposes of this subsection, terms used in such subsection which are also used in section 42 of the Internal Revenue Code of 1986 (as added by this section) shall have the meanings given such terms by such section 42.

"(5) Transitional rule.-In the case of any rehabilitation expenditures incurred with respect to units located in the neighborhood strategy area within the community development block grant program in Ft. Wayne, Indiana-

"(A) the amendments made by this section [enacting this section and amending sections 38 and 55 of this title] shall not apply, and

"(B) paragraph (1) of section 167(k) of the Internal Revenue Code of 1986, shall be applied as if it did not contain the phrase 'and before January 1, 1987'.

The number of units to which the preceding sentence applies shall not exceed 150."

<sup>1</sup> *So in original. See 2008 Amendment note below.*