

114TH CONGRESS
2D SESSION

S. 3384

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22, 2016

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

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Middle-Income Hous-
5 ing Tax Credit Act of 2016”.

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

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

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

6 (2) Since 1986, when the low-income housing
7 tax credit was first enacted, the credit has financed
8 about 2,800,000 affordable homes in the United
9 States for roughly 6,500,000 households. In Oregon,
10 the program has financed over 37,000 affordable
11 homes, providing housing to over 85,000 low-income
12 households.

13 (3) While the low-income housing tax credit has
14 been remarkably successful, the Nation still faces an
15 affordable housing crisis. Today, more than 1 in 4
16 renter households in the United States—roughly
17 11,400,000—spend more than half of their income
18 on rent, leaving too little for other necessities like
19 food, medical care, and transportation. Meanwhile,
20 only 1 in 4 eligible low-income households receives
21 any housing assistance, and we continue to lose af-
22 fordable housing from our Nation’s stock.

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

1 (5) In July of 2016, the Affordable Housing
2 Credit Improvement Act of 2016 was introduced to
3 expand and strengthen the low-income housing tax
4 credit. To provide States with further tools to en-
5 courage the development of greatly needed additional
6 affordable housing, the Affordable Housing Credit
7 Improvement Act of 2016 would increase the annual
8 per capita low income housing tax credit allocation
9 and small State minimum by 50 percent phased in
10 over 5 years.

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

13 (1) The low-income housing tax credit under
14 section 42 of the Internal Revenue Code of 1986 is
15 a critically important Federal Government policy
16 tool to encourage the production of affordable hous-
17 ing for low-income families; and

18 (2) Congress should further improve and en-
19 hance the low-income housing tax credit by passing
20 the Affordable Housing Credit Improvement Act of
21 2016.

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

23 (a) IN GENERAL.—Subpart D of part IV of sub-
24 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 is amended by inserting after section 42 the fol-
 2 lowing new section:

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

4 “(a) IN GENERAL.—For purposes of section 38, the
 5 amount of the middle-income housing credit determined
 6 under this section for any taxable year in the credit period
 7 shall be an amount equal to—

8 “(1) the applicable percentage of

9 “(2) the qualified basis of each qualified mid-
 10 dle-income building.

11 “(b) APPLICABLE PERCENTAGE.—

12 “(1) DETERMINATION OF APPLICABLE PER-
 13 CENTAGE.—For purposes of this section—

14 “(A) IN GENERAL.—The term ‘applicable
 15 percentage’ means, with respect to any building,
 16 the appropriate percentage prescribed by the
 17 Secretary for the earlier of—

18 “(i) the month in which such building
 19 is placed in service, or

20 “(ii) at the election of the taxpayer,
 21 the month in which the taxpayer and the
 22 housing credit agency enter into an agree-
 23 ment with respect to such building (which
 24 is binding on such agency, the taxpayer,
 25 and all successors in interest) as to the

1 housing credit dollar amount to be allo-
2 cated to such building.

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

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

14 “(C) METHOD OF DISCOUNTING.—The
15 present value under subparagraph (B) shall be
16 determined—

17 “(i) as of the last day of the 1st year
18 of the 15-year period referred to in sub-
19 paragraph (B),

20 “(ii) by using a discount rate equal to
21 72 percent of the average of the annual
22 Federal mid-term rate and the annual
23 Federal long-term rate applicable under
24 section 1274(d)(1) to the month applicable

1 under clause (i) or (ii) of subparagraph
2 (A) and compounded annually, and

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

6 “(2) MINIMUM CREDIT RATE.—The applicable
7 percentage for any building shall not be less than 5
8 percent.

9 “(3) CROSS REFERENCES.—

10 “(A) For treatment of certain rehabilita-
11 tion expenditures as separate new buildings, see
12 subsection (e).

13 “(B) For determination of applicable per-
14 centage for increases in qualified basis after the
15 1st year of the credit period, see subsection
16 (f)(3).

17 “(C) For authority of housing credit agen-
18 cy to limit applicable percentage and qualified
19 basis which may be taken into account under
20 this section with respect to any building, see
21 subsection (h)(6).

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

24 “(1) QUALIFIED BASIS.—

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

4 “(i) the applicable fraction (deter-
5 mined as of the close of such taxable year)
6 of

7 “(ii) the eligible basis of such building
8 (determined under subsection (d)).

9 “(B) APPLICABLE FRACTION.—For pur-
10 poses of subparagraph (A), the term ‘applicable
11 fraction’ means the smaller of the unit fraction
12 or the floor space fraction.

13 “(C) UNIT FRACTION.—For purposes of
14 subparagraph (B), the term ‘unit fraction’
15 means the fraction—

16 “(i) the numerator of which is the
17 number of middle-income units in the
18 building, and

19 “(ii) the denominator of which is the
20 number of residential rental units (whether
21 or not occupied) in such building.

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

1 “(i) the numerator of which is the
2 total floor space of the middle-income units
3 in such building, and

4 “(ii) the denominator of which is the
5 total floor space of the residential rental
6 units (whether or not occupied) in such
7 building.

8 “(2) QUALIFIED MIDDLE-INCOME BUILDING.—

9 “(A) IN GENERAL.—The term ‘qualified
10 middle-income building’ means any building
11 which is part of a qualified middle-income hous-
12 ing project at all times during the period—

13 “(i) beginning on the 1st day in the
14 credit period on which such building is
15 part of such a project, and

16 “(ii) ending on the last day of the
17 credit period with respect to such building.

18 “(B) CERTAIN BUILDINGS NOT IN-
19 CLUDED.—The term ‘qualified middle-income
20 building’ does not include any building if such
21 building is designated as a building to which
22 the low-income housing tax credit applies in an
23 election under section 42(i)(10).

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

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

4 “(2) EXISTING BUILDINGS.—

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

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

12 “(ii) zero in any other case.

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

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

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

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

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

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

11 “(D) SPECIAL RULES.—

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

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

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

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

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

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

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

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

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

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

1 of any building shall be determined by taking
2 into account the adjusted basis of property (of
3 a character subject to the allowance for depre-
4 ciation) used in common areas or provided as
5 comparable amenities to all residential rental
6 units in such building.

7 “(C) NO REDUCTION FOR DEPRECIATION.—The adjusted basis of any building shall
8 be determined without regard to paragraphs (2)
9 and (3) of section 1016(a).

11 “(4) CREDIT ALLOWABLE FOR CERTAIN BUILD-
12 INGS ACQUIRED DURING 10-YEAR PERIOD DE-
13 SCRIBED IN PARAGRAPH (2)(B)(II).—On application
14 by the taxpayer, the Secretary may waive paragraph
15 (2)(B)(ii) with respect to any building acquired from
16 an insured depository institution in default (as de-
17 fined in section 3 of the Federal Deposit Insurance
18 Act) or from a receiver or conservator of such an in-
19 stitution.

20 “(5) ACQUISITION OF BUILDING BEFORE END
21 OF PRIOR CREDIT PERIOD.—

22 “(A) IN GENERAL.—Under regulations
23 prescribed by the Secretary, in the case of a
24 building described in subparagraph (B) (or in-

1 terest therein) which is acquired by the tax-
2 payer—

3 “(i) paragraph (2)(B) shall not apply,
4 but

5 “(ii) the credit allowable by reason of
6 subsection (a) to the taxpayer for any pe-
7 riod after such acquisition shall be equal to
8 the amount of credit which would have
9 been allowable under subsection (a) for
10 such period to the prior owner referred to
11 in subparagraph (B) had such owner not
12 disposed of the building.

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

15 “(i) a credit was allowed by reason of
16 subsection (a) to any prior owner of such
17 building, and

18 “(ii) the taxpayer acquired such build-
19 ing before the end of the credit period for
20 such building with respect to such prior
21 owner (determined without regard to any
22 disposition by such prior owner).

23 “(e) REHABILITATION EXPENDITURES TREATED AS
24 SEPARATE NEW BUILDING.—

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

5 “(2) REHABILITATION EXPENDITURES.—For
6 purposes of paragraph (1)—

7 “(A) IN GENERAL.—The term ‘rehabilita-
8 tion expenditures’ means amounts chargeable to
9 capital account and incurred for property (or
10 additions or improvements to property) of a
11 character subject to the allowance for deprecia-
12 tion in connection with the rehabilitation of a
13 building.

14 “(B) COST OF ACQUISITION, ETC., NOT IN-
15 CLUDED.—Such term does not include the cost
16 of acquiring any building (or interest therein)
17 or any amount not permitted to be taken into
18 account under paragraph (3) of subsection (d).

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

23 “(i) amounts paid to occupants,

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

1 “(iii) amounts paid for temporary
2 housing for occupants,
3 shall be treated as chargeable to capital account
4 and taken into account as rehabilitation ex-
5 penditures.

6 “(3) MINIMUM EXPENDITURES TO QUALIFY.—

7 “(A) IN GENERAL.—Paragraph (1) shall
8 apply to rehabilitation expenditures with respect
9 to any building only if—

10 “(i) the expenditures are allocable to
11 1 or more middle-income units or substan-
12 tially benefit such units, and

13 “(ii) the amount of such expenditures
14 during any 24-month period meets the re-
15 quirements of whichever of the following
16 subclauses requires the greater amount of
17 such expenditures:

18 “(I) The requirement of this sub-
19 clause is met if such amount is not
20 less than 20 percent of the adjusted
21 basis of the building (determined as of
22 the 1st day of such period and with-
23 out regard to paragraphs (2) and (3)
24 of section 1016(a)).

1 “(II) The requirement of this
2 subclause is met if the qualified basis
3 attributable to such amount, when di-
4 vided by the number of middle-income
5 units in the building, is equal to or
6 greater than the dollar amount in ef-
7 fect under section 42(e)(3)(A)(ii)(II)
8 for the calendar year in which such
9 expenditures are treated as placed in
10 service under paragraph (4).

11 “(B) DATE OF DETERMINATION.—The de-
12 termination under subparagraph (A) shall be
13 made as of the close of the 1st taxable year in
14 the credit period with respect to such expendi-
15 tures.

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

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

23 “(B) the applicable fraction under sub-
24 section (c)(1) shall be the applicable fraction for
25 the building (without regard to paragraph (1))

1 with respect to which the expenditures were in-
2 curred.

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

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

10 “(6) REGULATIONS TO APPLY SUBSECTION
11 WITH RESPECT TO GROUP OF UNITS IN BUILDING.—
12 The Secretary may prescribe regulations, consistent
13 with the purposes of this subsection, treating a
14 group of units with respect to which rehabilitation
15 expenditures are incurred as a separate new build-
16 ing.

17 “(f) DEFINITION AND SPECIAL RULES RELATING TO
18 CREDIT PERIOD.—

19 “(1) CREDIT PERIOD DEFINED.—For purposes
20 of this section, the term ‘credit period’ means, with
21 respect to any building, the period of 15 taxable
22 years beginning with—

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

1 “(B) at the election of the taxpayer, the
2 succeeding taxable year,
3 but only if the building is a qualified middle-income
4 building as of the close of the 1st year of such pe-
5 riod. The election under subparagraph (B), once
6 made, shall be irrevocable.

7 “(2) SPECIAL RULE FOR 1ST YEAR OF CREDIT
8 PERIOD.—

9 “(A) IN GENERAL.—The credit allowable
10 under subsection (a) with respect to any build-
11 ing for the 1st taxable year of the credit period
12 shall be determined by substituting for the ap-
13 plicable fraction under subsection (c)(1) the
14 fraction—

15 “(i) the numerator of which is the
16 sum of the applicable fractions determined
17 under subsection (c)(1) as of the close of
18 each full month of such year during which
19 such building was in service, and

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

21 “(B) DISALLOWED 1ST YEAR CREDIT AL-
22 LOWED IN 16TH YEAR.—Any reduction by rea-
23 son of subparagraph (A) in the credit allowable
24 (without regard to subparagraph (A)) for the
25 1st taxable year of the credit period shall be al-

1 lowable under subsection (a) for the 1st taxable
2 year following the credit period.

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

6 “(A) IN GENERAL.—In the case of any
7 building which was a qualified middle-income
8 building as of the close of the 1st year of the
9 credit period, if—

10 “(i) as of the close of any taxable year
11 in the credit period (after the 1st year of
12 such period) the qualified basis of such
13 building exceeds

14 “(ii) the qualified basis of such build-
15 ing as of the close of the 1st year of the
16 credit period,

17 the applicable percentage which shall apply
18 under subsection (a) for the taxable year to
19 such excess shall be the percentage equal to $\frac{2}{3}$
20 of the applicable percentage which (after the
21 application of subsection (h)) would but for this
22 paragraph apply to such basis.

23 “(B) 1ST YEAR COMPUTATION APPLIES.—
24 A rule similar to the rule of paragraph (2)(A)
25 shall apply to any increase in qualified basis to

1 which subparagraph (A) applies for the 1st year
2 of such increase.

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

9 “(5) CREDIT PERIOD FOR EXISTING BUILDINGS
10 NOT TO BEGIN BEFORE REHABILITATION CREDIT
11 ALLOWED.—

12 “(A) IN GENERAL.—The credit period for
13 an existing building shall not begin before the
14 1st taxable year of the credit period for reha-
15 bilitation expenditures with respect to the build-
16 ing.

17 “(B) ACQUISITION CREDIT ALLOWED FOR
18 CERTAIN BUILDINGS NOT ALLOWED A REHA-
19 BILITATION CREDIT.—

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

22 “(I) subsection (d)(2)(B)(iv)
23 shall not apply, and

24 “(II) the credit period for such
25 building shall not begin before the

1 taxable year which would be the 1st
 2 taxable year of the credit period for
 3 rehabilitation expenditures with re-
 4 spect to the building under the modi-
 5 fications described in clause (ii)(II).

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

8 “(I) a waiver is granted under
 9 subsection (d)(4) with respect to the
 10 acquisition of the building, and

11 “(II) a credit would be allowed
 12 for rehabilitation expenditures with
 13 respect to such building if subsection
 14 (e)(3)(A)(ii)(I) did not apply and if
 15 the dollar amount in effect under sub-
 16 section (e)(3)(A)(ii)(II) were two-
 17 thirds of such amount.

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

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

23 “(A) 60 percent or more of the residential
 24 units in such project are both rent-restricted
 25 and occupied by individuals whose income is

1 100 percent or less of area median gross in-
2 come, and

3 “(B) such project is not federally sub-
4 sidized and is not financed with the proceeds of
5 any federally funded grant.

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

10 “(2) RENT-RESTRICTED UNITS.—

11 “(A) IN GENERAL.—For purposes of para-
12 graph (1), a residential unit is rent-restricted if
13 the gross rent with respect to such unit does
14 not exceed 30 percent of the imputed income
15 limitation applicable to such unit. For purposes
16 of the preceding sentence, the amount of the in-
17 come limitation under paragraph (1) applicable
18 for any period shall not be less than such limi-
19 tation applicable for the earliest period the
20 building (which contains the unit) was included
21 in the determination of whether the project is
22 a qualified middle-income housing project.

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

1 “(i) includes any utility allowance de-
2 termined by the Secretary after taking into
3 account such determinations under section
4 8 of the United States Housing Act of
5 1937,

6 “(ii) does not include any fee for a
7 supportive service which is paid to the
8 owner of the unit (on the basis of the mid-
9 dle-income status of the tenant of the unit)
10 by any governmental program of assistance
11 (or by an organization described in section
12 501(e)(3) and exempt from tax under sec-
13 tion 501(a)) if such program (or organiza-
14 tion) provides assistance for rent and the
15 amount of assistance provided for rent is
16 not separable from the amount of assist-
17 ance provided for supportive services, and

18 “(iii) does not include any rental pay-
19 ment to the owner of the unit to the extent
20 such owner pays an equivalent amount to
21 the Farmers’ Home Administration under
22 section 515 of the Housing Act of 1949.

23 For purposes of clause (ii), the term ‘supportive
24 service’ means any service provided under a
25 planned program of services designed to enable

1 residents of a residential rental property to re-
2 main independent and avoid placement in a
3 hospital, nursing home, or intermediate care fa-
4 cility for the mentally or physically handi-
5 capped.

6 “(C) IMPUTED INCOME LIMITATION APPLI-
7 CABLE TO UNIT.—For purposes of this para-
8 graph, the imputed income limitation applicable
9 to a unit is the income limitation which would
10 apply under paragraph (1) to individuals occu-
11 pying the unit if the number of individuals oc-
12 cupying the unit were as follows:

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

15 “(ii) In the case of a unit which has
16 1 or more separate bedrooms, 1.5 individ-
17 uals for each separate bedroom.

18 “(D) TREATMENT OF UNITS OCCUPIED BY
19 INDIVIDUALS WHOSE INCOMES RISE ABOVE
20 LIMIT.—

21 “(i) IN GENERAL.—Except as pro-
22 vided in clause (ii), notwithstanding an in-
23 crease in the income of the occupants of a
24 middle-income unit above the income limi-
25 tation applicable under paragraph (1),

1 such unit shall continue to be treated as a
2 middle-income unit if the income of such
3 occupants initially met such income limita-
4 tion and such unit continues to be rent-re-
5 stricted.

6 “(ii) NEXT AVAILABLE UNIT MUST BE
7 RENTED TO MIDDLE-INCOME TENANT IF
8 INCOME RISES ABOVE 140 PERCENT OF IN-
9 COME LIMIT.—If the income of the occu-
10 pants of the unit increases above 140 per-
11 cent of the income limitation applicable
12 under paragraph (1), clause (i) shall cease
13 to apply to such unit if any residential
14 rental unit in the building (of a size com-
15 parable to, or smaller than, such unit) is
16 occupied by a new resident whose income
17 exceeds such income limitation.

18 “(3) DATE FOR MEETING REQUIREMENTS.—

19 “(A) IN GENERAL.—Except as otherwise
20 provided in this paragraph, a building shall be
21 treated as a qualified middle-income building
22 only if the project (of which such building is a
23 part) meets the requirements of paragraph (1)
24 not later than the close of the 1st year of the
25 credit period for such building.

1 “(B) BUILDINGS WHICH RELY ON LATER
2 BUILDINGS FOR QUALIFICATION.—

3 “(i) IN GENERAL.—In determining
4 whether a building (hereinafter in this sub-
5 paragraph referred to as the ‘prior build-
6 ing’) is a qualified middle-income building,
7 the taxpayer may take into account 1 or
8 more additional buildings placed in service
9 during the 12-month period described in
10 subparagraph (A) with respect to the prior
11 building only if the taxpayer elects to apply
12 clause (ii) with respect to each additional
13 building taken into account.

14 “(ii) TREATMENT OF ELECTED
15 BUILDINGS.—In the case of a building
16 which the taxpayer elects to take into ac-
17 count under clause (i), the period under
18 subparagraph (A) for such building shall
19 end at the close of the 12-month period ap-
20 plicable to the prior building.

21 “(iii) DATE PRIOR BUILDING IS
22 TREATED AS PLACED IN SERVICE.—For
23 purposes of determining the credit period
24 for the prior building, the prior building
25 shall be treated for purposes of this section

1 as placed in service on the most recent
2 date any additional building elected by the
3 taxpayer (with respect to such prior build-
4 ing) was placed in service.

5 “(C) SPECIAL RULE.—A building—

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

8 “(ii) other than a building which is
9 placed in service during the 12-month pe-
10 riod described in subparagraph (A) with
11 respect to a prior building which becomes
12 a qualified middle-income building,

13 shall in no event be treated as a qualified mid-
14 dle-income building unless the project is a
15 qualified middle-income housing project (with-
16 out regard to such building) on the date such
17 building is placed in service.

18 “(D) PROJECTS WITH MORE THAN 1
19 BUILDING MUST BE IDENTIFIED.—For pur-
20 poses of this section, a project shall be treated
21 as consisting of only 1 building unless, before
22 the close of the 1st calendar year in the project
23 period (as defined in subsection (h)(1)(F)(ii)),
24 each building which is (or will be) part of such

1 project is identified in such form and manner
2 as the Secretary may provide.

3 “(4) CERTAIN RULES MADE APPLICABLE.—
4 Paragraphs (2) (other than subparagraph (A) there-
5 of), (3), and (7) of section 142(d), and section
6 6652(j), shall apply for purposes of determining
7 whether any project is a qualified middle-income
8 housing project and whether any unit is a middle-in-
9 come unit; except that, in applying such provisions
10 for such purposes—

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

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

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

23 “(6) SPECIAL RULE WHERE DE MINIMIS EQ-
24 UITY CONTRIBUTION.—Property shall not be treated
25 as failing to be residential rental property for pur-

1 poses of this section merely because the occupant of
2 a residential unit in the project pays (on a voluntary
3 basis) to the lessor a de minimis amount to be held
4 toward the purchase by such occupant of a residen-
5 tial unit in such project if—

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

9 “(B) the purchase of the unit is not per-
10 mitted until after the close of the credit period
11 with respect to the building in which the unit
12 is located.

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

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

23 “(8) WAIVER OF CERTAIN RECERTIFI-
24 CATIONS.—On application by the taxpayer, the Sec-
25 retary may waive any annual recertification of ten-

1 ant income for purposes of this subsection, if the en-
 2 tire building is occupied by middle-income tenants.

3 “(9) CLARIFICATION OF GENERAL PUBLIC USE
 4 REQUIREMENT.—A project does not fail to meet the
 5 general public use requirement solely because of oc-
 6 cupancy restrictions or preferences that favor ten-
 7 ants—

8 “(A) with special needs,

9 “(B) who are members of a specified group
 10 under a Federal program or State program or
 11 policy that supports housing for such a speci-
 12 fied group, or

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

15 “(h) LIMITATION ON AGGREGATE CREDIT ALLOW-
 16 ABLE WITH RESPECT TO PROJECTS LOCATED IN A
 17 STATE.—

18 “(1) CREDIT MAY NOT EXCEED CREDIT
 19 AMOUNT ALLOCATED TO BUILDING.—

20 “(A) IN GENERAL.—The amount of the
 21 credit determined under this section for any
 22 taxable year with respect to any building shall
 23 not exceed the housing credit dollar amount al-
 24 located to such building under this subsection.

1 “(B) TIME FOR MAKING ALLOCATION.—
2 Except in the case of an allocation which meets
3 the requirements of subparagraph (C), (D),
4 (E), or (F), an allocation shall be taken into ac-
5 count under subparagraph (A) only if it is
6 made not later than the close of the calendar
7 year in which the building is placed in service.

8 “(C) EXCEPTION WHERE BINDING COM-
9 MITMENT.—An allocation meets the require-
10 ments of this subparagraph if there is a binding
11 commitment (not later than the close of the cal-
12 endar year in which the building is placed in
13 service) by the housing credit agency to allocate
14 a specified housing credit dollar amount to such
15 building beginning in a specified later taxable
16 year.

17 “(D) EXCEPTION WHERE INCREASE IN
18 QUALIFIED BASIS.—

19 “(i) IN GENERAL.—An allocation
20 meets the requirements of this subpara-
21 graph if such allocation is made not later
22 than the close of the calendar year in
23 which ends the taxable year to which it will
24 1st apply but only to the extent the

1 amount of such allocation does not exceed
2 the limitation under clause (ii).

3 “(ii) LIMITATION.—The limitation
4 under this clause is the amount of credit
5 allowable under this section (without re-
6 gard to this subsection) for a taxable year
7 with respect to an increase in the qualified
8 basis of the building equal to the excess
9 of—

10 “(I) the qualified basis of such
11 building as of the close of the 1st tax-
12 able year to which such allocation will
13 apply, over

14 “(II) the qualified basis of such
15 building as of the close of the 1st tax-
16 able year to which the most recent
17 prior housing credit allocation with re-
18 spect to such building applied.

19 “(iii) HOUSING CREDIT DOLLAR
20 AMOUNT REDUCED BY FULL ALLOCA-
21 TION.—Notwithstanding clause (i), the full
22 amount of the allocation shall be taken
23 into account under paragraph (2).

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

1 “(i) IN GENERAL.—An allocation
2 meets the requirements of this subpara-
3 graph if such allocation is made with re-
4 spect to a qualified building which is
5 placed in service not later than the close of
6 the second calendar year following the cal-
7 endar year in which the allocation is made.

8 “(ii) QUALIFIED BUILDING.—For pur-
9 poses of clause (i), the term ‘qualified
10 building’ means any building which is part
11 of a project if the taxpayer’s basis in such
12 project (as of the date which is 1 year
13 after the date that the allocation was
14 made) is more than 10 percent of the tax-
15 payer’s reasonably expected basis in such
16 project (as of the close of the second cal-
17 endar year referred to in clause (i)). Such
18 term does not include any existing building
19 unless a credit is allowable under sub-
20 section (e) for rehabilitation expenditures
21 paid or incurred by the taxpayer with re-
22 spect to such building for a taxable year
23 ending during the second calendar year re-
24 ferred to in clause (i) or the prior taxable
25 year.

1 “(F) ALLOCATION OF CREDIT ON A
2 PROJECT BASIS.—

3 “(i) IN GENERAL.—In the case of a
4 project which includes (or will include)
5 more than 1 building, an allocation meets
6 the requirements of this subparagraph if—

7 “(I) the allocation is made to the
8 project for a calendar year during the
9 project period,

10 “(II) the allocation only applies
11 to buildings placed in service during
12 or after the calendar year for which
13 the allocation is made, and

14 “(III) the portion of such alloca-
15 tion which is allocated to any building
16 in such project is specified not later
17 than the close of the calendar year in
18 which the building is placed in service.

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

22 “(I) beginning with the 1st cal-
23 endar year for which an allocation
24 may be made for the 1st building

1 placed in service as part of such
2 project, and

3 “(II) ending with the calendar
4 year the last building is placed in
5 service as part of such project.

6 “(2) ALLOCATED CREDIT AMOUNT TO APPLY
7 TO ALL TAXABLE YEARS ENDING DURING OR AFTER
8 CREDIT ALLOCATION YEAR.—Any housing credit dol-
9 lar amount allocated to any building for any cal-
10 endar year—

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

14 “(B) shall reduce the aggregate housing
15 credit dollar amount of the allocating agency
16 only for such calendar year.

17 “(3) HOUSING CREDIT DOLLAR AMOUNT FOR
18 AGENCIES.—

19 “(A) IN GENERAL.—The aggregate hous-
20 ing credit dollar amount which a housing credit
21 agency may allocate for any calendar year is
22 the portion of the State housing credit ceiling
23 allocated under this paragraph for such cal-
24 endar year to such agency.

1 “(B) STATE CEILING INITIALLY ALLO-
2 CATED TO STATE HOUSING CREDIT AGEN-
3 CIES.—Except as provided in subparagraphs
4 (D) and (E), the State housing credit ceiling
5 for each calendar year shall be allocated to the
6 housing credit agency of such State. If there is
7 more than 1 housing credit agency of a State,
8 all such agencies shall be treated as a single
9 agency.

10 “(C) STATE HOUSING CREDIT CEILING.—
11 The State housing credit ceiling applicable to
12 any State for any calendar year shall be an
13 amount equal to the sum of—

14 “(i) the greater of—

15 “(I) \$1.00 multiplied by the
16 State population, or

17 “(II) \$1,140,000, plus

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

20 For purposes of clause (ii), the amount of State
21 housing credit ceiling returned in the calendar
22 year equals the housing credit dollar amount
23 previously allocated within the State to any
24 project which fails to meet the 10 percent test
25 under paragraph (1)(E)(ii) on a date after the

1 close of the calendar year in which the alloca-
 2 tion was made or which does not become a
 3 qualified middle-income housing project within
 4 the period required by this section or the terms
 5 of the allocation or to any project with respect
 6 to which an allocation is cancelled by mutual
 7 consent of the housing credit agency and the al-
 8 location recipient.

9 “(D) SPECIAL RULE FOR STATES WITH
 10 CONSTITUTIONAL HOME RULE CITIES.—For
 11 purposes of this subsection—

12 “(i) IN GENERAL.—The aggregate
 13 housing credit dollar amount for any con-
 14 stitutional home rule city for any calendar
 15 year shall be an amount which bears the
 16 same ratio to the State housing credit ceil-
 17 ing for such calendar year as—

18 “(I) the population of such city,

19 bears to

20 “(II) the population of the entire
 21 State.

22 “(ii) COORDINATION WITH OTHER AL-
 23 LOCATIONS.—In the case of any State
 24 which contains 1 or more constitutional
 25 home rule cities, for purposes of applying

1 this paragraph with respect to housing
2 credit agencies in such State other than
3 constitutional home rule cities, the State
4 housing credit ceiling for any calendar year
5 shall be reduced by the aggregate housing
6 credit dollar amounts determined for such
7 year for all constitutional home rule cities
8 in such State.

9 “(iii) CONSTITUTIONAL HOME RULE
10 CITY.—For purposes of this paragraph, the
11 term ‘constitutional home rule city’ has the
12 meaning given such term by section
13 146(d)(3)(C).

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

19 “(F) POPULATION.—For purposes of this
20 paragraph, population shall be determined in
21 accordance with section 146(j).

22 “(G) COST-OF-LIVING ADJUSTMENT.—

23 “(i) IN GENERAL.—In the case of a
24 calendar year after 2017, the \$1,140,000
25 and \$1.00 amounts in subparagraph (C)

1 shall each be increased by an amount equal
2 to—

3 “(I) such dollar amount, multi-
4 plied by

5 “(II) the cost-of-living adjust-
6 ment determined under section 1(f)(3)
7 for such calendar year by substituting
8 ‘calendar year 2016’ for ‘calendar
9 year 1992’ in subparagraph (B) there-
10 of.

11 “(ii) ROUNDING.—

12 “(I) In the case of the
13 \$1,140,000 amount, any increase
14 under clause (i) which is not a mul-
15 tiple of \$5,000 shall be rounded to the
16 next lowest multiple of \$5,000.

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

22 “(4) PORTION OF STATE CEILING SET-ASIDE
23 FOR CERTAIN PROJECTS INVOLVING QUALIFIED
24 NONPROFIT ORGANIZATIONS.—

1 “(A) IN GENERAL.—Not more than 90
2 percent of the State housing credit ceiling for
3 any State for any calendar year shall be allo-
4 cated to projects other than qualified middle-in-
5 come housing projects described in subpara-
6 graph (B).

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

17 “(C) QUALIFIED NONPROFIT ORGANIZA-
18 TION.—For purposes of this paragraph, the
19 term ‘qualified nonprofit organization’ means
20 any organization if—

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

24 “(ii) such organization is determined
25 by the State housing credit agency not to

1 be affiliated with or controlled by a for-
2 profit organization; and

3 “(iii) one of the exempt purposes of
4 such organization includes the fostering of
5 middle-income housing.

6 “(D) TREATMENT OF CERTAIN SUBSIDI-
7 ARIES.—

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

15 “(ii) QUALIFIED CORPORATION.—For
16 purposes of clause (i), the term ‘qualified
17 corporation’ means any corporation if 100
18 percent of the stock of such corporation is
19 held by 1 or more qualified nonprofit orga-
20 nizations at all times during the period
21 such corporation is in existence.

22 “(E) STATE MAY NOT OVERRIDE SET-
23 ASIDE.—Nothing in subparagraph (E) of para-
24 graph (3) shall be construed to permit a State

1 not to comply with subparagraph (A) of this
2 paragraph.

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

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

11 “(B) EXTENDED MIDDLE-INCOME HOUS-
12 ING COMMITMENT.—For purposes of this para-
13 graph, the term ‘extended middle-income hous-
14 ing commitment’ means any agreement between
15 the taxpayer and the housing credit agency—

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

24 “(ii) which allows individuals who
25 meet the income limitation applicable to

1 the building under subsection (g) (whether
2 prospective, present, or former occupants
3 of the building) the right to enforce in any
4 State court the requirement and prohibi-
5 tions of clause (i),

6 “(iii) which prohibits the disposition
7 to any person of any portion of the build-
8 ing to which such agreement applies unless
9 all of the building to which such agreement
10 applies is disposed of to such person,

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

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

19 “(vi) which, with respect to the prop-
20 erty, is recorded pursuant to State law as
21 a restrictive covenant.

22 “(C) ALLOCATION OF CREDIT MAY NOT
23 EXCEED AMOUNT NECESSARY TO SUPPORT
24 COMMITMENT.—The housing credit dollar
25 amount allocated to any building may not ex-

1 ceed the amount necessary to support the appli-
2 cable fraction specified in the extended middle-
3 income housing commitment for such building,
4 including any increase in such fraction pursu-
5 ant to the application of subsection (f)(3) if
6 such increase is reflected in an amended mid-
7 dle-income housing commitment.

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

11 “(i) beginning on the 1st day in credit
12 period on which such building is part of a
13 qualified middle-income housing project,
14 and

15 “(ii) ending on the later of—

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

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

20 “(E) EXCEPTIONS IF FORECLOSURE OR IF
21 NO BUYER WILLING TO MAINTAIN MIDDLE-IN-
22 COME STATUS.—

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

1 “(I) on the date the building is
 2 acquired by foreclosure (or instrument
 3 in lieu of foreclosure) unless the Sec-
 4 retary determines that such acquisi-
 5 tion is part of an arrangement with
 6 the taxpayer a purpose of which is to
 7 terminate such period, or

8 “(II) on the last day of the pe-
 9 riod specified in subparagraph (I) if
 10 the housing credit agency is unable to
 11 present during such period a qualified
 12 contract for the acquisition of the
 13 middle-income portion of the building
 14 by any person who will continue to op-
 15 erate such portion as a qualified mid-
 16 dle-income building.

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

20 “(ii) EVICTION, ETC. OF EXISTING
 21 MIDDLE-INCOME TENANTS NOT PER-
 22 MITTED.—The termination of an extended
 23 use period under clause (i) shall not be
 24 construed to permit before the close of the
 25 3-year period following such termination—

1 “(I) the eviction or the termi-
2 nation of tenancy (other than for good
3 cause) of an existing tenant of any
4 middle-income unit, or

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

8 “(F) QUALIFIED CONTRACT.—For pur-
9 poses of subparagraph (E), the term ‘qualified
10 contract’ means a bona fide contract to acquire
11 (within a reasonable period after the contract is
12 entered into) the nonmiddle-income portion of
13 the building for fair market value and the mid-
14 dle-income portion of the building for an
15 amount not less than the applicable fraction
16 (specified in the extended middle-income hous-
17 ing commitment) of—

18 “(i) the sum of—

19 “(I) the outstanding indebtedness
20 secured by, or with respect to, the
21 building,

22 “(II) the adjusted investor equity
23 in the building, plus

1 “(III) other capital contributions
2 not reflected in the amounts described
3 in subclause (I) or (II), reduced by
4 “(ii) cash distributions from (or avail-
5 able for distribution from) the project.

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

11 “(G) ADJUSTED INVESTOR EQUITY.—

12 “(i) IN GENERAL.—For purposes of
13 subparagraph (F), the term ‘adjusted in-
14 vestor equity’ means, with respect to any
15 calendar year, the aggregate amount of
16 cash taxpayers invested with respect to the
17 project increased by the amount equal to—

18 “(I) such amount, multiplied by

19 “(II) the cost-of-living adjust-
20 ment for such calendar year, deter-
21 mined under section 1(f)(3) by sub-
22 stituting the base calendar year for
23 ‘calendar year 1987’.

24 An amount shall be taken into account as
25 an investment in the project only to the ex-

1 tent there was an obligation to invest such
2 amount as of the beginning of the credit
3 period and to the extent such amount is
4 reflected in the adjusted basis of the
5 project.

6 “(ii) COST-OF-LIVING INCREASES IN
7 EXCESS OF 5 PERCENT NOT TAKEN INTO
8 ACCOUNT.—Under regulations prescribed
9 by the Secretary, if the CPI for any cal-
10 endar year (as defined in section 1(f)(4))
11 exceeds the CPI for the preceding calendar
12 year by more than 5 percent, the CPI for
13 the base calendar year shall be increased
14 such that such excess shall never be taken
15 into account under clause (i).

16 “(iii) BASE CALENDAR YEAR.—For
17 purposes of this subparagraph, the term
18 ‘base calendar year’ means the calendar
19 year with or within which the 1st taxable
20 year of the credit period ends.

21 “(H) MIDDLE-INCOME PORTION.—For
22 purposes of this paragraph, the middle-income
23 portion of a building is the portion of such
24 building equal to the applicable fraction speci-

1 fied in the extended middle-income housing
2 commitment for the building.

3 “(I) PERIOD FOR FINDING BUYER.—The
4 period referred to in this subparagraph is the
5 1-year period beginning on the date (after the
6 14th year of the credit period) the taxpayer
7 submits a written request to the housing credit
8 agency to find a person to acquire the tax-
9 payer’s interest in the middle-income portion of
10 the building.

11 “(J) EFFECT OF NONCOMPLIANCE.—If,
12 during a taxable year, there is a determination
13 that an extended middle-income housing agree-
14 ment was not in effect as of the beginning of
15 such year, such determination shall not apply to
16 any period before such year and subparagraph
17 (A) shall be applied without regard to such de-
18 termination if the failure is corrected within 1
19 year from the date of the determination.

20 “(K) PROJECTS WHICH CONSIST OF MORE
21 THAN 1 BUILDING.—The application of this
22 paragraph to projects which consist of more
23 than 1 building shall be made under regulations
24 prescribed by the Secretary.

25 “(6) SPECIAL RULES.—

1 “(A) BUILDING MUST BE LOCATED WITH-
2 IN JURISDICTION OF CREDIT AGENCY.—A hous-
3 ing credit agency may allocate its aggregate
4 housing credit dollar amount only to buildings
5 located in the jurisdiction of the governmental
6 unit of which such agency is a part.

7 “(B) AGENCY ALLOCATIONS IN EXCESS OF
8 LIMIT.—If the aggregate housing credit dollar
9 amounts allocated by a housing credit agency
10 for any calendar year exceed the portion of the
11 State housing credit ceiling allocated to such
12 agency for such calendar year, the housing
13 credit dollar amounts so allocated shall be re-
14 duced (to the extent of such excess) for build-
15 ings in the reverse of the order in which the al-
16 locations of such amounts were made.

17 “(C) CREDIT REDUCED IF ALLOCATED
18 CREDIT DOLLAR AMOUNT IS LESS THAN CREDIT
19 WHICH WOULD BE ALLOWABLE WITHOUT RE-
20 GARD TO PLACED IN SERVICE CONVENTION,
21 ETC.—

22 “(i) IN GENERAL.—The amount of
23 the credit determined under this section
24 with respect to any building shall not ex-
25 ceed the clause (ii) percentage of the

1 amount of the credit which would (but for
2 this subparagraph) be determined under
3 this section with respect to such building.

4 “(ii) DETERMINATION OF PERCENT-
5 AGE.—For purposes of clause (i), the
6 clause (ii) percentage with respect to any
7 building is the percentage which—

8 “(I) the housing credit dollar
9 amount allocated to such building
10 bears to

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

13 “(iii) DETERMINATION OF CREDIT
14 AMOUNT.—The credit amount determined
15 in accordance with this clause is the
16 amount of the credit which would (but for
17 this subparagraph) be determined under
18 this section with respect to the building
19 if—

20 “(I) this section were applied
21 without regard to paragraphs (2)(A)
22 and (3)(B) of subsection (f), and

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

1 “(D) HOUSING CREDIT AGENCY TO SPECI-
 2 FY APPLICABLE PERCENTAGE AND MAXIMUM
 3 QUALIFIED BASIS.—In allocating a housing
 4 credit dollar amount to any building, the hous-
 5 ing credit agency shall specify the applicable
 6 percentage and the maximum qualified basis
 7 which may be taken into account under this
 8 section with respect to such building. The appli-
 9 cable percentage and maximum qualified basis
 10 so specified shall not exceed the applicable per-
 11 centage and qualified basis determined under
 12 this section without regard to this subsection.

13 “(7) OTHER DEFINITIONS.—For purposes of
 14 this subsection—

15 “(A) HOUSING CREDIT AGENCY.—The
 16 term ‘housing credit agency’ means any agency
 17 authorized to carry out this subsection.

18 “(B) POSSESSIONS TREATED AS STATES.—
 19 The term ‘State’ includes a possession of the
 20 United States.

21 “(i) DEFINITIONS AND SPECIAL RULES.—For pur-
 22 poses of this section—

23 “(1) MIDDLE-INCOME UNIT.—

24 “(A) IN GENERAL.—The term ‘middle-in-
 25 come unit’ means any unit in a building if—

1 “(i) such unit is rent-restricted (as de-
2 fined in subsection (g)(2)), and

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

7 “(B) EXCEPTIONS.—

8 “(i) IN GENERAL.—A unit shall not
9 be treated as a middle-income unit unless
10 the unit is suitable for occupancy and used
11 other than on a transient basis.

12 “(ii) SUITABILITY FOR OCCUPANCY.—
13 For purposes of clause (i), the suitability
14 of a unit for occupancy shall be determined
15 under regulations prescribed by the Sec-
16 retary taking into account local health,
17 safety, and building codes.

18 “(iii) SINGLE-ROOM OCCUPANCY
19 UNITS.—For purposes of clause (i), a sin-
20 gle-room occupancy unit shall not be treat-
21 ed as used on a transient basis merely be-
22 cause it is rented on a month-by-month
23 basis.

24 “(C) SPECIAL RULE FOR BUILDINGS HAV-
25 ING 4 OR FEWER UNITS.—In the case of any

1 building which has 4 or fewer residential rental
2 units, no unit in such building shall be treated
3 as a middle-income unit if the units in such
4 building are owned by—

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

7 “(ii) any person who is related (as de-
8 fined in subsection (d)(2)(D)(ii)) to such
9 individual.

10 “(D) RULES RELATING TO STUDENTS.—

11 “(i) IN GENERAL.—A unit occupied
12 solely by individuals who—

13 “(I) have not attained age 24,
14 and

15 “(II) are enrolled in a full-time
16 course of study at an institution of
17 higher education (as defined in section
18 3304(f)),

19 shall not be treated as a middle-income
20 unit.

21 “(ii) EXCEPTIONS.—Clause (i) shall
22 not apply to a unit occupied by an indi-
23 vidual who—

24 “(I) is married,

1 “(II) is a person with disabilities
2 (as defined in section 3(b)(3)(E) of
3 the United States Housing Act of
4 1937),

5 “(III) is a veteran (as defined in
6 section 101(2) of title 38, United
7 States Code),

8 “(IV) has one or more qualifying
9 children (as defined in section
10 152(c)), or

11 “(V) meets the income limitation
12 applicable under subsection (g)(1) to
13 the project of which the building is a
14 part and is, or was immediately prior
15 to attaining the age of majority—

16 “(aa) an emancipated minor
17 or in legal guardianship as deter-
18 mined by a court of competent
19 jurisdiction in the individual’s
20 State of legal residence,

21 “(bb) under the care and
22 placement responsibility of the
23 State agency responsible for ad-
24 ministering a plan under part B

1 or part E of title IV of the Social
2 Security Act, or

3 “(cc) was an unaccompanied
4 youth (within the meaning of sec-
5 tion 725(6) of the McKinney-
6 Vento Homeless Assistance Act
7 (42 U.S.C. 11434a(6))) or a
8 homeless child or youth (within
9 the meaning of section 725(2) of
10 such Act (42 U.S.C.
11 11434a(2))).

12 “(E) OWNER-OCCUPIED BUILDINGS HAV-
13 ING 4 OR FEWER UNITS ELIGIBLE FOR CREDIT
14 WHERE DEVELOPMENT PLAN.—

15 “(i) IN GENERAL.—Subparagraph (C)
16 shall not apply to the acquisition or reha-
17 bilitation of a building pursuant to a devel-
18 opment plan of action sponsored by a
19 State or local government or a qualified
20 nonprofit organization.

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

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

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

11 “(3) EXISTING BUILDING.—The term ‘existing
12 building’ means any building which is not a new
13 building.

14 “(4) APPLICATION TO ESTATES AND TRUSTS.—
15 In the case of an estate or trust, the amount of the
16 credit determined under subsection (a) shall be ap-
17 portioned between the estate or trust and the bene-
18 ficiaries on the basis of the income of the estate or
19 trust allocable to each.

20 “(5) IMPACT OF TENANT’S OPTION TO ACQUIRE
21 PROPERTY.—

22 “(A) IN GENERAL.—No Federal income
23 tax benefit shall fail to be allowable to the tax-
24 payer with respect to any qualified middle-in-
25 come building merely by reason of an option

1 held by the tenants (in cooperative form or oth-
2 erwise) or resident management corporation of
3 such building or by a qualified nonprofit organi-
4 zation or government agency to purchase the
5 property or a partnership interest relating to
6 the property after the close of the credit period
7 for a price which is not less than the minimum
8 purchase price determined under subparagraph
9 (B).

10 “(B) MINIMUM PURCHASE PRICE.—For
11 purposes of subparagraph (A), the minimum
12 purchase price under this subparagraph is an
13 amount equal to the sum of—

14 “(i) the principal amount of out-
15 standing indebtedness secured by the
16 building (other than indebtedness incurred
17 within the 5-year period ending on the date
18 of the sale to the tenants), and

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

21 Except in the case of Federal income taxes,
22 there shall not be taken into account under
23 clause (ii) any additional tax attributable to the
24 application of clause (ii). In the case of a pur-
25 chase of a partnership interest, the minimum

1 purchase price is an amount equal to such in-
2 terest's ratable share of the amount determined
3 under the first sentence of this subparagraph.

4 “(6) TREATMENT OF RURAL PROJECTS.—For
5 purposes of this section, in the case of any project
6 for residential rental property located in a rural area
7 (as defined in section 520 of the Housing Act of
8 1949), any income limitation measured by reference
9 to area median gross income shall be measured by
10 reference to the greater of area median gross income
11 or national non-metropolitan median income.

12 “(7) DETERMINATION OF WHETHER BUILDING
13 IS FEDERALLY SUBSIDIZED.—

14 “(A) IN GENERAL.—Except as otherwise
15 provided in this paragraph, for purposes of sub-
16 section (g)(1), a project shall be treated as Fed-
17 erally subsidized for any taxable year if, at any
18 time during such taxable year or any prior tax-
19 able year, there is or was outstanding any obli-
20 gation the interest on which is exempt from tax
21 under section 103 the proceeds of which are or
22 were used (directly or indirectly) with respect to
23 such project or the operation thereof.

24 “(B) SPECIAL RULE FOR SUBSIDIZED CON-
25 STRUCTION FINANCING.—Subparagraph (A)

1 shall not apply to any tax-exempt obligation
2 used to provide construction financing for any
3 building if—

4 “(i) such obligation (when issued)
5 identified the building for which the pro-
6 ceeds of such obligation would be used,
7 and

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

10 “(8) COORDINATION WITH LOW-INCOME HOUS-
11 ING CREDIT.—No credit shall be allowed under this
12 section with respect to any building for which a
13 credit is allowable under section 42 unless the tax-
14 payer makes an election under this paragraph. Such
15 election shall designate the buildings to which this
16 section applies and, once made, shall be irrevocable.

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

19 “(1) IN GENERAL.—Except as otherwise pro-
20 vided in this subsection, rules similar to the rules of
21 section 49(a)(1) (other than subparagraphs
22 (D)(ii)(II) and (D)(iv)(I) thereof), section 49(a)(2),
23 and section 49(b)(1) shall apply in determining the
24 qualified basis of any building in the same manner

1 as such sections apply in determining the credit base
2 of property.

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

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

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

15 “(ii) is a person described in section
16 49(a)(1)(D)(iv)(II).

17 “(B) FINANCING SECURED BY PROP-
18 ERTY.—The requirements of this subparagraph
19 are met with respect to any financing if such fi-
20 nancing is secured by the qualified middle-in-
21 come building, except that this subparagraph
22 shall not apply in the case of a federally as-
23 sisted building described in subsection (d)(5)(B)
24 if—

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

5 “(ii) the proceeds from the financing
6 (if any) are applied to acquire or improve
7 such building..

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

19 “(D) REPAYMENT OF PRINCIPAL AND IN-
20 TEREST.—The requirements of this subpara-
21 graph are met with respect to any financing if
22 such financing is fully repaid on or before the
23 earliest of—

24 “(i) the date on which such financing
25 matures,

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

4 “(iii) the date of its refinancing or the
5 sale of the building to which such financ-
6 ing relates.

7 In the case of a qualified nonprofit organization
8 which is not described in section
9 49(a)(1)(D)(iv)(II) with respect to a building,
10 clause (ii) of this subparagraph shall be applied
11 as if the date described therein were the 90th
12 day after the earlier of the date the building
13 ceases to be a qualified middle-income building
14 or the date which is 15 years after the close of
15 a credit period with respect thereto.

16 “(3) PRESENT VALUE OF FINANCING.—If the
17 rate of interest on any financing described in para-
18 graph (2)(A) is less than the rate which is 1 per-
19 centage point below the applicable Federal rate as of
20 the time such financing is incurred, then the quali-
21 fied basis (to which such financing relates) of the
22 qualified middle-income building shall be the present
23 value of the amount of such financing, using as the
24 discount rate such applicable Federal rate. For pur-
25 poses of the preceding sentence, the rate of interest

1 on any financing shall be determined by treating in-
2 terest to the extent of government subsidies as not
3 payable.

4 “(4) FAILURE TO FULLY REPAY.—

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

13 “(i) beginning with the due date for
14 the filing of the return of tax imposed by
15 chapter 1 for the 1st taxable year for
16 which such credit was allowable, and

17 “(ii) ending with the due date for the
18 taxable year in which such failure occurs,
19 determined by using the underpayment rate and
20 method under section 6621.

21 “(B) APPLICABLE PORTION.—For pur-
22 poses of subparagraph (A), the term ‘applicable
23 portion’ means the aggregate decrease in the
24 credits allowed to a taxpayer under section 38
25 for all prior taxable years which would have re-

1 sulted if the eligible basis of the building were
2 reduced by the amount of financing which does
3 not meet requirements of paragraph (2)(D).

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

8 “(k) CERTIFICATIONS AND OTHER REPORTS TO SEC-
9 RETARY.—

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

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

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

22 “(C) the maximum applicable percentage
23 and qualified basis permitted to be taken into
24 account by the appropriate housing credit agen-
25 cy under subsection (h), and

1 “(D) such other information as the Sec-
2 retary may require.

3 In the case of a failure to make the certification re-
4 quired by the preceding sentence on the date pre-
5 scribed therefor, unless it is shown that such failure
6 is due to reasonable cause and not to willful neglect,
7 no credit shall be allowable by reason of subsection
8 (a) with respect to such building for any taxable
9 year ending before such certification is made.

10 “(2) ANNUAL REPORTS TO THE SECRETARY.—

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

15 “(A) the qualified basis for the taxable
16 year of each qualified middle-income building of
17 the taxpayer,

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

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

22 The penalty under section 6652(j) shall apply to any
23 failure to submit the return required by the Sec-
24 retary under the preceding sentence on the date pre-
25 scribed therefor.

1 “(3) ANNUAL REPORTS FROM HOUSING CREDIT
2 AGENCIES.—Each agency which allocates any hous-
3 ing credit amount to any building for any calendar
4 year shall submit to the Secretary (at such time and
5 in such manner as the Secretary shall prescribe) an
6 annual report specifying—

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

9 “(B) sufficient information to identify each
10 such building and the taxpayer with respect
11 thereto, and

12 “(C) such other information as the Sec-
13 retary may require.

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

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

19 “(1) PLANS FOR ALLOCATION OF CREDIT
20 AMONG PROJECTS.—

21 “(A) IN GENERAL.—Notwithstanding any
22 other provision of this section, the housing cred-
23 it dollar amount with respect to any building
24 shall be zero unless—

1 “(i) such amount was allocated pursu-
2 ant to a qualified allocation plan of the
3 housing credit agency which is approved by
4 the governmental unit (in accordance with
5 rules similar to the rules of section
6 42(m)(1)) of which such agency is a part,

7 “(ii) such agency notifies the chief ex-
8 ecutive officer (or the equivalent) of the
9 local jurisdiction within which the building
10 is located of such project and provides
11 such individual a reasonable opportunity to
12 comment on the project,

13 “(iii) a comprehensive market study
14 of the housing needs of middle-income in-
15 dividuals in the area to be served by the
16 project is conducted before the credit allo-
17 cation is made and at the developer’s ex-
18 pense by a disinterested party who is ap-
19 proved by such agency, and

20 “(iv) a written explanation is available
21 to the general public for any allocation of
22 a housing credit dollar amount which is
23 not made in accordance with established
24 priorities and selection criteria of the hous-
25 ing credit agency.

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

4 “(i) which sets forth selection criteria
5 to be used to determine housing priorities
6 of the housing credit agency which are ap-
7 propriate to local conditions,

8 “(ii) which also gives preference in al-
9 locating housing credit dollar amounts
10 among selected projects to—

11 “(I) projects obligated to serve
12 qualified tenants for the longest peri-
13 ods,

14 “(II) projects in areas where
15 rents are unaffordable to median in-
16 come households,

17 “(III) projects which target hous-
18 ing to tenants at a range of incomes
19 between 60 and 100 percent of area
20 median gross income, taking local in-
21 come and market conditions into ac-
22 count, and

23 “(IV) projects located near tran-
24 sit hubs, and

1 “(iii) which provides a procedure that
2 the agency (or an agent or other private
3 contractor of such agency) will follow in
4 monitoring for noncompliance with the
5 provisions of this section and in notifying
6 the Internal Revenue Service of such non-
7 compliance which such agency becomes
8 aware of and in monitoring for noncompli-
9 ance with habitability standards through
10 regular site visits.

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

14 “(i) project location,

15 “(ii) housing needs characteristics,

16 “(iii) project characteristics, including
17 whether the project includes the use of ex-
18 isting housing as part of a community revi-
19 talization plan,

20 “(iv) sponsor characteristics,

21 “(v) tenant populations with special
22 housing needs,

23 “(vi) tenant populations of individuals
24 with children,

1 “(vii) projects intended for eventual
2 tenant ownership,

3 “(viii) the energy efficiency of the
4 project, and

5 “(ix) the historic nature of the
6 project.

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

19 “(2) CREDIT ALLOCATED TO BUILDING NOT TO
20 EXCEED AMOUNT NECESSARY TO ASSURE PROJECT
21 FEASIBILITY.—

22 “(A) IN GENERAL.—The housing credit
23 dollar amount allocated to a project shall not
24 exceed the amount the housing credit agency
25 determines is necessary for the financial feasi-

1 bility of the project and its viability as a quali-
2 fied middle-income housing project throughout
3 the credit period.

4 “(B) AGENCY EVALUATION.—In making
5 the determination under subparagraph (A), the
6 housing credit agency shall consider—

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

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

11 “(iii) the percentage of the housing
12 credit dollar amount used for project costs
13 other than the cost of intermediaries, and

14 “(iv) the reasonableness of the devel-
15 opmental and operational costs of the
16 project.

17 Clause (iii) shall not be applied so as to impede
18 the development of projects in hard-to-develop
19 areas. Such a determination shall not be con-
20 strued to be a representation or warranty as to
21 the feasibility or viability of the project.

22 “(C) DETERMINATION MADE WHEN CRED-
23 IT AMOUNT APPLIED FOR AND WHEN BUILDING
24 PLACED IN SERVICE.—

1 “(i) IN GENERAL.—A determination
2 under subparagraph (A) shall be made as
3 of each of the following times:

4 “(I) The application for the
5 housing credit dollar amount.

6 “(II) The allocation of the hous-
7 ing credit dollar amount.

8 “(III) The date the building is
9 placed in service.

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

18 “(m) REGULATIONS.—The Secretary shall prescribe
19 such regulations as may be necessary or appropriate to
20 carry out the purposes of this section, including regula-
21 tions—

22 “(1) dealing with—

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

1 “(B) buildings which are placed in service
2 in portions,

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

5 “(3) preventing the avoidance of the rules of
6 this section, and

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

13 (b) TREATMENT AS PART OF GENERAL BUSINESS
14 CREDIT.—Section 38(b) of the Internal Revenue Code of
15 1986 is amended by striking “plus” at the end of para-
16 graph (35), by striking the period at the end of paragraph
17 (36) and inserting “, plus”, and by adding at the end the
18 following new paragraph:

19 “(37) the middle-income housing credit deter-
20 mined under section 42A(a).”.

21 (c) UNUSED ALLOCATIONS CARRIED OVER TO LOW-
22 INCOME HOUSING CREDIT.—

23 (1) IN GENERAL.—Clause (i) of section
24 42(h)(3)(C) of the Internal Revenue Code of 1986
25 is amended—

1 (A) by striking “the unused” and inserting
2 “the sum of—

3 “(I) the unused”,

4 (B) by inserting “plus” after “calendar
5 year,”, and

6 (C) by adding at the end the following new
7 subclause:

8 “(II) the unused middle-income
9 State housing credit (if any) of such
10 State for the preceding calendar
11 year,”.

12 (2) UNUSED MIDDLE-INCOME STATE HOUSING
13 CREDIT.—Section 42(h)(3)(C) of such Code is
14 amended by inserting “, and the unused middle-in-
15 come State housing credit for any calendar year is
16 the excess (if any) of the amount described in sec-
17 tion 42A(h)(3)(C) for such State over the aggregate
18 amount of middle-income housing credit dollar
19 amount allocated by such State under section 42A
20 fo such year” after “for such year”.

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

24 (A) by inserting “the sum of” after “the
25 excess (if any) of”, and

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

4 (d) COORDINATION WITH LOW-INCOME HOUSING
5 CREDIT.—

6 (1) IN GENERAL.—Section 42(i) of the Internal
7 Revenue Code of 1986 is amended by adding at the
8 end the following new paragraph:

9 “(10) COORDINATION WITH MIDDLE-INCOME
10 HOUSING CREDIT.—No credit shall be allowed under
11 this section with respect to any building for which
12 a credit is allowable under section 42A unless the
13 taxpayer makes an election under this paragraph.
14 Such election shall designate the buildings to which
15 this section applies and, once made, shall be irrev-
16 ocable.”.

17 (2) CONFORMING AMENDMENTS.—

18 (A) Section 42(c)(2) of such Code is
19 amended by adding at the end the following
20 flush sentence:

21 “Such term does not include any building if such
22 building is designated as a building to which the
23 middle-income housing tax credit applies in an elec-
24 tion under section 42A(i)(8).”.

1 (B) Section 42(g)(1) of such Code is
2 amended by adding at the end the following
3 new sentence: “For purposes of the first sen-
4 tence of this paragraph, residential units in a
5 building which is not a qualified middle-income
6 building by reason of the second sentence of
7 subsection (c)(2) shall not be taken into ac-
8 count.”.

9 (e) CONFORMING AMENDMENTS.—

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

13 (2) Subsections (i)(3)(D), (i)(6)(B)(i), and
14 (k)(1) of section 469 of such Code are each amended
15 by inserting “or 42A” after “42”.

16 (3) Section 772(a) of such Code is amended by
17 redesignating paragraphs (8), (9), and (10) as para-
18 graphs (9), (10), and (11), respectively, and by in-
19 serting after paragraph (7) the following new para-
20 graph:

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

23 (4) The table of sections for subpart D of part
24 IV of subchapter A of chapter 1 of such Code is

1 amended by inserting after the item relating to sec-
2 tion 42 the following new item:

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

3 (f) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply to taxable years ending after the
5 date of the enactment of this Act.

○