118TH CONGRESS
1ST SESSION

S. 3436

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

DECEMBER 7, 2023

Mr. WYDEN (for himself and Mr. SULLIVAN) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘‘Workforce Housing Tax Credit Act’’.

SEC. 2. MIDDLE-INCOME HOUSING TAX CREDIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 42 the following new section:

"SEC. 42A. MIDDLE-INCOME HOUSING CREDIT.

''(a) IN GENERAL.—For purposes of section 38, the amount of the middle-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 middle-income building.

''(b) APPLICABLE PERCENTAGE.—

''(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, 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.

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 15-year period amounts of credit under subsection (a) which have a present value equal to—

"(i) 50 percent of the qualified basis of a new building which is not federally subsidized for the taxable year, and

"(ii) 20 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 15-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.—

"(A) IN GENERAL.—The applicable percentage for any building which is not federally subsidized for the taxable year shall not be less than 5 percent.

"(B) MINIMUM CREDIT RATE FOR FEDERALLY SUBSIDIZED BUILDINGS.—In the case of any building to which subparagraph (A) does not apply, except as provided in paragraph (3), the applicable percentage shall not be less than 2 percent.

"(3) EXCEPTION FOR CERTAIN FEDERALLY SUBSIDIZED BUILDINGS.—In the case of any building to which paragraph (2)(A) does not apply, the applicable percentage is zero unless—

"(A) a credit is allowed under section 42 with respect to such building for the taxable year, and

"(B) such building is financed by tax-exempt bonds as described in section 42(h)(4).

"(4) 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)(6).

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

"(1) QUALIFIED BASIS.—

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

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

"(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 middle-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 middle-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.

"(2) QUALIFIED MIDDLE-INCOME BUILDING.—The term 'qualified middle-income building' means any building which is part of a qualified middle-income housing project at all times during the period—

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

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

"(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.—

"(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 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) SPECIAL RULES RELATING TO DETERMINATION OF ADJUSTED BASIS.—For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in subparagraph (B), 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.—

"(i) IN GENERAL.—Except as provided in clause (ii), 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.

"(ii) SPECIAL RULE.—In the case of any building for which the low-income housing tax credit is allowable under section 42, the adjusted basis of the building under this section shall be determined without regard to property used in common areas or provided as comparable amenities to all residential rental units in such building.

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

"(4) 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 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) LIMITATION.—Clause (i) 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 (9) of such subsection.

"(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, or utility costs relative to area median gross income, any rural area, and any Indian area.

"(II) RURAL AREA.—For purposes of subclause (I), the term 'rural area' means any non-metropolitan area, or any rural area as defined by section 520 of the Housing Act of 1949, which is identified by the qualified allocation plan under subsection (m)(1)(B).

"(III) INDIAN AREA.—For purposes of subclause (I), the term 'Indian area' means any Indian area (as defined in section 4(11) of the Native American Housing Assistance and Self Determination Act of 1996 (25 U.S.C. 4103(11))).

"(IV) SPECIAL RULE FOR BUILDINGS IN INDIAN AREAS.—In the case of an area which is a difficult development area solely because it is an Indian area, a building shall not be treated as located in such area unless such building is assisted or financed under the Native American Housing Assistance and Self Determination Act of 1996 (25 U.S.C. 4101 et seq.)

or the project sponsor is an Indian tribe (as defined in section 45A(c)(6)), a tribally designated housing entity (as defined in section 4(22) of such Act (25 U.S.C. 4103(22))), or wholly owned or controlled by such an Indian tribe or tribally designated housing entity.

"(V) 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 middle-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.

"(5) CREDIT ALLOWABLE FOR CERTAIN BUILDINGS ACQUIRED DURING 10-YEAR PERIOD.—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.

"(6) ACQUISITION OF BUILDING BEFORE END OF PRIOR CREDIT 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 credit 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) of subsection (d).

"(C) CERTAIN RELOCATION COSTS.—In the case of a rehabilitation of a building to which section 280B does not apply, costs relating to the relocation of occupants, including—

"(i) amounts paid to occupants,

"(ii) amounts paid to third parties for services relating to such relocation, and

"(iii) amounts paid for temporary housing for occupants,

shall be treated as chargeable to capital account and taken into account as rehabilitation expenditures.

"(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 middle-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 middle-income units in the building, is equal to or greater than the dollar amount in effect under section 42(e)(3)(A)(ii)(II) for the calendar year in which such expenditures are treated as placed in service under paragraph (4).

"(B) 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.

"(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 15 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 middle-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 16TH 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 middle-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 credit period (after the 1st year of such 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 ⅔ 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.

"(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)(4) 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 MIDDLE-INCOME HOUSING PROJECT.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified middle-income housing project' means any project for residential rental property if—

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

"(B) not less than 20 percent of the residential units in such project are units which—

"(i) are described in subparagraph (A), and

"(ii) are not residential units which are taken into account under section 42.

"(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 middle-income housing project.

"(B) GROSS RENT.—For purposes of subparagraph (A), gross rent—

"(i) 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,

"(ii) does not include any fee for a supportive service which is paid to the owner of the unit (on the basis of the middle-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

"(iii) 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 (ii), 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.

"(C) IMPUTED INCOME LIMITATION APPLICABLE TO UNIT.—For purposes of this paragraph, the imputed income limitation applicable to a unit is the income limitation which would apply under paragraph (1) to individuals occupying the unit if the number of individuals occupying the unit were as follows:

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

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

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

"(D) TREATMENT OF UNITS OCCUPIED BY INDIVIDUALS WHOSE INCOMES RISE ABOVE LIMIT.—

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

"(ii) NEXT AVAILABLE UNIT MUST BE RENTED TO MIDDLE-INCOME TENANT IF

INCOME RISES ABOVE 140 PERCENT OF INCOME LIMIT.—If the income of the occupants of the unit increases above 140 percent of the income limitation applicable under paragraph (1), clause (i) shall cease to apply to such unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation.

"(3) DATE FOR MEETING REQUIREMENTS.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, a building shall be treated as a qualified middle-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 middle-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 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 middle-income building,

shall in no event be treated as a qualified middle-income building unless the project is a qualified middle-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), and (7) of section 142(d), and section 6652(j), shall apply for purposes of determining whether any project is a qualified middle-income housing project and whether any unit is a middle-income unit; except that, in applying such provisions for such purposes—

"(A) the term 'gross rent' shall have the meaning given such term by paragraph (2)(B) of this subsection, and

"(B) the term 'applicable income limit' means the limitation under paragraph (1) of this subsection.

"(5) ELECTION TO TREAT BUILDING AFTER CREDIT 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 middle-income housing project for any period beginning after the credit 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 credit 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 RECERTIFICATIONS.—On application by the taxpayer, the Secretary may waive any annual recertification of tenant income for purposes of this subsection, if the entire building is occupied by middle-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, or

"(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.

"(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 credit 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 subparagraph (D), 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) $1.00 multiplied by the State population, or

"(II) $1,500,000, plus

"(iii) the amount of State housing credit ceiling returned in the calendar year.

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) (reduced by the aggregate amounts described in paragraph (10)(A)(i) with respect to all elections made for such calendar year) and (iii) 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 middle-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) 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.

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

"(F) COST-OF-LIVING ADJUSTMENT.—

"(i) IN GENERAL.—In the case of a calendar year after 2024, the $1,500,000 and $1.00 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 2023’ for ‘calendar year 2016’ in subparagraph (A)(ii) thereof.

“(ii) ROUNDING.—

“(I) In the case of the $1,140,000 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 $1.00 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.

“(4) 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 (determined without regard to paragraph (7)) for any State for any calendar year shall be allocated to projects other than qualified middle-income housing projects described in subparagraph (B).

"(B) PROJECTS INVOLVING QUALIFIED NONPROFIT ORGANIZATIONS.—For purposes of subparagraph (A), a qualified middle-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 credit 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) one of the exempt purposes of such organization includes the fostering of middle-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 (E) of paragraph (3) shall be construed to permit a State not to comply with subparagraph (A) of this paragraph.

"(5) BUILDINGS ELIGIBLE FOR CREDIT ONLY IF MINIMUM LONG-TERM COMMITMENT TO MIDDLE-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 middle-income housing commitment is in effect as of the end of such taxable year.

"(B) EXTENDED MIDDLE-INCOME HOUSING COMMITMENT.—For purposes of this paragraph, the term 'extended middle-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.—The housing credit dollar amount allocated to any building may not exceed the amount necessary to support the applicable fraction specified in the extended middle-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 middle-income housing commitment.

"(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 credit period on which such building is part of a qualified middle-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 credit period.

"(E) EXCEPTIONS IF FORECLOSURE OR IF NO BUYER WILLING TO MAINTAIN MIDDLE-INCOME STATUS.—

"(i) IN GENERAL.—The extended use period for any building shall terminate on the 61st day after the taxpayer (or a successor in interest) provides notice to the Secretary and the housing credit agency that the building has been acquired by foreclosure (or instrument in lieu of foreclosure) and that the taxpayer intends the termination of such period, unless, before such date, the Secretary or the housing credit agency determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period.

"(ii) EVICTION, ETC., OF EXISTING MIDDLE-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 middle-income unit, or

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

"(F) EFFECT OF NONCOMPLIANCE.—If, during a taxable year, there is a determination that an extended middle-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.

"(G) 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.

"(6) 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 ⅔ 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.

"(7) INCREASE IN STATE CEILING DEDICATED TO CERTAIN RURAL DEVELOPMENT PROJECTS.—

"(A) IN GENERAL.—The State housing credit ceiling for any calendar year shall be increased by an amount equal to 5 percent of the amount determined under paragraph (3)(C)(ii).

"(B) USE OF INCREASED AMOUNT.—

"(i) IN GENERAL.—The amount of the increase under subparagraph (A) for any calendar year may only be allocated to buildings located in a rural area.

"(ii) RURAL AREA.—For purposes of clause (i), the term 'rural area' means any non-metropolitan area, or any rural area as defined by section 520 of the Housing Act of 1949, which is identified by the qualified allocation plan under subsection (l)(1)(B).

"(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.

"(9) CREDIT FOR BUILDINGS FINANCED BY TAX-EXEMPT BONDS SUBJECT TO VOLUME CAP NOT TAKEN INTO ACCOUNT.—Rules similar to the rules of subsections (h)(4), (m)(1)(D), and (m)(2)(D) of section 42 shall apply for purposes of this subsection.

"(10) ELECTION TO TRANSFER STATE HOUSING CREDIT CEILING FOR ALLOCATIONS TO LOW-INCOME BUILDINGS.—

"(A) IN GENERAL.—If a State housing credit agency makes an election under this paragraph with respect to a calendar year—

"(i) the State housing credit ceiling for such calendar year under paragraph (3) (determined before application of paragraph (7)) shall be reduced by the amount specified in such election,

"(ii) the amount determined under paragraph (7) for such calendar year shall be reduced by the amount specified in such election, and "(iii) the amount determined under section 42(h)(3)(C)(ii) for such calendar year shall be increased by the sum of the amounts specified in clauses (i) and (ii), except that any amount specified under clause (ii)—

"(I) may only be allocated under such section to qualified low-income buildings (as defined in section 42) located in a rural area (as defined in paragraph (7), and

"(II) shall not be taken into account for purposes of determining the unused housing credit ceiling under the second sentence of section 42(h)(3)(C).

"(B) TIME AND MANNER FOR MAKING ELECTION.—

"(i) IN GENERAL.—An election under this paragraph—

"(I) shall be made before the end of the calendar year with respect to which such election applies,

"(II) shall be made in such manner as specified by the Secretary, and

"(III) shall separately specify the amount of reductions to be made under paragraph (3) and paragraph (7).

"(ii) FREQUENCY.—A State housing credit agency may make more than one election under this section with respect to any calendar year, and any such election, once made, shall be revocable only if such revocation is made before the end of the calendar year with respect to which such election is made.

"(C) LIMITATION.—The aggregate amount specified in elections under this paragraph with respect to any State housing credit agency for calendar year shall not exceed the sum of—

"(i) the amount determined under paragraph (3)(C)(ii) for such calendar year, plus

"(ii) the amount determined under paragraph (7) for such calendar year.

"(i) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) MIDDLE-INCOME UNIT.—

"(A) IN GENERAL.—The term 'middle-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) EXCLUSION OF LOW-INCOME UNITS.—A unit shall not be treated as a middle-income unit if such unit is a low-income unit (as defined under section 42(i)(3)).

"(ii) UNIT MUST BE SUITABLE FOR PERMANENT OCCUPANCY.—

"(I) IN GENERAL.—A unit shall not be treated as a middle-income unit unless the unit is suitable for occupancy and used other than on a transient basis.

"(II) SUITABILITY FOR OCCUPANCY.—For purposes of subclause (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) SINGLE-ROOM OCCUPANCY UNITS.—For purposes of subclause (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 middle-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)(ii)) to such individual.

"(D) RULES RELATING TO STUDENTS.—

"(i) IN GENERAL.—A unit occupied solely by individuals who—

"(I) have not attained age 24, and

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

shall not be treated as a middle-income unit.

"(ii) EXCEPTION FOR CERTAIN FEDERAL PROGRAMS.—In the case of a federally assisted building (as defined in subsection (d)(6)(C)(i) of section 42), clause (i) shall not apply to a unit all of the occupants of which meet all applicable requirements under the housing program described in such subsection through which the building is assisted, financed, or operated.

"(iii) OTHER EXCEPTIONS.—Clause (i) shall not apply to a unit occupied by an individual who—

"(I) is married, if such individual's spouse also occupies the unit,

"(II) is a person with disabilities (as defined in section 3(b)(3)(E) of the United States Housing Act of 1937), "(III) is a veteran (as defined in section 101(2) of title 38, United States Code),

"(IV) has one or more qualifying children (as defined in section 152(c)), if such children also occupy the unit, the individual is not a dependent (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 claimed as dependents (as so defined) of another individual, or

"(V) is, or was immediately prior to attaining the age of majority—

"(aa) an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's State of legal residence,

"(bb) 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

"(cc) was an unaccompanied youth (within the meaning of section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6))) or a homeless child or youth (within the meaning of section 725(2) of such Act (42 U.S.C. 11434a(2))).

"(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.

"(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.

"(2) NEW BUILDING.—The term 'new building' means a building the original use of which begins with the taxpayer.

"(3) EXISTING BUILDING.—The term 'existing building' means any building which is not a new building.

"(4) APPLICATION TO ESTATES AND TRUSTS.—In the case of an estate or trust, the amount of the credit determined under subsection (a) 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.

"(5) IMPACT OF TENANT'S OPTION TO ACQUIRE PROPERTY.—

"(A) IN GENERAL.—No Federal income tax benefit shall fail to be allowable to the taxpayer with respect to any qualified middle-income building merely by reason of an option held by the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization or government agency to purchase the property or all of the partnership interests (other than interests of the person exercising such option or a related party thereto (within the meaning of section 267(b) or 707(b)(1))) relating to the property after the close of the credit 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 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). In the case of a purchase of a partnership interest, the minimum purchase price is an amount equal to such interest's ratable share of the amount determined under the preceding sentence.

"(6) 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.

"(7) DETERMINATION OF WHETHER BUILDING IS FEDERALLY SUBSIDIZED.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, for purposes of this section, a project 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 are or were used (directly or indirectly) with respect to such project or the operation thereof.

"(B) 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.

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

“(j) 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, the determination of whether such financing is qualified commercial financing with respect to any qualified middle-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 middle-income building, except that this subparagraph shall not apply in the case of a federally assisted building described in section 42(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 credit period if, as of the close of such taxable year, not more than 60 percent of the eligible basis of the qualified middle-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 credit period with respect to the qualified middle-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 middle-income building or the date which is 15 years after the close of a credit 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 middle-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 section 42(j)(4) shall apply for purposes of this subsection.

"(k) 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 middle-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), and

"(D) 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 middle-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.

"(l) 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 42(m)(1)) of which such agency is a part,

"(ii) a comprehensive market study of the housing needs of middle-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

"(iii) 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 obligated to serve qualified tenants for the longest periods,

''(II) projects in areas with insufficient supply of housing affordable to median income households,

''(III) projects which target housing to tenants at a range of incomes between 60 and 100 percent of area median gross income, and

''(IV) projects located near transit hubs, 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) tenant populations of individuals with children,

“(vii) projects intended for eventual tenant ownership,

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

“(ix) the historic nature of the project.

“(D) CERTAIN SELECTION CRITERIA PROHIBITED.—The selection criteria set forth in a qualified allocation plan shall not include a requirement of local approval or local contributions, either as a threshold qualification requirement or as part of a point system to be considered for allocations of housing credit dollar amount.

"(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 middle-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.

"(m) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including—

"(1) regulations dealing with—

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

"(B) buildings which are placed in service in portions,

"(2) regulations providing for the application of this section to short taxable years,

"(3) regulations preventing the avoidance of the rules of this section,

"(4) regulations 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, and

"(5) in consultation with the Secretary of Housing and Urban Development, regulations or guidance to promote uniform definitions and to streamline requirements for with respect to qualified middle-income buildings which receive funding from programs administrated by the Department of Housing and Urban Development, including programs authorized by Native American Housing Assistance and Self-Determination Act of 1996 .''.

(b) TREATMENT AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) of the Internal Revenue Code of 1986 is amended by striking ''plus'' at the end of paragraph (40), by striking the period at the end of paragraph (41) and inserting '', plus'', and by adding at the end the following new paragraph:

''(42) the middle-income housing credit determined under section 42A(a).''.

(c) REDUCTION IN BASIS.—Section 1016(a) of the Internal Revenue Code of 1986 is amended—

(1) by striking ''and'' at the end of paragraph (37);

(2) by redesignating paragraph (38) as paragraph (39); and

(3) by inserting after paragraph (37) the following new paragraph:

''(38) to the extent provided in section 42A(i)(8), and''.

(d) TREATMENT UNDER BASE EROSION MINIMUM TAX .—Section 59A(b)(4) of he Internal Revenue Code of 1986 is amended by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively, and by inserting after subparagraphs (A) the following new subparagraph:

"(B) the middle-income housing credit determined under section 42A(a),".

(e) CONFORMING AMENDMENTS RELATING TO LOW-INCOME HOUSING TAX CREDIT.—Section 42(n) of the Internal Revenue Code of 1986 is amended—

(1) by striking "regulations" in the matter preceding paragraph (1),

(2) by inserting "regulations" before "dealing with" in paragraph (1),

(3) by inserting "regulations" before "providing" in paragraphs (2) and (4),

(4) by inserting "regulations" before "preventing" in paragraph (3),

(5) by striking "and"at the end of paragraph (3),

(6) by striking the period at the end of paragraph (4) and inserting ", and", and

(7) by adding at the end the following new paragraph:

"(5) in consultation with the Secretary of Housing and Urban Development, regulations or guidance to promote uniform definitions and to streamline requirements for with respect to qualified low-income buildings which receive funding from programs administrated by the Department of Housing and Urban Development, including programs authorized by Native American Housing Assistance and Self-Determination Act of 1996.''.

(f) CONFORMING AMENDMENTS.—

(1) Section 45L(e) of the Internal Revenue Code of 1986 is amended by inserting ''or 42A'' after ''42''.

(2) Section 50(c)(3)(C) of such Code is amended by inserting ''or 42A'' after ''42''.

(3) Section 55(c)(1) of such Code is amended by inserting ''42A(j),'' before ''45(e)(11)(C)''.

(4) Subsections (i)(3)(C), (i)(6)(B)(i), and (k)(1) of section 469 of such Code are each amended by inserting ''or 42A'' after ''42''.

(5) The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 42 the following new item:

''Sec. 42A. Middle-income housing credit.''.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to buildings placed in service after December 31, 2023, in taxable years ending after such date.

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