

114TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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

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IN THE SENATE OF THE UNITED STATES

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

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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.

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 tools  
4 for encouraging the development and rehabilitation  
5 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 tool  
16                to encourage the production of affordable housing  
17                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 2/  
20 3 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) 1 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                   “(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 1-  
5           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 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.