

107TH CONGRESS
1ST SESSION

S. 1081

To amend the Internal Revenue Code of 1986 to allow a business credit for the development of low-to-moderate income housing for home ownership, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 21, 2001

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

A BILL

To amend the Internal Revenue Code of 1986 to allow a business credit for the development of low-to-moderate income housing for home ownership, 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; ETC.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Low-to-Moderate Income Home Ownership Tax Credit
6 Act”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; etc.

Sec. 2. Credit for low-to-moderate income housing for home ownership.

Sec. 3. Partial exclusion of gain from sale of low-to-moderate income housing.

Sec. 4. Expansion of rehabilitation credit.

1 SEC. 2. CREDIT FOR LOW-TO-MODERATE INCOME HOUSING
2 FOR HOME OWNERSHIP.

3 (a) IN GENERAL.—Subpart D of part IV of sub-
 4 chapter A of chapter 1 of the Internal Revenue Code of
 5 1986 (relating to business related credits) is amended by
 6 adding at the end the following:

7 **“SEC. 42A. LOW-TO-MODERATE INCOME HOME OWNERSHIP**
 8 **CREDIT.**

9 “(a) IN GENERAL.—For purposes of section 38, the
 10 amount of the home ownership credit determined under
 11 this section for any taxable year in the credit period shall
 12 be an amount equal to the applicable percentage of the
 13 qualified basis of each qualified low-to-moderate income
 14 building.

15 “(b) APPLICABLE PERCENTAGE: 70 PERCENT
 16 PRESENT VALUE CREDIT FOR NEW BUILDINGS; 30 PER-
 17 CENT PRESENT VALUE CREDIT FOR EXISTING BUILD-
 18 INGS.—For purposes of this section—

19 “(1) IN GENERAL.—The term ‘applicable per-
 20 centage’ means the appropriate percentage pre-
 21 scribed by the Secretary for the earlier of—

1 “(A) the first month of the credit period
 2 with respect to a low-to-moderate income build-
 3 ing, or

4 “(B) at the election of the taxpayer, the
 5 month in which the taxpayer and the housing
 6 credit agency enter into an agreement with re-
 7 spect to such building (which is binding on such
 8 agency, the taxpayer, and all successors in in-
 9 terest) as to the housing credit dollar amount
 10 to be allocated to such building.

11 A month may be elected under subparagraph (B)
 12 only if the election is made not later than the 5th
 13 day after the close of such month. Such an election,
 14 once made, shall be irrevocable.

15 “(2) METHOD OF PRESCRIBING PERCENT-
 16 AGES.—The percentages prescribed by the Secretary
 17 for any month shall be percentages which will yield
 18 over a 10-year period amounts of credit under sub-
 19 section (a) which have a present value equal to—

20 “(A) 70 percent of the qualified basis of a
 21 new building, and

22 “(B) 30 percent of the qualified basis of
 23 an existing building.

24 “(3) METHOD OF DISCOUNTING.—The present
 25 value under paragraph (2) shall be determined—

1 “(A) as of the last day of the 1st year of
 2 the 10-year period referred to in paragraph (2),

3 “(B) by using a discount rate equal to 72
 4 percent of the average of the annual Federal
 5 mid-term rate and the annual Federal long-
 6 term rate applicable under section 1274(d)(1)
 7 to the month applicable under subparagraph
 8 (A) or (B) of paragraph (1) and compounded
 9 annually, and

10 “(C) by assuming that the credit allowable
 11 under this section for any year is received on
 12 the last day of such year.

13 “(c) QUALIFIED BASIS; ELIGIBLE BASIS; QUALIFIED
 14 LOW-TO-MODERATE INCOME BUILDING.—For purposes
 15 of this section—

16 “(1) QUALIFIED BASIS.—

17 “(A) DETERMINATION.—The qualified
 18 basis of any qualified low-to-moderate income
 19 building for any taxable year is an amount
 20 equal to—

21 “(i) the applicable fraction (deter-
 22 mined as of the close of such taxable year)
 23 of

24 “(ii) the eligible basis of such build-
 25 ing.

1 “(B) APPLICABLE FRACTION.—

2 “(i) IN GENERAL.—For purposes of
3 subparagraph (A), the term ‘applicable
4 fraction’ means the smaller of the unit
5 fraction or the floor space fraction.

6 “(ii) UNIT FRACTION.—For purposes
7 of clause (i), the term ‘unit fraction’ means
8 the fraction—

9 “(I) the numerator of which is
10 the number of low-to-moderate income
11 units in the building, and

12 “(II) the denominator of which is
13 the number of all units (whether or
14 not occupied) in such building.

15 “(iii) FLOOR SPACE FRACTION.—For
16 purposes of clause (i), the term ‘floor space
17 fraction’ means the fraction—

18 “(I) the numerator of which is
19 the total floor space of the low-to-
20 moderate income units in such build-
21 ing, and

22 “(II) the denominator of which is
23 the total floor space of all units
24 (whether or not occupied) in such
25 building.

1 “(C) ELIGIBLE BASIS.—

2 “(i) IN GENERAL.—The eligible basis
3 of any qualified low-to-moderate income
4 building for any taxable year shall be de-
5 termined under rules similar to the rules
6 under section 42(d), except that—

7 “(I) the determination of the ad-
8 justed basis of any building shall be
9 made as of the beginning of the credit
10 period, and

11 “(II) such basis shall include de-
12 velopment costs properly attributable
13 to such building.

14 “(ii) DEVELOPMENT COSTS.—For
15 purposes of clause (i)(II), the term ‘devel-
16 opment costs’ includes—

17 “(I) site preparation costs,

18 “(II) State and local impact fees,

19 “(III) reasonable development
20 costs,

21 “(IV) professional fees related to
22 basis items,

23 “(V) construction financing costs
24 related to basis items other than land,
25 and

1 “(VI) on-site and adjacent im-
 2 provements required by State and
 3 local governments.

4 “(2) QUALIFIED LOW-TO-MODERATE INCOME
 5 BUILDING.—The term ‘qualified low-to-moderate in-
 6 come building’ means any building which is part of
 7 a qualified low-to-moderate income development
 8 project at all times during the period—

9 “(A) beginning on the 1st day in the com-
 10 pliance period on which such building is part of
 11 such a development project, and

12 “(B) ending on the last day of the compli-
 13 ance period with respect to such building.

14 “(d) REHABILITATION EXPENDITURES TREATED AS
 15 SEPARATE NEW BUILDING.—Rehabilitation expenditures
 16 paid or incurred by the taxpayer with respect to any build-
 17 ing shall be treated for purposes of this section as a sepa-
 18 rate new building under the rules of section 42(e).

19 “(e) DEFINITION AND SPECIAL RULES RELATING TO
 20 CREDIT PERIOD.—

21 “(1) CREDIT PERIOD DEFINED.—For purposes
 22 of this section, the term ‘credit period’ means, with
 23 respect to any building, the period of 10 taxable
 24 years beginning with the taxable year in which the
 25 building (or a low-to-moderate income unit in such

1 building) is first sold by the taxpayer to a low-to
 2 moderate income individual after being placed in
 3 service.

4 “(2) SPECIAL RULE FOR 1ST YEAR OF CREDIT
 5 PERIOD.—

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

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

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

18 “(B) DISALLOWED 1ST YEAR CREDIT AL-
 19 LOWED IN 11TH YEAR.—Any reduction by rea-
 20 son of subparagraph (A) in the credit allowable
 21 (without regard to subparagraph (A)) for the
 22 1st taxable year of the credit period shall be al-
 23 lowable under subsection (a) for the 1st taxable
 24 year following the credit period.

1 “(3) CREDIT PERIOD FOR EXISTING BUILDINGS
 2 NOT TO BEGIN BEFORE REHABILITATION CREDIT
 3 ALLOWED.—The credit period for an existing build-
 4 ing shall not begin before the 1st taxable year of the
 5 credit period for rehabilitation expenditures with re-
 6 spect to the building.

7 “(f) QUALIFIED LOW-TO-MODERATE INCOME DE-
 8 VELOPMENT PROJECT.—For purposes of this section—

9 “(1) IN GENERAL.—The term ‘qualified low-to-
 10 moderate income development project’ means any
 11 development project of 1 or more for qualified low-
 12 to-moderate income buildings located in an area if
 13 40 percent or more of the residential units in such
 14 development project are occupied and owned by indi-
 15 viduals whose income is 100 percent or less of area
 16 median gross income.

17 “(2) TREATMENT OF UNITS OCCUPIED BY INDIV-
 18 IDUALS WHOSE INCOMES RISE ABOVE LIMIT.—Not-
 19 withstanding an increase in the income of the occu-
 20 pants of a low-to-moderate income unit above the in-
 21 come limitation applicable under paragraph (2) or
 22 (3), such unit shall continue to be treated as a low-
 23 to-moderate income unit if the income of such occu-
 24 pants initially met such income limitation and such
 25 unit continues to be so restricted.

1 “(3) CERTAIN RULES MADE APPLICABLE.—
 2 Paragraphs (3), (5), (7), and (8) of section 42(g)
 3 shall apply for purposes of determining whether any
 4 development project is a qualified low-to-moderate
 5 income development project.

6 “(g) LIMITATION ON AGGREGATE CREDIT ALLOW-
 7 ABLE WITH RESPECT TO DEVELOPMENT PROJECTS LO-
 8 CATED IN A STATE.—

9 “(1) CREDIT MAY NOT EXCEED CREDIT
 10 AMOUNT ALLOCATED TO BUILDING.—The amount of
 11 the credit determined under this section for any tax-
 12 able year with respect to any building shall not ex-
 13 ceed the housing credit dollar amount allocated to
 14 such building under rules similar to the rules of sec-
 15 tion 42(h)(1) (determined without regard to sub-
 16 paragraph (D) thereof).

17 “(2) ALLOCATED CREDIT AMOUNT TO APPLY
 18 TO ALL TAXABLE YEARS ENDING DURING OR AFTER
 19 CREDIT ALLOCATION YEAR.—Any housing credit dol-
 20 lar amount allocated to any building for any cal-
 21 endar year—

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

1 “(B) shall reduce the aggregate housing
2 credit dollar amount of the allocating agency
3 only for such calendar year.

4 “(3) HOUSING CREDIT DOLLAR AMOUNT FOR
5 AGENCIES.—

6 “(A) IN GENERAL.—The aggregate hous-
7 ing credit dollar amount which a housing credit
8 agency may allocate for any calendar year is
9 the portion of the State housing credit ceiling
10 allocated under this paragraph for such cal-
11 endar year to such agency.

12 “(B) STATE CEILING INITIALLY ALLO-
13 CATED TO STATE HOUSING CREDIT AGEN-
14 CIES.—Except as provided in subparagraphs
15 (D) and (E), the State housing credit ceiling
16 for each calendar year shall be allocated to the
17 housing credit agency of such State. If there is
18 more than 1 housing credit agency of a State,
19 all such agencies shall be treated as a single
20 agency.

21 “(C) STATE HOUSING CREDIT CEILING.—
22 The State housing credit ceiling applicable to
23 any State and any calendar year shall be an
24 amount equal to the sum of—

1 “(i) the unused State housing credit
 2 ceiling (if any) of such State for the pre-
 3 ceding calendar year,

4 “(ii) the greater of—

5 “(I) \$1.75 multiplied by the
 6 State population, or

7 “(II) \$2,000,000,

8 “(iii) the amount of State housing
 9 credit ceiling returned in the calendar year,
 10 plus

11 “(iv) the amount (if any) allocated
 12 under subparagraph (D) to such State by
 13 the Secretary.

14 For purposes of clause (i), the unused State
 15 housing credit ceiling for any calendar year is
 16 the excess (if any) of the sum of the amounts
 17 described in clauses (ii) through (iv) over the
 18 aggregate housing credit dollar amount allo-
 19 cated for such year. For purposes of clause (iii),
 20 the amount of State housing credit ceiling re-
 21 turned in the calendar year equals the housing
 22 credit dollar amount previously allocated within
 23 the State to any development project which fails
 24 to meet the 10 percent test under section
 25 42(h)(1)(E)(ii) on a date after the close of the

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

9 “(D) UNUSED HOUSING CREDIT
 10 CARRYOVERS ALLOCATED AMONG CERTAIN
 11 STATES.—

12 “(i) IN GENERAL.—The unused hous-
 13 ing credit carryover of a State for any cal-
 14 endar year shall be assigned to the Sec-
 15 retary for allocation among qualified
 16 States for the succeeding calendar year.

17 “(ii) UNUSED HOUSING CREDIT CAR-
 18 RYOVER.—For purposes of this subpara-
 19 graph, the unused housing credit carryover
 20 of a State for any calendar year is the ex-
 21 cess (if any) of the unused State housing
 22 credit ceiling for such year (as defined in
 23 subparagraph (C)(i)) over the excess (if
 24 any) of —

1 “(I) the unused State housing
2 credit ceiling for the year preceding
3 such year, over

4 “(II) the aggregate housing cred-
5 it dollar amount allocated for such
6 year.

7 “(iii) FORMULA FOR ALLOCATION OF
8 UNUSED HOUSING CREDIT CARRYOVERS
9 AMONG QUALIFIED STATES.—The amount
10 allocated under this subparagraph to a
11 qualified State for any calendar year shall
12 be the amount determined by the Secretary
13 to bear the same ratio to the aggregate un-
14 used housing credit carryovers of all States
15 for the preceding calendar year as such
16 State’s population for the calendar year
17 bears to the population of all qualified
18 States for the calendar year. For purposes
19 of the preceding sentence, population shall
20 be determined in accordance with section
21 146(j).

22 “(iv) QUALIFIED STATE.—For pur-
23 poses of this subparagraph, the term
24 ‘qualified State’ means, with respect to a
25 calendar year, any State—

1 “(I) which allocated its entire
 2 State housing credit ceiling for the
 3 preceding calendar year, and

4 “(II) for which a request is made
 5 (not later than May 1 of the calendar
 6 year) to receive an allocation under
 7 clause (iii).

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

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

17 “(I) the population of such city,
 18 bears to

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

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

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

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

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

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

21 “(H) COST-OF-LIVING ADJUSTMENT.—

22 “(i) IN GENERAL.—In the case of a
 23 calendar year after 2002, the \$2,000,000
 24 and \$1.75 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
7 1(f)(3) for such calendar year by sub-
8 stituting ‘calendar year 2001’ for ‘cal-
9 endar year 1992’ in subparagraph (B)
10 thereof.

11 “(ii) ROUNDING.—

12 “(I) In the case of the
13 \$2,000,000 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 \$1.75
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 DEVELOPMENT PROJECTS INVOLVING
24 QUALIFIED 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 development projects other than quali-
 5 fied low-to-moderate income development
 6 projects described in subparagraph (B).

7 “(B) DEVELOPMENT PROJECTS INVOLVING
 8 QUALIFIED NONPROFIT ORGANIZATIONS.—For
 9 purposes of subparagraph (A), a qualified low-
 10 to-moderate income development project is de-
 11 scribed in this subparagraph if a qualified non-
 12 profit organization is to materially participate
 13 (within the meaning of section 469(h)) in the
 14 development and operation of the development
 15 project throughout the compliance period.

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

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

23 “(ii) such organization is determined
 24 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 low-to-moderate 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 (F) 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 LOW-TO-
 5 MODERATE 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 a low-
 9 to-moderate income housing commitment is in
 10 effect as of the end of such taxable year.

11 “(B) LOW-TO-MODERATE INCOME HOUS-
 12 ING COMMITMENT.—For purposes of this para-
 13 graph, the term ‘low-to-moderate 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
 18 (c)(1)(B)) for the building for each taxable
 19 year in the compliance period will not be
 20 less than the applicable fraction specified
 21 in such agreement,

22 “(ii) which allows individuals who
 23 meet the income limitation applicable to
 24 the building under subsection (f) (whether
 25 prospective, present, or former occupants

1 of the building) the right to enforce in any
 2 State court the requirement of clause (i),
 3 “(iii) which allows the taxpayer the
 4 right of first refusal to purchase the build-
 5 ing from the low-or-moderate income indi-
 6 vidual to whom the taxpayer first sold the
 7 building,

8 “(iv) which is binding on all succes-
 9 sors of the taxpayer, and

10 “(v) which, with respect to the prop-
 11 erty, is recorded pursuant to State law as
 12 a restrictive covenant.

13 “(C) ALLOCATION OF CREDIT MAY NOT
 14 EXCEED AMOUNT NECESSARY TO SUPPORT
 15 COMMITMENT.—The housing credit dollar
 16 amount allocated to any building may not ex-
 17 ceed the amount necessary to support the appli-
 18 cable fraction specified in the low-to-moderate
 19 income housing commitment for such building.

20 “(D) EFFECT OF NONCOMPLIANCE.—If,
 21 during a taxable year, there is a determination
 22 that a low-to-moderate income housing agree-
 23 ment was not in effect as of the beginning of
 24 such year, such determination shall not apply to
 25 any period before such year and subparagraph

1 (A) shall be applied without regard to such de-
2 termination if the failure is corrected within 1
3 year from the date of the determination.

4 “(E) DEVELOPMENT PROJECTS WHICH
5 CONSIST OF MORE THAN 1 BUILDING.—The ap-
6 plication of this paragraph to development
7 projects which consist of more than 1 building
8 shall be made under regulations prescribed by
9 the Secretary.

10 “(6) SPECIAL RULES.—

11 “(A) BUILDING MUST BE LOCATED WITH-
12 IN JURISDICTION OF CREDIT AGENCY.—A hous-
13 ing credit agency may allocate its aggregate
14 housing credit dollar amount only to buildings
15 located in the jurisdiction of the governmental
16 unit of which such agency is a part.

17 “(B) AGENCY ALLOCATIONS IN EXCESS OF
18 LIMIT.—If the aggregate housing credit dollar
19 amounts allocated by a housing credit agency
20 for any calendar year exceed the portion of the
21 State housing credit ceiling allocated to such
22 agency for such calendar year, the housing
23 credit dollar amounts so allocated shall be re-
24 duced (to the extent of such excess) for build-

1 ings in the reverse of the order in which the al-
2 locations of such amounts were made.

3 “(C) CREDIT REDUCED IF ALLOCATED
4 CREDIT DOLLAR AMOUNT IS LESS THAN CREDIT
5 WHICH WOULD BE ALLOWABLE WITHOUT RE-
6 GARD TO SALES CONVENTION, ETC.—

7 “(i) IN GENERAL.—The amount of
8 the credit determined under this section
9 with respect to any building shall not ex-
10 ceed the clause (ii) percentage of the
11 amount of the credit which would (but for
12 this subparagraph) be determined under
13 this section with respect to such building.

14 “(ii) DETERMINATION OF PERCENT-
15 AGE.—For purposes of clause (i), the
16 clause (ii) percentage with respect to any
17 building is the percentage which—

18 “(I) the housing credit dollar
19 amount allocated to such building
20 bears to

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

23 “(iii) DETERMINATION OF CREDIT
24 AMOUNT.—The credit amount determined
25 in accordance with this clause is the

amount of the credit which would (but for this subparagraph) be determined under this section with respect to the building if this section were applied without regard to paragraph (2)(A) of subsection (e).

“(D) HOUSING CREDIT AGENCY TO SPECIFY APPLICABLE PERCENTAGE AND MAXIMUM QUALIFIED BASIS.—In allocating a housing credit dollar amount to any building, the housing credit agency shall specify the applicable percentage and the maximum qualified basis which may be taken into account under this section with respect to such building. The applicable percentage and maximum qualified basis so specified shall not exceed the applicable percentage and qualified basis determined under this section without regard to this subsection.

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

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

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

1 “(h) DEFINITIONS AND SPECIAL RULES.—For pur-
2 poses of this section—

3 “(1) COMPLIANCE PERIOD.—The term ‘compli-
4 ance period’ means, with respect to any building, the
5 period of 5 taxable years beginning with the 1st tax-
6 able year of the credit period with respect thereto.

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

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

13 “(4) APPLICATION TO ESTATES AND TRUSTS.—
14 In the case of an estate or trust, the amount of the
15 credit determined under subsection (a) and any in-
16 crease in tax under subsection (j) shall be appor-
17 tioned 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 “(i) RECAPTURE OF CREDIT.—If—

21 “(1) as of the close of any taxable year in the
22 compliance period, the amount of the qualified basis
23 of any building with respect to the taxpayer is less
24 than

1 “(2) the amount of such basis as of the close
 2 of the preceding taxable year,
 3 then the taxpayer’s tax under this chapter for the
 4 taxable year shall be increased by the credit recap-
 5 ture amount determined under rules similar to the
 6 rules of section 42(j).

7 “(j) APPLICATION OF AT-RISK RULES.—For pur-
 8 poses of this section, rules similar to the rules of section
 9 42(k) shall apply.

10 “(k) CERTIFICATIONS AND OTHER REPORTS TO SEC-
 11 RETARY.—

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

19 “(A) the taxable year, and calendar year,
 20 in which such building was first sold after being
 21 placed in service,

22 “(B) the adjusted basis and eligible basis
 23 of such building as of the beginning of the cred-
 24 it period,

1 “(C) the maximum applicable percentage
 2 and qualified basis permitted to be taken into
 3 account by the appropriate housing credit agen-
 4 cy under subsection (g),

5 “(D) the election made under subsection
 6 (f) with respect to the qualified low-to-moderate
 7 income housing development project of which
 8 such building is a part, and

9 “(E) such other information as the Sec-
 10 retary may require.

11 In the case of a failure to make the certification re-
 12 quired by the preceding sentence on the date pre-
 13 scribed therefor, unless it is shown that such failure
 14 is due to reasonable cause and not to willful neglect,
 15 no credit shall be allowable by reason of subsection
 16 (a) with respect to such building for any taxable
 17 year ending before such certification is made.

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

19 The Secretary may require taxpayers to submit an
 20 information return (at such time and in such form
 21 and manner as the Secretary prescribes) for each
 22 taxable year setting forth—

23 “(A) the qualified basis for the taxable
 24 year of each qualified low-to-moderate income
 25 building of the taxpayer,

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

3 “(C) such other information as the Sec-
4 retary may require.

5 The penalty under section 6652(j) shall apply to any
6 failure to submit the return required by the Sec-
7 retary under the preceding sentence on the date pre-
8 scribed therefor.

9 “(3) ANNUAL REPORTS FROM HOUSING CREDIT
10 AGENCIES.—Each agency which allocates any hous-
11 ing credit amount to any building for any calendar
12 year shall submit to the Secretary (at such time and
13 in such manner as the Secretary shall prescribe) an
14 annual report specifying—

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

17 “(B) sufficient information to identify each
18 such building and the taxpayer with respect
19 thereto, 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 report required by the pre-
24 ceding sentence on the date prescribed therefor.

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

3 “(1) PLANS FOR ALLOCATION OF CREDIT
4 AMONG DEVELOPMENT PROJECTS.—

5 “(A) IN GENERAL.—Notwithstanding any
6 other provision of this section, the housing cred-
7 it dollar amount with respect to any building
8 shall be zero unless—

9 “(i) such amount was allocated pursu-
10 ant to a qualified allocation plan of the
11 housing credit agency which is approved by
12 the governmental unit (in accordance with
13 rules similar to the rules of section
14 147(f)(2) (other than subparagraph (B)(ii)
15 thereof)) of which such agency is a part,

16 “(ii) such agency notifies the chief ex-
17 ecutive officer (or the equivalent) of the
18 local jurisdiction within which the building
19 is located of such development project and
20 provides such individual a reasonable op-
21 portunity to comment on the development
22 project,

23 “(iii) a comprehensive market study
24 of the housing needs of low- and moderate-
25 income individuals in the area to be served

1 by the development project is conducted
 2 before the credit allocation is made and at
 3 the developer's expense by a disinterested
 4 party who is approved by such agency, and
 5 “(iv) a written explanation is available
 6 to the general public for any allocation of
 7 a housing credit dollar amount which is
 8 not made in accordance with established
 9 priorities and selection criteria of the hous-
 10 ing credit agency.

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

14 “(i) which sets forth selection criteria
 15 to be used to determine housing priorities
 16 of the housing credit agency which are ap-
 17 propriate to local conditions,

18 “(ii) which also gives preference in al-
 19 locating housing credit dollar amounts
 20 among selected development projects to—

21 “(I) development projects serving
 22 the lowest income owners, and

23 “(II) development projects which
 24 are located in qualified census tracts
 25 (as defined in section 42(d)(5)(C))

1 and the development of which contrib-
 2 utes to a concerted community revital-
 3 ization plan, and

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

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

17 “(i) development project location,

18 “(ii) housing needs characteristics,

19 “(iii) development project characteris-
 20 tics, including whether the development
 21 project includes the use of existing housing
 22 as part of a community revitalization plan,

23 “(iv) populations with special housing
 24 needs,

1 “(v) low-to-moderate income housing
2 waiting lists, and

3 “(vi) populations of individuals with
4 children.

5 “(2) CREDIT ALLOCATED TO BUILDING NOT TO
6 EXCEED AMOUNT NECESSARY TO ASSURE DEVELOP-
7 MENT PROJECT FEASIBILITY.—

8 “(A) IN GENERAL.—The housing credit
9 dollar amount allocated to a development
10 project shall not exceed the amount the housing
11 credit agency determines is necessary for the fi-
12 nancial feasibility of the development project
13 and its viability as a qualified low-to-moderate
14 income development project throughout the
15 compliance period.

16 “(B) AGENCY EVALUATION.—In making
17 the determination under subparagraph (A), the
18 housing credit agency shall consider—

19 “(i) the sources and uses of funds and
20 the total financing planned for the develop-
21 ment project,

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

24 “(iii) the percentage of the housing
25 credit dollar amount used for development

1 project costs other than the cost of inter-
 2 mediaries, and

3 “(iv) the reasonableness of the devel-
 4 opmental and operational costs of the de-
 5 velopment project.

6 Clause (iii) shall not be applied so as to impede
 7 the development of development projects in
 8 hard-to-develop areas.

9 “(C) DETERMINATION MADE WHEN CRED-
 10 IT AMOUNT APPLIED FOR AND WHEN BUILDING
 11 SOLD.—

12 “(i) IN GENERAL.—A determination
 13 under subparagraph (A) shall be made as
 14 of each of the following times:

15 “(I) The application for the
 16 housing credit dollar amount.

17 “(II) The allocation of the hous-
 18 ing credit dollar amount.

19 “(III) The date the building is
 20 first sold after having been placed in
 21 service.

22 “(ii) CERTIFICATION AS TO AMOUNT
 23 OF OTHER SUBSIDIES.—Prior to each de-
 24 termination under clause (i), the taxpayer
 25 shall certify to the housing credit agency

1 the full extent of all Federal, State, and
2 local subsidies which apply (or which the
3 taxpayer expects to apply) with respect to
4 the building.

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

9 “(1) dealing with—

10 “(A) development projects which include
11 more than 1 building or only a portion of a
12 building,

13 “(B) buildings which are sold in portions,

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

16 “(3) preventing the avoidance of the rules of
17 this section, and

18 “(4) providing the opportunity for housing cred-
19 it agencies to correct administrative errors and omis-
20 sions with respect to allocations and record keeping
21 within a reasonable period after their discovery, tak-
22 ing into account the availability of regulations and
23 other administrative guidance from the Secretary.

1 “(n) TERMINATION.—Clause (ii) of subsection
2 (g)(3)(C) shall not apply to any amount allocated after
3 December 31, 2004.”.

4 (b) CURRENT YEAR BUSINESS CREDIT CALCULA-
5 TION.—Section 38(b) of the Internal Revenue Code of
6 1986 (relating to current year business credit) is amended
7 by striking “plus” at the end of paragraph (12), by strik-
8 ing the period at the end of paragraph (13) and inserting
9 “, plus”, and by adding at the end the following:

10 “(14) the home ownership credit determined
11 under section 42A(a).”.

12 (c) LIMITATION ON CARRYBACK.—Subsection (d) of
13 section 39 of the Internal Revenue Code of 1986 (relating
14 to carryback and carryforward of unused credits) is
15 amended by adding at the end the following:

16 “(10) NO CARRYBACK OF HOME OWNERSHIP
17 CREDIT BEFORE EFFECTIVE DATE.—No amount of
18 unused business credit available under section 42A
19 may be carried back to a taxable year beginning on
20 or before the date of the enactment of this para-
21 graph.”.

22 (d) CONFORMING AMENDMENTS.—

23 (1) Section 55(c)(1) of the Internal Revenue
24 Code of 1986 is amended by inserting “or subsection
25 (i) or (j) of section 42A” after “section 42”.

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

4 (3) Section 772(a) of such Code is amended by
 5 striking “and” at the end of paragraph (10), by re-
 6 designating paragraph (11) as paragraph (12), and
 7 by inserting after paragraph (10) the following:

8 “(11) the home ownership credit determined
 9 under section 42A, and”.

10 (4) Section 774(b)(4) of such Code is amended
 11 by inserting “, 42A(i),” after “section 42(j)”.

12 (e) CLERICAL AMENDMENT.—The table of sections
 13 for subpart D of part IV of subchapter A of chapter 1
 14 of the Internal Revenue Code of 1986 is amended by in-
 15 serting after the item relating to section 42 the following:

“Sec. 42A. Low-to-moderate income home ownership credit.”.

16 (f) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply to expenditures made in taxable
 18 years beginning after the date of the enactment of this
 19 Act.

20 **SEC. 3. PARTIAL EXCLUSION OF GAIN FROM SALE OF LOW-**
 21 **TO-MODERATE INCOME HOUSING.**

22 (a) IN GENERAL.—Part III of subchapter B of chap-
 23 ter 1 of the Internal Revenue Code of 1986 (relating to
 24 items specifically excluded from gross income) is amended

1 by redesignating section 139 as section 140 and inserting
 2 after section 138 the following new section:

3 **“SEC. 139. CERTAIN GAIN FROM SALE OF LOW-TO-MOD-**
 4 **ERATE INCOME HOUSING.**

5 “(a) IN GENERAL.—Gross income shall not include
 6 the gain from the sale of any low-to-moderate income
 7 building made during the taxable year and with respect
 8 to which the taxpayer is allowed a credit under section
 9 42A.

10 “(b) LIMITATION.—The amount of gain which may
 11 be taken into account under subsection (a) with respect
 12 to the sale of a low-to-moderate income building shall not
 13 exceed \$10,000 for each low-to-moderate income unit in
 14 such building.”.

15 (b) CONFORMING AMENDMENT.—The table of sec-
 16 tions for part III of subchapter B of chapter 1 of such
 17 Code is amended by striking the item relating to section
 18 139 and inserting the following new items:

“Sec. 139. Certain gain from sale of low-to-moderate income housing.

“Sec. 140. Cross references to other Acts.”.

19 (c) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply sales in taxable years beginning
 21 after the date of the enactment of this Act.

22 **SEC. 4. EXPANSION OF REHABILITATION CREDIT.**

23 (a) CREDIT APPLICABLE TO BUILDINGS AT LEAST
 24 50 YEARS OLD.—Subparagraph (B) of section 47(c)(1)

1 of the Internal Revenue Code of 1986 (relating to quali-
2 fied rehabilitated building is amended to read as follows:

3 “(B) BUILDING MUST BE AT LEAST 50
4 YEARS OLD.—In the case of a building other
5 than a certified historic structure, a building
6 shall not be a qualified rehabilitated building
7 unless the building was first placed in service
8 before the date which is at least 50 years before
9 the date such building is placed in service for
10 purposes of the credit under this section.”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 this section shall apply to property placed in service after
13 the date of the enactment of this Act.

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