

ing unless, before the close of the 1st calendar year in the project period (as defined in subsection (h)(1)(F)(ii)), each building which is (or will be) part of such project is identified in such form and manner as the Secretary may provide.

(4) Certain rules made applicable

Paragraphs (2) (other than subparagraph (A) thereof), (3), (4), (5), (6), and (7) of section 142(d), and section 6652(j), shall apply for purposes of determining whether any project is a qualified low-income housing project and whether any unit is a low-income unit; except that, in applying such provisions for such purposes, the term “gross rent” shall have the meaning given such term by paragraph (2)(B) of this subsection.

(5) Election to treat building after compliance period as not part of a project

For purposes of this section, the taxpayer may elect to treat any building as not part of a qualified low-income housing project for any period beginning after the compliance period for such building.

(6) Special rule where de minimis equity contribution

Property shall not be treated as failing to be residential rental property for purposes of this section merely because the occupant of a residential unit in the project pays (on a voluntary basis) to the lessor a de minimis amount to be held toward the purchase by such occupant of a residential unit in such project if—

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

(B) the purchase of the unit is not permitted until after the close of the compliance period with respect to the building in which the unit is located.

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

(7) Scattered site projects

Buildings which would (but for their lack of proximity) be treated as a project for purposes of this section shall be so treated if all of the dwelling units in each of the buildings are rent-restricted (within the meaning of paragraph (2)) residential rental units.

(8) Waiver of certain de minimis errors and recertifications

On application by the taxpayer, the Secretary may waive—

(A) any recapture under subsection (j) in the case of any de minimis error in complying with paragraph (1), or

(B) any annual recertification of tenant income for purposes of this subsection, if the entire building is occupied by low-income tenants.

(h) Limitation on aggregate credit allowable with respect to projects located in a State

(1) Credit may not exceed credit amount allocated to building

(A) In general

The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the housing credit dollar amount allocated to such building under this subsection.

(B) Time for making allocation

Except in the case of an allocation which meets the requirements of subparagraph (C), (D), (E), or (F), an allocation shall be taken into account under subparagraph (A) only if it is made not later than the close of the calendar year in which the building is placed in service.

(C) Exception where binding commitment

An allocation meets the requirements of this subparagraph if there is a binding commitment (not later than the close of the calendar year in which the building is placed in service) by the housing credit agency to allocate a specified housing credit dollar amount to such building beginning in a specified later taxable year.

(D) Exception where increase in qualified basis

(i) In general

An allocation meets the requirements of this subparagraph if such allocation is made not later than the close of the calendar year in which ends the taxable year to which it will 1st apply but only to the extent the amount of such allocation does not exceed the limitation under clause (ii).

(ii) Limitation

The limitation under this clause is the amount of credit allowable under this section (without regard to this subsection) for a taxable year with respect to an increase in the qualified basis of the building equal to the excess of—

(I) the qualified basis of such building as of the close of the 1st taxable year to which such allocation will apply, over

(II) the qualified basis of such building as of the close of the 1st taxable year to which the most recent prior housing credit allocation with respect to such building applied.

(iii) Housing credit dollar amount reduced by full allocation

Notwithstanding clause (i), the full amount of the allocation shall be taken into account under paragraph (2).

(E) Exception where 10 percent of cost incurred

(i) In general

An allocation meets the requirements of this subparagraph if such allocation is made with respect to a qualified building which is placed in service not later than the close of the second calendar year fol-

lowing the calendar year in which the allocation is made.

(ii) Qualified building

For purposes of clause (i), the term “qualified building” means any building which is part of a project if the taxpayer’s basis in such project (as of the later of the date which is 6 months after the date that the allocation was made or the close of the calendar year in which the allocation is made) is more than 10 percent of the taxpayer’s reasonably expected basis in such project (as of the close of the second calendar year referred to in clause (i)). Such term does not include any existing building unless a credit is allowable under subsection (e) for rehabilitation expenditures paid or incurred by the taxpayer with respect to such building for a taxable year ending during the second calendar year referred to in clause (i) or the prior taxable year.

(F) Allocation of credit on a project basis

(i) In general

In the case of a project which includes (or will include) more than 1 building, an allocation meets the requirements of this subparagraph if—

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

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

(III) the portion of such allocation which is allocated to any building in such project is specified not later than the close of the calendar year in which the building is placed in service.

(ii) Project period

For purposes of clause (i), the term “project period” means the period—

(I) beginning with the 1st calendar year for which an allocation may be made for the 1st building placed in service as part of such project, and

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

(2) Allocated credit amount to apply to all taxable years ending during or after credit allocation year

Any housing credit dollar amount allocated to any building for any calendar year—

(A) shall apply to such building for all taxable years in the compliance period ending during or after such calendar year, and

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

(3) Housing credit dollar amount for agencies

(A) In general

The aggregate housing credit dollar amount which a housing credit agency may allocate for any calendar year is the portion of the State housing credit ceiling allocated

under this paragraph for such calendar year to such agency.

(B) State ceiling initially allocated to State housing credit agencies

Except as provided in subparagraphs (D) and (E), the State housing credit ceiling for each calendar year shall be allocated to the housing credit agency of such State. If there is more than 1 housing credit agency of a State, all such agencies shall be treated as a single agency.

(C) State housing credit ceiling

The State housing credit ceiling applicable to any State for any calendar year shall be an amount equal to the sum of—

(i) the unused State housing credit ceiling (if any) of such State for the preceding calendar year,

(ii) the greater of—

(I) \$1.75 (\$1.50 for 2001) multiplied by the State population, or

(II) \$2,000,000,

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

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

For purposes of clause (i), the unused State housing credit ceiling for any calendar year is the excess (if any) of the sum of the amounts described in clauses (ii) through (iv) over the aggregate housing credit dollar amount allocated for such year. For purposes of clause (iii), the amount of State housing credit ceiling returned in the calendar year equals the housing credit dollar amount previously allocated within the State to any project which fails to meet the 10 percent test under paragraph (1)(E)(ii) on a date after the close of the calendar year in which the allocation was made or which does not become a qualified low-income housing project within the period required by this section or the terms of the allocation or to any project with respect to which an allocation is cancelled by mutual consent of the housing credit agency and the allocation recipient.

(D) Unused housing credit carryovers allocated among certain States

(i) In general

The unused housing credit carryover of a State for any calendar year shall be assigned to the Secretary for allocation among qualified States for the succeeding calendar year.

(ii) Unused housing credit carryover

For purposes of this subparagraph, the unused housing credit carryover of a State for any calendar year is the excess (if any) of—

(I) the unused State housing credit ceiling for the year preceding such year, over

(II) the aggregate housing credit dollar amount allocated for such year.

(iii) Formula for allocation of unused housing credit carryovers among qualified States

The amount allocated under this subparagraph to a qualified State for any calendar year shall be the amount determined by the Secretary to bear the same ratio to the aggregate unused housing credit carryovers of all States for the preceding calendar year as such State's population for the calendar year bears to the population of all qualified States for the calendar year. For purposes of the preceding sentence, population shall be determined in accordance with section 146(j).

(iv) Qualified State

For purposes of this subparagraph, the term "qualified State" means, with respect to a calendar year, any State—

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

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

(E) Special rule for States with constitutional home rule cities

For purposes of this subsection—

(i) In general

The aggregate housing credit dollar amount for any constitutional home rule city for any calendar year shall be an amount which bears the same ratio to the State housing credit ceiling for such calendar year as—

(I) the population of such city, bears to

(II) the population of the entire State.

(ii) Coordination with other allocations

In the case of any State which contains 1 or more constitutional home rule cities, for purposes of applying this paragraph with respect to housing credit agencies in such State other than constitutional home rule cities, the State housing credit ceiling for any calendar year shall be reduced by the aggregate housing credit dollar amounts determined for such year for all constitutional home rule cities in such State.

(iii) Constitutional home rule city

For purposes of this paragraph, the term "constitutional home rule city" has the meaning given such term by section 146(d)(3)(C).

(F) State may provide for different allocation

Rules similar to the rules of section 146(e) (other than paragraph (2)(B) thereof) shall apply for purposes of this paragraph.

(G) Population

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

(H) Cost-of-living adjustment

(i) In general

In the case of a calendar year after 2002, the \$2,000,000 and \$1.75 amounts in subpara-

graph (C) shall each be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 2001" for "calendar year 1992" in subparagraph (B) thereof.

(ii) Rounding

(I) In the case of the \$2,000,000 amount, any increase under clause (i) which is not a multiple of \$5,000 shall be rounded to the next lowest multiple of \$5,000.

(II) In the case of the \$1.75 amount, any increase under clause (i) which is not a multiple of 5 cents shall be rounded to the next lowest multiple of 5 cents.

(4) Credit for buildings financed by tax-exempt bonds subject to volume cap not taken into account

(A) In general

Paragraph (1) shall not apply to the portion of any credit allowable under subsection (a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 if—

(i) such obligation is taken into account under section 146, and

(ii) principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing.

(B) Special rule where 50 percent or more of building is financed with tax-exempt bonds subject to volume cap

For purposes of subparagraph (A), if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed by any obligation described in subparagraph (A), paragraph (1) shall not apply to any portion of the credit allowable under subsection (a) with respect to such building.

(5) Portion of State ceiling set-aside for certain projects involving qualified nonprofit organizations

(A) In general

Not more than 90 percent of the State housing credit ceiling for any State for any calendar year shall be allocated to projects other than qualified low-income housing projects described in subparagraph (B).

(B) Projects involving qualified nonprofit organizations

For purposes of subparagraph (A), a qualified low-income housing project is described in this subparagraph if a qualified nonprofit organization is to own an interest in the project (directly or through a partnership) and materially participate (within the meaning of section 469(h)) in the development and operation of the project throughout the compliance period.

(C) Qualified nonprofit organization

For purposes of this paragraph, the term "qualified nonprofit organization" means any organization if—

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

(ii) such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization;⁴ and

(iii) 1 of the exempt purposes of such organization includes the fostering of low-income housing.

(D) Treatment of certain subsidiaries

(i) In general

For purposes of this paragraph, a qualified nonprofit organization shall be treated as satisfying the ownership and material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

(ii) Qualified corporation

For purposes of clause (i), the term “qualified corporation” means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence.

(E) State may not override set-aside

Nothing in subparagraph (F) of paragraph (3) shall be construed to permit a State not to comply with subparagraph (A) of this paragraph.

(6) Buildings eligible for credit only if minimum long-term commitment to low-income housing

(A) In general

No credit shall be allowed by reason of this section with respect to any building for the taxable year unless an extended low-income housing commitment is in effect as of the end of such taxable year.

(B) Extended low-income housing commitment

For purposes of this paragraph, the term “extended low-income housing commitment” means any agreement between the taxpayer and the housing credit agency—

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

(ii) which allows individuals who meet the income limitation applicable to the building under subsection (g) (whether prospective, present, or former occupants of the building) the right to enforce in any State court the requirement and prohibitions of clause (i),

(iii) which prohibits the disposition to any person of any portion of the building to which such agreement applies unless all of the building to which such agreement applies is disposed of to such person,

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

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

(vi) which, with respect to the property, is recorded pursuant to State law as a restrictive covenant.

(C) Allocation of credit may not exceed amount necessary to support commitment

(i) In general

The housing credit dollar amount allocated to any building may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building, including any increase in such fraction pursuant to the application of subsection (f)(3) if such increase is reflected in an amended low-income housing commitment.

(ii) Buildings financed by tax-exempt bonds

If paragraph (4) applies to any building the amount of credit allowed in any taxable year may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building. Such commitment may be amended to increase such fraction.

(D) Extended use period

For purposes of this paragraph, the term “extended use period” means the period—

(i) beginning on the 1st day in the compliance period on which such building is part of a qualified low-income housing project, and

(ii) ending on the later of—

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

(II) the date which is 15 years after the close of the compliance period.

(E) Exceptions if foreclosure or if no buyer willing to maintain low-income status

(i) In general

The extended use period for any building shall terminate—

(I) on the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period, or

(II) on the last day of the period specified in subparagraph (I) if the housing credit agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building.

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

⁴So in original. The semicolon probably should be a comma.