[JOINT COMMITTEE PRINT]

PRESENT LAW AND ISSUES RELATING TO THE LOW-INCOME HOUSING AND REHABILITATION TAX CREDITS

SCHEDULED FOR HEARINGS

BEFORE THE

SUBCOMMITTEE ON SELECT REVENUE MEASURES

OF THE

HOUSE COMMITTEE ON WAYS AND MEANS

ON MAY 23, 1989

AND

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PREPARED BY THE STAFF

OF THE

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CONTENTS

INTRODUCTION

The Subcommittee on Select Revenue Measures of the House ommittee on Ways and Means has scheduled a hearing on May , 1989, on tax provisions affecting low-income rental housing. The ıbcommittee has also scheduled a hearing on June 6, 1989, on ·ovisions affecting the rehabilitation tax credit. This pamphlet,[1] ·epared by the staff of the Joint Committee on Taxation, provides description of present-law tax provisions and a discussion of the x issues relating to both the low-income housing and the rehabili- tion tax credits.

The first part of the pamphlet is a summary. The second part de- ribes the present-law provisions and discusses issues relating to ιe tax credit for low-income housing. The third part describes the ·esent-law provisions and discusses issues relating to the rehabili- tion tax credit.

Appendix A discusses economic issues relating to tax preferences r low-income rental housing. Appendix B provides an overview of ederal low-income rental housing assistance programs and utiliza- on of the credit for rehabilitation expenditures.

[1] This pamphlet may be cited as follows: Joint Committee on Taxation, *Present Law and sues Relating to the Low-Income Housing and Rehabilitation Tax Credits* (JCS-12-89), May 12, 89.

I. SUMMARY

Low-income housing tax credit

A tax credit may be claimed by owners of newly constructed habilitated, and newly acquired existing residential rental prop used for low-income housing. The credit is claimed annually, ge ally for a period of 10 years. For buildings placed in service a 1987, the credit percentages are adjusted monthly to provid credit (over a 10 year period) with a present value equal to 70 cent of the qualified basis in the building. In the case of acquisi of existing housing and of newly constructed or rehabilitated h ing receiving other Federal subsidies (including tax-exempt bor monthly adjustments are made to maintain a 30-percent pres value for the credit.

The credit amount is based on the qualified basis of the hou units serving the low-income tenants. Low-income tenants for p poses of the low-income housing tax credit are defined as tena having incomes equal to or less than either 50 percent or 60 cent of the area median income, adjusted for family size. An exe tion is provided for projects that elect to satisfy a stricter requ ment and that significantly restrict the rents on the low-inco units relative to the other residential units in the building ("deep-rent skewing" set-aside). The qualifying income for a part lar property depends on the minimum percentage of units that owner elects to provide for low-income tenants. Rents that may charged families in units on which a credit is claimed may exceed 30 percent of the applicable qualifying income, also adjus for family size.

To qualify for the credit, a low-income housing project must c tinuously comply with all requirements for the credit for a per of 15 years. Each State receives an annual credit volume limi $1.25 per resident. A credit allocation from the appropriate St or local government credit authority must be received by the ow of the property eligible for the low-income housing tax cre unless the property is substantially financed with the proceeds tax-exempt bonds subject to the State's private activity b volume limitation.

Tax credit for rehabilitation expenditures

Present law also provides an income tax credit for certain penditures incurred in rehabilitating certified historic structu and certain nonresidential buildings placed in service before 19 The amount of the credit is determined by multiplying the appli ble rehabilitation percentage by the basis of the property that is tributable to qualified rehabilitation expenditures. The applica rehabilitation percentage is 20 percent for certified historic str tures and 10 percent for qualified rehabilitated buildings (otl than certified historic structures) that were originally placed in service before 1936.

A nonresidential building is eligible for the 10-percent credit only if the building is substantially rehabilitated and a specific portion of the existing structure of the building is retained in place upon completion of the rehabilitation. For this purpose, a building generally is considered substantially rehabilitated if the qualified rehabilitation expenditures incurred during a 24-month measuring period exceed the greater of (1) the adjusted basis of the building as of the later of the first day of the 24-month period or the beginning of the taxpayer's holding period for the building, or (2) $5,000. A building satisfies the structural requirement only if (1) at least 50 percent of the existing external walls of the building are retained in place as external walls, (2) at least 75 percent of the existing external walls of the building are retained in place as internal or external walls, and (3) at least 75 percent of the existing internal structural framework of the building is retained in place.

A residential or nonresidential building is eligible for the 20-percent credit that applies to certified historic structures only if the building is substantially rehabilitated (as determined under the eligibility rules for the 10-percent credit). In addition, the building must be listed in the National Register or the building must be located in a registered historic district and must be certified by the Secretary of the Interior as being of historical significance to the district.

II. TAX CREDIT FOR LOW-INCOME RENTAL HOUSING

A. Present Law

1. Tax credit for low-income rental housing—general rules

Overview

A tax credit may be claimed by owners of residential rental pro erty used for low-income housing. The credit is claimed annually a fixed rate, generally for a period of 10 years. For buildings plac in service after 1987, the credit percentages are adjusted month to provide a credit (over a 10 year period) with a present val equal to 70 percent of the qualified basis of the building. In th case of acquisition costs of existing housing and of newly construc ed or rehabilitated housing receiving other Federal subsidies (e.g financed by the sale of tax-exempt bonds), monthly adjustments the credit percentage are made to provide a 30-percent prese value for the credit.[2]

The credit is based on the qualified basis of the housing uni serving the low-income tenants. Low-income tenants are defined tenants having incomes equal to or less than either 50 percent 60 percent of area median income, adjusted for family size. Th qualifying income for a particular property depends on the mir mum percentage of housing units that the owner elects to provic for low-income tenants. Rents that may be charged families units on which a credit is claimed may not exceed 30 percent of th applicable qualifying income also adjusted for family size.

The credit generally is claimed in equal annual amounts durir the first 10 years after the qualified property is placed in service However, unless the low-income housing project continuously cor plies with all requirements of the Internal Revenue Code for period of 15 years a recapture of the credit is imposed.

Each State receives an annual credit volume limit of $1.25 p resident. A credit allocation from the appropriate State or loc government credit authority must be received by the owner property eligible for the low-income housing tax credit, unless th property is substantially financed with the proceeds of tax-exem bonds subject to the State's private activity bond volume limit tion.

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[2] New construction and rehabilitation expenditures for most low-income housing proje placed in service in 1987 were eligible for a maximum 9-percent credit per year for 10 years. T acquisition cost of existing projects and the cost of newly constructed projects receiving oth Federal subsidies placed in service in 1987 were eligible for a maximum 4-percent credit p year for 10 years.

[3] A credit percentage equal to two-thirds of the credit percentage for the initial qualified ba is applicable to additions to qualified basis, as discussed below.

'etermination of credit amount

The credit amount for low-income housing in any taxable year is ɔmputed by applying the appropriate credit percentage to the ualified basis amount for that year.

Credit percentage

For buildings placed in service after 1987, the credit percentage determined monthly, to achieve a present value of either 70 perɛnt (most newly constructed and rehabilitated buildings) or 30 perɛnt (existing buildings and all Federally subsidized buildings) of ıe qualified basis. The present value is calculated as of the last ıy of the first year of the 10 year period for which the credit is lowed. The discount rate used to determine the present value is ! percent of the average of the annual applicable Federal rates ᴧFR) for mid-term and long-term obligations applicable for the onth the building is placed in service.[4]

Present law permits a building owner, with the consent of the ɔplicable housing credit agency, to elect irrevocably to use the 'edit percentage for the month in which the taxpayer receives a nding commitment for a credit allocation from the credit agency ', in the case of a tax-exempt bond financed project for which no location is required, the month in which the tax-exempt bonds 'e issued.

The credit percentage for rehabilitation expenditures (in excess a prescribed minimum amount) is determined when rehabilitaɔn is completed and the rehabilitated property is placed in serve.

Qualified basis

In general.—The qualified basis amount with respect to which e credit is computed is determined as the percentage of eligible ısis in a qualified low-income building attributable to the lowcome rental housing units. This percentage is the lesser of (1) the ɛrcentage of low-income units to all residential rental units or (2) e percentage of the floor space of the low-income units to the ɔor space of all residential rental units. In these calculations, lowcome units generally are those housing units actually occupied ' low-income tenants, whereas residential rental units are all ɔusing units, whether or not occupied.

The qualified basis for each building is determined on the last ıy of each taxable year, beginning in the taxable year in which e building is placed in service or, if the taxpayer elects, the folwing taxable year.

Additions to qualified basis.—The qualified basis of a building ay be increased subsequent to the initial determination only by ason of an increase in the number of low-income units or in the ɔor space of the low-income units (as contrasted to by reason of

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Treasury's monthly adjustments of the credit percentages are to be determined on a disınted after-tax basis, based on the average of the annual applicable Federal rates (AFR) for d-term and long-term obligations for the month the building is placed in service. The after-tax erest rate is to be computed as the product of (1) the average AFR and (2) .72 (one minus the ximum individual Federal income tax rate). The discounting formula assumes each credit is eived on the last day of each year and that the present value is computed as of the last day the first year.

increases in the eligible basis of the building). Credits claimed such additional qualified basis are determined using a credit p centage equal to two-thirds of the applicable credit percentage lowable for the initial qualified basis. As described below under t description of the State credit ceiling, an allocation of credit thority must be received for credits claimed on additions to qua fied basis, in the same manner as for credits claimed on the init qualified basis. Unlike credits claimed on the initial qualified bas credits claimed on additions to qualified basis are allowable ann ally for the portion of the required 15-year compliance period maining after eligibility for such credits arises, regardless of t year such additional qualified basis is determined. The additior qualified basis is determined as a percentage increase in the ori nal adjusted basis (before deductions for depreciation) of the pro erty.

Eligible basis

In general.—Eligible basis consists of (1) the cost of new constru tion, (2) the cost of rehabilitation, or (3) the cost of acquisition existing buildings acquired by purchase (including the cost of reh bilitation, if any, to such buildings incurred before the close of t first taxable year of the credit period and which do not exce $2,000 per unit). Only the adjusted basis of depreciable proper may be included in eligible basis. The cost of land is not includ in eligible basis.

Generally, the eligible basis of a building is determined at t time the building is placed in service. For this purpose, rehabili tion expenditures (in excess of $2,000 per unit) are treated placed in service at the close of the period when rehabilitation e penditures are incurred, not to exceed 24 months. In the case of r habilitation expenditures incurred in connection with the acqui tion of an existing building (and which do not exceed the $2,0 threshold amount), capital expenditures incurred through the en of the first year of the credit period may be included in the origin eligible basis.

Acquisition of existing buildings.—The cost of acquisition of existing building may be included in eligible basis and any rehabi tation expenditures to such a building incurred before the close the first year of the credit period may at the election of the taxpa er also be included in eligible basis, without a minimum rehabilit tion requirement. These costs may be included in eligible bas however, only if the building or a substantial improvement to t building has not been previously placed in service within 10 yea and if the building (or rehabilitated property within the building) not subject to the 15-year housing credit compliance period.

A building that is transferred in a transaction where the basis the property in the hands of the new owner is determined in who or part by the adjusted basis of the previous owner (for example, a gift of property) is considered not to have been newly placed service for purposes of the 10-year placed-in-service requiremen Further, a building which has been acquired by a government unit, or certain qualified 501(c)(3) or 501(c)(4) organizations is n treated as placed in service by that governmental unit or organiz tion for purposes of the 10-year placed-in-service requirement, e acquisition occurred more than 10 years from the date the ıilding or a substantial improvement to the building was last aced in service. Further, a building acquired by foreclosure by xpayers other than a governmental unit or 501(c)(3) organization not treated as newly placed in service by that taxpayer for purses of the 10-year requirement if the foreclosure occurred more an 10 years from the date the building or a substantial improveent to the building was last placed in service and the property ıs resold within a short period.

The Treasury Department may waive the 10-year requirement r any building substantially assisted, financed, or operated under e Department of Housing and Urban Development (HUD) Secn 8, Section 221(d)(3), or Section 236 programs, or under the ırmers' Home Administration (FmHA) Section 515 program when assignment of the mortgage secured by property in the project HUD or FmHA otherwise would occur or when a claim against a deral mortgage insurance fund would occur.

Federal grants and other subsidies.—Eligible basis may not inıde the amount of any Federal grant, regardless of whether such ant is included in gross income. If any portion of the eligible sis attributable to new construction or to rehabilitation expendires is financed with Federal subsidies (e.g., tax-exempt bonds), e qualified basis is eligible only for the 30-percent present value edit, unless such Federal subsidies are excluded from eligible sis.

nimum set-aside requirement for low-income individuals

In general

A residential rental project qualifies for the low-income housing x credit only if (1) 20 percent or more of the aggregate residential ntal units in the project are occupied by individuals with incomes 50 percent or less of area median income or (2) 40 percent or ore of the aggregate residential rental units in the project are occpied by individuals with incomes of 60 percent or less of area edian income. These income levels are adjusted for family size.[5] his requirement is referred to as the "minimum set-aside" reirement.)

A special set-aside may be elected for projects that satisfy a icter requirement and that significantly restrict the rents on the v-income units relative to the other residential units in the build- (the "rent skewing" set-aside). Projects qualify for this rule ly if, as part of the general set-aside requirement, 15 percent or ore of all low-income units are occupied by individuals having inmes of 40 percent (rather than 50 percent or 60 percent) or less of ea median income, and the average rent charged to tenants in e residential rental units which are not low-income units is at ıst 300 percent of the average rent charged to low-income tents for comparable units. Under this special rule, a low-income ıant who initially meets the 40 percent test will continue to qual-

A special set-aside requirement under which a project qualifies if 25 percent or more of the ts are occupied by individuals with incomes of 60 percent or less of area median income is vided for New York City.

ify in the future as such, as long as the tenant's income does ı exceed 170 percent (rather than the general 140 percent limit, scribed below) of the qualifying income. Additionally, if a project which this special set-aside requirement applies ceases to com with the continuous compliance requirement because of increa in existing tenants' incomes, no penalties are imposed if each ava able low-income unit (rather than each available unit) is rented tenants having incomes of 40 percent or less of area medi income, until the project is again in compliance.

All units comprising the minimum set-aside in a project must suitable for occupancy and used on a nontransient basis, and subject to the limitation on gross rent charged to residents of s aside units.

The owner of each project must irrevocably elect the minimı set-aside requirement (including the rent skewing set-aside scribed above) at the time the project is placed in service. In t case of a project consisting of a single building, the set-aside quirement must be met within 12 months of the date the buildi (or rehabilitated property) is placed in service, and complied w continuously thereafter for a period ending 15 years after the fi day of the first taxable year in which the credit is claimed. Spec rules apply to projects consisting of multiple buildings placed service on different dates.

Continuous compliance required

The determination of whether a tenant qualifies as low inco for purposes of the minimum set-aside requirement is made on continuing basis, both with regard to the tenant's income and t qualifying area income, rather than only on the date the tena initially occupies the unit. An increase in a tenant's income m result, therefore, in a unit ceasing to qualify as occupied by a lo income person. However, a qualified low-income tenant is treat as continuing to be such notwithstanding *de minimis* increases his or her income. Under this rule, a tenant qualifying when i tially occupying a rental unit will be treated as continuing to ha such an income provided his or her income does not increase to level more than 40 percent in excess of the maximum qualifyi income, adjusted for family size. If the tenant's income increases a level more than 40 percent above the otherwise applicable ceili (or if the tenant's family size decreases so that a lower maximu family income applies to the tenant) that tenant is no longer cou ed in determining whether the project satisfies the set-aside quirement. No penalty is assessed in such an event, however, p vided that each residential rental unit that becomes vacant comparable or smaller size to the units no longer satisfying the a plicable income requirement) is rented to low-income tenants un the project is again in compliance.

Vacant units, formerly occupied by low-income individuals, m continue to be treated as occupied by qualified low-income indiv uals for purposes of the set-aside requirement (as well as for det mining qualified basis) provided reasonable attempts are made rent the units and no other units of comparable or smaller size the project are rented to nonqualifying individuals.

·oss rent limitation

The gross rent paid by families in units on which a tax credit is ıimed may not exceed 30 percent of the applicable area income alifying as "low," adjusted for family size. Gross rent includes e cost of any utilities, other than telephone. If any utilities are id directly by the tenant, the maximum rent that may be paid by e tenant is reduced by a utility allowance prescribed by the easury Department.

The gross rent limitation applies only to payments made directly the tenant. For example, any rental assistance payments made behalf of the tenant, such as through Section 8 of the United ıtes Housing Act of 1937 or any comparable Federal rental as- tance, are not included in gross rent for purposes of the 30-per- ıt limit. (Such payments are, however, included in determining ›ss rent for purposes of the special exception for rent-skewed ›jects.)

mpliance period and penalty for noncompliance

Qualified residential rental projects must remain as rental prop- ·y and must satisfy the minimum set-aside requirement, de- ·ibed above, throughout a 15-year compliance period. Units on ıich credits are claimed in addition to those meeting the mini- ım set-aside requirement on which a credit is allowable also ıst continuously comply with this requirement.

Generally, any change in ownership of a building subject to the npliance period is a recapture event. An exception is provided if › seller posts a bond with the Treasury Department (in an ıount prescribed by Treasury) and provided it can reasonably be ›ected that the building will continue to be operated as a quali- l low-income building for the remainder of the compliance ·iod. For partnerships comprised of at least 35 individual part- ·s, unless the partnership elects otherwise, no change in owner- p will be deemed to occur provided that within any 12-month ·iod, at least 50 percent (in value) of the original ownership is changed.

f any building subject to the 15-year compliance period fails to nain part of a qualified low-income project, a portion of all cred- claimed is recaptured with interest for all prior years and the ılified basis of the building is reduced.

Similarly, in the event of a decrease in the qualified basis of a ılding, while still remaining part of a qualified low-income ›ject, (e.g., through a reduction in number of qualified low ome units) there is recapture of the credits with respect to the ·elerated amount claimed for all previous years on the amount of › reduction in qualified basis plus interest.

Owners and operators of low-income housing projects on which a ·dit has been claimed may correct any noncompliance with the -aside requirement within a reasonable period after the noncom- ance is discovered or reasonably should have been discovered. If › taxpayer can correct the noncompliance in the manner re- ıred, there is no recapture.

State low-income housing credit authority limitation

In general

Generally, all buildings eligible for the low-income housing cr must receive an allocation of credit authority from the State local credit agency in whose jurisdiction the qualifying low-inc housing project is located. The aggregate amount of such credits located within the State is limited by the State annual low-inc credit authority limitation. Generally, credits subject to the St credit authority limitation include any credits attributable to penditures not financed with tax-exempt bonds subject to the vate activity bond volume limitation.

In all cases, credit allocations are counted against a Sta annual credit authority limitation for the calendar year in wh the credits are allocated. Credits may be allocated only during calendar year in which the building or rehabilitated property placed in service, except in the case of (1) credits claimed on a tions to qualified basis and (2) credits allocated in a later year p suant to an earlier binding commitment made no later than year in which the building is placed in service.

Present law permits a building to be placed in service in the y in which the credit allocation is received or in either of the succeeding years provided that at least 10 percent of the expec project costs were paid by the end of the year in which the cre allocation was received. This provision applies only to credit allo tions for new construction and substantial rehabilitations.

Project costs are the total costs budgeted to acquire and deve the project. These costs include costs budgeted by the taxpayer acquire the land and any existing structure. The determination whether the taxpayer has incurred at least 10 percent of the to project costs is measured by calculating the following fraction. T numerator of the fraction is the taxpayer's basis (land and dep ciable basis) in the property as of the close of the calendar year which the credit allocation is made by the State authority. The nominator of the fraction is the taxpayer's reasonably expec basis (land and depreciable basis) in the property at the time property is placed in service.

Allowable credit authority

General rules.—The annual credit authority limitation for ea State is equal to $1.25 for every individual who is a resident of State. For purposes of the credit authority limitation, the Distr of Columbia and U.S. possessions (e.g., Puerto Rico, the Virgin lands, Guam, and American Samoa) are treated as States. credit authority is provided for years after 1989.

Special set-aside for qualified nonprofit organizations.—A porti of each State's credit authority limitation is set aside for exclus use by qualified nonprofit organizations. This set-aside is equal $0.125 per resident of the State. This set-aside amount may not decreased by State action, either legislative or gubernatorial. In dition to the special set-aside, qualified nonprofit organizati projects may be allocated any additional amount of a State's maining credit authority.

For these purposes, a qualified low-income housing project must ave the material participation of a qualified nonprofit organiza-on in its development and operation. A qualified nonprofit organi-ation means any organization (1) described in section 501(c)(3) or ection 501(c)(4) of the Code and which is exempt from tax under ection 501(a); and (2) one of the exempt purposes of such organiza-on includes the fostering of low-income housing.

Other applicable restrictions on the tax credit for low-income rental housing

a. At-risk rules

Present law provides that the low-income housing credit is not llowed with respect to borrowed amounts that do not meet the re-uirements of the low-income housing credit at-risk rules (sec. 2(k)). The at-risk rules applicable to the low-income housing credit re a modified version of the generally applicable credit at-risk ules. In general, the credit at-risk rules as applicable for the low-icome housing credit provide that nonrecourse debt is treated as n amount at risk where (1) it is borrowed from a commercial nder, or represents a loan from (or is guaranteed) by certain gov-rnmental entities; (2) the property is acquired from an unrelated erson; (3) the lender is not a person from whom the taxpayer ac-uired the property (and is unrelated to such a person); (4) the nder or a related person does not receive a fee with respect to the axpayer's investment in the property; and (5) the debt is not con-ertible debt.

In addition, under special rules, certain financing provided by ualified nonprofit organizations may be treated as an amount at sk for purposes of the low-income housing credit, without regard whether the organization is actively and regularly engaged in ie business of lending money, or is a person from which the tax-ayer acquired the property (or is related to such a person). These pecial rules impose restrictions on who may hold a security inter-st in the property, on the portion of the property attributable to uch financing, and on the repayment schedule and the interest ate of such financing, among other restrictions. The credit is re-aptured if the financing provided by such organizations is not epaid with interest by the end of the 15-year credit compliance eriod.

b. Restrictions on deductions and credits arising from passive activities

assive loss rules in general

The Tax Reform Act of 1986 added a provision limiting losses nd credits from passive activities (i.e., activities in which the tax-ayer does not materially participate, and rental activities).

Under this provision, deductions from passive trade or business ctivities or rental activities, to the extent they exceed income rom all such passive activities (exclusive of portfolio income), gen-rally may not be deducted against other income. Similarly, credits rom passive activities generally are limited to the tax attributable the passive activities. Suspended losses and credits are carried forward and treated as deductions and credits from passive acti ties in the next year. Suspended losses from an activity are allow in full when the taxpayer disposes of his entire interest in the a tivity.

The provision applies to individuals, estates, trusts, and person service corporations. A special rule limits the use of passive acti ty losses and credits against portfolio income in the case of close held corporations.

Special rules

$25,000 allowance in the case of rental real estate activities.— special rule is provided for passive activity losses and credits attri utable to rental real estate activities. In the case of rental re estate activities, a taxpayer who is an individual is allowed deduct up to $25,000 of passive activity losses (to the extent th they exceed income from passive activities) if the taxpayer active participates in the rental real estate activity (and has at least a 1 percent interest in it). The $25,000 amount is phased out ratably the taxpayer's adjusted gross income, with certain modification increases from $100,000 to $150,000.

$25,000 allowance for low-income housing and rehabilitatic credits.—Under a special rule, the $25,000 allowance also applies low-income housing and rehabilitation credits (on a deductio equivalent basis), regardless of whether the taxpayer claiming th credit actively participates in the rental real estate activity gene ating the credit. In addition, the adjusted gross income phaseou range for the $25,000 amount for these credits is from $200,000 $250,000 (rather than the generally applicable phaseout range $100,000 to $150,000).

Effective date

The passive loss limitations are effective for taxable years begi ning after 1986. For certain pre-enactment interests in passive a tivities, the provision is phased in, and becomes fully effective fo taxable years beginning in 1991 and thereafter. Transitional reli is provided for losses from certain existing low-income housing a tivities.

c. Restrictions on use of credit to offset tax

The low-income housing tax credit is subject to the rules of th general business credit (sec. 38), including the maximum amount income tax liability that may be reduced by a general busine credit in any one year. This limitation generally is equal to th excess (if any) of the taxpayer's net income tax over the greater (1) the taxpayer's tentative minimum tax for the year, or (2) 25 pe cent of so much of the taxpayer's net regular tax liability as e ceeds $25,000.

The rules for credit carryovers provide that unused credits fo any taxable year may be carried back to each of the three prece ing taxable years and then carried forward to each of the 15 follov ing years. No portion of the low-income housing credit for any ta able year may be carried back to a taxable year ending before 198 (sec. 39(d)(4)).

B. Issues Relating to the Low-Income Housing Tax Credit

. Eligibility for the credit

a. 10-year placed-in-service requirement

urrent treatment

The cost of acquisition and any rehabilitation expenditures with spect to a low-income building generally may be included in eligi-le basis only if two requirements are satisfied: (1) the building or a ubstantial improvement to the building may not have been previ-usly placed in service within 10 years; and (2) the building or re-abilitated portion of the building may not already have been laced in service by the taxpayer or any person who was a related erson with respect to the taxpayer as of the time previously laced in service.

One benefit of the 10-year placed-in-service requirement is that it perates to prevent the transfer and placement in service of build-igs primarily for tax motivated reasons. This provision limits the bility of owners and investors in structures to receive multiple tax enefits from the same tax property. There is evidence that churn-ig such property could have substantial tax effects.[6]

The Congress has identified specific instances in which excep-ons are provided to the placed-in-service rule: (1) a placement in ervice is unlikely to be a purely tax-motivated transaction or (2) ne absence of an exception from the placed-in-service rule could esult in an assignment or other claim against the Federal Govern-ient or certain government sponsored entities. (This latter deter-iination is made by the Department of the Treasury.)

Included in the first classification are placements in service in onnection with the gift or inheritance of property. The second assification relates primarily to certain Federally assisted hous-ig, where an assignment of the mortgage secured by property in ne project to HUD or the Farmers Home Administration would ccur or when a claim against a Federal mortgage insurance fund ould occur.

roposals for further exceptions from the 10-year placed-in-service requirement

Numerous proposals have been suggested to create exceptions to ne 10-year placed-in-service requirement (see above). One such pro-osal would create an exception from the 10-year placed-in-service equirement for property on which a mortgage originates from the ederal Government or which is Federally insured or guaranteed ut which receives no Federal assistance.

The Department of Housing and Urban Development (HUD) esti-iates that the Sections 221(d)(3) and 236 programs presently subsi-ize over 600,000 units of rental housing. HUD further estimates nat mortgages on over 25 percent of these units are likely to be repaid between now and the mid-1990s.[7] With prepayment of the

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[6] *See* Roger H. Gordon, James R. Hines, Jr., and Lawrence H. Summers, "Notes on the Tax reatment of Structures", in Martin Feldstein (ed.), *The Effects of Taxation on Capital Forma-on* (Chicago: University of Chicago Press), 1987.

[7] See, G., Milgram, *The Assisted Housing Stock: Potential Losses from Prepayment and "Opt-its"*, Congressional Research Service, Report 87-879E (November 4, 1987).

HUD-subsidized mortgage, HUD loses control of the rents that te ants may be charged. These housing units may be converted nonsubsidized rental housing or owner-occupied housing as result. This problem is less likely to occur for State-finance nonFHA-insured projects which are subject to State control. Mo if not all, of these mortgages prohibit prepayment.[8]

One argument for the proposed exception is that selective use the low-income housing credit for some of these housing projec could encourage their retention as subsidized rental housing (a go of housing policy). Concomitantly, the tax credit's targeting rul would be extended to these projects, many of which currently qu ify for these outlay provisions under more relaxed rules.

On the other hand, permitting waivers of the rule restricting t credits to projects that have not been placed in service within t 10 years preceding the credit-eligible transfer may not be the mc effective way to assure a stock of low-income rental housing. Mu rental housing serving low-income households originally was n built as low-income housing. Rather, as the housing aged and mo new housing was built, the older housing became affordable a available to low-income families. Expanding the circumstanc under which waivers of the 10-year anti-churning rule may granted by Treasury without imposing a substantial rehabilitati requirement may eliminate incentives to increase or improve t stock of low-income rental housing.

A second proposal would create an exception for property that in default. It has been suggested that this type of exception wou be particularly desirable if a State or local housing agency wou take possession of the property as a result of the default.

Some argue that a natural extension of present law would be grant the same waiver from the 10-year requirement to cases of d fault to State or local agencies that is currently available to cas of default involving some Federally-assisted projects which are risk of default. Under this view, the State and local authoriti would have more flexibility in allocating the credit and could u their available credit authority to generate the greatest stock low-income housing regardless of its last placed-in-service dat Property at risk of conversion or of imposing losses on governme tal bodies responsible for encouraging low-income rental housi hinders State and local housing officials from most effectively pr moting utilization of low-income housing.

Others argue that the Federal Government has established class of properties that are eligible for the low-income housi credit waiver. These projects were chosen with the rationale of pe mitting the Federal Government to substitute tax expenditures f budgetary outlays when this would provide a more attainab result. When the waiver is used to prevent default to State a local housing authorities, it is argued that the waiver is not bei used to minimize Federal costs but instead serves as a subsidy fro the Federal Government to the State or local governmental bod In this view, the waiver is inappropriate because the credit autho ity could be better utilized to generate new low-income units as o

[8] *Ibid.*

osed to further subsidizing relatively new existing units or State overnmental units or agencies.

To the extent that a State has unused credit authority available, he use of the credit on buildings which receive the waiver may inrease low-income housing by preventing conversion or, alternaively, subsidizing the housing authority. However, if a State is aleady allocating the maximum credit available, then the use of redit authority on property receiving the waiver will displace ther low-income housing property. The net impact on available ousing depends on the relative increase provided by alternative rojects. The stock of low-income housing in this situation may inrease or decrease because of the availability of the waiver, but the et effect of the eligibility waiver for areas which are already alloating all credits may be small.

A third proposal would create an exception from the 10-year laced-in-service requirement for certain properties in the HUD inentory on which HUD is prepared to foreclose. Proponents of this xception assert that utilization of the low-income housing credit ill avert a further revenue drain on HUD. Opponents respond hat any savings to HUD would necessarily involve a tax expendiure drain on the general fund of the Treasury.

b. Type of buildings eligible for the credit

evel of credit—70 percent versus 30 percent

Present law provides a greater tax benefit for new buildings and ubstantial rehabilitation costs than for either existing buildings ot involving substantial rehabilitation or tax-exempt bond fianced buildings. One of the credit's objectives is to provide an inentive to expand and upgrade the nation's low-income housing tock by more than the private market alone would provide.

There are those who argue that the relatively scarce tax expendiure resources available through the credit should be directed olely at new construction and substantial rehabilitation projects. hey argue that providing incentives targeted primarily to existing roperty will generate little net increase in rental housing for lowcome populations. Instead, they contend that much of the benefit f the incentives for existing housing will go to owners of property hich would have remained low-income anyway. Also, when an inentive is provided to keep existing property as low-income housg, such property may displace other new or rehabilitated housing ossibly of better quality that might have become available to lowcome populations. The particular level of tax incentive granted ay bear little relation to the level of housing services provided by he project or the amount needed to assure the continued provision f low-income rental housing. Instead, the value of the proposed ax incentive to be granted depends on the particular historical attern of investments associated with a property, in nominal ather than in inflation-adjusted dollars. Therefore, the benefit is nly loosely related to age or the true worth of the project.

hat constitutes substantial rehabilitation

The argument is made that the present law requirements as to hat constitutes substantial rehabilitation are not stringent enough. Currently, a property can qualify as a substantial rehabil tation project if qualified rehabilitation expenditures averag $2,000 per unit. It is argued that in some instances this level of e: penditure provides an inadequate level of improvement to th housing stock. Further, the value of the tax credit should require higher level of required expenditures.

The counter argument is that the credit provides an importa incentive to owners of existing property to initiate or continue i use as low-income property. The protection of a stock of low-incom housing is especially important in light of the increasing deman for such housing and the reduction of direct Federal subsidies i recent years for such housing.

Because labor and material costs vary across the nation, ar dollar limit for qualifying expenses may be stringent in some are and lax in others. In part, to meet this concern it has been pr posed that the $2,000 per unit average expenditure requirement l replaced. One alternative would require that qualified rehabilit tion expenditures amount to a fixed percentage of the eligible bas in the acquired property.

Small owner-occupied buildings

In the case of a building with four or fewer units, no unit is qualified low-income unit for purposes of the credit under prese law if any units in that building are occupied by the owner or related person. The definition for purposes of the credit general follows the definition of single-family, owner-occupied residenc used elsewhere in the Internal Revenue Code.

Some argue that eligibility for the credit should be extended otherwise qualified units in such buildings that are not occupi either by the owner or a person related to the owner. They arg that a response to abusive uses of the credit can be more accurat ly targeted than through the denial of the credit to the enti building.

Opponents respond that a double tax subsidy may result when building qualifies for tax benefits under both the low-income hou ing tax credit and the single-family mortgage revenue bond ta exempt financing. An extension of credit eligibility to buildin with four or fewer units may have the result that certain buildin qualify for tax benefits under both provisions. It is further argu that smaller projects are less likely to need the operating subsi the credit may represent due to generally lower costs of operation

c. Duration of low-income use

The low-income housing credit requires that the project rema in compliance for 15 years, but accelerates the period over whi the tax benefit is allowed to the taxpayer to the first 10 years. the project falls into noncompliance, the accelerated portion of t credit plus interest is recaptured. Upon disposition of an interest a credit property within the compliance period, the taxpayer mu post a bond that represents the taxpayer's total recapture liabilit One purpose of the bond requirement is to bolster the effectivene of the recapture penalty in maintaining extended low-income us

There are two major issues involving this aspect of the credit. he first issue is whether the compliance period should be ex- ›nded or otherwise modified. The second issue is whether the com- lexity of the recapture mechanism unduly burdens the taxpayer nd limits liquidity.

Those who support the extension of the compliance period cite ıe shortage of affordable housing for low-income individuals. They lso draw an analogy to the experience of the Federal Government ı Federal housing programs. Recent experience shows a conver- on to market rate use of low- and moderate-income housing soon fter the restrictions against such conversion lapse. It is also rgued that, at a minimum, a mechanism should exist to allow the overnment an option to maintain the low-income use of the prop- rty before its conversion to market rate use.

Opponents argue that the benefit of the credit will not support a ramatically longer compliance period. Economically, the costs of onstruction and operation of such projects may be high relative to ıe combination of the tax benefit and the cash flow from the roject. They further argue that the complexity of the bond posting ıechanism is exacerbated by the length of the compliance period nd by the number of transfers of ownership interests that occur.

One way to reduce the complexity of the credit would be to elimi- ate the requirement of posting a bond in the amount of recapture ability at the time of transfer of ownership interest. It is argued ıat the size of the bond may be large especially on transfers early ı the compliance period (due to the interest component of the ond). The counterargument is that the bond is necessary to main- ıin the nexus between the taxpayer who received the accelerated ıx benefit and the compliance of the low-income project. The only ay to eliminate the need for the bond and maintain a direct exus between the recipient of the tax benefit and the provision of w-income housing is to modify the credit so the credit period coin- des with the compliance period (i.e., extend the credit period to 15 ears).

One way to extend low-income use without compounding the omplexity of the recapture requirement would be to impose a deed estriction on credit property. Such a restriction, enforceable under tate law, would require that the property be maintained within a w-income use for some defined period of time after the credit ompliance period. The State agencies or even the low-income indi- iduals themselves would have the ability to enforce this right. roponents argue that extended low-income use would result from ıch a proposal. Opponents argue that by reducing potential resale alue any such restriction would reduce investor interest in credit roperties and adversely affect liquidity of ownership interests.

d. Eligible tenants and services

Jse by the general public

The legislative history of the credit includes a discussion of the equirement that residential rental units must be available for use y the general public. The term "use by the general public" was ot defined in either the Tax Reform Act of 1986 or the legislative history to that Act. The Internal Revenue Service has, however, ı leased guidance on the subject.

Some argue that a comprehensive definition should be the su ject of future legislative efforts. Legislation could, for examp clearly delineate allowable tenants and provide a bright line te for taxpayers. Others respond that a static definition would not sa isfy the evolving concept of public use and no definition could pı vide an exhaustive list of eligible tenants. Legislation should used to provide guidance to the IRS only as needed.

Significant services

Some low-income tenants are furnished services, other tha housing, such as laundry, day care, and meals. The issue of servic provided to tenants of credit properties was not comprehensive addressed at the time of enactment. Subsequently, this issue h been the subject of regulatory guidance by the IRS. In IRS Noti 89-6 (1989-2 I.R.B. 16)), the Service took the position that the fu nishing to tenants of services other than housing (whether or n such services are significant) will not prevent the property fro qualifying as residential rental property. Generally, any charg for services that are not optional to the low-income tenants and a paid for by the tenants must be included as rent for purposes of t gross rent limitation.

The elimination of the significant services standard has been a vocated for two reasons: (1) reduction in complexity, and (2) reco nition that certain elements of the low-income population requi special social services. It is argued that the IRS position on th issue causes some projects to violate the rent restriction requiı ment of the credit. The ineligibility of hospitals, nursing home and sanitariums would remain unchanged from present law und the proposal. Opponents of such modifications argue that defiı tional vagaries would exist under any standard. Opponents al note that as the credit reaches full utilization, any expansion of u of the credit for special needs/special service housing reduc credit availability for other low-income families.

Non-transient use restriction

Unlike the requirements for units in projects financed with ta exempt bonds, certain single room occupancy housing used on nontransient basis may qualify for the credit even though su housing may provide eating, cooking and sanitation facilities on shared basis. Generally a unit is considered to be used on a no transient basis if the initial lease is six months or longer.

It is argued that the six-month initial lease term is necessary target the benefits of the credit to the provision of traditional hou ing. The counterarguments are that the six-month rule is arbitra and that it precludes availability of credit-subsidized housing to significant portion of low-income individuals who need it.

e. Rent restrictions

30-percent of area median income rule

The credit limits the total allowable gross rent that low-incor families must pay for housing subsidized by the credit. This is cognition of the fact that lower-income individuals have relative- less income to devote to housing costs. In fact, the gross rent iid by families in units on which a tax credit is claimed generally ay not exceed 30-percent of the qualifying income (i.e., rent is nited to 30-percent of either 50 or 60 percent of area median come) adjusted for family size. The area median income figure is inually recomputed by HUD. Because the rent, restriction is ised on qualifying income rather than the tenants actual income me families can pay more than 30-percent of their income in ntal payments.

Two main issues have been raised regarding the 30-percent rule. ie first consideration is whether the accuracy that could be at- ined by limiting gross rent to actual family income outweighs the lditional administrative complexity. A second issue is whether her restrictions on allowable rent payments should be superim- ised over the 30-percent of area median income limitation.

ctual family size versus standard measurements of income

Those who favor gross rent limitations based on actual family come argue that this standard more accurately reflects the abili- of low-income families to pay rent. Opponents report that the lministrative burden of computing this figure for each low-income mily would outweigh the relative benefits. Opponents also argue at such a standard would produce uncertainty of cash flows to vestors in credit properties.

ther restrictions

The need for certainty by investors in the rental income stream the basis for a proposal to set the initial month's rent as a floor low which rents may not fall. It is argued that providing certain- to investors' cashflow may create greater investor interest. On e other hand, not requiring reductions in rent as area median in- mes fall could impose a greater financial burden on the low- come tenants.

A related argument is that maximum rent should be determined the size of the apartment rather than family size. This proposal so has the merits of simplicity and greater certainty of cashflow investors. Again, it may result in a less accurate measurement the tenant's ability to meet the rental obligations.

f. Other tax provisions relating to the operation of the low-income housing credit

sues under the passive loss rules

Although present law does provide more liberal treatment for e low-income housing credit than for other tax benefits under the issive loss rules, some argue that the imposition of any restriction the credit under the passive loss rules deter investment in low- come housing projects. It is argued that the incentive provided by e low-income housing credit is not fully utilized because many tential investors whose adjusted gross incomes exceed the 50,000 limit under the passive loss restrictions cannot receive iy current benefit from the credit. Limiting utilization of the edit in this manner, it is argued, is inconsistent with the non-tax policy for retaining the credit: i.e., to promote the developme construction and maintenance of low-income housing stock in t United States.

Others point to the growth in utilization of the credit since institution only 3 years ago. They argue that, because the credit already almost fully utilized under the State agency allocati caps, there is no need to expand the investor market. Utilizati could not be increased because of the cap on the total availa credits.

Those who favor broadening the investor market for the cre respond that, if there were more competition for investor dollars be spent on low-income housing, the efficiency of the credit wou be improved. More viable projects, and less marginal ones, wou be developed if there were more competition for investor dolla

Those who oppose altering the passive loss restrictions sugg that other changes in the administration of the credit could ma it more efficient, without contradicting the purpose of Congress enacting the passive loss restrictions generally: to limit tax shelt and to make sure that everyone pays a fair share of taxes. Th argue that removing the passive loss restrictions on these cred would only increase tax benefits for the very wealthy and th with high incomes without significantly increasing the availabil of low-income housing in the United States.

Income from discharge of indebtedness

It is common to finance plans involving both credit and nonc dit transactions that a portion of the cost of the project is debt nanced. Generally, the existence of debt financing alone will deny or restrict the ability of a taxpayer to receive tax benefits such property. Typically, these loans are satisfied by payment the amount due. If the lender instead forgives the indebtedne the borrower may have taxable income from such discharge of debtedness.

In an effort to encourage free marketability of debt-financ credit property, some argue that an exception from the dischar of indebtedness rules should be created. Others argue that such ception would encourage taxpayers to inflate the size of loans ma in connection with the credit in order to inflate eligible basis a therefore the level of tax benefits. This abuse would be particula troublesome in situations where at-risk rules are not fully appli ble under the credit.

2. Role of the allocating agencies and State and local gove ments

a. Allocation plans and selection criteria

No administrative or allocation plans are required of the alloc ing agencies under the credit program. Current law could amended to require allocating agencies to establish, publish, a hold hearings on allocation plans. Such plans would set forth t standards under which allocations would be made. Examples of lection criteria are location, housing needs, project characteristi sponsor characteristics, housing mix, and financial participation the projects by State or local governments.

Ͻne issue related to such proposals is whether allocation plans ɔuld be voluntary or mandatory to the allocating agencies and if ındatory, the penalty for noncompliance. A second issue is ıether selection criteria should be determined by each allocating ency or rather by the Federal Government. These issues revolve ɔund the relative importance assigned to the need for certain iform standards and the value of added flexibility to the allocat- g agencies.

b. Project evaluation

Some have advocated a proposal to require State housing agen- s responsible for allocating credit amounts to allocate on the sis of a specific project evaluation. As discussed above, the maxi- ım credit amounts are (1) a 70-percent present value credit for w construction and substantial rehabilitation expenditures and a 30-percent present value credit for certain existing buildings d Federally subsidized buildings. These credit amounts represent maximum amounts permitted, but the allocating agency may lower amounts for each project. Early experience with the dit indicates that the allocating agencies rarely allocate less ın the maximum credit amount.

Proponents of a project evaluation process argue that allocating encies should be required to exercise their authority to allocate limited resources of the credit in the most efficient way possi- . They assert that a formal, standardized project review process ıducted by the allocating agency should be performed on each ɔject. Opponents respond that market forces alone will lead to most efficient utilization of the credit.

Two main issues have risen with respect to the concept of a ɔject evaluation process. The first issue is whether the evaluation ɔcess should be mandatory for the allocating agencies, and, if so, at sanction would apply for failure to implement the process. e second issue is whether the selection criteria should be deter- ned by the Federal Government or the allocating agencies them- ves (see B.2.a., above).

An argument against a mandatory project evaluation program is responsibility of the allocating agencies to take local concerns o consideration in the allocation process without the complexity a formal process. Further, some agencies may not have the staff conduct a comprehensive evaluation process. A counter argu- nt is that delivery of the credit to those projects that most need as determined by a formal and objective set of criteria, out- ighs the value of increased flexibility to the allocating agencies.

Utilization of the credit

a. Level of credit increasing annually since its inception

The low-income housing credit was enacted to replace several ıer tax incentives available but not directly targeted to low- ome housing. Prior to the Tax Reform Act of 1986, no low- ome rental housing credit existed. Preliminary data shows a uti- ation rate of 19 percent of allocable amounts in calendar year

1987. This level increased to nearly 70 percent in 1988, and is pected to approach full utilization in 1989.[9]

Generally, two reasons have been advanced for the utiliza curve since the credit's inception: (1) increased taxpayer familia with the program; and (2) the 1988 modification to the credit allows allocation currently for projects where at least 10 percen the total reasonably expected project costs have been incurred, where the project may not be placed in service until one of next two succeeding years (the "10-percent test"). This modifica did not extend to tax-exempt bond financed properties.

Some argue that levels of utilization are too low and that sig cant adjustments should be made to the credit to make it more tractive to investors. The response is that levels of utilization early years are not indicative of the credits' potential long-run lization because of the relative newness of the credit and taxpa lack of familiarity with it.

Another proposed modification is to extend the 10-percent tes tax-exempt bond financed properties. It is asserted that it is d cult for any project to be placed in service in the same year tha allocation is received and that the rationale for the 10-percent applies equally to bond financed and non-bond financed proje Others counter that issuance of tax-exempt bonds prior to ac need represents a revenue drain on the U.S. Treasury.

b. Comparison of 70-percent versus 30-percent credits

Preliminary data indicates that while utilization of the cred increasing, most transactions involve properties with no elemen tax-exempt bond financing.

Two theories have been advanced as to the relative absenc bond-financed properties under the credit: (1) the restriction bond-financed property to the 30-percent credit makes such proj relatively unattractive to investors; and (2) other general lim tions on the use of tax-exempt bonds make their use in conjunc with the credit unlikely.

Proponents of the first theory argue that increased utilizatio the credit by 70-percent projects, but not by 30-percent projects conjunction with the theory that the market operates efficien indicates that bond-financed property is relatively tax-disadv taged. Others assert that increased demand for tax-exempt fin ing under the State volume cap and other restrictions are reason why relatively little tax-exempt financing is available use with the credit. No conclusive determination as to the rela accuracy of these theories has been made at this time.

c. Utilization of the nonprofit set-aside

Level of nonprofit set-aside

The Tax Reform Act of 1986 established an annual State all tion cap for the credit. The Act also required that 10 percen each State's cap be set aside for the exclusive use by qualified profit organizations. In addition to the mandatory set-aside, qu

[9] Estimates of low-income housing credit activity for 1987, 1988, and 1989 prepared by th tional Council of State Housing Agencies.

d nonprofits may be allocated any additional amount of a State's naining credit authority.

One issue associated with this provision is ascertaining the cor- ɛt level of the nonprofit set-aside, assuming that such a set-aside appropriate. While the theory behind the set-aside is to encour- e involvement of nonprofits, the relative efficiency of a mandato- set-aside has not yet been determined.

ility of the credit to nonprofits

Whatever is the appropriate level of involvement of nonprofits in edit properties, another issue presents itself. The issue is the util- of a tax benefit mechanism to a nontaxable entity. Currently, nprofits form a partnership with taxable entities to participate the tax credit projects, either directly or through taxable sub- iaries.

The structure of these deals and their relationship to the non- ofits requires further examination. Numerous proposals have en made to facilitate increased involvement of nonprofits in edit properties. They range from making the credit refundable to eries of proposals for special treatment of nonprofits under other provisions. Some argue that involvement of nonprofits is an es- ntial element to the credit and express dismay at the relatively utilization levels by nonprofits. Others respond that the credit ould be structured to provide low-income housing in the most ef- ient way allowable under the Internal Revenue Code. In any ent, further detailed study and information gathering is neces- y for Congress to make an informed decision on the issue.

d. Utilization of the credit among the States

Experience among the States in utilization of allocation has ried; however, the general trend has been towards more com- te utilization. In any effort to improve utilization through modi- ation of the credit, at least three areas may deserve more atten- n: (1) activities of the allocating agency; (2) level of other subsi- s by State and local governments; and (3) operation of the credit rural and urban areas.

tivities of the allocating agency

Under the low-income housing credit, the allocating agency has e responsibility for allocating credits in an amount not to exceed credit cap. Any other rights and responsiblities of the agency ve not been clearly delineated. There are proposals discussed ove (see II. B.2.a. and b., above) to require allocating agencies to epare allocation plans and perform project evaluations. Another ernative would be to have the agency take a more active rule in ocating the credit to more projects.

Some argue that there would be an appearance of impropriety if ocating agencies where to solicit project bids. The counterargu- ent is that the operation of the allocating agency within certain eguards may increase investor and developer awareness of the edit.

Level of subsidy by State and local governments

The credit was originally designed to be used to encourage l income housing in conjunction with other State and local partici tion. In at least some instances, the credit must be used as a sta alone subsidy simply because of lack of participation by State a local government. There is also some indication that in some ar the credit alone has not been enough to support the provision low-income housing.

Rural/urban area utilization

There has been some discussion involving the relative utilizat of the credit between rural and urban areas. The degree to wh utilization differs between rural and urban areas may relate to ative median incomes or to other factors. One such factor is the eration of a low-interest loan program available in rural ar through the Farmers Home Administration. More complete disc sion of these issues will be possible as more complete data are lected.

e. Ways to improve utilization

Level of subsidy

One way to improve investment in credit projects would be to crease the level of Federal tax benefits flowing to each proj Those who favor this approach argue that the benefit of the cre and other Federal tax provisions should be used to encourage p ticipation by private investors in the provision of housing to l income individuals. Others respond that the credit is not inten to provide the sole source of subsidy, but that ways should be de oped to encourage other entities such as State or local governme to participate.

Allocating agencies

Some assert that the allocating agency should take a more act role in promoting use of the credit. This may be accomplisl through some form of subsidy or penalty (or a combination there intended to encourage participation by the allocating ager Others respond that forces beyond the control of the allocat agency may be responsible for low utilization and in which c any subsidies or penalties would have little or even a detrimer effect.

Permanent extension and reduced complexity

Permanent or longer-term extension of the credit would prov more certainty in the market for investors. This certainty wo encourage participation of more corporations and others who n be more risk averse. While a permanent extension may have t effect, Federal budget constraints lessen the possibility of such l islation. Indeed, utilization has increased rapidly nonetheless.

Some argue that significant reductions in the complexity in credit would lead to increased and more efficient utilizati Others respond that, notwithstanding the complexity, each elem of the credit represents an implementation of some Congressio policy.

Efficiency of the credit

a. Transaction and operating costs

Currently, the credit places no limits on the amounts of transaction and operating costs associated with a credit project. Examples such costs are developers' fees, syndication fees, legal and engineering costs and management contracts. The Congress is concerned that the high level of such fees may limit the efficiency of credit. In some instances transaction costs, including developers' fees, may approach 50 percent of total project costs.

Some argue that Congress should limit such transaction costs. Proposals include a definition of allowable costs or more simply a on total transaction costs. Opponents respond that competition the market will control excessive costs and that an attempt by Congress to impose limits may be inappropriate to certain projects and generally may impinge on the flexibility of individuals to structure their deals.

b. Capitalization of fees

Generally, the eligible basis of an existing building includes its acquisition cost plus amounts chargeable to capital account and incurred by the taxpayer (before the close of the first taxable year of credit period for such building) for property (or additions or improvements to property) of a character subject to the allowance for depreciation. The eligible basis for a new building is its adjusted basis. There is some indication that guidance is necessary to assist taxpayers in determining the eligible basis in credit property. Specifically the tax treatment of certain fees and transaction costs in relation to the credit may need clarification.

III. TAX CREDIT FOR REHABILITATION EXPENDITURI

A. Present Law

1. General rules for the rehabilitation tax credit

Present law provides an income tax credit for certain expe tures incurred in rehabilitating certified historic structures certain nonresidential buildings placed in service before 1936. amount of the credit is determined by multiplying the applic rehabilitation percentage by the basis of the property that is at utable to qualified rehabilitation expenditures. The applicabl habilitation percentage is 20 percent for certified historic s tures and 10 percent for qualified rehabilitated buildings (o than certified historic structures) that were originally place service before 1936.

Eligibility for 10-percent credit

A nonresidential building that was originally placed in se before 1936 is eligible for the 10-percent rehabilitation credit if the building is substantially rehabilitated and a specific po of the existing structure of the building is retained in place completion of the rehabilitation. For this purpose, a building is sidered substantially rehabilitated only if the qualified rehabi tion expenditures incurred during a 24-month period selecte the taxpayer exceed the greater of (1) the adjusted basis of building as of the later of the first day of the 24-month perio the beginning of the taxpayer's holding period for the buildin (2) $5,000. In the case of any rehabilitation that is reasonabl pected to be completed in phases set forth in architectural plar specifications completed before the rehabilitation begins, a month period is to be employed rather than the 24-month pe

A building satisfies the structural requirement only if (1) at l 50 percent of the existing external walls of the building are tained in place as external walls, (2) at least 75 percent of the e ing external walls of the building are retained in place as inte or external walls, and (3) at least 75 percent of the existing ir nal structural framework of the building is retained in place. purposes of this requirement, the internal structural framewor a building includes all load-bearing internal walls and any o internal structural supports, including columns, girders, be trusses, and spandrels, that are essential to the stability of building.

Eligibility for 20-percent credit

A residential or nonresidential building is eligible for the 20- cent credit that applies to certified historic structures only if building is substantially rehabilitated (as determined under the bility rules for the 10-percent credit). In addition, the building ust be listed in the National Register or the building must be lo- ted in a registered historic district and must be certified by the cretary of the Interior as being of historical significance to the strict. While the structural requirement that applies for purposes the 10-percent credit is inapplicable to certified historic struc- res, the Secretary of the Interior is expected to deny certification cases of substantial new construction rather than rehabilitation.

finition of qualified rehabilitation expenditure

The income tax credit for rehabilitation expenditures is only ailable with respect to the the portion of the basis of the reha- litated building that is attributable to qualified rehabilitation ex- nditures. A qualified rehabilitation expenditure is defined as any penditure that is incurred in connection with the rehabilitation a building which is eligible for the rehabilitation credit and that properly chargeable to a capital account with respect to certain preciable real property. A qualified rehabilitation expenditure, wever, does not include the cost of acquiring a building or any terest in the building (such as a leasehold interest), the cost of cilities related to a building (such as a parking lot), or any ex- nditure that is attributable to the enlargement of an existing ilding.

In addition, an expenditure is not a qualified rehabilitation ex- nditure unless the amount of depreciation or cost recovery allow- ce with respect to the expenditure is determined under the raight line method. Finally, any expenditure incurred by the ssee of a building is not a qualified rehabilitation expenditure if the date the rehabilitation is completed, the remaining term of e lease (determined without regard to any renewal periods) is ss than the recovery period for the building (generally, 27.5 years r residential rental buildings and 31.5 years for nonresidential ildings).

isis reduction and credit recapture

The basis of any property that is eligible for the rehabilitation edit is reduced by the full amount of the allowable credit. Conse- iently, no cost recovery allowance or depreciation deduction is al- wed for rehabilitation expenditures that are considered funded by e rehabilitation credit.

In addition, the rehabilitation credit is subject to recapture (*i.e.*, e amount of income tax is increased by all or a portion of the edit) if the rehabilitated building is disposed of or otherwise ases to be qualified investment property at any time during the e year period that begins after the year that the rehabilitated operty is placed in service. For this purpose, a certified historic ructure ceases to be qualified investment property if the Secre- ry of the Interior decertifies the structure.

Other applicable restrictions on the rehabilitation tax credit

a. At-risk rules

The investment tax credit at-risk rules apply to activities involv- g real estate where a credit is otherwise allowable, including the rehabilitation credit. The investment tax credit at-risk rules lir the credit base of property. The rules generally provide that non course debt is treated as an amount at risk for credit purpo: where (1) it is borrowed from an unrelated commercial lender, represents a loan from or is guaranteed by certain governmen entities; (2) the property was acquired from an unrelated person; the lender is not a person from whom the taxpayer acquired t property (and is unrelated to such a person); (4) the lender or a lated person does not receive a fee with respect to the taxpaye investment in the property; (5) the debt is not convertible debt a (6) the nonrecourse debt does not exceed 80 percent of the cre base of the property.

b. Restrictions on deductions and credits arising from pass activities

The rehabilitation credit, like the low-income housing credit, subject to the limitation on losses and credits from passive acti ties with a $25,000 deduction equivalent allowance for credits fr rental real estate activities. (This rule is discussed in more detail II.A.2.b., above.)

c. Restrictions on use of credit to offset tax

The rehabilitation credit is subject to the rules of the gene business credit (sec. 38), including the maximum amount of inco tax liability that may be reduced by a general business credit any one year. This limitation generally is equal to the excess any) of the taxpayer's net income tax over the greater of (1) t taxpayer's tentative minimum tax for the year, or (2) 25 percent so much of the taxpayer's net regular tax liability as excee $25,000.

The rules for credit carryovers provide that unused credits any taxable year may be carried back to each of the three prec ing taxable years and then carried forward to each of the 15 follo ing years.

B. Issues Relating to the Rehabilitation Tax Credit

Some argue that imposition of the passive loss restrictions, w the purpose of limiting abusive tax shelters, has curtailed rehab tation activities. They argue that utilization of the rehabilitati credit has been limited to a degree greater than necessary to cu tax shelter activity, and point to the decline in utilization of t credit in recent years. Thus, they argue, the passive loss ru should be modified with respect to the rehabilitation credit.

Others have suggested that modifying the passive loss restr tions applicable to credit use would not increase actual rehabili tion activities with respect to old and historic structures. Th argue that modifying the passive loss limitations on use of t credit by individuals with adjusted gross income over $250,(would merely serve to create tax shelter opportunities for t wealthy. In addition, they point out that the rehabilitation credit available, without the application of any passive loss restrictio to widely held corporations.

IV. APPENDICES

A. Economic Issues Arising From Tax Preferences for Low-Income Rental Housing

ıs is the case with direct expenditures, the tax system may be d to improve housing opportunities for low-income families ıer by subsidizing rental payments (increasing demand) or by sidizing construction and rehabilitation (increasing supply) of -income housing units.

xcluding the value of Section 8 housing vouchers from taxable ome is an example of a demand subsidy. By subsidizing a por-ı of rent payments, these vouchers enable beneficiaries to rent re or better housing than they might otherwise be able to ›rd. The low-income housing tax credit is an example of a supply sidy. By offering a credit worth 70 percent of construction costs, nduces investors to provide housing which otherwise would not built.

iciency of tax subsidies

oth direct expenditures and tax subsidies for rental payments y not increase housing consumption dollar for dollar. One study he Section 8 Existing Housing Program suggests that, for every 0 of rent subsidy, a typical family increases its expenditure on ısing by $22 and increases its expenditure on other goods by .[10] While the additional $78 spent on other goods certainly ben-s the family, the $100 rent subsidy does not increase their hous-expenditures by $100.

he theory of subsidizing demand assumes that, by providing -income families with more spending power, their increase in nand for housing will ultimately lead to more or better housing ng available in the market. However, if the supply of housing to se families does not respond to the higher market prices that t subsidies ultimately cause, the result will be that all existing ısing costs more, the low-income tenants will have no better ng conditions than before, and other tenants will face higher ts. The benefit of the subsidy will accrue primarily to landlords ause of the higher rents.

upply subsidy programs can suffer from similar inefficiencies. If eveloper had planned to build low-income rental units prior to creation of the low-income housing tax credit, the developer y now find that the project qualifies for the credit. That is, the sidized project may displace what otherwise would have been an subsidized project with no net gain in number of low-income ısing projects. If this is the case, the tax expenditure of the

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See, W. Reeder, "The Benefits and Costs of the Section 8 Existing Housing Program," *Jour-of Public Economics*, 26, 1985.

credit will result in little benefit except to the extent that the cr
it's targeting rules may force the developer to serve lower-inco
individuals than otherwise would have been the case.

One study of government-subsidized housing starts between 1
and 1977 suggests that as many as 85 percent of the governme
subsidized housing starts may have merely displaced unsubsidi
housing starts.[11] This figure is based on both moderate- and l
income housing starts, and therefore may overstate potential ine
ciency of tax subsidies for low-income housing. Displacement
more likely to occur when the subsidy is directed at projects
private market would have produced anyway.[12] Displacement
also more likely to occur if the number of subsidies granted
small relative to private market activity because there is more p
sibility for substitution. Thus, if relatively small private market
tivity exists for low-income housing, a supply subsidy is more lik
to produce a net gain in available low-income housing units
cause the subsidy is less likely to displace otherwise plan
market activity.

Many believe that tax-based supply subsidies do not produce s
nificant displacement within the low-income housing market
cause they believe that low income housing is unprofitable and
private market would not otherwise build new housing for l
income individuals. Under this theory, tax-subsidized low-inco
housing starts would not displace unsubsidized low-income hous
starts.

The tax subsidy for low-income housing construction could
place construction of other housing. Constructing rental hous
requires specialized resources. A tax subsidy for low-income ho
ing may induce these resources to be devoted to the constructio
low-income housing rather than other housing. If most of the ex
ing low-income housing stock originally was built to serve nonl
income individuals, a tax subsidy to low-income housing could
place some privately supplied low-income housing in the long r

Targeting the benefits of tax subsidies

Since the basic principle of demand subsidies is to put more c
in the hands of consumers, targeting the recipients of the subs
is not a difficult job. For example, the use of a tax deduction or
credit could be limited to individuals whose income is less t
some specified amount. However, such demand-side tax subsid
are not without problems for targeting recipients.

If a low-income tax subsidy is structured as a tax deducti
many low-income individuals might not be able to take advant
of the subsidy. Utilizing a tax deduction requires taxable inco
and the Tax Reform Act of 1986 eliminated any tax liability
many low-income families. Even if the tax subsidy were structu
as a credit, the credit would have to be refundable (i.e., the cr
would have to be payable without regard to tax liability) for an

[11] *See* M. Murray, "Subsidized and Unsubsidized Housing Starts: 1961-1977," *The Revi Economics and Statistics*, 65, November 1983.

[12] For example, a mortgage subsidy for single-family housing may be a ready substitut conventional mortgages available in the private market place. The effect of the subsidized gage may be to reduce the supply of unsubsidized mortgages since the money is borrowed the same pool of private investors.

potential benefits to reach low-income families who have no tax oility.[13] Even if the credit were refundable, some low-income nilies either may not file tax returns or may not be aware of ir eligibility for the credit and, as a result, the potential benefits ld go unclaimed. A refundable demand-side tax credit would e to be payable more frequently than annually to assist low-ome taxpayers in meeting rent commitments. A refundable dit would require creating a distribution system to get the funds the hands of the recipients, which could present significant ad-nistrative difficulties, particularly if the recipient were unem-yed.[14] Thus, some might contend that a demand subsidy may be ninistered most efficiently as a spending program (e.g., Section 8 ichers) rather than through the tax system.

dits versus deductions

tax subsidy may be structured as either a deduction or a dit. Deductions yield different dollar amounts of tax benefits de-iding upon the taxpayer's marginal tax rate. In the case of a nand subsidy, as a taxpayer's income and marginal tax rate in-ases, the tax subsidy provided to the taxpayer also increases be-ise each dollar of deduction offsets a dollar of income that would e been taxed at a higher marginal tax rate.

n the case of a supply subsidy in the form of a deduction, if both igher tax bracket and a lower tax bracket supplier find it profit-e to use the deduction and provide low-income housing, the er tax bracket supplier will have supplied the housing at less t to the government, even though both suppliers provide the ne amount of housing. For the same dollar amount of deduction, higher tax bracket supplier of housing receives more dollars of benefit than the lower tax bracket supplier.

ax credits yield the same dollar of tax benefit to all recipients l therefore do not favor higher income taxpayers.[15] Thus, the -income housing credit yields the same tax benefit to all inves-s.

Refundable tax credits (other than the earned income credit) are treated as direct outlays le budget process.

The earned income credit is payable to the employee in his paycheck.

This is not strictly true if a taxpayer has an insufficient tax liability to utilize fully the it and the credit is not refundable.

B. Overview of Federal Low-Income Rental Housing Assistan Programs

1. Legislative background of direct expenditure programs

Pre-1974 legislation

Federal participation in the provision of low-income rental ho ing began with the United States Housing Act of 1937.[16] This provides Federal assistance for the construction of low-rent proje which were developed, owned and operated by State-charte local public housing agencies. Federal assistance is given by ann payments made under an annual contributions contract. The su dy covers the payment of annual interest and amortization bonds or notes issued by the public housing agency.[17] In respo to inflation in the 1960s, tenant rent payments were limited to more than 25 percent of income and the Department of Hous and Urban Development (HUD) was authorized to pay operat costs of projects to make up for the loss of income incurred by public housing agency because of the limitation on rent payme

Section 221(d)(3)

The Housing Act of 1937 established the Section 221 mortgage surance program providing assistance for construction and rehat tation of housing for displaced persons. This assistance was tended to low- and moderate-income families in the Housing Ac 1961 when the program was extended beyond mortgage insura to the subsidization of mortgage interest charges.

Section 202

Efforts to broaden the number of people served by the 1937 led to other assistance programs being added through time. Th assistance programs generally relied upon reducing the financ costs of new construction. For example, Section 202 of the Hous Act of 1959 provided direct loans for construction of rental u for elderly families. Construction and permanent financing lo are given for the development of rental units. As revised throu the years, this program was expanded to include low-income han capped persons and their families.

Section 236

In 1968, the Section 236 program was enacted to provide su dies to developers of rental units. These subsidies were provided

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[16] For a more complete discussion of these programs, *see*, G. Milgram, *Housing Assistan Brief History and Description of Current HUD Programs*. Congressional Research Ser Report 88-385E, May 19, 1988.

[17] In more recent years, HUD has been authorized to pay development costs through g at the beginning of development, rather than through annual payments.

form of an annual interest payment to the private lender ich reduced the effective rate of mortgage interest to one per- t. Eligibility for residency in an assisted rental project was lim- l to families with incomes below 135 percent of maximum ome for admittance to public housing in the particular area. nilies then paid at least 25 percent of income for rent. A higher ment would be necessary if the interest reduction was insuffi- it to lower rents to an amount that could be covered by the 25 cent figure. Section 236 assistance superseded the similar sec- 1 221(d)(3) program.

n the early 1970s these housing programs came under criticism being excessively expensive in both initial construction costs operating expenses, and subject to unacceptably high rates of ault and foreclosure. In response to the criticism, a moratorium all new activities under the major subsidy programs was im- ed after January 5, 1973. Since that time, no additional units e been financed with Section 236 rental housing assistance, al- ugh long-term contracts continue to be honored.

4 Act—"Section 8"—program

he Housing and Community Development Act of 1974 created a program popularly referred to as "Section 8." This law amend- Section 8 of the Housing Act of 1937 to provide a payment made HUD on behalf of the tenant to a landlord. The tenant must re- e a certificate of eligibility from the local public housing agency must find his or her own housing. The payment to the landlord ne difference between the tenant's rent payment, which is limit- o 30 percent of the tenant's income, and the contract rent. The tract rent generally may not exceed the HUD established fair ket rent. The law permits the subsidy amount to increase an- lly as rents in the local area increase.

3 Act

rior to the Housing and Urban-Rural Recovery Act of 1983, sec- 8 housing units could be either in existing housing, or in new struction or substantially rehabilitated units which were built er a commitment from HUD that Section 8 subsidies would be l to eligible tenants when development was completed. The 1983 removed authorization for additional new construction or sub- ntial rehabilitation.

Housing vouchers

housing voucher program was adopted in 1983 as a demonstra- program. The housing voucher program is technically a part of Section 8 program and is similar to the Section 8 Existing ising (Certificate) Program in providing a subsidy for rent pay- nts to landlords on behalf of tenants. In the voucher program, D pays the difference between 30 percent of the tenant's income the HUD- established fair market rent. Unlike the Section 8 ificates, the tenant and landlord establish the contract rent, ch may exceed the fair market rent. Consequently, the tenant pay more than 30 percent of his income in rent.

Section 17

The 1983 Act created Rental Housing Rehabilitation and Pro tion Grants. The rehabilitation part of the program provides gr for moderate rehabilitation of units in neighborhoods in which median income is not greater than 80 percent of the area me income. The grant may finance no more than 50 percent of all and cannot exceed $5,000 per unit. Rehabilitations are restricte correct substandard conditions, make essential improvements repair major systems in danger of failure. All assistance must efit low-income families.

The program also makes available grants for new constru and substantial rehabilitation. Demonstration of a shortage c fordable rental housing, minimization of displacement, and co bution to neighborhood conservation constitute some of the n selection criteria.

Farmers Home Administration programs

In addition to programs administered by HUD, the Departr of Agriculture, through the Farmers Home Administra ("FmHA"), provides rental housing assistance primarily targete rural areas.[18]

Section 515

The Senior Citizens Housing Act of 1962 amended the Hou Act of 1949 by adding Section 515. Under Section 515, Fr makes loans to developers of rental housing at a one-percent i est rate, repayable over 50 years. The assisted housing must b cated in rural areas and must be made available to low- and erate-income families at affordable rates.

Section 521

In 1968, Section 521 was added to the Housing Act of 194 enable FmHA to make loans available to nonprofit develope rural, rental housing. The loans may be originated with int rates as low as one percent.

In 1974, Section 521 was amended to authorize FmHA to pro rental assistance payments to owners of FmHA-financed re housing. Amendments in 1983 provided that the rent paym made by eligible families would be the greatest of (1) 30 perce monthly adjusted family income, (2) 10 percent of monthly inc or (3) for welfare recipients, that portion of the family's we payment that is designated for housing costs. FmHA pays rental assistance payments directly to the borrowers to mak the difference between the tenants' payments and the FmHA proved rent for the units. The term of the rental assistance a ment is 20 years for new construction and 5 years for exis projects.

[18] For a more complete discussion of FmHA programs, *see*, B. E. Foote, *Rural Housin grams of the Farmers Home Administration: Brief Descriptions and Budget Data*, Congres Research Service, Report 87-171E, March 3, 1987.

iiform requirements

As different programs were added in a piecemeal manner, differ-t programs often had different eligibility or rent requirements. ›w the requirements are uniform across programs. Eligible ten-ts must have incomes under 80 percent of the median income in e local housing market, adjusted for family size. The tenant's t-of-pocket contribution toward rent, which includes both pay-ent for shelter and utilities, cannot exceed 30 percent of income.

Scope of Federal housing programs; rehabilitation tax credits

JD programs

While the growth in the number of assisted housing units has ›wed during the 1980s, there were nearly 1 million more assisted using units at the end of 1988 than in 1980. The total stock of JD-assisted housing is in excess of 4 million units. Table 1 re-rts the stock of HUD-assisted housing by program type. Section 8 the program that provides the largest number of assisted units. the end of fiscal 1988, over 2.3 million households received as-tance through receipt of a Section 8 subsidy payment. More than lf of these were in the existing housing program. Conventional blic housing currently houses some 1.25 million families.[19]

G. Milgram, *Urban Housing Assistance Programs in the United States*, Congressional Re-ch Service, Report 89-137E, March 2, 1989.

Table 1.—Stock of HUD-Assisted Housing Units by Program, Selected Fiscal Years 1955–1988

[Number of units in thousands]

End of fiscal year	Net total	Section 236 units with Section 8 or rent supp.	Gross total	Public housing[1]	Rent supp.	Section 235	Section 236	Section 8 (including voucher)
1955	414	NA	414	414	NA	NA	NA	NA
1960	477	NA	477	477	NA	NA	NA	NA
1965	605	NA	605	605	NA	NA	NA	NA
1970	967	NA	967	865	31	66	5	NA
1975	2,126	NA	2,126	1,151	165	409	400	NA
1980	3,268	NA	3,268	1,192	165	219	538	1,153
1981	3,297	161	3,458	1,204	158	241	537	1,319
1982	3,508	174	3,682	1,224	153	542	537	1,527
1983	3,631	208	3,840	1,250	77	230	533	1,780
1984	3,860	178	4,038	1,332	56	209	531	1,910
1985	3,943	196	4,140	1,355	46	199	528	2,010
1986	4,077	192	4,269	1,380	34	182	529	2,143
1987	4,151	189	4,341	1,390	23	158	528	2,240
1988	4,233	203	4,435	1,398	23	148	528	2,338

NA: Not applicable.
[1] Excluding Indian housing.

Source: G. Milgram, *Urban Housing Assistance Programs in the United States,* Congressional Research Service, Report 89-137E, March 2, 1989.

'ables 2 and 3 show that expenditure on and growth of public ısing has slowed considerably over the past 10 years. Table 2 re- ts annual additions to the assisted housing stock. Section 8 is program currently adding the most units to the subsidized ısing stock, although at a lower rate than in previous years. ısing vouchers are funding larger proportions of Section 8 as- ance. In fiscal year 1986, 36,000 of the units were assisted by ıchers, and funding plans call for 48,500 vouchers for fiscal 1989. ɛr the same period, the authorizations for Section 8 certificates 'e dropped from 39,000 to 18,333.[20] Table 3 documents the de- ıe in expenditure on the Section 8 and other housing programs.

ıble 2.—Newly Reserved Units in Public Housing and Section 8 Assistance, Fiscal Years 1977–1988

[Number of units in thousands]

scal year	Total [1]	Total NC&SR [2]	Total existing	Section 8		Public housing, NC&SR [2]
				NC&SR [2]	Existing	
7	362.9	201.3	161.6	169.4	161.6	31.9
8	313.9	178.4	135.5	122.0	135.5	56.3
9	324.7	200.0	124.7	145.0	124.7	54.9
0	205.9	129.4	76.5	97.8	76.4	36.7
1	220.1	109.8	110.3	73.9	110.3	35.9
2	145.5	39.6	105.9	27.5	105.9	12.1
3	146.7	18.1	128.6	15.6	128.6	2.5
4	151.7	21.8	129.9	14.4	129.9	7.4
5	125.5	20.3	105.2	12.6	105.2	7.6
6	106.3	16.9	89.4	11.5	88.7	6.1
7	99.6	21.2	78.5	12.6	77.5	9.8
8	92.6	20.7	71.9	11.3	70.7	9.4

Until fiscal 1980, units reserved are reported on a net basis, exclusive of units ptured from previous reservations. In fiscal 1981 and thereafter, the data are ı gross basis.

New construction and substantial rehabilitation.

ɔurce: G. Milgram, *Trends in Funding and Numbers of Households in HUD- sted Housing, Fiscal Years 1975–1989*, Congressional Research Service, Report ?00E, March 9, 1989, and G. Milgram, *Trends in Funding and Numbers of seholds in HUD-Assisted Housing, Fiscal Years 1975–1988*, Congressional Re- ch Service, Report 88-340E, May 31, 1988.

Ibid.

Table 3.—Use of Budget Authority for Public Housing and Sect 8 Assistance, Fiscal Years 1977–1988

[Dollar amounts in billions]

Fiscal Year	Total [1]	Total NC&SR [2]	Total existing	Section 8 NC&SR [2]	Section 8 Exist-ing	Pul hous NC&
1977	$27.8	$21.8	$6.0	$18.9	$4.9	[illegible]
1978	25.3	19.8	5.5	13.3	4.8	
1979	28.2	23.1	5.1	16.4	5.1	
1980	19.3	15.2	4.1	10.7	4.1	
1981	21.0	14.9	6.1	10.2	6.1	
1982	10.3	5.4	4.9	3.7	4.9	
1983	8.6	2.3	6.3	2.0	6.3	
1984	8.1	3.1	5.0	1.9	5.0	
1985	7.8	2.7	5.1	1.5	5.1	
1986	7.3	2.8	4.5	1.6	4.5	
1987	5.4	2.3	3.1	1.6	3.1	
1988	5.5	2.2	3.3	1.5	3.3	

[1] Until fiscal 1980, units reserved are reported on a net basis, exclusive of u recaptured from previous reservations. In fiscal 1981 and thereafter, the data on a gross basis.

[2] New construction and substantial rehabilitation.

Source: G. Milgram, *Trends in Funding and Numbers of Households in H Assisted Housing, Fiscal Years 1975–1989, supra.*, and G. Milgram, *Trend Funding and Numbers of Households in HUD-Assisted Housing, Fiscal Years 1 1988*, Congressional Research Service, Report 88–340E, May 31, 1988.

Loans under Section 202 have typically been combined with sistance under Section 8. Loans under Section 202 have also dv dled in recent years. In fiscal 1981, permissible loan funds reac their peak of $895.8 million. In fiscal 1988, loan funds were limi to $565.8 million. Nevertheless, by the end of fiscal 1988, more tl 150,000 units had been completed with the assistance of Section funds in concert with Section 8.

Approximately 600,000 units were built under the Section program of which 528,000 units remain in the program. Of t total, 203,000 receive Section 8 assistance. Another approximat 70,000 units are in service with the assistance of Section 221.

FmHA programs

The current stock of FmHA-assisted housing is approximat 350,000 units under the Section 515 program. A decade earlier stock of such housing was 160,000 units. Between 1978 and 19 the number of units assisted under Section 521 has grown fror total of 20,000 units to nearly 150,000 units. Tables 4 and 5 do ment the activity of the FmHA in providing assisted rental hous in recent years. As with the HUD programs, the number of new additions to the FmHA-assisted housing stock has declinec ent years. It is important to note that the assisted units report- in Table 5 under the Section 521 program are not in addition to se of Section 515, but rather generally represent a subset of se assisted under Section 515.[21]

ɔle 4.—Net New Additions to Assisted Housing Stock Loan)bligations and Units Assisted Under Section 515, Fiscal Years 977–1987

[Dollars in millions]

Fiscal year	Loan obligations	units
7	$555	32,056
8	676	34,300
9	870	38,650
0	881	33,100
1	865	29,500
2	954	30,500
3	802	24,200
4	919	27,100
5	903	25,687
6	652	21,266
7 (estimate)	670	21,233

ırce: B.E. Foote, *Rural Housing Programs of the Farmers Home Administra- Brief Descriptions and Budget Data,* Congressional Research Service, Report 71E, March 3, 1987.

ɔle 5.—Net New Additions to Assisted Housing Stock Units Assisted Under Section 521, Fiscal Years 1977–1987

Fiscal year	Units
8	20,000
9	22,623
0	20,000
1	17,655
2	14,280
3	11,746
4	10,750
5	15,250
6	14,511
7 (estimate)	14,511

urce: B.E. Foote, *Rural Housing Programs of the Farmers Home Administra- Brief Description and Budget Data, supra.*

Section 521 rental assistance also may be provided to farm laborers who live in housing ced under the FmHA Section 514 program for farm laborers.

Rehabilitation tax credits

The number and dollar value of rehabilitation projects utili rehabilitation tax credits has declined in recent years. The num of rehabilitation projects approved by the Department of the Int or grew steadily from 635 projects in fiscal year 1979 to 3,21 fiscal year 1984. Since 1984 the number of approved rehabilita projects has declined, falling to 3,117 in fiscal year 1985, to 2,96 fiscal year 1986, to 1,931 in fiscal year 1987, and to 1,092 in fi year 1988.[22]

Concomitantly with the rise in project approvals in the 1970's and early 1980's, the dollars of private investment com ted to rehabilitation projects increased from $.3 billion in fi year 1979 to a peak of $2.4 billion in fiscal year 1985. The pri dollars invested in rehabilitation projects has fallen in each fiscal years 1986, 1987, and 1988. In 1986, the total was nearly billion. In 1987, the total was $1.1 billion. And, in 1988, the t was approximately $.9 billion.[23] The number of projects and total investment dollars for fiscal year 1988 exceed the total 1 levels.

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[22] Betsey Chittenden, *Tax Incentives for Rehabilitating Historic Buildings: Fiscal Year Analysis*, Preservation Assistance Division, National Park Service, Department of the Int November 1988.
[23] *Ibid.*