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HUD Amends DDA, QCT Effective Dates for LIHTC and Bond Purposes

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The U.S. Department of Housing and Urban Development (HUD) last month published a notice extending eligibility for areas that were designated as difficult development areas (DDAs) in 2003, but not in 2004. In the notice, HUD says that a "reasonable accommodation should be made to allow the DDA and qualified census tract (QCT) features of the low-income housing tax credit (LIHTC) to work effectively." HUD says it is revising the definition of effective date of the 2004 DDAs because tying the effective date of DDAs and QCTs to the allocation of LIHTCs (or the issuance of tax-exempt bonds and placement in service) without regard to the application date for these federal subsidies increases uncertainty in the development and financing process of affordable rental housing in areas that lose DDA or QCT designations.

Background

On December 19, 2003, HUD published a notice in the *Federal Register* designating DDAs and QCTs for calendar year 2004. The 2004 notice provides that the lists of DDAs are effective if LIHTCs are allocated after December 31, 2003; and, in the case of a building described in Section 42(h)(4)(B) of the Internal Revenue Code (IRC), the lists are effective if tax-exempt bonds are issued and the building is placed in service after December 31, 2003.

IRC Section 42(d)(5)(C) defines a DDA as any area designated by the Secretary of HUD as an area that has high construction, land and utility costs relative to the area median gross income (AMGI). All designated DDAs in metropolitan statistical areas (MSAs) may not contain more than 20 percent of the aggregate population of all MSAs, and all designated areas not in MSAs (nonmetropolitan areas) may not contain more than 20 percent of

the aggregate population of all nonmetropolitan areas. In the case of buildings located in DDAs, eligible basis can be increased by as much as 130 percent of what it would otherwise be. This means that the available LIHTCs also can be increased by as much as 30 percent.

HUD typically issues a notice designating DDAs for the forthcoming calendar year in the *Federal Register* in the last quarter of a calendar year. HUD uses a ranking procedure to select DDAs, subject to the 20 percent population cap. Because income and housing cost conditions change, new areas are added each year to the lists of designated DDAs and some old areas are dropped from the lists. For example, HUD says the 2004 lists published on December 19, 2003, no longer include 10 metropolitan areas and 68 nonmetropolitan areas that were included on the 2003 DDA list. The 2004 list also includes three new metropolitan areas and 47 new nonmetropolitan areas not on the 2003 list.

Effective Dates Amended

In the November 2 notice, HUD says it recognizes that with every new designation of DDAs, some metropolitan areas and nonmetropolitan areas lose their designation and rental projects planned in these areas lose their eligibility for extra LIHTCs. Nevertheless, HUD says it believes that the department should update the lists of designated areas as new data become available.

LIHTC allocating agencies and rental project developers have adjusted to a system in which the future availability of the extra LIHTCs is uncertain. Generally, for any rental project that an LIHTC allocating agency believes is crucial to meeting the housing needs of the area and for which the extra credits are essential for economic feasibility, HUD says the LIHTC allocating agency

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ensures that all the steps necessary to qualify are accomplished before a new designation list becomes effective. HUD explained in the notice that it generally attempts to publish the designation notice early enough to allow state allocating agencies to accomplish the necessary steps. However, in this instance, because HUD did not publish the 2004 notice until December 19, 2003 and, the notice says, this did not provide adequate time before the effective date for allocating agencies or applicants for LIHTCs or tax-exempt bond financing to take actions to meet the conditions necessary to capture the benefits of the 2003 DDA designations before they expired.

In addition, HUD noted in its statement that the practice of tying the effective date of DDAs and QCTs to the allocation date, without regard to the application date, creates a potential disruption to the financing and development plans for buildings to be constructed or rehabilitated in areas that lose DDA or QCT designations after LIHTC (or tax-exempt bond financing) are applied for and before the allocations of credits are made (or the bonds are issued and the building is placed in service). HUD also asserted that it seeks to reduce the uncertainty and ease the transition associated with the changes in DDA and QCT designations for allocating agencies and affordable housing developers, while ensuring that the additional resources governed by these designations are directed to the areas where the need is greatest.

In last month's notice, HUD stated that a "reasonable accommodation should be made to allow the DDA and QCT features of the LIHTC to work effectively." Because the late publication of the 2004 notice impeded the effectiveness of the DDA feature of the LIHTC, HUD amended the effective date published in the 2004 notice. And because tying the effective date of DDAs and QCTs to the allocation of credits (or the issuance of tax-exempt bonds and placement in service) without regard to the application date for these federal subsidies increases uncertainty in the development and financing process of affordable rental housing in areas that lose DDA or QCT designations, HUD also revised the definition of effective date published in the 2004 notice.

Complete details regarding the new effective dates can be found in the *Federal Register* notice, dated November 2, 2004, which is available online at www.novoco.com/Huddata/. ❖

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