

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4889-N-08]

**Statutorily Mandated Designation of Difficult Development Areas
and Qualified Census Tracts
for Section 42 of the Internal Revenue Code of 1986**

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: This document designates “Difficult Development Areas” (DDAs) and “Qualified Census Tracts” (QCTs) for purposes of the Low-Income Housing Tax Credit (LIHTC) under Section 42 of the Internal Revenue Code of 1986 (the Code) (26 U.S.C. 42). The United States Department of Housing and Urban Development (HUD) makes new DDA designations annually and is making new designation of QCTs at this time on the basis of revised metropolitan statistical area (MSA) definitions published by the Office of Management and Budget (OMB) and on the basis of more detailed census tract income distribution data from the 2000 Census.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions, contact Michael K. Hollar, Economist, Economic Development and Public Finance Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-6000, telephone (202) 708-0426 x5878, or send an email to Michael_K._Hollar@hud.gov. For specific legal questions pertaining to Section 42, contact Branch 5, Office of the Associate Chief Counsel, Passthroughs and Special Industries, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, telephone (202) 622-3040. For questions about the “HUB Zones” program, contact Michael P. McHale, Assistant Administrator for Procurement

Policy, Office of Government Contracting, Small Business Administration, 409 Third Street, SW, Suite 8800, Washington, DC 20416, telephone (202) 205-8885, fax (202) 205-7167, or send an email to hubzone@sba.gov. A text telephone is available for persons with hearing or speech impairments at (202) 708-9300. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUD User at (800) 245-2691 for a small fee to cover duplication and mailing costs.

COPIES AVAILABLE ELECTRONICALLY: This notice and additional information about DDAs and QCTs are available electronically on the Internet at <http://www.huduser.org/datasets/qct.html>.

SUPPLEMENTARY INFORMATION:

This Document

This notice designates DDAs for each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. The designations of DDAs in this notice are based on final Fiscal Year (FY) 2006 Fair Market Rents (FMRs), FY2006 income limits, and 2000 Census population counts as explained below. This notice also lists those areas treated as DDAs under the Gulf Opportunity Zone Act of 2005 (P.L. 109-135; the GO Zone Act). Specifically, the GO Zone Act provides that areas determined by the President to warrant individual or individual and public assistance from the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance (Stafford Act) as a result of Hurricanes Katrina, Rita, or Wilma shall be treated as DDAs designated under subclause (I) of Internal Revenue Code section 42(d)(5)(C)(iii) (i.e., areas designated by the Secretary of Housing and Urban Development as having high construction, land, and utility costs relative to area median gross income (AMGI)), and shall not be taken into account for purposes

of applying the limitation under subclause II of such section (i.e., the 20 percent cap on the total population of designated areas).

This notice designates QCTs for each of the 50 states, the District of Columbia, and Puerto Rico based on new MSA definitions published by the Office of Management and Budget (OMB) and new detailed data on census tract household income distributions from the 2000 Census. The designations of QCTs under Section 42 of the Internal Revenue Code published December 12, 2002, (67 FR 76451) for the U.S. Virgin Islands, and on December 19, 2003, (68 FR 70982) for American Samoa, Guam, and the Northern Mariana Islands, remain in effect because these areas are not affected by new metropolitan area definitions or the release of more detailed 2000 Census data on household incomes.

2000 Census

Data from the 2000 Census on total population of metropolitan areas and nonmetropolitan areas are used in the designation of DDAs. OMB published new metropolitan area definitions incorporating 2000 Census data first in OMB Bulletin No. 03-04 on June 6, 2003, and updated periodically through OMB Bulletin No. 06-01 on December 5, 2005. The FY2006 FMRs and FY2006 income limits used to designate DDAs are based on these new MSA definitions with modifications to account for substantial differences in rental housing markets (and in some cases median income levels) within MSAs.

HUD has obtained a more highly detailed, special tabulation of 2000 Census household income data at the census tract level than that published for general public use by the Census Bureau. HUD is using these new data to more accurately determine the eligibility of census tracts for QCT designation. This QCT designation uses the new OMB metropolitan area definitions without modification for purposes of evaluating how many census tracts can be

designated under the population cap, but uses the HUD-modified definitions and their associated area median incomes for determining QCT eligibility.

Background

The U.S. Department of the Treasury (Treasury) and its Internal Revenue Service (IRS) are authorized to interpret and enforce the provisions of the Internal Revenue Code (the Code), including the LIHTC found at Section 42 of the Code. The Secretary of HUD is required to designate DDAs and QCTs by Section 42(d)(5)(C) of the Code. In order to assist in understanding HUD's mandated designation of DDAs and QCTs for use in administering Section 42, a summary of the section is provided. The following summary does not purport to bind Treasury or the IRS in any way, nor does it purport to bind HUD, since HUD has authority to interpret or administer the Code only in instances where it receives explicit delegation.

Summary of Low-Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low-income housing. Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (credit ceiling) is limited by population. Each state is allowed a credit ceiling based on a statutory formula indicated at Section 42(h)(3). States may carry forward unallocated credits derived from the credit ceiling for one year; however, to the extent these unallocated credits are not used by then, the credits go into a national pool to be redistributed to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides Section 42 credits derived from the credit ceiling, states may also provide Section 42 credits to owners of buildings based on the percentage of certain building costs financed by tax-exempt bond

proceeds. Credits provided under the tax-exempt bond “volume cap” do not reduce the credits available from the credit ceiling.

The credits allocated to a building are based on the cost of units placed in service as low-income units under particular minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC: either 20 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the Area Median Gross Income (AMGI) or 40 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. The term “rent-restricted” means that gross rent, including an allowance for utilities, cannot exceed 30 percent of the tenant’s imputed income limitation (i.e., 50 percent or 60 percent of AMGI). The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low-income character of the building for at least an additional 15 years.

The LIHTC reduces income tax liability dollar-for-dollar. It is taken annually for a term of 10 years and is intended to yield a present value of either: (1) 70 percent of the “qualified basis” for new construction or substantial rehabilitation expenditures that are not federally subsidized (i.e., financed with tax-exempt bonds or below-market federal loans), or (2) 30 percent of the qualified basis for the cost of acquiring certain existing buildings or projects that are federally subsidized. The actual credit rates are adjusted monthly for projects placed in service after 1987 under procedures specified in Section 42. Individuals can use the credits up to a deduction equivalent of \$25,000 (the actual maximum amount of credit that an individual can claim depends on the individual’s marginal tax rate). Individuals cannot use the credits against the alternative minimum tax. Corporations, other than S or personal service corporations, can

use the credits against ordinary income tax. They cannot use the credits against the alternative minimum tax. These corporations can also deduct losses from the project.

The qualified basis represents the product of the building's "applicable fraction" and its "eligible basis." The applicable fraction is based on the number of low-income units in the building as a percentage of the total number of units, or based on the floor space of low income-units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to a capital account that are incurred prior to the end of the first taxable year in which the qualified low-income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated DDAs or designated QCTs, eligible basis can be increased by up to 130 percent from what it would otherwise be. This means that the available credits also can be increased by up to 30 percent. For example, if a 70 percent credit is available, it effectively could be increased to as much as 91 percent.

Section 42 of the Code 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 AMGI. All designated DDAs in metropolitan areas (taken together) may not contain more than 20 percent of the aggregate population of all metropolitan areas, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all nonmetropolitan areas.

The GO Zone Act provides that areas determined by the President to warrant individual or individual and public assistance from the federal government under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma shall be treated as DDAs designated under subclause I of Internal Revenue Code section 42(d)(5)(C)(iii) (i.e., areas designated by the Secretary of HUD as

having high construction, land, and utility costs relative to AMGI), and shall not be taken into account for purposes of applying the limitation under subclause II of such section (i.e., the 20 percent cap on the total population of designated areas). This notice lists the affected areas described in the GO Zone Act. Because the populations of DDAs designated under the GO Zone Act are not counted against the statutory 20 percent cap on the aggregate population of DDAs, the total population of designated metropolitan DDAs listed in this notice exceeds 20 percent of the total population of all MSAs, and the population of all nonmetropolitan DDAs listed in this notice exceeds 20 percent of the total population of nonmetropolitan counties.

Explanation of HUD Designation Methodology

A. Difficult Development Areas

This notice lists all areas determined by the President to warrant individual or individual and public assistance from the federal government under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma as DDAs according to lists of counties and parishes from the Federal Emergency Management Agency website (<http://www.fema.gov/>). Affected metropolitan areas and nonmetropolitan areas are assigned the indicator “[GO Zone]” in the lists of DDAs.

In developing the list of the remaining DDAs, HUD compared housing costs with incomes. HUD used 2000 Census population data and the MSA definitions as published in OMB Bulletin No. 06-01 on December 5, 2005, with modifications as described below. In keeping with past practice of basing the coming year’s DDA designations on data from the preceding year, the basis for these comparisons was the FY2006 HUD income limits for very low-income households (Very Low Income Limits, or VLILs), which are based on 50 percent of AMGI, and final FY2006 FMRs used for the Housing Choice Voucher program. In formulating

the FY2006 FMRs and VLILs, HUD modified the current OMB definitions of MSAs to account for substantial differences in rents among areas within each new MSA that were in different FMR areas under definitions used in prior years. HUD formed these “HUD Metro FMR Areas” (HMFAs) in cases where one or more of the parts of newly defined MSAs that previously were in separate FMR areas had 2000 Census base 40th-percentile recent mover rents that differed, by 5 percent or more, from the same statistic calculated at the MSA level. In addition, a few HMFAs were formed on the basis of very large differences in AMGIs among the MSA parts. All HMFAs are contained entirely within MSAs. All nonmetropolitan counties are outside of MSAs and are not broken up by HUD for purposes of setting FMRs and VLILs. (Complete details on HUD’s process for determining FY2006 FMR areas and FMRs are available at <http://www.huduser.org/datasets/fmr/fmrs/index.asp?data=fmr06>).

HUD’s unit of analysis for designating metropolitan DDAs, therefore, consists of: entire MSAs where these were not broken up into HMFAs for purposes of computing FMRs and VLILs; and HMFAs within the MSAs that were broken up for such purposes. Hereafter in this notice, the unit of analysis for designating metropolitan DDAs will be called the HMFA, and the unit of analysis for nonmetropolitan DDAs will be the nonmetropolitan county or county equivalent area. The procedure used in making the DDA calculations follows:

1. For each HMFA and each nonmetropolitan county, a ratio was calculated. This calculation used the final FY2006 two-bedroom FMR and the FY2006 four-person VLIL.
 - a. The numerator of the ratio was the area’s final FY2006 FMR. In general, the FMR is based on the 40th-percentile gross rent paid by recent movers to live in a two-bedroom apartment. In metropolitan areas granted a FMR based on the 50th-percentile rent for purposes of improving

the administration of HUD's Housing Choice Voucher program (see 71 FR 7832), the 40th-percentile rent was used to ensure nationwide consistency of comparisons.

b. The denominator of the ratio was the monthly LIHTC income-based rent limit, which was calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where the VLIL was rounded to the nearest \$50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent of AMGI base).

2. The ratios of the FMR to the LIHTC income-based rent limit were arrayed in descending order, separately, for HMFAs and for nonmetropolitan counties.

3. The non-GO Zone DDAs are those HMFAs and nonmetropolitan counties *not* in areas determined by the President to warrant individual or individual and public assistance from the federal government under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma with the highest ratios cumulative to 20 percent of the 2000 population of all HMFAs and of all nonmetropolitan counties, respectively.

B. Qualified Census Tracts

In developing this list of QCTs, HUD used 2000 Census 100-percent count data on total population, total households, and population in households; a special tabulation of household income at the tract level from the 2000 Census; the 2000 Census base AMGIs computed at the HMFA level as described above to determine tract eligibility; and the MSA definitions published in OMB Bulletin No. 06-01 on December 5, 2005, for determining how many eligible tracts can be designated under the statutory 20 percent population cap.

HUD uses the HMFA-level AMGIs to determine QCT eligibility because the statute, specifically 26 U.S.C. 42(d)(5)(C)(iv)(II), refers to the same section of the Code that defines income for purposes of tenant eligibility and unit maximum rent, specifically 26 U.S.C. 42(g)(4).

By rule, the IRS sets these income limits according to HUD's VLILs, which in FY2006 and thereafter are established at the HMFA level. Similarly, HUD uses the entire MSA to determine how many eligible tracts can be designated under the 20 percent population cap as required by the statute (26 U.S.C. 42(d)(5)(C)(ii)(III)), which states that MSAs should be treated as singular areas. The QCTs were determined as follows:

1. To be eligible to be designated a QCT, a census tract must have 50 percent of its households with incomes below 60 percent of the AMGI or have a poverty rate of 25 percent or more. In metropolitan areas, HUD calculates 60 percent of AMGI by multiplying by a factor of 0.6 the HMFA median family income for 1999, as estimated by HUD from 2000 Census data. Outside of metropolitan areas, HUD calculates 60 percent of AMGI by multiplying by a factor of 0.6 the state-specific, non-metropolitan balance median family income for 1999, as estimated by HUD. (For a complete listing of HMFA median family incomes for 1999, see http://www.huduser.org/datasets/il/il06/Medians_2006.pdf. For a complete listing of state non-metropolitan balance median family incomes for 1999, see http://www.huduser.org/datasets/il/il06/MedianNotice_2006.pdf.)

2. For each census tract, the percentage of households below the 60 percent income standard (income criterion) was determined by: (a) calculating the average household size of the census tract, (b) applying the income standard after adjusting it to match the average household size, and (c) calculating the number of households with incomes below the income standard. In performing this calculation, HUD used a special tabulation of household income data from the 2000 Census that provides more detail than the data on household income distribution publicly released by the Census Bureau and used in the designation of QCTs published December 12, 2002. Therefore, even in MSAs where there was no geographic change, a different set of census

tracts may be determined eligible and designated as QCTs based on these more accurate data. HUD's special tabulations of census tract household income distribution are available for download from http://qct.huduser.org/tract_data.html.

3. For each census tract, the poverty rate was determined by dividing the population with incomes below the poverty line by the population for whom poverty status has been determined.

4. QCTs are those census tracts in which 50 percent or more of the households meet the income criterion, or 25 percent or more of the population is in poverty, such that the population of all census tracts that satisfy either one or both of these criteria does not exceed 20 percent of the total population of the respective area.

5. In areas where more than 20 percent of the population resides in eligible census tracts, census tracts are designated as QCTs in accordance with the following procedure:

a. Eligible tracts are placed in one of two groups. The first group includes tracts that satisfy both the income and poverty criteria for QCTs. The second group includes tracts that satisfy either the income criterion or the poverty criterion, but not both.

b. Tracts in the first group are ranked from lowest to highest on the income criterion. Then, tracts in the first group are ranked from lowest to highest on the poverty criterion. The two ranks are averaged to yield a combined rank. The tracts are then sorted on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In the event of a tie, more populous tracts are ranked above less populous ones.

c. Tracts in the second group are ranked from lowest to highest on the income criterion. Then, tracts in the second group are ranked from lowest to highest on the poverty criterion. The two ranks are then averaged to yield a combined rank. The tracts

are then sorted on the combined rank, with the census tract with the highest combined rank being placed at the top of the sorted list. In the event of a tie, more populous tracts are ranked above less populous ones.

d. The ranked first group is stacked on top of the ranked second group to yield a single, concatenated, ranked list of eligible census tracts.

e. Working down the single, concatenated, ranked list of eligible tracts, census tracts are designated until the designation of an additional tract would cause the 20 percent limit to be exceeded. If a census tract is not designated because doing so would raise the percentage above 20 percent, subsequent census tracts are then considered to determine if one or more census tract(s) with smaller population(s) could be designated without exceeding the 20 percent limit.

C. Application of Population Caps to DDA Determinations

In identifying DDAs, HUD applied caps, or limitations, as noted above. The cumulative population of metropolitan DDAs *not* in areas determined by the President to warrant individual or individual and public assistance from the federal government under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma cannot exceed 20 percent of the cumulative population of all metropolitan areas and the cumulative population of nonmetropolitan DDAs *not* in areas determined by the President to warrant individual or individual and public assistance from the federal government under the Stafford Act by reason of Katrina, Rita, or Wilma cannot exceed 20 percent of the cumulative population of all nonmetropolitan areas.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains the procedure. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the

applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio, as described above, was identical (to four decimal places) to the last area selected, and its inclusion resulted in only a minor overrun of the cap. Thus, for both the designated metropolitan and nonmetropolitan DDAs, there may be minimal overruns of the cap. HUD believes the designation of these additional areas is consistent with the intent of the legislation. As long as the apparent excess is small due to measurement errors, some latitude is justifiable because it is impossible to determine whether the 20 percent cap has been exceeded. Despite the care and effort involved in a decennial census, the Census Bureau and all users of the data recognize that the population counts for a given area and for the entire country are not precise. The extent of the measurement error is unknown. Thus, there can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting small variances above the 20 percent limit.

D. Exceptions to OMB Definitions of MSAs and Other Geographic Matters

As stated in OMB Bulletin 06-01 defining metropolitan areas:

“OMB establishes and maintains the definitions of Metropolitan ... Statistical Areas, ... solely for statistical purposes. ... OMB does not take into account or attempt to anticipate any non-statistical uses that may be made of the definitions[.] In cases where ... an agency elects to use the Metropolitan ... Area definitions in nonstatistical programs, it is the sponsoring agency's responsibility to ensure that the definitions are appropriate for such use. An agency using the statistical definitions in a nonstatistical program may

modify the definitions, but only for the purposes of that program. In such cases, any modifications should be clearly identified as deviations from the OMB statistical area definitions in order to avoid confusion with OMB's official definitions of Metropolitan ... Statistical Areas.”

Following OMB guidance, the estimation procedure for the FY2006 FMRs incorporates the current OMB definitions of metropolitan areas based on the new Core-Based Statistical Area (CBSA) standards as implemented with 2000 Census data, but makes adjustments to the definitions in order to separate subparts of these areas in cases where FMRs (and in a few cases, VLILs) would otherwise change significantly if the new area definitions were used without modification. In CBSAs where sub-areas are established, it is HUD's view that the geographic extent of the housing markets are not yet the same as the geographic extent of the CBSAs, but may become so in the future as the social and economic integration of the CBSA component areas increases.

The geographic baseline for the new estimation procedure is the CBSA Metropolitan Areas (referred to as Metropolitan Statistical Areas or MSAs) and CBSA Non-Metropolitan Counties (non-metropolitan counties include the county components of Micropolitan CBSAs where the counties are generally assigned separate FMRs). The proposed HUD-modified CBSA definitions allow for sub-area FMRs within MSAs based on the boundaries of “Old FMR Areas” (OFAs) within the boundaries of new MSAs. (OFAs are the FMR areas defined for the FY2005 FMRs. Collectively, they include June 30, 1999, OMB-definition Metropolitan Statistical Areas and Primary Metropolitan Statistical Areas (old definition MSAs/PMSAs), metropolitan counties deleted from old definition MSAs/PMSAs by HUD for FMR-setting purposes, and counties and county parts outside of old definition MSAs/PMSAs referred to as non-metropolitan counties.)

Sub-areas of MSAs are assigned their own FMRs when the sub-area 2000 Census Base FMR differs significantly from the MSA 2000 Census Base FMR (and in some cases where the 2000 Census base AMGI differs significantly from the MSA 2000 Census Base AMGI). MSA subareas, and the remaining portions of MSAs after sub-areas have been determined, are referred to as “HUD Metro FMR Areas (HMFAs)” to distinguish these areas from OMB’s official definition of MSAs.

In addition, Waller County, Texas, which is part of the Houston-Baytown-Sugar Land, TX HMFA, is not an area determined by the President to warrant individual or individual and public assistance from the federal government under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma. It is therefore excluded from the definition of the Houston-Baytown-Sugar Land, TX HMFA and is assigned the FMR and VLIL of the Houston-Baytown-Sugar Land, TX HMFA and is evaluated as if it were a separate metropolitan area for purposes of designating DDAs. The Houston-Baytown-Sugar Land, TX HMFA is assigned the indicator “(part)” in the list of Metropolitan DDAs.

In the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), HMFAs are defined according to county subdivisions or minor civil divisions (MCDs), rather than county boundaries. However, since no part of a HMFA is outside an OMB-defined, county-based MSA, all New England nonmetropolitan counties are kept intact for purposes of designating Nonmetropolitan DDAs.

For the convenience of readers of this notice, the geographical definitions of designated Metropolitan DDAs are included in the list of DDAs.

The Census Bureau provides no tabulations of 2000 Census data for Broomfield County, Colorado, an area that was created from parts of four Colorado counties when the City of

Broomfield became a county in November 2001. Broomfield County is made up of former parts of Adams, Boulder, Jefferson, and Weld counties. The boundaries of Broomfield County are similar, but not identical to, the boundaries of Broomfield city at the time of the 2000 Census. In OMB metropolitan area definitions and, therefore, for purposes of this notice, Broomfield County is included as part of the Denver-Aurora, CO MSA. Census tracts in Broomfield County include the parts of the Adams, Boulder, Jefferson, and Weld County census tracts that were within the boundaries of Broomfield city according to the 2000 Census, plus parts of three Adams County tracts (85.15, 85.16, and 85.28), and one Jefferson County tract (98.25) that were not within any municipality during the 2000 Census but which, according to Census Bureau maps, are within the boundaries of Broomfield County. Data for Adams, Boulder, Jefferson, and Weld counties and their census tracts were adjusted to exclude the data assigned to Broomfield County and its census tracts.

Future Designations

DDAs are designated annually as updated income and FMR data are made public. QCTs are designated periodically as new data become available, or as metropolitan area definitions change. QCTs are being updated at this time to reflect the recent change to 2000 Census-based metropolitan area definitions (OMB Bulletin N0. 03-04, June 6, 2003, as updated through OMB Bulletin 06-01, December 5, 2005) and the availability of new detailed 2000 Census income distribution tables.

Effective Date

For DDAs designated by reason of being in areas determined by the President to warrant individual or individual and public assistance from the federal government under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma (the GO Zone Designation), the designation

is effective: (1) for housing credit dollar amounts allocated and buildings placed in service during the period beginning on January 1, 2006, and ending on December 31, 2008; or (2) for purposes of Section 42(h)(4)(B) of the Internal Revenue Code, for buildings placed in service during the period beginning on January 1, 2006, and ending on December 31, 2008, but only with respect to bonds issued after December 31, 2005.

The 2007 lists of QCTs and the 2007 lists of DDAs that are not part of the GO Zone Designation are effective: (1) for allocations of credit after December 31, 2006; or (2) for purposes of Section 42(h)(4)(B) of the Code, if the bonds are issued and the building is placed in service after December 31, 2006. If an area is not on a subsequent list of DDAs or QCTs, the 2007 lists are effective for the area if: (1) the allocation of credit to an applicant is made no later than the end of the 365-day period after the submission to the credit-allocating agency of a complete application by the applicant, and the submission is made before the effective date of the subsequent lists; or (2) for purposes of Section 42(h)(4)(B) of the Code, if: (a) the bonds are issued or the building is placed in service no later than the end of the 365-day period after the applicant submits a complete application to the bond-issuing agency, and (b) the submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

An application is deemed to be submitted on the date it is filed if the application is determined to be complete as certified in writing by the credit-allocating or bond-issuing agency. A “complete application” means that no more than *de minimis* clarification of the application is required for the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

The designations of QCTs under Section 42 of the Internal Revenue Code published December 12, 2002, (67 FR 76451) for the U.S. Virgin Islands, and on December 19, 2003, (68 FR 70982) for American Samoa, Guam, and the Northern Mariana Islands, remain in effect.

Members of the public are hereby reminded that the Secretary of Housing and Urban Development, or his designee, has sole legal authority to designate DDAs and QCTs by publishing lists of geographic entities as defined by, in the case of DDAs, the several states and the governments of the insular areas of the United States and, in the case of QCTs, by the Census Bureau; and to establish the effective dates of these lists. The Secretary of the Treasury, through the IRS thereof, has sole legal authority to interpret, and to determine and enforce compliance with, the Internal Revenue Code and associated regulations including Federal Register notices published by HUD for purposes of designating DDAs and QCTs. Representations made by any other entity as to the content of HUD notices designating DDAs and QCTs that do not precisely match the language published by HUD should not be relied upon by taxpayers in determining what actions are necessary to comply with HUD notices.

Interpretive Examples of Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose DDA status. The term “regular DDA” as used below refers to DDAs that are designated by the Secretary of HUD as having high construction, land, and utility costs relative to AMGI. The term “GO Zone DDA” refers to areas determined by the President to warrant individual or individual and public assistance from the federal government under the Stafford Act by reason of Hurricanes Katrina, Rita, or Wilma. The examples covering regular DDAs are equally applicable to QCT designations.

(Case A) Project A is located in a 2007 regular DDA that is NOT a designated regular DDA in 2008. An application for tax credits for Project A is filed with the allocating agency on November 15, 2007, and, in writing, the credit-allocating agency certifies the application as complete. Credits are allocated to Project A on October 30, 2008. Project A is eligible for the increase in basis accorded a project in a 2007 regular DDA because the application was filed BEFORE January 1, 2008 (the assumed effective date for the 2008 regular DDA lists), and tax credits were allocated no later than the end of the 365-day period after the filing of the complete application for an allocation of tax credits.

(Case B) Project B is located in a 2007 regular DDA that is NOT a designated regular DDA in 2008. An application for tax credits for Project B is filed with the allocating agency on December 1, 2007, and, in writing, the credit-allocating agency certifies the application as complete. Credits are allocated to Project B on March 30, 2009. Project B is NOT eligible for the increase in basis accorded a project in a 2007 regular DDA because, although the application for an allocation of tax credits was filed BEFORE January 1, 2008 (the assumed effective date of the 2008 regular DDA lists), the tax credits were allocated later than the end of the 365-day period after the filing of the complete application.

(Case C) Project C is located in a 2007 regular DDA that was not a DDA in 2006. Project C was placed in service on November 15, 2006. An application for tax-exempt bond financing for Project C is filed with the bond-issuing agency on January 15, 2007, and, in writing, the bond-issuing agency certifies the application as complete. The bonds that will support the permanent financing of Project C are issued on September 30, 2007. Project C is NOT eligible for the increase in basis otherwise accorded a project in a 2007 DDA because the project was placed in service BEFORE January 1, 2007.

(Case D) Project D is located in an area that is a regular DDA in 2007, but is NOT a regular DDA in 2008. An application for tax-exempt bond financing for Project D is filed with the bond-issuing agency on October 30, 2007, and, in writing, the bond-issuing agency certifies the application as complete. Bonds are issued for Project D on April 30, 2008, but Project D is not placed in service until January 30, 2009. Project D is eligible for the increase in basis available to projects located in 2007 regular DDAs because the first of the two events necessary for triggering the effective date for buildings described in Section 42(h)(4)(B) of the Code (the two events being bonds issued and buildings placed in service) took place on April 30, 2008, within the 365-day period after a complete application for tax-exempt bond financing was filed, the application was filed during a time when the location of Project D was in a regular DDA, and both the issuance of the bonds and placement in service of project D occurred after the application was submitted.

(Case E) Project E is located in a GO Zone DDA. The bonds used to finance project E are issued on July 1, 2008, and project E is placed in service July 1, 2009. Project E is NOT eligible for the increase in basis available to projects in GO Zone DDAs because it was not placed in service during the period beginning on January 1, 2006, and ending on December 31, 2008.

(Case F) Project F is located in a GO Zone DDA. The bonds used to finance project F were issued July 1, 2005, and project F is placed in service on July 1, 2006. Project F is NOT eligible for the increase in basis available to projects in GO Zone DDAs because the bonds used to finance project F were issued BEFORE December 31, 2005.

Findings and Certifications

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(6) of HUD's regulations, the policies and procedures contained in this notice provide for the establishment of fiscal requirements or procedures that do not

constitute a development decision affecting the physical condition of specific project areas or building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act, except for extraordinary circumstances, and no Finding of No Significant Impact is required.

Federalism Impact

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any policy document that has federalism implications if the document either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the document preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This notice merely designates DDAs and QCTs as required under Section 42 of the Internal Revenue Code, as amended, for the use by political subdivisions of the states in allocating the LIHTC. This notice also details the technical methodology used in making such designations. As a result, this notice is not subject to review under the order.

Dated: September 20, 2006

Darlene F. Williams
Assistant Secretary for Policy
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