

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 598 and 599

[Docket No. FR-4663-F-07]

RIN 2506-AC09

Designation of Round III Urban Empowerment Zones and Renewal Communities

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule adopts without change an interim rule that governs the designation of Round III Urban Empowerment Zones (EZs) and Renewal Communities (RCs) nominated by states and local governments. The designation of an area as an EZ or an RC provides special federal income tax treatment as an incentive for businesses to locate within the area.

DATES: Effective Date: November 3, 2003.

FOR FURTHER INFORMATION CONTACT: For EZ/EC issues, Lisa Hill, and for RC issues, John Haines, at the Department of Housing and Urban Development, Room 7130, 451 Seventh Street, SW., Washington, DC 20410-7000, telephone (202) 708-6339 (this is not a toll-free telephone number). Individuals with speech or hearing impairments may access these numbers via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 2001 (Omnibus Act) (Pub. L. 106-554, 114 Stat. 2763, approved December 21, 2000) enacted into law the provisions of a number of bills of the 106th Congress. One of the bills enacted into law as part of the Omnibus Act is H.R. 5662, the Community Renewal Tax Relief Act of 2000 (CRTR Act).

Section 111 of the CRTR Act added a new subsection (h), which authorized the designation of nine Round III Empowerment Zones (EZs) to section 1391 of Subchapter U of Chapter 1 of the Internal Revenue Code of 1986 (IRC). Subchapter U governs the designation and treatment of Empowerment Zones, Enterprise Communities, and Rural Development Investment Areas and provided authorization (though separate legislative enactments) for the designation of Round I EZs in 1993 and

Round II EZs in 1997. The CRTR Act requires seven of the Round III EZs to be designated in urban areas by the Secretary of HUD and the remaining two Round III EZs to be designated in rural areas by the Secretary of Agriculture. The CRTR Act also conforms and enhances the tax incentives for Round I and Round II EZs and makes the new Round III EZs eligible for these incentives. The availability of the tax incentives is extended to December 31, 2009, for all EZs.

Section 101 of the CRTR Act added a new Subchapter X, consisting of sections 1400E through 1400J, to Chapter 1 of the IRC. Subchapter X governs the designation of, and tax incentives for, Renewal Communities (RCs) within which special tax incentives would be available. At least 12 of the 40 RC designations authorized by the CRTR Act must be in rural communities. Unlike the EZ program, which splits the designation responsibility between HUD and the Department of Agriculture for urban and rural areas respectively, all RC designations are to be made by HUD.

On July 9, 2001 (66 FR 35850), HUD published an interim rule to implement the designation requirements for Round III EZs and for RCs and requested public comment on the rule. HUD received four public comments, which are discussed in section III, Public Comments, of this preamble.

II. Changes in the Final Rule

The Department has determined to adopt the July 9, 2001, interim rule as a final rule without change.

III. Public Comments

Four municipalities submitted comments on the interim rule. The issues raised in the comments, all of them concerning the RC rule at 24 CFR part 599, followed by HUD's response, are set out under separate subject headings in this section of the preamble.

Too Small Areas

Because the nominated areas will be ranked solely on statistical criteria, there is nothing to prevent small areas from winning designation. The selection formula should give added weight to areas with larger populations.

HUD response: The statutory authorization for the designation of RCs, at section 1400E(c)(2)(C) of the IRC, establishes maximum and minimum population limits as eligibility requirements for RC designation. The criteria that may be used to designate RCs is also specifically limited to those provided in section 1400E. Although the population of an area must be within

the statutory limits for the area to be considered for RC designation, population size is not included as one of the selection criteria provided in section 1400E. Therefore, HUD must determine that an area meets the population eligibility threshold, but HUD is not permitted to use population size in the selection formula.

Awarding RC Designation in a City With an EZ

If a city that already contains an EZ applies for an RC designation for an area that does not contain any census tracts from the EZ, it could receive the RC designation and also retain its EZ. This opportunity is unfair to a community that needs and deserves one of the designations.

HUD response: Section 1400E does not permit EZs and RCs to overlap by even a single census tract. Section 1400E(e) specifically provides that, "[T]he designation * * * of any area as an empowerment zone or enterprise community shall cease to be in effect as of the date that the designation of any portion of such area as a renewal community takes effect." Beyond this limitation, the statute does not impose any restrictions on the availability of both EZs and RCs to qualifying areas within a community.

Including No- or Low-Population Tracts

A census tract with very low or no population may be critical for inclusion to create an effective RC, yet it would be ineligible unless it meets the 20 percent poverty criterion. This may result in inadequate land for business growth. HUD should allow inclusion of census tracts that are predominantly industrial or transportation uses if they are adjacent to tracts that meet the 20 percent poverty standard and if fewer than 50 households were counted in determining the poverty percentage.

HUD response: Although the authorizing statute for the EZ program specifically included, at 26 U.S.C. 1391(g)(3)(A)(ii), a provision permitting such treatment of census tracts with small populations, no such provision was included in the authorizing statute for the RC program. HUD hesitates to adopt such requirements absent the specific legislative authority.

Using Employment Tax Credits Cross-Boundary

The employment tax credits should be available for an employee that works in one EZ or RC and lives in another. This would include allowing an employer to claim the RC employment tax credit if both an EZ and an RC are involved. HUD and the Internal Revenue Service