

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4889-N-01]

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 Secretary, HUD.

ACTION: Notice.

SUMMARY: This document designates "Difficult Development Areas" and "Qualified Census Tracts" for purposes of the Low-Income Housing Tax Credit (LIHTC) under section 42 of the Internal Revenue Code of 1986 (the Code). The United States Department of Housing and Urban Development (HUD) makes new Difficult Development Area designations annually and makes Qualified Census Tract Designations at this time due to the recent release of relevant data from the 2000 Census.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions: Kurt G. Usowski, Associate Deputy Assistant Secretary for Economic Affairs, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-6000, telephone (202) 708-2770, e-mail Kurt_G_Usowski@hud.gov. For specific legal questions pertaining to section 42: Office of the Associate Chief Counsel, Passthroughs & Special Industries, Internal Revenue Service, 1111 Constitution Avenue, NW.; Washington, DC 20224, telephone (202) 622-3040, fax (202) 622-4753. For questions about the "HUBZones" program: Michael P. McHale, Assistant Administrator for Procurement Policy, Office of Government Contracting, Suite 8800, Small Business Administration, 409 Third Street, SW., Washington, DC 20416, telephone (202) 205-8885, fax (202) 205-7167, e-mail 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 Difficult Development Areas and Qualified Census Tracts are available electronically on the Internet (World Wide Web) at <http://www.huduser.org/datasets/qct.html>.

SUPPLEMENTARY INFORMATION:

This Document

The designations of Difficult Development Areas in this notice are based on fiscal year (FY) 2003 Fair Market Rents (FMRs), FY 2003 income limits, and 2000 Census population counts as explained below. This notice designates Difficult Development Areas for each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands. The designations of Qualified Census Tracts in this notice are based on 2000 Census data. This notice designates Qualified Census Tracts for American Samoa, Guam, and the Northern Mariana Islands. The 2003 Qualified Census Tracts designated for the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands published December 12, 2002, at 67 FR 76452 are unchanged by this notice.

2000 Census

Data from the 2000 Census on total population of metropolitan areas and nonmetropolitan counties are used in the designation of Difficult Development Areas. The Census Bureau has recently released the data needed to update Qualified Census Tract designations for American Samoa, Guam, and the Northern Mariana Islands, so this notice makes new qualified Census Tract designations in these areas based on 2000 Census data. The Office of Management and Budget (OMB) published new metropolitan area definitions incorporating 2000 Census data in OMB Bulletin No. 03-04 on June 6, 2003. The Census Bureau has not yet released official data on 1999 median incomes in the newly defined metropolitan areas and nonmetropolitan areas of states. Also, the FY 2003 FMRs and 2003 income limits used to designate Difficult Development Areas are based on the Metropolitan Statistical Areas (MSA) and Primary Metropolitan Statistical Areas (PMSA) definitions established by OMB in OMB Bulletin No. 99-04 on June 30, 1999. Therefore, for the purposes of designating Difficult Development Areas and Qualified Census Tracts "metropolitan areas" will continue to be defined according to the MSA/PMSA definitions established by the OMB in OMB Bulletin No. 99-04 on June 30, 1999, until further notice.

Background

The U.S. Treasury Department and the Internal Revenue Service thereof are authorized to interpret and enforce the provisions of the Code, including the LIHTC found at section 42 of the Code (26 U.S.C. 42). The Secretary of HUD is

required to designate Difficult Development Areas and Qualified Census Tracts by section 42(d)(5)(C) of the Code.

In order to assist in understanding HUD's mandated designation of Difficult Development Areas and Qualified Census Tracts for use in administering section 42 of the Code, a summary of section 42 is provided. The following summary does not purport to bind the Treasury or the IRS in any way, nor does it purport to bind HUD, as HUD has no authority to interpret or administer the Code, except in those instances where it has a specific 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 allocated credit based on a statutory formula indicated at section 42(h)(3). States may carry forward unallocated credit derived from the credit ceiling for one year; if a certain portion of this unallocated credit is not used by then, this portion goes into a national pool to be allocated 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 upon 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 credit available from the credit ceiling.

The credit allocated to a building is based on the cost of units placed in service as low-income units under certain 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 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 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