<NOTICE>
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<AGENCY TYPE='S'>DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

<DEPDOC>[Docket No. FR-5652-N-01]

<SUBJECT>Statutorily Mandated Designation of Difficult Development Areas for 2013

AGENCY: Office of the Secretary, Department of Housing and Urban Development.

ACTION: Notice.

SUMMARY: This notice designates "Difficult Development Areas" (DDAs) for purposes of the Low-Income Housing Tax Credit (LIHTC) under Section 42 of the Internal Revenue Code of 1986 (IRC). The United States Department of Housing and Urban Development (HUD) makes DDA designations annually. In addition to announcing the 2013 DDA designations, this notice responds to public comment received in response to the proposed use of Small Area Fair Market Rents (FMRs) for designating DDAs as published in the notice "Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts for 2012", published in the Federal Register on October 27, 2011. After considering the public comments, HUD has decided to delay by one year the adoption of small area DDAs. The 2014 DDAs will be published in a separate notice at a later date after further consideration of the Small DDA concept.

Qualified Census Tracts (QCTs) for 2013 were previously designated in a notice published in the Federal Register on April 20, 2012.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions, contact Michael K. Hollar, Senior Economist, Economic Development and Public Finance Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 8234, Washington, DC 20410-6000; telephone number 202-402-5878, 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 number 202-622-3040, fax number 202-622-4753. For questions about the "HUB Zones" program, contact Mariana Pardo, Assistant Administrator for Procurement Policy, Office of Government Contracting, Small Business Administration, 409 Third Street, SW, Suite 8800, Washington, DC 20416; telephone number 202-205-8885, fax number 202-205-7167, or send an email to hubzone@sba.gov. A text telephone is available for persons with hearing or speech impairments at 202-708-8339. (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, including the 2013 DDAs, are available electronically on the Internet at http://www.huduser.org/datasets/qct.html.

SUPPLEMENTARY INFORMATION:

This Notice

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, which are attached to this notice, are based on final Fiscal Year (FY) 2012 Fair Market Rents (FMRs), FY2012 income limits, and 2010 Census population counts.

This notice also responds to public comment HUD requested on the use of Small Area FMRs, estimated at the ZIP-code level and based on the relationship of ZIP-code rents to metropolitan area rents, as the housing cost component of the DDA formula rather than metropolitan-area FMRs (October 27, 2011, 76 FR 66741). HUD continues to believe that the small area concept best targets areas with high development costs, however, the Department has decided to delay the implementation for one year.

2010 Census, 2000 Census, and Metropolitan Area Definitions

Data from the 2010 Census on total population of metropolitan areas and nonmetropolitan areas are used in the designation of DDAs. The Office of Management and Budget (OMB) first published new metropolitan area definitions incorporating 2000 Census data in OMB Bulletin No. 03-04 on June 6, 2003, and updated them periodically through OMB Bulletin No. 10-02 on December 1, 2009. FY2012 FMRs and FY2012 income limits used to designate DDAs are based on these metropolitan statistical area (MSA) definitions, with modifications to account for substantial differences in rental housing markets (and, in some cases, median income levels) within MSAs.

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 IRC (26 U.S.C. 42), including the LIHTC found at Section 42. The Secretary of HUD is required to designate DDAs and QCTs by IRC Section 42(d)(5)(B). In order to assist in understanding HUD's mandated designation of DDAs and QCTs for use in administering IRC 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 IRC only when it receives explicit statutory delegation.

Summary of the Low-Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low-income housing. IRC 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 IRC Section 42(h)(3). States may carry forward unallocated credits derived from the credit ceiling for one year; however, to the extent such 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 IRC Section 42 credits derived from the credit ceiling, states may also provide IRC 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: (1) 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 (2) 40 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. A unit is "rent-restricted" if the gross rent, including an allowance for tenant-paid utilities, does not exceed

30 percent of the imputed income limitation (i.e., 50 percent or 60 percent of AMGI) applicable to that unit. 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 (as defined in IRC Section 42(i)(2)), 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 IRC 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). For buildings placed in service after December 31, 2007, individuals can use the credits against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credits against ordinary income tax, and, for buildings placed in service after December 31, 2007, against the alternative minimum tax. These corporations also can 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 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.

IRC Section 42 defines a DDA as an area designated by the Secretary of HUD 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.

IRC Section 42(d)(5)(B)(v) allows states to award an increase in basis up to 30 percent to buildings located outside of federally designated DDAs and QCTs if the increase is necessary to make the building financially feasible. This state discretion applies only to buildings allocated credits under the state housing credit ceiling and is not permitted for buildings receiving credits in connection with tax-exempt bonds. Rules for such designations shall be set forth in the LIHTC-allocating agencies' qualified allocation plans (QAPs).

Response to Public Comment on Designating Metropolitan DDAs Using Small Area FMRs

On October 27, 2011 (76 FR 66741), HUD published a notice announcing the 2012 Difficult Development Area (DDA) designations and sought public comments on a major policy change in the method of designating metropolitan DDAs starting with the 2013 designations. The methodology proposed in that notice uses Small Area Fair Market Rents (SAFMRs) defined at the ZIP Code level within metropolitan areas rather than existing Fair Market Rents (FMRs) established for HUD metropolitan FMR areas (HFMAs). Under the methodology described in that notice, zip code areas rather than HFMAs would be ranked according to a ratio comparing "construction, land, and utility costs relative to area median gross income."

The public comment period on this notice closed on December 27, 2011. HUD received 6 public comments in response to the October 27, 2011 notice during the official public comment period defined in the notice; however, one commenter submitted 2 separate comments identical in substance. Overall, one commenter supported the proposal while the remaining expressed opposition. The commenter supported the proposal because the small area DDA concept would reach more than double the number of metropolitan areas and more than triple the number of states. The commenter also stated that use of SAFMRs to set DDAs encourages balance between low-and high-poverty neighborhoods under the LIHTC basis boost.

The commenters in opposition expressed several reasons. First, two commenters stated that HUD has not furnished any data to substantiate this proposal. HUD acknowledges that the evaluative list of metropolitan zip codes that would be designated Small Area DDAs using this methodology and based on the data available to HUD at the time of publication was released near the end of the comment period. However, the list continues to be available at http://www.huduser.org/portal/datasets/qct.html. The commenters also stated, "It is inappropriate and premature to use SAFMRs for anything other than the current demonstration [of their use in the Housing Choice Voucher program]." HUD notes, however, that whether SAFMRs are expanded for use in the Housing Choice Voucher program is irrelevant to the decision of using the areas as the unit of geography for DDA designation.

One commenter stated that HUD's proposal imposes burdens on cities with high housing costs, specifically, New York City. HUD acknowledges that DDA designations in cities with high housing costs, which were traditionally designated as DDAs in their entirety year after year, would be more limited since less than 100 percent of the metropolitan area would be eligible for the basis boost. However, many other metropolitan areas, some of which ranked just outside of the population-capped designation list, have high-cost areas which burden their cities' development and are also in need of federal assistance.

Finally, one commenter stated, "Along with the data problems of using ZIP-Code gross rent as an indicator, it is simply a false measure for high costs in a densely built, vertical city like New York." HUD acknowledges the shortcomings of using gross rent as an indicator. However, the Department believes that FMRs are the best indicator of construction, utility and land costs that is available consistently and uniformly for all areas across the country. House Report No. 101-247, September 20, 1989 [To accompany H.R. 3299, the Omnibus Budget Reconciliation Act of 1989] states that the Secretary of HUD may use market rents as a proxy for construction, land and utility costs. Thus, HUD's methodology follows Congressional intent. The commenter recommended that, "HUD permit an opt-out policy for high-cost cities with a high ratio of low-income households to vacant, affordable rental housing." The LIHTC statute states that the term "difficult development area" is "an area which has a high construction, land, and utility costs relative to area median gross income." It does not state that the number of low-income households or the availability of affordable housing is to be used as criteria for DDA designations.

After consideration of these comments, and others submitted informally after the end of official public comment period, HUD has decided to delay the implementation of the small area DDAs for one year. Updates on the implementation of the small area concept, including any proposed changes in the calculation methodology and an updated list of anticipated areas designated, will be provided on http://www.huduser.org/. The Department expects to publish the final list of 2014 small area DDAs in the first half of 2013.

Explanation of HUD Designation Methodology

A. Difficult Development Areas

In developing the list of DDAs, HUD compared housing costs with incomes. HUD used 2010 Census population for metropolitan and nonmetropolitan areas, and the MSA definitions, as published in OMB Bulletin No. 10-02 on December 1, 2009, 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 is the FY2012 HUD income limits for very low-income households (very low-income limits, or VLILs), which are based on 50 percent of AMGI, and metropolitan FMRs based on the Final FY2012 FMRs used for the Housing Choice Voucher (HCV) program.

In formulating the FY2012 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 based 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 FY2012 FMR areas and FMRs are available at http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr12.

Complete details on HUD's process for determining FY2012 income limits are available at http://www.huduser.org/portal/datasets/il/il12/index.html.)

HUD's unit of analysis for designating metropolitan DDAs consists of: entire MSAs, in cases 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 metropolitan HMFA and each nonmetropolitan county, HUD calculated a ratio. HUD used the final FY2012 two-bedroom FMR and the FY2012 four-person VLIL for this calculation.

a. The numerator of the ratio, representing the development cost of housing, was the area's final FY2012 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 HCV program (see 76 FR 52058), HUD used the 40th-percentile rent to ensure nationwide consistency of comparisons.

b. The denominator of the ratio, representing the maximum income of eligible tenants, 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 DDAs are those with the highest ratios cumulative to 20 percent of the 2010 population of all metropolitan areas and all nonmetropolitan areas.

B. Application of Population Caps to DDA Determinations

In identifying DDAs, HUD applied caps, or limitations, as noted above. The cumulative population of metropolitan DDAs cannot exceed 20 percent of the cumulative population of all metropolitan areas, and the cumulative population of nonmetropolitan DDAs 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 those procedures. 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, <u>and</u> 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 additional areas in the above examples of minimal overruns is consistent with the intent of the IRC. 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. Therefore, the extent of the measurement error is unknown. 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.

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

As stated in OMB Bulletin 10-02, 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 FY2012 FMRs and income limits incorporates the current OMB definitions of metropolitan areas based on the 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 subareas 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 approach becoming so as the social and economic integration of the CBSA component areas increases.

The geographic baseline for the FMR and income limit estimation procedure is the CBSA Metropolitan Areas (referred to as Metropolitan Statistical Areas or MSAs) and CBSA Non-Metropolitan Counties (nonmetropolitan counties include the county components of Micropolitan CBSAs where the counties are generally assigned separate FMRs). The HUD-modified CBSA definitions allow for subarea 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 the June 30, 1999, OMB definitions of MSAs and Primary MSAs (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 nonmetropolitan counties). Subareas of MSAs are assigned their own FMRs and Income Limits when the subarea 2000 Census Base FMR differs significantly from the MSA 2000 Census Base FMR (or, 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 subareas have been determined, are referred to as "HUD Metro FMR Areas (HMFAs)," to distinguish such areas from OMB's official definition of MSAs.

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 an 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.

Future Designations

DDAs are designated annually as updated income and FMR data are made public.

Effective Date

The 2013 lists of DDAs are effective:

(1) for allocations of credit after December 31, 2012; or

(2) for purposes of IRC Section 42(h)(4), if the bonds are issued and the building is placed in service after December 31, 2012.

If an area is not on a subsequent list of DDAs, the 2013 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 applicant submits a complete application to the LIHTC-allocating agency, and the submission is made before the effective date of the subsequent lists; or

(2) for purposes of IRC Section 42(h)(4), 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 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.

In the case of a "multiphase project," the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the project received its first allocation of LIHTC. For purposes of IRC Section 42(h)(4), the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the first of the following occurred: (a) the building(s) in the first phase were placed in service, or (b) the bonds were issued.

For purposes of this notice, a "multiphase project" is defined as a set of buildings to be constructed or rehabilitated under the rules of the LIHTC and meeting the following criteria:

(1) The multiphase composition of the project (i.e., total number of buildings and phases in project, with a description of how many buildings are to be built in each phase and when each phase is to be completed, and any other information required by the agency) is made known by the applicant in the first application of credit for any building in the project, and that applicant identifies the buildings in the project for which credit is (or will be) sought;

(2) The aggregate amount of LIHTC applied for on behalf of, or that would eventually be allocated to, the buildings on the site exceeds the one-year limitation on credits per applicant, as defined in the Qualified Allocation Plan (QAP) of the LIHTC-allocating agency, or the annual per-capita credit authority of the LIHTC allocating agency, and is the reason the applicant must request multiple allocations over 2 or more years; and

(3) All applications for LIHTC for buildings on the site are made in immediately consecutive years.

Members of the public are hereby reminded that the Secretary of Housing and Urban Development, or the Secretary's designee, has legal authority to designate DDAs and QCTs, by publishing lists of geographic entities as defined by, in the case of DDAs, the Census Bureau, 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 such lists. The Secretary of the Treasury, through the IRS thereof, has sole legal authority to interpret, and to determine and enforce compliance with the IRC 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.

The 2013 designations of "Qualified Census Tracts" under IRC Section 42 published April 20, 2012 (77 FR 23735) remain in effect. The above language regarding 2013 and subsequent designations of DDAs also applies to the designations of QCTs published April 20, 2012 and to subsequent designations of QCTs.

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 examples covering DDAs are equally applicable to QCT designations.

(Case A) Project A is located in a 2013 DDA that is NOT a designated DDA in 2014. A complete application for tax credits for Project A is filed with the allocating agency on

November 15, 2013. Credits are allocated to Project A on October 30, 2014. Project A is eligible for the increase in basis accorded a project in a 2013 DDA because the application was filed BEFORE January 1, 2014 (the assumed effective date for the 2014 DDA lists), and because 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 2013 DDA that is NOT a designated DDA in 2014 or 2015. A complete application for tax credits for Project B is filed with the allocating agency on December 1, 2013. Credits are allocated to Project B on March 30, 2015. Project B is NOT eligible for the increase in basis accorded a project in a 2013 DDA because, although the application for an allocation of tax credits was filed BEFORE January 1, 2014 (the assumed effective date of the 2014 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 2013 DDA that was not a DDA in 2012. Project C was placed in service on November 15, 2012. A complete application for tax-exempt bond financing for Project C is filed with the bond-issuing agency on January 15, 2013. The bonds that will support the permanent financing of Project C are issued on September 30, 2013. Project C is NOT eligible for the increase in basis otherwise accorded a project in a 2013 DDA, because the project was placed in service BEFORE January 1, 2013.

(Case D) Project D is located in an area that is a DDA in 2013, but is NOT a DDA in 2014. A complete application for tax-exempt bond financing for Project D is filed with the bond-issuing agency on October 30, 2013. Bonds are issued for Project D on April 30, 2014, but Project D is not placed in service until January 30, 2015. Project D is eligible for the increase in basis available to projects located in 2013 DDAs because: (1) one of the two events necessary for triggering the effective date for buildings described in Section 42(h)(4)(B) of the IRC (the two events being bonds issued and buildings placed in service) took place on April 30, 2014, within the 365-day period after a complete application for tax-exempt bond financing was filed, (2) the application was filed during a time when the location of Project D was in a DDA, and (3) both the issuance of the bonds and placement in service of Project D occurred after the application was submitted.

(Case E) Project E is a multiphase project located in a 2013 DDA that is NOT a designated DDA in 2014. The first phase of Project E received an allocation of credits in 2013, pursuant to an application filed March 15, 2013, which describes the multiphase composition of the project. An application for tax credits for the second phase Project E is filed with the allocating agency by the same entity on March 15, 2014. The second phase of Project E is located on a contiguous site. Credits are allocated to the second phase of Project E on October 30, 2014. The aggregate amount of credits allocated to the two phases of Project E exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP and is the reason that applications were made in multiple phases. The second phase of Project E is, therefore, eligible for the increase in basis accorded a project in a 2013 DDA, because it meets all of the conditions to be a part of a multiphase project.

(Case F) Project F is a multiphase project located in a 2013 DDA that is NOT a designated DDA in 2014. The first phase of Project F received an allocation of credits in 2013, pursuant to an application filed March 15, 2013, which does not describe the multiphase composition of the project. An application for tax credits for the second phase of Project F is filed with the allocating agency by the same entity on March 15, 2015. Credits are allocated to the second phase of Project F on October 30, 2015. The aggregate amount of credits allocated to the two phases of Project F exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP. The second phase of Project F is, therefore, NOT eligible for the increase in basis accorded a project in a 2013 DDA, since it does not meet all of the conditions for a multiphase project, as defined in this notice. The original application for credits for the first phase did not describe the multiphase composition of the project. Also, the application for credits for the second phase of Project F was not made in the year immediately following the first phase application year.

Findings and Certifications

Environmental Impact

This notice involves the establishment of fiscal requirements or procedures that are related to rate and cost determinations and do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(6) of HUD's regulations, this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

<u>Federalism Impact</u>

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any policy document that has federalism implications if the document 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 as required under Section 42 of the IRC, 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.

<SIG><DATED>Dated: _September 24, 2012.

<NAME>Erika C. Poethig,
<TITLE>Acting Assistant Secretary for Policy Development and Research.</SIG>

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