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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5980-N-01]

**Statutorily Mandated Designation of Difficult Development
Areas and Qualified Census Tracts for 2017**

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 Internal Revenue Code (IRC) Section 42 (26 U.S.C. 42). The United States Department of Housing and Urban Development (HUD) makes new DDA and QCT designations annually. Unlike the effective date of the 2016 QCTs and DDAs, which was July 1, 2016, the 2017 QCTs and DDAs are effective January 1, 2017. In order to avoid designating areas unsuitable for residential development, such as airports, HUD is implementing a minimum population requirement for metropolitan Small Difficult Development Areas (SDDAs), as described below.

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 202-317-4137, fax number 202-317-6731. For questions about the “HUB Zone” program,

contact Mariana Pardo, Director, HUBZone Program, Office of Government Contracting and Business Development, U.S. Small Business Administration, 409 Third Street, SW, Suite 8800, Washington, DC 20416; telephone number 202-205-2985, fax number 202-481-6443, or send an email to hubzone@sba.gov. (These are not toll-free telephone numbers.) A text telephone is available for persons with hearing or speech impairments at 800-877-8339. 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 modified Fiscal Year (FY) 2016 Small Area Fair Market Rents (SAFMRs), FY2016 income limits, and 2010 Census population counts, as explained below.

This notice also designates QCTs based on new income and poverty data released in the American Community Survey (ACS). HUD relies on the most recent three sets of ACS estimates to ensure that anomalous estimates, due to sampling, do not affect the QCT status of tracts.

2010 Census and 2008-2012, 2009-2013 and 2010-2014 American Community Survey Data

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 2010 Census data in OMB Bulletin No. 13-01 on February 28, 2013. FY2016 FMRs and FY2016 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. SAFMRs are calculated for the ZIP Code Tabulation Areas (ZCTAs), or portions of ZCTAs within the metropolitan areas defined by OMB Bulletin No. 13-01.

Data from the 2010 Census on total population of census tracts, metropolitan areas, and the nonmetropolitan parts of states are used in the designation of QCTs. The FY2016 income limits used to designate QCTs are based on these MSA definitions with modifications to account for substantial differences in rental housing markets (and in some cases median income levels) within MSAs. This QCT designation uses the OMB metropolitan area definitions published in OMB Bulletin No. 13-01 on February 28, 2013, 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.

Because the 2010 Decennial Census did not include questions on respondent household income, HUD uses ACS data to designate QCTs. The ACS tabulates data collected over 5 years to provide estimates of socioeconomic variables for small areas containing fewer than 20,000 persons, such as census tracts. Due to anomalies in estimates from year-to-year, HUD utilizes three sets of ACS tabulations to ensure that anomalous estimates do not affect QCT status.

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 LIHTC found at IRC 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 in instances where 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 determined monthly under procedures specified in IRC Section 42 and cannot be less than 9 percent for buildings that are not federally subsidized. 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, or buildings designated by the state agency, 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.

Similarly, IRC Section 42 defines a QCT as an area designated by the Secretary of HUD and, for the most recent year for which census data are available on household income in such tract, in which either 50 percent or more of the households have an income which is less than 60

percent of the area median gross income or which has a poverty rate of at least 25 percent. All designated QCTs in a single metropolitan area or nonmetropolitan area (taken together) may not contain more than 20 percent of the population of that metropolitan or nonmetropolitan area. Thus, unlike the restriction on DDA designations, QCTs are restricted by each individual area as opposed to the aggregate population across all metropolitan areas and 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).

Explanation of HUD Designation Method

A. 2017 Difficult Development Areas

In developing the list of DDAs, HUD compared housing costs with incomes. HUD used 2010 Census population for ZCTAs, and nonmetropolitan areas, and the MSA definitions, as published in OMB Bulletin No. 13-01 on February 28, 2013, 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 FY2016 HUD income limits for very low-income households (very low-income limits, or VLILs), which are based on 50 percent of AMGI, and modified FMRs based on the FY2016 FMRs used for the Housing Choice Voucher (HCV) program. For metropolitan DDAs, HUD used SAFMRs based on three annual releases of ACS data, to compensate for statistical anomalies which affect estimates for some

ZCTAs. For non-metropolitan DDAs, HUD used the final FY2016 FMRs as published on December 11, 2015 (80 FR 77124) and periodically through July 29, 2016 (81 FR 50003).

In formulating the FY2016 FMRs and VLILs, HUD modified the current OMB definitions of MSAs to account for differences in rents among areas within each current 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. All counties added to metropolitan areas will be an HMFA with rents and incomes based on their own county data, where available. HUD no longer requires recent-mover rents to differ by five percent or more in order to form a new HMFA. 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 FY2016 FMR areas and FMRs are available at <https://www.huduser.gov/portal/datasets/fmr/fmrs/docsys.html?data=fmr16>. Complete details on HUD’s process for determining FY2015 income limits are available at <https://www.huduser.gov/portal/datasets/il/il16/index.html>.)

HUD’s unit of analysis for designating metropolitan DDAs consists of ZCTAs, whose SAFMRs are compared to metropolitan VLILs. For purposes of computing VLILs in metropolitan areas, HUD considers entire MSAs, in cases where these were not broken up into HMFAs for purposes of computing 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 ZCTA, 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 ZCTA and each nonmetropolitan county, HUD calculated a ratio. HUD used a modified FY2016 two-bedroom SAFMR for ZCTAs, the final FY2016 two-bedroom FMR as published for non-metropolitan counties, and the FY2016 four-person VLIL for this calculation. The modified FY2016 two-bedroom SAFMRs for ZCTAs differ from the final FY2016 SAFMRs in three ways.

First, HUD did not limit the median gross ZCTA rent to 150 percent of the median gross Core-Based Statistical Area (CBSA) rent, as in the SAFMR calculations used in HUD's demonstration project. Second, HUD adjusted median rent values in New York City to correct for the downward-bias resulting from rent control and stabilization regulations using the New York City Housing and Vacancy Survey, which is conducted by the U.S. Census Bureau.¹ No other jurisdictions have provided HUD with data that could be used to adjust SAFMRs for rent control or stabilization regulations. Finally, the adjustment for recent mover rents is calculated at the HMFA-level rather than CBSA-level.

a. The numerator of the ratio, representing the development cost of housing, was the area's FY2016 FMR, or SAFMR in metropolitan areas. In general, the FMR is based on the 40th-percentile gross rent paid by recent movers to live in a two-bedroom apartment.

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).

¹ HUD encourages other jurisdictions with rent control laws that affect rents paid by recent movers into existing units to contact HUD about what data might be provided or collected to adjust SAFMRs in those jurisdictions.

2. The ratios of the FMR, or SAFMR, to the LIHTC income-based rent limit were arrayed in descending order, separately, for ZCTAs and for nonmetropolitan counties. ZCTAs with populations less than 100 were excluded in order to avoid designating areas unsuitable for residential development, such as ZCTAs containing airports.

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. For purposes of applying this population cap, HUD excluded the population in areas designated as 2017 QCTs. Thus, an area can be designated as a QCT or DDA, but not both.

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, 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 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. Qualified Census Tracts

In developing this list of QCTs, HUD used 2010 Census 100-percent count data on total population, total households, and population in households; the median household income and poverty rate as estimated in the 2008-2012, 2009-2013 and 2010-2014, ACS tabulations; the FY2016 Very Low-Income Limits (VLILs) computed at the HUD Metropolitan FMR Area (HMFA) level² to determine tract eligibility; and the MSA definitions published in OMB Bulletin No. 13-01 on February 28, 2013, for determining how many eligible tracts can be designated under the statutory 20 percent population cap.

² HUD income limits for very low-income households (very low-income limits, or VLILs) are based on 50 percent of AMGI. In formulating the Fair Market Rents (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 originally 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. Furthermore, HUD created separate “HUD Metro FMR Areas” for all counties added to metropolitan areas in the February 28, 2013 re-definition of metropolitan areas published by the Office of Management and Budget. 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 FMR areas and FMRs are available at <http://www.huduser.org/portal/datasets/fmr.html>. Complete details on HUD’s process for determining income limits are available at <http://www.huduser.org/portal/datasets/il.html>.)

HUD uses the HMFA-level AMGIs to determine QCT eligibility because the statute, specifically IRC Section 42(d)(5)(B)(iv)(II), refers to the same section of the IRC that defines income for purposes of tenant eligibility and unit maximum rent, specifically IRC Section 42(g)(4). By rule, the IRS sets these income limits according to HUD's VLILs, which, starting 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 (IRC Section 42(d)(5)(B)(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. Due to potential statistical anomalies in the ACS 5-year estimates, one of these conditions must be met in at least 2 of the 3 evaluation years for a tract to be considered eligible for QCT designation. HUD calculates 60 percent of AMGI by multiplying by a factor of 1.2 the HMFA or nonmetropolitan county FY2016 VLIL adjusted for inflation to match the ACS estimates. For example, the FY2016 VLILs were adjusted for inflation to 2013 dollars to compare with the median income estimate from the 2009-2013 ACS estimates. The inflation-adjusted 2013 VLIL was then deflated to 2012 for comparison with the 2008-2012 ACS estimates and inflated to 2014 to compare with the 2010-2014 ACS estimates.

2. For each census tract, whether or not 50 percent of households have incomes 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) comparing the average-household-size-adjusted income standard to the median household income for the tract reported in each of the three years

of ACS tabulations (2008-2012, 2009-2013 and 2010-2014). HUD did not consider estimates of median household income to be statistically reliable unless the margin of error was less than half of the estimate (or a Margin of Error Ratio, MoER, of 50 percent or less). If at least two of the three estimates were not statistically reliable by this measure, HUD determined the tract to be ineligible under the income criterion due to lack of consistently reliable median income statistics across the three ACS tabulations. Since 50 percent of households in a tract have incomes above and below the tract median household income, if the tract median household income is less than the average-household-size-adjusted income standard for the tract, then more than 50 percent of households have incomes below the standard.

3. For each census tract, the poverty rate was determined in each of the three releases of ACS tabulations (2008-2012, 2009-2013 and 2010-2014) by dividing the population with incomes below the poverty line by the population for whom poverty status has been determined. As with the evaluation of tracts under the income criterion, HUD uses a higher data quality standard for evaluating ACS poverty rate data in designating the 2017 QCTs than HUD used in previous designations. HUD did not consider estimates of the poverty rate to be statistically reliable unless both the population for whom poverty status has been determined and the number of persons below poverty had MoERs of less than 50 percent of the respective estimates. In prior designations of QCTs, HUD accepted ACS data with MoERs of up to, but not including 100 percent. If at least two of the three poverty rate estimates were not statistically reliable, HUD determined the tract to be ineligible under the poverty rate criterion due to lack of reliable poverty statistics across the ACS tabulations.

4. QCTs are those census tracts in which 50 percent or more of the households meet the income criterion in at least two of the three years evaluated, or 25 percent or more of the

population is in poverty in at least two of the three years evaluated, 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. The income and poverty criteria are each averaged over the three ACS tabulations (2008-2012, 2009-2013 and 2010-2014). Statistically reliable values that did not exceed the income and poverty rate thresholds were included in the average.

b. Eligible tracts are placed in one of two groups based on the averaged values of the income and poverty criteria. The first group includes tracts that satisfy both the income and poverty criteria for QCTs for at least two of the three evaluation years. The second group includes tracts that satisfy either the income criterion or the poverty criterion in at least two of three years, but not both. A tract must qualify by at least one of the criteria in at least two of the three evaluation years to be eligible, although it does not need to be the same criterion.

c. Tracts in the first group are ranked from highest to lowest by the average of the ratios of the tract average-household-size-adjusted income limit to the median household income. Then, tracts in the first group are ranked from highest to lowest by the average of the poverty rates. 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.

d. Tracts in the second group are ranked from highest to lowest by the average of the ratios of the tract average-household-size-adjusted income limit to the median household income. Then, tracts in the second group are ranked from highest to lowest by the average of the poverty

rates. 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.

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

f. Working down the single, concatenated, ranked list of eligible tracts, census tracts are identified as 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.

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

As stated in OMB Bulletin 13-01, defining metropolitan areas:

“OMB establishes and maintains the delineations 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 delineations, [...] 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 delineations are appropriate for such use. An agency using the statistical delineations in a nonstatistical program may modify the delineations, but only for the purposes of that program. In such cases, any modifications should be clearly identified as delineations from the OMB

statistical area delineations in order to avoid confusion with OMB's official definitions of Metropolitan ... Statistical Areas.”

Following OMB guidance, the estimation procedure for the FMRs and income limits incorporates the current OMB definitions of metropolitan areas based on the CBSA standards, as implemented with 2010 Census data, but makes adjustments to the definitions, in order to separate subparts of these areas in cases where counties were added to an existing or newly defined metropolitan area. In CBSAs where subareas are established, it is HUD's view that the geographic extent of the housing markets are not the same as the geographic extent of the CBSAs.

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.

Future Designations

DDAs are designated annually as updated income and FMR data are made public. QCTs are designated annually as new income and poverty rate data are released.

Effective Date

The 2017 lists of QCTs and DDAs are effective:

- (1) for allocations of credit after December 31, 2016; 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, 2016.

If an area is not on a subsequent list of QCTs or DDAs, the 2017 lists are effective for the area if:

(1) the allocation of credit to an applicant is made no later than the end of the 730-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 730-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.

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 QCT or DDA status. The examples covering DDAs are equally applicable to QCT designations.

(Case A) Project A is located in a 2017 DDA that is NOT a designated DDA in 2018 or 2019. A complete application for tax credits for Project A is filed with the allocating agency on November 15, 2017. Credits are allocated to Project A on October 30, 2019. Project A is eligible for the increase in basis accorded a project in a 2017 DDA because the application was filed BEFORE January 1, 2018 (the assumed effective date for the 2018 DDA lists), and because tax credits were allocated no later than the end of the 730-day period after the filing of the complete application for an allocation of tax credits.

(Case B) Project B is located in a 2017 DDA that is NOT a designated DDA in 2018 or 2019. A complete application for tax credits for Project B is filed with the allocating agency on December 1, 2017. Credits are allocated to Project B on March 30, 2020. Project B is NOT eligible for the increase in basis accorded a project in a 2017 DDA because, although the application for an allocation of tax credits was filed BEFORE January 1, 2018 (the assumed effective date of the 2018 DDA lists), the tax credits were allocated later than the end of the 730-day period after the filing of the complete application.

(Case C) Project C is located in a 2017 DDA that was not a DDA in 2016. Project C was placed in service on November 15, 2016. A complete application for tax-exempt bond financing for Project C is filed with the bond-issuing agency on January 15, 2017. The bonds that will

support the permanent financing of Project C are issued on September 30, 2017. Project C is NOT eligible for the increase in basis otherwise accorded a project in a 2017 DDA, because the project was placed in service BEFORE January 1, 2017.

(Case D) Project D is located in an area that is a DDA in 2017, but is NOT a DDA in 2018 or 2019. A complete application for tax-exempt bond financing for Project D is filed with the bond-issuing agency on October 30, 2017. Bonds are issued for Project D on April 30, 2019, but Project D is not placed in service until January 30, 2020. Project D is eligible for the increase in basis available to projects located in 2017 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, 2019, within the 730-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 2017 DDA that is NOT a designated DDA or QCT in 2018. The first phase of Project E received an allocation of credits in 2017, pursuant to an application filed March 15, 2017, which describes the multiphase composition of the project. An application for tax credits for the second phase of Project E is filed with the allocating agency by the same entity on March 15, 2018. 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, 2018. 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 2017 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 2017 DDA that is NOT a designated DDA in 2018 or 2019. The first phase of Project F received an allocation of credits in 2017, pursuant to an application filed March 15, 2017, 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, 2019. Credits are allocated to the second phase of Project F on October 30, 2019. 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 2017 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).

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 IRC Section 42 , as amended, for the use by political subdivisions of the states in allocating the LIHTC. This notice also details the technical methods used in making such designations. As a result, this notice is not subject to review under the order.

Dated: October 5, 2016

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