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**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

[Docket No. FR-4889-N-02]

**Change in Effective Date in Notice for  
Designation of Difficult Development  
Areas Under Section 42 of the Internal  
Revenue Code of 1986**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice.

**SUMMARY:** This document amends a notice that designates 2004 Difficult Development Areas (the 2004 notice), by extending 2003 eligibility for areas that were designated as 2003 Difficult Development Areas in a notice published in 2002 (the 2003 notice), but were not so designated in the 2004 notice. The amendment is necessary because publication of the 2004 notice only two weeks prior to its effective date did not provide adequate notice to affected entities. This notice (1) changes the definition of effective date to relate it to the filing date of an application for Low-Income Housing Tax Credits or tax-exempt bond financing, (2) extends the effective date for areas designated as Difficult Development Areas in the 2003 notice that were not Difficult Development Areas in the 2004 notice, and (3) changes the definition of effective date for the Difficult Development Areas and Qualified

Census Tracts in the 2004 notice to relate it to the filing date of an application for Low-Income Housing Tax Credits or tax-exempt bond financing, but does not change the dates themselves.

**FOR FURTHER INFORMATION CONTACT:**

With questions related narrowly to the issue of the effective dates in this notice, Kurt G. Usowski, Associate Deputy Assistant Secretary for Economic Affairs, Office of Policy Development and Research, 451 Seventh Street, SW., Washington, DC 20410-6000, telephone (202) 708-2770, or e-mail [Kurt\\_G\\_Usowski@hud.gov](mailto:Kurt_G_Usowski@hud.gov). With questions on how areas are designated and on geographic definitions, Alastair McFarlane, Senior 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, e-mail [Alastair\\_McFarlane@hud.gov](mailto:Alastair_McFarlane@hud.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 HUDUSER at (800) 260-2691 for a small fee to cover duplication and mailing costs.

*Copies Available Electronically:* This notice is available electronically on the Internet (World Wide Web) at <http://www.huduser.org/datasets/qct.html>.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 19, 2003, HUD published the 2004 notice in the **Federal Register** designating Difficult Development Areas and Qualified Census Tracts for calendar year 2004. The 2004 notice provides that the lists of Difficult Development Areas are effective if the credits are allocated after December 31, 2003; and, in the case of a building described in section 42(h)(4)(B) of the Internal Revenue Code (Code), the lists are effective if the

bonds are issued and the building is placed in service after December 31, 2003.

Section 42(d)(5)(C) of the Code defines a Difficult Development Area as any area designated by the Secretary of HUD as an area that has high construction, land, and utility costs relative to the area median gross income. All designated Difficult Development Areas in metropolitan statistical areas (MSAs) may not contain more than 20 percent of the aggregate population of all MSAs, and all designated areas not in MSAs (nonmetropolitan areas) may not contain more than 20 percent of the aggregate population of all nonmetropolitan areas. In the case of buildings located in Difficult Development Areas, eligible basis can be increased by as much as 130 percent of what it would otherwise be. This means that the available Low-Income Housing Tax Credits also can be increased by as much as 30 percent.

HUD typically issues a notice in the **Federal Register** in the last quarter of a calendar year designating Difficult Development Areas for the forthcoming calendar year. HUD uses a ranking procedure to select Difficult Development Areas, subject to the 20 percent population cap. Because income and housing cost conditions change, new areas are added to the lists of designated Difficult Development Areas each year and some old areas are dropped from the lists. The 2004 lists published on December 19, 2003, do not include 10 metropolitan areas and 68 nonmetropolitan areas on the 2003 lists of Difficult Development Areas and include 3 metropolitan areas and 47 nonmetropolitan areas not on the 2003 lists of Difficult Development Areas.

**Determination**

HUD recognizes that, with every new designation of Difficult Development Areas, some metropolitan areas and nonmetropolitan areas lose their designation and rental projects planned in these areas lose their eligibility for

the extra credits. Nevertheless, HUD believes that the Department should update the lists of designated areas as new data become available.

Low-Income Housing Tax Credit-allocating agencies and rental project developers have adjusted to a system in which the future availability of the extra credits is uncertain. Generally, for any rental project that a credit-allocating agency believes is crucial to meeting the housing needs of the area and for which the extra credits are essential for economic feasibility, the credit-allocating agency ensures that all the steps necessary to qualify are accomplished before a new designation list becomes effective. HUD attempts to publish the designation notice early enough to allow credit-allocating agencies to accomplish the necessary steps. HUD did not publish the 2004 notice until December 19, 2003, which did not provide adequate time before the effective date for allocating agencies or applicants for tax credits or tax-exempt bond financing to take actions to meet the conditions necessary to capture the benefits of the 2003 Difficult Development Area designations before they expired.

In addition, the practice of tying the effective date of Difficult Development Areas and Qualified Census Tracts to the allocation date, without regard to the application date, creates a potential disruption to the financing and development plans for buildings to be constructed or rehabilitated in areas that lose Difficult Development Area or Qualified Census Tract designations after credits (or tax-exempt bond financing) are applied for and before the allocations of credits are made (or the bonds are issued and the building is placed in service). HUD seeks to reduce the uncertainty and ease the transition associated with the changes in Difficult Development Area and Qualified Census Tract designations for allocating agencies and affordable housing developers while ensuring that the additional resources governed by these designations are directed to the areas where the need is greatest.

HUD has determined that reasonable accommodation should be made to allow the Difficult Development Area and Qualified Census Tract features of the Low-Income Housing Tax Credit to work effectively. Because the late publication of the 2004 notice impeded the effectiveness of the Difficult Development Area feature of the Low-Income Housing Tax Credit, HUD is amending the effective date published in the 2004 notice. Because tying the effective date of Difficult Development Areas and Qualified Census Tracts to

the allocation of credits (or the issuance of tax-exempt bonds and placement in service) without regard to the application date for these Federal subsidies increases uncertainty in the development and financing process of affordable rental housing in areas that lose Difficult Development Area or Qualified Census Tract designations, HUD is revising the definition of effective date published in the 2004 notice.

This amendment provides that, in the case of a building to be constructed or rehabilitated, that is located in a Difficult Development Area designated in the 2003 notice that is not designated in the 2004 notice, the 2003 lists of Difficult Development Areas remain in effect (1) for allocations of credit to an applicant within the 365-day period after the submission to the credit-allocating agency of a complete application that was filed after December 31, 2002, and before December 17, 2004, or (2) for purposes of section 42(h)(4)(B) of the Code, for bonds issued or buildings placed in service within the 365-day period after the submission to the bond-issuing agency of a complete application that was filed after December 31, 2002, and before December 17, 2004, 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 agency or the bond-issuing agency. A "complete application" means that no more than *de minimis* clarifications of the application are required for the agency to make a decision about the allocation of tax credit or issuance of bonds covered by the application.

This amendment will extend Difficult Development Area designations in the 2003 notice for buildings to be constructed or rehabilitated that are located in Difficult Development Areas in the 2003 notice and that are not located in Difficult Development Areas in the 2004 notice. Thus, a building to be constructed or rehabilitated that is located in a Difficult Development Area designated in the 2003 notice that is not designated in the 2004 notice would be deemed to be located in a Difficult Development Area if a complete application for a tax credit allocation was filed, as certified in writing by the allocating agency, after December 31, 2002, and before December 17, 2004, and credits were allocated to the building within the 365-day period after the application filing date. Similarly, a

building described in section 42(h)(4)(B) of the Code that was located in a Difficult Development Area designated in the 2003 notice that was not designated in the 2004 notice would be deemed to be located in a Difficult Development Area if a complete application for tax-exempt bond financing was filed, as certified in writing by the bond-issuing agency, after December 31, 2002, and before December 17, 2004, and the building was placed in service or the bonds were issued within the 365-day period after the application filing date, provided that the issuance of the bonds and the placement in service of the building occur after the application is filed. That is, the applicant submitting an application during the prescribed time frame has up to 365 days after the application date either to place the project in service or to issue bonds to be eligible for the increase in basis accorded to projects located in 2003 Difficult Development Areas. The applicant is ineligible for the increase in basis if the building was placed in service before the application date, or if the application was submitted before the area was a Difficult Development Area.

This amendment also revises the language defining the effective date for 2004 Difficult Development Areas and Qualified Census Tracts designated in the 2004 notice to base the effective date on the filing of a complete application for tax credit or tax-exempt bond financing. The revision of the effective date definition will reduce uncertainty for developers of affordable rental housing that rely on the additional subsidies available in Difficult Development Areas and Qualified Census Tracts by effectively allowing them to lock in the availability of additional subsidy based on application date and provide a smoother transition to subsequent Difficult Development Area and Qualified Census Tract designations.

This amendment, therefore, provides that the 2004 lists of Difficult Development Areas and Qualified Census Tracts (including Qualified Census Tracts designated in notices FR-4799-N-01 and designated by reference in FR-4889-N-01) are effective (1) for allocations of credit after December 31, 2003; 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, 2003. If an area or census tract is not on subsequent lists of Difficult Development Areas or Qualified Census Tracts, the 2004 lists remain effective for the area or tract 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 filed before the effective date of the subsequent lists of Difficult Development Areas and Qualified Census Tracts; or (2) for purposes of section 42(h)(4)(B) of the Code, the bonds are issued or the building is placed in service no later than the end of the 365-day period after the submission to the bond-issuing agency of a complete application filed before the effective date of the subsequent lists of Difficult Development Areas and Qualified Census Tracts, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted. That is, the applicant submitting an application during 2004 has up to 365 days after the application date either to place the project in service or to issue bonds to be eligible for the increase in basis accorded to projects located in 2004 Difficult Development Areas and Qualified Census Tracts that are not so designated in, for example, 2005. The applicant is ineligible for the increase in basis if the building was placed in service before the application date, or if the application was submitted before the area was a Difficult Development Area or the tract was a Qualified Census Tract.

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 agency or bond-issuing agency. A “complete application” means that no more than *de minimis* clarifications of the application are required for the agency to make a decision about the allocation of tax credits or issuance of bonds covered by the application.

The effect of this amendment will be to allow developers of affordable rental housing in Difficult Development Areas and Qualified Census Tracts for 2004 that will not be so designated in, for example, 2005 to submit applications prior to the expiration of the 2004 designations and be eligible for the associated increase in basis so long as credits are allocated (or for section 42(h)(4)(B) buildings, the bonds are issued or the building placed in service) within the 365-day period after the filing of a complete application as certified in writing by the credit-allocating agency or bond-issuing agency.

#### Effective Date

##### *2003 Difficult Development Areas That Are Not 2004 Difficult Development Areas*

In the case of Difficult Development Areas designated in the 2003 notice, but not designated in the 2004 notice, these Difficult Development Areas are effective (1) for allocations of credit to an applicant within the 365-day period after the submission to the credit-allocating agency of a complete application by the applicant that was submitted after December 31, 2002, and before December 17, 2004; or (2) for purposes of section 42(h)(4)(B) of the Code, for bonds issued or buildings placed in service within the 365-day period after the submission to the bond-issuing agency of a complete application by the applicant that was submitted after December 31, 2002, and before December 17, 2004, 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 agency or bond-issuing agency. A “complete application” means that no more than *de minimis* clarifications of the application are required for the agency to make a decision about the allocation of tax credits or issuance of bonds covered by the application.

##### *2004 Difficult Development Areas and Qualified Census Tracts*

The effective date section of the 2004 notice is revised to read as follows:

The 2004 lists of Difficult Development Areas and Qualified Census Tracts (including Qualified Census Tracts designated in notices FR-4799-N-01 and FR-4889-N-01) are effective (1) for allocations of credit after December 31, 2003; 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, 2003. If an area or census tract is not on subsequent lists of Difficult Development Areas or Qualified Census Tracts, the 2004 lists remain effective for the area or tract if (1) the allocation of credit to an applicant is made no later than the end of the 365-day period after the submission of a complete application by the applicant to the credit-allocating agency, and the submission is made before the effective date of the subsequent lists of Difficult Development Areas and Qualified Census Tracts; or (2) for purposes of section 42(h)(4)(B) of the Code, the

bonds are issued or the building is placed in service no later than the end of the 365-day period after the submission of a complete application by the applicant to the bond-issuing agency, and the submission is made before the effective date of the subsequent lists of Difficult Development Areas and Qualified Census Tracts, 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 agency or bond-issuing agency. A “complete application” means that no more than *de minimis* clarifications of the application are required for the agency to make a decision about the allocation of tax credits or issuance of bonds covered by the application.

##### *Obligation of Credit-Allocating and Bond-Issuing Agencies With Regard to Subsidy Amounts*

A governmental unit continues to be obligated under section 42(m)(2) of the Code to ensure that the amount of credits attributable to a project affected by this notice do not exceed the amount necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

#### Other Matters

##### *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 that affects 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.

##### *Regulatory Flexibility Act*

The Secretary, in accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), has reviewed and approved this notice, and in so doing certifies that this notice does not have a significant economic impact on a substantial number of small entities. The notice involves the designation of “Difficult

Development Areas” as required by Section 42 of the Code, as amended, for use by political subdivisions of the states in allocating Low-Income Housing Tax Credits or issuing tax-exempt bonds. This notice places no new requirements on the states, their political subdivisions, or the applicants for credits. This notice also details the technical methodology used in making such designations.

*Executive Order 12612, Federalism*

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. As a result, the notice is not subject to review under the order. The notice merely designates “Difficult Development Areas” and “Qualified Census Tracts” as required under section 42 of the Code, as amended, for the use by political subdivisions of the states in allocating Low-Income Housing Tax Credits or issuing tax-exempt bonds.

Dated: October 28, 2004.

**Alphonso Jackson,**

*Secretary.*

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