DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5815–N–03]

Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts: Revision of Effective Date for 2015 Designations

AGENCY: Office of the Assistant Secretary for Policy Development and Research,HUD.

ACTION: Notice.

SUMMARY: This document revises the effective date for designations of “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 published on October 3, 2014 at 79 FR 59855 and amended December 17, 2015 at 80 FR 78749 in areas approved for Federal disaster-related individual assistance under the Stafford Act in 2017 (hereafter, “declared counties”) and were not in areas on subsequent lists of DDAs or QCTs but submitted applications while the area was a 2015 QCT or DDA. DDAs and QCTs for 2015 were published on November 24, 2015 at 80 FR 73201. DDAs and QCTs for 2017 were published on October 17, 2016 at 81 FR 71523. DDAs and QCTs for 2018 were published on September 11, 2017 at 82 FR 42694. This applies to declared counties in 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 actual designations of 2015 QCTs and DDAs are not affected by this notice. HUD is revising the effective date of the 2015 QCTs and DDAs in declared counties at this time to aid the ability of areas affected by natural disasters to place in service affordable housing. For LIHTC and bond-financed projects located in declared counties, the sections entitled “Effective Date” and “Interpretive Examples of Effective Date” of the 2015 DDA and QCT designations as published October 3, 2014 at 79 FR 59855 and December 17, 2015 at 80 FR 78749 are hereby revised to read as follows:

Effective Date

The 2015 lists of QCTs and DDAs are effective:

(1) For allocations of credit after December 31, 2014; 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, 2014.

If an area is not on a subsequent list of DDAs, the 2015 lists are effective for the area if:

(1) The allocation of credit to an applicant is made no later than the end of the 850-day period after the applicant submits a complete application to the bond-issuing agency, and

(2) 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 applies 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 is that which applies 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 for 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 two 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
Project C was placed in service on November 15, 2014. A complete application for tax-exempt bond financing for Project C is filed with the bond-issuing agency on January 15, 2015. The bonds that will support the permanent financing of Project C are issued on September 30, 2015. Project C is NOT eligible for the increase in basis otherwise accorded a project in a 2015 DDA, because the project was placed in service BEFORE January 1, 2015.

(Case D) Project D is located in an area that is a DDA in 2015, but is NOT a DDA in 2016, 2017, or 2018 and is in a declared county. A complete application for tax-exempt bond financing for Project D is filed with the bond-issuing agency on October 30, 2015. Bonds are issued for Project D on January 30, 2018, but Project D is not placed in service until July 30, 2018. Project D is eligible for the increase in basis available to projects located in 2015 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 January 30, 2018, within the 850-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.

Findings and Certifications

A. 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).

B. 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 as required under IRC Section 42, as amended, for the use by political subdivisions of the states in allocating the LIHTC. As a result, this notice is not subject to review under the order.


Kurt G. Usowski,
Deputy Assistant Secretary for Economic Affairs.

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

Indian Gaming: Tribal-State Class III Gaming Compact Taking Effect in the State of New Mexico

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The notice announces that the Tribal-State Class III Gaming Compact between the Pueblo of Pojoaque and State of New Mexico is taking effect.

DATES: This notice is applicable as of October 26, 2017.


SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA) Public Law 100–497, 25 U.S.C. 2701 et seq., the Secretary of the Interior shall publish in the Federal Register notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by IGRA and 25 CFR 293.4, all compacts are subject to review and approval by the Secretary. The Secretary took no action on the compact between the Pueblo of Pojoaque and the State of New Mexico within 45 days of its submission. Therefore, the Compact is considered to have been approved, but only to the extent the Compact is consistent with IGRA. See 25 U.S.C. 2710(d)(8)(C).


Gavin Clarkson,
Deputy Assistant Secretary, Policy and Economic Development—Indian Affairs.

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