

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**Office of the Secretary**

[Docket No. N-94-3821; FR-3796-N-01]

**Statutorily Mandated Designation of  
Qualified Census Tracts and Difficult  
Development Areas for Section 42 of  
the Internal Revenue Code of 1986;  
Republication**

**Editorial Note:** FR Doc. 94-26217 was originally published at 59 FR 53518 in the issue of Monday, October 24, 1994. In that publication numerous errors were made. The corrected document is republished below in its entirety.

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

**ACTION:** Notice.

**SUMMARY:** This document provides revised designations of "Qualified Census Tracts" and "Difficult Development Areas" for purposes of the Low-Income Housing Tax Credit ("LIHTC") under section 42 of the Internal Revenue Code of 1986, and provides the methodology used by the United States Department of Housing and Urban Development ("HUD"). The new Qualified Census Tract designations are based on 1990 census data. The new Difficult Development Areas are based on FY 1994 Fair Market Rents ("FMRs"), FY 1994 income limits and 1990 census population counts as explained below.

**EFFECTIVE DATE:** The lists of Qualified Census Tracts and Difficult Development Areas are effective for allocations of credit made after December 31, 1994. In the case of a building described in Internal Revenue Code section 42(h)(4)(B), the list is effective if the bonds are issued and the building is placed in service after December 31, 1994.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Gross, Senior Tax Attorney, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708-3260, or Kurt G. Usowski, Economist, Division of Economic Development and Public Finance, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708-0426. A telecommunications device for deaf persons (TDD) is available at (202) 708-9300. (These are not toll-free telephone numbers.)

**SUPPLEMENTARY INFORMATION:**

**Background**

The U.S. Treasury Department and the Internal Revenue Service thereof are authorized to interpret and enforce the provisions of the Internal Revenue Code of 1986 (the "Code"), including the Low-Income Housing Tax Credit ("LIHTC") found at section 42 of the Code, as enacted by the Tax Reform Act of 1986 [Pub. L. 99-514], as amended by the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100-647], as amended by the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101-239], as amended by the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101-508], as amended by the Tax Extension Act of 1991 [Pub. L. 102-227], and as amended and made permanent by the Omnibus Budget Reconciliation Act of 1993 [Pub. L. 103-66]. The Secretary of HUD is required to designate Qualified Census Tracts and Difficult Development Areas by section 42(d)(5)(C) of the Code.

In order to assist in understanding HUD's mandated designation of Qualified Census Tracts and Difficult Development Areas for use in administering section 42 of the Code, a summary of section 42 is provided. The following summary does not purport to bind the Treasury or the IRS in any way, nor does it purport to bind HUD as HUD has no authority to interpret or administer the Code, except in those instances where it has a specific delegation.

**Summary of Low Income Housing Tax Credit**

The LIHTC is a tax incentive intended to increase the availability of low income housing. Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (the "credit ceiling") is limited by population. Each state is allocated credit based on \$1.25 per resident. Also, states may carry forward unused or returned credit for one year; if not used by then, credit goes into a national pool to be allocated to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low income housing building owners applying for the credit.

The credit is based on the cost of units placed in service as low-income units under certain minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC: either 20% of units must be

rent-restricted and occupied by tenants with incomes no higher than 50% of the Area Median Gross Income ("AMGI"), or 40% of units must be rent restricted and occupied by tenants with incomes no higher than 60% of AMGI. The term "rent-restricted" means that gross rent, including an allowance for utilities, cannot exceed 30% of the tenant's imputed income limitation (i.e., 50% or 60% of AMGI). The rental restrictions 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 an additional 15 years.

The LIHTC reduces income tax liability dollar for dollar. It is taken annually for a term of ten 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 or financed with tax-exempt bonds, or (2) 30 percent of the qualified basis for the acquisition of existing projects or projects involving federal subsidies or financing with tax-exempt bonds. The actual credit rates were fixed at 9 percent (70 percent present value) and 4 percent (30 percent present value) for 1987, and are adjusted monthly for projects placed in service after 1987 under procedures specified in section 42. Individuals can use the credit up to a deduction equivalent of \$25,000. This equals \$9,900 at the 39.6% maximum marginal tax rate. Individuals cannot use the credit against the alternative minimum tax. Corporations, other than S or professional service corporations, can use the credit against ordinary income tax. They cannot use the credit against the alternative minimum tax. These corporations can also use the losses from the project.

The qualified basis represents a fraction of the "eligible basis," 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 in the building. The eligible basis is the adjusted basis attributable to acquisition cost plus the amounts chargeable to capital account incurred prior to the end of the first taxable year in which the qualified low income building is placed in service. In the case of buildings located in designated Qualified Census Tracts or designated Difficult Development Areas, eligible basis is increased to 130% of what it would otherwise be. This means that the available credit will also be increased by 30%; if the 70% credit is available, it will effectively be increased to 91%.