

Census Tracts. If a tract's low income population exceeds 50% of its total population, then the tract is eligible unless it becomes necessary to eliminate the tract to satisfy the cap. There are many metropolitan areas and States in which the population of eligible areas falls short of 20%. When HUD had to eliminate tracts to satisfy the 20% cap, it was choosing among tracts that were otherwise eligible. By comparison, section (42)(d)(5)(C) does not specify under what conditions an area is automatically a Difficult Development Area. HUD did not attempt to establish a threshold for eligibility. Instead HUD used the 20% cap as a limit on eligibility.

2. For both Qualified Census Tracts and Difficult Development Areas, HUD applied the caps strictly unless a strict application produced an anomalous result. Specifically, HUD stopped selecting areas when it was impossible to choose another area without exceeding the applicable cap. The only exception to this policy was when an excluded area contained either a large absolute population or a large percentage of the total population and its inclusion resulted in only a minor overrun of the cap. There were some cases where the inclusion of an area would result in a minimal overrun of the cap; but, in all of these cases, the exclusion of the area resulted in neither a large absolute loss of population nor a large short-fall below 20%. HUD believes the designation of these areas is consistent with the intent of the legislation. Some latitude is justifiable because it is impossible to really determine whether the 20% cap has been exceeded, as long as the apparent excess is small, due to measurement error. Despite the care and effort involved in a decennial census, it is recognized by the Census Bureau, and all users of the data, that the population counts for a given area and for the entire country are not precise. The extent of

the measurement error is unknown. Thus, there can be errors in both the numerator and denominator of the ratio of populations used in applying a 20% cap. In circumstances where a strict application of a 20% cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting small variances above the 20% limit.

Future Designations

Difficult Development Areas are designated annually as updated income and FMR data become available. Qualified Census Tracts will not be redesignated until year 2000 census data become available.

Other Matters

Environmental Review

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, that implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Impact on Small Entities

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby 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" and "Qualified Census Tracts" for use by political subdivisions of the States in allocating the LIHTC, as required by section 42 of the Internal Revenue Code, as amended. This notice places no new requirements on the States, their political subdivisions, or the applicants for the credit. This notice also details the

technical methodology used in making such designations.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have any substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. 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 Internal Revenue Code, as amended, for use by political subdivisions of the States in allocating the LIHTC. The notice also details the technical methodology used in making such designations.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and is not subject to review under the Order. The notice only designates "Difficult Development Areas" and "Qualified Census Tracts" as required under section 42 of the Internal Revenue Code, as amended, for use by political subdivisions of the States in allocating the LIHTC. The notice also details the technical methodology used in making such designations.

Dated: October 13, 1994.

Henry G. Cisneros,
Secretary.

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