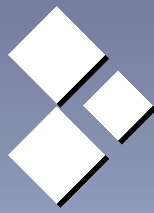
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USDA Rural Definition Changed by Farm Bill

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Congress approved the Agricultural Act of 2014, also known as the Farm Bill, Feb. 4, 2014. The Farm Bill revised the definition of "rural" that defines rural area eligibility for U.S. Department of Agriculture (USDA) housing programs. USDA provided preliminary guidance on how to implement the new definition of rural in Rural Development Administrative Notice 4748. Although the Farm Bill provides relief for some areas, many areas will still lose their rural designation.

Background

As previously covered in an article, "Rural Designation Uncertainty Could Disrupt Affordable Housing Development in 921 Communities," in the December 2012 Novogradac Journal of Tax Credits, changes resulting from the 2010 Census meant many rural communities were at risk of losing their rural status.

In the past, so-called "grandfather" clauses have protected communities where the population had grown since the previous census. The grandfather clause that expired on Sept. 30, 2012 had allowed communities with increased populations to retain eligibility if they were previously eligible under the 1990 or 2000 census. Without a new iteration of the grandfather clause, any area that couldn't meet the rural definition based on the 2010 census would no longer be eligible for rural funding and may not be able to use the national non-metro median income (NNMI) limit.

LIHTC Implications

The loss of rural designation would affect future development of low-income housing tax credit (LIHTC) properties and could affect access to loans and other sources of funding for new and existing properties. Internal Revenue Code Section 42(i)(8) allows developers of 9 percent LIHTC properties in rural areas to use the greater of either the NNMI or the area median gross income (AMGI) for the area to determine income limits. Properties financed with tax-exempt bonds are not eligible to use the NNMI.

The ability to use the NNMI has helped spur development in rural areas in two ways:

1. It has increased rent limits to help cover property expenses.
2. It has increased the number of people who can qualify to live at the properties.

Rural properties often have difficulty finding qualified individuals to occupy LIHTC units, and allowing properties to use a higher income limit increases the percentage of people who can qualify for the property, therefore helping units rent faster and decreasing vacancy loss.

If the property keeps its rural status, it would still be able to use NNMI and therefore have a higher income limit and target more of the population, which would help keep vacancy loss lower than a property that is not able to use NNMI.

New Definition

The recently passed Farm Bill increased the population limit for rural communities from 25,000 to 35,000, but removed all grandfathering. All areas must meet the rural criteria as of Sept. 30, 2014, to remain qualified. This provision to

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the Farm Bill will ensure that rural communities that are currently eligible for the USDA rural housing programs that would have lost eligibility because of the USDA's use of the 2010 Census data will now retain their eligibility through 2020 but only if their populations are below 35,000. This will not only result in the protection of the rural communities that have increased in population size since the 2000 Census but also classify new communities as rural areas.

USDA Implementation

USDA issued Administrative Notice 4748, which provides guidance on how USDA plans to implement the designation of eligible and ineligible areas based on the new definition of rural. USDA will implement the new designation in two phases. The USDA eligibility map will be updated on USDA's website once the implementation has been completed.

Phase one was implemented May 6, 2014. During this time the USDA will determine which communities will qualify as eligible. Areas meeting any of the three following criteria will be classified as eligible:

1. The area was eligible as of Sept. 30, 2013.
2. The area:
   a. was eligible prior to Oct. 1, 1990 or
   b. was eligible between Jan. 1, 2000, and Dec. 31, 2010 and
   c. was subsequently changed to ineligible and was ineligible on Sept. 30, 2013 and
   d. has a population that does not exceed 35,000 (2010 Census) and
   e. is rural in character.
3. The area population decreased following the 2000 Census, and the 2010 Census indicates it is now below the population limit for the area.

Phase two will be implemented Oct. 1, 2014. During this time, the USDA will be taking all the areas they deemed eligible on May 6, 2014, and take a closer look at their eligibility. Areas meeting any of the following criteria will be classified as ineligible:

1. The area was eligible prior to Oct. 1, 1990, or deemed to be eligible between Jan. 1, 2000, and Dec. 31, 2010, and the population exceeds 35,000 per the 2010 Census.
2. The area has been annexed into a larger ineligible area and has become part of the larger Census Data Place.
3. The area was formerly eligible but is no longer rural in character due to further development and urbanization that is inconsistent with the new rural area definition.

Uncertainty Surrounding Existing LIHTC Income and Rent Limits

Even though the Farm Bill expanded the population limits for rural areas from 25,000 to 35,000, many areas will still lose their rural eligibility without the grandfathering provision that allowed existing properties to continue their rural eligibility. LIHTC properties that lose their rural status might not be able to continue using the NNMI limit. There is no clear guidance that a project is held harmless at the national NNMI limits when an area loses its rural status. LIHTC properties located in these areas should contact their state agency and tax advisors to determine how this affects their properties. ❖

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