DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 598 and 599

[Docket No. FR–4663–F–07]

RIN 2506–AC09

Designation of Round III Urban Empowerment Zones and Renewal Communities

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule adopts without change an interim rule that governs the designation of Round III Urban Empowerment Zones (EZs) and Renewal Communities (RCs) nominated by states and local governments. The designation of an area as an EZ or an RC provides special federal income tax treatment as an incentive for businesses to locate within the area.

DATES: Effective Date: November 3, 2003.

FOR FURTHER INFORMATION CONTACT: For EZ/EC issues, Lisa Hill, and for RC issues, John Haines, at the Department of Housing and Urban Development, Room 7130, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–6339 (this is not a toll-free telephone number). Individuals with speech or hearing impairments may access these numbers via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 2001 (Omnibus Act) (Pub. L. 106–554, 114 Stat. 2763, approved December 21, 2000) enacted into law the provisions of a number of bills of the 106th Congress. One of the bills enacted into law as part of the Omnibus Act is H.R. 5662, the Community Renewal Tax Relief Act of 2000 (CRTR Act).

Section 111 of the CRTR Act added a new subsection (h), which authorized the designation of nine Round III Empowerment Zones (EZs) to section 1391 of Subchapter U of Chapter 1 of the Internal Revenue Code of 1986 (IRC). Subchapter U governs the designation and treatment of Empowerment Zones, Enterprise Communities, and Rural Development Investment Areas and provided authorization (though separate legislative enactments) for the designation of Round I EZs in 1993 and Round II EZs in 1997. The CRTR Act requires seven of the Round III EZs to be designated in urban areas by the Secretary of HUD and the remaining two Round III EZs to be designated in rural areas by the Secretary of Agriculture. The CRTR Act also conforms and enhances the tax incentives for Round I and Round II EZs and makes the new Round III EZs eligible for these incentives. The availability of the tax incentives is extended to December 31, 2009, for all EZs.

Section 101 of the CRTR Act added a new Subchapter X, consisting of sections 1400E through 1400J, to Chapter 1 of the IRC. Subchapter X governs the designation of, and tax incentives for, Renewal Communities (RCs) within which special tax incentives would be available. At least 12 of the 40 RC designations authorized by the CRTR Act must be in rural communities. Unlike the EZ program, which splits the designation responsibility between HUD and the Department of Agriculture for urban and rural areas respectively, all RC designations are to be made by HUD.

On July 9, 2001 (66 FR 35850), HUD published an interim rule to implement the designation requirements for Round III EZs and for RCs and requested public comment on the rule. HUD received four public comments, which are discussed in section III, Public Comments, of this preamble.

II. Changes in the Final Rule

The Department has determined to adopt the July 9, 2001, interim rule as a final rule without change.

III. Public Comments

Four municipalities submitted comments on the interim rule. The issues raised in the comments, all of them concerning the RC rule at 24 CFR part 599, followed by HUD's response, are set out under separate subject headings in this section of the preamble.

Too Small Areas

Because the nominated areas will be ranked solely on statistical criteria, there is nothing to prevent small areas from winning designation. The selection formula should give added weight to areas with larger populations.

HUD response: The statutory authorization for the designation of RCs, at section 1400E(c)(2)(C) of the IRC, establishes maximum and minimum population limits as eligibility requirements for RC designation. The criteria that may be used to designate RCs is also specifically limited to those provided in section 1400E. Although the population of an area must be within the statutory limits for the area to be considered for RC designation, population size is not included as one of the selection criteria provided in section 1400E. Therefore, HUD must determine that an area meets the population eligibility threshold, but HUD is not permitted to use population size in the selection formula.

Awarding RC Designation in a City With an EZ

If a city that already contains an EZ applies for an RC designation for an area that does not contain any census tracts from the EZ, it could receive the RC designation and also retain its EZ. This opportunity is unfair to a community that needs and deserves one of the designations.

HUD response: Section 1400E does not permit EZs and RCs to overlap by even a single census tract. Section 1400E(e) specifically provides that, ''[T]he designation * * * of any area as an empowerment zone or enterprise community shall cease to be in effect as of the date that the designation of any portion of such area as a renewal community takes effect.'' Beyond this limitation, the statute does not impose any restrictions on the availability of both EZs and RCs to qualifying areas within a community.

Including No- or Low-Population Tracts

A census tract with very low or no population may be critical for inclusion to create an effective RC, yet it would be ineligible unless it meets the 20 percent poverty criterion. This may result in inadequate land for business growth. HUD should allow inclusion of census tracts that are predominantly industrial or transportation uses if they are adjacent to tracts that meet the 20 percent poverty standard and if fewer than 50 households were counted in determining the poverty percentage.

HUD response: Although the authorizing statute for the EZ program specifically included, at 26 U.S.C. 1391(g)(3)(A)(ii), a provision permitting such treatment of census tracts with small populations, no such provision was included in the authorizing statute for the RC program. HUD hesitates to adopt such requirements absent the specific legislative authority.

Using Employment Tax Credits Cross-Boundary

The employment tax credits should be available for an employee that works in one EZ or RC and lives in another. This would include allowing an employer to claim the RC employment tax credit if both an EZ and an RC are involved. HUD and the Internal Revenue Service

(IRS) should issue the rulings that are necessary to confirm that these interpretations are correct.

HUD response: While HUD is responsible for the designation of RCs, the implementation and administration of the tax incentives for these areas is the responsibility of the Internal Revenue Service.

Regulation Protecting Health and Safety or Preventing Public Nuisance

The program requires the nominating governments to commit to ''economic growth promotion requirements.'' Specifically, they certify that they will repeal, reduce, or not enforce legal restrictions on certain types of business activities. The certifications do not apply to the extent that the regulation of businesses and occupations is necessary for, and well-tailored to, the protection of health and safety or if a public nuisance is involved, and the certifications may be limited to exclude specific businesses and occupations. The commenter recommended that HUD should allow the local governments broad discretion in determining what is a public nuisance.

HUD response: What constitutes a public nuisance is a determination to be made by the community at the local level.

Using CDBG Funds To Implement Renewal Communities

HUD should allow jurisdictions with designated RCs to use funds from the CDBG program, or, if applicable, EZ funds, for promotion and administration of RC responsibilities, perhaps with an annual cap of, say, $2.00 per RC resident.

HUD response: HUD is considering this suggestion, and will issue appropriate guidance to grantees.

Retaining One State's EZ Designation

Philadelphia and Camden request that Camden be allowed to retain its EZ status even if Philadelphia is awarded designation of an RC that includes census tracts from the Philadelphia-Camden EZ. They point out that the EZ is in two states and two cities, and each state/city combination has entered into a separate Memorandum of Agreement with HUD to implement their portions of the Round I EZ.

HUD response: As discussed above, section 1400E(e) of the IRC mandates that if any portion of an area designated as an EZ is given RC designation, the entire EZ designation ceases to be in effect. HUD has no authority to permit a different result.

IV. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in 24 CFR parts 598 and 599 have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control numbers 2506–0148 and 2506–0173, respectively. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made for this rule at the interim rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. Because this final rule adopts the interim rule without change, the Finding of No Significant Impact continues to apply. 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, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities as distinguished from large entities. The rule does not place any mandates on small entities. It merely authorizes them to seek designation as Renewal Communities as authorized by statute, and the burdens placed on applicants derive from the statute.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates

Executive Order 12875 calls for federal agencies to refrain, to the extent feasible and permitted by law, from promulgating any regulation that is not required by statute that would create a mandate on a state, local, or Tribal government, unless the agency provides funds for complying with the mandate or the agency first consults with affected state, local, and Tribal governments. Title II of the Unfunded Mandates Reform Act of 1995 (12 U.S.C. 1501) established requirements for federal agencies to assess the effects of their regulatory actions on state, local, and Tribal governments, and the private sector.

This rule does not impose any federal mandates on any state, local, or Tribal governments, or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995, because it does not mandate any particular action. The rule only authorizes states, localities, and tribes to apply for designation of areas within their jurisdiction as Empowerment Zones or Renewal Communities, which permits special tax treatment of business activities within the areas.

Regulatory Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule after its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, 451 Seventh Street, SW, Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program number assigned to these programs is 14.244.

List of Subjects

24 CFR Part 598

Community development, Economic development, Empowerment zones, Housing, Indians, Intergovernmental relations, Reporting and record keeping requirements, Urban renewal.

24 CFR Part 599

Community development, Economic development, Renewal communities, Housing, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Urban renewal.

PART 598—URBAN EMPOWERMENT ZONES: ROUND TWO AND THREE DESIGNATIONS

PART 599—RENEWAL COMMUNITIES

■ Accordingly, the interim rule amending 24 CFR part 598 and adding 24 CFR part 599, which was published at 66 FR 35850 on July 9, 2001, is adopted as final without change.

Dated: August 11, 2003.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 03–25041 Filed 10–2–03; 8:45 am]

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