

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-312 applicable to periods after Dec. 31, 2009, see section 753(d) of Pub. L. 111-312, set out as a note under section 1202 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title IX, §951(c), Aug. 5, 1997, 111 Stat. 885, provided that: “The amendments made by this section [amending this section and section 1396 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997], except that designations of new empowerment zones made pursuant to such amendments shall be made during the 180-day period beginning on the date of the enactment of this Act. No designation pursuant to such amendments shall take effect before January 1, 2000.”

TREATMENT OF CERTAIN TERMINATION DATES SPECIFIED IN NOMINATIONS

Pub. L. 116-260, div. EE, title I, §118(d), Dec. 27, 2020, 134 Stat. 3051, provided that: “In the case of a designation of an empowerment zone the nomination for which included a termination date which is contemporaneous with the date specified in subparagraph (A)(i) of section 1391(d)(1) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act [Dec. 27, 2020]), subparagraph (B) of such section shall not apply with respect to such designation if, after the date of the enactment of this section, the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary of the Treasury (or the Secretary’s designee) may provide.”

Pub. L. 116-94, div. Q, title I, §118(b), Dec. 20, 2019, 133 Stat. 3229, provided that: “In the case of a designation of an empowerment zone the nomination for which included a termination date which is contemporaneous with the date specified in subparagraph (A)(i) of section 1391(d)(1) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act [Dec. 20, 2019]), subparagraph (B) of such section shall not apply with respect to such designation if, after the date of the enactment of this section, the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary of the Treasury (or the Secretary’s designee) may provide.”

Pub. L. 115-123, div. D, title I, §40311(a)(2), Feb. 9, 2018, 132 Stat. 147, provided that: “In the case of a designation of an empowerment zone the nomination for which included a termination date which is contemporaneous with the date specified in subparagraph (A)(i) of section 1391(d)(1) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act [Feb. 9, 2018]), subparagraph (B) of such section shall not apply with respect to such designation if, after the date of the enactment of this section, the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary of the Treasury (or the Secretary’s designee) may provide.”

Pub. L. 114-113, div. Q, title I, §171(a)(2), Dec. 18, 2015, 129 Stat. 3069, provided that: “In the case of a designation of an empowerment zone the nomination for which included a termination date which is contemporaneous with the date specified in subparagraph (A)(i) of section 1391(d)(1) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act [Dec. 18, 2015]), subparagraph (B) of such section shall not apply with respect to such designation if, after the date of the enactment of this section, the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary of the Treasury (or the Secretary’s designee) may provide.”

Pub. L. 113-295, div. A, title I, §139(b), Dec. 19, 2014, 128 Stat. 4020, provided that: “In the case of a designation of an empowerment zone the nomination for which included a termination date which is contemporaneous

with the date specified in subparagraph (A)(i) of section 1391(d)(1) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act [Dec. 19, 2014]), subparagraph (B) of such section shall not apply with respect to such designation if, after the date of the enactment of this section, the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary of the Treasury (or the Secretary’s designee) may provide.”

Pub. L. 112-240, title III, §327(c), Jan. 2, 2013, 126 Stat. 2334, provided that: “In the case of a designation of an empowerment zone the nomination for which included a termination date which is contemporaneous with the date specified in subparagraph (A)(i) of section 1391(d)(1) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act [Jan. 2, 2013]), subparagraph (B) of such section shall not apply with respect to such designation if, after the date of the enactment of this section, the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary of the Treasury (or the Secretary’s designee) may provide.”

Pub. L. 111-312, title VII, §753(c), Dec. 17, 2010, 124 Stat. 3321, provided that: “In the case of a designation of an empowerment zone the nomination for which included a termination date which is contemporaneous with the date specified in subparagraph (A)(i) of section 1391(d)(1) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act [Dec. 17, 2010]), subparagraph (B) of such section shall not apply with respect to such designation if, after the date of the enactment of this section [Dec. 17, 2010], the entity which made such nomination amends the nomination to provide for a new termination date in such manner as the Secretary of the Treasury (or the Secretary’s designee) may provide.”

§ 1392. Eligibility criteria**(a) In general**

A nominated area shall be eligible for designation under section 1391 only if it meets the following criteria:

(1) Population

The nominated area has a maximum population of—

(A) in the case of an urban area, the lesser of—

(i) 200,000, or

(ii) the greater of 50,000 or 10 percent of the population of the most populous city located within the nominated area, and

(B) in the case of a rural area, 30,000.

(2) Distress

The nominated area is one of pervasive poverty, unemployment, and general distress.

(3) Size

The nominated area—

(A) does not exceed 20 square miles if an urban area or 1,000 square miles if a rural area,

(B) has a boundary which is continuous, or, except in the case of a rural area located in more than 1 State, consists of not more than 3 noncontiguous parcels,

(C)(i) in the case of an urban area, is located entirely within no more than 2 contiguous States, and

(ii) in the case of a rural area, is located entirely within no more than 3 contiguous States, and

(D) does not include any portion of a central business district (as such term is used for purposes of the most recent Census of Retail Trade) unless the poverty rate for each population census tract in such district is not less than 35 percent (30 percent in the case of an enterprise community).

(4) Poverty rate

The poverty rate—

(A) for each population census tract within the nominated area is not less than 20 percent,

(B) for at least 90 percent of the population census tracts within the nominated area is not less than 25 percent, and

(C) for at least 50 percent of the population census tracts within the nominated area is not less than 35 percent.

(b) Special rules relating to determination of poverty rate

For purposes of subsection (a)(4)—

(1) Treatment of census tracts with small populations

(A) Tracts with no population

In the case of a population census tract with no population—

(i) such tract shall be treated as having a poverty rate which meets the requirements of subparagraphs (A) and (B) of subsection (a)(4), but

(ii) such tract shall be treated as having a zero poverty rate for purposes of applying subparagraph (C) thereof.

(B) Tracts with populations of less than 2,000

A population census tract with a population of less than 2,000 shall be treated as having a poverty rate which meets the requirements of subparagraphs (A) and (B) of subsection (a)(4) if more than 75 percent of such tract is zoned for commercial or industrial use.

(2) Discretion to adjust requirements for enterprise communities

In determining whether a nominated area is eligible for designation as an enterprise community, the appropriate Secretary may, where necessary to carry out the purposes of this subchapter, reduce by 5 percentage points one of the following thresholds for not more than 10 percent of the population census tracts (or, if fewer, 5 population census tracts) in the nominated area:

(A) The 20 percent threshold in subsection (a)(4)(A).

(B) The 25 percent threshold in subsection (a)(4)(B).

(C) The 35 percent threshold in subsection (a)(4)(C).

If the appropriate Secretary elects to reduce the threshold under subparagraph (C), such Secretary may (in lieu of applying the preceding sentence) reduce by 10 percentage points the threshold under subparagraph (C) for 3 population census tracts.

(3) Each noncontiguous area must satisfy poverty rate rule

A nominated area may not include a noncontiguous parcel unless such parcel sepa-

ately meets (subject to paragraphs (1) and (2)) the criteria set forth in subsection (a)(4).

(4) Areas not within census tracts

In the case of an area which is not tracted for population census tracts, the equivalent county divisions (as defined by the Bureau of the Census for purposes of defining poverty areas) shall be used for purposes of determining poverty rates.

(c) Factors to consider

From among the nominated areas eligible for designation under section 1391 by the appropriate Secretary, such appropriate Secretary shall make designations of empowerment zones and enterprise communities on the basis of—

(1) the effectiveness of the strategic plan submitted pursuant to section 1391(f)(2) and the assurances made pursuant to section 1391(e)(3), and

(2) criteria specified by the appropriate Secretary.

(d) Special eligibility for nominated areas located in Alaska or Hawaii

A nominated area in Alaska or Hawaii shall be treated as meeting the requirements of paragraphs (2), (3), and (4) of subsection (a) if for each census tract or block group within such area 20 percent or more of the families have income which is 50 percent or less of the statewide median family income (as determined under section 143).

(Added Pub. L. 103-66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 545; amended Pub. L. 105-34, title IX, §954, Aug. 5, 1997, 111 Stat. 888.)

Editorial Notes

PRIOR PROVISIONS

A prior section 1392, added Pub. L. 95-600, title VI, §601(a), Nov. 6, 1978, 92 Stat. 2893; amended Pub. L. 96-222, title I, §106(a)(5), Apr. 1, 1980, 94 Stat. 221; Pub. L. 96-595, §3(a)(3), (4), Dec. 24, 1980, 94 Stat. 3465, related to election by general stock ownership corporations not to be subject to taxes imposed by this chapter, prior to repeal by Pub. L. 99-514, title XIII, §1303(a), Oct. 22, 1986, 100 Stat. 2658.

AMENDMENTS

1997—Subsec. (d). Pub. L. 105-34 added subsec. (d).

§ 1393. Definitions and special rules

(a) In general

For purposes of this subchapter—

(1) Appropriate Secretary

The term “appropriate Secretary” means—

(A) the Secretary of Housing and Urban Development in the case of any nominated area which is located in an urban area, and

(B) the Secretary of Agriculture in the case of any nominated area which is located in a rural area.

(2) Rural area

The term “rural area” means any area which is—

(A) outside of a metropolitan statistical area (within the meaning of section 143(k)(2)(B)), or

(B) determined by the Secretary of Agriculture, after consultation with the Secretary of Commerce, to be a rural area.