

§ 1391. Designation procedure**(a) In general**

From among the areas nominated for designation under this section, the appropriate Secretaries may designate empowerment zones and enterprise communities.

(b) Number of designations**(1) Enterprise communities**

The appropriate Secretaries may designate in the aggregate 95 nominated areas as enterprise communities under this section, subject to the availability of eligible nominated areas. Of that number, not more than 65 may be designated in urban areas and not more than 30 may be designated in rural areas.

(2) Empowerment zones

The appropriate Secretaries may designate in the aggregate 11 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than 8 may be designated in urban areas and not more than 3 may be designated in rural areas. If 8 empowerment zones are designated in urban areas, no less than 1 shall be designated in an urban area the most populous city of which has a population of 500,000 or less and no less than 1 shall be a nominated area which includes areas in 2 States and which has a population of 50,000 or less. The Secretary of Housing and Urban Development shall designate empowerment zones located in urban areas in such a manner that the aggregate population of all such zones does not exceed 1,000,000.

(c) Period designations may be made

A designation may be made under subsection (a) only after 1993 and before 1996.

(d) Period for which designation is in effect**(1) In general**

Any designation under this section shall remain in effect during the period beginning on the date of the designation and ending on the earliest of—

(A)(i) in the case of an empowerment zone, December 31, 2025, or

(ii) in the case of an enterprise community, the close of the 10th calendar year beginning on or after such date of designation,

(B) the termination date designated by the State and local governments as provided for in their nomination, or

(C) the date the appropriate Secretary revokes the designation.

(2) Revocation of designation

The appropriate Secretary may revoke the designation under this section of an area if such Secretary determines that the local government or the State in which it is located—

(A) has modified the boundaries of the area, or

(B) is not complying substantially with, or fails to make progress in achieving the benchmarks set forth in, the strategic plan under subsection (f)(2).

(e) Limitations on designations

No area may be designated under this section unless—

(1) the area is nominated by 1 or more local governments and the State or States in which it is located for designation under this section,

(2) such State or States and the local governments have the authority—

(A) to nominate the area for designation under this section, and

(B) to provide the assurances described in paragraph (3),

(3) such State or States and the local governments provide written assurances satisfactory to the appropriate Secretary that the strategic plan described in the application under subsection (f)(2) for such area will be implemented,

(4) the appropriate Secretary determines that any information furnished is reasonably accurate, and

(5) such State or States and local governments certify that no portion of the area nominated is already included in an empowerment zone or in an enterprise community or in an area otherwise nominated to be designated under this section.

(f) Application

No area may be designated under this section unless the application for such designation—

(1) demonstrates that the nominated area satisfies the eligibility criteria described in section 1392,

(2) includes a strategic plan for accomplishing the purposes of this subchapter that—

(A) describes the coordinated economic, human, community, and physical development plan and related activities proposed for the nominated area,

(B) describes the process by which the affected community is a full partner in the process of developing and implementing the plan and the extent to which local institutions and organizations have contributed to the planning process,

(C) identifies the amount of State, local, and private resources that will be available in the nominated area and the private/public partnerships to be used, which may include participation by, and cooperation with, universities, medical centers, and other private and public entities,

(D) identifies the funding requested under any Federal program in support of the proposed economic, human, community, and physical development and related activities,

(E) identifies baselines, methods, and benchmarks for measuring the success of carrying out the strategic plan, including the extent to which poor persons and families will be empowered to become economically self-sufficient, and

(F) does not include any action to assist any establishment in relocating from one area outside the nominated area to the nominated area, except that assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary is permitted if—

(i) the establishment of the new branch, affiliate, or subsidiary will not result in a decrease in employment in the area of original location or in any other area

where the existing business entity conducts business operations, and

(ii) there is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operation, and

(3) includes such other information as may be required by the appropriate Secretary.

(g) Additional designations permitted

(1) In general

In addition to the areas designated under subsection (a), the appropriate Secretaries may designate in the aggregate an additional 20 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than 15 may be designated in urban areas and not more than 5 may be designated in rural areas.

(2) Period designations may be made and take effect

A designation may be made under this subsection after the date of the enactment of this subsection and before January 1, 1999.

(3) Modifications to eligibility criteria, etc.

(A) Poverty rate requirement

(i) In general

A nominated area shall be eligible for designation under this subsection only if the poverty rate for each population census tract within the nominated area is not less than 20 percent and the poverty rate for at least 90 percent of the population census tracts within the nominated area is not less than 25 percent.

(ii) Treatment of census tracts with small populations

A population census tract with a population of less than 2,000 shall be treated as having a poverty rate of not less than 25 percent if—

(I) more than 75 percent of such tract is zoned for commercial or industrial use, and

(II) such tract is contiguous to 1 or more other population census tracts which have a poverty rate of not less than 25 percent (determined without regard to this clause).

(iii) Exception for developable sites

Clause (i) shall not apply to up to 3 noncontiguous parcels in a nominated area which may be developed for commercial or industrial purposes. The aggregate area of noncontiguous parcels to which the preceding sentence applies with respect to any nominated area shall not exceed 2,000 acres.

(iv) Certain provisions not to apply

Section 1392(a)(4) (and so much of paragraphs (1) and (2) of section 1392(b) as relate to section 1392(a)(4)) shall not apply to

an area nominated for designation under this subsection.

(v) Special rule for rural empowerment zone

The Secretary of Agriculture may designate not more than 1 empowerment zone in a rural area without regard to clause (i) if such area satisfies emigration criteria specified by the Secretary of Agriculture.

(B) Size limitation

(i) In general

The parcels described in subparagraph (A)(iii) shall not be taken into account in determining whether the requirement of subparagraph (A) or (B) of section 1392(a)(3) is met.

(ii) Special rule for rural areas

If a population census tract (or equivalent division under section 1392(b)(4)) in a rural area exceeds 1,000 square miles or includes a substantial amount of land owned by the Federal, State, or local government, the nominated area may exclude such excess square mileage or governmentally owned land and the exclusion of that area will not be treated as violating the continuous boundary requirement of section 1392(a)(3)(B).

(C) Aggregate population limitation

The aggregate population limitation under the last sentence of subsection (b)(2) shall not apply to a designation under paragraph (1).

(D) Previously designated enterprise communities may be included

Subsection (e)(5) shall not apply to any enterprise community designated under subsection (a) that is also nominated for designation under this subsection.

(E) Indian reservations may be nominated

(i) In general

Section 1393(a)(4) shall not apply to an area nominated for designation under this subsection.

(ii) Special rule

An area in an Indian reservation shall be treated as nominated by a State and a local government if it is nominated by the reservation governing body (as determined by the Secretary of the Interior).

(h) Additional designations permitted

(1) In general

In addition to the areas designated under subsections (a) and (g), the appropriate Secretaries may designate in the aggregate an additional 9 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than seven may be designated in urban areas and not more than 2 may be designated in rural areas.

(2) Period designations may be made and take effect

A designation may be made under this subsection after the date of the enactment of this subsection and before January 1, 2002.

(3) Modifications to eligibility criteria, etc.

The rules of subsection (g)(3) shall apply to designations under this subsection.

(4) Empowerment zones which become renewal communities

The number of areas which may be designated as empowerment zones under this subsection shall be increased by 1 for each area which ceases to be an empowerment zone by reason of section 1400E(e).¹ Each additional area designated by reason of the preceding sentence shall have the same urban or rural character as the area it is replacing.

(Added Pub. L. 103-66, title XIII, §13301(a), Aug. 10, 1993, 107 Stat. 543; amended Pub. L. 105-34, title IX, §§951(a), 952(a), (d), Aug. 5, 1997, 111 Stat. 885-887; Pub. L. 106-554, §1(a)(7) [title I, §§111, 112, title III, §319(13)], Dec. 21, 2000, 114 Stat. 2763, 2763A-600, 2763A-601, 2763A-646; Pub. L. 111-312, title VII, §753(a), Dec. 17, 2010, 124 Stat. 3321; Pub. L. 112-240, title III, §327(a), Jan. 2, 2013, 126 Stat. 2334; Pub. L. 113-295, div. A, title I, §139(a), Dec. 19, 2014, 128 Stat. 4020; Pub. L. 114-113, div. Q, title I, §171(a)(1), Dec. 18, 2015, 129 Stat. 3069; Pub. L. 115-123, div. D, title I, §40311(a)(1), Feb. 9, 2018, 132 Stat. 147; Pub. L. 115-141, div. U, title IV, §401(a)(194), Mar. 23, 2018, 132 Stat. 1193; Pub. L. 116-94, div. Q, title I, §118(a), Dec. 20, 2019, 133 Stat. 3229; Pub. L. 116-260, div. EE, title I, §118(a), Dec. 27, 2020, 134 Stat. 3051.)

Editorial Notes**REFERENCES IN TEXT**

The date of the enactment of this subsection, referred to in subsec. (g)(2), is the date of enactment of Pub. L. 105-34, which was approved Aug. 5, 1997.

The date of the enactment of this subsection, referred to in subsec. (h)(2), is the date of enactment of Pub. L. 106-554, which was approved Dec. 21, 2000.

Section 1400E(e), referred to in subsec. (h)(4), was repealed by Pub. L. 115-141, div. U, title IV, §401(d)(5)(A), Mar. 23, 2018, 132 Stat. 1210.

PRIOR PROVISIONS

A prior section 1391, added Pub. L. 95-600, title VI, §601(a), Nov. 6, 1978, 92 Stat. 2892; amended Pub. L. 96-222, title I, §106(a)(4), Apr. 1, 1980, 94 Stat. 221; Pub. L. 96-595, §3(a)(1), (2), Dec. 24, 1980, 94 Stat. 3465, defined terms used in former subchapter U, prior to repeal by Pub. L. 99-514, title XIII, §1303(a), Oct. 22, 1986, 100 Stat. 2658.

AMENDMENTS

2020—Subsec. (d)(1)(A)(i). Pub. L. 116-260 substituted “December 31, 2025” for “December 31, 2020”.

2019—Subsec. (d)(1)(A)(i). Pub. L. 116-94 substituted “December 31, 2020” for “December 31, 2017”.

2018—Subsec. (d)(1)(A)(i). Pub. L. 115-123 substituted “December 31, 2017” for “December 31, 2016”.

Subsec. (g)(3)(E)(ii). Pub. L. 115-141 substituted “the Interior” for “Interior”.

2015—Subsec. (d)(1)(A)(i). Pub. L. 114-113 substituted “December 31, 2016” for “December 31, 2014”.

2014—Subsec. (d)(1)(A)(i). Pub. L. 113-295 substituted “December 31, 2014” for “December 31, 2013”.

2013—Subsec. (d)(1)(A)(i). Pub. L. 112-240 substituted “December 31, 2013” for “December 31, 2011”.

2010—Subsec. (d)(1)(A)(i). Pub. L. 111-312, §753(a)(1), substituted “December 31, 2011” for “December 31, 2009”.

¹ See References in Text note below.

Subsec. (h)(2). Pub. L. 111-312, §753(a)(2), struck out at end “Subject to subparagraphs (B) and (C) of subsection (d)(1), such designations shall remain in effect during the period beginning on January 1, 2002, and ending on December 31, 2009.”

2000—Subsec. (d)(1)(A). Pub. L. 106-554, §1(a)(7) [title I, §112], amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “the close of the 10th calendar year beginning on or after such date of designation.”.

Subsec. (g)(3)(C). Pub. L. 106-554, §1(a)(7) [title III, §319(13)], substituted “paragraph (1)” for “paragraph (1)(B)”.

Subsec. (h). Pub. L. 106-554, §1(a)(7) [title I, §111], added subsec. (h).

1997—Subsec. (b)(2). Pub. L. 105-34, §951(a)(3), substituted “1,000,000” for “750,000”.

Pub. L. 105-34, §951(a)(2), which directed substitution of “8” for “6”, was executed by making the substitution both places “6” appeared, to reflect the probable intent of Congress.

Pub. L. 105-34, §951(a)(1), substituted “11” for “9”.

Subsec. (c). Pub. L. 105-34, §952(d)(2), substituted “subsection (a)” for “this section”.

Subsecs. (e), (f). Pub. L. 105-34, §952(d)(1), substituted “this section” for “subsection (a)” in introductory provisions.

Subsec. (g). Pub. L. 105-34, §952(a), added subsec. (g).

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 2020 AMENDMENT**

Pub. L. 116-260, div. EE, title I, §118(e), Dec. 27, 2020, 134 Stat. 3051, provided that: “The amendments made by this section [amending this section and sections 1397A and 1397B of this title] shall apply to taxable years beginning after December 31, 2020.”

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116-94, div. Q, title I, §118(c), Dec. 20, 2019, 133 Stat. 3229, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2017.”

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115-123, div. D, title I, §40311(b), Feb. 9, 2018, 132 Stat. 147, provided that: “The amendment made by subsection (a)(1) [amending this section] shall apply to taxable years beginning after December 31, 2016.”

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-113, div. Q, title I, §171(e)(1), Dec. 18, 2015, 129 Stat. 3071, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2014.”

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-295, div. A, title I, §139(c), Dec. 19, 2014, 128 Stat. 4020, provided that: “The amendment made by this section [amending this section] shall apply to periods after December 31, 2013.”

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112-240 applicable to periods after Dec. 31, 2011, see section 327(d) of Pub. L. 112-240, set out as a note under section 1202 of this title.

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, §4031(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,