

# HAWKINS ADVISORY

## 2021 UNITED STATES AND AREA MEDIAN GROSS INCOME FIGURES WITH RESPECT TO MORTGAGE REVENUE BONDS AND MORTGAGE CREDIT CERTIFICATES

Please be advised that the Internal Revenue Service has released Revenue Procedure 2021-19, which contains information for issuers of single-family housing bonds and mortgage credit certificates related to the income limits applicable thereto.

Important changes are included which we have been requesting for over 10 years! First, this guidance is now permanent; there will no longer be annual income limit updates. Instead, issuers will use the HUD income limits that are most recently published, without waiting for IRS acknowledgment of such. Second, there is now a 90-day transition period to switch to HUD's most recent income limits. And third, Revenue Procedure 2021-19 retains the ability of an issuer to use either (i) the income figures HUD released most recently (the "Most Recent HUD Figures") or (ii) the income figures HUD released immediately prior to the Most Recent HUD Figures (the "Immediately Prior HUD Figures"), determined as of the date a mortgage loan or mortgage credit certificate is committed to a mortgagor (meaning, a written commitment). No later than 90 days after the date on which HUD releases updated income figures for the calendar year, issuers of qualified mortgage bonds or mortgage credit certificates may continue to use the income figures HUD released during the second preceding calendar year for purposes of computing the income requirements. As has been the guidance in the past, if the issuer uses the Most Recent HUD Figures to calculate high housing cost areas, then the issuer must use the Most Recent HUD Figures for all purposes within the high housing cost area formula. Likewise, if the issuer uses the Immediately Prior HUD Figures to calculate high housing cost areas, then the issuer must use the Immediately Prior HUD Figures for all purposes within the high housing cost area formula.

Revenue Procedure 2021-19 supersedes Revenue Procedure 2020-33, which is now obsolete except with respect to the use of the Immediately Prior HUD Figures, as provided in Section 3 of the Revenue Procedure.

Please contact a member of the Tax Department or Housing Group if you have any questions about the use of this information.

### **About Hawkins Advisory**

The Hawkins Advisory is intended to provide occasional general comments on new developments in Federal and State law and regulations that we believe might be of interest to our clients. Articles in the Hawkins Advisory should not be considered opinions of Hawkins Delafield & Wood LLP. The Hawkins Advisory is not intended to provide legal advice as a substitute for seeking professional counsel; readers should not under any circumstance act upon the information in this publication without seeking specific professional counsel. Hawkins Delafield & Wood LLP will be pleased to provide additional details regarding any article upon request.

This Hawkins Advisory is not intended or written to be used, and cannot be used, by a taxpayer for the purpose of avoiding penalties that the Internal Revenue Service may impose on the Taxpayer.

Additional copies of this edition of the Hawkins Advisory may be obtained by contracting any attorney in the Firm.

**New York**  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
Tel: (212) 820-9300

**Washington, D.C.**  
601 Thirteenth Street, N.W.  
Washington, D.C. 20005  
Tel: (202) 682-1480

**Newark**  
One Gateway Center  
Newark, NJ 07102  
Tel: (973) 642-8584

**Hartford**  
20 Church Street  
Hartford, CT 06103  
Tel: (860) 275-6260

**Ann Arbor**  
2723 South State Street  
Ann Arbor, MI 48104  
Tel: (734) 794-4835

**Sacramento**  
1415 L Street  
Sacramento, CA 95814  
Tel: (916) 326-5200

**Los Angeles**  
333 South Grand Avenue  
Los Angeles, CA 90071  
(213) 236-9050

**San Francisco**  
One Embarcadero Center  
San Francisco, CA 94111  
Tel: (415) 486-4200

**Portland**  
200 SW Market  
Portland, OR 97201  
Tel: (503) 402-1320

*Hawkins*  
DELAFIELD & WOOD LLP

26 CFR 601.601: Rules and Regulations.  
(Also Part I, §§ 25, 143)

Rev. Proc. 2021-19

## SECTION 1. PURPOSE

This revenue procedure provides guidance with respect to the United States and area median gross income figures for use by issuers of qualified mortgage bonds, as defined in § 143(a) of the Internal Revenue Code, and issuers of mortgage credit certificates, as defined in § 25(c), in computing the income requirements described in § 143(f).

## SECTION 2. BACKGROUND

.01 Section 103(a) provides that, except as provided in § 103(b), gross income does not include interest on any State or local bond. Section 103(b)(1) provides that § 103(a) does not apply to any private activity bond that is not a qualified bond (within the meaning of § 141). Section 141(e) provides that the term "qualified bond" includes any private activity bond that (1) is a qualified mortgage bond, (2) meets the applicable volume cap requirements under § 146, and (3) meets the applicable requirements under § 147.

.02 Section 143(a)(1) provides that the term "qualified mortgage bond" means a bond that is issued as part of a "qualified mortgage issue". Section 143(a)(2)(A) provides that the term "qualified mortgage issue" means an issue of one or more bonds by a State or political subdivision thereof, but only if: (i) all proceeds of the issue (exclusive of issuance costs and a reasonably required reserve) are to be used to finance owner-occupied residences; (ii) the issue meets the requirements of subsections (c), (d), (e), (f), (g), (h), (i), and (m)(7) of § 143; (iii) the issue does not meet the private business tests of paragraphs (1) and (2) of § 141(b); and (iv) with respect to amounts received more than 10 years after the date of issuance, repayments of \$250,000 or more of principal on financing provided by the issue are used not later than the close of the first semi-annual period beginning after the date the prepayment (or complete repayment) is received to redeem bonds that are part of the issue.

.03 Section 25(c)(1) provides that the term "mortgage credit certificate" means any certificate that: (1) is issued under a qualified mortgage credit certificate program by the State or political subdivision having the authority to issue a qualified mortgage bond to provide financing on the principal residence of the taxpayer; (2) is issued to the taxpayer in connection with the acquisition, qualified rehabilitation, or qualified home improvement of the taxpayer's principal residence; (3) specifies the certificate credit rate and the certified indebtedness amount; and (4) is in such form as the Secretary of the Treasury or the Secretary's delegate (Secretary) may prescribe.

.04 Section 25(c)(2) provides that the term "qualified mortgage credit certificate

program” means any program under which, among other requirements, the indebtedness certified by mortgage credit certificates meets the requirements of § 143(f). See § 25(c)(2)(A)(iii)(IV).

.05 Section 143(f) imposes eligibility requirements concerning the maximum income of mortgagors for whom financing may be provided by qualified mortgage bonds. Generally, under §§ 143(f)(1) and 25(c)(2)(A)(iii)(IV), these income requirements are met only if all owner-financing under a qualified mortgage bond and all certified indebtedness amounts under a mortgage credit certificate program are provided to mortgagors whose family income is 115 percent or less of the applicable median family income. Under § 143(f)(3), in the case of targeted area residences, the income limitation of § 143(a) applies to 2/3 of the owner financing and is treated as satisfied if the family income of the mortgagor is 140 percent or less of the applicable median family income. Under § 143(f)(6), if there are fewer than three individuals in the family of the mortgagor, the income limitation of § 143(a) is reduced to 100 percent of the applicable median family income and, in the case of targeted area residences, the income limitation of § 143(a) is satisfied if the family income of the mortgagor is 120 percent or less of the applicable median family income.

.06 Section 143(f)(2) provides that, for purposes of § 143(f), the family income of mortgagors, and area median gross income, are determined by the Secretary after taking into account the regulations prescribed under section 8 of the United States Housing Act of 1937 (if terminated, a successor program) (Housing Act).

.07 Section 143(f)(4) provides that the term "applicable median family income" means, with respect to a residence, the greater of (A) the area median gross income for the area in which the residence is located, or (B) the statewide median gross income for the state in which the residence is located.

.08 Section 143(f)(5) provides for an upward adjustment of the income limitations in certain high housing cost areas. Under § 143(f)(5)(C), a high housing cost area is a statistical area for which the housing cost/income ratio is greater than 1.2. The housing cost/income ratio with respect to any statistical area is determined under § 143(f)(5)(D) by dividing (a) the applicable housing price ratio for such area by (b) the ratio that the area median gross income for such area bears to the median gross income for the United States. The applicable housing price ratio for any area is the new housing price ratio (new housing average purchase price for the area divided by the new housing average purchase price for the United States) or the existing housing price ratio (existing housing average purchase price for the area divided by the existing housing average purchase price for the United States), whichever results in the housing cost/income ratio being closer to 1.

.09 The Department of Housing and Urban Development (HUD) annually computes the median gross income (adjusted by family size) for the United States, the states, and statistical areas within the states. HUD releases the annually updated income figures to its regional offices in a notice. The most recent income figures are generally available by calling the HUD reference service at 1-800-245-2691, or at HUD's

website, <http://www.huduser.gov/portal/datasets/il.html> (including a menu from which the year and type of data of interest may be selected).

.10 Rev. Rul. 86-124, 1986-2 C.B. 27, provides the manner in which the income limits under § 143(f) applicable to qualified mortgage bonds and mortgage credit certificates are determined. In particular, the revenue ruling provides that, for purposes of § 143(f)(4), to determine the area median gross income for an area or state in a manner consistent with the determination of “median gross income” for the area or state under section 8 of the Housing Act, issuers must use the income limits released by HUD for Lower Income and Very Low Income under the Housing Act. Further, Rev. Rul. 86-124 provides the manner in which issuers must apply these income limits. See generally, Rev. Rul. 86-124, Guidelines.

.11 The Internal Revenue Service (IRS) has published a revenue procedure in the Internal Revenue Bulletin annually, providing guidance with respect to the United States and area median gross income figures that are to be used by issuers of qualified mortgage bonds and issuers of mortgage credit certificates for purposes of computing the income requirements under § 143(f). See, e.g., Rev. Proc. 2020-33, 2020-25 I.R.B. 956.

.12 The IRS has also published a revenue procedure in the Internal Revenue Bulletin annually, providing the most recent nationwide average purchase prices and average area purchase price safe harbor limitations for purposes of § 143(f)(5). See, e.g., Rev. Proc. 2020-18, 2020-15 I.R.B. 592.

.13 The Department of the Treasury (Treasury Department) and the IRS

requested public comments on whether, instead of publishing a revenue procedure annually, such as Rev. Proc. 2020-33, the IRS should publish permanent guidance that would allow issuers to rely on the HUD income figures immediately upon release. See Rev. Proc. 2020-33, Section 6. The Treasury Department and the IRS also requested public comments on the two-year convention with respect to the issuers' reliance on the HUD income figures, as provided in section 3.01 of Rev. Proc. 2020-33, and a transition period, if necessary. See Rev. Proc. 2020-33, Section 6. Comments received consistently favored publication of permanent guidance, retention of the two-year convention, and provision of a transition period, such as a period of 90 days following the release of the HUD income figures. As a result, the Treasury Department and the IRS have decided to publish this revenue procedure as permanent guidance consistent with comments received and to cease publishing annual revenue procedures providing income figures for purposes of computing the income requirements of § 143(f).

### SECTION 3. SCOPE

This revenue procedure applies to mortgage loans financed with qualified mortgage bonds and to mortgage credit certificates.

### SECTION 4. APPLICATION

.01 Applicable Income Figures. Except as provided in section 4.02 of this revenue procedure, for purposes of computing the income requirements of § 143(f), issuers of qualified mortgage bonds or mortgage credit certificates must use either (1) the income figures HUD released most recently (Most Recent HUD Figures) or (2) the income figures HUD released immediately prior to the Most Recent HUD Figures

(Immediately Prior HUD Figures), determined as of the date a mortgage loan or mortgage credit certificate is committed to a mortgagor.

.02 Transition Period. For mortgage loans and mortgage credit certificates committed to mortgagors no later than 90 days after the date on which HUD releases updated income figures for the calendar year, issuers of qualified mortgage bonds or mortgage credit certificates may continue to use the income figures HUD released during the second preceding calendar year for purposes of computing the income requirements of § 143(f).

.03 Consistency Requirement. If an issuer uses the Most Recent HUD Figures to compute the housing cost/income ratio under § 143(f)(5), the issuer must use the Most Recent HUD Figures for all purposes under § 143(f). Likewise, if an issuer uses the Immediately Prior HUD Figures to compute the housing cost/income ratio under § 143(f)(5), the issuer must use the Immediately Prior HUD Figures for all purposes under § 143(f). For example, if an issuer uses the income figures HUD released in 2021 to compute the housing cost/income ratio under § 143(f)(5), the issuer must use the income figures HUD released in 2021 for all purposes under § 143(f). Likewise, if an issuer uses the income figures HUD released in 2020 to compute the housing cost/income ratio under § 143(f)(5), the issuer must use the income figures HUD released in 2020 for all purposes under § 143(f).

## SECTION 5. EFFECT ON OTHER DOCUMENTS

.01 This revenue procedure obsoletes Rev. Proc. 2020-33.

.02 This revenue procedure amplifies Rev. Rul. 86-124.

## SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for mortgage loans and mortgage credit certificates committed on or after March 25, 2021.

## DRAFTING INFORMATION

The principal authors of this revenue procedure are Jian H. Grant and David White of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure contact Mr. White at (202) 317-6980 (not a toll-free call).