



National Council of
State Housing Agencies

December 28, 2018

CC:PA:LPD:PR (REG-115420-18)
Room 5203, Internal Revenue Service
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Re: 26 CFR Part I, REG-115420-18, Investing in Qualified Opportunity Funds

Dear Sir or Madam,

On behalf of the nation's Housing Finance Agencies (HFAs), the National Council of State Housing Agencies (NCSHA) appreciates the opportunity to provide comments on proposed Opportunity Zone guidance under Internal Revenue Code section 1400Z-2.

NCSHA represents the nation's state housing finance agencies (HFAs). State HFAs have established over many decades a track record of outstanding performance in affordable housing finance, including issuance of tax-exempt private activity Housing Bonds and administration of the federal Low Income Housing Tax Credit (Housing Credit) program. A number of HFAs also administer programs that finance job-creating activities such as economic development, infrastructure, and small businesses.

State HFA interest in Opportunity Zones is strong, and these agencies look forward to collaborating with the private sector to encourage investment and economic growth in distressed communities nationwide. Opportunity Zone investments have the potential to revitalize stable as well as struggling areas, and to support a wide array of activities, including housing, small business startup and expansion, and new community infrastructure. The regulations should ensure the Opportunity Zone incentives can and will realize this broad-based potential.

NCSHA greatly appreciates the significant effort and thoughtful approach by the Treasury Department and the Internal Revenue Service (IRS) to develop proposed regulatory guidance implementing this new section of the Internal Revenue Code. We also appreciate the guidance provided in Revenue Ruling 2018-29 relating to application of the original use and substantial improvement requirements in section 1400Z-2 to real property.

As IRS evaluates changes to the proposed guidance, we urge you to consider comments on the following provisions in particular:

Original Use of Opportunity Zone Property

The proposed regulations address the original use requirement of section 1400Z-2, defining qualified Opportunity Zone business property as tangible property acquired in 2018 or later, for which the original use of such property commences with the Qualified Opportunity Fund. Alternatively the regulations allow the property to qualify if it is substantially improved.

The proposed regulations solicit comment on the definition of original use—including whether some period of abandonment or underutilization of tangible property or vacant real property should erase a property’s history of prior use in the Opportunity Zone—and if so, what period would be consistent with the statute. NCSHA encourages IRS to consider land or property that has been vacant for a period of at least one year as meeting the original use requirement, consistent with rules under the Enterprise Zone incentive. This safe harbor will facilitate the redevelopment of vacant and abandoned properties in distressed communities and greatly enhance the impact of the Opportunity Zone incentive.

Substantial Improvement of Opportunity Zone Property

The proposed regulations address the substantial improvement requirement of section 1400Z-2 with respect to qualified Opportunity Zone property, providing that tangible property is treated as substantially improved if, during any 30-month period beginning after the date of acquisition of the property, additions to the basis of the property exceed an amount equal to the adjusted basis of the property at the beginning of the 30-month period. The proposed regulations further provide that the basis attributable to land on which such a building sits is not taken into account in determining whether the building has been substantially improved.

NCSHA supports this provision, as it will provide additional flexibility in selecting appropriate sites and redeveloping vacant or abandoned buildings in qualified Opportunity Zones. In addition, we suggest that IRS clarify that land and buildings acquired prior to 2018 qualify as Opportunity Zone property, so long as the substantial improvement of such property commences in 2018 or after, consistent with Opportunity Zone rules.

We also suggest that IRS provide an exception to the substantial improvement test for Opportunity Zone investments made in conjunction with the Housing Credit, by adopting the Housing Credit’s substantial rehabilitation rules in these instances. Section 42 of the Internal Revenue Code, which governs the Housing Credit, defines substantial rehabilitation as the greater of 20 percent of a building’s adjusted basis or \$6,000 per low-income unit. Aligning the substantial improvement test for Opportunity Zone investment with the Housing Credit

substantial rehabilitation requirement would help facilitate the development and preservation of Housing Credit developments in qualified Opportunity Zones.

Finally, we recommend that the regulations provide additional guidance on the definition and expectation of substantial improvement for Opportunity Zone business investments. In particular, we urge IRS to treat tangible and intangible property of a qualifying business the same so that businesses with intangible assets (i.e., STEM, software, or biotech companies) are not disadvantaged in attracting Opportunity Zone investment. Additional clarity on substantial improvement requirements for startup and small businesses will help encourage necessary investment in Opportunity Zones.

Qualified Opportunity Zone Business Requirements

The proposed regulations require that for each taxable year at least 50 percent of the gross income of a qualified Opportunity Zone business is derived from the active conduct of a trade or business in the Opportunity Zone. This requirement may discourage Opportunity Fund investment in businesses that generate income from internet-based sales that are not within the Opportunity Zone or from research and development entities that rely on expertise outside the local area. We encourage IRS to provide a lower threshold or exceptions to this rule for internet-based businesses or research and development entities located in Opportunity Zones.

Self-Certification of A Qualified Opportunity Fund

The proposed regulations generally permit any taxpayer that is a corporation or partnership for tax purposes to self-certify as a Qualified Opportunity Fund. While we agree this approach will facilitate the certification process and minimize the information collection burden placed on taxpayers, this certification should have additional parameters, including a statement of the anticipated outcome or goals of the fund's investment and a timeline for achieving such goals. This statement will allow communities to measure whether funds are on track to meet anticipated outcomes and facilitate subsequent investor reporting requirements.

In addition to the issues addressed above, we are pleased that forthcoming IRS regulations are expected to provide guidance in other areas. NCSHA looks forward to this future program guidance and suggests that IRS specifically consider guidance in the following areas to enable Opportunity Zones to fulfill the statutory intent of transforming distressed communities:

Preventing The Loss of Affordable Housing in Opportunity Zones

To prevent the loss of critical affordable housing, we encourage IRS to specifically prohibit Opportunity Zone investments that eliminate affordable housing units in a designated

Opportunity Zone without associated development of an equal number of replacement affordable units, unless a review of historic occupancy rates and a current market study support the elimination of such units.

Specifying Reporting Requirements for Opportunity Zone Investments

To enable assessment of the impacts and outcomes of Opportunity Zone investments, we encourage IRS to specify reporting requirements in program guidance. To avoid unnecessary burden, we encourage limiting the collection of data—both at the point of project certification and at regular intervals thereafter—to that necessary to allow reasonable assessment of the impact Opportunity Zone investments have on the communities in which they are located. We also encourage IRS to solicit public input on proposed data collection parameters.

NCSHA and our HFA members are excited to contribute to the implementation of the Opportunity Zone program and to leverage investments using HFA affordable housing and economic development tools. Thank you for considering our comments as you work to finalize this important program guidance.

Sincerely,



Stockton Williams
Executive Director