High-cost Cities Housing Forum

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Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington, DC 20224

The High-cost Cities Housing Forum (HCHF) appreciates the opportunity to provide comments to the Department of Treasury (Treasury) on the above referenced notice of proposed rulemaking relating to Investing in Qualified Opportunity Funds (QOF).

The HCHF, convened by Enterprise Community Partners, is a peer-to-peer group comprised of local housing commissioners and directors from nine of the most expensive cities in the United States. The forum was created more than a decade ago as a venue for local policymakers to discuss housing policy, offer program ideas and exchange best practices. Current member cities include Boston, Chicago, Denver, Los Angeles, Miami, New York City, San Francisco, Seattle and Washington, DC.

The members of the HCHF believe that QOF investments have the potential to transform some of our most distressed communities, particularly those that have suffered from decades of disinvestment. However, without proper guardrails in place, such investments could unintentionally harm or even displace the very residents the tax benefit was intended to serve.

We appreciate the guidance provided by the IRS in this initial round of regulations. This proposed rule offers much needed direction to stakeholders seeking to structure Opportunity Funds, and we infer through examples provided in the proposed rule that residential rental property is indeed a qualified business activity. Nevertheless, some provisions in this ruling may require further clarification. Questions remain on the implementation of the substantial improvement test, the "substantially all" threshold and the ability to pair QOF investments with other tax credits.

In anticipation of the next round of proposed rules which will address critical information reporting requirements, we also stress the critical nature of transparency as the cornerstone of community benefits in revitalizing neighborhoods.

In addition to the areas of requested clarification below, we urge the IRS to address the information outlined in individual comment letters submitted directly by our mayors.

Substantial Improvement Test

HCHF appreciates the flexibility that the IRS has provided by excluding the value of land from the substantial improvement test for tangible property. That provision would be conducive to efforts to preserve existing affordable housing, which is especially critical in high-cost markets where the combination of rapidly rising costs and expiring subsidies can result in the displacement of low- and moderate-income residents.

At the same time, the HCHF cities are concerned about the potential for abuse under this rule, particularly the potential for long-term land holding. Subtracting the value of land from Qualified Opportunity Zone (QOZ) Property could be especially problematic in the case of land that is vacant, significantly underdeveloped or with significantly depreciating assets (i.e. dilapidated or uninhabitable structures). In such cases, the substantial improvement test would result in little or no improvement to QOZ Property. Accordingly, we are concerned about the potential for predatory land-banking, particularly in areas that have already experienced rising costs and where investors could receive a federal tax benefit by simply buying and holding a piece of valuable land for ten years. We therefore urge Treasury and IRS to explicitly prevent the long-term holding of vacant land under the Opportunity Zones regulations.

Moreover, there are questions over the determination of value of QOZ Property. As such, HCHF also requests guidance on which entity will be designated to appraise or otherwise calculate the value of QOZ Property.

Substantially All Threshold

HCHF appreciates the additional flexibility in the “substantially all” threshold test for QOF investments. Statute requires substantially all of a partnership or corporation’s tangible property owned or leased to be a QOZ Business Property. Setting that threshold at 70 percent, as currently proposed, could be particularly helpful for investments in qualified business activity, which may be more fluid and require such flexibility to be successful.

Real estate projects, however, are static and we urge Treasury and IRS to set a separate, higher threshold for QOF investments in real estate. The perception that tangible real estate projects outside of a QOZ could receive preferential tax treatment from the federal government could undermine community development efforts and potentially conflict with the intended purpose of this tax benefit.

Pairing Investments with other Tax Credits

HCHF believes that the true potential of Opportunity Zones lies in the ability to pair this new source of private capital with existing programs to generate social impact. In particular, the Low-Income Housing Tax Credit (Housing Credit) and New Markets Tax Credit (NMTC) are proven, powerful tools with long track records in community revitalization. Both require competitive and rigorous application processes that lend themselves to transparency and accountability.

Considering the alignment of mission between those tax credits and the new Opportunity Zones benefit, we strongly urge the IRS to issue regulations that most efficiently allow the Credits to be paired with Opportunity Fund equity. Clarification on these regulations would allow us to maximize the impact we can have in low-income communities by leveraging existing federal programs.

Information Reporting Requirements

We were pleased to see the IRS commit to addressing information reporting requirements in the next round of proposed rules. As you are aware, the Conference Report that accompanied the Tax Cuts and Jobs Act compelled Treasury to set reporting requirements. We feel that collecting transaction-level data from QOFs is imperative to the ability of the public and Congress to evaluate the efficacy of this tax incentive. Collecting and analyzing this data will be particularly critical when considering the impact on residents who were living in the community at the time the Opportunity Zone was designated.

Final regulations for Opportunity Funds must include provisions that promote the transparency of Opportunity Fund activities, ensure accountability and prevent abuse.

Again, we appreciate the opportunity to comment and look forward to working with Treasury on the implementation of Opportunity Zones. If you have any questions regarding these comments, please do not hesitate to contact Flora Arabo, coordinator of the HCHF, at farabo@enterprisecommunity.org.

Sincerely,

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