



June 8, 2018

The Honorable Steven T. Mnuchin
Secretary of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Dear Secretary Mnuchin:

We are writing regarding the implementation of the new Opportunity Zone tax incentive on behalf of the members of the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) who represent the \$1.3 trillion apartment industry and its nearly 39 million residents. We would like to congratulate the Administration for working with Congress to enact landmark tax reform legislation that we believe holds great promise for generating economic growth and fostering job creation. We believe the Opportunity Zone provision represents an integral component toward achieving these goals.

For more than 20 years, NMHC and NAA have partnered to provide a single voice for America's apartment industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management and finance. NMHC represents the principal officers of the apartment industry's largest and most prominent firms. As a federation of 160 state and local affiliates, NAA encompasses over 75,000 members representing 9.25 million rental housing units globally.

As multifamily housing firms consider their participation in the new Opportunity Zone program, there is much excitement but many questions on how the program will work. Indeed, by providing for the deferral of capital gains invested in Opportunity Funds and eliminating tax on certain gains realized from Opportunity Fund investments, there is a strong potential to drive considerable investment in multifamily housing and workforce housing, in particular, in Opportunity Zones. If implemented properly, this new program can play a key role in addressing the nation's housing affordability challenge and building the 4.6 million new apartment units our nation needs by 2030.

To make the Opportunity Zones program as effective as possible, the multifamily industry, as a preliminary matter, asks the Treasury Department to ensure that forthcoming regulations ensure that:

- Multifamily housing is a qualified investment for Opportunity Funds;
- Multifamily properties qualified for other tax benefits, including Low-Income Housing Tax Credits (LIHTCs), Historic Tax Credits and New Markets Tax Credits, which are necessary to make a development viable, also qualify as investments for Opportunity Funds. It is often only a combination of incentives that make the difference between a project being able to move forward as opposed to never breaking ground; and
- Properties of all sizes are able to receive Opportunity Fund financing.

Beyond these threshold requests, we also have numerous technical questions about how the Opportunity Zone program will operate in practice. Please find below a summary of the key issues raised and our policy recommendations to address them. Investors in and managers of Opportunity Funds will require answers to these questions before they invest capital.

Opportunity Fund Execution

- **Time to Invest Funds:** How soon do deferred capital gains contributed to an Opportunity Fund have to be invested in qualified Opportunity Zone property? The statute appears to require that 90 percent of Opportunity Fund assets be invested in qualified Opportunity Zone property based on the average amount of Fund assets measured six months into the taxable year and again at the end of the taxable year. This truncated time frame could make it extremely difficult to use Opportunity Funds to invest in the new development of multifamily real estate given that the development process (i.e., securing entitlements and actual construction) often takes a significant period of time that runs well past one year and can approach three years.
Recommendation: Allow Opportunity Funds investing in real estate to have sufficient time to navigate the pre-construction and construction process without fear of penalty. This can be accommodated using the reasonable cause exception provided for in the statute.
- **Opportunity Zone Expiration:** Is there a deadline by which Opportunity Fund investments have to be made to qualify for the tax exclusion for assets held for 10 years? The statute specifies that “a designation as a qualified opportunity zone shall remain in effect for the period beginning on the date of designation and ending at the close of the 10th calendar year beginning on or after such date of designation.” We read this language to mean that Opportunity Zones designated in 2018 will lose their status January 1, 2029. In other words, will the gain on investments in Opportunity Funds made in 2019 and thereafter and held for at least 10 years still qualify for a tax exclusion even if underlying Opportunity Zone designations are expired during a portion of the holding period?
Recommendation: Clarify that investments into an Opportunity Fund any time after a qualified Opportunity Fund is designated will qualify for the tax exclusion.
- **Treatment of Investments Made During the Holding Period:** During a 10-year period, owners often want or need to make improvements and further investments to a newly constructed property. This further investment improves the cash flow and the value of the building, but there remains the question of how this additional investment is treated for purposes of calculating the tax exclusion for Opportunity Fund investments held for 10 years. Must the funds needed to make the future investment come from an Opportunity Fund? If not, how is such an investment treated?
Recommendation: Allow future investments from new equity sources and provide guidance on how to account for the split between opportunity and non-opportunity fund investments.
- **Allowable Investor Structure:** The statute refers to only corporations and partnerships as being eligible to start up Opportunity Funds. Can LLCs and REITs qualify to set up Opportunity Funds and is REIT stock a qualified Opportunity Zone stock investment?
Recommendation: Allow LLCs and REITs to qualify so as to make this tax incentive as widely used and effective as possible.
- **Control of an Opportunity Fund:** Multifamily projects are often extremely costly, and the ability to establish Opportunity Funds to invest in single assets would be beneficial. Additionally, can an Opportunity Fund be controlled, funded and invested in an asset by a single entity? This would be useful in a case in which a real estate company derives a gain from the sale of a property and deposits the gain into an Opportunity Fund that it establishes and controls to invest in a single asset within an Opportunity Zone.
Recommendation: Allow single asset opportunity funds, and allow control, funding and investing in a multifamily property to be controlled by a single entity.

Qualified Opportunity Fund Investment Activities

- **Land:** Can land purchases count for purposes of a qualifying Opportunity Zone investment? The statute requires that an Opportunity Fund either invests in original use property or that it substantially improves a property. Can land purchases qualify if the land is substantially improved?
Recommendation: Allow land as an investment if subsequent investments in land improvement within 30 months meet the requirements of Section 1400Z-2(d)(2)(D)(ii).
- **Required Improvement Threshold:** To invest in existing property, Opportunity Funds must double the basis of acquired property within 30 months. This can be a high threshold in certain circumstances and, thereby, serve as a barrier to rehabilitating and renovating properties. Can this rule be waived if acquired property has been vacant for a period time, such as one year, to make such investment more attractive and viable?
Recommendation: Allow a waiver to the “double the basis” rule if property has been vacant for a period exceeding one year.
- **Infrastructure:** Does the investment in new infrastructure, such as sewer systems and broadband, which serves a multifamily development qualify as an Opportunity Zone investment? If so, how would situations in which infrastructure improvements cross from an Opportunity Zone area into a non-Opportunity Zone area be treated?
Recommendation: Infrastructure improvements undertaken as part of a multifamily property development should be a qualified Opportunity Zone investment. Guidance should include proration methodology for the amount of investment that is within and outside of the Zone.
- **CRA:** Opportunity Zones are all located in LMI income neighborhoods, and, therefore, banks should be eligible to receive CRA credit for investments in multifamily properties within a Zone. The ability to earn CRA is credit is often one factor motivating investment in economically distressed areas.
Recommendation: Work with banking regulators to ensure that all Opportunity Fund investments in multifamily properties within an Opportunity Zone be eligible to earn CRA credit.

NMHC/NAA thank you for considering our views. We again congratulate you on establishing Opportunity Zones and hope to work with Congress to make this incentive and the new tax law as successful as possible. Please do not hesitate to contact Cindy Chetti, NMHC’s Senior Vice President of Government Relations, at 202-974-2300 should any questions arise.

Sincerely,



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