NMHC/NAA Viewpoint
Treasury in October 2018 proposed favorable Opportunity Zone regulations that adopted many NMHC/NAA priorities that should enable multifamily investors and developers to get projects off the ground. As the regulations do not address every issue, NMHC/NAA will work with policymakers to make additional changes, including further reducing the threshold for property improvements that rehabilitation projects must meet for Opportunity Zone benefits.

Tax incentives available to Opportunity Zone investments have the potential to unleash significant production of multifamily housing and workforce housing in particular.

OPPORTUNITY ZONES

Enacted as part of tax reform legislation in 2017, Opportunity Zones are designed to provide tax incentives for investments in distressed communities. Under the new program, Governors have designated over 8,700 qualified low-income census tracts nationwide as Opportunity Zones. Up to 25 percent of a state’s qualified census tracts may qualify as Opportunity Zones, with each state having to designate a minimum of 25 Zones.

Now that Opportunity Zones have been designated, real estate developers and others may establish Opportunity Funds that will be eligible for two tax incentives:

First, taxpayers may defer capital gains that are reinvested in Opportunity Funds to the earlier of the date an investment in an Opportunity Fund is disposed of or December 31, 2026. Notably, gains deferred for five years are eligible for a 10 percent basis step up, while gains deferred for seven years are eligible for an additional five percent basis step up.

Second, post-acquisition capital gains on investments held in Opportunity Funds for at least 10 years may be permanently excluded from income.

An Opportunity Fund is a corporation or partnership that holds at least 90 percent of its assets in Opportunity Zone property. Opportunity Fund capital may be used in conjunction with non-Opportunity Fund capital to finance an investment.

In October 2018, the Treasury Department proposed favorable regulations implementing the Opportunity Zones program. These regulations:

- Provide no restrictions on investing in multifamily housing as an asset class or using other tax incentives, including Low-Income Housing Tax Credits, as part of a development.
- Permit Opportunity Funds to use up to 31 months to deploy capital for multifamily investment;
- Enable LLCs to set up Opportunity Funds; and
- Allow investors to exclude the value of land in meeting the requirement to double basis as part of a rehabilitation project.

As the regulations do not address every issue, we will work with policymakers to make additional changes. For example, Congress should further reduce the basis increase necessary to qualify a multifamily rehabilitation project for Opportunity Zone purposes.