

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 program, Governors have designated over 8,700 qualified low-income census tracts nationwide as Opportunity Zones. Real estate developers and others may establish Opportunity Funds to construct and rehabilitate multifamily property 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.

In December 2019, the Treasury Department issued final 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 businesses to utilize multiple 31-month working capital safe harbors to deploy capital, provided that each individually meets the regulatory requirements. If a business uses multiple working capital safe harbors for the same piece of tangible property, the total length of time the safe harbor can last is 62 months
- Enable taxpayers to take debt-financed returns of capital (i.e., cash-out refinances) that do not exceed a taxpayer's basis in an Opportunity Fund without losing Opportunity Zones tax benefits; and
- Allow investors to exclude the value of land in meeting the requirement to double basis as part of a rehabilitation project.

While the final regulations appear very favorable for new multifamily development, taxpayers may find it difficult use Opportunity Zone benefits to rehabilitate existing properties. To qualify for Opportunity Zone benefits for renovations, the basis of an existing asset must be doubled excluding land. Although property that is added to and improves an asset can count toward this threshold, doubling the basis can still be a high hurdle. Accordingly, Congress should reduce the basis increase necessary to qualify a multifamily rehabilitation project for Opportunity Zone purposes.

NMHC/NAA Viewpoint

Treasury in December 2019 issued favorable final Opportunity Zone regulations that should enable multifamily investors and developers to get projects off the ground. However, because the basis of existing assets excluding land must be doubled to qualify a rehabilitation project for Opportunity Zone benefits, policymakers should reduce this threshold and make multifamily property renovations more viable.

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