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The Honorable Charles P. Rettig
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December 20, 2018

RE: IRS REG-115420-18, Opportunity Zone

Commissioner Rettig,

Please find below the U.S. Conference of Mayors' comments to proposed Opportunity Zone regulations and guidance under new section 1400Z-2 of the Internal Revenue Code published on October 29, 2018 in the Federal Register.

In order for Opportunity Zones to meet the shared goal of attracting investment to communities that have suffered long-term disinvestment, we encourage Treasury to adopt rules that support new and growing operating businesses in such zones. We also encourage Treasury to develop regulations that address the intent of the Opportunity Zone provisions to empower and benefit residents within the zones.

Our comments are as follow:

**1. Substantially All Threshold for Qualified Opportunity Zone Businesses**

Treasury offered clarity in the proposed regulations on a number of important definitional issues, including, most importantly, the definition of "substantially all" of a Qualified Opportunity Zone (QOZ) Business's tangible assets that must be Opportunity Zone Business Property. The proposed threshold of 70 percent provides the operational flexibility needed by small and medium-sized businesses and their potential investors. We encourage Treasury to adopt this 70 percent threshold in their final regulations.

We also ask Treasury to consider responsible carve-outs for types of property that should not count against the substantially all threshold for QOZ Businesses, such as goods and services in transit, and vehicles used to transport goods and services in and out of zones.

**2. 50 Percent Gross Income Test**

We are deeply concerned with the proposed rule requiring a Qualified Opportunity Zone Business to derive 50 percent of its gross income from the active conduct of a trade or business "*in the qualified opportunity zone*." This requirement is a departure from the plain language of the statute, and adds a level of rigidity that would dramatically curtail investments in operating businesses, given that many of these businesses will sell their products and services outside of the boundary of the zone in which they operate. Additionally, this would impose huge administrative burdens on businesses receiving Opportunity Fund investments to determine how to accurately calculate income received from activities conducted inside and outside of an Opportunity Zone. To address these concerns, we urge Treasury to adhere to the original language in the statute that requires at least 50 percent of an Opportunity Zone Business's total gross income come from the active conduct of its trade or business.

**3. Timing Flexibility for Qualified Opportunity Funds**

We believe that Qualified Opportunity Funds (QOFs) should be given adequate start up time in order to work with cities to identify projects that have the most impact in providing economic opportunity to low income residents. This is particularly true for QOFs that are formed to invest in zones with high concentrations of poverty and historic patterns of dis-investment where even with the added incentives offered by Opportunity Zones, investors face high hurdles. Cities are currently developing investment projects and strategies to present to QOFs for potential investment into such communities. We are committed to using our resources to unlock private capital for these places as well, but such a development process requires sufficient lead time. The proposed regulations include a 31-month safe harbor at the business level for the acquisition, construction, and/or substantial improvement of tangible property, but a similar safe harbor is needed for Opportunity Funds to allow time to prudently deploy capital. In addition, flexibility should be provided for the safe harbor in the event project development is delayed due to court-imposed permitting delays.

**4. Substantial Improvement Test for Operating Businesses**

In defining Qualified Opportunity Zone Business Property, the statute requires that the property's original use in the zone commences with the QOF, or that the QOF substantially improve the property by adding 100 percent of its basis over a 30-month period. In the context of an operating QOZ Business, it could be quite difficult and administratively burdensome to try to meet this test on an asset-by-asset basis. Treasury could provide that this test be met by a QOZ Business on an aggregate basis; if the QOZ Business doubled its basis in its aggregate business assets over the 30-month period, it would be treated as substantially improving its business assets. This would allow existing businesses to qualify as QOZ Businesses while still requiring that new investment and economic activity occur in the zone, and reducing undue administrative burden.

Treasury should consider allowing QOF investments into existing businesses that result in a substantial increase in the *intangible* property of a qualifying business to qualify under the substantial improvement test, just as investments that result in a substantial improvement of tangible property are eligible. The tangible property requirement is biased against financing the growth of QOZ businesses whose assets are primarily intangible in nature--often the very STEM businesses, such as software firms or biotech startups, that have the most transformative potential for local economies. Such businesses, however, must contribute economic activity to the zone.

**5. Reporting Requirements**

In order to properly evaluate the impact and intended effects of the Opportunity Zone program, Treasury should require QOFs to collect and submit transactional level information on the projects they invest in, including anticipated economic and job creation benefits to the zone. The collection of data should not be onerous, but sufficient to allow researchers and local government officials to reasonably measure the impact QOF investments have on low-income neighborhoods and their residents.

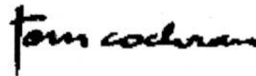
**6. Alignment with Complementary Programs**

It is important to recognize that some important projects, especially those in communities of historic dis-investment, will require additional incentives to come to fruition. It is likely that some projects will require incentives from the New Markets Tax Credit, the Low-Income Housing Tax Credit and other development incentives. We encourage Treasury to affirm that these other tax credits can be used in the financing of projects that also have QOF investment.

We look forward to continuing to work with Treasury and the IRS to develop effective Opportunity Zone provisions that will bring much needed investment to communities in need.

If you have any questions, please contact U.S. Conference of Mayor staff Dave Gatton dgatton@usmayors.org 202-861-6712.

Sincerely,



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