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The Honorable David J. Kautter
Acting Commissioner of the Internal Revenue Service
and Assistant Secretary of the Treasury for Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

August 23, 2018

Acting Commissioner Kautter,

As the nation's mayors, we write to encourage the issuance of timely and effective IRS guidance for the implementation of Opportunity Zone provisions in the recently enacted Tax Cuts and Jobs Act of 2017. As mayors we believe such guidance is essential to the successful formation of funds and deployment of investments consistent with the purposes of the Act, to encourage a broad array of private investments in communities with low-income residents.

We stand together as a diverse and bipartisan group of mayors representing thousands of Opportunity Zones and millions of Opportunity Zone residents who would like to convey the excitement our constituents and communities have for this promising new policy. Investors, entrepreneurs, and local leaders are activated and already putting business and community plans in place in response to Congress' and the Administration's commitments to implement the Opportunity Zone program.

However, we are keenly aware that the success of this policy depends on timely and effective guidelines from the Department of the Treasury and the Internal Revenue Service, especially in light of the timelines in the statute. We worry that absent timely and effective guidance that encourages broad investor participation in funds that can assemble diversified portfolios, the economic outcomes Congress and the Administration envisioned will not be achieved. Rules need to be written with the practical needs of businesses and fund managers in mind. The expectations of our constituents and communities are high but wholly appropriate given the clear intent of Congress and the basic principles underlying this new tool.

We ask you and the Secretary to take the following into consideration:

1. The need for rules attuned to Opportunity Funds making portfolio investments into new and existing businesses.

Mayors all across this country took to heart the words that Senator Tim Scott, lead co-sponsor of the underlying legislation that created Opportunity Zones, wrote in a February op-ed in *USA Today* this year:

“Under the provisions, in exchange for a lower capital gains rate that decreases based on the length of the investment, investors can put those unused dollars to work in a meaningful and productive way that will grow jobs, inspire entrepreneurship, and improve the local economy.”

All stakeholders involved in this piece of legislation have been clear that opportunity and entrepreneurship are inseparable, and that this new provision of the tax code was intended to unlock capital for businesses seeking to take root and grow in communities that for too long have known only disinvestment and decline. Mayors are deeply attuned to the need to boost business formation and expansion in low-income areas, and we believe therein lies the most exciting promise of the Opportunity Zones policy.

In short, in order to be successful and deliver on its promises, Opportunity Zones must be a useable tool to finance, launch, and scale new business enterprises. In that spirit, we generally concur with the technical recommendations submitted by the Opportunity Zone Coalition led by the Economic Innovation Group in its June 18 comments to you.

Specifically, if the “substantially all” tests for Qualified Opportunity Zones (QOZ) business and property are too high, we are concerned Qualified Opportunity Fund (QOF) investment in small and medium-sized business will be curtailed, thereby undermining the core goal and potential of this new policy. We concur with previous commenters that a 70% “substantially all” test is necessary. For existing businesses, the “substantially all” use test should not be required for previous business activity or acquired property. To that end, the holding period for QOZ business property for small businesses should be treated as starting on the first day of the first taxable year starting after December 31, 2017. Again, we concur with the comments of the OZ coalition.

2. The need for Opportunity Funds to be given sufficient time to assemble meaningful investment portfolios.

We also believe that 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. We concur with

previous commenters that a minimum 18 month start-up period is needed before funds are required to meet the 90% test.

3. The need for this new tool to generate investment into affordable housing.

In addition, we agree with previous commenters that the guidance should clarify that residential real estate property qualifies as QOZ property. We believe it was the intent of Congress to include such property given the importance of housing to low-income neighborhoods and the workforce housing shortages that currently effect many communities.

4. The need to collect data on investments.

In order to properly evaluate the impact and intended effects of the Opportunity Zone program, we also believe Treasury should require QOFs to collect and submit transactional level information on the projects they invest in. The collection of data should not be onerous, but sufficient to allow researchers to reasonably measure the impact QOF investments have on low-income neighborhoods and their residents.

5. Clarity on alignment with other 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.

In sum, the nation's mayors look forward to working with Treasury to assist in meeting the goals of the Opportunity Zone provisions in the new tax law. We believe many projects will require the active involvement of the public sector, be it in the form of local infrastructure, workforce training, local incentives, permitting and neighborhood development considerations. We ask that Treasury pay particular notice to guidance that facilitates affordable housing and investment in new and existing businesses in QOZs.

Sincerely,



Steve Benjamin
President
U.S. Conference of Mayors
Mayor of Columbia, SC



Tom Cochran
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