To Whom It May Concern:

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), I would like to offer the following comments to the United States Internal Revenue Service (IRS) of the United States Department of the Treasury in response to the proposed rulemaking titled “Investing in Qualified Opportunity Funds,” published in the Federal Register on May 1, 2019.

Formed in 1933, NAHRO represents over 20,000 housing and community development individuals and agencies. Collectively, our members manage over 970,000 public housing units, 1.7 million Housing Choice Vouchers (HCVs), and receive over $1.5 billion in Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) Program funding to use in their communities. Many NAHRO members have also used Low-Income Housing Tax Credits (LIHTC or the Housing Credit), New Markets Tax Credits (NMTC), and other community development initiatives to help strengthen and preserve affordable housing in underserved communities throughout the country. NAHRO has the unique ability to represent public housing agencies, local redevelopment agencies, and other community development and housing organizations of all sizes and geography.

After this brief introductory section, this letter is divided into two sections. The first section provides a background and context on the Opportunity Zone Program. The second section provides NAHRO’s suggestions for improving this proposed regulation.

1. Background

Established by the Tax Cuts and Jobs Act of 2017, the Opportunity Zone program encourages long-term investments in low-income urban and rural communities. The Opportunity Zone program provides tax incentives for investors to re-invest unrealized capital gains into Opportunity Funds. Opportunity Funds are private sector investment vehicles that invest substantially all their capital into Opportunity Zones, low-income census tracts selected by state, territory, or federal district governments. This new...
program has the potential to be an important, viable program for housing and community development agencies.

The Opportunity Zone program includes tax incentives to encourage investment. The program includes a temporary tax deferral for capital gains that are reinvested into an Opportunity Fund. Also included is a step-up in basis for capital gains reinvested into an Opportunity Fund. The basis of the original investment is increased by 10 percent if the investment in the qualified Opportunity Zone is held by the taxpayer for at least 5 years, or 15 percent if held for at least 7 years. As such, investors can exclude up to 15 percent of the original gain from taxation. Lastly, investors receive a permanent exclusion from taxable income of capital gains from the sale or exchange of an investment in a qualified opportunity zone fund, if the investment is held for at least 10 years. This exclusion applies to the gains accrued from an investment in an Opportunity Fund, not the original gains.

The IRS posted the first round of regulations for the Opportunity Zone initiative in October 2018. NAHRO submitted comments on the first round of regulations. Many of NAHRO’s comments for the second round of proposed regulations are similar to our first comment letter as we remain concerned these issues have not yet been addressed by the IRS.

2. Specific Recommendations

Pairing Opportunity Fund Investments with Community Development Initiatives.

NAHRO recommends that the IRS create regulations that would encourage pairing Opportunity Fund investments with existing federal, state, and local community development initiatives, including Low-Income Housing Tax Credit (LIHTC) developments and public housing preservation programs, like the Rental Assistance Demonstration (RAD). Pairing Opportunity Fund investments with existing community development initiatives would allow Public Housing Agencies (PHAs), which own and operate more than one million units of federally subsidized public housing, to utilize Opportunity Funds to provide safe, secure, housing for low-income Americans in qualified Opportunity Zones. Increasing housing stock and affordability in Opportunity Zones would ensure the viability and success of these underserved neighborhoods.

Although the public housing inventory is an integral component of our nation’s infrastructure, chronic underfunding of the Public Housing Capital and Operating Funds, coupled with burdensome over-regulation, has placed the inventory at risk. Opportunity Funds may prove to become a key funding source to help these public housing properties that are in need of modernization and repair. Residents in aging units face increasingly unhealthy and unsafe conditions due to a mounting capital needs backlog. Sadly, Capital Fund appropriations, which provide funding for the rehabilitation and modernization of public housing units, lag dangerously behind accruing modernization needs. HUD's Capital Needs Assessment found a backlog of $26 billion in 2010 and that Congress would need to appropriate $3.4 billion each year to keep up with Public Housing capital needs. Furthermore, failing to meet existing capital needs adds an additional 8.7 percent to annual accrual estimates. As such, public housing has a current public housing capital needs backlog of $70 billion. At the same time, funding for operations – through the Operating Fund – has endured deep cuts, forcing PHAs to forgo critical maintenance functions, further jeopardizing the long-term sustainability of many properties. The U.S. Department of Housing and Urban Development (HUD) notes that there are 371,000 public housing units in 2,254 public housing developments located within Opportunity Zones. These properties would strongly benefit from private investment through Opportunity Funds.
Deteriorating public housing has a huge impact on the health of entire communities, as dilapidated buildings drag down neighborhood real estate prices. This is especially true for public housing developments located in Opportunity Zones. PHAs need increased access to private and public funds to rehabilitate and redevelop their properties. PHAs must have broad access to tools that will allow them to streamline their operations, better serve their residents, and tap into the value of their assets to leverage private capital. Coupling Opportunity Fund investments with other affordable housing initiatives, like LIHTC, would allow PHAs access to much needed investment for public housing preservation and affordable housing development.

Aside from public housing preservation, coupling LIHTC with Opportunity Fund investments could help PHAs and other affordable housing and community development organizations increase the affordable housing stock in Opportunity Zones. LIHTC is our nation’s most successful tool for encouraging private investment in the production and preservation of affordable rental housing and has been an important financing tool for PHAs to upgrade their public housing stock and develop non-traditional affordable housing developments. The Housing Credit has been a critical source of equity for almost 3 million affordable housing units over the last 30 years, providing affordable homes to 6.7 million low-income families and supporting 3.25 million jobs. Virtually no affordable rental housing development would occur without LIHTC, and the Housing Credit is now a vital financing component for many of the federal, state, and local affordable housing programs NAHRO members utilize. Although LIHTC is a critical tool, it is often just one source of investment that PHAs, affordable housing non-profits, and community development organizations need to modernize and preserve their public housing and affordable rental stock. Coupled with Opportunity Fund investments, LIHTC could become an even more powerful tool for developing affordable housing in underserved communities.

PHAs would also benefit from pairing Opportunity Funds with public housing preservation programs that exist within HUD. This includes Section 18 demolition/disposition and the RAD program. In 2018, HUD released Notice PIH 2018-04, focusing on demolition and/or disposition of public housing property, eligibility for tenant protection vouchers and associated requirements. The Notice allows PHAs to request HUD approval to demolish and/or dispose of public housing under Section 18 of the US Housing Act of 1937 if the agency meets specific requirements set forth in the guidance. Notice PIH 2018-04 provides HUD the authority to allow a PHA to dispose of a public housing development if it is in the best interests of the residents and the PHA, consistent with the goals of the PHA and the PHA Plan. This includes improving efficiency/effectiveness through on-site development of low-income housing, or the removal of scattered site units with four or fewer total units. NAHRO believes there is considerable potential for PHAs interested in disposition that have public housing developments in need of modernization in qualified Opportunity Zones. Through disposition, a PHA could partner with a developer, or self-develop, to construct a higher-density mixed-income development on the site of the public housing property located in the Opportunity Zone.

RAD permits PHAs to convert their public housing properties to the Section 8 platform allowing increased access to private capital for rehabilitation and modernization. Opportunity Funds could provide a critical source of investment and even gap financing for these transactions. NAHRO strongly recommends that the IRS work closely with HUD to determine how Opportunity Funds could be structured to support these transactions.

NAHRO also recommends that the IRS work with HUD to consider ways in which Opportunity Funds can support HOME and Community Development Block Grant (CDBG) programs. For more than 40 years, CDBG has provided annual formula grants to over 1,300 state and local governments (and an additional 7,250 local governments that could have access to the funding) to rebuild local economies, strengthen
public infrastructure, recover from disasters, and improve the quality of life for millions of low- and moderate-income Americans. For 20 years, the HOME program has been effective in empowering over 600 states and localities to design and implement affordable housing strategies in response to locally determined need. HOME funds can be used for new construction, housing rehabilitation, down payment assistance to creditworthy homebuyers, and tenant-based rental assistance.

NAHRO strongly recommends that the IRS clarify how public housing agencies can pair LIHTC and other public housing preservation options with Opportunity Fund investments in this regulation. Failure to clarify this key dynamic only serves to increase the risk of displacement and gentrification within Opportunity Zones.

Substantially All Threshold

The proposed regulation provides that the IRS will use the “substantially all” threshold of 70 percent to determine whether a trade or business satisfies the “substantially all” requirement, as suggested in the first round of regulations. In the proposed regulation, if at least 70 percent of the tangible property owned or leased by a trade or business is invested in a qualified opportunity zone business property, then the trade or business is treated as satisfying the “substantially all” requirement.

NAHRO commends the decision to maintain the “substantially all” threshold at 70 percent when the Opportunity Fund is being invested in Opportunity Zone businesses. NAHRO agrees that this will provide more of an incentive to invest in a qualified Opportunity Zone without being required to own an Opportunity Zone business outright. This has the potential to help local businesses have access to outside investment through Opportunity Funds. NAHRO believes the “substantially all” threshold for tangible property, including funds invested in housing and community development projects should remain at 90 percent. This will ensure that Opportunity Funds are invested in housing and community development projects located within Opportunity Zones and not in better served neighborhoods and communities.

Anti-Abuse Rule

In the proposed rule, the IRS notes that the anti-abuse rule under section 1400Z-2(e)(4)(c) would apply to treat the acquisition of unimproved land with Opportunity Funds as a non-qualifying property for section 1400Z-2 purposes. Although NAHRO is pleased to see anti-abuse language within the proposed regulation, NAHRO recommends the IRS explicitly state what constitutes “unimproved.” Doing so will add additional clarity that will help the initiative meet its statutory intent.

Investment Incentives for Highest-Need Opportunity Zones

NAHRO recommends that the proposed rule provide additional incentives to encourage investing Opportunity Funds in Opportunity Zones with the highest-needs. Without additional incentives, these highest-need Opportunity Zones may struggle to attract investors. Providing additional incentives to invest in these areas will ensure that those most in need of economic opportunities will benefit from the Opportunity Zone program. Incentives could include incremental tax benefits for investments that create and preserve affordable housing units for families earning between thirty and sixty percent of the area median income (AMI), investments in female and/or minority owned businesses, and investments in non-profit housing and community development organizations that serve the local community.

NAHRO also encourages the White House Opportunity Revitalization Council to evaluate whether Opportunity Fund investments are positively impacting the most underserved Opportunity Zones and
make recommendations to better promote Opportunity Fund investment in these distressed communities.

Tracking and Reporting

NAHRO recommends that the IRS ensure adequate, transparent tracking and reporting of Opportunity Fund investments that promote accountability. Furthermore, NAHRO strongly recommends adequate funding from the Department of the Treasury and the IRS to accomplish this vital endeavor. Without a system at the federal level to track and evaluate investment activities, distressed communities will be inadequately prepared to engage, respond, and collaborate to meet the statutory purpose of the Opportunity Zone program. NAHRO recommends that the IRS focus on four specific reporting topics: job creation, poverty reduction, new business starts, and affordable housing creation.

NAHRO further recommends using existing reporting infrastructure to track and report on the outcomes of Opportunity Fund investments. The Treasury Department already collects and publicly reports on New Market Tax Credits and Community Development Financial Institution (CDFI) data. This could act as a model for how the IRS collects and reports on data related to Opportunity Fund investments.

NAHRO believes HUD could assist in this effort, especially as it relates to ensuring Opportunity Funds are benefiting those they are intended to benefit. HUD collects considerable data relating to affordable housing creation and development, including information on affordable units and households served by HUD programs. A data sharing agreement between HUD and the IRS could ensure that adequate data is being collected that can be used to determine the degree to which low-income communities are benefitting from the Opportunity Zone program. This data should also be publicly available so that Opportunity Fund managers can determine where their investments may make the biggest impact on economically distressed communities.

NAHRO is encouraged by the Executive Order establishing the White House Opportunity and Revitalization Council signed by President Trump on December 12, 2018 which directs federal agencies to evaluate the impact of public and private investments into distressed communities. The President’s Executive Order demonstrates the administration’s commitment to ensuring that Opportunity Fund investments benefit underserved communities. Proper tracking and reporting by the IRS is necessary to ensure this commitment is met.

Interagency Cooperation

Consistent with Executive Order 13853, “Establishing the White House Opportunity and Revitalization Council,” multiple federal agencies have requested information on how to maximize the beneficial impact of investment in Opportunity Zones, including HUD. NAHRO is pleased to see increased federal interagency cooperation and hopes that such cooperation continues moving forward to ensure the Opportunity Zone Initiative continues maximizing affordable housing results. NAHRO recently submitted comments to HUD on how their programs can best work with Opportunity Funds. Those comments can be found in Appendix A.

3. Conclusion

As always, NAHRO appreciates the opportunity to comment on this important proposed rule. Currently, one in four renter households spends over 50 percent of their income on housing, and there is no state in the U.S. where a worker earning full-time minimum wage can afford a modest, one-bedroom
The growing housing needs of low- and moderate-income families is an imminent reality that policymakers cannot ignore. Opportunity Fund investments could be an important and critical tool for PHAs, non-profit housing organizations, and community development agencies across the country to address our housing crisis and ensure the long-term viability of underserved, low-income communities. Currently, however, the proposed rule lacks clarity regarding pairing existing community development tools from traditional sources and does not include a coordinated and centralized reporting system.

NAHRO appreciates the IRS’ efforts in expeditiously promulgating rulemaking for the Opportunity Zone Program and looks forward to submitting comments on future rulemaking for Opportunity Fund investments. Please do not hesitate to contact us if we can provide additional information or clarification.

Thank you,

Eric Oberdorfer
Policy Advisor
To Whom It May Concern:

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), I would like to offer the following comments to the United States Department of Housing and Urban Development (HUD or the Department) in regards to the Notice published in the Federal Register on April 17, 2019 titled “Review of HUD Policy in Opportunity Zones” [FR-6155-N-01].

Formed in 1933, NAHRO represents over 20,000 housing and community development individuals and agencies. Collectively, our members manage over 970,000 public housing units, 1.7 million Housing Choice Vouchers (HCVs), and receive over $1.5 billion in Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) Program funding to use in their communities. Many NAHRO members have also used Low-Income Housing Tax Credits (LIHTC or the Housing Credit), New Markets Tax Credits (NMTC), and other community development initiatives to help strengthen and preserve affordable housing in underserved communities throughout the country. NAHRO has the unique ability to represent public housing agencies, local redevelopment agencies, and other community development and housing organizations of all sizes and geography.

After this brief introductory section, this letter is divided into two sections. The first section provides a background and context on the Opportunity Zone Program. The second section provides NAHRO’s input and recommendations regarding potential agency actions HUD can take to encourage beneficial investment, both public and private, in urban and economically distressed communities, including qualified Opportunity Zones.

Background

Established by the Tax Cuts and Jobs Act of 2017, the Opportunity Zone program encourages long-term investments in low-income urban and rural communities. The Opportunity Zone program provides tax incentives for investors to re-invest unrealized capital gains into Opportunity Funds. Opportunity Funds are private sector investment vehicles that invest substantially all their capital into Opportunity Zones, low-income census tracts selected by state, territory, or federal district governments. This new program has the potential to be an important, viable program for housing and community development agencies.

The Opportunity Zone program includes tax incentives to encourage investment. The program includes a temporary tax deferral for capital gains that are reinvested into an Opportunity Fund. Also included is a step-up in basis for capital gains reinvested into an Opportunity Fund. The basis of the original investment is increased by 10 percent if the investment in the qualified Opportunity Zone is held by the
As such, investors can exclude up to 15 percent of the original gain from taxation. Lastly, investors receive a permanent exclusion from taxable income of capital gains from the sale or exchange of an investment in a qualified opportunity zone fund, if the investment is held for at least 10 years. This exclusion applies to the gains accrued from an investment in an Opportunity Fund, not the original gains.

NAHRO’s Comments

Consistent with Executive Order 13853, “Establishing the White House Opportunity and Revitalization Council,” HUD is requesting information on how to maximize the beneficial impact of investment in Opportunity Zones. HUD is currently seeking input and recommendations from the public regarding potential agency actions. NAHRO’s comments include mixing Opportunity Zones with public housing repositioning, HUD’s role in tracking and reporting and ensuring Opportunity Funds are invested in high-need areas, and the treatment of businesses created with Opportunity Funds as it relates to HUD’s Section 3 proposed rule.

HUD specifically requested comment on how the Department should use its existing authorities to maximize the beneficial impact of public and private investments in urban and economically distressed communities, including Opportunity Zones. NAHRO believes that the Opportunity Zone program could provide much needed investment and capital to Public Housing Agencies (PHAs) and other affordable housing providers that can be used to develop additional affordable units and modernize and improve existing units. NAHRO believes this can be accomplished through existing programs, like Section 18 Demolition/Disposition and the Rental Assistance Demonstration (RAD) Program.

Section 18 Demo/Dispo

As HUD notes, there are 371,000 public housing units in 2,254 public housing developments located within Opportunity Zones. Opportunity Funds may prove to become a key funding source to help these public housing properties that are in need of modernization and repair. However, there are challenges in using Opportunity Funds to modernize units for PHAs. Based on the funding structure of the Public Housing program, these properties cannot be purchased by an Opportunity Fund, as the property must remain owned by the PHA. This limits potential benefits from new investments from the program. In order for PHAs to use Opportunity Funds to modernize public housing properties, PHAs would need to reposition their public housing properties and rely on other federal funding streams, including Section 8 project-based vouchers and tenant-based vouchers.

In 2018, HUD released Notice PIH 2018-04, focusing on demolition and/or disposition of public housing property, eligibility for tenant protection vouchers and associated requirements. The Notice allows PHAs to request HUD approval to demolish and/or dispose of public housing under Section 18 of the US Housing Act of 1937 if the agency meets specific requirements set forth in the guidance. Notice PIH 2018-04 provides HUD the authority to allow a PHA to dispose of a public housing development if it is in the best interests of the residents and the PHA, consistent with the goals of the PHA and the PHA Plan. This includes improving efficiency/effectiveness through on-site development of low-income housing, or the removal of scattered site units with four or fewer total units.

NAHRO believes there is considerable potential for PHAs interested in disposition that have public housing developments in need of modernization in qualified Opportunity Zones. Through disposition, a PHA could partner with a developer to construct a higher-density mixed-income development on the site of the public housing property located in the Opportunity Zone. For the disposition to be approved by HUD, the developer and the PHA would have to propose a preferred form of use restriction that is acceptable to HUD, ensuring the long-term affordability of the units. Furthermore, through disposition,
the PHA could then apply to receive Section 8 Housing Choice Voucher (HCV) assistance from HUD in the form of Tenant-Protection Vouchers (TPVs) ensuring no households lose their housing subsidy. As per attachment F of PIH Notice 2017-21, newly constructed units that are project-based on the same site as the units being replaced are exempt from project-based voucher (PBV) percentage limitation and income-mixing requirements. This means that a PHA could project-base the TPVs received through disposition in the newly constructed building located on the site of the former public development.

For this arrangement to work, HUD would need to allow PHAs to attach PBV assistance to the project without following a competitive process. NAHRO recommends that HUD include “immediate past ownership of a development funded through an Opportunity Fund” as a condition for non-competitive selection of PBVs.

NAHRO further recommends that HUD streamline the approval of disposition applications for applications that improve efficiency/effectiveness of units through on-site development of low-income housing funded through an Opportunity Fund.

**LIHTC and RAD**

In our comment letter to the Department of the Treasury on the first round of proposed Opportunity Fund regulations (“Investing in Qualified Opportunity Funds,” published in the Federal Register on October 29, 2018) NAHRO recommended that the IRS create regulations that would encourage pairing Opportunity Fund investments with existing federal, state, and local community development initiatives, including LIHTC developments. Although HUD is not responsible for running the LIHTC program, many agencies that are converting their public housing through the Rental Assistance Demonstration (RAD) rely on LIHTC to provide necessary capital to the modernization of units. PHAs need increased access to private and public funds to rehabilitate and redevelop their properties. PHAs must have broad access to tools that will allow them to streamline their operations, better serve their residents, and tap into the value of their assets to leverage private capital. Coupling Opportunity Fund investments with other affordable housing initiatives, like LIHTC through RAD, would allow PHAs access to much needed investment for public housing preservation and affordable housing development. NAHRO recommends that HUD and Treasury work closely together to determine strategies and incentives to encourage Opportunity Fund investment in RAD conversions and other projects that require the LIHTC.

**Tracking and Reporting**

NAHRO recommended to the IRS that it ensure adequate, transparent tracking and reporting of Opportunity Fund investments that promote accountability. NAHRO believes HUD could assist in this effort, especially as it relates to ensuring Opportunity Funds are benefiting those they are intended to benefit. Without a system at the federal level to track and evaluate investment activities, distressed communities will be inadequately prepared to engage, respond, and collaborate to meet the statutory purpose of the Opportunity Zone program. While promulgating Opportunity Zone regulations, NAHRO recommends that the federal government focus on four specific reporting topics: job creation, poverty reduction, new business starts, and affordable housing creation.

NAHRO further recommends using existing reporting infrastructure to track and report on the outcomes of Opportunity Fund investments. The Treasury Department already collects and publicly reports on New Market Tax Credits and Community Development Financial Institution (CDFI) data. This could act as a model for how the IRS collects and reports on data related to Opportunity Fund investments. HUD also collects considerable data relating to affordable housing creation and development, including information on affordable units and households served by HUD programs.
data sharing agreement between HUD and the IRS could ensure that adequate data is being collected that can be used to determine the degree to which low-income communities are benefitting from the Opportunity Zone program. This data should also be publicly available so that Opportunity Fund managers can determine where their investments may make the biggest impact on economically distressed communities.

NAHRO is encouraged by the Executive Order establishing the White House Opportunity and Revitalization Council signed by President Trump on December 12 which directs federal agencies to evaluate the impact of public and private investments into distressed communities. The President’s Executive Order demonstrates the administration’s commitment to ensuring that Opportunity Fund investments benefit underserved communities. Proper tracking and reporting by the IRS and HUD is necessary to ensure this commitment is met.

Investment Incentives for Highest-Need Opportunity Zones

NAHRO recommends that the proposed rule provide additional incentives to encourage investing Opportunity Funds in Opportunity Zones with the highest need. Without additional incentives, these highest-need Opportunity Zones may struggle to attract investors. Providing additional incentives to invest in these areas will ensure that those most in need of economic opportunities will benefit from the Opportunity Zone program. Incentives could include incremental tax benefits for investments that create and preserve affordable housing units for families earning between thirty and sixty percent of the area median income (AMI), investments in female and/or minority owned businesses, and investments in non-profit housing and community development organizations that serve the local community. HUD should work closely with the IRS to determine what types of incentives HUD may be able to provide to Opportunity Funds that invest in highest-need areas. This could include additional basis points for HUD grants and funding through programs like the Choice Neighborhoods Program. This will help ensure that Opportunity Fund investments can provide a decent rate of return for investors, while still ensuring the Funds are being used to develop critical affordable housing.

NAHRO also encourages the White House Opportunity Revitalization Council through HUD data to evaluate whether Opportunity Fund investments are positively impacting the most underserved Opportunity Zones and make recommendations to better promote Opportunity Fund investment in these distressed communities.

Section 3 Businesses

NAHRO recommends that HUD consider businesses funded through Opportunity Fund investments be considered as Section 3 business. Established by the Tax Cuts and Jobs Act of 2017, the Opportunity Zone program encourages long-term investments in low-income urban and rural communities. The Opportunity Zone program provides tax incentives for investors to re-invest unrealized capital gains into Opportunity Funds. Opportunity Funds are private sector investment vehicles that invest substantially all their capital into Opportunity Zones, low-income census tracts selected by state, territory, or federal district governments. Opportunity Funds can be invested in local businesses located in Opportunity Zones, which in turn will help residents in low-income communities.

Conclusion

As always, NAHRO appreciates the opportunity to comment on this important matter. Currently, one in four renter households spends over 50 percent of their income on housing, and there is no state in the U.S. where a worker earning full-time minimum wage can afford a modest, one-bedroom apartment. The growing housing needs of low- and moderate-income families is an imminent reality that
policymakers cannot ignore. Opportunity Fund investments could be an important and critical tool for PHAs, non-profit housing organizations, and community development agencies across the country to address our housing crisis and ensure the long-term viability of underserved, low-income communities.

NAHRO appreciates HUD’s efforts to better understand how they can maximize the beneficial impact of investment in Opportunity Zones. Partnerships between HUD, PHAs, housing organizations, and the IRS will be critical to ensure low-income communities reap the intended benefits of the Opportunity Zone program.

Thank you,

[Signature]

Eric Oberdorfer
Policy Advisor