June 17, 2019

SUBMITTED ELECTRONICALLY

Regulations Division
Office of the General Counsel
Department of Housing and Urban Development
451 7th St SW
Room 10276
Washington, DC 20410-0500

Re: Review of HUD Policy in Opportunity Zones [FR-6155-N-01]

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 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.

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 preservation, 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, the Rental Assistance Demonstration (RAD) Program, and the Low-Income Housing Tax Credit (LIHTC).
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 preserve 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, or self-develop, to construct a higher-density mixed-income development on the site of the public housing property located in the Opportunity Zone. In order 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.

In order 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 preservation programs, like the Rental Assistance Demonstration (RAD) and demo/dispo, 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 preservation initiatives 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.

**HOME and CDBG Supported Projects**

NAHRO also recommends that HUD 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. Opportunity Funds could be critical for

**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, local 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 a 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. NAHRO recommends that HUD look to see if business created through Opportunity Funds could be included in HUD’s definition of a Section 3 business, if the business is increasing access to jobs for low-income individuals in the area.

*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. 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 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.

**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