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 October 29, 2018.

Founded 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.

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 LIHTC developments. 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. 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. 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.

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. The Low-Income Housing Tax Credit 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.

NAHRO strongly recommends that the IRS clarify how LIHTC can pair 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.

**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. Currently, the IRS plans to address information reporting requirements in the next round of rulemaking for Opportunity Fund investments. While promulgating these future regulations, 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 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 is necessary to ensure this commitment is met.

**Substantially All Threshold**

In determining whether an entity is meeting the requirement that Opportunity Funds invest “substantially all” their capital in Opportunity Zones, the proposed regulation suggests a threshold of 70 percent to determine whether a trade or business satisfies the “substantially all” requirement. 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. The proposed regulation notes that the IRS also considered setting the “substantially all” threshold at 90 percent.

NAHRO recommends maintaining 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. However, NAHRO recommends setting the “substantially all” threshold at 90 percent if an Opportunity Fund is being invested in a housing or community development project. 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.

*Preventing Speculative Purchasing of Vacant Land*

Statutory language creating the Opportunity Zone program requires that Opportunity Funds “substantially improve” any qualified Opportunity Zone property by doubling the tax basis of the property. This proposed rule would exclude the value of the land itself when determining the tax basis for meeting the “substantially improve” requirement.

Although excluding the land itself from the tax basis may help spur development in high cost areas that have seen significant displacement of low- to moderate-income residents in the past years, there is concern that excluding the land from the tax basis may incentivize investors to speculatively purchase vacant lots in gentrifying neighborhoods without improving the property. Rather, once purchased, the investor may hold onto the property without substantially improving it until property values increase in the community. The investor may then sell the property for a significant profit without providing any improvements to the property. Not only would this further contribute to the unaffordability of gentrifying neighborhoods, it would go against statutory intent for the Opportunity Zone program. NAHRO recommends that the IRS explicitly prohibit Opportunity Funds from being used for speculative land purchases in the final rule to prevent this from occurring.

*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.

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 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. 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,

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