

July 1, 2019

Via Federal eRulemaking Portal at www.regulations.gov

Internal Revenue Service
CC:PA:LPD:PR (REG-120186-18), Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: REG-120186-18 (Proposed Regulations on Investing in Qualified Opportunity Funds)

To Whom It May Concern:

I write on behalf of the Economic Inclusion Task Force (“EITC”), a stakeholder group regarding the implementation of Opportunity Zone legislation, a new investment tool created by the 2017 Tax Cuts and Jobs Act and designed to foster capital investments in America’s low-income communities through tax incentives to capital gains taxpayers. The EITC comprises African American men and women entrepreneurs, formed following a White House meeting with Vice President Mike Pence and U.S. Senator Tim Scott in spring of 2017. The EITC advocates advancing the economic growth of urban communities and worked hard for the passage of the Opportunity Zones program. We believed then, and believe even more resolutely today, that the Opportunity Zones program, for the first time in decades, opens the door for much needed new major capital investments in urban and rural, and heavily African-American concentrated communities.

It in this regard, we are keenly interested in two vital goals: (1) ensuring that the program operates to the benefit of the intended communities; and (2) ensuring that there is significant diverse participation at every level of the program, including at the fund formation, ownership and management levels, and regarding the business enterprises that will be the subject and recipients of these capital investments. The nature of the U.S. Department of Treasury’s regulations are crucial to achieving these outcomes. We write to express support for certain provisions that we believe are critical to these objectives.

We applaud the Department of Treasury for the tremendous work it has done on advancing the program’s Regulations. We also believe that the Department has achieved much needed progress and clarification in a manner that is providing more confidence to the marketplace of investors and stakeholders that we know are eager to engage this new national interest investment tool. However, we remain concerned about several issues: (1) the Regulations regarding investments in operating businesses and the substantial improvement test application; and (2) the proposed 31-month requirement for determining an active trade or business.

(1) Regulations Regarding Investments in Operating Businesses and the Substantial Improvement Test Application

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This issue concerns the determination of the substantial improvement tests either on an asset-by-asset basis or on an aggregate basis. The Department’s Notice of Proposed Rulemaking (“NPRM”) indicates that this test is to be applied on an asset-by-asset basis. However, given the nature of the targeted communities and what it is going to take to attract capital and realize successful investments in these communities, it is vital that the Department allow for meeting the 30-month substantial improvement tests on an aggregate basis as opposed to an asset-by-asset basis. For example, if a Qualified Opportunity Fund (QOF) determines to build a healthcare business park in a QOZ, the assets will likely include adjoining commercial structures and parking lots. On an asset-by-asset basis, each asset must meet the test individually. However, almost no rational investment strategy would operate this way. Only by allowing for accounting on an aggregate basis do we believe such an investments are more likely.

(2) Proposed 31-Month Requirement for Determining an Active Trade or Business

The NPRM suggests that a new investment in a new operating business in a QOZ must become an active trade or business after 31 months of the deployment of the capital. However, given that these investments are occurring in distressed, and many ways nascent markets for the purpose of major private capital investments, it is highly probable that it is going to take longer than 31 months before such an enterprise fully meets the test of an active trade or business. Consequently, we agree with the position of others who have commented on this issue that the Department strongly allow for the satisfaction of this requirement in the event there is clear evidence of advancement of the investment toward an active trade or business and all the other safe harbor requirements for the deployment of capital have been met.

Thank you for the opportunity to comment on this NPRM. In addition to the comments above, the EITC also endorses the comments by the Economic Innovation Group Coalition. I respectfully request the opportunity to speak on behalf of the EITC at the public hearing (REG-115420-18) on July 9, 2019 for approximately 10 minutes. If you should have any questions about these comments, please contact me at mboyd@isgwdc.com or (202) 420-8628.

Sincerely,

Moses Boyd, M.C. Boyd Enterprises, Arlington, VA
Tony Brown, T. Brown Consulting Group, LLC, Jacksonville, FL
Jonathan Charleston, The Charleston Group, Fayetteville, NC
Maurice Daniel, Metro Strategies, LLC, Washington, DC
Walter Davis, Peachtree Providence Partner, Charlotte, NC
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