

Congress of the United States
Washington, DC 20515

May 19, 2020

Honorable Steven Mnuchin
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Secretary Mnuchin and Commissioner Rettig,

The Coronavirus health emergency has presented grave challenges for individuals, businesses, and a wide variety of government programs and initiatives. The Opportunity Zones program is one such initiative that has not escaped the impact of the COVID-19 emergency. Opportunity Zones seek to provide a long-term incentive to deliver relief to the most economically distressed communities by incentivizing impactful investments in these communities. As a relatively new program, however, the current health emergency is threatening the future success of Opportunity Zones at an early stage of the initiative's development.

For instance, due to the COVID-19 emergency, some Qualified Opportunity Zone Funds (QOFs) may not be accepting new investments due to the difficulty in deploying such capital in accordance with the regulations. With travel limited, many businesses have significantly reduced or halted their work which makes a due diligence review for potential investment both challenging and difficult. Furthermore, there is increased uncertainty whether the federally declared disaster provisions in the Opportunity Zone regulations have been triggered. Given the infancy of the Opportunity Zone tool, relief is needed to help remedy the disruption caused by the current pandemic.

Given the nature of the crisis, we write to request that the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) use the authority provided under 26 U.S.C. § 7508A(a) and the respective Opportunity Zone regulations to implement the following recommendations to provide relief that will help the Opportunity Zones initiative continue to function in a fair and equitable manner during these challenging times:

1. Extend the 180-day period in section 1400Z-2(a)(1)(A) by a three-month period for gains required to be invested during the period beginning on March 13, 2020, through the end of 2020 (or at least through July 15, 2020, consistent with Notice 2020-18).
2. Deem any failure to meet the 90-percent asset test on a testing date falling during the period beginning March 13, 2020, and through July 15, 2020, to be due to reasonable cause, and treat

any failure to meet the 90-percent asset test for the remainder of the year to be due to reasonable cause if the QOF can demonstrate that the failure was attributable to the COVID-19 emergency.

3. Clarify that the 24-month extension of the working capital safe harbor and the 12-month extension for the reinvestment by a QOF for federally declared disasters apply automatically to qualified opportunity zone (QOZ) businesses in all QOZs nationwide due to the Emergency Declaration, and that these periods begin on March 13, 2020, and extend until the earlier of the end of the Emergency Declaration or the period expressed in the regulations.
4. Extend the end of the 30-month substantial improvement period by one year for QOFs with substantial improvement periods ending in 2020.
5. Provide clarification that employees of a QOZ business who are teleworking due to the COVID-19 emergency will still be deemed to be performing services in the QOZ for purposes of the gross income test.
6. Lastly, any guidance provided with respect to the above requests should include strong anti-abuse language and require those taking advantage of the liberalized timelines to document the facts and circumstances to substantiate that their fund or business merits the beneficial treatment where appropriate without creating undue or unnecessary burdens.

We recognize that the respective IRS forms and systems may need to be updated in order to facilitate the efficient and accurate enforcement of these recommendations to ensure that entities using these extensions are able to properly indicate such use.

If you have questions, please contact Lori Prater with Congressman Mike Kelly (Lori.Prater@mail.house.gov) or Ethan Holmes with Congressman Ron Kind (Ethan.Holmes@mail.house.gov)

Sincerely,



Ron Kind
Member of Congress



Mike Kelly
Member of Congress