



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

June 12, 2019

Ms. Erika C. Reigle
Mr. Kyle C. Griffin
Office of Associate Chief Counsel
Income Tax & Accounting
CC:PA:LPD:PR (REG-120186-18), Room 5203
Internal Revenue Service
PO Box 7604 Ben Franklin Station
Washington, DC 20044

Subject: U.S. EPA Office of Brownfields and Land Revitalization Seeks Further Clarifications & Improvements to Proposed Rule Regarding “Investing in Opportunity Funds,” REG-120186-18

Dear Ms. Reigle and Mr. Griffin:

On behalf of the U.S. Environmental Protection Agency’s (EPA) Office of Brownfields and Land Revitalization (OBLR), thank you for the opportunity to comment of the Department of Treasury’s Proposed Regulations §1400Z-2 regarding “Investing in Opportunity Funds.” EPA’s OBLR encourages Treasury to further clarify and improve the proposed rule to foster investment in blighted and contaminated properties, or “brownfields,” in designated Opportunity Zones.

Distressed conditions in Opportunity Zones often include brownfield properties. Investments in brownfields assessment and cleanup in distressed communities, including those located in Opportunity Zones, will spur economic development and reduce blight. We encourage Treasury and the IRS to take further action to clarify that Opportunity Zone capital may be invested in the brownfield aspects of economic development. We request this clarification so that investors in Qualified Opportunity Funds (QOFs) will be confident that the assessment and cleanup of brownfields are eligible investments. Otherwise, we fear that QOF investors will avoid contaminated or potentially contaminated sites altogether out of an abundance of caution. This would be a detriment to the program’s success as so many brownfield properties are within Opportunity Zones. Further clarifying the following will encourage private QOF investors to invest in brownfields and help return these sites to economic reuse.

1. Clearly state that **site preparation expenses including assessment and remediation of a brownfield site are eligible uses of working capital assets of a Qualified Opportunity Zone Business (QOZB).**

Investment in contaminant assessment and remediation activities are necessary pre-development activities to prepare a brownfield site for vertical redevelopment. Explicit mention of these activities as eligible for the QOZ tax incentive (if other regulatory conditions are met) will give QOF investors and communities confidence to proceed with brownfields redevelopment that generates an economic use.

2. Clarify that **property that has been foreclosed upon and reverted to a local government or land bank will qualify as “vacant and underutilized,” for purposes of meeting the original use test, regardless of how long it has been vacant, abandoned or underutilized.**

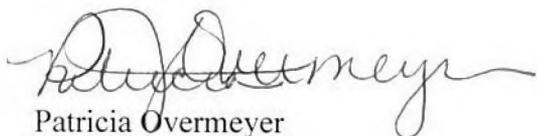
Local government and land banks often acquire brownfields and other blighted properties through tax delinquency, abandonment, bankruptcy, and other forms of governmental acquisition. It will prove extremely difficult and inefficient for local governmental entities or land banks to determine the length of vacancy for any of these site and structures, especially when assembling many properties for a larger development. Creating a bright line test around status of ownership for properties in foreclosure, receivership, or other involuntary transfer to a local governmental entity or land bank as a specific alternative to the length of vacancy will help expedite investment in these properties, particularly in distressed urban areas. Further, this alternative will not undermine the vacancy requirement or encourage speculation such as intentional cessation of property occupancy, since any property acquired by a local unit of government or land bank in this manner will be changing ownership.

3. Clarify the **working capital safe harbor circumstances to specify that the period during which an investor is waiting on governmental action to provide site cleanup or other permit approvals will not count against the 31-month timeframe for deploying capital.**

Brownfield site redevelopment in OZs requires local government action, and often state or tribal government action, before the project can proceed to vertical development. Parties pursuing responsible brownfield redevelopment will seek government approvals of contaminant cleanup actions to ensure protection of public and environmental health and reduce the risk of environmental liability. This usually involves seeking approvals from state or tribal government voluntary response programs or other such governmental action. Often, cleanup or other regulatory signoffs require multiple stages of applying for and waiting on governmental approval. Economic redevelopment delayed beyond 31 months due to the site developer waiting on local permits, a certificate of completion of brownfield cleanup from the state or tribal environmental agency, or other regulatory approvals for which application for the governmental action has been submitted, should not count against the 31-month working capital timeframe.

These clarifications will give investors confidence that QOF funds can be used to assess, clean up, and redevelop brownfields sites located in QOZs. Such investments in brownfield properties will help revitalize distressed communities across the country. Should you want to discuss our requests for clarifications, please contact me at 202-566-2774 or overmeyer.patricia@epa.gov.

Sincerely,



Patricia Overmeyer
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Office of Brownfields and Land Revitalization
U.S. Environmental Protection Agency