



Outline of Comments

Presented by Marion McFadden, Sr. Vice President, Enterprise Community Partners

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On behalf of Enterprise Community Partners (Enterprise), I want to thank you for this opportunity to offer comments on the proposed rule for Investing in Qualified Opportunity Funds.

Enterprise is a leading provider of the development capital and expertise it takes to create well-designed, affordable homes and vibrant communities. Since 1982, we have raised and invested \$36 billion in equity, grants and loans to help build or preserve nearly 529,000 affordable homes in diverse, thriving communities.

In partnership with Rivermont Capital and Beekman Advisors, Enterprise has announced one of the nation's first Opportunity Funds – the Rivermont Enterprise Emergent Communities Fund. The Fund aims to raise \$250 million and will invest in main streets and support local entrepreneurs across small cities and towns in the Southeast United States.

The guidance provided by IRS in this initial round of regulations was helpful in several areas. For example, while an affirmative statement remains preferable, we infer through examples provided in the proposed rule that residential rental property is indeed a qualified business activity. We are also pleased to see IRS commit to addressing information reporting requirements in the next round of proposed rules. Enterprise continues to stress that transparency and accountability are the keystone to fulfilling the tax incentive's original intent of transforming economically distressed communities.

However, some topics require further clarification. Based on our current work structuring Opportunity Funds and engaging with communities and investors, we offer five priorities at this stage in the rule-making process.

Prevent Predatory Land-Banking Under the Substantial Improvement Test

- We believe that excluding the value of land from the substantial improvement test will be particularly conducive to our efforts to preserve existing affordable homes, especially in high-cost areas where rapidly rising costs often contribute to the displacement of low- and moderate-income residents in unsubsidized, market rate housing.
- We are also concerned about how this rule may incent predatory or speculative land holding and we therefore urge IRS to consider regulations to prevent such abuse. Subtracting the value of land from Qualified Opportunity Zone (QOZ) Property could be especially problematic in the case of land that is vacant, significantly underdeveloped or with significantly depreciating assets (i.e. dilapidated or uninhabitable structures). In such cases, the substantial improvement test would result in little or no improvement to QOZ Property.
- Enterprise urges the IRS to explicitly prevent predatory or speculative land-banking under the Opportunity Zones regulations. This practice would be counter to the statute's intent since it would provide no economic or other benefit to the community.

Require a Higher “Substantially All” Threshold for Real Estate Projects

- The statute requires substantially all of a partnership or corporation’s tangible property owned or leased to be a Qualified Opportunity Zone Business Property, and the IRS has proposed 70 percent as the threshold for meeting this test. Although the 70 percent threshold may make sense for investments in qualified business activity, which may be more fluid and require such flexibility to be successful, we believe there should be a separate and higher threshold for real estate investments since those projects are static.

Provide Flexibility for the Means of Measuring Compliance with the 90-Percent Asset Test

- Given the varied nature of potential investment structures, we urge the IRS to clarify that Opportunity Funds have the flexibility to use a basis other than US GAAP for measuring compliance with the 90-percent asset test.
- For example, Opportunity Funds have considered using a ground lease structure to successfully execute investments in Indian Country. The preferred method to value those assets would be on a cost basis. This lack of certainty and flexibility may create a barrier to investing in the 248 Qualified Opportunity Zones located in Indian Country.

Provide Regulations that Encourage Pairing Investments with other Tax Credits

- Enterprise believes that Opportunity Zone investments will be the most impactful when paired with existing federal, state and local community development initiatives, such as the Low-Income Housing Tax Credit (Housing Credit) and New Markets Tax Credit (NMTC). Considering the alignment of mission between these tax credits and the new Opportunity Zones benefit, we strongly urge the IRS to issue regulations that most efficiently allow the Credits to be paired with Opportunity Fund equity.

Track and Report Outcomes of Opportunity Fund Investments

- We were pleased to see the IRS commit to addressing information reporting requirements in the next round of proposed rules on Opportunity Zones. Final regulations for Opportunity Zones must include provisions that promote the transparency of Opportunity Fund activities and ensure accountability to prevent abuse.
- Enterprise urges Treasury to follow Congress’s guidance – included in the Investing in Opportunity Act and clarified in the Conference Report that accompanied Tax Cuts and Jobs Act – and collect and make publicly available transaction-level data from Opportunity Funds so that the public and Congress can evaluate the efficacy of the Opportunity Zones tax incentive.
- There is precedent for the Treasury Department to collect and publicly report data on NMTC and CDFI Fund-supported deals, and we encourage the IRS to consider using existing infrastructure to accomplish the information reporting needed for Opportunity Zones.

Enterprise looks forward to working with Treasury to ensure that Opportunity Zones are a successful community investment tool that brings equitable and inclusive growth to the more than 8,700 designated areas.