February 14, 2019
IRS Public Hearing on Opportunity Zones

Statement by Stockton Williams
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Ladies and Gentlemen, my name is Stockton Williams, and I am the executive director of the National Council of State Housing Agencies (NCSHA) here in Washington.

NCSHA represents the nation's Housing Finance Agencies (HFAs), and we greatly appreciate the opportunity to provide comments to the Internal Revenue Service (IRS) on its proposed Opportunity Zone regulations.

State HFAs have delivered more than $450 billion in financing to provide affordable homeownership and rental housing opportunities for more than 7 million households.

Much of this investment is in areas now designated as Opportunity Zones.

A number of HFAs also administer programs that finance economic development, infrastructure, and small business creation, much of it also in Opportunity Zones.

State HFAs have deep experience with tax incentives for affordable housing and economic development and have worked with the IRS for many years on programs such as tax-exempt Housing Bonds, the Low Income Housing Tax Credit (Housing Credit), and the New Markets Tax Credit.

Most state HFAs were at the table with their governors advising on their Opportunity Zone designation decisions and many are allocating their own resources to enhance the viability of Opportunity Zones in rural and urban communities in their states.

The state HFAs are also sharing best practices and coordinating policy outreach through the NCSHA Opportunity Zones Focus Group, co-chaired by Ken Holt, Secretary of the Maryland Department of Housing and Community Development and Earl Poleski, Executive Director of the Michigan State Housing Development Authority.

NCSHA appreciates the significant effort and thoughtful approach by IRS to develop guidance implementing this new section of the Internal Revenue Code.

As you finalize this guidance, we urge you to consider three issues in particular:

Comments on Provisions of the Proposed Regulations

Original Use of Opportunity Zone Property
The proposed regulations solicit comment on the definition of original use—including whether some period of abandonment or underutilization should erase a property's history of prior use in the Opportunity Zone.

NCSHA recommends that the IRS regulations specify that land or property that has been vacant for a period of at least one year satisfies the original use requirement, consistent with rules under the Enterprise Zone Facility Bond[1] incentive.

Vacant land represents a largely untapped asset for the redevelopment of the communities Opportunity Zones are intended to strengthen.

Recent research suggests that nearly 17 percent of the land area in large U.S. cities is vacant[2] and many smaller communities have underutilized parcels that could be developed as community assets as well.

Given the impacts of land prices on housing costs, vacant land may represent an especially beneficial opportunity for generating new affordable housing development in Opportunity Zones.

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1 26 CFR § 1.1394-1(h) - Enterprise zone facility bonds

2 Galen D. Newman, Ann O'M. Bowman, Ryun Jung Lee & Boah Kim (2016) A current inventory of vacant urban land in America, Journal of Urban Design, 21:3, 302-319, DOI: 10.1080/13574809.2016.1167589

Substantial Improvement of Opportunity Zone Property

In general, the proposed regulations specify that tangible property is treated as substantially improved if additions to basis exceed the basis of the property at the beginning of a 30-month period.

The proposed regulations also provide that the basis attributable to land on which a building sits is not taken into account in determining whether the building has been substantially improved.

NCSHA supports this provision, as it provides additional flexibility in selecting appropriate sites and redeveloping vacant or abandoned buildings in Opportunity Zones.

In addition, we suggest that IRS clarify that land and buildings acquired prior to 2018 may qualify as Opportunity Zone property, so long as the substantial improvement of such property commences in 2018 or after, consistent with Opportunity Zone rules.

Qualified Opportunity Zone Business Requirements

In our comments submitted in December, NCSHA suggested that the final regulations:

1. provide additional clarity on substantial improvement requirements for startup and small businesses to help encourage necessary investment in Opportunity Zones;

2. amend the requirement that at least 50 percent of the gross income of a Opportunity Zone business be derived from the active conduct of the business in the zone; and

3. enhance requirements for self-certification of a Qualified Opportunity Fund to allow communities to measure whether funds are on track to meet anticipated outcomes and facilitate subsequent investor reporting requirements.

Please see our written comments for further details on these suggestions.

Suggestions for Future Program Guidance
In addition to the issues addressed in this first set of proposed regulations, we are pleased that forthcoming IRS regulations will provide program guidance in other areas.

NCSHA looks forward to this future guidance and suggests that IRS specifically address the following three issues to enable Opportunity Zones to fulfill the statutory intent of transforming distressed communities:

<u>Leveraging Opportunity Zone Incentives With Other Tax Credits</u>
To enable financial feasibility, most—if not all—Opportunity Zone projects will require multiple subsidies.

The proposed regulations do not address the ability of Opportunity Zone investments to qualify for other federal tax incentives, including the Housing Credit, the Historic Rehabilitation Tax Credit, or the New Markets Tax Credit.

Leveraging one or more of these resources in an Opportunity Zone investment will serve to maximize the results of the program.

As such, we strongly encourage IRS to provide guidance that facilitates the leveraging of Opportunity Zone incentives with these other federal tax incentives.

<u>Preventing the Loss of Affordable Housing in Opportunity Zones</u>
It is conceivable that some Opportunity Zone-driven activities could result in the loss of existing affordable housing, either because they put upward pressure on home prices and rents that exceed what lower-income current residents can reasonably afford, or because they result in the actual removal of housing units affordable to, and in many cases occupied by, lower-income current residents.

Either scenario is completely contrary to the purpose and goals of the Opportunity Zones legislation.

We encourage the IRS to specify that a Qualified Opportunity Fund whose activities result, or may result, in losses of housing affordable to the current lower-income residents of an Opportunity Zone specify publicly the actions they will take to mitigate the effects of such outcomes.

In addition, we recommend that IRS regulations expressly prohibit the intentional removal or conversion of existing affordable housing in an Opportunity Zone, unless new housing of comparable quality and affordability is provided in or near a Zone in a location with similar or better basic amenities.

For these purposes "affordable housing" could be defined as for-sale or rental units subject to a price or rent restriction imposed by a federal, state, or local program, or through other legally binding means, such as a community land trust.

<u>Specifying Reporting Requirements for Opportunity Zone Investments</u>
To enable assessment of the impacts and outcomes of Opportunity Zone investments, we encourage IRS to specify such reporting requirements in future program guidance.

The Congress directed the Treasury in its Conference Report that accompanied the Tax Cuts and Job Act to report to Congress on the impacts and outcomes of the Opportunity Zone incentive.

This report specified an assessment of the impact of Opportunity Zone investments on economic indicators including job creation, poverty reduction, and new business starts.

Consistent with our comments above, NCSHA encourages IRS to also require data collection on the number of affordable housing units developed or preserved in each Opportunity Zone.

To avoid unnecessary burden, we encourage limiting the collection of data to that necessary to allow reasonable assessment of the impact Opportunity Zone investments have on the communities in which they are located.

We also encourage IRS to solicit public input on proposed data collection parameters.

In conclusion, NCSHA and our HFA members are excited to contribute to the implementation of the Opportunity Zone program and to leverage investments using HFA affordable housing and economic development tools.

Thank you for considering our comments as you work to finalize this critically important program guidance.