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MORTGAGE BANKERS ASSOCIATION

December 21, 2018

Internal Revenue Service  
1111 Constitution Avenue NW  
Washington, DC 20224

**Re: Proposed Regulations on Investing in Qualified Opportunity Zones  
(REG-115420-18)**

Ladies and Gentlemen:

The Mortgage Bankers Association (MBA)<sup>1</sup> respectfully submits these comments on the Internal Revenue Service (IRS) notice of proposed rulemaking implementing new section 1400Z-2 of the Internal Revenue Code.<sup>2</sup>

Section 1400Z-2 establishes tax incentives to encourage economic growth and investment in distressed communities designated as Opportunity Zones by providing federal income tax benefits to taxpayers who invest in businesses located within those areas.

MBA supports this objective and appreciates IRS efforts to provide guidance that taxpayers and Qualified Opportunity Funds (QOFs) can rely on to make investment and other business decisions. For example, the section became effective immediately when the Tax Cuts and Jobs Act became law in December 2017. We appreciate that the notice grants taxpayers the option of relying on the proposed guidance as an alternative to waiting for the final rule.<sup>3</sup> We also support the clarification that a taxpayer may use an interest in a QOF as collateral for a loan without impairing its status as an eligible interest.<sup>4</sup>

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<sup>1</sup> The Mortgage Bankers Association is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,300 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, and others in the mortgage lending field. For additional information, visit MBA's Web site: [www.mba.org](http://www.mba.org).

<sup>2</sup> 83 Fed. Reg. 54279 (Oct. 29, 2018). Available at: <https://www.gpo.gov/fdsys/pkg/FR-2018-10-29/pdf/2018-23382.pdf>

<sup>3</sup> See 83 Fed. Reg. at 54286.

<sup>4</sup> See proposed 26 C.F.R. § 1.1400Z2(a)-1(b)(3)(ii) ("*Use as collateral permitted*"); 83 Fed. Reg. at 54290.

We urge the IRS to ensure that its guidance address practical considerations. For example, as the notice suggests, it may be appropriate to specify exceptions to the general 180-day rule for reinvestment of capital gains into a QOF<sup>5</sup> to address circumstances under which reinvestment within that time period may be impractical.

While clarity of guidance and practical considerations are important, we also recognize that the equity investment incentives created by new section 1400Z-2 will generate the intended benefits only if the broader commercial and multifamily development ecosystem is also actively engaged. This includes sources of debt capital, developers, business operators, state and local governments, and state Housing Finance Agencies (HFAs).<sup>6</sup>

Notably, sources of debt capital include MBA member companies that can provide mortgage debt financing for the acquisition and substantial improvement of business properties. In this regard, we are pleased that the new provision and the proposed guidance provide substantial flexibility in how the financing of Qualified Opportunity Zone Business projects may be structured. MBA is working with our members across multiple capital sources to ensure that they are prepared to play a critical role in financing Opportunity Zone projects.

Again, we appreciate IRS efforts to provide certainty to enable investors and QOFs to take action. As those activities unfold, our expectation is that our members will play an active and important mortgage financing role that will help Opportunity Zone communities to realize the benefits Congress intended. Please contact Fran Mordi at [fmordi@mba.org](mailto:fmordi@mba.org) or Bruce Oliver at [boliver@mba.org](mailto:boliver@mba.org) with questions about this comment letter or for more information.

Sincerely,



Thomas T. Kim  
Senior Vice President  
Commercial/Multifamily  
Mortgage Bankers Association

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<sup>5</sup> See 83 Fed. Reg. at 54281 (“Comments are requested as to whether the final regulations should contain exceptions to the general 180-day rule”).

<sup>6</sup> *Executive Order on Establishing the White House Opportunity and Revitalization Council* (Dec. 12, 2018) similarly recognizes that multiple public- and private-sector stakeholders must play critical roles in facilitating investment in Opportunity Zones and fulfilling the purposes of new section 1400Z-2. Available at: <https://www.whitehouse.gov/presidential-actions/executive-order-establishing-white-house-opportunity-revitalization-council/>