Via electronic submission

December 28, 2018

Erika C. Reigle & Kyle C. Griffin
Office of Associate Chief Counsel (Income Tax and Accounting)
Internal Revenue Service
1111 Constitution Ave., NW
Washington, DC 20224

Re: Notice of Proposed Rulemaking and Notice of Public Hearing [REG-115420-18] [RIN 1545-BP03]

Dear Ms. Reigle and Mr. Griffin:

The Independent Community Bankers of America ("ICBA")[1] welcomes this opportunity to provide comment in response to the Internal Revenue Service's ("IRS" or "Agency") notice of proposed rulemaking and notice of public hearing, regarding investing in Qualified Opportunity Funds ("QOF").[2] ICBA firmly supports the goals of the Opportunity Zones ("OZ") program and believes that the proposed rulemaking will enable and encourage investment in communities that are economically distressed.

Community banks are integral components of their communities. Because their success and good fortunes are intertwined, community banks strive to provide responsible financial services that will improve the community. The community bank business model hinges on this virtuous cycle – when communities thrive, their community banks flourish; when community banks flourish, their communities thrive even further, and so forth.

[1] The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 52,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 760,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than $4.9 trillion in assets, $3.9 trillion in deposits, and $3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.
[2] 83 Fed. Reg. 54279 (Oct. 29, 2018).

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Unfortunately, there are many communities in this country that are not thriving. Despite the best efforts of community banks, there are 52 million Americans that live in economically distressed communities that are hampered by persistent poverty levels and low employment rates.[3] These communities are trapped in a vicious cycle – the poverty levels do not draw investment, which only perpetuates further poverty and unemployment. Fortunately, the Opportunity Zone program can be a key mechanism to break this cycle and give distressed communities an opportunity to leverage new resources. This first issuance of guidance will help facilitate investments in QOF, though ICBA urges the Agency to collaborate with federal financial regulators to issue guidance that is targeted toward community banks.

Background

As the guidance makes clear, the Opportunity Zone program seeks to encourage economic growth and investment in qualified opportunity zones by providing Federal income tax benefits to taxpayers who invest in QOFs. The benefits include: (1) a temporary tax deferral for capital gains reinvested in a QOF, (2) a step-up in basis for any investment in a QOF held for at least five years (10% basis increase) or seven years (15% basis increase), and (3) a permanent exclusion of capital gains from the sale or exchange of an investment in a QOF held for at least 10 years.

The proposed guidance stipulates that corporations and partnerships can self-certify as QOFs, so long as the entity holds at least 90% of its assets in "qualified OZ property," which can be stock or a partnership interest in a business located within a qualified OZ or tangible business property located in a qualified OZ. The Opportunity Zone program is expected to spur over $40 billion in investment over the next five years.

Community Banks Would Welcome IRS collaboration with Bank Prudential Regulators

Given their ties and relationships, community banks have the in-depth knowledge of their communities to know which financing-projects would have the biggest impact. Community banks would welcome the opportunity to facilitate funding for QOFs, direct investors toward worthwhile projects, or even establish a special purpose vehicle (SPV) that could be classified as a QOF. However, the proposed guidance does not appear to discuss how community banks could be involved in Opportunity Zone projects. ICBA recommends that the IRS develop subsequent guidance in collaboration with federal financial regulators.

[3] President Trump's Executive Order on Establishing the White House Opportunity and Revitalization Council, issued on Dec. 12, 2018, *available at* https://www.whitehouse.gov/presidential-actions/executive-order-establishing-white-house-opportunity-revitalization-council/.

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For example, ICBA encourages subsequent guidance to address issues or potential complications that would be unique to community bank involvement in QOF, such as the Volker Rule and Bank Holding Company Act restrictions on certain bank-sponsored investment vehicles.[4] While the rule might allow community banks to establish QOFs for the benefit of their customers, regulatory restrictions and uncertainty might be prohibitive from community bank involvement.

Additionally, ICBA is encouraged by President Trump's Executive Order Establishing the White House Opportunity and Revitalization Council.[5] ICBA is optimistic that this Council will serve as a platform for stakeholders to explore innovative ideas on how communities within Opportunity Zones can be revitalized. The Council holds the potential to lead interagency dialogue on how additional, non-IRS regulations can be tailored so that more investors and entities can become involved in Opportunity Zones. ICBA looks forward to working with the Council to identify and recommend changes to Federal statutes, regulations, policies and programs that will encourage public and private investment in urban and economically distressed communities.

In conclusion, ICBA is supportive of the Opportunity Zone program and the proposed guidance that would enable its implementation. As future guidance is developed, ICBA urges the IRS and federal banking agencies to work together on identifying ways to involve community banks in revitalization efforts.

Finally, if statutes or regulations prove to be a hinderance to community bank involvement, ICBA requests that the IRS work with the Opportunity and Revitalization Council to design a plan that would reduce those barriers to community bank involvement. If you have any questions or would like additional information, please do not hesitate to contact me at (202) 659-8111.

Sincerely,

/s/

Michael Emancipator
Assistant Vice President, Regulatory Counsel

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[4] *See* section 13 of the Bank Holding Company Act, which contains certain prohibitions and restrictions on the ability of a banking entity to engage in proprietary trading or have certain relationships with private equity funds.
[5] *See supra* note 3.