



**COLORADO**  
Governor Jared Polis

July 1, 2019

CC:PA:LPD:PR (REG-120186-18)  
Room 5203  
Internal Revenue Service  
P.O. Box 7604, Ben Franklin Station  
Washington, D.C. 20044

Re: Internal Revenue Service's Proposed Rules for Investing in Qualified Opportunity Funds

To whom it may concern:

As the Governor of Colorado, I would like to ensure that the Opportunity Zone incentive is as conducive as possible to facilitating the development of affordable housing, particularly low-income housing that is built using low income housing tax credits (LIHTC). Affordable housing is a critical need in Colorado, and the Opportunity Zone incentive, if implemented effectively, has the potential to catalyze significant new investment in housing projects.

The second set of proposed guidance released by the IRS in April 2019 made changes to language that decrease the potential for pairing those two incentives. When the regulations removed "fair market value as of 12-31-2026" as part of the "lesser of" tests to determine the amount of gain includable in gross income, this changed the calculation of capital gains tax due no later than 12-31-2026 and, as a result, yield to investors. This was especially detrimental to LIHTC investors, unlike market-rate investors, often have nominal cash flow and thus their returns are primarily derived from the above reduced tax on capital gains and the partnership's losses.

We respectfully propose that the IRS return to the statute's original definition of gain, which offers that the investor pays capital gains tax in 2026 on the lesser of the original gain *or* the fair market value of the interest, plus any cash distributions received.

Low-income housing tax credits have proven to be a powerful tool in providing a safe shelter for residents in Colorado and across the country. If easily paired with Opportunity Zone credits, investors have shown interest in increasing their investments in these types of projects. We hope that the IRS and Treasury consider our comments as they finalize the regulations for Opportunity Zone investment.

Sincerely,



Jared Polis  
Governor

