

June 17, 2019

Todd M. Richardson
General Deputy Assistant Secretary for Policy Development and Research
Office of the Assistant Secretary for Policy Development and Research
Department of Housing and Urban Development
451 7th Street, SW, Room 8216
Washington, DC 20410-0500

Re: Review of HUD Policy in Opportunity Zones, Docket Number: FR-6155-N-01

Dear Mr. Richardson:

On behalf of the organizations, businesses and other entities listed below that advance the preservation and rehabilitation of our nation's historic buildings, we appreciate the U.S. Department of Housing and Urban Development's (HUD) request for information about programs that encourage beneficial investment in urban and economically distressed communities, particularly those located in Opportunity Zones.

As referenced in the review notice, Executive Order 13853 established the White House Opportunity and Revitalization Council (Council) with HUD Secretary Ben Carson serving as Chair. The Council was directed to assess the actions each Federal agency can take to focus Federal investments and programs on urban and economically distressed communities and to identify ways to minimize regulatory costs and burdens that might discourage private investment in Opportunity Zones. The Council is also charged with coordinating agency efforts in developing growth and revitalization strategies for these communities.

We believe there is unprecedented potential for Opportunity Zones to align public and private resources to revitalize neighborhoods for low- and moderate-income residents while maintaining community identity, expanding housing opportunities, promoting small business development, and preserving irreplaceable historic buildings. Accordingly, we would urge the Council to maximize utilization of the federal historic tax credit (HTC) to accomplish these complementary objectives.

Overview of the Federal Historic Tax Credit - Intersection of Preservation and Housing Creation

The federal HTC has a long track record of successfully supporting revitalization efforts in underserved communities and should be considered an essential component for each Opportunity Zone's growth and revitalization strategy. Congress affirmed the importance of the HTC in the Tax Cut and Jobs Act of 2017, and its role in spurring revitalization in our downtowns, Main Streets, and rural America. Over the last four decades, the HTC has become the federal government's most successful incentive to transform abandoned and underutilized historic buildings into economically productive community assets. Since 1978, the HTC has generated \$144.6 billion in HTC-related

investment resulting in the creation of more than 2.5 million jobs and \$158 billion in Gross Domestic Product.¹

The HTC effectively focuses rehabilitation investment in underserved communities. In FY17, 50 percent of all rehabilitation projects occurred in low- and moderate-income census tracts and 79 percent were in “economically distressed areas.”² Over the life of the program, the HTC has created more than 166,000 units of Low- and Moderate-Income Housing.³ As HUD evaluates its role in aligning federal investment in Opportunity Zones, we urge the Council to assist the Department of the Interior and the Department of Treasury in encouraging the use of historic tax credits as a strategic component of Opportunity Fund investments.

Question 1. How should HUD use its existing authorities to maximize the beneficial impact of public and private investments in urban and economically distressed communities, including Opportunity Zones?

Use HUD’s Existing Authorities to Support Historic Preservation in Opportunity Zones

Within its existing authorities, we see an important opportunity for HUD to demonstrate that Low-Income Housing Tax Credit projects can efficiently incorporate Historic Tax Credits on substantially rehabilitated housing projects. In 2012, the Federal Housing Administration (FHA) launched a program to streamline mortgage insurance applications for Section 223(f) Program projects with equity from the sale of Low-Income Housing Tax Credits (LIHTC). Earlier this year, FHA announced it would expand the program to include new construction and substantial rehabilitation of multifamily housing for its Section 221(d)(4) and Section 220 programs. In its notice announcing the expansion of the program, however, FHA specified that projects involving HTCs are not eligible for the Expedited Approval Process or the Standard Approval Process. The reason noted was the additional complexity these types of projects present and the presumed inability to complete projects with twinned tax incentives within the proscribed 60- and 90-day thresholds.

It is important to note that HUD’s loan programs are commonly used in conjunction with HTC financing. As referenced above, over the life of the HTC program, tens of thousands of low- and moderate- income housing units benefitted from use of HTCs, a significant portion of which used both HTC and LIHTC incentives to produce affordable housing in previously underutilized historic properties or used HTC with HUD loan programs to develop affordable or mixed income properties without LIHTC. While we recognize that combining the credits can be complicated, it has become a common industry practice to use one or more credits in transactions that also include HUD’s loan products. HTC projects that have had their rehabilitation plans approved by State Historic Preservation Offices and the National Park Service are considered “shovel ready” and the HTC approval process from this point forward is unlikely to delay an expedited review of the HUD loan product.

¹ Annual Report on the Economic Impact of the Federal Historic Tax Credit for FY17, Rutgers University, Edward J. Bloustein School of Policy and Planning, and the National Park Service, Technical Preservation Services, p. 5

² Ibid.

³ Federal Tax Incentives for Rehabilitating Historic Buildings, Annual Report for Fiscal Year 2018, National Park Service, U.S. Department of the Interior, Technical Preservation Services

HTC projects that revitalize historic properties for affordable and mixed-income housing benefit communities from both an economic and social welfare standpoint, and HUD, as the lead federal agency of the Council has a critical opportunity to bring multiple federal resources to bear in Opportunity Zones to support and coordinate economic development and revitalization strategies. Accordingly, we would encourage HUD to allow HTC projects to be eligible for FHA's expedited loan programs provided that the project is able to meet HUD's expedited timeline.

Lastly, we would encourage HUD to include information about the HTC incentive, and how it may be used in conjunction with the LIHTC program, as it considers the creation of an information portal on Opportunity Zones. Should HUD decide to move forward with the development of an Opportunity Zone information portal, we would welcome the opportunity to assist you in the identification and compilation of information to promote HTC use in Opportunity Zones.

Question 7. How should HUD interact with other stakeholders to maximize the success of the Opportunity Zone incentive?

- (a) How should HUD interact with officials from State, local, and tribal governments, institutions, local and regional agencies, businesses, and individuals from the private sector to most effectively encourage beneficial investment in urban and economically distressed areas?**

Encourage meetings between HUD officials and State, Local, and Tribal Preservation Entities

One of the fundamental challenges for historic preservation in Opportunity Zones is the extent to which the program seeks to expedite the inflow of capital without significant federal oversight. While this approach may indeed strike the appropriate market inducement to redirect private investment, it then becomes incumbent on state and local governments to ensure OZ investments occur in a manner consistent with a community's vision for growth and revitalization, including the balanced production of affordable, workforce, and market rate housing. We would therefore encourage HUD in its approach to interactions with state, local, and tribal governments to seek out opportunities to engage with State Historic Preservation Offices, Tribal Historic Preservation Offices, local preservation organizations, and community development entities to facilitate the establishment of OZ guidelines that incorporate community development plans, inventories of historic buildings, zoning and planning review, and public participation.

- (c) How should Federal technical assistance, planning, financing tools, and implementation strategies be coordinated across agencies to assist communities in addressing economic problems, engaging in comprehensive planning, and advancing regional collaboration?**

Ensure Federal Agencies are Effectively Deploying HTC's in Opportunity Zones

A critical way for HUD to assist in aligning federal incentives and maximizing rehabilitation and revitalization efforts in Opportunity Zones is to ensure that Opportunity Zone investments can be readily incorporated into HTC financed transactions. For projects that are indirectly owned by a Qualified Opportunity Fund, the current regulations require that at least 50 percent of the total gross income of a qualified opportunity zone business is derived from the active conduct of a trade or business. The regulations note that while leasing qualifies as active conduct, "mere" triple net leasing – where a tenant is solely responsible for all costs related to the asset – does not.

Due to the diverse interests and requirements of investors and lenders in an HTC project and the fact that the HTC is an allocated credit, a common way of structuring HTC transactions is through a lease pass through structure, in which one entity owns a building that is being rehabilitated and then passes the HTC to a tenant entity, often referred to as a Master Tenant. The Master Tenant assumes responsibility for property maintenance, upkeep, and payment of taxes via what may be considered a triple net lease. However, this lease structure can be distinguished from traditional triple net lease arrangements in that it is implemented to facilitate the usage of the HTC in revitalizing a historic building as permitted under the Internal Revenue Code.

For other federal tax credit incentives, like New Market Tax Credits, active conduct of the business is interpreted broadly as having a reasonable expectation of revenue generation within three years. This interpretation is justified because these incentives support the objective of providing investment capital for low-income communities. Similarly, HTC projects within Opportunity Zones provide investment capital in underserved areas and should receive similar tax treatment given the demonstrable role HTC's play in transforming and revitalizing these communities particularly in light of the fact that the lease structure is permitted under existing tax law. We recommend the Council confirm the commonly utilized HTC Master Tenant lease pass through structure is a qualifying Opportunity Zone "active trade or business".

Conclusion

With the creation of the White House Opportunity and Revitalization Council, the more than 8,700 qualified census tracts in our rural areas, suburbs, and inner cities included in designated Opportunity Zones form an important partnership with the federal government. Together, federal, state, and local governing bodies working together can ensure the estimated \$100 billion in private investment expected to flow to these communities over the next decade will indeed support neighborhood preservation and revitalization.

By supporting guidance that embraces neighborhood preservation and revitalization strategies, private investment will produce better solutions to economic development challenges. Incorporating existing community development plans, surveying historic buildings, following zoning and planning recommendations and engaging in public participation, will help produce an appropriate balance of affordable, workforce, and market rate housing. The most successful community development outcome would include the preservation of historic properties and Opportunity Funds that encourage and promote rehabilitation over demolition.

We are committed to working with HUD and the White House Opportunity and Revitalization Council to ensure Opportunity Zone investments are focused on projects that will provide the most benefit to low- and moderate- income neighborhoods and their residents while preserving the historic character of these communities.

Should you have questions or comments about the above recommendations, please do not hesitate to contact Shaw Sprague, Senior Director of Government Relations with the National Trust for Historic Preservation at ssprague@savingplaces.org.

Sincerely,

Asian and Pacific Islander Americans in Historic Preservation - National
National Alliance of Preservation Commissions - National
National Association of Tribal Preservation Officers - National
National Conference of State Historic Preservation Officers - National
National Housing and Rehabilitation Association - National
National Trust Community Investment Corporation - National
National Trust for Historic Preservation - National
Preservation Action - National
Main Street Alabama - AL
Restore Mobile, Inc - AL
Saving our Communities (S.O.C.) - AL
Arizona Downtown Alliance - AZ
Arizona Preservation Foundation - AZ
Mesa Preservation Foundation - AZ
Preserve Arkansas - AR
Quapaw Quarter Association - AR
California Institute of Environmental Design & Management (CIEDM) - CA
California Preservation Foundation - CA
Save Our Heritage Organization - CA
Voices of Vallejo - CA
Connecticut Main Street Center, Inc. - CT
Florida Division of Historical Resources - FL
Preservation Chicago - IL
S & E Development & Construction - IL
C Resources - IN
Historic Valley Junction Foundation - IA
Preservation Kentucky - KY
Alembic Community Development - LA
Preservation Resource Center - LA
Maine Preservation - ME
Maryland Historical Trust - MD
Preservation Maryland - MD
Boston Preservation Alliance - MA
Parker Associates - MA
Preservation Massachusetts - MA
Benton Harbor Historical Preservation Society - MI
Casey Architecture - MO
McClure Placemaking - MO
City of Red Lodge - MT
Nebraska Main Street Network - NE
Preservation New Jersey - NJ
Urban Vantage LLC - NY
Rosenwald Center - NC
City of Toledo - OH
Downtown Mansfield, Inc. - OH
Heritage Ohio - OH

Historic Preservation Group, LLC - OH
PlaceMark Collaborative LLC - OH
Tulsa Foundation for Architecture - OK
Restore Oregon - OR
Downtown Bellefonte, Inc. - PA
Erie Downtown Partnership - PA
Lewisburg Downtown Partnership - PA
Mainspring of Ephrata - PA
Mosaic Community Land Trust - PA
Myerstown Vitality Partnership - PA
Pennsylvania Downtown Center - PA
Preservation Alliance for Greater Philadelphia - PA
Preservation Pennsylvania - PA
Grow Smart Rhode Island - RI
Preserve Rhode Island - RI
Main Street South Carolina - SC
Preservation South Carolina - SC
Tnovsa Global Commons - SC
Cornerstones, Inc. - TN
Crossroads Downtown Partnership - TN
Preservation Houston - TX
The Texas Freedom Colonies Project LLC - TX
Preservation Utah - UT
High Street Studios - VA
Historic Richmond - VA
Hopewell Downtown Partnership - VA
Preservation Virginia - VA
Historic Seattle - WA
Kinsey LA - WA
Michael Gioulis, Historic Preservation Consultant Inc. - WV
Milwaukee Preservation Alliance - WI