EIG
OPPORTUNITY ZONES
COALITION

July 20, 2026

U.S. Department of the Treasury
Attn: Kevin Salinger
Deputy Assistant Secretary for Tax Policy
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

Re: Comments on Notice 2026-40 – Transitional Guidance on Qualified Opportunity Zones

Dear Deputy Assistant Secretary Salinger,

The Economic Innovation Group (EIG) Opportunity Zones Coalition appreciates the opportunity to comment on Notice 2026-40, Transitional Guidance on Qualified Opportunity Zones under §§ 1400Z-1 and 1400Z-2. The EIG Opportunity Zones Coalition represents a cross-section of Opportunity Zones (OZ) stakeholders, including fund managers, financial institutions, CDFIs, community-based organizations, developers, and philanthropy. Our recommendations reflect the priorities and consensus of this diverse coalition.

We thank the Department of the Treasury and the Internal Revenue Service for issuing prompt guidance on the transition to new OZ rules and designations well in advance of the new map's 2027 start date. Notice 2026-40 offers stakeholders key clarifications on a range of transition issues, including the number of zones eligible for designation in 2027 and confirmation that inclusion event gain is eligible for reinvestment into OZs. We also appreciate that Treasury has specified that ongoing repairs and replacement property may qualify as Qualified Opportunity Zones Business Property (QOZBP) and indicated that Treasury expects to allow Qualified Opportunity Zone Businesses (QOZBs) to treat expiring OZs as OZs for compliance testing purposes.

Our comments focus on additional points of clarification that stakeholders require to navigate the 2026-2028 transition period and some necessary revisions to allow the original OZ communities to utilize the full 10-year designation period granted to them by Congress.

Thank you for your consideration of the enclosed recommendations. If you have any questions, we would welcome the opportunity to discuss them in more detail.

Sincerely,

Catherine Lyons
Senior Director of Policy and Coalitions
Economic Innovation Group

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EIG Opportunity Zone Coalition Comments and Recommendations on Notice 2026-40

We would first like to acknowledge several areas of helpful clarification in the Notice.

The Current Number of OZs in a State Does Not Affect the 25 Percent Limitation on New Zones: We appreciate Treasury's clarification that the number of currently designated zones does not affect the number of zones that a state is eligible to nominate in 2026. The Notice appropriately interprets "during any period" in statute as imposing limits on each decennial designation period rather than preventing the one-time overlap of zones between 2026 and 2028.

Gains Are Eligible for Reinvestment and Deferral When There is No Election in Effect: We thank Treasury for the confirmation that gains stemming from an inclusion event before December 31, 2026, are eligible for deferral if reinvested after January 1, 2027, but that gains deemed includible on December 31, 2026, are not because the taxpayer remains eligible to make an election under § 1400Z-2(c). Understanding this distinction will be helpful to investors as the December 31, 2026, deadline approaches.

Property Used for Replacement and Modernization Can Qualify as QOZBP: We appreciate Treasury's recognition that QOZBs should be allowed to replace, repair, and modernize property in the ordinary course of business while remaining in compliance with OZ rules. Doing so will be essential for the continued operation of both real estate and non-real estate OZ businesses.

The following are our coalition's recommendations for additional clarity and required changes to the guidance provided in the Notice and forthcoming proposed regulations.

I. Treasury Should Allow Investment in Existing OZs Through December 31, 2028.

Since the original Opportunity Zones were designated in 2018, stakeholders have relied on the understanding that OZ designations would remain fully in effect until their statutory expiration on December 31, 2028. Notice 2026-40 effectively cuts off investment activity in these zones two years early by stipulating that in order to qualify as QOZBP, new property acquired in current OZs after December 31, 2026, will need to either (1) be acquired pursuant to a working capital safe harbor plan in place by the end of the year or (2) be acquired for use in the ordinary course of business to replace existing tangible property.

To qualify for the first exemption, by the end of 2026, a valid working capital plan must be in place, the QOZB must have received at least ten percent of the total estimated working capital assets in the plan, and the QOZB must have expended at least five percent of the total estimated working capital assets in the plan. These requirements are appropriate for zones with expired designations, but the December 31, 2026, deadline is two years premature.

The Notice contends that QOZs designated prior to the One, Big, Beautiful Bill Act (OBBBA) have no applicable start date and that after 2026, property acquired in these zones cannot satisfy the acquisition requirement unless one of the two listed exemptions is satisfied. Section 1400Z-1(e)(2) defines "applicable start date" as "with respect to any qualified opportunity zone designated under this section, the January 1 following the date on which such qualified opportunity zone was certified and designated by the Secretary under subsection (b)(1)(B)." There is nothing in this definition to exclude previously designated zones, as the 2018 zones were designated under 1400Z-1 and were designated by the Secretary under subsection (b)(1)(B). A plain reading of the statute would assign an applicable date of January 1, 2018, to the original zones.

If changes to the designation process under § 1400Z-1 exclude the 2018 zones from the definition of "applicable date" beginning in 2027, then any additional changes to the designation process under future legislation could similarly be interpreted as rendering future active designations moot after the effective date of said bill. This sets an undesirable precedent requiring Congress to actively affirm that it does not want to invalidate existing zones every time it amends some aspect of § 1400Z-1.

Absent the OBBBA, investors would have been able to continue making eligible investments in the 2018 OZs through the end of 2028, an ability that Congress clearly intended to preserve. A version of OBBBA initially passed by the House included a provision that would have ended the original OZ map in 2026. The Senate stripped this provision in its version of the bill, later passed by the House, demonstrating clear intent not to end the designation of existing zones two years early.

Investors have relied on both pre-OBBBA statute and Congress's demonstrated intent in the OBBBA to plan project timelines through December 31, 2028. Placing new limits on 2018 OZs risks unduly depriving some of the distressed communities originally designated in 2018 of investment they would otherwise have seen in the absence of OBBBA. New timing concerns and uncertainty arising from the Notice may push investors that had previously planned OZ investments in 2027 and 2028 to pursue alternative investment decisions unconstrained by still-unknown OZ 2.0 designations.

We recommend that Treasury apply the same requirements outlined in Section 5 of the Notice to investments made after December 31, 2028, to allow the communities with 2018 OZs to receive the full benefit of their 10-year designations through the end of 2028.

II. Treasury Should Allow OZ Businesses to Continue to Expand After the Expiration of an OZ.

The Notice allows tangible property acquired to replace or modernize existing property after December 31, 2026, to qualify as QOZBP if the requirements of § 1400Z-2(d)(2)(D) are otherwise met but does not allow property acquired in the expansion of a business to qualify. This disproportionately affects non-real estate operating businesses, which generally need to expand to bring in sustaining revenue and succeed in their operations. If a QOZB is ready to expand after the expiration of its OZ, it cannot do so without risking losing its QOZB status, even if it is in the best interest of the business to do so. This runs contrary to the fundamental purpose of the policy to spur long-term growth in businesses in distressed communities.

Further, preventing QOZBs from expanding after the expiration of a zone will discourage OZ investment in non-real estate operating businesses, particularly in the final years of an OZ's designation. Treasury should allow property acquired as part of a reasonable expansion of a non-real estate operating business to qualify as QOZBP after the expiration of a zone's designation. This should apply to non-real estate operating businesses only; we agree with the intent of the proposed rule as it applies to real estate transactions.

III. Treasury Should Clarify Whether Additional Investments May Be Made to Finance Allowable Activities After the Expiration of an OZ.

The Notice outlines acceptable expenditures for the replacement or modernization of property after December 31, 2026, and clarifies that stock or partnership interests acquired after 2026 pursuant to a written working capital safe harbor plan will be treated as acquired after the applicable date of the zone. The Notice does not specify, however, whether additional stock or partnership interest used to fund the replacement and modernization of property outside of a working capital safe harbor plan can be treated as after the applicable date.

Treasury should clarify that stock or partnership interest acquired by a Qualified Opportunity Fund will be treated as Qualified Opportunity Zone Property if the funds are used for the allowable expenditures described in Section 5 of the Notice.

IV. Treasury Should Clarify the Requirements for QOZBs In Section 5.02 of the Notice.

Section 5.02(3) of the Notice states that "A QOZB that has begun to engage in the active conduct of a trade or business within a previously designated QOZ on or before the expiration of its QOZ designation… or that reasonably anticipates to begin doing so in accordance with a written plan" may continue to treat the expired QOZ as a QOZ for the purposes of § 1400Z-2(d)(3)(A)(ii). This wording allows for some ambiguity as to whether a QOZB with a working capital safe harbor plan must have commenced operation by the expiration date of the OZ or whether it may commence doing so according to a safe harbor plan in place by the expiration date of the OZ.

We ask Treasury to clarify that a QOZB satisfies this requirement if it either (1) has begun the active conduct of the trade or business before the expiration date of the OZ *or* (2) reasonably anticipates beginning the active conduct of the trade or business by the end of its written working capital safe harbor plan.

Cc:
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