Debt-Financed Distributions

It would be helpful if the examples under Prop. Reg. sec. 1.1400Z2(b)-1(f) were expanded to confirm that a debt-financed distribution within two years of a contribution is not a disguised sale provided that it is subject to the entrepreneurial risks of the partnership. As it is currently written, Example 10 confirms that a debt-financed distribution increases basis in the partnership, but that distribution is after the two-year presumption under the disguised sale rules. Many developers and QOF investors will rely on debt-financed distributions to finance additional QOZ developments and projects. Confirmation that the two-year presumption can be overcome (or removal of the 'presumption as a disguised sale') would free up additional capital to allow developers to pursue additional projects consistent with the intention of the statute. Consider the following example from Bloomberg U.S. Income Portfolios, Portfolio 711-2nd:

> Propp and Surv form a general partnership, Oppar, to own and operate rental real estate. Propp is to contribute land and a building worth $300,000, but with a basis of $100,000 (after straight-line depreciation), for a 50% interest in the business. The Oppar partnership agreement satisfies the special allocation regulations. The parties expect Oppar to refinance the contributed property and to distribute $200,000 to Propp if its operations produce specified results that depend on Surv's skill as a manager and on economic conditions. Because satisfying these conditions is subject to substantial economic risk, the disguised sale provision probably does not apply, even if the distribution is made within two years.

Use and location of Tangible Property

Prop. Reg. sec. 1.1400Z2(d)-1(c)(6) provides that "a trade or business of an entity is treated as satisfying the substantially all requirement of paragraph (c)(4)(i)(D) of this section if at least 70 percent of the use of the tangible property is in a qualified opportunity zone." It would be helpful if Treasury could provide a definition or examples regarding what constitutes "use" for purposes of satisfying this test. For example, Example 1 under Prop. Reg. sec. 1.1400Z2(d)-1(d)(5)(i)(E) provides that a landscaping business headquartered in a QOZ can satisfy the "active conduct of a trade or business" requirement pursuant to 1397(C) if its officers and employees manage the business and its equipment and supplies are stored within a QOZ. However, how would this fact pattern satisfy the "use" requirement because if the business is landscaping, substantially all of the use of its property could take place outside the zone, while all of the revenue would be derived from the headquarters location in the zone. The employees may spend all of their time providing landscaping services to customers outside the zone. This would require the use of supplies, trucks, tools, etc. to take place outside the zone. What about a QOZ business that sent salespeople outside the zone in company vehicles? What if the employees parked the vehicles at their homes overnight? What if a management company, whose headquarters and all employees were within the zone provided services to various customers outside zones? What if the services included property management and other back-office activities whereby management bundles the overhead of multiple non-OZ businesses (finance, accounting, legal, IT, purchasing, marketing, etc.) such that the managed services are located in an HQ OZ but the services are provided to business properties or businesses within and outside of OZ locations? It seems that if the revenue sourcing is generated from these managed services, the fact that the end user of those services and/or the location of leased equipment (lawnmowers or laptops, for example) may be outside of an OZ at times or all of the time should not prevent the HQ OZ located business from qualifying as QOZB.

Gain roll-over within the 10 year holding period:

Clarity and flexibility to allow an Opportunity Fund the ability to roll-over gain as a tax deferred transaction (rather than creating a capital gain during the 10 year holding period) is necessary to facilitate ease of transacting within the OF structure. Without clarity that transactions during the 10 year holding period could be allowed to defer gain back into the Opportunity Fund (as opposed to the clarification given in the last round of regulations that requires such intermediary transaction to be treated as a taxable event) would better position Opportunity Fund investments to stay in place to grow and develop additional investments in Opportunity Zones. Without such relief, Investors will continue to look to other investment vehicles and investments outside opportunity zones. By allowing gains to be 'recycled' within the 10 year holding period without the burden of creating a new capital gain, investors are able to reduce risk in investing in low census tracts by creating more deal flow and greater diversity in their investment portfolio and thereby enhance the value of the Opportunity Fund and prioritize continued investments in Opportunity Zones.

We recommend you consider adding flexibility to such holding period transactions so that these secondary deferred gain transactions can be 'recycled' into a new qualified investment within a window period (such as 180 or 360 days). A 180 or 360 day period by which to reinvest (or recycle) new capital gains would free up investment options and provide Opportunity Funds and investors with a longer term solution and investment strategy and encourage additional and new OZ investments throughout the 10 year holding period. Without such flexibility, Investors and Opportunity Funds are limited in their ability to attract new investment and market investment options to potential investors. Please consider allowing for additional reinvestment in the OF and in new or additional QOZB or QOZBP such that deferred gain treatment is allowed on the original deferred gain as well as new capital gains generated by the OF within the 10 year hold.