

adherence to limitations on the use and disclosure of the information requested.

(4) *DOE evaluation.* Upon receiving a request for CEII, the CEII Coordinator shall contact the DOE Office or Federal agency that created or maintains the CEII. In consultation with the DOE Office, the CEII Coordinator shall determine if the need for CEII and the protection afforded to the CEII should result in sharing CEII for the limited purpose made in the request. In the event the CEII Coordinator or Coordinator's designee denies the request, the requestor may seek request for reconsideration, as provided in § 1004.13(i).

(l) *Unauthorized Disclosure.*

(1) *Disclosure by submitter of information.* If the submitter of information discloses to the public information that has received a CEII designation, then the Department reserves the right to remove its CEII designation.

(2) *Disciplinary Action for Unauthorized Disclosure.* DOE employees or contractors who knowingly or willfully disclose CEII in an unauthorized manner will be subject to appropriate sanctions, including disciplinary action under DOE or DOE Office personnel rules or referral to the DOE Inspector General.

(3) In accordance with the Whistleblower Protection Enhancement Act of 2012 (Pub. L. 112-199, 126 Stat. 1465), these provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute relating to:

(i) Classified information,

(ii) Communications to Congress,

(iii) The reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or

(iv) Any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling statutory provisions are incorporated into this agreement and are controlling.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 91

[Docket No.: FAA-2010-0289; SFAR No. 110]

RIN 2120-AJ69

#### Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan; Withdrawal

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking; withdrawal.

**SUMMARY:** The Federal Aviation Administration (FAA) is withdrawing a previously published notice of proposed rulemaking that proposed to restrict U.S. civil flight operations below flight level (FL) 160 within the territory and airspace of Afghanistan.

**DATES:** The notice of proposed rulemaking published on May 26, 2010 (75 FR 29466) is withdrawn as of October 29, 2018.

**FOR FURTHER INFORMATION CONTACT:** Michael Filippell, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone 202-267-8166; email [michael.e.filippell@faa.gov](mailto:michael.e.filippell@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

On May 26, 2010, the FAA published a notice of proposed rulemaking (NPRM) titled "Prohibition against Certain Flights within the Territory and Airspace of Afghanistan" (75 FR 29466). The NPRM proposed to restrict U.S. civil flight operations below FL 160 within the territory and airspace of Afghanistan, unless the operations are authorized by another U.S. Government department or agency (hereinafter referred to as "department or agency") and approved by the FAA, or subject to an exemption granted by the FAA. The preamble to the NPRM explained the process for a department or agency to apply for FAA approval for operations to be conducted under contract to that department or agency and for operators to apply for exemption.

The situation in Afghanistan presented a unique environment relative to other situations where the FAA had imposed similar regulations to address the safety of U.S. operators while in foreign territories and airspace. The presence of the U.S. military forces in Afghanistan had required a large

presence of U.S. civil aircraft operations to support the warfighting, nation building, and humanitarian efforts. The level of these operations occurring in Afghanistan warranted the FAA to provide notice of the proposed regulation to limit flight in this area and a limited opportunity for comment from operators or other individuals that might have been affected by such action. The FAA found that good cause existed to limit the notice and public comment period required by 5 U.S.C. 553(d)(3) to 15 days. The comment period closed on June 10, 2010.

#### Discussion of Comments Received

The FAA received 22 submissions containing multiple comments from air carriers, associations, labor organizations, humanitarian organizations, and individuals. All of the commenters acknowledged the risks associated with conducting aviation operations in Afghanistan. Several commenters fully supported the provisions in the NPRM, while others requested clarification of certain elements in the proposal. The majority of commenters, however, asserted that the proposed rule would place unnecessary restrictions and burdens on U.S. civil aviation operations in Afghanistan. They contended that the proposed rule would result in an adverse economic impact for U.S. operators and limit their ability to support the ongoing U.S. military activities, nation building, and humanitarian efforts.

Following publication of the NPRM, several commenters, including Kalitta Air, Pactec International, and Atlas Air Worldwide Holdings submitted comments that questioned the FAA's determination of the costs of implementing the NPRM if adopted as proposed. Kalitta Air specifically requested that the FAA complete a regulatory impact analysis to accurately account for the costs associated with the proposal. In response, the FAA published a Supplemental Regulatory Flexibility Analysis on July 20, 2010 (75 FR 42015) for a 15-day comment period that closed on August 4, 2010. No comments were submitted to the supplemental regulatory flexibility analysis.

#### Conclusion

After considering the comments, the FAA has determined the unique environment in Afghanistan continues. There is no scheduled U.S. air service in Afghanistan, and the only operations by U.S. operators or airmen currently conducted there are in support of U.S. Government activities. Additionally, the

FAA has issued an advisory notice to airmen (NOTAM KICZ A0031/17) advising U.S. operators in Afghanistan airspace to operate, to the maximum extent possible, only on established air routes and at altitudes at or above FL 330 due to the risk to civil aviation.

Accordingly, the FAA has decided to withdraw this proposal. Withdrawal of proposed SFAR No. 110 does not preclude the FAA from issuing another notice on this subject matter in the future and does not commit the agency to any future course of action. The FAA continues to assess the circumstances in Afghanistan and intends to take action as appropriate to mitigate risks to aviation safety.

The FAA withdraws Notice No. 2010-12670, published at 75 FR 29466 on May 26, 2010.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1), and 44701(a)(5), on October 16, 2018.

**Rick Domingo,**

*Executive Director, Flight Standards Service.*

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## DEPARTMENT OF TREASURY

### Internal Revenue Service

#### 26 CFR Part I

[REG-115420-18]

RIN 1545-BP03

#### Investing in Qualified Opportunity Funds

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations that provide guidance under new section 1400Z-2 of the Internal Revenue Code (Code) relating to gains that may be deferred as a result of a taxpayer's investment in a qualified opportunity fund (QOF). Specifically, the proposed regulations address the type of gains that may be deferred by investors, the time by which corresponding amounts must be invested in QOFs, and the manner in which investors may elect to defer specified gains. This document also contains proposed regulations applicable to QOFs, including rules for self-certification, valuation of QOF assets, and guidance on qualified opportunity zone businesses. The proposed regulations affect QOFs and their investors. This document also

provides notice of a public hearing on these proposed regulations.

**DATES:** Written (including electronic) comments must be received by December 28, 2018. Outlines of topics to be discussed at the public hearing scheduled for January 10, 2019 at 10 a.m. must be received by December 28, 2018.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-115420-18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-115420-18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224. Alternatively, taxpayers may submit comments electronically via the Federal Rulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-115420-18). The public hearing will be held in the IRS auditorium, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Concerning the proposed regulations, Erika C. Reigle of the Office of Associate Chief Counsel (Income Tax and Accounting), (202) 317-7006 and Kyle C. Griffin of the Office of Associate Chief Counsel (Income Tax and Accounting), (202) 317-4718; concerning the submission of comments, the hearing, or to be placed on the building access list to attend the hearing, Regina L. Johnson, (202) 317-6901 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

#### Background

This document contains proposed regulations under section 1400Z-2 of the Code that amend the Income Tax Regulations (26 CFR part 1). Section 13823 of the Tax Cuts and Jobs Act, Public Law 115-97, 131 Stat. 2054, 2184 (2017) (TCJA), amended the Code to add sections 1400Z-1 and 1400Z-2. Section 1400Z-1 provides procedural rules for designating qualified opportunity zones and related definitions. Section 1400Z-2 allows a taxpayer to elect to defer certain gains to the extent that corresponding amounts are timely invested in a QOF.

Section 1400Z-2, in conjunction with section 1400Z-1, seeks to encourage economic growth and investment in designated distressed communities (qualified opportunity zones) by providing Federal income tax benefits to taxpayers who invest in businesses located within these zones. Section 1400Z-2 provides two main tax

incentives to encourage investment in qualified opportunity zones. First, it allows for the deferral of inclusion in gross income for certain gains to the extent that corresponding amounts are reinvested in a QOF. Second, it excludes from gross income the post-acquisition gains on investments in QOFs that are held for at least 10 years.

As is more fully explained in the Explanation of Provisions, these proposed regulations describe and clarify the requirements that must be met by a taxpayer in order properly to defer the recognition of gains by investing in a QOF. In addition, the proposed regulations provide rules permitting a corporation or partnership to self-certify as a QOF. Finally, the proposed regulations provide initial proposed rules regarding some of the requirements that must be met by a corporation or partnership in order to qualify as a QOF.

Contemporaneous with the issuance of these proposed regulations, the IRS is releasing a revenue ruling addressing the application to real property of the "original use" requirement in section 1400Z-2(d)(2)(D)(i)(II) and the "substantial improvement" requirement in section 1400Z-2(d)(2)(D)(i)(II) and 1400Z-2(d)(2)(D)(ii).

In addition, these proposed regulations address the substantial-improvement requirement with respect to a purchased building located in a qualified opportunity zone. They provide that for purposes of this requirement, the basis attributable to land on which such a building sits is not taken into account in determining whether the building has been substantially improved. Excluding the basis of land from the amount that needs to be doubled under section 1400Z-2(d)(2)(D)(ii) for a building to be substantially improved facilitates repurposing vacant buildings in qualified opportunity zones. Similarly, an absence of a requirement to increase the basis of land itself would address many of the comments that taxpayers have made regarding the need to facilitate repurposing vacant or otherwise unutilized land.

In connection with soliciting comments on these proposed regulations the Department of the Treasury (Treasury Department) and the IRS are soliciting comments on all aspects of the definition of "original use" and "substantial improvement." In particular, they are seeking comments on possible approaches to defining the "original use" requirement, for both real property and other tangible property. For example, what metrics would be appropriate for determining whether