

May 31, 2019

Via Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov)

Hon. David J. Kautter  
Assistant Secretary (Tax Policy)  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, DC 20220

**Re: Request for Information on Data Collection and Tracking for Qualified Opportunity Zones, 84 FR 18648 (May 1, 2019)**

Dear Assistant Secretary Kautter:

We write as a broad coalition of stakeholders to provide comments in response to the Request for Information on Data Collection and Tracking for Qualified Opportunity Zones (“RFI”) issued May 1, 2019. We are grateful for the work of staff at the Department of the Treasury (“Treasury”) and Internal Revenue Service (the “IRS”) to seek public input on the development of public information collection and tracking related to investment in Qualified Opportunity Funds (“QOFs”).

As stated in the RFI, the “information reported on the current version of Form 8996 lacks sufficient granularity for the Treasury Department to determine the amount and type of investment that flows into an individual Qualified Opportunity Zone (“QOZ”) through a QOF. This type of information would be valuable for evaluating the success of the QOZ tax incentive on increasing investment and economic activity within QOZ.” We encourage the prompt adoption of a reporting framework that includes metrics necessary for proper evaluation of investment in QOZ communities over time. In addition, we believe Treasury must provide an appropriate level of public transparency by making certain data sets available to the public in a timely manner.

Opportunity Zones have already brought new energy, ideas, and much-needed attention to one of the nation's most vexing challenges: establishing a stronger and broader connectivity between communities and the equity capital needed to seed new industries, revitalize local assets, fuel innovation, and improve access to opportunity. While Opportunity Zones provide a tool to help communities rise to meet this challenge, we must keep sight of the fact that reviving struggling communities is a long-term, complex undertaking -- one that involves careful tracking and analysis.

Insufficient data has undermined the ability to evaluate the success of past place-based policies created to spur economic development, such as Enterprise Zones and Renewal Communities. For example, GAO analyses in 2004, 2006, and 2010 failed to reach a conclusion about the effectiveness of these two programs due to inadequate data collection by the agencies responsible for administering the programs.<sup>1</sup> This is why timely and thoughtful measurement and transparency are key to evaluating the impact of the Opportunity Zones incentive.

We recommend adopting the framework advanced in the proposed legislation by Senators Cory Booker (D-NJ), Tim Scott (R-SC), Maggie Hassan (D-NH), and Todd Young (R-IN) and Representatives Ron Kind (D-WI) and Mike Kelly (R-PA) to establish a standardized reporting framework for investments in Opportunity Zones nationwide.<sup>2</sup> We believe Treasury and the IRS already have the authority to collect the requisite information, and the proposed legislation merely reiterates the congressional intent expressed in the original reporting requirements provisions of the *Investing in Opportunity Act*. Furthermore, we encourage Treasury to leverage its existing assets to implement these measures, disseminate the resulting data publicly, and lead in conducting additional qualitative and quantitative analysis of Opportunity Zones.

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<sup>1</sup> U.S. Government Accountability Office, *Community Development: Federal Revitalization Programs Are Being Implemented, but Data on the Use of Tax Benefits Are Limited* (Mar. 5, 2004); U.S. Government Accountability Office, *Empowerment Zone and Enterprise Community Program* (Sept. 22, 2006); U.S. Government Accountability Office, *Revitalization Programs: Empowerment Zones, Enterprise Communities, and Renewal Communities* (March 12, 2010).

<sup>2</sup> S. 1344, H.R. 2593.

Thank you for the opportunity to comment on this RFI. Detailed recommendations and responses to the prompts included in the RFI are attached. If you have any questions about this letter, please contact John Lettieri, President and CEO of Economic Innovation Group, at [john@eig.org](mailto:john@eig.org).

Sincerely,

ACON Investments  
Advantage Capital  
Alliant Strategic Housing Funds  
Alphametic LLC  
Arctaris Impact Fund  
Blueprint Local  
Bridge Investment Group  
California Forward  
CalOZ  
Calvert Impact Capital  
Capalino & Company  
Catalyst Opportunity Fund  
Chicago Community Loan Fund  
CliftonLarsonAllen  
CohnReznick LLP  
Community Capital Management  
Community Development Bankers Association  
Community Development Venture Capital Alliance  
Community Reinvestment Fund, Inc.  
DL3 Realty  
Dauby O'Connor & Zaleski, LLC  
Economic Innovation Group  
EJF Capital  
Fund for Our Economic Future  
Fundrise  
Goodcity  
Greatwater Opportunity Capital  
Homecoming Capital  
Institute for Portfolio Alternatives  
International Franchise Association  
KeyBank  
Kirkland & Ellis

KPMG  
Launch NY Inc  
Launch Tennessee  
LIIF  
LISC  
Mayer Brown  
National Development Council  
National Foundation for Affordable Housing Solutions, Inc.  
NES Financial  
Newark Venture Partners  
Novogradac & Company  
Opportunity Alabama  
Opportunity Finance Network  
Our Opportunity  
Peachtree Providence Partners  
Plante Moran  
Polsinelli  
R and C Brown  
Redbrick LMD, LLC  
Reinvestment Fund  
Riaz Capital  
Rural Opportunity Initiative  
Small Business Majority  
SMB Intelligence  
Sorenson Impact Center  
Sorenson Impact Foundation  
Stonehenge Capital Company, LLC  
The Enterprise Center  
The Governance Project  
U.S. Impact Investing Alliance  
Urban Atlantic  
Virtua Capital Management, LLC  
WarHorseCities  
Weller Development Company

## Attachment

### Recommendations:

#### **Embrace congressional proposal for Opportunity Zones reporting framework**

In May 2019, legislation was introduced (S. 1344, H.R. 2593) by a bipartisan group of lawmakers, including the original cosponsors of the *Investing in Opportunity Act*, to require the Secretary of the Treasury to collect data nationally and at the state level on:

1. the number of QOFs;
2. the amount of assets held;
3. the composition of investments by asset class;
4. the percentage of designated communities receiving investments; and
5. other economic indicators associated with the impacts and outcomes of a census tract's Opportunity Zone designation on job creation, poverty reduction, and new business starts in the designated communities.<sup>3</sup>

The proposed legislation calls for Treasury to submit an annual report and impact analysis to Congress beginning five years after the date of enactment of the legislation that includes the information enumerated above.<sup>4</sup> Impacts and outcomes (#5 above) can be quantified by combining information collected from QOFs with other economic data collected by agencies of the federal government, such as the U.S. Census Bureau or Department of Housing and Urban Development. The proposed legislation also enumerates the information Treasury should collect annually from QOFs on specific investments:

1. the total amount of the investment and the date on which such investment was made;
2. the type of investment (i.e., existing business, new business, or real property)
3. the location of such business or property;

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<sup>3</sup> S. 1344 § 1(a), H.R. 2593 § 1(a).

<sup>4</sup> S. 1344 § 2, H.R. 2593 § 2.

4. the type of activity being supported by such investment (i.e., single-family or multi-family residential properties, commercial properties, or the economic sectors in which the business operates);
5. in the case of a business, the approximate number of full-time employees at the time the investment in such business was made; and
6. in the case of real property, the approximate total square footage and the approximate number of residential units, as applicable.

Section 3 of the proposed legislation makes it clear that this investment information should be made publicly available no later than one year after the date of the bill's enactment, and annually thereafter. The proposed legislation directs the Secretary to establish appropriate procedures to ensure that:

1. Collection of such information is performed in a manner so as to prevent duplicative or redundant reporting; and
2. Any personally identifiable data included in such information is properly protected and withheld from disclosure to the public.<sup>5</sup>

Thus, the proposed legislation establishes a framework where investment-level information is collected from QOFs, then the Secretary or the Secretary's delegate aggregates that data and provides it to Congress and the public.

We recommend that Treasury implement the information reporting and data collection framework put forward in S. 1344 and H.R. 2593 regardless of whether the legislation is enacted. These reporting provisions are substantively similar to those in the original 2017 legislation (*Investing in Opportunity Act*), which only failed to be included in the *Tax Cuts and Jobs Act of 2017* as a result of procedural rules relating to reconciliation. As reflected in the legislative history, Congress has always viewed reporting as integral to the successful implementation of

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<sup>5</sup> S. 1344 § 1(c), H.R. 2593 § 1(c).

Opportunity Zones as a policy.<sup>6</sup> Under section 1400Z-2(e)(4) of the statute itself,<sup>7</sup> Congress granted Treasury broad authority to “prescribe such regulations as may be necessary or appropriate to carry out the purposes of” section 1400Z-2. Establishing a robust data collection and provision regime would fall squarely under that mandate. What is more, the 2010 GAO study commissioned by Congress makes it abundantly clear that proper data collection and provision is essential for properly implementing place-based tax incentives. In response to Congressional inquiry into the effectiveness of Enterprise Zones and Renewal Communities, for example, GAO wrote:

The lack of data on the use of some of the tax benefits available to businesses in EZs and RCs limits the ability of HUD and USDA to administer the programs. ... Also, the lack of data on these tax benefits limits the ability of EZs and RCs to use their designations to attract additional resources, which is an expectation. For example, according to tax and community development specialists, the inability to report on the extent to which some existing tax benefits are being used limits the ability of EZs and RCs to demonstrate the effectiveness of their revitalization programs. Moreover, the lack of data on these benefits limits the ability of HUD, USDA, or others to audit or evaluate the programs.<sup>8</sup>

As evidenced in the *Investing in Opportunity Act*, the conference agreement, and the new legislation, Congress clearly intended to take these experiences to heart in its formulation of Opportunity Zones.

Furthermore, most or all of the information outlined in the proposed legislation will be gathered by QOFs through the normal course of business and is relevant to the application of the various tests provided for by the statute and proposed regulations. Information concerning the nature and location of assets, activities, income, and employees is directly relevant to the application of the 90 percent QOZ property test, the 70 percent QOZ business property test, the 50 percent gross income test (including the three proposed safe harbors), and the requirement that QOZ business property be used in a trade or business, for example. Treasury therefore has the clear authority to

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<sup>6</sup> See H. Rep. No. 115-466, Conference Agreement to Accompany the Tax Cuts and Jobs Act, at 539 (describing reporting procedures).

<sup>7</sup> All section references are to the Internal Revenue Code of 1986, as amended, or to the Treasury regulations thereunder.

<sup>8</sup> U.S. Government Accountability Office, *Community Development: Federal Revitalization Programs Are Being Implemented, but Data on the Use of Tax Benefits Are Limited*, at pp. 35-36 (Mar. 5, 2004).

require taxpayers to provide it such information.<sup>9</sup> In addition, under the general anti-abuse rule, “[w]hether a tax result is inconsistent with the purposes of section 1400Z–2 must be determined *based on all the facts and circumstances*,”<sup>10</sup> which further supports Treasury’s authority to collect this information.

To the extent that Treasury determines that information specifically collected for tax administration purposes would be subject to disclosure limitations under section 6103, such information can be aggregated and anonymized so that it is disclosed to the public only “in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.”<sup>11</sup> If particular data is not sufficiently able to be aggregated and anonymized, we urge Treasury to provide alternative information at as fine a level of geographic granularity as possible.

In that vein, we support the RFI’s proposal to require QOFs to report the amount they invest in particular census tracts on Form 8996<sup>12</sup> and recommend that all of the above data points be reported at the census-tract level to the extent that privacy laws allow. Tract-level data is essential to the success and longevity of Opportunity Zones. The very structure of the policy implies that states and the public will have access to such information in order to evaluate the efficacy with which Opportunity Zones were selected. State-level statistics are insufficient for determining which types of communities (urban versus rural; industrial versus residential, for example) attracted which types of investments and enjoyed which types of outcomes. Furthermore, state governments, local governments, and much of the federal government are all busy aligning various policies and programs behind Opportunity Zones. They must be able to obtain standardized and verifiable information on exactly where qualifying investments have flowed under the new regime. Only the federal government can provide such a resource. Given

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<sup>9</sup> See section 6011.

<sup>10</sup> Preamble to Proposed Regulations, 84 Fed. Reg. 18,652, 18,669 (emphasis added); Prop. Treas. Reg. 1.1400Z2(f)-1(c) (emphasis added).

<sup>11</sup> See section 6103(b)(2) (flush language, excluding such anonymized information from the definition of “return information” subject to the section 6103 nondisclosure rules).

<sup>12</sup> Preamble to Proposed Regulations, 84 Fed. Reg. at 18,653.

the structure of the incentive (operating via the tax code), Treasury and IRS are the sole agencies in a position to collect and package the raw data either via Form 8996 or some other form.

Beyond the data points enumerated above, we urge Treasury to consider collecting and reporting information on the number of investors in each QOF, the number of transactions made by each QOF, and the composition of investments by QOFs across asset classes, to the extent that privacy laws allow. The creation of QOFs represents a core innovation of the Opportunity Zones policy, and Treasury, other federal agencies, Congress, and the public all stand to benefit from insights into the shape, nature, and evolution of the investor and fund side of the market.

### **Considerations for Data Collection and Dissemination Methodologies**

QOF managers are the appropriate source for collecting Opportunity Zones-related data. The best approach toward meeting Treasury's stated goal of "evaluating the success of the QOZ tax incentive on increasing investment and economic activity within QOZs" is to collect transaction-level information that QOFs are likely to keep as part of their own due diligence and underwriting of investments, or as part of compliance with other statutory or regulatory requirements.<sup>13</sup>

In considering both the means of collection as well as what data-points to make available to the public, we again point to the recently introduced legislation that states the Secretary shall establish appropriate procedures and measures to ensure that:

1. Collection of such information is performed in a manner so as to prevent duplicative or redundant reporting; and
2. Any personally identifiable data included in such information is properly protected and withheld from disclosure to the public.

To the first point, it is critically important to balance the dual goals of collecting and sharing accurate information with the public in a timely manner with robust and free-flowing investment

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<sup>13</sup> Request for Information on Data Collection and Tracking for Qualified Opportunity Zones, 84 Fed. Reg. 18,648 (May 1, 2019).

in Opportunity Zones. Data requested of QOFs should not increase costs of operations or slow project timelines to such an extent that it creates a barrier to capital flow or that compliance costs themselves divert much-needed capital from target communities.

We believe that the reporting framework recommended above is not burdensome. The information included in the aforementioned legislation is already collected by fund managers in the ordinary course of business, and reporting it on the Form 8996 or another form does not create additional or unreasonable reporting obligations on the QOFs. In addition, the certainty of a national standard will create efficiencies that could result in a net cost savings for QOFs. For example, fund managers can template reporting documents across all Opportunity Funds, and new platforms or services could be created as a back-office service for QOFs. Such a service could be provided at a lower cost if the needs across all clients are the same.

With respect to dissemination, we encourage Treasury to leverage its existing assets, such as those which currently exist at the Community Development Financial Institution Fund (“CDFI Fund”), to implement this reporting framework in a way that ensures personally identifiable data is properly protected and withheld from disclosure to the public. For example, the aforementioned data submitted by QOFs on Form 8996 or related documents could be aggregated and disseminated using the CDFI Information Mapping System v.3 (“CIMS3”) and CDFI Fund’s Awards Management Information System (“AMIS”), both systems that community development stakeholders are accustomed to utilizing. The CDFI Fund is also well-positioned to lead in further qualitative and quantitative analyses of Opportunity Zones and QOF activities, given its experience conducting research in many of the same communities that have been certified as Opportunity Zones.

Treasury’s data collection and dissemination framework must balance privacy and transparency carefully and be structured to maximize the latter without sacrificing the former. For example, many census tracts may only have a single QOF investor, meaning that the provision of detailed tract level information might reveal protected information about the QOF itself.<sup>14</sup> Nevertheless,

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<sup>14</sup> Section 6103(b)(2) permits the disclosure of aggregate data, which we understand to require a minimum of three inputs

analysts and program evaluators must be able to ascertain whether a tract did indeed receive QOF investment and generally be able to differentiate between tracts that saw robust investment activity, limited activity, and none at all. Treasury should therefore suppress only the exact data points it is required to while still allowing the public to know which communities are benefitting from this provision of the tax code. When it must suppress data at the census tract level, Treasury should strive to aggregate to the next highest-level geography, for example zip code, city, or county.

Relevant information such as the mix of housing options created by investments can also be collected outside the tax administration system so that it is not subject to section 6103. For example, the information could be collected by the CDFI Fund, Department of Housing and Urban Development, or the White House Opportunity and Revitalization Council and provided to researchers in a manner that permits them to conduct economic analysis without disclosing personally identifiable data.

### **Tracking the Effectiveness of Opportunity Zones in Bringing Economic Development and Job Creation to Distressed Communities**

In response to the RFI's request for supplemental information on how to track the effectiveness of the Opportunity Zones incentive over the long term, we recommend that Treasury focus on evaluating the measurable direct and indirect impacts of the incentive on designated communities. A holistic approach to measuring economic and social impact is especially appropriate for a policy such as Opportunity Zones, which is designed to change the behavior of investors at scale and improve the functioning of markets in delivering investment capital to distressed communities in general. The performance of Opportunity Zones over the next several years will therefore need to be benchmarked against several different baselines, including the nation as a whole, the low-income communities that were eligible but not nominated as zones, and non-low-income communities. With respect to specific metrics and themes, we recommend that Treasury include the following in its evaluations:

- **Population gain or loss.** One simple and straightforward measure of success is whether people are voting with their feet and moving to Opportunity Zones.

- **Change in both the poverty rate and number of people in poverty.** Both are required in case any decline in the poverty rate is driven by an influx of non-poor households, rather than genuine reductions in poverty.
- **Change in both the employment and unemployment rates and in the total numbers of employed and unemployed persons.** Both are required in case any increase in employment is driven by an influx of new employed residents, rather than genuine reductions in unemployment among existing residents.
- **Positive and negative spillover effects.** Does it appear that Opportunity Zones emerged as growth poles for wider neighborhoods, lifting up adjacent but non-Opportunity Zone tracts nearby? Or does it appear that Opportunity Zones attracted investment, people, and economic activity away from neighboring communities?
- **Entrepreneurship.** Did the number of businesses in Opportunity Zones increase? Did self-employment rates rise relative to non-Opportunity Zone tracts? Did the rate of new EIN registrations (possible utilizing the Census Bureau's new Business Formation Statistics dataset) rise faster in Opportunity Zones than in non-designated Low-Income Communities (LICs)? Did the rate of new entrepreneurs increase (perhaps partnering with the Census Bureau on its Current Population Surveys or Annual Survey of Entrepreneurs)?
- **Job quality.** How does the average or median wage of employees in Opportunity Zones change (being careful to distinguish between the earnings of residents who may be employed outside of zones and the earnings of zone workers who may or may not live outside the zone; doing so may require supplemental surveys of QOZ Businesses)? If Treasury decides on a survey to help inform its long-term evaluations, additional questions such as benefits could be added. In partnership with the Securities and Exchange Commission, Treasury could also assess how many employee share ownership schemes were adopted in Opportunity Zones.
- **Community amenities.** Does the number of business establishments in key industry codes such as daycare centers, senior care facilities, healthcare centers, and grocery stores increase?
- **Brownfield redevelopment.** In partnership with the Environmental Protection Agency (EPA), Treasury can assess Opportunity Zones' success in remediating and redeveloping

blighted and contaminated properties and putting long-neglected corners of our country back to productive economic use.

- **Displacement and Migration:** Given concerns in some areas about gentrification and displacement, and to answer definitely whether the policy uplifted the residents of low-income communities it was intended to, Treasury should consider announcing now that it will commission a report utilizing confidential IRS information on linked individual tax records to track the earnings and migration of Opportunity Zone residents (or a subset of them) over time (along with a control group). There is precedent for such an analysis and for granting researchers access to such confidential data, with all the appropriate protections and precautions, in the groundbreaking research of Raj Chetty, Nathaniel Hendren, and other collaborators through what is now the Opportunity Insights project at Harvard University. Treasury could send perhaps no greater signal about its commitment to transparency and impact than soliciting an evaluation such as this.

cc: Krishna P. Vallabhaneni, Acting Tax Legislative Counsel, Department of the Treasury  
Craig Johnson, Office of Tax Analysis, Department of the Treasury