May 29, 2019

The Honorable David J. Kautter
Assistant Secretary for Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Dear Assistant Secretary Kautter:

The Local Initiatives Support Corporation (LISC) is pleased to offer comments in response to the Request for Information on Data Collection and Tracking for Qualified Opportunity Zones.

LISC is a non-profit housing and community development organization and certified Community Development Financial Institution (CDFI) with offices in 35 cities throughout the country, and a rural network encompassing 90 partner organizations serving 44 different states. LISC's work supports a wide range of activities, including affordable housing, economic development, building family wealth and incomes, education, community safety, and community health. In 2018 alone, LISC raised and deployed approximately $1.5 billion of capital into low-income urban and rural communities – including over $1 billion in private equity capital through federal Low Income Housing Tax Credits and New Markets Tax Credits. We believe that the Opportunity Zones tax incentive has the potential to unleash tremendous amounts of patient, private capital into the underserved urban and rural communities that are the core of LISC's markets.

Overarching Comments

In previous comments submitted to the IRS and to the Treasury Department, LISC noted the importance of creating "an administrative structure that protects the integrity of the program without adding unnecessary burden on the users." We believe that a robust structure for reporting and dissemination of data will add a critical level of transparency to the Opportunity Zones initiative and will better enable researchers to determine whether the program was effective; but that there are additional administrative actions that the IRS can proactively take to help prevent waste, fraud and abuse, and to ensure that program objectives are being met. Most notably:

1. **Requiring Opportunity Funds to identify community development objectives at the time of certification.** We believe that it was Congressional intent to ensure some kind of accountability for Opportunity Funds to achieve certain community development impacts through their investments in Opportunity Zones. As noted in the Conference Report that accompanied H.R. 1 (Report 115-466):

> "*The provision intends that the certification process for a qualified opportunity fund will be done in a manner similar to the process for allocating the new markets tax credit. The provision provides the Secretary authority to carry out the process.*"

New Markets Tax Credits are allocated through an annual competitive application process, one which helps ensure that the most qualified entities are provided with credit allocations, and that the scarce credits are directed to the highest and best uses. LISC does not suggest trying to implement a competitive scoring and selection process into the certification of Opportunity Funds. This would be an unwise use of resources (both Federal and private sector) and would cause considerable delays in program implementation. However, consistent with the language of the Conference Report, we do think it would be appropriate for the Treasury Department to require Opportunity Funds to identify, at the time of certification, one or more outcomes from a list of desirable community development outcomes that they intend to achieve with their investments. These could include, for example: creating quality jobs for low-income individuals; developing affordable housing for low-income families; investing in community facilities that provide services benefitting low-income community residents; etc.

Collecting this information at the time of an Opportunity Fund's certification is not at all burdensome (it can simply be a drop down menu on a form), so will not in any way slow down Fund formation or investment activity. Furthermore, there are other distinct benefits to collecting this baseline information at the time of certification: (i) it will encourage Opportunity Funds to think intentionally about how their investments will produce positive outcomes for community residents; and (ii) it will provide a benchmark for measuring program success, by allowing researchers to compare whether investment outcomes fulfilled the stated objectives of the Opportunity Fund.

2. **Screening out potential bad actors**. We remain concerned that the IRS's current approach to certification, which allows QOFs to self-certify without so much as a cursory review of application materials, could open the door for bad or unscrupulous actors to participate in the program. As is the current practice under the New Markets Tax Credit Program, the IRS should consider requiring managers of Opportunity Funds to self-certify that neither the applicant entity nor its principals:

   (i) have, within a three-year period preceding the formation of the Opportunity Fund, been indicted, charged with or convicted of, or had a civil judgment rendered against it for commission of fraud or a criminal offense;

   (ii) have, within a three-year period preceding the formation of the Opportunity Fund, been indicted, charged with or convicted of, or had a civil judgment rendered against it for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

   (iii) are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in (i) and (ii).

Responses to Questions Posed in the Request for Information

1. *What data would be useful for tracking the effectiveness of providing tax incentives for investment in O-Zones to bring economic development and job creation to distressed communities?*

   We offer the following recommendations with respect to specific data points that QOFs should minimally be required to report annually, in addition to what is already being submitted on Form 8996:

   1. The dollar amount of the investment.
   2. The total project costs (in cases of real estate) or total amount of financing provided (in the case of co-investments).
   3. The EIN of the business.
   4. The NAICS code of the business.
   5. The address of the business, including census tract.
   6. The total square feet of the project (in cases of real estate).
   7. The total number of FTEs at the business or at the leasees' businesses (in the case of commercial real estate); to be reported as "anticipated" at the time of initial investment, and then as actual in the following years.
   8. The number of "quality jobs" for low-income persons (e.g., with benefits; that pay living wages).
   9. The total number of clients served (in the case of non-profit facilities), including the number of low-income persons served.
   10. The total number of housing units, and the percentage that are affordable to families across various income bands (e.g, below 30 percent of area median family income; between 30-50% of AMI; between 51-80% of AMI; between 81-100% of AMI; between 101-120% of AMI; and above 120% of AMI).

   In addition to these discrete data points, we would also recommend that QOFs be required to provide a brief narrative description of each project investment, which would include: the nature of the project; the benefits to the community or a community based organization; the degree to which the project was developed in consultation with the community residents and/or mitigated against displacement; the extent to which the project connects with local workforce development efforts for low and moderate income residents; and the extent to which the project could not have moved forward in the same manner without the Opportunity Zone incentives.

2. *In addition to the anticipated revisions to Form 8996 discussed in the Summary of this Notice and Request for Information, is there other information that can be collected on a tax form that would be helpful in measuring effectiveness of Opportunity Zone incentives?*

   As noted above, there are several data points that we feel need to be collected that aren't currently being collected in Form 8996. Most notably, Form 8996 currently only collects information at the Opportunity Fund level, and not at the investment level. Without information about the underlying businesses, it will not be possible to undertake an evaluation of the success of the Opportunity Zones initiative.

Further, while it may be appropriate to collect the above data points on Form 8996, it would be preferable for the Treasury Department to create a supplemental form -- or better yet an on-line portal -- to collect this information outside of routine tax filings. We suggest this approach so that this information can be aggregated and disseminated more efficiently and more effectively. As with the designation of Opportunity Zones, this particular task could be delegated to the CDFI Fund, which already has electronic systems in place for collecting similar data from CDFI Program awardees and NMTC allocatees -- though any such delegation of authority must be accompanied by administrative funds to the CDFI Fund to support system redesigns as well as data collection and dissemination.

3. *What data would be useful in measuring how much would have been invested in qualified opportunity zones in the absence of the O-Zone incentive?*

Quantitative data points alone, even when examined in comparison to control sites, are not always sufficient for determining whether a specific investment or sets of investments would have occurred "but for" the Opportunity Zones incentive. It is critical, we believe, to also collect qualitative information from the Opportunity Funds where they can briefly describe the degree to which the Opportunity Zones incentive made a difference in allowing a project to move forward or to move forward more quickly and/or with more favorable terms to the project than otherwise would have been possible without the Opportunity Zones incentive.

In addition, a more rigorous research design might also compare investment levels and trajectories in O-Zones compared to similar low-income tracts that are not O-Zones, by examining home sale or other forms of investment data, such as may be provided through the Home Mortgage Disclosure Act (HMDA). Census has access to business and wage data that may also be of use in determining impacts, though it is not necessarily available to the public in a form that can easily allow these analyses to occur.

4. *What data would be useful for ensuring that the investment opportunity remains an attractive option for investors?*

Information regarding the anticipated returns to investors, and the actual returns received after exit, would be instructive as to identifying the relative soundness of Opportunity Zone investments compared with other similar investments. That being said, it must be recognized that different investors have different motivations. Some may be interested in higher risk-higher return investments; some may want safer, steady returns; and some socially motivated investors may be willing to forsake higher return in exchange for achieving significant community impacts. In all cases, it remains critical to determine whether certain community impacts have followed from the Opportunity Zone investments (e.g., an increase in O-Zone housing, home sales and population; an increase in jobs in the community; a decrease in crime) in such a manner as to suggest that the neighborhood has in fact become a more sustainable place for investment. Investors will remain attracted to areas where they see a positive trend in economic factors because of O-Zone investments.

That being said, any evaluation of the success of the Opportunity Zone initiative with respect to attracting investments to the O-Zones must also include analysis of any unintended consequences, including displacement of low-income families, dislodging of local retail establishments, or disruption of supports and services for existing community residents.

5. *What are the costs and benefits of various methods of information collection? Who should perform this data collection?*

   As noted earlier, we believe that the CDFI Fund is well positioned within the Treasury Department to collect this information and disseminate findings on a periodic basis; but that such efforts need to be adequately funded. It is important to note that public concerns about lack of transparency may undermine confidence in the incentive. Ample but realistic reporting from Opportunity Funds, combined with independent research that is conducted by or sponsored by Treasury, would do well to combat unfair perceptions of the O-Zone incentive, and would also provide stakeholders (including Congress) with information needed to make the incentive more successful, if there is to be future round(s) of Opportunity Zone designations.

6. *What considerations should government officials take into account when considering data to analyze the effectiveness of the qualified opportunity zone incentives to promote economic development to distressed areas? Over what time period should this analysis occur?*

   Data collection should occur on an annual basis. Opportunity Funds should be required to report information pertaining to its entire outstanding portfolio, even as some information (e.g., jobs at the businesses) may change over time. This will necessitate that each underlying business or real estate project is provided a unique identifier, rather than having all of this information rolled up at the Opportunity Fund level.

   Data should also be released frequently to allow independent researchers to engage in a real time assessment of the landscape of Opportunity Zone investments (e.g., the types of businesses or real estate projects financed; the geographies being served; etc.), though it may take several years (perhaps 10 years or more) to determine the extent to which Opportunity Zone investments impacted the underlying characteristics of demographics of a neighborhood or census tracts.

   As far as the Treasury Department's obligations, we support the approach mandated in the Investing in Opportunity Act and which was also included in the Conference Report that accompanied H.R. 1 (Report 115-466):

   > *The Secretary or the Secretary's delegate is required to report annually to Congress on the opportunity zone incentives beginning 5 years after the date of enactment. The report is to include an assessment of investments held by the qualified opportunity fund nationally and at the State level. To the extent the information is available, the report is to include the number of qualified opportunity funds, the amount of assets held in qualified opportunity funds, the composition of qualified opportunity fund investments by asset class, and the percentage of*

qualified opportunity zone census tracts designated under the provision that have received qualified opportunity fund investments. The report is also to include an assessment of the impacts and outcomes of the investments in those areas on economic indicators including job creation, poverty reduction and new business starts, and other metrics as determined by the Secretary.

7. *How do you view the role of the Federal Government, and Tribal, State and local governments in the ongoing maintenance and administration of opportunity zones?*

   We believe that in order for this initiative to be successful, all parties have a role to play. As we noted earlier, we'd like to see the IRS and Treasury Department not only lead the way in collecting and disseminating data that can be utilized by researchers to determine program outcomes, but also in honoring Congressional intent by encouraging impactful investments and guarding against potential malfeasance.

   The Federal government can also play a role by aligning other federal funding streams to support Opportunity Zones, though it is important to remember that less than 25% of eligible low-income communities were deemed Opportunity Zones, so that we must be careful not to further disadvantage the vast majority of communities that were not fortunate enough to receive this designation.

   Similarly, we believe that state and local governments, having helped identify Opportunity Zones, are in the best position to make sure that investments support the well-being of those communities. Many are already developing on-line portals where investors can be connected to projects, which could be an excellent starting point for states and localities to highlight particular projects that they can identify as having been vetted through state or local redevelopment plans as benefitting community residents. States and localities should also develop their own incentives, whether through project subsidies or tax incentives, to support projects that bring true value to communities, as well as projects that help to prevent displacement of community residents. We would also encourage localities to adopt or strengthen inclusionary zoning requirements with respect to housing developments financed in Opportunity Zones.

We thank you for considering these comments, and look forward to working with the Treasury Department on implementation going forward.

Sincerely,

Matt Josephs
Senior Vice President for Policy