



March 15, 2018

Mr. Scott Dinwiddie
Associate Chief Counsel
Income Tax & Accounting
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

Dear Mr. Dinwiddie,

As the Treasury Department begins the process of implementing Opportunity Zones as authorized by the Tax Cuts and Jobs Act of 2017, H.R. 1 (115), Enterprise Community Partners would like to offer our recommendations for ensuring this exciting new initiative is successful.

Enterprise is a leading provider of the development capital and expertise it takes to create decent, affordable homes and rebuild communities. Since 1982, we have raised and invested \$36 billion in equity, grants and loans to help build or preserve nearly 529,000 affordable homes in diverse, thriving communities. This includes community investments through Enterprise Community Loan Fund, a Treasury Department-certified Community Development Financial Institution (CDFI) and one of the largest nonprofit loan funds in the country. Enterprise Community Loan Fund has invested more than \$1.5 billion in low-income communities and helped to build or renovate nearly 100,000 affordable homes nationwide.

Enterprise is excited about the potential for the Opportunity Zones tax incentive to bring together public and private resources that create strong neighborhoods of opportunity for low- and moderate-income residents, and we are committed to working with Treasury to ensure that the revitalization associated with Opportunity Zones is more successful than many previous revitalization efforts. Some past federal efforts have exacerbated the very concentrated poverty they were meant to remedy, most notably the unintended consequences stemming from the Housing Act of 1949. By the late 1970s, an astonishing one million minority families were estimated to have been displaced by the urban renewal policies resulting from this Act. We understand that it is neither Congress nor Treasury's intent for Opportunity Zones to cause unintended consequences in these distressed communities, so we hope that Treasury will consider our recommendations to ensure community development best practices are included in the rules and regulations around Opportunity Zones.

Designation of Qualified Opportunity Zones

- I. Request authority from Congress to extend the period during which Treasury can accept census tract nominations.
- II. In rulemaking, require governors to substantiate Qualified Opportunity Zone nominations in the context of considerations outlined in the Conference Report of the Tax Cuts and Jobs Act.
- III. Request authority from Congress to allow Treasury to select Qualified Opportunity Zones if the governor or State CEO fails to submit nominations.



- IV. In rulemaking, request feedback from governors and the public about the process for nominating Qualified Opportunity Zones and use that feedback to create a flexible framework for re-evaluating Qualified Opportunity Zones, either through rule-making or by requesting additional authority from Congress.

Certification of Opportunity Funds

- V. In rulemaking, define abuse to include investments that do not actively benefit the residents and local businesses living and operating in the census tract at the time it was designated as a Qualified Opportunity Zone.
- VI. In rulemaking, include annual reporting requirements to ensure Treasury can analyze where Opportunity Funds invest their capital and can assess the impacts and outcomes of these investments.
- VII. In rulemaking, require an Opportunity Fund to express its intent for type and location of investments prior to providing certification.

DESIGNATION OF OPPORTUNITY ZONES

I. Extend Determination Period

Nominating census tracts to be Qualified Opportunity Zones is a critical step in structuring this new community investment tool and should therefore be a thoughtful, deliberate process that incorporates feedback from local stakeholders and communities. With the Tax Cuts and Jobs Act enacted on December 22, 2017, states have only been provided until March 21, 2018, or April 20 if they request an extension, to identify, thoughtfully consider, and nominate census tracts for a critical revitalization opportunity.

Opportunity Zones was conceptualized in the bipartisan Investing in Opportunity Act (IIOA), S. 293 (115). The original intent of IIOA was that the 90-day determination period would start after Treasury's rules and regulations were finalized. Because Treasury is unlikely to have issued regulations by the March 21 deadline, we recommend that Treasury request additional authority from Congress to accept census tract nominations until 90 days after Treasury releases final rules regulating Opportunity Zones. States that have already submitted nominations prior to the availability of final rules should be able to amend their nominations during this ensuing 90-day period. This recommendation is the result of the following three points:

- a) Time needed to develop guidance. Considering that the information available in the Opportunity Zones statute is limited at this early stage and groups are seeking clarification on the definitional meaning of certain terms, it is difficult for stakeholders to anticipate how it will be structured, what investments may or may not qualify, and other requirements that could be included in the rule-making process. It is hard to gauge investor demand for the various types of Opportunity Zone Property (small business versus real estate, for example) and properly evaluate which census tracts are best suited to be paired with Opportunity Fund capital. It is likewise difficult to predict how the investments may impact a community, especially communities that do not have the infrastructure to equitably manage an influx of capital. It is therefore critical to first know how Opportunity Zones will be implemented before governors can appropriately nominate census tracts.
- b) Time needed to produce tools and resources. The CDFI Fund has been developing critical mapping tools and data resources to assist states in the nomination process. However, the CDFI Fund was tasked with this significant effort at the same time the Determination Period began, meaning that governors are attempting to make critical decisions about their distressed census

tracts while the necessary resources are still being developed. In fact, as recently as March 5th, the CDFI Fund made technical corrections to its mapping and data tools. While we applaud the CDFI Fund's thorough work as it seeks to create these critical tools, we believe that states would be best served nominating census tracts after the CDFI Fund has had sufficient time to fully develop and finalize its resources.

- c) Considerations around unintended consequences. As with any federal initiative, the impacts across the country will vary dramatically based on local communities, economies, populations, and other factors. Governors must think critically about which census tracts to nominate; if this step is done hastily, mayors and local officials will not have the time to consider which policies and programs need to be implemented to stem the threat of unintended negative consequences such as the displacement of existing residents and local businesses, and establish a framework that ensures equitable economic growth. Even in places where these measures already exist, localities require more time than is currently available to reflect on Treasury's guidance and nominate the census tracts best-suited for these new investments.

II. Require Explanation of Qualified Opportunity Zones Nominations

The Conference Report that accompanied the Tax Cuts and Jobs Act provided the following guidance for nominating census tracts:

Governors are required to provide particular consideration to areas that: (1) are currently the focus of mutually reinforcing state, local, or private economic development initiatives to attract investment and foster startup activity; (2) have demonstrated success in geographically targeted development programs such as promise zones, the new markets tax credit, empowerment zones, and renewal communities; and (3) have recently experienced significant layoffs due to business closures or relocations.

Enterprise believes that this guidance is important for ensuring that census tracts are selected with a mind towards intentional investments that promote equitable economic growth. We recommend that Treasury include in rulemaking a requirement for each state to submit alongside its census tract nominations an explanation of the factors that went into designating the identified tracts, with particular emphasis on the above guidance from Congress. Treasury should consider whether or not a governor provided justification for the nominated census tracts when deciding whether to approve that state's Qualified Opportunity Zones.

III. Allow Treasury to Select Census Tracts in Absence of Nominations

The Investing in Opportunity Act, S. 293 (115), also included a provision that would have allowed Treasury to designate a jurisdiction's Opportunity Zones if a governor failed to submit nominations within the designated timeframe; this provision was not ultimately included in the Tax Cuts and Jobs Act. As a result, governors who do not submit census tracts for nomination essentially opt out of being eligible for Opportunity Fund investments for the next ten years. We are concerned that the March 21 deadline for nominations or requesting an extension does not provide enough time to feasibly educate all governors about this opportunity, raising the risk that a state inadvertently misses the opportunity to benefit from this private capital. Enterprise recommends that Treasury request additional authority from Congress to select a jurisdiction's Qualified Opportunity Zones if the governor fails to do so. If Treasury receives this authority, we also recommend that the agency request local input to guide its decision-making process.

IV. Provide Flexibility for Re-Evaluating Eligible Qualified Opportunity Zones

Given the long-term nature of these investments, Opportunity Zones should be flexible enough to meet local priorities as they evolve, adaptable in responding to growth or unintended consequences, and sufficiently predictable for the financiers who invest in them. As such, Enterprise believes that Treasury



should include a mechanism that would allow governors to amend the state’s Qualified Opportunity Zones over the ten-year eligibility period to reflect potential changes within the census tract, while allowing any investments made in Zones no longer designated to continue to receive the statutory tax benefit. This would add an additional and important layer of state flexibility, while allowing any Opportunity Fund that has invested in a formerly Qualified Opportunity Zone to continue to receive the tax benefit so that investors and the market retain this certainty.

To do this, we recommend that Treasury request feedback from governors and the public about the need to re-evaluate eligible census tracts throughout the 10-year investment period and use that feedback to create a flexible framework that allows a limited number of changes to Qualified Opportunity Zones in each state. Any changes to a state’s eligible census tracts should incorporate input from governors and the public to balance local priorities with the market’s need for certainty.

If Treasury determines that it lacks the statutory authority to act on this recommendation, we recommend requesting such authority from Congress.

CERTIFICATION OF OPPORTUNITY FUNDS

V. Define Abuse to Protect Communities and Residents

The Tax Cuts and Jobs Act authorizes Treasury to issue regulations for preventing abuse of Opportunity Funds. Enterprise recommends that Treasury define “abuse” as any investment that does not provide a direct and sustained community benefit to the residents living in the census tract. For example, under this definition, abuse should prohibit the elimination of housing that is affordable to families making up to 120 percent of area median income (AMI). We are concerned that Opportunity Zones could unintentionally harm residents without adequate parameters to guard against displacement or prevent predatory capital from becoming an eligible investment. Enterprise believes that any investments targeted specifically at distressed communities with the purpose of deferring an investor’s capital gains taxes must demonstrate a community benefit to be eligible for the tax incentive.

If Treasury determines that it lacks the statutory authority to act on this recommendation, we recommend requesting such authority from Congress.

VI. Include Annual Reporting Requirements

The Conference Report that accompanied the Tax Cuts and Jobs Act also included the following guidance related to annual reporting requirements:

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 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.

Enterprise supports this guidance and believes that Treasury should include it as a requirement during rulemaking because the data will allow Treasury, Congress and stakeholders to understand how the investments are impacting the local economy, community and residents. Without annual analysis of



where this capital is invested, there will be no indication if the investments are benefiting or harming the residents and local businesses in the census tract at the time it is designated as a Qualified Opportunity Zone. Enterprise cautions against implementing a new community investment tool without the appropriate reporting and analysis requirements in place.

Specifically, Enterprise recommends that Treasury submit annual reports to Congress detailing metrics related to community and resident benefits in each Qualified Opportunity Zone and publish such reports on Treasury's website. In addition to the metrics outlined in the Conference Report – i.e. job creation, poverty reduction, and new business starts – potential metrics to consider include but are not limited to:

- a) The number of jobs created and held by residents of Opportunity Zones that pay a living wage. It will be critical to understand whether the creation of new businesses and new jobs are benefiting local residents to adequately measure whether the investments are meeting the legislative intent.
- b) The number of dedicated affordable housing units (120 percent of AMI or less) created or preserved. This will allow Treasury to monitor the ability of residents to remain in their homes even while growth and development occur.
- c) Investments in minority/disadvantaged/women-owned businesses, providing an equity framework that ensures investments are available to such businesses.
- d) Revitalization of neighborhoods suffering from vacant structures and disinvestment. By measuring the number of façade or streetscape improvements, for example, the public can determine what kinds of investments are most needed within these distressed census tracts.
- e) Increase in the number of health care facilities, transportation options and quality education services, all of which provide pathways to opportunity.

Collecting and analyzing this data will be critical, particularly when considering the impact on residents who were living in the community at the time the census tract was designated as a Qualified Opportunity Zone. Enterprise would be happy to provide additional support through our free [Opportunity360](#) data and mapping platform to help Treasury identify appropriate metrics and indicators.

If Treasury determines that it lacks the statutory authority to act on this recommendation, we recommend requesting such authority from Congress.

VII. Require Explanation of Intent for Fund Certification

Enterprise recommends that Treasury require each Opportunity Fund to identify and commit their investments to specific community benefit outcomes, as detailed in the above metrics, in order to be certified as an Opportunity Fund. This includes making the above reporting requirements publicly available prior to designating Opportunity Funds so that the Funds can therefore tailor their investment model to best meet the community benefit metrics emphasized by Treasury. This would ensure that these new investment funds are structured with an eye towards equitable community investments from the beginning. We also recommend that Treasury require Opportunity Funds to share their intentions for investing in geographic areas, investment types, and asset classes prior to receiving certification. We recommend that Treasury make this information publicly available to assist investors and developers seeking to work with an Opportunity Fund in certain census tracts.

If Treasury determines that it lacks the statutory authority to act on this recommendation, we recommend requesting such authority from Congress.



Enterprise looks forward to working with Treasury to ensure that Opportunity Zones are a successful community investment tool. If you have any questions regarding these comments, please do not hesitate to reach me at lblatchford@enterprisecommunity.org.

Sincerely,

Laurel Blatchford
Senior Vice President for Solutions, Chief Program Officer
Enterprise Community Partners, Inc.
10 G Street, NE; Suite 580
Washington, D.C. 20002