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United States Senate

June 8, 2018

Received Treas Exec Sec

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Date: 2018.06.12 15:02:39 -04'00'

The Honorable Steven T. Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue N.W.
Washington, D.C. 20220

Dear Secretary Mnuchin:

I write to you today to ensure that the Treasury Department implements the new Opportunity Zones program[1] as the underlying legislation, the Investing in Opportunity Act,[2] intended—to benefit residents of economically distressed communities. As you develop regulations for these tax incentives, I urge you to institute critically important safeguards to prevent abuse and advance the goals of lifting up communities, catalyzing entrepreneurship, and promoting long-term investment.

As Treasury Secretary, you are charged with overseeing how these new incentives are utilized.[3] Executing this responsibility with precision will be vital to ensure this law operates as intended. The Opportunity Zones program is intended to spur lasting investments in struggling communities, jumpstarting economic development in those areas and restoring economic opportunity for residents.

First, the Treasury Department should take special care to ensure that Opportunity Funds will support investments in and for economically distressed communities—as opposed to areas that are already thriving, or projects that will bypass or even harm local residents. If the Treasury Department's regulations are not thoughtfully and properly designed, the program could be twisted to provide little more than a tax shelter for areas or projects that the legislation was not meant to support.

Second, without the necessary attention to regulatory design, the program could be distorted to displace residents of economically distressed communities, instead of helping them. These incentives should not be converted into subsidies for projects that will simply force out existing

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[1] Pub. L. No. 115-97, tit. I, § 13823(a), 131 Stat. 2184 (2017) (codified at I.R.C. §§ 1400Z-1, 1400Z-2).
[2] S. 293, 115th Cong. (2017); H.R. 828, 115th Cong. (2017).
[3] I.R.C. §§ 1400Z-1(b)(1)(B), 1400Z-2(e)(4).

residents in favor of wealthier new arrivals. To the extent allowed by its regulatory authority, the Treasury Department should institute safeguards to support inclusive development and ensure that local residents will genuinely benefit from these investments.

To avoid any such unintended consequences, I urge you to apply recognized best practices for community development in devising rules and regulations. Through your duties to oversee the certification of qualified Opportunity Funds and prevent abuse, I hope you will consider the following guardrails:

1. *Reporting Requirements.* The Conference Report, like the original Investing in Opportunity Act bills,[4] indicated that the Treasury Department should submit annual reports to Congress about the Opportunity Zones program:

    > 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.[5]

    The Department should carefully consider these and any additional metrics that should be included in annual reports to ensure that the Opportunity Zones tax incentives are boosting economically distressed communities and supporting their residents. In addition, each state should be required to have a publicly accessible resource that provides information about the program's implementation. Transparency will be essential to making sure this program operates as intended.

2. *Statements of Intent.* The Treasury Department should consider requiring each prospective Opportunity Fund to provide a straightforward statement of intent, as a condition of receiving the Department's certification. Each Opportunity Fund should be able to articulate and justify where it will be investing and what kinds of investments it plans to make. As an added benefit, if these statements of intent are made public, investors and developers would have a common framework for determining how best to work with Opportunity Funds.

[4] S. 293, 115th Cong. (2017); H.R. 828, 115th Cong. (2017).
[5] H.R. Rep. No. 115-466, at 539 (2017).

3. *Outcome Commitments.* The Treasury Department should consider developing a rigorous list of positive and measurable community-development outcomes to evaluate Opportunity Funds' performance. At the certification stage, each Opportunity Fund should be able to make a commitment to a number of these outcomes. In developing the outcome criteria, the Treasury Department should draw on its compliance experience with the New Markets Tax Credit.[6] That would be consistent with the Conference Report, which underscored the legislative "inten[t] 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."[7] At a later date, the Department could also conduct compliance audits to determine whether Opportunity Funds have upheld their outcome commitments.

4. *Definition of "Abuse."* One of your statutory responsibilities is to institute "rules to prevent abuse" of Opportunity Funds.[8] The first step in preventing abuse is defining it. Accordingly, the Department should consider developing a clear and concrete definition of "abuse." These tax incentives are supposed to promote long-term investment that directly benefits the residents of economically distressed communities. The Department should make clear that it will not abide investments that fail to advance this purpose by displacing residents or harming them in other ways.

I hope you will consider these and other proposals to ensure that the Opportunity Zones program fulfills its intended purpose of lifting up economically distressed communities and the people who live in them. Thank you for your attention to this matter.

Sincerely,

Cory A. Booker
United States Senator

[6] *See* I.R.C. § 45D; Treas. Reg. § 1.45D-1.
[7] H.R. Rep. No. 115-466, at 538 (2017).
[8] I.R.C. § 1400Z-2(e)(4)(C).