AFR EF Americans for Financial Reform Education Fund

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David J. Kautter
Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Ave NW
Washington, DC 20220

May 31, 2019

RE: Request for Information on Data Collection and Tracking for Qualified Opportunity Zones

Dear Mr. Kautter:

Americans for Financial Reform Education Fund respectfully submits comments on the U.S. Treasury Department's request for information on collecting and tracking data for qualified Opportunity Zones.[1] Americans for Financial Reform Education Fund is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups. The Treasury Department is soliciting input on what information should be gathered to assess the effectiveness of the Opportunity Zone policy "to encourage economic growth and investment in designated distressed communities (qualified opportunity zones)" and whether the tax incentives are "an attractive option for investors."[2]

The Opportunity Zone program contained in the 2017 Tax Cuts and Jobs Act (TCJA) provides lucrative tax breaks to encourage very wealthy investors to invest in "low-income communities."[3] Treasury Secretary Steven Mnuchin estimated that $100 billion could be shifted to over 8,700 census tracts designated qualified Opportunity Zones.[4] The Joint Tax Committee estimated the Opportunity Zone would cost $9.4 billion over the five-year 2018 to 2022 period, about 8 times larger than the cost of the Empowerment Zone community redevelopment tax incentive program between 2000 and 2004.[5]

The real costs (and tax savings to investors) could be even higher, depending on how much money is invested. *Forbes* magazine said the program could become "one of the biggest tax giveaways in American history."[6] Data collection is essential to assess the aggregate costs (the tax expenditures and negative externalities like residential displacement or small business exits) and impacts (the investment level, job creation, poverty alleviation, etc.) of the program. As the Urban Institute-Brookings Institute Tax Policy Center noted, "Because the incentives for Opportunity Zone investments are so much more

[1] 84 Fed. Reg. 84. May 1, 2019 at 18648.

[2] *Ibid.*

[3] Tax Cuts and Jobs Act. Pub. L. 115–97 §13823. December 22, 2017.

[4] U.S. Treasury Department. [Press release]. "Treasury releases proposed regulations on Opportunity Zones designed to incentivize investment in American communities." October 19, 2018.

[5] U.S. Congress. Joint Tax Committee (JCT). "Estimates of Federal Tax Expenditures for Fiscal Years 2018-2022." JCX-81-18. October 4, 2018 at 27; JCT. "Estimates of Federal Tax Expenditures for Fiscal Years 2000-2004. JCS-13-99. December 22, 1999 at 19.

[6] Bertoni, Steven. "An unlikely group of billionaires and politicians has created the most unbelievable tax break ever." *Forbes*. July 18, 2018.

generous than prior programs, the revenue loss might turn out to be substantial, and far out of proportion to the local economic development they are intended to encourage."[7]

Critically, the Treasury Department needs to collect data not just to measure the effectiveness of the Opportunity Zone program but also collect data to assess the potential negative impacts of the program on housing affordability, residential dislocation, and small business exits. It is especially imperative that the Treasury Department provide broad-based Opportunity Zone data collection, tracking and disclosure to overcome the data collection failures of past community development tax incentive programs and to redress the deficiencies in sufficiently targeting genuinely low-income areas as designated qualified Opportunity Zone areas.

The goal of incentivizing beneficial investment in historically under-capitalized areas is laudable, but prior community development tax incentives, such as Empowerment Zones, produced indifferent or anemic economic results.[8] The Treasury Department contents the goal of the program is to "encourage economic growth and investment in disadvantaged communities."[9] There should be performance standards to make certain that the substantial tax benefits provided to investors generate intended tangible benefits for residents and communities. Neither the statute nor any of published regulatory materials have included any performance standards or specific expected benefits. They are sorely needed.

The size, scale, and potential negative impact of the Opportunity Zone program obliges the Treasury Department to prioritize robust and comprehensive data collection and disclosure. This data should cover a broad range of longitudinal metrics and variables, be easily searchable and accessible online, and be provided to the public free of any charges or fees to ensure that neighborhoods, community groups, the media, and the public can evaluate the program.

Vital to collect data on negative impact of Opportunity Zone investments: It is important to recognize that any economic activity in targeted areas that does accrue from the Opportunity Zone program could also pose substantial risks of economic dislocation and residential displacement, especially for lower-income families and families of color. Any evaluation of the benefits of Opportunity Zone investments must take these substantial risks into account. Because of flaws in the conception and implementation of the Opportunity Zone program's designation of qualified low-income areas, along with the absence of performance standards, we are gravely concerned that while the list of qualified Opportunity Zones does include many lower-income neighborhoods, communities of color, and economically disadvantaged rural areas, few of these areas are likely to see much investment

Instead, the program seems poised to concentrate investments into higher-income and already gentrifying neighborhoods in the most booming metropolitan areas. These neighborhoods are currently receiving ample investment even without the new tax breaks. Morningstar's Pitchbook predicted that

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[7] Rosenthal, Steven M. Urban Institute-Brookings Institute Tax Policy Center. "[Opportunity Zones may create more opportunities for investors than distressed communities]." *TaxVox*. August 2, 2018.
[8] Weaver, Timothy. "[The Problem With Opportunity Zones]." *CityLab*. May 16, 2018.
[9] 84 Fed. Reg. 84. May 1, 2019 at 18648.

the majority of Opportunity Zone investments would go into "up-and-coming census tracts such as downtown areas, suburbs, or college towns that will deliver high yields."[10]

The resulting investment flow will likely exacerbate the problem of finding affordable housing in metropolitan areas and neighborhoods that are rapidly gentrifying. Real estate firm Zillow reported that home prices surged by more than 20 percent in the nine months since the Opportunity Zone designations were announced, even before the program rules have been finalized or any investments were made into these areas.[11] The Federal Reserve Bank of San Francisco documented that prior community development tax incentives consistently increased housing prices in the designated areas.[12]

Rising prices increase housing costs, which often displace lower-income households and families who are already being pushed out of their increasingly unaffordable neighborhoods. A 2019 University of California, Berkeley study found that a 30 percent increase in typical neighborhood rents was associated with a 28 percent decline in low-income households of color in the San Francisco Bay region.[13] A 2019 National Community Reinvestment Coalition study found that gentrification — especially prevalent in the bigger cities predicted to receive the bulk of the Opportunity Zone investments — has already sharply increased property values and rental costs, diminishing the supply of affordable housing and displacing local residents, often African American and Latinx families.[14]

Disclosure need demonstrated by failure of prior community development tax incentives to collect data to assess impact or costs of programs: The Opportunity Zone program is substantially a re-boot of earlier community development tax incentives and grant programs (Empowerment Zones, Enterprise Communities, and Renewal Communities). These programs had modest, mixed, or uncertain results and were beset with poor data collection and assessment problems that further hampered evaluating the programs.[15] The Federal Reserve Bank of San Francisco concluded that the Enterprise Zone program did not create jobs or alleviate poverty but likely "generated benefits for real estate owners [due to housing price increases], who are not the intended beneficiaries."[16]

The Government Accountability Office (GAO) found that the lack of adequate data compromised the ability to assess the impact of the Empowerment Zone and Enterprise Community programs and "determine whether the EZ/EC funds had been spent effectively or [if] the tax benefits had in fact been used as intended."[17] Agencies including the Department of Housing and Urban Development, Department of Health and Human Services, and U.S. Department of Agriculture failed to collect

[10] Sostheim, Joelle and Jordan Beck. Pitchbook. "A Window of Opportunity: An Overview and Analysis of Opportunity Zones." February 21, 2019 at 2.

[11] Casey, Alexander. Zillow. "Sale Prices Surge in Neighborhoods With New Tax Break." March 18, 2019.

[12] Neumark, David and Helen Simpson. "Do place-based policies matter?" *Federal Reserve Bank of San Francisco Economic Letter*. March 2, 2015 at Table 1.

[13] Verma, Philip et al. University of California, Berkeley's Urban Displacement Project and California Housing Project. "Rising Housing Costs and Re-Segregation in the San Francisco Bay Area." 2019 at 3.

[14] Richardson, Jason, Bruce Mitchell and Juan Franco. National Community Reinvestment Coalition. "Shifting Neighborhoods: Gentrification and cultural displacement in American cities." March 2019 at 4.

[15] GAO. "Empowerment Zone and Enterprise Community Program: Improvements Occurred in Communities, but the Effect of the Program Is Unclear." September 2006; Congressional Research Service. "Empowerment Zones, Enterprise Communities, and Renewal Communities: Comparative Overview and Analysis." February 4, 2011 at 16 to 18; Neumark and Simpson (2015) at Figure 1 and Table 1 at 2 to 3.

[16] Neumark and Simpson (2015) at. 2 to 3.

[17] GAO (2006) at executive summary.

sufficient data on how program funds were used and there was little or no coordination between the agencies on data collection.[18] Collecting and evaluating adequate data on the Opportunity Zone program would likely similarly require high levels of coordination between multiple agencies (including the IRS, HUD, Small Business Administration, USDA and others).

The lack of data collection prevented GAO and HUD from performing mandated program oversight and the agencies were unable to establish a connection between economic improvements in designated areas and the tax expenditures.[19] The lack of data presented a pervasive obstacle to conducting analyses to isolate the effects of the programs from changes in the overall economy and other factors.[20] The Treasury Department must overcome the data deficiencies of the prior community development tax incentive programs by collecting, assembling, and disclosing a wide array of relevant data to evaluate the impact of the program – both positive and negative – on residents and communities.

Data collection need heightened by weak Opportunity Zone eligibility standards and certification that diluted targeting towards low-income communities: The Opportunity Zone program was intended to direct investment into "distressed communities," but the loose statutory definition of 'low-income areas' combined with the program's reliance on outdated demographic data for the actual selection of eligible census tracts meant that many higher-income and already gentrifying areas were included in the list of qualified Opportunity Zones. While many genuinely under-capitalized neighborhoods were designated as qualified Opportunity Zones, it is reasonable to fear that the majority of investment is likely to flow into the economically emerging neighborhoods.

First, the JCTA statutory definition was broad enough to encompass many neighborhoods that do not qualify as low-income. The definition of low-income census tracts includes three possible criteria: either more than 20 percent of the population had incomes below the poverty level, or the median family income was less than 80 percent of the metropolitan median income (or state median for rural areas), or a census tract *adjacent* to a low-income area with incomes less than 25 percent higher than the neighboring low-income area.[21] An adjacent neighborhood could be eligible with poverty rates below 20 percent and with family incomes that were higher than the metropolitan area typical incomes.

Second, these already lax standards were further undermined by permitting states to use outdated income data to assess low-income areas. The Internal Revenue Service allowed states to use 2011 to 2015 data rather than newer and easily available data, allowing states to include areas where incomes increased or poverty fell since 2015 (for example, newly gentrifying areas).[22] (Although Treasury

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[18] GAO. "Community Development: Federal Revitalization Programs Are Being Implemented, but Data on the Use of Tax Benefits Are Limited." March 2004; GAO (2006) at 24 to 26.

[19] GAO (2004); GAO (2006); Gruenstein, Debbie et al. HUD. "Interim Assessment of the Empowerment Zones and Enterprise Communities (EZ/EC) Program: A Progress Report and Appendices." November 2001.

[20] GAO (2006) at 29 to 30.

[21] Pub. L. 115-97 §1400Z-1(c) and (e); 26 USC 46D(e). For tracts not located within a metropolitan area, the threshold is 80 percent of the statewide median family income. For tracts located within a metropolitan area, the threshold is 80 percent of the greater of the statewide median family income or the metropolitan area median family income.

[22] Internal Revenue Service (IRS). Rev. Proc. 2018-16. *Internal Revenue Bulletin*. No. 2018-9. February 26, 2018, at 383 to 384; The Census Bureau released its 2012-2016 data weeks before the Trump tax cut was signed into law on December 22, 2017. See, Census Bureau. [Press release]. "Census Bureau to host webinar on release of 2012-2016 American Community Survey five-year estimates." November 15, 2017.

permitted the use of newer data to include additional areas, it did not automatically *exclude* areas that would not meet the low-income criteria with the latest data.[23])

The Treasury Department determined that more than half (56 percent) of *all* census tracts could qualify under one of the statutory definitions and with older data for possible inclusion the Opportunity Zone program and 23 percent of these areas were adjacent tracts with lower poverty levels and higher incomes.[24] States could nominate up to 25 percent of the census tracts that Treasury identified (or up to 25 tracts if there are fewer than 100 statewide that met any of the criteria).[25] The Brookings Institute found that many states designated qualified O-Zones in college towns, where incomes might be low because of the non-working student population, but which are not necessarily areas that have lacked investment.[26]

As a result, states were able to nominate and Treasury certified many qualified Opportunity Zones that failed to meet the low-income and poverty thresholds and many of these areas probably were already receiving ample investment without the Opportunity Zone tax breaks. The Treasury Department certified 8,764 census tracts as qualified Opportunity Zones with around 35 million residents (more than 10 percent of the U.S. population).[27] About one-fourth of qualified Opportunity Zones did not have poverty rates above 20 percent and 300 of those lower-poverty qualified Opportunity Zone areas had typical family incomes that were higher than the 2017 median family income of $70,850.[28]

Nor were the qualified Opportunity Zones predominantly under-capitalized neighborhoods. The Urban Institute found that there was only "minimal targeting" of the Opportunity Zone program to the communities that most need investment because the qualified census tracts did not have substantially lower levels of investment than undesignated areas.[29] Instead, gentrifying areas experiencing the most socioeconomic change were overrepresented in the designated O-Zones compared to areas that were eligible but not included in the program.[30]

The poorly constructed definition of low-income, the expansive inclusion of adjacent and less economically vulnerable areas and the certification of qualified Opportunity Zones in many up-and-coming areas heightens the need for the Treasury Department to provide comprehensive data collection. It is imperative that the Treasury Department assess the distribution of Opportunity Zone investments in order to evaluate whether the program delivers economic benefits to low-income areas that have otherwise continued to be deprived of capital and to determine whether there are

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[23] IRS. Rev. Proc. 2018-16. *Internal Revenue Bulletin*. February 26, 2018 at 384. The IRS procedure stated that a "tract will not fail to be certified on the grounds that the tract is no longer eligible under more recent census data."

[24] *Ibid.* The IRS qualified 41,000 census tracts out of 73,000 tracts in the United States. See Census Bureau Geographies Tallies. Available at https://www.census.gov/geographies/reference-files/time-series/geo/tallies.html.

[25] Pub. L. 115-97 §1400Z-1(d).

[26] Gelfond, Hilary and Adam Looney. Brookings Institution. "Learning from Opportunity Zones: How to Implement Place-Based Policies." October 2018 at 8.

[27] U.S. Department of the Treasury. [Press release]. "Treasury, IRS announce final round of Opportunity Zone designations." June 14, 2018; O-Zone census tracts Include 938 tracts in the U.S. territories of American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. For a list of designated qualified Opportunity Zones see: U.S. Department of the Treasury, "Opportunity Zones Resources." Accessed April 2019.

[28] AFR calculations using the 2012-2017 American Community Survey 5-Year Estimates.

[29] Theodos, Brett, Brady Meixell, and Carl Hedman. Urban Institute. "Did States Maximize their Opportunity Zone Selections?" July 2018 at 3.

[30] *Ibid.*

concentrated negative impacts on housing affordability, residential displacement, and small business exits.

Treasury must collect broad-based, granular, and longitudinal data to assess the impact of the Opportunity Zone program: The Treasury Department must collect, assemble, disclose and freely provide to the public comprehensive, longitudinal, and geographically and demographically granular data to evaluate whether the Opportunity Zone investments deliver tangible economic benefits to neighborhoods and residents. This data should be provided in an internet searchable and downloadable format; it should be available annually no later than March 31st for the prior calendar year. The data should include:

- *Geographically specific and coded for states and metropolitan areas:* The investment, demographic, housing and economic data described below should be aggregated by census tract and census block groups of qualified Opportunity Zones as well as its inclusion in any metropolitan statistical area (or lack thereof), county, and state.

- *Longitudinal demographic and economic characteristics of the Opportunity Zones:* The Treasury Department should assemble comprehensive longitudinal and annual data about every qualified Opportunity Zone census tract and census block group going back at least to 2012 and every subsequent year going forward where available to assess the economic and demographic trajectories and potential economic performance and demographic impact of the investments.

    - *Demographic data should include:* population totals and population by race (dis-aggregated by national origin), ethnicity, and nativity; the number and proportion of population over 65 years and under 18 years of age; disability; gender and family composition; sexual orientation and gender identity; number and proportion of the population and households living below the federal poverty line (including for population over 65 years and under 18 years of age); median household income; unemployment rate; proportion of families spending more than 30 percent of their income on housing; number and proportion of families receiving federal rental assistance; educational attainment; and population inflow and outflow migration.

    - *Residential housing stock characteristics should include:* the number and proportion of owner-occupied homes; typical years in residence; prevailing median rental prices; prevailing median residential property values; residential vacancies and vacancy rates; residential property tax delinquency, tax lien and tax foreclosure numbers and rates; the number of units and buildings with specific affordable housing income limits; the number of home improvement loans and permits; the number of new construction permits; and the number and proportion of out-of-area landlords.

    - *Business characteristics should include:* the number of establishments by North American Industry Classification System; number of employees; total payroll; average establishment size; number of sole-proprietorships or non-employer establishments; business tax delinquency, tax lien and tax foreclosure numbers and rates; number of family-owned enterprises; number of minority and women-owned businesses; number of franchise enterprises; demographics of business owner (race, ethnicity, gender, age); average age of businesses; and business licenses (new and renewals).

- ♦ *Critical services and infrastructure data should include:* access to mass transit routes, stops, or stations; the number and type of health care facilities; the number of practicing physicians; the number of grocery retailers and the number that sell fresh fruits and vegetables; the number of schools or educational facilities and the number of students; and the number of emergency 911 calls by emergency service (fire, medical services, or police).

- *Opportunity Fund data by investment:* Each Opportunity Fund should report its total assets, its number of investors, median investments, total investments by Opportunity Zones, the quantity and type of investments:

  - ♦ *New or rehabilitated residential housing stock data should include:* the number of residential units in multifamily housing and single-family homes including unit size (number of bedrooms), rental or owner-occupied, the number of units and buildings with specific affordable housing income limits, and rent as percentage of Department of Housing and Urban Development area Fair Market Rents.

  - ♦ *New businesses or investments in business enterprise data should include:* the number of business enterprises (partnerships, purchases, and starts); square footage of retail, commercial, and industrial space; the number of temporary and permanent jobs created and sustained at businesses backed by Opportunity Fund investments; the number of residents of Opportunity Zones with temporary and permanent jobs at businesses backed by Opportunity Funds; the number of business enterprise investments (partnerships and purchases) in existing minority or women-owned businesses; and the number and type of investments (tangible business properties) sold and purchaser's income brackets by census tract and census block group.

- *Aggregated Opportunity Fund data by census tract and census block group:* The Treasury Department should collect and make available for every qualified Opportunity Zone census tract and census block group the number of funds that have made investments, the total value of these investments, the quantity and type of investments. This aggregated data should include all of the variables described above (new or rehabilitated residential housing stock as well as new businesses or investments in business enterprises) at the census block level.

- *Data related to potential negative effects of investments:* The Treasury Department should collect data that would measure any potential negative impact of the investments on existing residents and neighborhoods (population changes, household income changes, dislocation and displacement, etc.) including the number of residential rental eviction filings, completed evictions and eviction rates; the number of foreclosures initiated; the number of foreclosure sales completed; the number of homes sold due to property tax foreclosure; the number of tax lien certificates sold; the number of purchases or transfers of property owned by distressed or delinquent borrowers, including data on whether borrowers received a permanent modification of their loan and whether borrowers transferred their property through a deed-in-lieu or short sale; the number of land installment contracts entered into; the number of small business exits by census tract and census block group.

- *Data from comparable non-Opportunity Zone areas for baseline comparison:* The Treasury Department should identify comparable, matched-pair or matched-groups of qualified Opportunity Zone areas and those census tracts that met the definitional requirements but were not certified as qualified Opportunity Zones. These baseline, comparative non-Opportunity Zone census tracts (or groups of census tracts) should be geographically proximate and demographically and demographically comparable. The Treasury should collect all of the above longitudinal, demographic and economic variables for these comparable non-Opportunity Zone areas as well to attempt to determine whether Opportunity Zone investments affected economic or demographic outcomes relative to similarly situated non-Opportunity Zone areas.

Americans for Financial Reform Education fund joined coalition partners in submitting a comprehensive and detailed list of variables and factors that the Treasury Department should collect. AFREF supports Treasury collecting and releasing the entirety of that list of variables; this slightly condensed catalogue does not reflect a more circumscribed request for data.

It is imperative that the Treasury Department require strong data collection and public disclosure. The data should be instructive in assessing the extent to which the Opportunity Zone program provides investments that benefit local residents and communities or worsens the critical lack of affordable housing. The collection, assembly, and public disclosure of comprehensive economic, demographic, and longitudinal data on the qualified Opportunity Zone areas and the investments into these areas is essential to evaluate the program and determine the positive and negative impacts of the program on residents and communities.

The Americans for Financial Reform Education Fund is concerned that the Opportunity Zone program is far more likely to provide tax benefits to wealthy investors than to provide substantial and tangible economic benefits to the residents of qualified Opportunity Zones. The Opportunity Funds and consultants have already targeted the most economically thriving metropolitan areas and neighborhoods for investment under the program.[31] This could leave many qualified Opportunity Zones with little or no investment. In more up-and-coming areas, the Opportunity Zone investments are likely to raise costs and prices and exacerbate the crisis in affordable housing that is already displacing lower-income households and families of color from their neighborhoods.

The Opportunity Zone program should have performance requirements that conditioned the receipt of tax benefits for investors on positive net economic outcomes. Opportunity Funds should not receive tax breaks for investments that do not provide tangible economic benefits for residents and communities.

Thank you for the opportunity to provide input into this important matter. If you have questions, please contact Patrick Woodall, Senior Researcher for the AFR Education Fund at pwoodall@ourfinanicalsecurity.org.

Sincerely,
AFR Education Fund

[31] *See* Fundrise. "Top 10 Opportunity Zones in the U.S." Available at https://fundrise.com/education/blog-posts/the-top-10-opportunity-zones-in-the-united-states. Accessed April 2019; Develop LLC. "Opportunity Zone Index." Available at www.developadvisors.com/opportunity-zones-index/. Accessed April 2019; Coes, Christopher A. and Tracy Hadden Loh. Locus-Smart Growth America. "National Opportunity Zones Ranking Report." December 2018 at 5.