

Todd M. Richardson
General Deputy Assistant Secretary
Office of Policy Development and Research
Department of Housing and Urban Development
451 7th Street SW Room 8216
Washington, DC 20410-0500

RE: Review of HUD Policy in Opportunity Zones, Docket No. FR-6155-N-01

June 17, 2019

Dear Mr. Richardson:

The 22 undersigned community, housing, civil rights, consumer and other advocacy organizations appreciate the opportunity to submit comments on the request for information on actions the Department of Housing and Urban Development (HUD) can pursue to align HUD's policies and practices to maximize the benefits and reduce the negative outcomes of investment in Opportunity Zones.¹

We believe that it is essential that HUD carefully assess the potential risks and benefits of the Opportunity Zone investments and act accordingly to further HUD's mission to ensure there are quality and affordable homes for all people and create sustainable and inclusive communities that are free from discrimination. The Opportunity Zone program poses substantial risks to lower-income households and households of color, including families with children and people with disabilities, that already face rapidly rising housing costs and a declining availability of affordable housing options.

The size, scope and potential downsides of the Opportunity Zone program requires substantial coordination, oversight and management. The 2017 Tax Cuts and Jobs Act (TCJA) provides substantial tax breaks to encourage wealthy investors to invest in designated low-income communities.² Treasury Secretary Steven Mnuchin estimated that \$100 billion could be shifted to the over 8,700 qualified Opportunity Zone census tracts.³ The Congressional Joint Tax Committee estimated the program would cost \$9.4 billion between the 2018 and 2022 period, about 8 times larger than the cost of HUD's Empowerment Zone community redevelopment tax incentive program between 2000 and 2004.⁴

HUD's programs already serve communities and residents in qualified Opportunity Zones. More than 2.4 million people – over one-fourth of all HUD-assisted tenants – rely on HUD-assisted housing within the qualified Opportunity Zones in public housing units and rental-assistance programs.⁵ There are over half a million properties backed by Federal Housing Administration

¹ 84 Fed. Reg. 74. April 17, 2019 at 1629.

² Tax Cuts and Jobs Act. Pub. L. 115-97 §13823. December 22, 2017.

³ U.S. Treasury Department. [Press release]. "[Treasury releases proposed regulations on Opportunity Zones designed to incentivize investment in American communities.](#)" October 19, 2018.

⁴ 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.

⁵ 84 Fed. Reg. 74. April 17, 2019 at 1630 to 1631.

insured loans in qualified Opportunity Zones (617,000 single-family homes and 2,400 multifamily buildings). In addition, billions of dollars distributed through multiple HUD grant and community-based programs could be aligned, affected or even undermined by Opportunity Zone investments.

The booming cities that real estate and investment advisors recommend for Opportunity Zone investments — places like Baltimore, Denver, Honolulu, Los Angeles, New York City, Oakland, Portland, Philadelphia, San Francisco, San Jose, and Seattle⁶ — are already among areas with the highest rental costs and where it takes more than 80 hours of minimum wage work per week to pay for a one-bedroom apartment, according to the National Low Income Housing Coalition.⁷

The Opportunity Zone investments are likely to exacerbate the housing affordability crisis in many already high-cost housing areas that could displace existing lower-income households and households of color. Pitchbook reported that these investments could drive up housing costs and consumer prices that could be “a harbinger of inflated cost of living.”⁸ Real estate firm Zillow reported that home prices surged by more than 20 percent in Opportunity Zones in the nine months after the designations were announced, even before investments had begun.⁹

Earlier tax incentives to promote economic development in disadvantaged areas ended up raising housing costs and displacing residents. The Federal Reserve Bank of San Francisco documented that prior community development tax incentives consistently increased housing prices in the designated areas.¹⁰ A 2019 *Wisconsin Law Review* article observed that “there is strong evidence that property values increase in Enterprise Zones” that translated to higher housing costs that “may price out the poorest members of the community.”¹¹

Rising rents displace lower-income people of color, including families with children and people with disabilities. 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.¹² 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.¹³ This displacement does more than force lower-income families to relocate; it severs families from their community and essential social capital that provide a network necessary to ameliorate, lessen or prevent further economic hardship.

⁶ 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 June 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.

⁷ National Low Income Housing Coalition. “Out of Reach 2018.” 2018 at 12 and 13.

⁸ Sostheim, Joelle and Jordan Beck. Pitchbook. “A Window of Opportunity: An Overview and Analysis of Opportunity Zones.” February 21, 2019 at 13.

⁹ Casey, Alexander. Zillow. “[Sale prices surge in neighborhoods with new tax break](#).” March 18, 2019.

¹⁰ Neumark, David and Helen Simpson. “[Do place-based policies matter?](#)” *Federal Reserve Bank of San Francisco Economic Letter*. March 2, 2015 at Table 1 at 3.

¹¹ Layser, Michelle D. “The pro-gentrification origins of place-based investment tax incentives and a path toward community oriented reform.” *Wisconsin Law Review*. 2019 (forthcoming) at 24.

¹² 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.

¹³ Richardson, Jason, Bruce Mitchell and Juan Franco. National Community Reinvestment Coalition. “[Shifting Neighborhoods: Gentrification and cultural displacement in American cities](#).” March 2019 at 4.

The likely negative impact of Opportunity Zone investments on housing affordability and existing residents and communities amplifies the imperative of HUD taking action to protect affordable housing. If Opportunity Zone investments raise housing costs in and around the designated areas, the millions of people receiving HUD rental assistance could find that they can no longer stay in their communities. For example, landlords that accepted HUD Housing Choice Vouchers (formerly known as Section 8) may decide they no longer wish to participate in the program when area rents rise or they could raise their rents to levels that exceed HUD's voucher payment levels.¹⁴ Economic and demographic changes driven by Opportunity Zone investments could increase pressure to demolish or privatize public housing, including through the Rental Assistance Demonstration (RAD).¹⁵

While the Opportunity Zone program presents potentially substantial investments in areas where HUD has long-established programs and assets, HUD should not allow the Opportunity Zone program to dilute or distract from its core mission areas. HUD's real budget and staffing levels have been declining; any HUD expenditures to administer or coordinate the Opportunity Zone program would necessarily reduce spending on other HUD priorities. HUD should focus its resources on ensuring that Opportunity Zone investments do not undermine housing affordability and collecting information to assess the impact of these investments.

The investment-driven price pressure on private housing, public housing and rental assistance is likely to raise the cost of residential housing units and reduce the availability of affordable housing options. This is especially true in higher-cost metropolitan areas and neighborhoods that are already undergoing gentrification that are included in the Opportunity Zone geographies and the areas most likely to receive the preponderance of the Opportunity Zone investments. These risks are heightened because of the lack of any performance standards or regulatory guiderails that would direct or ensure the investments to provide community benefits. HUD's programs are even more vital for families in this investment-driven environment. HUD must act so that its programs and policies serve to the maximum extent possible as a bulwark against the likely negative impacts of Opportunity Zone investments on residents and communities.

HUD should use its existing authority to ensure that Opportunity Zone investments provide benefits to residents and communities and advance HUD's mission (question 1)

HUD must ensure that any Opportunity Zone investments that interact with HUD programs, policies, assets, or rental-assisted residents provide tangible benefits to these people and communities. HUD should not provide any coordination, administration, or management to Opportunity Funds or Opportunity Zone investments that threaten to displace lower-income residents of color or that do not expand and/or preserve affordable housing units. HUD should also refuse to provide any assistance to Opportunity Zones that do not provide community residents meaningful consultation and input into the proposed investments. While most of the investment is expected to flow into a small number of areas with higher expected financial returns (booming cities and gentrifying neighborhoods), HUD should attempt to encourage investments into the Opportunity Zones where there is a lack of capital while still ensuring these investments meet the needs of these communities.

¹⁴ 24 CFR §982.310(d)(iii to iv).

¹⁵ Center for Budget and Policy Priorities. "Policy Basics: Public Housing." November 15, 2017; Austen, Ben. "The towers came down, and with them the promise of public housing." *New York Times Magazine*. February 8, 2018; Rodriguez, Cindy. "[Public housing invites private developers](#)." *WNYC*. June 28, 2016.

Protect residents and assets in public and other HUD-assisted housing: HUD should use its authorities to protect existing public housing and ensure that quality affordable housing options are not substantially diminished or eliminated in Opportunity Zones. HUD should increase the scrutiny and review of any applications for demolition, disposition, or RAD conversion within Opportunity Zones to ensure that these investments do not accelerate the elimination of these vital public housing assets and affordable housing units. The investor, economic, and demographic pressure is likely to increase in Opportunity Zones and HUD must act to prevent extremely low-income families from being displaced from their homes and communities. Public and HUD-assisted housing is often the only source of deeply affordable housing in a community. HUD must therefore preserve and expand those units to ensure that extremely low-income families benefit from Opportunity Zone investments.

Ensure the right to safe and healthy housing conditions and enhance tenant protections in Opportunity Zones: HUD must strengthen the oversight and enforcement of tenants' rights to protect families from being displaced. HUD should enforce the uniform physical condition requirements to ensure that all families in HUD rental-assisted and public housing units live in decent, safe, and sanitary housing units.¹⁶ Owners that want to sell their assets to Opportunity Zone investors could let their buildings fall into disrepair or further disrepair to encourage families to leave the building and make it easier to sell the property; HUD inspections to maintain Uniform Physical Condition could protect tenants and prevent landlords from displacing tenants through a strategy of disrepair. In addition, residents in HUD-assisted housing have rights to protect them from unfair lease termination or eviction (including notice, appeal etc.),¹⁷ but tenants often face challenges in enforcing them. In the face of Opportunity Zone investment-driven housing price inflation, it is particularly important that these tenant protections are preserved, enforced, and strengthened. HUD should especially protect the rights of tenants to form organizations to advocate on their behalf, to participate in the operation of housing facilities, and to be involved in the decision-making over any planned demolition, disposition, or conversion of HUD-assisted housing.¹⁸

Ensure that Opportunity Zone residents receive economic benefits from investments: HUD should also aggressively apply Section 3 to any and all Opportunity Zone investments, especially those that seek to coordinate or access HUD programs or funding, to ensure that low-income and rental-assisted families receive economic benefits from these investments. Section 3 of the 1968 Housing Act was intended to provide employment opportunities to low-income people, especially those that are residents of public housing or those receiving HUD rental-assistance.¹⁹ HUD should enhance its oversight of investments in Opportunity Zones related to housing and community development and ensure that to the fullest extent possible Opportunity Zone investments are complying with Section 3 in the recruiting, hiring and training low-income workers from within Opportunity Zones. In the past, HUD has failed to monitor public housing authorities to ensure they complied with Section 3. For example, HUD's Inspector General found that over 1,600 public housing authorities may have submitted false compliance certifications in the expenditure of Recovery Act funds.²⁰

¹⁶ 24 CFR §5.703 and §5.705.

¹⁷ 24 CFR §982.310; 24 CFR §966.50.

¹⁸ 24 CFR §964.15; 24 CFR §245.105; 24 CFR §970.9

¹⁹ 12 USC §1701u(b).

²⁰ HUD. Inspector General. "Section 3 for Public Housing Authorities." 2013-KC-0002. June 26, 2013.

Enhance protections for distressed FHA homeowners: The Federal Housing Administration (FHA) mortgage program plays a vital role in providing access to affordable homeownership for all Americans, and especially for low- and moderate-income families and communities of color. In 2018, almost 83 percent of FHA mortgage loans provided financing for first-time homebuyers.²¹ Minority homebuyers accounted for almost 34 percent of all FHA loans.²²

The Opportunity Zone investment-driven housing price increases could increase incentives for investors — both Opportunity Funds and other buyers — to purchase FHA properties from distressed borrowers without providing reasonable access to home-saving loss mitigation options. HUD reports that there are 617,000 FHA-insured single-family homes within Opportunity Zones, 8 percent of all FHA single family properties.²³ HUD must strengthen protections for distressed borrowers in its programs that sell FHA loans.

Through its Distressed Asset Stabilization Program (DASP) loan sale program, HUD has sold over 108,000 loans in default with unpaid principal balances totaling over \$18 billion,²⁴ and this program has directly impacted not only the borrowers of those loans, but the communities where they reside. Instead of helping families preserve their homes, the loan sale program has stripped borrowers of important protections against foreclosure, including their ability to access FHA loss mitigation options, without replacing it with reasonable alternatives. Servicer non-compliance with loss mitigation guidelines has led to unnecessary sales of loans where the borrower's delinquency could have been resolved with an FHA home-saving solution.

HUD's sale of non-performing loans has directed thousands of loans into the hands of private equity firms and hedge funds, threatening to dismantle neighborhoods in the process. Many were sold at Claims without Conveyance of Title (CWCOT) auctions that allowed third parties to purchase distressed loans often for less than the total outstanding debt. Private equity and hedge fund purchasers of non-performing loans buy the loans for far less than the outstanding principal balance and below the property's market value. They do not pass on these savings to the borrowers, but often only offer short term and unsustainable loss mitigation options, enhancing the risk of foreclosures and neighborhood instability. The new, often distant corporate owners, have often not rehabilitated the homes so that they could be affordably rented or resold to families. Only a small number of loans have gone to mission-driven entities.

HUD has also failed to provide reasonable data about the loan sale program to stakeholders. It has stopped providing quarterly performance reports on how purchasers have handled the loans. The agency's most recent report was dated March 2017. This lack of data makes it very challenging to evaluate ongoing community impact. FHA should make all data from the last report available and stop all sales of non-performing loans until its ongoing rulemaking process on loan sales is complete.

²¹21 FHA Status of the Mutual Ins. Fund FY 2018 p.23, available at:

<https://www.hud.gov/sites/dfiles/Housing/documents/2018fhaannualreportMMIFund.pdf>

²²22 FHA Status of the Mutual Ins. Fund FY 2018, p. 24

²³23 84 Fed. Reg. 74. April 17, 2019 at 16030.

²⁴24 HUD. Office of Inspector General. "Distressed Asset Stabilization Program." 2017-KC-0006. July 14, 2017 at 3; Walsh, Geoff. National Consumer Law Center. "[Opportunity Denied: How HUD's Note Sale Program Deprives Homeowners of the Basic Benefits of Their Government-Insured Loans](#)" May 2016 at 10.

HUD should ensure note sales are only used when necessary to preserve solvency of the insurance fund, enact protections for borrowers before loan sales to prevent unnecessary inclusion in sales (such as notice of impending sales and servicer certification that loss mitigation has been exhausted), robust requirements for loan sale purchasers to offer affordable and sustainable loss mitigation options to preserve owner-occupancy, increased opportunities and resources for mission-driven entities to have the first option (First Look and Second Look programs) to purchase loans and rehabilitate properties for owner-occupancy or affordable rental prior to auction, and collection of post-sale data that HUD regularly makes available to the public for analysis.

HUD must ensure that Opportunity Zone investments do not undermine fair housing: HUD should apply a fair housing lens to Opportunity Zone investments and any steps it may take to align HUD policies, programs, and grants with these investments. HUD should assess whether the Opportunity Fund investments affirmatively further fair housing; investments that fail to affirmatively further fair housing must not receive any HUD programmatic or financial support. The Opportunity Zone statute, proposed Treasury and Internal Revenue Service regulations, and even HUD's request for information makes no reference to the race, ethnicity, sex, family status, or disability status of residents within Opportunity Zones or the potentially discriminatory impact these investments could have by failing to provide equal housing opportunities to members of protected classes under the Fair Housing Act or displacing them from their homes and communities.

HUD is obligated to administer its programs and activities relating to housing and urban development in a manner that affirmatively furthers fair housing (AFFH) under the Fair Housing Act.²⁵ This means that all HUD programs and activities must actively work to end discrimination and segregation. It also must actively work to overcome the harmful effects of segregation by connecting people who have been harmed by segregation to opportunity, including access to good jobs, good schools, reliable and affordable transportation, a healthy environment and the like. Further, the cities, counties and states that may seek to use Community Development Block Grant, HOME Investment Partnerships, Housing Opportunities for Persons with AIDS, Emergency Solutions Grants program or other HUD funds to invest in or support projects in Opportunity Funds must do so in a manner that affirmatively furthers fair housing. HUD should oversee their use of program funds to ensure that its grantees are in compliance.

The AFFH mandate requires that HUD must coordinate with other federal agencies that have a role in the Opportunity Zone program, including the Treasury Department and Internal Revenue Service. The Treasury Department and the Internal Revenue Service have the same obligation under the Fair Housing Act to AFFH for all programs and activities related to housing and urban development, and that Act instructs them to cooperate with the Secretary of HUD to further those purposes.²⁶ This imposes a proactive responsibility upon the Treasury Department and the IRS to monitor and enforce the Opportunity Zone program to ensure that the investments under the program also work to end discrimination and segregation, and to connect people to housing, employment, transportation, a healthy environment and other types of opportunities. HUD should press Treasury and the IRS to issue guidelines, collect data and monitor implementation of the Opportunity Zone program to ensure it meets these goals.

²⁵ 24 CFR §3608(c).

²⁶ 24 CFR §3608(d).

HUD should not offer “preference points” or other incentives for Opportunity Zone investments (question 3)

HUD should focus on ensuring that Opportunity Zone investments do not displace existing residents rather than providing additional incentives for Opportunity Zone investments. There are already considerable financial incentives for Opportunity Zone investors. Capital gains taxes are deferred and reduced for investment profits that are moved into Opportunity Funds.²⁷ All Opportunity Fund profits are completely tax exempt if the investments are held at least a decade.²⁸ *Forbes* magazine wrote that the program could become “one of the biggest tax giveaways in American history.”²⁹

The Opportunity Zones are likely to receive a disproportionate share of investor and other attention and HUD should not provide any additional inducements for other programs, grants or policies to operate within Opportunity Zones. The Treasury Department only designated 8,764 census tracts of over 41,000 census tracts that qualified as low-income under at least one statutory standard.³⁰ The majority of HUD’s housing assets and rental-assisted tenants are *outside* Opportunity Zones (over 70 percent of project-based rental properties and tenants, nearly 80 percent of multi-family buildings with FHA mortgages, over 90 percent of FHA-backed single family mortgages, more than two-thirds of RAD conversions).³¹ HUD should not take any action to incentivize additional programmatic focus on Opportunity Zones.

HUD technical assistance should focus primarily on the needs of local communities, governments, community groups, and organizations providing services to lower-income residents (question 4)

HUD primarily should offer technical assistance on Opportunity Zones solely to local governments, community groups, non-profit organizations, and groups providing services to lower-income residents to help level the playing field between these under-resourced organizations and institutions and the considerable financial and technical capacity of the Opportunity Zone investors. Treasury Secretary Steven Mnuchin estimated that as much as \$100 billion could be invested under the Opportunity Zone program and already Opportunity Funds have received commitments for over \$29 billion in initial investor interest.³² Not only do these investment funds have ample resources but they have led to the creation of a host of Opportunity Zone consultants, think tanks, and other advisors that provide additional capacity to further their investment aims.

Instead, HUD should help local governments and groups establish standards for community-based investment by Opportunity Funds, establish training materials to help stakeholders prepare for the influx in investments in their neighborhoods, and help build technical capacity for these stakeholders to engage with Opportunity Zone investors. HUD should provide special technical

²⁷ Pub. L. 115-97 §1400Z-2(a)(2)(B), §1400Z-2(b)(1) and §1400Z-2(b)(2)(B).

²⁸ Pub. L. 115-97 §1400Z-2(c).

²⁹ Bertoni, Steven. “An unlikely group of billionaires and politicians has created the most unbelievable tax break ever.” *Forbes*. July 18, 2018.

³⁰ Internal Revenue Service (IRS). Rev. Proc. 2018-16. *Internal Revenue Bulletin*. No. 2018-9. February 26, 2018, at 383 to 384; U.S. Department of the Treasury. [Press release]. “[Treasury, IRS announce final round of Opportunity Zone designations.](#)” June 14, 2018.

³¹ 84 Fed. Reg. 74. April 17, 2019 at 16030.

³² U.S. Department of the Treasury. [Press release]. “[Treasury releases proposed regulations on Opportunity Zones designed to incentivize investment in American communities.](#)” October 18, 2018; *See* Opportunity Zones Database. “[Opportunity Zone Funds.](#)” June 6, 2019 update; Novogradac. “[Opportunity Zones Resource Center: Opportunity Funds Listing.](#)” Accessed June 2019.

assistance to owners of buildings with HUD rental-assisted tenants, including non-profit housing associations, social service providers, multifamily property owners and private landlords to help ensure that these housing providers can secure and issue tenant-protection vouchers and enhanced vouchers to help keep rental-assisted families housed in and near Opportunity Zones.

HUD can play an important role to ensure that residents and communities benefit from Opportunity Zone investments (question 5)

We commend HUD for recognizing the inherent risk in tax incentive-based economic development policies that do not proactively ensure that the existing residents, businesses, and community organizations receive tangible economic benefits. It appears that HUD has been the first federal agency to recognize that the existing residents could be ignored or even harmed by the Opportunity Fund investments.

While economically distressed communities may be eager for any increased investment in local areas, the inflow of Opportunity Zone funds lacks any performance requirements for these investments (such as expanding or upgrading the stock of affordable housing, providing employment and advancement opportunities for residents of Opportunity Zones, or supporting local social service providing organizations, etc.).

As a result, the Opportunity Zone investments are likely to raise local costs for housing and for other goods and services without necessarily providing commensurate benefits to residents or communities. HUD must act to protect and expand affordable housing opportunities and to protect existing public and federally-assisted residents from being displaced by the influx of Opportunity Zone investments (described above in answer to question 1).

HUD must collect broad-based, granular and longitudinal data to assess the impact of Opportunity Zone program (questions 2 and 6)

HUD 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 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:* HUD 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); the number and percent of households occupying substandard housing or living in overcrowded units; 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; HUD Fair Market Rents or Small Area Fair Market Rents, if applicable; 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 HUD rental assistance vouchers and public housing units and residents thereof; 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).

- *Data related to potential negative effects of investments:* HUD 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:* HUD 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 economically comparable. HUD 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.

HUD must carefully monitor and redress the potentially significant negative impact of Opportunity Zone investments on goal of ending homelessness (question 8)

It is unlikely that the Opportunity Zone program will advance the goal of eliminating homelessness; even more targeted tax incentives like the Low Income Housing Tax Credit have had very limited impact in providing resources to serve the very lowest-income people or creating supportive or transitional housing for people who are homeless or at risk of homelessness.³³

Opportunity Zone investments will be focused on areas and assets that are expected to provide considerable economic returns; profits from these investments that are held for at least ten years will be exempt from all capital gains taxes.³⁴ These investors will be unlikely to build or refurbish housing units that would serve the lowest-income renters because these properties would not generate sufficient profits or market appreciation. The policies and programs that most effectively address homelessness are those that expand the pool of affordable housing stock for low- and extremely low-income households (30 percent to 50 percent of area median income or less), such as publicly-owned and publicly-managed housing units.

Opportunity Zone investments could have a particularly severe impact on the lowest-income people that are homeless or at risk of homelessness, including families with children and people with disabilities. As noted earlier, Opportunity Zone investments are likely to raise housing prices and rents in the already gentrifying neighborhoods and cities where these investments are expected to be concentrated. Not only could these investments accelerate gentrification, further reducing available affordable housing opportunities, but this could displace the lowest-income people who are most at risk of becoming homeless or those already struggling to exit homelessness as neighborhoods become less accommodating. Homeless service providers located in or near Opportunity Zones could face higher operating costs or greater not-in-my-backyard pressure to relocate from increasingly affluent neighboring residents or businesses.

HUD must monitor these risks carefully and act to reduce the potential negative impact on people who are homeless, at risk of becoming homeless, very low-income people, and the organizations and facilities that serve these populations.

³³ See Sullivan, Laura and Meg Anderson. "Affordable housing program costs more, shelters fewer." *All Things Considered*. NPR. May 9, 2017; Covert, Bryce. "The deep, uniquely American roots of our affordable-housing crisis." *The Nation*. May 24, 2018.

³⁴ Pub. L. 115-97 §1400Z-2(c).

HUD should establish and convene an Opportunity Fund advisory council that includes non-governmental organizations, community stakeholder groups, and local governments (question 9):

Given the sizable investment and potential negative implications of the Opportunity Zone program for families and communities living in Opportunity Zone areas, HUD should establish an advisory council to advise and consult with HUD on how the investments are affecting low-income families and families of color and how to best protect them. The advisory council should meet at least twice per year.

The members of this advisory council should include representation from consumer groups, community groups, community development organizations, fair housing and civil rights organizations, housing groups, mission-driven affordable housing developers, local governments, and other entities that primarily serve underserved communities or represent or come from communities that will be significantly impacted by Opportunity Zone investments.

• • •

There is grave danger that Opportunity Zone investments will raise housing costs and prices and accelerate the displacement of low- and moderate-income residents and low- and moderate-income residents of color in particular from high-cost housing markets and gentrifying neighborhoods. HUD must take decisive actions to protect against these outcomes, and to prevent Opportunity Zone investments from undermining the agency's mission to provide quality and affordable homes for all people and create sustainable and inclusive communities that are free from discrimination. HUD's programs play a crucial role in providing and maintaining access to affordable housing for low-income families and communities of color. In the face of Opportunity Zone investments, HUD must strengthen and enforce existing protections to provide guardrails against displacement and mandate comprehensive data collection so that the impact of Opportunity Zones can be properly evaluated.

Signed,

Action Center on Race and the Economy
Americans for Financial Reform Education
Fund
Association for Neighborhood and Housing
Development
California Reinvestment Coalition
Center for Community Progress
Center for NYC Neighborhoods
Center for Responsible Lending
Connecticut Fair Housing Center
Consumer Action
Main Street Alliance
NAACP

National Coalition for the Homeless
National Community Reinvestment Coalition
National Community Stabilization Trust
National Consumer Law Center (on behalf of
its low-income clients)
National Fair Housing Alliance
National Housing Law Project
National LGBTQ Task Force
New Jersey Citizen Action
Poverty & Race Research Action Council
Prosperity Now
Woodstock Institute