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December 16, 2020

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

Dear Secretary Mnuchin:

The Subcommittee on Economic and Consumer Policy requests documents and information about the Department of the Treasury's administration of the Opportunity Zone (OZ) program.[1] In addition to reiterating our request for Treasury's overdue responses to the Subcommittee's June 24, 2020 letter about the selection and confirmation of Opportunity Zones, we now seek information regarding reported investments into Opportunity Zones and the resulting effects on local economies.

We are concerned that Treasury's decision not to collect robust transaction-level data has prevented any reliable assessment of the effectiveness of the OZ program. A recent report from the Government Accountability Office (GAO) found that "there are insufficient data available to evaluate OZ performance" and recommended that "[a]dditional data collection and reporting on OZ are necessary to evaluate outcomes."[2]

The little data that is available, such as investment amounts reported for particular Opportunity Zones, has not been released to the public. We call on Treasury to do that now—to release data about investments in the OZ program, as outlined in the requests below. The taxpaying public needs to see the data that Treasury has collected in tax filings from Qualified Opportunity Funds (QOFs), the entities that are organized to reap the tax benefits of investments into Opportunity Zones. That information will show whether the program is spurring economic growth and jobs, as intended, or whether it is primarily being exploited as a tax benefit to wealthy investors.

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[1] Pub. L. No. 115-97 (2017), § 13823 (codified at Internal Revenue Code § 1400Z-1 to 2).

[2] Government Accountability Office, *Opportunity Zones: Improved Oversight Needed to Evaluate Tax Expenditure Performance* (Oct. 2020) (GAO-21-30) (online at www.gao.gov/products/gao-21-30).

Congress designed the OZ program "to spur economic development and job creation in distressed communities."[3] To ensure congressional intent is achieved, we must scrutinize whether OZs have led to equitable economic development. We do not have access to the data to answer that question fully. An independent, qualitative assessment by the Urban Institute, based on interview-based research of a limited number of OZ tracts, suggested that the OZ program has in many instances served mostly as stimulus for real estate transactions rather than investment in jobs for local residents.[4] In the absence of good data, speculation has filled the void. A close reading of an August report issued by the White House Council on Economic Advisers (CEA) reveals fabrications and exaggerations about the benefits of the OZ program.[5]

Treasury Must Release the Data Necessary to Assess the Effectiveness of This Administration's OZ Program

Treasury has not released the information necessary to conduct an independent evaluation of the impacts of the OZ program. The lack of transparency is due, in part, to Treasury's decision to collect bare-bones tax administration information about OZ investment through tax returns, which are tightly restricted.[6] As a result, the amount of public data coming from the OZ program is shockingly small.

In explaining Treasury's failure to collect data on Opportunity Zones to GAO, Treasury officials claimed to lack sufficient direction from Congress to evaluate the program.[7] The statute, however, is quite clear that Treasury has not just the authority, but the obligation, to "prescribe such regulations as may be necessary or appropriate to carry out the purposes" of the OZ program, including rules for fund certification and "rules to prevent abuse."[8]

As of now, Treasury only appears to collect information on the program through Internal Revenue Service (IRS) tax returns filed by the Qualified Opportunity Funds. The Funds are required to file a form to receive the OZ tax breaks, called Form 8996. In tax year 2018, the first iteration of Form 8996 only asked for the total investment a fund made in property in a Qualified Opportunity Zone (QOZ), without even requiring the opportunity zone(s) to be identified.[9] In January 2020, Form 8996 was revised to ask for a list of QOZ tracts in which the fund has

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[3] Internal Revenue Service, *Opportunity Zones Frequently Asked Questions* (updated Oct. 22, 2019) (online at www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions) (accessed Sept. 18, 2020).

[4] Urban Institute, *An Early Assessment of Opportunity Zones for Equitable Development Projects* (June 2020) (online at www.urban.org/research/publication/early-assessment-opportunity-zones-equitable-development-projects/view/full_report).

[5] Council of Economic Advisors, *The Impact of Opportunity Zones: An Initial Assessment* (Aug. 2020) (online at www.whitehouse.gov/wp-content/uploads/2020/08/The-Impact-of-Opportunity-Zones-An-Initial-Assessment.pdf).

[6] 26 U.S.C. § 6103.

[7] Government Accountability Office, *Opportunity Zones: Improved Oversight Needed to Evaluate Tax Expenditure Performance* (Oct. 2020) (GAO-21-30) (online at www.gao.gov/products/gao-21-30).

[8] 26 U.S.C. § 1400Z–2(e)(4).

[9] Department of Treasury, Internal Revenue Service, *Form 8996: Qualified Opportunity Fund* (Dec. 2018) (online at www.irs.gov/pub/irs-prior/f8996--2018.pdf).

invested and, for each tract, the value of the fund's property, owned and leased, and the value of the fund's business investments in the tract.[10] IRS Form 8997 asks investors to report their investments in QOFs and the deferred gains on those investments.[11]

Treasury has ignored suggestions to make data on the program publicly available. In response to proposed Treasury regulations, commentators asked that program information be made public, "including a database which the public can use to track projects nationally." Treasury dismissed these prudent suggestions out of hand, stating curtly: "Comments received in this regard are not adopted in these final regulations."[12] As part of its mission to provide statistics to inform tax and economic policy, Treasury could publicly release aggregated and anonymized data about Opportunity Zone investments.[13] But it has not.

Simple transparency mechanisms could have easily been carried over from other place-based economic programs. The New Markets Tax Credit (NMTC) statute, for example, has a similar statutory requirement for Treasury to "impose appropriate reporting requirements."[14] In response, Treasury and its Community Development Financial Institutions Fund (CDFI Fund), through regulation, have required annual reporting from all Community Development Entities receiving NMTC credits on how money is being invested and the types of businesses receiving support. CDFI Fund frequently provides this data to the public in summary reports and comprehensive data files.[15]

Treasury's lack of transparency has made it difficult to assess how effective the OZ program has been in revitalizing distressed communities and how it compares to other place-based programs like NMTC. For this reason, the Subcommittee seeks the information Treasury possesses, and has so far kept under lock and key.

The White House May Have Grossly Overstated Opportunity Zone Benefits

On August 24, 2020, the White House's Council of Economic Advisors (CEA) released a report that claims "that Qualified Opportunity Funds raised $75 billion in private capital by the

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[10] Department of Treasury, Internal Revenue Service, *Form 8996: Qualified Opportunity Fund* (revised Jan. 2020) (online at www.irs.gov/pub/irs-pdf/f8996.pdf).

[11] Department of Treasury, Internal Revenue Service, *Form 8997: Initial and Annual Statement of Qualified Opportunity Fund (QOF) Investments* (2019) (online at www.irs.gov/pub/irs-pdf/f8997.pdf).

[12] Department of Treasury, *Investing in Qualified Opportunity Funds,* 85 Fed. Reg. 1866 (IX)(A) (Mar. 13, 2020) (final regulation) (online at www.govinfo.gov/content/pkg/FR-2020-01-13/pdf/2019-27846.pdf).

[13] Internal Revenue Service, Statistics of Income Division, *Statistical Use of U.S. Federal Tax Data* (May 20, 2008) (online at https://www.irs.gov/pub/irs-soi/08rpstatusegreenia.pdf).

[14] 26 U.S.C. § 45D(i)(4) (2018).

[15] Community Development Financial Institutions Fund, *News Detail: CDFI Fund Releases Summary Report and Public Data for NMTC Program for FYs 2003-2017* (Nov. 25, 2019) (online at www.cdfifund.gov/news-events/news/Pages/news-detail.aspx?NewsID=364&Category=Press%20Releases).

end of 2019, most of which would not have entered OZs without the incentive."[16] This $75 billion number was the product of faulty assumptions and misleading figures and does not necessarily represent equitable development. Given that there is a strong bipartisan desire to expand the program, including from the White House, it is necessary to address these flawed assumptions now, which further underscore the need for better data on the program.

There were three primary problems with the CEA report: (1) CEA based its conclusions on limited self-reported data, instead of relying on Treasury's data; (2) the report's key calculation relied on dubious assumptions; and (3) the report failed to account for the distribution of the benefits of the program, making it difficult to assess the program's efficacy at helping the most distressed communities.

1. The CEA Report Is Based on Self-Reported Data.

As an agency within the Executive Office of the President, we would hope CEA would base its analysis on the best available data in the possession of the federal government. Rather, to infer the number, size, and distribution of Opportunity Funds and their investments, the authors of the report instead relied on two limited and likely biased samples of data.

The first sample, from the private accounting firm Novogradac, relied on voluntarily reported data from 513 funds, which CEA admits is "a small subset of all funds."[17] In fact, the sample likely represents less than 10% of all QOFs. IRS has estimated that the program will encompass between 5,500 and 12,000 QOFs.[18]

The second sample, from securities filings submitted to the Securities Exchange Commission (SEC), is even more limited. CEA only analyzed 197 funds that registered for securities exemptions with the SEC and chose to include "Opportunity Zone" or similar words in their name—even though Opportunity Funds were not required either to register in that way or use any particular name. While Novogradac's data set was collected for the purpose of understanding Opportunity Zones, the SEC filings had an unrelated purpose and have no specific data about Opportunity Zone investments.[19]

The IRS data from Forms 8996 and 8997 would be much more robust, since they would reveal the identity of all Opportunity Funds and would show the amount of investment in specific Opportunity Zone census tracts.[20] The CEA should have used the more complete IRS

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[16] Council of Economic Advisors, *The Impact of Opportunity Zones: An Initial Assessment* (Aug. 2020) (online at www.whitehouse.gov/wp-content/uploads/2020/08/The-Impact-of-Opportunity-Zones-An-Initial-Assessment.pdf).

[17] *Id.*

[18] Internal Revenue Service, *Investing in Qualified Opportunity Funds*, 85 Fed. Reg. 1866 (Jan. 13, 2020) (final rule).

[19] Securities and Exchange Commission, *Form D: Notice of Exempt Offering of Securities* (online at www.sec.gov/files/formd.pdf).

[20] Department of Treasury Internal Revenue Service, *Form 8996: Qualified Opportunity Fund* (Jan. 2020) (online at www.irs.gov/pub/irs-pdf/f8996.pdf).

information to generate a more accurate report. More importantly, this data should be made available to policymakers so we can assess the program for ourselves.

2. Flawed Logic and Improper Calculations by CEA Overstated the Investments in Opportunity Zones by Tens of Billions of Dollars.

Under the bold heading, "Opportunity Zones' Effect on Total Investment," the CEA report estimates that the OZ program generated around $75 billion in investments. This headline figure is misleading, both qualitatively and quantitatively.

First, not all capital raised by these funds is an investment deployed to positive effect in distressed communities. For instance, when funds report capital raised to a private firm like Novogradac, it includes capital that has been committed but not transferred to the fund, which may also be contingent on the fund identifying a promising return on investment. In essence, counting capital raised is counting chickens before they're hatched—and not a true figure of equitable investment.

Second, the authors used dubious assumptions in coming to this result, in a way that appears to have inflated the figure of Opportunity Fund capital inferred from the limited data. CEA's estimate of $75 billion is an average of two separate extrapolations, $63 billion from the SEC data and $84 billion from Novogradac data. The report unreasonably assumes that because these estimates of total funds from those limited data sets are roughly similar, and that one data set was voluntary and the other non-voluntary, those estimates must be accurate.[21] The CEA's logical leaps cast doubt on their final figure of $75 billion.

In the final analysis, CEA's extrapolations are unnecessary when Treasury has already collected the information needed for an accurate and complete assessment of the number of funds and total investment value. That true data would instantly reveal the limitations of the SEC and Novogradac data, and any errors in CEA's assumptions and extrapolations.

3. The CEA Report Obscures the Distribution of Benefits, Making It Difficult to Assess the Program's Impact on Distressed Communities.

CEA estimates the Opportunity Zone program "may lift about 1 million people out of poverty, an 11 percent decrease in the baseline population in poverty in OZs." However, this estimate was inflated.

First, the estimate relies on the erroneous estimate of total investment, which may be only half the stated estimate. The CEA report, by making comparisons of tracts that were eligible for Opportunity Zone status with those that were finally selected as Opportunity Zones, fails to properly assess the program's effectiveness at helping the most distressed communities. This analysis does not show how that money is being spent or which communities are receiving the most investment. To properly assess whether Opportunity Zone investments are flowing broadly

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[21] Council of Economic Advisors, *The Impact of Opportunity Zones: An Initial Assessment* (Aug. 2020) (online at www.whitehouse.gov/wp-content/uploads/2020/08/The-Impact-of-Opportunity-Zones-An-Initial-Assessment.pdf).

to all Opportunity Zones—as opposed to, for example, a few high-flying luxury developments in rapidly gentrifying areas—it is essential to see the geographic distribution of investments.

Second, CEA selectively used numbers generated from studies of the NMTC Programs, which state that each $1 million in subsidized NMTC investment lifts 20 people out of poverty.[22] The NMTC program is not a fair comparison to the OZ program because its mechanisms to fight antipoverty more precisely target distressed communities and their needs. The OZ program lacks the guardrails of the NMTC program that ensure the funds are spent to fight poverty. For instance, the NMTC program requires that participant Community Development Entities (CDE) have a primary mission of serving, or providing investment capital for, low income communities or persons.[23] Additionally, the NMTC program maintains "accountability to residents of low-income communities through their representation on any governing board or advisory board of the CDE."[24]

In addition to overstating the OZ program's benefits, CEA's report also underestimates the cost of the OZ program. It uses a 10-year budget window to estimate that each $1 in investment will result in forgone federal revenue of 15 cents. However, this 10-year budget window cuts out from consideration capital gains that are deferred outside of that window, for which OZ investors receive the biggest tax breaks, a complete elimination of capital gains taxes for property held for more than 10 years. Any fair estimate of the costs must include those potentially massive tax breaks to the rich.

Independent Analysis Contradicts the White House Report and Raises Questions About the Effect of the Program on the Communities it is Designed to Serve

Researchers at the Urban Institute were able to conduct a qualitative assessment of a sample of Opportunity Zone tracts after painstakingly conducting in-depth interviews with project sponsors, fund managers, investors, wealth managers, developers, philanthropies, public and nonprofit agencies, state OZ program offices, and city-level OZ coordinators.[25] Their findings do not support the White House's fabrications about how it has implemented and overseen the program.

The Urban Institute report found that "although OZs were designed to spur job creation, the vast majority of OZ capital appears to be flowing into real estate, not operating businesses." The report found that only 4% of Qualified Opportunity Funds are "focused on investments into operating businesses."[26] Instead of creating jobs and stimulating economic activity, the OZ program may be mostly benefiting wealthy entities and individuals who develop high-end real estate or engage in speculative property investments.

[22] *Id.*

[23] 26 U.S.C § 45D(c)(1)(A) (2018).

[24] 26 U.S.C § 45D(c)(1)(B) (2018).

[25] Urban Institute, *An Early Assessment of Opportunity Zones for Equitable Development Projects* (June 2020) (online at www.urban.org/research/publication/early-assessment-opportunity-zones-equitable-development-projects/view/full_report).

[26] *Id.*

The report also found that the "most egregious failing of OZ's to date is that very little OZ investment is going to small businesses, the exact group of investees that proponents had held out as standing the most to benefit." More generally, Urban Institute found that the OZ program is operating in a way that is "least workable for the projects that could have the highest impacts" on addressing "high unemployment and job loss, including increased illness and mortality, lower achievement outcomes for children, the breakup of families, and significant lifetime earnings disparities between those who grew up in poor versus wealthy neighborhoods."[27]

Subcommittee's Investigation

The lack of reporting and the resulting misrepresentations of the program are of the utmost concern to the residents of OZs and the taxpayers who are subsidizing these programs. Low-income communities and the struggling individuals living and working in them may not be getting the support Congress intended, because the OZ program does not have the guardrails to ensure that the program is actually working for them.

In order to assist the Subcommittee in its review of the Opportunity Zone program, please provide the following information by December 30, 2020:

1. Aggregate data, including totals and quartile distributions, from all filings of Form 8996, separately for tax years 2018 and 2019, showing:

    a. The type of taxpayers (Item 1 on Form 8996);

    b. Total qualified opportunity zone property held on the last day of the first 6-month period of the tax year (Item 6 on Form 8996);

    c. Total assets held on the last day of the first 6-month period of the tax year (Item 7 on Form 8996);

    d. Total qualified opportunity zone property held on the last day of the tax year (Item 9 on Form 8996); and

    e. Total assets held on the last day of the tax year (Item 10 on Form 8996);

2. For each Qualified Opportunity Zone, aggregate data from Form 8996, separately for tax years 2018 and 2019, showing:

    a. The total value of QOZ business property held directly, broken down by owned and leased property, on the last day of the first 6-month period of the tax year and on the last day of the tax year (from Part V on Form 8996,

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[27] *Id.*

Qualified Opportunity Zone (QOZ) Business Property—directly owned or leased by taxpayer);

b. The total investment value of QOZ stock or partnership interest on the last day of the first 6-month period of the tax year and on the last day of the tax year (from Parts VI and VII on Form 8996, Qualified Opportunity Zone (QOZ) Stock or Partnership Interests);

c. The total tangible property of QOZ businesses, broken down by owned and leased, on the last day of the first 6-month period of the tax year and on the last day of the tax year (from Parts VI and VII on Form 8996, Qualified Opportunity Zone (QOZ) Stock or Partnership Interests); and

d. The number of unique QOFs reporting investments in the QOZ, broken down by QOFs reporting owned property, QOFs reporting leased property, QOFs reporting owned or leased property, QOFs reporting QOZ stock or partnership interest, and QOFs reporting any investment (property or stock or partnership interest);

3. A list of all QOZ businesses listed in column (b) of Part VI of Form 8996 and, for each business, the total reported investment value of QOZ stock or partnership interests and total reported tangible property (owned and leased) on the last day of the first 6-month period of the tax year and on the last day of the tax year;

4. For each Qualified Opportunity Fund, anonymized, aggregate data reported on Form 8997, separately for tax years 2018 and 2019, showing:

   a. The total short-term deferred gains held at beginning of tax year (from Part I, Total QOF investment holdings at beginning of tax year);

   b. The total amount of long-term deferred gain remaining at beginning of tax year (from Part I, Total QOF investment holdings at beginning of tax year);

   c. The total amount of short-term deferred gains invested during the tax year (from Part II, Current tax year capital gains deferred by investing in QOF); and

   d. The total amount of long-term deferred gains invested during the tax year (from Part II on Form 8997, current tax year capital gains deferred by investing in QOF);

5. Aggregate data, including totals and quartile distributions, from Form 8997, separately for tax years 2018 and 2019, showing:

   a. The total amount of short-term deferred gain in QOFs at the beginning and end of year; and

b. The total amount of long-term deferred gain in QOFs at the beginning and end of year;

6. The total number of filings of Forms 8996 and 8997, separately for tax years 2018 and 2019;

7. A description of how Treasury collected information about investments in QOZs and QOFs prior to the creation of Forms 8996 and 8997, and any collection methods post-creation of Forms 8996 and 8997 aside from those forms, and all information available from such collection methods;

8. All documents regarding Treasury's decisions:

   a. Not to require transaction-level data;

   b. Not to require public reporting forms by Qualified Opportunity Funds; and

   c. To collect all information on Qualified Opportunity Funds in tax return filings; and

9. All communications between Treasury and the Council of Economic Advisors regarding the Opportunity Zone program, including all data and information about Qualified Opportunity Zones and Qualified Opportunity Funds requested by or provided to the Council.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. An attachment to this letter provides additional instructions for responding to the Committee's request. If you have any questions regarding this request, please contact Subcommittee staff at (202) 225-5051.

Sincerely,

Raja Krishnamoorthi
Chairman
Subcommittee on Economic and Consumer Policy

Rashida Tlaib
Member of Congress

Enclosure

cc: The Honorable Michael Cloud, Ranking Member
Subcommittee on Economic and Consumer Policy