Congress of the United States
Washington, DC 20515

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April 17, 2019

The Honorable Steven T. Mnuchin
Secretary
US Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Mick Mulvaney
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

Dear Secretary Mnuchin, Director Mulvaney, and Commissioner Rettig:

As you develop regulations for the implementation of the Opportunity Zones (OZ) program—as designed in the *Investing in Opportunity Act* and enacted as part of the *Tax Cuts and Jobs Act*—we urge you to honor the program's fundamental goal of benefiting economically distressed communities through private investment incentives. While this unique program has significant potential for transformative economic and community development, it is critically important to ensure the program does not create one-sided "opportunity" that takes advantage of or brings economic harm to those most in need of its aid. The regulations designed by the federal government must include protections that prevent rapid gentrification and support the intended vision of community revitalization, economic growth, job creation, and long-term, sustainable investment.

This program was conceived to enable a broad array of private equity fund managers and investors to pool their resources, potentially increasing the scale of investments going to underserved areas. All across the United States, communities are eagerly making arrangements to attract long-term, patient private capital to invest in the 8,762 eligible low-income rural and urban zones.

This program holds exciting potential. If thoughtfully and intentionally implemented, it has the potential to address our uneven economic recovery and persistent lack of growth that continues to negatively impact many struggling communities. The regulations designed by the federal government must include protections that prevent rapid gentrification and support the intended vision of community revitalization, economic growth, job creation, and long-term, sustainable investment. However, without established regulatory guardrails there is little guarantee the program will benefit low-income persons. For example, the return on investments in OZs will likely be disproportionately accrued by already wealthy investors, leaving the distressed communities and residents with less than favorable results. As such, your agencies should ensure the program implements key protective measures for these struggling communities.

In October 2018, your agencies collectively published the first of several regulatory guidelines providing an outline of how OZs could function. However, we remain deeply concerned that opportunity zone investments are currently not required to demonstrate specific benefits to the local population, which could allow investors to select projects based solely on financial return, with little to no regard for social impact.

To date, community development advocates, local and state governments, financial institutions, and urban planners are preparing in earnest to begin the creation of qualified funds to support workforce and affordable housing, finance new infrastructure and update aging structures, invest in startup businesses, and upgrade pre-existing underutilized assets. There have also been reports of investors developing funds in contiguous zones that are not defined as economically distressed. According to an analysis by the Brookings Institution, nearly 20 percent of the zones were certified through provisions that allowed wealthier, adjacent zones to be designated. If the regulations remain open-ended or without stipulations that promote social impact investing, investments will flow unrestrained to these thriving non-distressed zones[1], leading many good projects centered around public benefit to go unfunded or under-funded.

Without thoughtful community development safeguards, we are also worried about distressed zones experiencing a rapid, untenable rise in housing prices and the cost of living for existing distressed residents. As you know, displacing low-income, often minority, persons from a community does nothing to improve their lives, in fact it further disrupts their social and economic mobility causing greater harm in the long run. More troubling is displaced residents may be forced to move into poorer and more vulnerable neighborhoods mired in concentrated poverty. Persistent, high-poverty neighborhoods tripled between 1970 and 2010[2], and we must ensure this federally-directed incentive program does not further exacerbate the problem. Communities across the United States are counting on the promise of this transformative investment. We cannot afford to get this wrong, and further fuel concentrated poverty and income inequality in the US.

In your critical oversight role of certifying eligible participants and ensuring the fair implementation of the OZ program, we respectfully request that you provide responses to the following questions:

Outcome Commitments

- What safeguards will be put in place to ensure the OZ program does not accelerate disruptive gentrification in the low-income, designated census tracts?
- What, if any, tenant affordability requirements or contingencies will be placed on real estate investments secured as a result of the OZ program?

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[1] White, Bob. "US Opportunity Zones: A Baseline." *Real Capital Analytics, Inc.*, 4 Dec. 2018, www.rcanalytics.com/opportunity-zones-baseline/.

[2] Courtright, Joseph, and Dillon Mahmoudi. *Neighborhood Change, 1970 to 2010: Transition and Growth in Urban High Poverty Neighborhoods*. CityLab, 2014, *Neighborhood Change, 1970 to 2010: Transition and Growth in Urban High Poverty Neighborhoods*, dillonm.io/articles/Cortright_Mahmoudi_2014_Neighborhood-Change.pdf.

- Since the 1970s, place-based federal programs and initiatives have been designed and implemented throughout the country. However, many of these well-intentioned programs have fallen short in producing the anticipated outcomes for underserved communities and their residents. What are the lessons learned from previous programs and what steps are your respective agencies and the Administration taking to ensure this program produces positive economic outcomes for the existing residents in these communities?
- The New Markets Tax Credit, one of the more successful incentives, has seen significant utilization and success since its inception because it requires engagement from local community development partners and incorporates an upfront government review process. In contrast, the OZ program is far more flexible for investors, with little to no oversight to ensure that the types and locations of projects are consistent with improving local economic conditions. What, if any, oversight do your agencies plan to provide in ensuring the program does not result in widespread corruption, over-investments in metropolitan communities that are already thriving, tax shelters, among other issues?

Reporting Requirements & Metrics

- What reporting requirements, metrics, data collection efforts, and accountability tools are being utilized to determine whether an OZ is directly or indirectly improving the community or communities in its designated census tract, as well as socioeconomically empowering the existing residents?
- In what ways are your agencies working with local and state governments to ensure the proper data collection and transparent public reporting will take place to assess participation in and efficacy of the program?

Definition of Abuse

- Will there be any penalties or deterrents for investors or OZ fund creators that abuse or manipulate the program?
- Recent reports have indicated that wealthy investors are most interested in storing their capital gains in opportunity zones that are already revitalizing, experiencing significant development, or contain properties they already own[3]. How can the regulations play a role in encouraging the even distribution of investments across the country, particularly in communities that are most in need?

Distribution of Investments

- The current regulations appear to strongly favor real estate projects, leaving other viable concepts or proposals at a disadvantage (i.e. startup ventures, small business incubators, microenterprises). Are there further incentives that can be incorporated to encourage investment in non-real estate ventures?
- Given these OZ funds and the investment levels are not capped, how will you encourage investors to distribute their capital gains into a diversity of tracts and OZs? What can be done to limit an over-saturation or excessive concentration of investments into a few OZ funds or regions of the country?

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[3] Strickler, Laura, and Stephanie Ruhle. "Trump, Kushner Could Benefit from New Federal 'Opportunity Zones'." *NBCNews.com*, NBCUniversal News Group, 12 Dec. 2018, www.nbcnews.com/politics/donald-trump/trump-kushner-lefrak-could-potentially-benefit-federal-opportunity-zones-n946821.

Again, we urge you to develop the program regulations in a way that allows for the program to equitably benefit our most underserved communities and the participating investors. We also respectfully ask that you incorporate community development best practices into the federal guidelines thereby ensuring the OZ program drives investment that delivers economically inclusive and fair outcomes. Thank you for your attention to these concerns and we look forward to working with you.

Sincerely,

Alma S. Adams, Ph.D.
Member of Congress

Gwen Moore
Member of Congress

Anthony Brown
Member of Congress

Danny K. Davis
Member of Congress

Barbara Lee
Member of Congress

Emanuel Cleaver
Member of Congress

Bennie Thompson
Member of Congress

Eddie Bernice Johnson
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Donald Payne Jr.
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Marc Veasey
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Bonnie Watson Coleman
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