ABPN ASSET BUILDING POLICY NETWORK

December 21, 2018

Internal Revenue Service
P.O. Box 7604
CC:PA:LPD:PR (REG–115420–18)
Ben Franklin Station
Washington, DC 20044

Re: Investing in Qualified Opportunity Funds, Docket Number REG-115420-18 or RIN 1545-BP03

On behalf of the Asset Building Policy Network, we write to comment on the Internal Revenue Service's proposed rule to provide guidance under new section 1400Z-2 of the Internal Revenue Code (Code) as it relates to the implementation of Opportunity Zones program.

The Asset Building Policy Network, or ABPN, is a coalition of civil rights, community development and policy organizations, including a financial institution, committed to the following core goals: coordinating savings and asset building policy and advocacy efforts at a national level, developing a shared communications agenda and strategy, and building the capacity of Network members and their networks. The ABPN seeks to improve the opportunity for economic progress for low-income individuals and families, especially communities of color, by increasing local access to responsible and appropriate financial products and services that can enable families to save, invest, preserve and build financial assets. The comments and recommendations within this letter are reflective of the ABPN as a body and not necessarily the position of each individual member.

As a collective of organizations who work to improve communities that have long been neglected, we thank the Internal Revenue Service and the U.S. Treasury Department for beginning the process of implementing the Opportunity Zones tax provision enacted under the Tax Cuts and Jobs Act of 2017.

However, while we are encouraged by the promulgation of rules and regulations that would govern this program, and by the potential benefits of private investment this program could leverage in low-income communities across the nation, we are deeply concerned about the risks and dangers of misguided investments that do not place the needs of the most vulnerable as the top priority. Unfortunately, while we understand the need to focus on clarifying several technical aspects of the Opportunity Zones statute, the regulations put forward by the IRS so far do not alleviate our concerns as we find the lack of clarity for ensuring how this new initiative will embody accountability, equity and full inclusion for our most vulnerable communities to be alarming.

Ultimately, while the intent for Opportunity Zones, as noted in the program's underlying legislation, the Investing in Opportunity Act,[1] is to attract much needed investment in low-income communities that have suffered neglect for decades, that intent will not be met, and unintended harmful consequences could result if equitable and inclusive community development practices are not embedded within the rules and regulations for those investments.

Therefore, we recommend that the IRS and U.S. Treasury Department take proactive steps to guide Opportunity Zone investments toward these overarching outcomes:

1. **Equitable growth.** Opportunity Zones should leverage tax incentives to create good jobs—defined as paying a living wage and offering worker protections and full benefits that support families—and increase economic security and mobility, as a means towards bridging economic inequality and the racial wealth gap. Projects in the zones should result in jobs that provide wages that support a dignified standard of living, full benefits and workers' rights, and safe and healthy working conditions. Developers and investors of color should have access to contracting opportunities in the zones.

2. **Development without displacement**. Opportunity Zones should foster greater housing affordability and security for families most at risk of displacement, including low-income households and households of color.

3. **Healthy communities of opportunity**. Investments should drive equitable growth and prosperity for current low-income residents and communities of color within the zones. Projects should increase services available to vulnerable populations such as affordable transportation options, health-care facilities, healthy food retail, and quality education services.

More specifically, we urge the IRS and the U.S. Treasury Department to consider the following guardrails for Opportunity Zones across the estimated 8000+ communities that will be impacted:

1. **Allow local and state governments to configure additional guidelines for Opportunity Zones.** The U.S. Treasury Department should grant flexibility to local and state governments to issue additional guidelines as needed to ensure that investments benefit local communities, residents, and small businesses to prevent unintended consequences or harm, such as those stemming from housing and commercial displacement.

2. **Ensure that investments do no harm to low-income residents and small businesses.** Over the last decade across America, large parts of our country have faced intense and increasing displacement pressures that have led to an alarming rise in evictions of residential tenants and small businesses, as well as home foreclosures amongst vulnerable seniors and long-term residents. These issues have led to destabilization of families, disruption of community institutions, a weakening of the fabric of neighborhoods, and re-segregation of communities.

   To prevent further harm to our most vulnerable communities, fund managers should be required to demonstrate, through assessment of localized data and public input, that investment strategies will not place additional displacement risks on low-income renters, low-income/at-risk homeowners, local small businesses, and cultural districts and institutions.

3. **Specifically define abuse in the regulations.** Define "abuse" in the regulations to include projects that result in eviction of tenants or small businesses, dramatically increased rents, or the loss of deed restricted or naturally-occurring affordable housing.

4. **Require declaration of intent in order to certify Opportunity Funds.** To be certified by the U.S. Treasury Department as an Opportunity Fund, the agency should require Opportunity Funds to declare their investment intentions and commit their investments to specific community benefit outcomes (i.e. equitable growth, development without displacement and healthy communities of opportunity) as a condition of certification.

5. **Set enhanced performance measures for Opportunity Zones to ensure vulnerable residents are protected.** Building on the measures outlined in the *Tax Cuts and Jobs Act of 2017 Conference Report*[2]—related to job creation, poverty reduction, and new business starts—we recommend that the U.S. Treasury Department submit annual reports to Congress detailing the metrics related to community and resident benefits in each qualified Opportunity Zone, and that such reports be published on the U.S. Treasury Department department's website.

   More specifically, and in addition to the metrics outlined in the Congressional Conference Report,[3] we recommend that reported metrics include the following measures be assessed and reported within zones to ensure vulnerable residents are protected:

   a. **The number of good jobs created and held by residents of Opportunity Zones**. At a minimum, the jobs created must pay a living wage, and offer worker protections and full benefits that support families. It will be critical to ensure that the creation of new businesses and new jobs are benefiting residents to adequately measure whether the investments are meeting the legislative intent.

   b. **The number of dedicated affordable housing units** (60 percent of area median income or less, or as determined based on local housing needs) **created or preserved**. This will allow the U.S. Treasury Department to monitor the ability of residents to remain in their homes even while growth and development occur.

   c. **Number/percentage of investments in minority/disadvantaged/women-owned businesses**, providing an equity framework that ensures investments are available to such businesses.

   d. **Revitalization of neighborhoods suffering from vacant structures and disinvestment**. By measuring the number of vacant properties or structures, for example, the public can determine what kinds of investments are most needed within these distressed census tracts.

   e. **Increase in the number of critical services available to vulnerable populations** such as transportation options, health care facilities, healthy food retail, quality education services, all of which are necessary to build communities of opportunity.

6. **As part of the certification process, Opportunity Funds should identify and commit their investments to specific community benefit outcomes**. This includes making the previously recommended reporting requirements publicly available prior to designating Opportunity Funds so that the Funds can tailor their investment models to best meet the community benefit metrics emphasized by Treasury. In turn, this would ensure that these new investment funds are structured with an eye towards equitable community investments from the beginning.

   We also recommend that the U.S. Treasury Department require Opportunity Funds to share their intentions for investing in geographic areas, investment types, and asset classes prior to receiving certification. This information should also be publicly available to assist investors and developers seeking to work with an Opportunity Fund in certain census tracts and to provide the information necessary for the community and the public at large to hold the Opportunity Fund accountable for the investments made.

We appreciate the opportunity to comment and encourage full consideration of the above guiding principles, recommendations, reporting requirements, and certification guidance in the implementation of Opportunity Zones.

Sincerely,

Asset Building Policy Network

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[1] See S.293 - Investing in Opportunity Act, H.R.828 - Investing in Opportunity Act, 115th Congress

[2] Tax Cuts and Jobs Act, Conference Report 115–466, *House of Representatives*, 115th Congress, December 15, 2017, https://www.congress.gov/115/crpt/hrpt466/CRPT-115hrpt466.pdf

[3] Ibid.