Enterprise

December 19, 2018

CC:PA:LPD:PR (REG-115420-18), Room 5203
Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington, DC 20224

On behalf of Enterprise Community Partners (Enterprise), I want to thank you for this opportunity to offer comments on the proposed rule for Investing in Qualified Opportunity Funds.

Enterprise is a leading provider of the development capital and expertise it takes to create well-designed, affordable homes and vibrant communities. Since 1982, we have raised and invested $36 billion in equity, grants and loans to help build or preserve nearly 529,000 affordable homes in diverse, thriving communities. This includes community investments through Enterprise Community Loan Fund, a Department of Treasury-certified Community Development Financial Institution (CDFI) and one of the largest nonprofit loan funds in the country.

Enterprise has been deeply engaged in Opportunity Zones since the enactment of the Tax Cuts and Jobs Act of 2017. In May 2018 our chief executive officer testified before the Joint Economic Committee on The Promise of Opportunity Zones (Appendix A). In August we announced the creation of one of the first Qualified Opportunity Funds. In partnership with Rivermont Capital and Beekman Advisors, the Rivermont Enterprise Emergent Communities Fund aims to raise $250 million with a first close in December 2018 and will invest in main streets and support local entrepreneurs across small cities and towns in the Southeast United States.

Enterprise also submitted comments to the Department of Treasury and IRS on this tax incentive in March and again in July of this year, urging the Administration to ensure Opportunity Fund investments are accountable to community needs and clarify that residential rental property qualifies as an Opportunity Zone Business (Appendices B and C).

The guidance provided by IRS in this initial round of regulations was helpful in several areas for the diverse array of stakeholders seeking to structure Opportunity Funds. For example, while an affirmative statement remains preferable, we infer through examples provided in the proposed rule that residential rental property is indeed a qualified business activity. We are also pleased to see IRS commit to addressing information reporting requirements in the next round of proposed rules, and we continue to stress that transparency and accountability are the keystone to fulfilling the tax incentive's original intent of transforming economically distressed communities.

However, some topics require further clarification. Based on our current work structuring Opportunity Funds and engaging with communities and investors, we offer the following insight as top priorities at this stage in the rule-making process:

- Prevent predatory or speculative purchasing of vacant land under the substantial improvement test
- Require a higher "Substantially All" threshold for real estate projects
- Provide flexibility for the means of measuring compliance with the 90-percent asset test
- Provide regulations that encourage pairing investments with other tax credits
- Track and report outcomes of Opportunity Fund investments

Prevent Predatory or Speculative Purchasing of Vacant Land Under the Substantial Improvement Test

Enterprise appreciates the flexibility that the IRS has provided by excluding the value of land from the substantial improvement test for tangible property. We believe this will be particularly conducive to our efforts to preserve existing affordable homes, especially in high-cost areas where rapidly rising costs often contribute to the displacement of low- and moderate-income residents in unsubsidized, market rate housing.

Enterprise is concerned about how this rule may incent predatory or speculative purchasing of vacant land with minimal physical improvement. This kind of activity is ultimately detrimental to the community, and we therefore urge IRS to consider regulations to prevent such abuse. Subtracting the value of land from Qualified Opportunity Zone (QOZ) Property could be especially problematic in the case of land that is vacant, significantly underdeveloped or with significantly depreciating assets (i.e. dilapidated or uninhabitable structures). In such cases, the substantial improvement test would result in little or no improvement to QOZ Property. We are concerned about the potential for speculative investments, particularly in areas that have already experienced rising costs and where investors could gain a profit by simply buying and holding a piece of valuable land to the detriment of broader community revitalization efforts.

Enterprise urges the IRS to explicitly prevent these predatory or speculative activities under the Opportunity Zones regulations. This practice would be counter to the statute's intent since it would provide no economic or other benefit to the community, and we caution against the potential for negative media coverage of the Opportunity Zones initiative overall should such activity take place.

Enterprise also requests guidance on which entity will be designated to appraise QOZ Property.

Require a Higher "Substantially All" Threshold for Real Estate Projects

Enterprise urges the IRS to consider creating separate "substantially all" threshold tests for real estate projects and other qualified investments. The statute requires substantially all of a partnership or corporation's tangible property owned or leased to be QOZ Business Property, and the IRS has proposed 70 percent as the threshold for meeting this test.

Although the 70 percent threshold may make sense for investments in qualified business activity, which may be more fluid and require such flexibility to be successful, we believe there should be a separate and higher threshold for real estate investments since those projects are static. Again, Enterprise cautions against the perception of real estate receiving preferential tax treatment from the federal government if it is located outside of a Qualified Opportunity Zone.

Provide Flexibility for the Means of Measuring Compliance with the 90-Percent Asset Test

Under "Valuation of assets for purposes of the 90-percent asset test" in the proposed regulations, there is a reference to the concept of "applicable financial statements" within Section 1.475(a)-4(h) of the Internal Revenue Code. Given the varied nature of potential investment structures, we urge the IRS to clarify that Opportunity Funds have the flexibility to use a basis other than US GAAP for measuring compliance with the 90-percent asset test. For example, Opportunity Funds have considered using a ground lease structure to successfully execute investments in Indian Country. The preferred method to value those assets would be on a cost basis. This lack of certainty and flexibility may create a barrier to investing in the 248 Qualified Opportunity Zones located in Indian Country.

Provide Regulations that Encourage Pairing Investments with other Tax Credits

Enterprise believes that Opportunity Zone investments will be the most impactful when paired with existing federal, state and local community development initiatives, such as the Low-Income Housing Tax Credit

(Housing Credit) and New Markets Tax Credit (NMTC). Opportunity Zones provide another source of private capital to advance community revitalization efforts and could complement existing programs and efforts.

Housing Credit developments have been prioritized by each state based on local needs, and developers go through an exceptionally competitive and rigorous application process with State Housing Finance Agencies to be awarded Housing Credits. Community Development Entities (CDEs) go through a similarly competitive application process with the Treasury Department's Community Development Financial Institution (CDFI) Fund to receive NMTCs, which are required to be located in low-income census tracts. Both public-private partnerships have a proven history of spurring private investment and revitalization in communities that most need it.

Considering the alignment of mission between these tax credits and the new Opportunity Zones benefit, we strongly urge the IRS to issue regulations that most efficiently allow the Credits to be paired with Opportunity Fund equity. Combining Opportunity Zone equity investments with Housing Credits and NMTCs will maximize the impact each will have in low-income communities.

Track and Report Outcomes of Opportunity Fund Investments

We were pleased to see the IRS commit to addressing information reporting requirements in the next round of proposed rules on Opportunity Zones. We were also encouraged to see the White House direct federal agencies to evaluate the effect of public and private investments in distressed communities, including in Qualified Opportunity Zones, in the *Executive Order on Establishing the White House Opportunity and Revitalization Council* that President Trump signed on December 12. This indicates that the Administration believes that reporting and tracking outcomes is a critical component of monitoring success and efficacy, and we urge the IRS to enact regulations that fulfill this commitment.

As we noted in our previous comment letters to the Treasury Department and IRS, Enterprise urges Treasury to follow Congress's guidance – included in the Investing in Opportunity Act and clarified in the Conference Report that accompanied Tax Cuts and Jobs Act – and collect and make publicly available transaction-level data from Opportunity Funds so that the public and Congress can evaluate the efficacy of the Opportunity Zones tax incentive.

The Conference Report that accompanied the Tax Cuts and Jobs Act included the following guidance related to annual reporting requirements:

> *The Secretary or the Secretary's delegate is required to report annually to Congress on the opportunity zone incentives beginning 5 years after the date of enactment. The report is to include an assessment of investments held by the qualified opportunity fund nationally and at the State level. To the extent the information is available, the report is to include the number of qualified opportunity funds, the amount of assets held in qualified opportunity funds, the composition of qualified opportunity fund investments by asset class, and the percentage of qualified opportunity fund investments. The report is also to include an assessment of the impacts and outcomes of the investments in those areas on economic indicators including job creation, poverty reduction and new business starts, and other metrics as determined by the Secretary.*

In addition to the metrics outlined in the Conference Report – job creation, poverty reduction, and new business starts – Enterprise urges the collection of data on the number of dedicated affordable housing units (for households earning 120 percent of area median income or less) created or preserved. Collecting and analyzing this data will be critical, particularly when considering the impact on residents who were living in the community at the time the census tract was designated as a Qualified Opportunity Zone. Enterprise would be happy to provide additional support through our free Opportunity360 data and mapping platform to help Treasury identify appropriate metrics and indicators.

Final regulations for Opportunity Zones must include provisions that promote the transparency of Opportunity Fund activities and ensure accountability to prevent abuse. There is precedent for the Treasury Department to collect and publicly report data on NMTC and CDFI Fund-supported deals, and we encourage the IRS to consider using existing infrastructure to accomplish the information reporting needed for Opportunity Zones.

In addition to the areas of requested clarification above, we urge the IRS to address the information requested by the Opportunity Zones Working Group hosted by Novogradac & Company, of which Enterprise is an active participant.

Enterprise looks forward to working with Treasury to ensure that Opportunity Zones are a successful community investment tool that brings equitable and inclusive growth to the more than 8,700 designated areas. If you have any questions regarding these comments, please do not hesitate to reach me at lblatchford@enterprisecommunity.org.

Laurel Blatchford

Laurel Blatchford
President
Enterprise Community Partners

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Appendix A

Testimony of Terri Ludwig
Chief Executive Officer
Enterprise Community Partners
Before the Joint Economic Committee

"The Promise of Opportunity Zones"
May 17, 2018

Chairman Paulsen, Ranking Member Heinrich and members of the Joint Economic Committee, thank you for the opportunity to testify on the Opportunity Zones provision that was included in the Tax Cuts and Jobs Act of 2017.

I am Terri Ludwig, chief executive officer of Enterprise Community Partners (Enterprise). Enterprise is a proven and powerful nonprofit that improves communities and people's lives by making well-designed homes affordable. For over 35 years, we have increased the impact of investment in affordable homes by engaging the right partners, directing private and public capital to the right places, and working with government leaders to offer nonpartisan advice and support. Nationwide, Enterprise has invested $36 billion in equity, grants and loans to help build or preserve nearly 529,000 affordable homes in diverse, thriving communities in all 50 states. Last year we invested $7.2 billion, resulting in the creation or preservation of more than 26,000 affordable homes, almost 35,000 workforce homes, and 35 million square feet of commercial space. I have spent the past 30 years working in financial services, real estate, social sector and entrepreneurial leadership. My career has focused on creating opportunity in lower-income areas: at Accion I led the then-largest U.S. microfinance program, which brought affordable small business loans to entrepreneurs, and I was president and CEO of Merrill Lynch's community reinvestment business unit.

Enterprise builds much more than just housing. We build vibrant communities. We know that access to the social determinants of health can influence an individual's trajectory in life, which is why our investment portfolio also includes health clinics, schools and access to healthy foods and public transportation. Together with safe, decent, affordable quality housing, these are the attributes of economic mobility and opportunity. We have touched millions of lives through our work – in urban, rural and all other types of communities – but there is more to be done. We know that the zip code in which a person lives can still affect the life they can have.

I am honored to share with the committee our thoughts on how the public policy goals that gave rise to the creation of Opportunity Zones – bolstering inclusive economic growth – can be realized. My testimony includes:

- An overview of the work we have been doing to ensure that Opportunity Zones are successfully utilized.
- Feedback from communities throughout the nation.
- Recommendations for implementation of Opportunity Zones.

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Like a number of members of this committee, Enterprise supported the Investing in Opportunity Act (IIOA, S. 293), the bipartisan legislation that introduced the Opportunity Zones concept. We endorsed the bill because we recognized the tremendous need for additional investment in the communities we serve.

When IIOA was introduced in the 115th Congress, the original co-sponsors – Senators Tim Scott (R-SC) and Cory Booker (D-NJ) and Congressmen Pat Tiberi (R-OH) and Ron Kind (D-WI) – issued the following statement:[i]

"Too many American communities have been left behind by widening geographic disparities and increasingly uneven economic growth. We come from different parties and regions, but share the common conviction that all Americans should have access to economic opportunity regardless of their zip code. The Investing in Opportunity Act will unlock new private investment for communities where millions of Americans face the crisis of closing business, lack of access to capital, and declining entrepreneurship. American ingenuity has never failed us, and with this bill, we will dramatically expand the resources to restore economic opportunity, job growth, and prosperity for those who need it most."

In the Tax Cuts and Jobs Act, the Opportunity Zones tax incentive was designed to facilitate *"new channels for investment in small businesses, supporting entrepreneurs, developing blighted properties, investing in local infrastructure projects, and other activities to create new opportunities for local residents."* Its graduated tax benefit structure is designed to incent long-term private investment in designated distressed communities (Qualified Opportunity Zones) through newly authorized investment vehicles called Opportunity Funds. Opportunity Funds provide an alternative to assets subject to capital gains. If an investor reinvests unrealized capital gains into an Opportunity Fund, they are eligible to receive a tax deferral, reduction in tax liability, and a tax exemption based on the length of time invested in the Opportunity Fund. We are pleased to add this tax incentive to our toolkit of proven affordable housing and community development programs. According to the Economic Innovation Group, there is an estimated pool of $6 trillion in unrealized capital gains[ii], and given that the Opportunity Zones tax benefit is not capped, it has the potential to become the nation's largest tool for economic development.

In order to achieve the intent of IIOA – "*expand the resources to restore economic opportunity, job growth, and prosperity for those who need it most*" – it is critical that Opportunity Zones are implemented in a way that truly bolsters inclusive economic growth in urban and rural communities alike. A recent study by the Urban Institute, "Inclusive Recovery in US Cities," found that, "economically healthy cities tend to be more inclusive than distressed ones,"[iii] underpinning the importance of ensuring that current residents and businesses in Qualified Opportunity Zones are able to realize the benefit of Opportunity Fund investments. Housing affordability and job availability were among the indicators Urban Institute considered in its set of inclusion metrics. All types of communities, from urban to rural, need affordable housing and access to jobs that pay a living wage. Given how important these and other related issues are to inclusive growth, we believe that investments in Qualified Opportunity Zones can, when carefully implemented, provide sustained community benefits for existing residents and businesses.

Fostering Successful Utilization of Opportunity Zones

As a national leader in the field of affordable housing and community development finance, Enterprise knows well the value of public-private partnerships that encourage investment activity that would not occur without incentives, or seed funding from the government. We have deep expertise in aggregating private capital and then deploying those funds in programs such as the Low-Income Housing Tax Credit[iv] and New Markets Tax Credit[v]. These two proven public-private partnerships exemplify how patient, long-term capital enables and encourages inclusive communities where housing is affordable across a broad income range and local businesses can expand their operations. Similarly, there is strong potential to utilize Opportunity Zones in a way that transforms communities and residents' lives when investments are aligned with local priorities and needs.

Since the passage of the Tax Cuts and Jobs Act at the end of 2017, we have been working with governors, mayors, investors, community-based organizations and others to gather and share data, disseminate critical information, identify emerging best practices and provide technical assistance on the implementation of Opportunity Zones. For example, we created free, customizable online maps to identify which Census tracts would be eligible for selection, overlaid with the availability of existing community development resources. Through the use of our Opportunity360 data and mapping tool,[vi] we are working closely with communities to provide them with in-depth analysis and help them understand the potential uses and benefits of this new way to invest in communities.

Enterprise is exploring Opportunity Fund models that would allow us to invest in and promote the activities that foster inclusive economic growth by promoting the availability of affordable homes and living-wage jobs. Our vision for the successful implementation of Opportunity Zones would include many of the same best practices that we have seen in our affordable housing and community development work over the past 35 years. These include investments that develop or preserve affordable housing, create and retain jobs that pay a living wage, support minority/disadvantaged/women-owned businesses, and increase transportation options and the overall infrastructure needed to increase access to opportunity for all community members. Our commitment to transparency and impact measurement will apply to any Opportunity Fund we may create, and our hope is to demonstrate that capital can be deployed successfully to deliver compelling financial returns *and* social benefits.

Feedback from Communities

Enterprise began developing and distributing resources and tools on Opportunity Zones in January 2018. Our online mapping tool has been accessed a total of more than 37,000 times by users in every state in the nation, including state and local government officials who said it informed their Opportunity Zone nominations. Enterprise hosted three free webinars to provide additional information about Opportunity Zones; collectively they garnered 2,500 registrants from across the country. Through these activities, we have learned a lot from our current partners, and been introduced to many new ones. I would like to share some of these observations with you today.

Many communities are looking to this new tax incentive as a catalyst for economic revitalization, and Enterprise is thrilled to have the opportunity to work alongside our partners as we consider how to most effectively deploy capital into these newly designated Opportunity Zones. In Minnesota, for example, we provided data and technical assistance to help the state Department of Employment and Economic Development understand the relationship between eligible tracts and other federal place-based investment programs, so the state could better focus its designations in places where Opportunity Zone investments could best align with other public priorities.

Other communities, however, have expressed concerns that additional private investment without an explicit commitment to benefiting local residents and businesses could unintentionally displace the very residents and businesses that Congress is seeking to support through this new tax benefit. In Oregon, we assisted members of the governor's team in incorporating a measure of housing stability into their process, allowing them to focus on areas where residents were less likely to be displaced by increasing land values as a result of investments.

In these and other cases, we are seeing local communities work to determine what is best for them. In fact, Enterprise applauds the flexibility of this tax incentive and its responsiveness to local needs and priorities and is excited about the potential for additional investment in our nation's distressed communities.

At the same time, the risk of not meeting the intended goal of inclusive economic growth that benefits existing residents and businesses also must be considered. For this reason, we urge that optimism be balanced with a sense of caution. This tax incentive – and the funds that will be created as a result – must be developed carefully and with attention to the long-term goals of communities, and with an eye towards potential negative unintended consequences. In particular, we believe that there is an important role for government to play – at the federal, state, and local level – to ensure that these investments advance local policy priorities and that their benefits are fully realized by all members of a community receiving the investment, not just a few. For instance, a central feature of Colorado's process for Opportunity Zone nominations was community engagement, as the state carefully solicited input prior to selecting their tracts. And in Michigan, the state housing finance agency is exploring innovative ways to incentivize affordable housing development in designated Zones.

Recommendations for Implementation

Enterprise and our partner organizations are eagerly waiting for the U.S. Department of Treasury and the Internal Revenue Service to release additional guidance on certifying and structuring Opportunity Funds. We have identified two primary sets of issues that we believe will be critical to focus carefully on moving forward: promoting the transparency of Opportunity Fund activities, and ensuring accountability and preventing abuse in implementation. I want to share more about those here.

Promote Transparency to Ensure Accountability and Evaluate Impact. In the Conference Report that accompanied the Tax Cuts and Jobs Act, Congress clearly directed Treasury to report back on the use Opportunity Funds. To do so, Treasury must be able to collect and share data from the start. Due to the foregone revenue associated with the Opportunity Zones tax benefit, Enterprise believes that Opportunity Funds should be required to report specific investment activity to ensure accountability of federal resources. Because this tax benefit specifically incents investment in distressed communities, it is important that information is made publicly available so that stakeholders, including members of Congress, can evaluate the impact that these investment funds have on local residents and businesses.

The Conference Report included the following guidance related to annual reporting requirements:

> *The Secretary or the Secretary's delegate is required to report annually to Congress on the opportunity zone incentives beginning 5 years after the date of enactment. The report is to include an assessment of investments held by the qualified opportunity fund nationally and at the State level. To the extent the information is available, the report is to include*

the number of qualified opportunity funds, the amount of assets held in qualified opportunity funds, the composition of qualified opportunity fund investments by asset class, and the percentage of qualified opportunity fund investments. The report is also to include an assessment of the impacts and outcomes of the investments in those areas on economic indicators including job creation, poverty reduction and new business starts, and other metrics as determined by the Secretary.

Enterprise appreciates the guidance laid out in the Conference Report because it could allow Treasury, Congress and stakeholders to understand how the investments are impacting the local economy, community and residents. As Treasury and IRS consider additional guidance and clarification, Enterprise specifically recommends that Opportunity Funds be required, at a minimum, to report:

- Who the fund manager is.
- The state in which the fund is registered.
- Transaction-level information, such as the Zone(s) in which the fund has invested, how much the fund has invested, and in what the fund has invested (i.e. real estate, business, etc.).

And to provide an additional degree of public accountability, Enterprise recommends that Treasury make this information publicly available and allow stakeholders to comment on a fund's investments.

This transparency is in line with the original intent of IIOA and will allow Congress to evaluate the efficacy and impact of the tax benefit in meeting its intended policy goals, and thus make an informed decision about the future extension or expansion of Opportunity Zones.

*Ensuring Accountability and Preventing Abuse in Implementation***.** Opportunity Zones have the potential to catalyze investment in affordable housing, businesses that create living-wage jobs, public transportation, and other necessities for sustainable and prosperous communities. At the same time, our collective vision for Opportunity Zones cannot be realized without practical guardrails that help to ensure that the residents and business owners currently living in newly designated Qualified Opportunity Zones in fact benefit from the resulting economic growth. In the Tax Cuts and Jobs Act, Congress gave the implementing agency the authority to promulgate regulations to prevent abuse:

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including: (A) rules for the certification of qualified opportunity funds for the purposes of this section, (B) rules to ensure a qualified opportunity fund has a reasonable period of time to reinvest the return of capital from investments in qualified opportunity zone stock and qualified opportunity zone partnership interests, and to reinvest proceeds received from the sale or disposition of qualified opportunity zone property, and (C) rules to prevent abuse.

Therefore, we recommend that the Department of Treasury issue regulations to prevent abuse not only to ensure that tax benefits inure to investments consistent with good public policy, but also lead to a direct and sustained benefit for the residents and local businesses in the census tract at the time it was designated as an Opportunity Zone.

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Because Opportunity Zones provide a federal tax benefit for investing in some of the nation's most vulnerable communities, Enterprise believes that it is critical that these investments benefit the communities that they are impacting. Every community has its own challenges, so "direct and sustained" benefits will look different across geographies, and state and local governments will need to consider policies and programs that fit their needs. However, Enterprise believes it is important for the federal government to explicitly prevent Opportunity Fund investments that would disproportionately harm low-income residents and local businesses.

For example, we recommend that Treasury prohibit abusive investments that result in the net elimination of affordable housing (housing that is affordable to residents earning up to 120 percent of Area Median Income) because housing affordability is vital to achieve the intent of the IIOA. The definition of abuse should also include the refinancing of existing projects. We believe that investments that do not result in new activities or harm low- and modest-income residents will be contrary to our collective public policy goals. We urge the use of notice-and-comment rulemaking to allow affected communities to participate in identifying practices that would constitute abuse.

These are the priorities that Enterprise is committed to achieving through our own work in distressed communities, and we encourage federal policy mechanisms to ensure that other stakeholders also address the needs of the communities in which they are investing.

Conclusion

Enterprise is eager to add Opportunity Zones to our industry's toolkit of affordable housing and community development resources, and we applaud the committee for convening this hearing to consider how to most efficiently implement this new tax benefit. If implemented with transparent reporting requirements and an explicit commitment to prevent abuse – and in doing so, connecting local residents to opportunity – Opportunity Zones could have a transformative impact in distressed communities nationwide.

Thank you for your efforts to ensure that distressed communities receive critical private investment capital. Enterprise would be pleased to work with you on implementing our recommendations and discussing these issues further.

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[i] Opportunity Zones were introduced in the 115th Congress through the Investing in Opportunity Act (S. 293 and H.R. 828), bipartisan legislation sponsored by Senator Tim Scott (R-SC), Senator Cory Booker (D-NJ), Congressmen Pat Tiberi (R-OH) and Congressman Ron Kind (D-WI). The concept for the Investing in Opportunity Act was introduced by the Economic Innovation Group, a bipartisan public policy organization that combines innovative research and data-driven advocacy to address America's most pressing economic challenges.

On February 2, 2018, Senator Scott, Senator Booker, Rep. Tiberi and Rep. Kind released a statement about the enactment of Opportunity Zones in the Tax Cuts and Jobs Act of 2017. Citing the challenges created by closing businesses, lack of access to capital, and declining entrepreneurship, these elected officials highlighted the potential for Opportunity Zones to "expand the resources to restore economic opportunity, job growth, and prosperity for those who need it most."

Enterprise supports the expansion of resources to address these challenges. We also believe that affordable housing and local businesses are critical for successful community development and prosperous neighborhoods, and we encourage lawmakers to commit to these community assets while implementing Opportunity Zones.

[ii] The Economic Innovation Group estimates that there is $6 trillion in untapped capital gains being held in stocks and funds. Opportunity Zones make it possible to reinvest this capital into communities that need it the most.

[iii] New research from the Urban Institute reports on trends in economic health and inclusion across many cities, including within a smaller subset of cities that have experienced an economic recovery. The researchers identify key lessons and common building blocks that can support progress on inclusion during a city's economic recovery.

[iv] The Low-Income Housing Tax Credit (Housing Credit) is the nation's primary tool for developing and preserving affordable rental housing. Since 1986, it has financed three million affordable rental homes, supported 3.4 million jobs annually, and generated $323 billion in local income nationwide.

Congress reaffirmed the Housing Credit's role in the tax code by preserving it in the Tax Cuts and Jobs Act of 2017. However, as a result of the corporate tax rate being lowered from 35 to 21 percent, investor demand for the Credit has decreased, which has impacted the amount of equity in the Housing Credit market. As a result, accounting firm Novogradac & Company estimates that approximately 235,000 fewer affordable rental homes will be produced over the next decade. Given that over 11 million households already pay more than half of their income on rent, this reduction production will exacerbate the vast and growing affordable housing crisis nationwide.

Congress made an important down payment on the Housing Credit in the Consolidated Appropriations Act of 2018 by enacting a temporary, 12.5 percent expansion of the Housing Credit for four years (2018-2021) and the new permanent option for income averaging in Housing Credit developments. Novogradac & Company estimates that this temporary expansion will result in the production of approximately 28,400 affordable rental homes over the next decade.

Enterprise applauds Congress for enacting these critical provisions to strengthen and expand the Housing Credit. While this is an important step forward, the country still faces a reduction in affordable housing production because of the lower corporate tax rate. Enterprise encourages Congress to enact the Affordable Housing Credit Improvement Act (S. 548), bipartisan legislation sponsored by Senate Finance Committee Chairman Orrin Hatch (R-UT) and Senator Maria Cantwell (D-WA). This bill would increase Housing Credit allocation authority by 50 percent, phased-in over five years, and would enact nearly two-dozen other provisions to strengthen the Housing Credit. The 50 percent cap increase would allow for the production or renovation of approximately 400,000 affordable rental homes over the next decade, which would fully make up for the reduced production resulting from the Tax Cuts and Jobs Act.

[v] The New Markets Tax Credit (NMTC) is an effective, targeted and cost-efficient financing tool that increases the flow of capital to businesses and low-income communities by providing a modest tax incentive to private investors. Since it was authorized in 2000, NMTC has leveraged nearly $80 billion in total capital investment to businesses and revitalization projects in communities with high rates of poverty and unemployment. NMTC has also generated more than one million jobs. This successful public-private partnership exemplifies how patient capital can directly benefit low-income residents, communities, and local businesses in urban and rural areas.

Congress reaffirmed the importance of NMTC by preserving the Credit in the Tax Cuts and Jobs Act of 2017. Enterprise applauds Congress for recognizing the value of this proven and effective community development tool. However, NMTC authorization expires at the end of 2019 unless Congress extends the Credit. Enterprise urges Congress to enact the New Markets Tax Credit Extension Act of 2017 (S. 384, H.R. 1098), bipartisan legislation to permanently extend NMTC.

[vi] Through our Opportunity 360 platform, Enterprise Community Partners created a specific data and mapping tool to specifically help states and others interested in Opportunity Zone eligibility to determine which tracts in their state or region are eligible. The tool also depicts how eligible tracts relate to other federal programs and designations, including Low-Income Housing Tax Credit developments, New Markets Tax Credit projects, Choice Neighborhoods, Empowerment Zones, and others.

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Appendix B

March 15, 2018

Mr. Scott Dinwiddie
Associate Chief Counsel
Income Tax & Accounting
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

Dear Mr. Dinwiddie,

As the Treasury Department begins the process of implementing Opportunity Zones as authorized by the Tax Cuts and Jobs Act of 2017, H.R. 1 (115), Enterprise Community Partners would like to offer our recommendations for ensuring this exciting new initiative is successful.

Enterprise is a leading provider of the development capital and expertise it takes to create decent, affordable homes and rebuild communities. Since 1982, we have raised and invested $36 billion in equity, grants and loans to help build or preserve nearly 529,000 affordable homes in diverse, thriving communities. This includes community investments through Enterprise Community Loan Fund, a Treasury Department-certified Community Development Financial Institution (CDFI) and one of the largest nonprofit loan funds in the country. Enterprise Community Loan Fund has invested more than $1.5 billion in low-income communities and helped to build or renovate nearly 100,000 affordable homes nationwide.

Enterprise is excited about the potential for the Opportunity Zones tax incentive to bring together public and private resources that create strong neighborhoods of opportunity for low- and moderate-income residents, and we are committed to working with Treasury to ensure that the revitalization associated with Opportunity Zones is more successful than many previous revitalization efforts. Some past federal efforts have exacerbated the very concentrated poverty they were meant to remedy, most notably the unintended consequences stemming from the Housing Act of 1949. By the late 1970s, an astonishing one million minority families were estimated to have been displaced by the urban renewal policies resulting from this Act. We understand that it is neither Congress nor Treasury's intent for Opportunity Zones to cause unintended consequences in these distressed communities, so we hope that Treasury will consider our recommendations to ensure community development best practices are included in the rules and regulations around Opportunity Zones.

<u>Designation of Qualified Opportunity Zones</u>

I. Request authority from Congress to extend the period during which Treasury can accept census tract nominations.
II. In rulemaking, require governors to substantiate Qualified Opportunity Zone nominations in the context of considerations outlined in the Conference Report of the Tax Cuts and Jobs Act.
III. Request authority from Congress to allow Treasury to select Qualified Opportunity Zones if the governor or State CEO fails to submit nominations.

IV. In rulemaking, request feedback from governors and the public about the process for nominating Qualified Opportunity Zones and use that feedback to create a flexible framework for re-evaluating Qualified Opportunity Zones, either through rule-making or by requesting additional authority from Congress.

Certification of Opportunity Funds

V. In rulemaking, define abuse to include investments that do not actively benefit the residents and local businesses living and operating in the census tract at the time it was designated as a Qualified Opportunity Zone.

VI. In rulemaking, include annual reporting requirements to ensure Treasury can analyze where Opportunity Funds invest their capital and can assess the impacts and outcomes of these investments.

VII. In rulemaking, require an Opportunity Fund to express its intent for type and location of investments prior to providing certification.

DESIGNATION OF OPPORTUNITY ZONES

I. Extend Determination Period

Nominating census tracts to be Qualified Opportunity Zones is a critical step in structuring this new community investment tool and should therefore be a thoughtful, deliberate process that incorporates feedback from local stakeholders and communities. With the Tax Cuts and Jobs Act enacted on December 22, 2017, states have only been provided until March 21, 2018, or April 20 if they request an extension, to identify, thoughtfully consider, and nominate census tracts for a critical revitalization opportunity.

Opportunity Zones was conceptualized in the bipartisan Investing in Opportunity Act (IIOA), S. 293 (115). The original intent of IIOA was that the 90-day determination period would start after Treasury's rules and regulations were finalized. Because Treasury is unlikely to have issued regulations by the March 21 deadline, we recommend that Treasury request additional authority from Congress to accept census tract nominations until 90 days after Treasury releases final rules regulating Opportunity Zones. States that have already submitted nominations prior to the availability of final rules should be able to amend their nominations during this ensuing 90-day period. This recommendation is the result of the following three points:

a) Time needed to develop guidance. Considering that the information available in the Opportunity Zones statute is limited at this early stage and groups are seeking clarification on the definitional meaning of certain terms, it is difficult for stakeholders to anticipate how it will be structured, what investments may or may not qualify, and other requirements that could be included in the rule-making process. It is hard to gauge investor demand for the various types of Opportunity Zone Property (small business versus real estate, for example) and properly evaluate which census tracts are best suited to be paired with Opportunity Fund capital. It is likewise difficult to predict how the investments may impact a community, especially communities that do not have the infrastructure to equitably manage an influx of capital. It is therefore critical to first know how Opportunity Zones will be implemented before governors can appropriately nominate census tracts.
b) Time needed to produce tools and resources. The CDFI Fund has been developing critical mapping tools and data resources to assist states in the nomination process. However, the CDFI Fund was tasked with this significant effort at the same time the Determination Period began, meaning that governors are attempting to make critical decisions about their distressed census

tracts while the necessary resources are still being developed. In fact, as recently as March 5th, the CDFI Fund made technical corrections to its mapping and data tools. While we applaud the CDFI Fund's thorough work as it seeks to create these critical tools, we believe that states would be best served nominating census tracts after the CDFI Fund has had sufficient time to fully develop and finalize its resources.

c) Considerations around unintended consequences. As with any federal initiative, the impacts across the country will vary dramatically based on local communities, economies, populations, and other factors. Governors must think critically about which census tracts to nominate; if this step is done hastily, mayors and local officials will not have the time to consider which policies and programs need to be implemented to stem the threat of unintended negative consequences such as the displacement of existing residents and local businesses, and establish a framework that ensures equitable economic growth. Even in places where these measures already exist, localities require more time than is currently available to reflect on Treasury's guidance and nominate the census tracts best-suited for these new investments.

II. Require Explanation of Qualified Opportunity Zones Nominations

The Conference Report that accompanied the Tax Cuts and Jobs Act provided the following guidance for nominating census tracts:

> *Governors are required to provide particular consideration to areas that: (1) are currently the focus of mutually reinforcing state, local, or private economic development initiatives to attract investment and foster startup activity; (2) have demonstrated success in geographically targeted development programs such as promise zones, the new markets tax credit, empowerment zones, and renewal communities; and (3) have recently experienced significant layoffs due to business closures or relocations.*

Enterprise believes that this guidance is important for ensuring that census tracts are selected with a mind towards intentional investments that promote equitable economic growth. We recommend that Treasury include in rulemaking a requirement for each state to submit alongside its census tract nominations an explanation of the factors that went into designating the identified tracts, with particular emphasis on the above guidance from Congress. Treasury should consider whether or not a governor provided justification for the nominated census tracts when deciding whether to approve that state's Qualified Opportunity Zones.

III. Allow Treasury to Select Census Tracts in Absence of Nominations

The Investing in Opportunity Act, S. 293 (115), also included a provision that would have allowed Treasury to designate a jurisdiction's Opportunity Zones if a governor failed to submit nominations within the designated timeframe; this provision was not ultimately included in the Tax Cuts and Jobs Act. As a result, governors who do not submit census tracts for nomination essentially opt out of being eligible for Opportunity Fund investments for the next ten years. We are concerned that the March 21 deadline for nominations or requesting an extension does not provide enough time to feasibly educate all governors about this opportunity, raising the risk that a state inadvertently misses the opportunity to benefit from this private capital. Enterprise recommends that Treasury request additional authority from Congress to select a jurisdiction's Qualified Opportunity Zones if the governor fails to do so. If Treasury receives this authority, we also recommend that the agency request local input to guide its decision-making process.

IV. Provide Flexibility for Re-Evaluating Eligible Qualified Opportunity Zones

Given the long-term nature of these investments, Opportunity Zones should be flexible enough to meet local priorities as they evolve, adaptable in responding to growth or unintended consequences, and sufficiently predictable for the financiers who invest in them. As such, Enterprise believes that Treasury should include a mechanism that would allow governors to amend the state's Qualified Opportunity Zones over the ten-year eligibility period to reflect potential changes within the census tract, while allowing any investments made in Zones no longer designated to continue to receive the statutory tax benefit. This would add an additional and important layer of state flexibility, while allowing any Opportunity Fund that has invested in a formerly Qualified Opportunity Zone to continue to receive the tax benefit so that investors and the market retain this certainty.

To do this, we recommend that Treasury request feedback from governors and the public about the need to re-evaluate eligible census tracts throughout the 10-year investment period and use that feedback to create a flexible framework that allows a limited number of changes to Qualified Opportunity Zones in each state. Any changes to a state's eligible census tracts should incorporate input from governors and the public to balance local priorities with the market's need for certainty.

If Treasury determines that it lacks the statutory authority to act on this recommendation, we recommend requesting such authority from Congress.

CERTIFICATION OF OPPORTUNITY FUNDS

V. Define Abuse to Protect Communities and Residents

The Tax Cuts and Jobs Act authorizes Treasury to issue regulations for preventing abuse of Opportunity Funds. Enterprise recommends that Treasury define "abuse" as any investment that does not provide a direct and sustained community benefit to the residents living in the census tract. For example, under this definition, abuse should prohibit the elimination of housing that is affordable to families making up to 120 percent of area median income (AMI). We are concerned that Opportunity Zones could unintentionally harm residents without adequate parameters to guard against displacement or prevent predatory capital from becoming an eligible investment. Enterprise believes that any investments targeted specifically at distressed communities with the purpose of deferring an investor's capital gains taxes must demonstrate a community benefit to be eligible for the tax incentive.

If Treasury determines that it lacks the statutory authority to act on this recommendation, we recommend requesting such authority from Congress.

VI. Include Annual Reporting Requirements

The Conference Report that accompanied the Tax Cuts and Jobs Act also included the following guidance related to annual reporting requirements:

> *The Secretary or the Secretary's delegate is required to report annually to Congress on the opportunity zone incentives beginning 5 years after the date of enactment. The report is to include an assessment of investments held by the qualified opportunity fund nationally and at the State level. To the extent the information is available, the report is to include the number of qualified opportunity funds, the amount of assets held in qualified opportunity funds, the composition of qualified opportunity fund investments by asset class, and the percentage of qualified opportunity fund investments. The report is also to include an assessment of the impacts and outcomes of the investments in those areas on economic indicators including job creation, poverty reduction and new business starts, and other metrics as determined by the Secretary.*

Enterprise supports this guidance and believes that Treasury should include it as a requirement during rulemaking because the data will allow Treasury, Congress and stakeholders to understand how the investments are impacting the local economy, community and residents. Without annual analysis of where this capital is invested, there will be no indication if the investments are benefiting or harming the residents and local businesses in the census tract at the time it is designated as a Qualified Opportunity Zone. Enterprise cautions against implementing a new community investment tool without the appropriate reporting and analysis requirements in place.

Specifically, Enterprise recommends that Treasury submit annual reports to Congress detailing metrics related to community and resident benefits in each Qualified Opportunity Zone and publish such reports on Treasury's website. In addition to the metrics outlined in the Conference Report – i.e. job creation, poverty reduction, and new business starts – potential metrics to consider include but are not limited to:

a) The number of jobs created and held by residents of Opportunity Zones that pay a living wage. It will be critical to understand whether the creation of new businesses and new jobs are benefiting local residents to adequately measure whether the investments are meeting the legislative intent.
b) The number of dedicated affordable housing units (120 percent of AMI or less) created or preserved. This will allow Treasury to monitor the ability of residents to remain in their homes even while growth and development occur.
c) 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 façade or streetscape improvements, for example, the public can determine what kinds of investments are most needed within these distressed census tracts.
e) Increase in the number of health care facilities, transportation options and quality education services, all of which provide pathways to opportunity.

Collecting and analyzing this data will be critical, particularly when considering the impact on residents who were living in the community at the time the census tract was designated as a Qualified Opportunity Zone. Enterprise would be happy to provide additional support through our free Opportunity360 data and mapping platform to help Treasury identify appropriate metrics and indicators.

If Treasury determines that it lacks the statutory authority to act on this recommendation, we recommend requesting such authority from Congress.

VII. Require Explanation of Intent for Fund Certification

Enterprise recommends that Treasury require each Opportunity Fund to identify and commit their investments to specific community benefit outcomes, as detailed in the above metrics, in order to be certified as an Opportunity Fund. This includes making the above reporting requirements publicly available prior to designating Opportunity Funds so that the Funds can therefore tailor their investment model to best meet the community benefit metrics emphasized by Treasury. This would ensure that these new investment funds are structured with an eye towards equitable community investments from the beginning. We also recommend that Treasury require Opportunity Funds to share their intentions for investing in geographic areas, investment types, and asset classes prior to receiving certification. We recommend that Treasury make this information publicly available to assist investors and developers seeking to work with an Opportunity Fund in certain census tracts.

If Treasury determines that it lacks the statutory authority to act on this recommendation, we recommend requesting such authority from Congress.

Enterprise

Enterprise looks forward to working with Treasury to ensure that Opportunity Zones are a successful community investment tool. If you have any questions regarding these comments, please do not hesitate to reach me at lblatchford@enterprisecommunity.org.

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Enterprise

Appendix C

The Honorable David J. Kautter
Acting Commissioner of the Internal Revenue Service and
Assistant Secretary of the Treasury for Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Mr. Scott Dinwiddie
Associate Chief Counsel
Income Tax & Accounting
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

July 20, 2018

Dear Acting Commissioner Kautter and Mr. Dinwiddie:

On behalf of Enterprise Community Partners, Inc., I write to you today with an urgent request for clarification and guidance on the Opportunity Zones provision of the Tax Cuts and Jobs Act of 2017. I understand the intention for Opportunity Zones to be a flexible investment tool, but currently a lack of clarity is impeding potential investments in distressed communities nationwide. Enterprise believes that additional guidance from you will ensure that this new tax incentive meets its intended goal – that is, benefiting residents of economically distressed communities.

Enterprise is a leading provider of the development capital and expertise it takes to create decent, affordable homes and rebuild communities. Since 1982, we have raised and invested $36 billion in equity, grants and loans to help build or preserve nearly 529,000 affordable homes in diverse, thriving communities. This includes community investments through Enterprise Community Loan Fund, a Department of Treasury-certified Community Development Financial Institution (CDFI) and one of the largest nonprofit loan funds in the country. Enterprise has also been the recipient of $960 million in New Markets Tax Credit awards.

Unfortunately, the lack of guidance around the rules and administration of Opportunity Zones is delaying our ability to quickly aggregate and deploy capital in designated Opportunity Zones. I raised these concerns to Congress in testimony before the Joint Economic Committee on “The Promise of Opportunity Zones” (see Attachment 1 for the full text of my testimony). Current uncertainty is hindering many potential investors and fund managers from utilizing this new tool, and we have been engaged in working groups that bring together broad coalitions of stakeholders seeking clarification on the implementation of Opportunity Zones. I would like to particularly emphasis our support for the letter submitted by the *Opportunity Zones Working Group, hosted by Novogradac & Company LLP*, on July 16 (see Attachment 2 for the full text). Enterprise is a signatory on this letter, which requests guidance and clarification on ten specific questions related to the Opportunity Zones provision.

<u>I urge you to immediately consider these requests for technical clarifications on Opportunity Fund investments</u> so that Enterprise and other affordable housing and community development lenders can have the certainty we need to efficiently structure Opportunity Funds and begin investing in communities.

I would like to specifically highlight Enterprise's interest in Q9 of the *Opportunity Zones Working Group* letter, which requests guidance on the eligibility of residential rental property to be a Qualified Opportunity Zone Business. Enterprise recognizes that affordable housing in diverse, thriving communities is a critical foundation for opportunity. We have extensive experience deploying capital into communities through proven public-private partnerships, such as the Low-Income Housing Tax Credit and the New Markets Tax Credit, and using this capital to foster far-reaching revitalization in distressed neighborhoods. We hope to create an Opportunity Fund that aligns with our existing efforts to make well-designed homes affordable in communities that are connected to jobs that pay a living wage, transportation options, healthy food, and educational institutions.

Without clarification from the IRS, investors and fund managers alike are uncertain if Opportunity Fund investments in affordable rental housing will qualify for the tax benefit, which is hindering our ability to deploy capital. We have encountered several potential deals over the last several months that we believe would benefit from the Opportunity Zone tax benefit – including projects that would have built or preserved affordable rental housing – but investors are hesitant to invest without the certainty that they will receive the agreed-upon benefit. Congressional and administration leaders – including Senator Tim Scott (R-SC), lead sponsor of the Investing in Opportunity Act (S. 293, 115), and HUD Secretary Ben Carson – have publicly cited housing as an intended activity in designated Opportunity Zones. However, the absence of specific clarification from the Treasury Department is hindering our ability to move forward with an Opportunity Fund that makes affordable rental housing a principal component of its mission.

Because of our desire to begin accepting funds and deploying capital into our nation's distressed communities, I ask that the IRS immediately provide clarification, either through a Frequently Asked Question (FAQ) document or other proposed rulemaking form, that residential rental property is a Qualified Opportunity Zone Business. A sentence stating that, "Residential rental property qualifies as an Opportunity Zone Business," would be sufficient. That guidance, together with FAQs addressing the other items included in the attached Novogradac working group letter, will enable Enterprise and our partner organizations to begin utilizing this exciting new investment vehicle to advance affordable housing and community development efforts.

Again, I want to thank you for considering Enterprise's comments on the implementation of Opportunity Zones, and for recognizing the importance of providing clarification and guidance to Opportunity Zone stakeholders. I look forward to the day when I can invite you and your colleagues to tour an Opportunity Zone property and witness firsthand the far-reaching benefits that these investments can have on low-income residents and communities.

If you have any questions regarding these comments, please do not hesitate to reach out to me or to Enterprise's Vice President for Public Policy, Marion McFadden, at mmcfadden@enterprisecommunity.org.

Terri Ludwig

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