



July 1, 2019

CC:PA:LPD:PR (REG-120186-18)
Room 5203
Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington, DC 20224

Re: 26 CFR Part I, REG–120186–18, Investing in Qualified Opportunity Funds

To Whom It May Concern:

Thank you for the opportunity to provide comments on the second round of IRS proposed regulations implementing the Opportunity Zones tax incentive. Enterprise believes the Opportunity Zones tax incentive should be used to advance equitable and inclusive growth and is pleased to offer recommendations to support that purpose.

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 \$43.7 billion in equity, grants and loans to help build or preserve nearly 585,000 affordable homes in diverse, thriving communities. This includes community investments through Enterprise Community Loan Fund, Inc., a Treasury Department-certified Community Development Financial Institution (CDFI) and one of the largest nonprofit loan funds in the country. Enterprise Community Loan Fund, Inc. has invested more than \$1.7 billion in low-income communities and helped to build or renovate nearly 110,000 affordable homes nationwide. Enterprise is launching our own family of qualified Opportunity Funds (QOFs), intended to advance equitable and inclusive growth in the communities where investments are made.

To ensure the tax benefits fulfills its intent, Enterprise recommends that the IRS modify proposed regulations to:

- Clarify the treatment of vacant land to prevent land banking;
- Encourage pairing with Low-Income Housing Tax Credits and New Markets Tax Credits; and
- Implement requirements to collect and publicly share meaningful data on QOF investments.

Clarify the Treatment of Land to Prevent Land Banking

In the most recent round of proposed regulations, the IRS acknowledged that even with general anti-abuse provisions in place, certain acquisitions of unimproved or vacant land “could lead to tax results that are inconsistent with the purposes of section 1400Z-2.” Accordingly, the IRS requested suggestions for anti-abuse provisions specifically under section 1400Z-2(e)(4)(c) to prevent land-banking or similar outcomes.

We agree with the IRS’ assessment that there is potential for abuse under this section. Although we believe that subtracting the value of land from Qualified Opportunity Zone (QOZ) Property for purposes of the substantial improvement test would be conducive to efforts to preserve affordable housing, that same provision could unintentionally result in predatory land-banking and long-term land holding. Such an outcome would contradict the goal of making improvements to acquired QOZ Property. This is particularly true in areas experiencing rapidly rising costs.

The potential for abuse would be especially problematic in the case of land that is vacant, significantly underdeveloped or with significantly depreciating assets (i.e. dilapidated or uninhabitable structures).

We recommend that the IRS clarify that in the circumstance where property is being used for Low-Income Housing Tax Credit (Housing Credit) properties, the requirement to substantially improve property comply with Section 42 requirements, which are 20 percent.

However, with the exception of circumstances with the Housing Credit, we recommend that the IRS provide a threshold above which land would have to be substantially improved regardless of any assets or buildings on the property and further clarify the anti-abuse provisions to prohibit transactions that only marginally improve the QOZ Property while providing a significant tax shelter to investors without clear and direct economic benefit to the community.

Without such clarification, it is possible that investors will be able to receive a significant federal tax credit for holding valuable land for 10 years without making improvements.

Encourage Pairing with Housing Credits

Enterprise believes that the true potential of Opportunity Zones lies in the ability to pair this new source of private capital with existing programs to generate social impact. In particular, the Low-Income Housing Tax Credit (Housing Credit) and New Markets Tax Credit (NMTC) are proven, powerful tools with long track records in community revitalization.

This round of proposed regulations includes provisions that could drastically inhibit the industry’s ability to pair these tools. The original legislation allows investors to elect between paying the tax on either the original deferred capital gain or the Fair Market Value (FMV) of the QOZ investment in 2026. However, the proposed regulations differ from the original legislation

and instead require investors to elect between paying the tax on either the original deferred capital gain or the capital gain that would result from the sale or transfer of the QOZ investment.

Under applicable tax rules, this interpretation increases the investor's gain recognition by the amount of debt on the Opportunity Zone Housing Credit project and results in a gain amount in 2026 that is higher than the FMV of the QOF interest. This has the unintended consequence of taking away a significant incentive and have the impact of deterring investors from investing in Housing Credit projects. For Housing Credit projects that generally do not have "market upside" at exit, a primary tax benefit would have been the reduction in the FMV (based on the reduction on the value of Housing Credits over time) in 2026. As such, this regulation creates a disincentive for community development and the creation of affordable housing. Moreover, we believe this is inconsistent with Congress's original intent, which was to ensure that investors were not unduly burdened with additional tax liability in the event of a loss in value of a QOZ investment.

We strongly urge the IRS to ensure the viability of pairing these incentives and ask that the IRS clarify that FMV (not FMV with debt), plus any cash flow distributions to investors, be the standard for calculating a deferred tax bill in 2026 for Housing Credit projects. Clarification on these regulations would allow Housing Credit projects to compete with market-rate projects and help us to maximize the impact we can have in low-income communities by leveraging existing federal programs.

We also recommend adjustments to the proposed regulations that state that the actual corporate subsidiary with the capital gain has to be the one that makes the investment in a QOF. This could be problematic for banks that invest in Housing Credits through a Community Development Corporation (CDC), but which may have capital gains in another corporate affiliate. **We recommend that the IRS allow taxpayers investing in QOFs that then invest in Housing Credit partnerships to use capital gains from consolidated affiliates of the taxpayer.**

The housing affordability crisis facing our cities requires that we use every tool and incentive at our disposal. In order to ensure that the Opportunity Zone regulations do not inadvertently exacerbate existing inequities in Opportunity Zones, we strongly urge the IRS to issue regulations that facilitate the creation of more affordable housing and community facilities by leveraging the proven Housing Credit and the NMTC. Both are proven programs that require competitive and rigorous application processes that lend themselves to transparency and accountability.

Implement Requirements to Collect and Publicly Share Meaningful Data on QOF Investments

Enterprise believes the Opportunity Zones tax incentive should be used to advance equitable and inclusive growth. We believe investments made through socially-minded, responsible QOFs with a commitment to community engagement have the potential to transform communities, grow small businesses, and create broader access to opportunity. QOF investments should thoughtfully serve each low-income community's unique needs—especially those of long-time residents and business owners—so that the investments do not lead to displacement but rather inclusive community benefits and growth. For this reason, Enterprise believes that the federal government

must require data collection and publicly report on QOF investments and outcomes in designated OZs, allowing Congress and the public to evaluate whether this new tax incentive is driving equitable investments.

We thank the Treasury for its prior Request for Information (RFI) on Data Collection and Tracking for Qualified Opportunity Zones. Enterprise was pleased to provide our recommendations on this important topic. We believe the collection and public reporting of meaningful data on QOFs and their investments into designated OZs are critical first steps towards ensuring the Opportunity Zones tax incentive is fulfilling its intended purpose. Enterprise provided detailed recommendations on reporting requirements in a letter to the Treasury, which can be found at <https://bit.ly/2KTqKBv> and is attached as an appendix to this letter.

We appreciate your consideration of these comments and welcome any future opportunity to work with the IRS to ensure that the Opportunity Zones tax incentive is resulting in equitable benefits for communities nationwide. In Appendix A, we have included a list of proposed topics to be discussed at the July 9 public hearing. For your convenience, you will find Enterprise's previously submitted letter to the Treasury regarding data collection as Appendix B.

If you have any questions regarding these comments, please do not hesitate to reach out to me at lchatman@enterprisecommunity.org, or Sarah Brundage, Senior Director of Public Policy, at sbrundage@enterprisecommunity.org.

Sincerely,

Lori Chatman
President
Enterprise Community Loan Fund, Inc.

Appendix A: Outline of topics to be discussed at IRS public hearing regarding Opportunity Zones scheduled for July 9, 2019

Here we provide a brief outline of topics that we would like to discuss at the public hearing scheduled for July 9 at 10 a.m.

Sarah Brundage, Senior Director, Public Policy will attend and share comments on behalf of Enterprise Community Partners.

In the provided for maximum ten minutes, Sarah Brundage will provide comments on Enterprise's recommendations for the IRS to:

- Clarify the treatment of vacant land to prevent land banking;
- Encourage pairing with Low-Income Housing Tax Credits and New Markets Tax Credits; and
- Implement requirements to collect and publicly share meaningful data on Opportunity Fund investments.

If you have any questions regarding these topics, please do not hesitate to reach out to Sarah Brundage at sbrundage@enterprisecommunity.org.

Appendix B: Enterprise’s Comment Letter Submitted to the Treasury in response to the RFI on Data Collection and Tracking for Qualified Opportunity Zones

May 30, 2019

Assistant Secretary David J. Kautter
Assistant Secretary for Tax Policy
U.S. Department of the Treasury

Dear Assistant Secretary Kautter,

Thank you for issuing the *Request for Information (RFI) on Data Collection and Tracking for Qualified Opportunity Zones*. Enterprise Community Loan Fund, Inc. is pleased to provide our recommendations on this important topic. We believe the collection and public reporting of meaningful data on qualified opportunity funds (QOFs) and their investments into designated Opportunity Zones (OZs) are critical first steps towards ensuring the Opportunity Zones tax incentive is fulfilling its intended purpose.

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 \$43.7 billion in equity, grants and loans to help build or preserve nearly 585,000 affordable homes in diverse, thriving communities. This includes community investments through Enterprise Community Loan Fund, Inc., a Treasury Department-certified Community Development Financial Institution (CDFI) and one of the largest nonprofit loan funds in the country. Enterprise Community Loan Fund, Inc. has invested more than \$1.7 billion in low-income communities and helped to build or renovate nearly 110,000 affordable homes nationwide.

Enterprise believes the Opportunity Zones tax incentive should be used to advance equitable and inclusive growth. We believe investments made through socially-minded, responsible QOFs with a commitment to community engagement have the potential to transform communities, grow small businesses, and create broader access to opportunity. QOF investments should thoughtfully serve each low-income community’s unique needs—especially those of long-time residents and business owners—so that the investments do not lead to displacement but rather inclusive community benefits and growth. For this reason, Enterprise believes that the federal government must require data collection and publicly report on QOF investments and outcomes in designated OZs, allowing Congress and the public to evaluate whether this new tax incentive is driving equitable investments.

Enterprise is launching our own family of QOFs, intended to advance equitable and inclusive growth in the communities where investments are made. As both an advocate for low-income communities and an active Opportunity Zones fund manager, we believe that the recommendations for data collection that follow in this letter are both reasonable and necessary to achieve the objectives of the statute. Furthermore, many of our recommended data points are

already reported on by allocatees of the New Markets Tax Credit. These recommendations reflect data that Enterprise’s experienced fund managers have identified could be easily reported.

In this letter, you will find our responses in order of the questions posed in the RFI. We have generally provided three buckets of recommendations:

- Recommendations on data collection about individual QOFs, i.e. fund-level data that should be collected by Form 8996;
- Recommendations on data collection about individual QOF investments, i.e. investment-level data that should be collected by a new, supplemental form; and
- Additional recommendations on cumulative data the Treasury should publicly report.

First, we would like to provide overarching recommendations for the Treasury’s approach to collecting and reporting data on QOFs and their investments:

- All the recommended **data points should be required as applicable** in order to ensure comparability of data. If made optional, any subsequent evaluation of the impact of the tax incentive will not be an accurate depiction.
- The **full data should be made publicly available** so that independent stakeholders with research capacities could conduct analyses of QOF investments and the outcomes and impacts on communities within designated OZs.
- The Treasury should **publicly release the data on an annual basis in an annual report on the prior year’s activities.**

1. What data would be useful for tracking the effectiveness of providing tax incentives for investment in qualified opportunity zones to bring economic development and job creation to distressed communities?

In response to question 1, we provide **recommendations on data collection about individual QOFs, i.e. fund-level data that should be collected by Form 8996.**

Data about individual QOFs to be collected by Form 8996:

- *Collected by:* **Treasury**
- *Submitted by:* **QOFs**
- *Collected through:* **Form 8996**
- *Frequency of collection:* **Annually, as Form 8996 is currently required**
- *Made publicly available:* **Annually (subsequent year) by Treasury**

Recommended data points:

- Fund name
- Fund ID (EIN)
- Date fund was established (day, month, year)
- Fund address (such as office location)
- Fund contact (name, email, phone number)
- Fund strategy
 - Asset category
 - Geography

- Total assets under management
- Target return
- Target composition of QOF investments by asset class
- As applicable:
 - Funds at five-year mark:
 - Number of redemptions
 - Dollar of redemptions
 - Funds at seven-year mark:
 - Number of redemptions
 - Dollar of redemptions
- The intended community benefit of QOF investment in designated OZ (dropdown)
 - Economic Growth and Jobs
 - Education
 - Affordable Housing
 - Entrepreneurship
 - Access to healthy food
 - Positive environmental impact
 - Other

2. *In addition to the anticipated revisions to Form 8996 discussed in the Summary of this Notice and Request for Information, is there other information that could appropriately be collected on a tax form that would be helpful in measuring the effectiveness of the opportunity zone incentives.*

In response to question 2, we first provide **recommendations on data collection about individual QOF investments, i.e. investment-level data that should be collected by a new, supplemental form.** This data is critical to evaluate the outcomes and impacts of QOF investments.

Data about individual QOF investments to be collected by a new, supplemental form:

- *Collected by:* **Treasury.** We recommend the Treasury consider tasking this responsibility to an agency or sub-agency that has demonstrated capacity and competencies on transaction-level data collection, aggregation, and public release. For example, the CDFI Fund might be tasked with administering the collection, compiling, and public releasing of this information, given their demonstrated experience with New Markets Tax Credit reporting. Additional resources should be provided to the agency or sub-agency tasked with collecting and publicly reporting this data to sufficiently cover the additional administrative costs.
- *Submitted by:* **QOFs**
- *Collected through:* **New, Supplemental Form**
- *Frequency of collection:* **Annually.** QOFs should be required to submit the form for each investment they make into a designated OZ on an annual basis. Subsequently, QOFs should be required to submit the form for each investment on an annual basis to provide actual numbers (i.e. of job creation, etc.).
- *Made publicly available:* **Annually (subsequent year) by Treasury**

Recommended data points:

Investment data:

- Investee Name
- Investee ID
 - EIN
 - NAICS code
 - DUNS (required for operating businesses)
- Investment closing date (day, month, year)
- Location of the investment:
 - Street address, City, State, Postal Code; *and*
 - Designated OZ census tract ID
- Total dollar amount of the investment
 - Total Debt
 - Total Equity
- Investment asset class
- Target return
- Whether this investment was paired with a separate federal tax tool (ex: Low-Income Housing Tax Credit, New Markets Tax Credit), and if so, specify which one
- Type of investment (dropdown):
 - Operating Business
 - Operating business: equipment
 - Operating business: inventory
 - Operating business: manufacturing
 - Operating business: retail
 - Operating business: office
 - Operating business: community facility
 - Operating business: other
 - Real Estate
 - Real estate: Rental – Single family
 - Real estate: Rental – Multifamily
 - Real estate: Owner-occupied – Single family
 - Real estate: Owner-occupied – Multifamily
 - Real estate: Commercial
 - Real estate: Industrial
 - Real estate: Institutional
 - Mixed-use
- The intended community benefit of QOF investment in designated OZ (dropdown):
 - Economic Growth and Jobs
 - Education
 - Affordable Housing
 - Entrepreneurship
 - Access to healthy food
 - Positive environmental impact
 - Other

Job creation data. As applicable for any investment (including real estate):

- Projected or Actual (*In the initial report, these numbers can be projected at time of investment, and in subsequent reports, these numbers should be actual jobs created.*)
- Source of job estimates
- Jobs created – construction
 - Of those, the number and/or percentage of new jobs that will go to local hires
 - Of those, the number and/or percentage of new jobs that will be living wage jobs (*Recommend applying same definition used in NMTC program and data collection*)
- Jobs created – permanent
 - Of those, the number and/or percentage of new jobs that will go to local hires
 - Of those, the number and/or percentage of new jobs that will be living wage jobs (*Recommend applying same definition used in NMTC program and data collection*)

Displacement data. As applicable for any investment requiring demolition or construction:

- Total number of housing units lost due to demolition or construction
 - Of those, total number of affordable housing units occupied by low-income tenants lost due to demolition or construction
- Description of any anti-displacement policies and/or strategies and tenant protections in place and/or being provided to low-income tenants (relocation assistance, right of first return, etc.)

Real estate data. In the case of a real estate investment, additional data on:

- New development or substantial rehabilitation
- The approximate total square footage
- Total number of housing units for sale
 - Whether they are market-rate or designated for a particular Area Median Income (AMI) level
 - Of those, the total number/percentage of affordable housing units for sale for Low-Income Persons (*household income of no more than 80% AMI*)
- Total number of housing units for rental
 - Whether they are market-rate or designated for a particular AMI level
 - Of those, the total number/percentage of affordable housing units for rent for Low-Income Persons (*household income of no more than 80% AMI*)

Also in response to question 2, we are providing **additional recommendations on cumulative data the Treasury should publicly report.**

We strongly recommend that the Treasury make the full data sets for all of the above data points publicly available. Clearly organized and formatted data sets will be critical for independent OZ stakeholders to evaluate the impact of the tax incentive on any given community at the census tract level. It will also allow independent parties to conduct custom analyses on outcomes using various metrics or geographies, such as specific analyses on economic growth or housing market changes, or state or regional comparative analyses.

We also recommend the Treasury uses the data to compile and publicly report cumulative data for each data point. By collecting the above information, the following can be easily calculated as a sum total from the individual reporting, and publicly reported so that Congress and the public can assess the overall activity from the new tax incentive.

We especially want to emphasize the necessity of providing a single list of designated OZs that have received QOF investments by census tract ID, with the total number of QOF investments per OZ and the total value of those investments. Congress and the public have expressed a deep interest in understanding how the designation of OZs have impacted those specific census tracts. In order to evaluate the impact of QOF investments in designated OZs, analysts need data that allows them to specify between: non-eligible census tracts; eligible but non-designated census tracts; designated OZs by census tract ID that received QOF investments—and the total number of investments and value of investments per OZ; and designated OZs by census tract ID that did *not* receive QOF investments.

By collecting and publicly sharing the location of every QOF investment (specific address and census tract ID), this information can be compiled by the Treasury or a designated agency or sub-agency. Only by providing this information could the Treasury or any independent stakeholder with research capacity conduct comparative analyses on how the tax incentive has impacted OZs relative to non-OZs across indicators such as poverty reduction or economic growth. For instance, the Treasury or any independent stakeholder might evaluate:

- **Poverty Reduction.** The change in population percentage living below the federal poverty line within a designated OZ that received QOF investments could be evaluated over time, capturing the change from before and after an investment was made. The change in poverty within a designated OZ that received QOF investments relative to designated OZs that did not receive investments or other low-income communities that were not designated OZs could also be analyzed.
- **Economic Development.** The investment level data on the number and type of jobs created, as recommended above, will be critical to evaluate any economic benefits from QOF investments.
- **Job Creation.** Our above recommendations include collecting data on jobs created at the investment-level. By collecting and publicly reporting this data, the Treasury or any independent stakeholder could aggregate this information in a multitude of ways such as: (1) the number of new jobs created by all QOF investments nationally within a given period of time, and of those how many are living wage jobs; or (2) the number of new jobs created within a designated OZ within a given period of time, and of those how many are living wage jobs. Furthermore, by knowing which designated OZs received QOF investments (listed by census Tract ID), an analysis could also be conducted on new job growth within designated OZs that received QOF investments relative to those that did not.

3. What data would be useful for measuring how much would have been invested in qualified opportunity zones in the absence of the opportunity zone incentives?

While it is not possible to analyze the counterfactual, the overall trends within the designated OZs that did not receive QOF investments or similar low-income census tracts that were not

designated as OZs could be analyzed. In order to conduct any comparative analyses, we again want to emphasize the necessity of providing a single list of designated OZs that have received QOF investments by census tract ID, with the total number of QOF investments per OZ and the total value of those investments. Only by providing this information could the Treasury or any independent stakeholder with research capacity conduct comparative analyses on how much has been invested in designated OZs vs. eligible but non-designated census tracts.

4. What data would be useful for ensuring that the investment opportunity remains an attractive option for investors?

Investors will benefit from public release of the same data reporting recommended above. The publicly reported data will provide an informative overview of QOF activity.

5. What are the costs and benefits of various methods of information collection? Who should perform this data collection?

From the perspective of fund managers collecting and reporting this information, we expect the costs of basic inventory reporting to be extremely low. The metrics we are suggesting are already known to all fund managers.

Regarding the Treasury's role in collecting, aggregating, and publicly reporting this critical information on QOF investments, we recommend the Treasury consider tasking an agency or sub-agency that has demonstrated capacity and competencies on transaction-level data collection, aggregation, and public release. For example, the CDFI Fund might be tasked with administering the collection, compiling, and public releasing of this information, given their demonstrated experience with New Markets Tax Credits reporting. We recommend additional resources be provided to the agency or sub-agency tasked with collecting and publicly reporting this data to sufficiently cover the additional administrative costs.

6. What considerations should government officials take into account when considering data to analyze the effectiveness of the qualified opportunity zone incentives to promote economic development to distressed areas? Over what time period should this analysis occur?

Assessing the Opportunity Zones tax incentive is not solely the responsibility of the Department of Treasury. We need public dissemination of granular data to allow the broader field of researchers, cities, investors, and other OZ stakeholders with research capacities the ability to probe findings across various methodologies and timelines. It will be more cost-effective for the federal government if a broader set of stakeholders are allowed to access and analyze these data. To achieve this, all that is needed from Treasury is the publicly reported data as recommended above. Researchers will be able to leverage this against community data from other sources. We again emphasize:

- All the recommended **data points should be required as applicable** in order to ensure comparability of data. If made optional, any subsequent evaluation of the impact of the tax incentive will not be an accurate depiction.
- The **full data should be made publicly available** so that an independent stakeholder with research capacities could conduct analyses of QOF investments and the outcomes and impacts on communities within designated OZs.

- The Treasury should **publicly release the data on an annual basis in an annual report on the prior year’s activities.**

Related, we also stress the importance of continued access to essential Census data sets that track the type of information that is necessary to evaluate designated OZs or any other program at the census tract level. In September 2018, the Census Bureau announced its intention to adopt a more aggressive approach to privacy control. This approach, known as “differential privacy,” would prohibit Census data products from revealing characteristics of an individual, even if the individual’s identity is concealed. The application of differential privacy measures to Census data tabulated for census tracts and other small geographic areas could severely limit the data’s availability and utility—making it difficult if not impossible for researchers to evaluate the impact of QOF investments at the OZ (census tract) level. We raise this issue as it would be in the interest of the Treasury to ensure that the Census Bureau preserves open access to high-quality data for census tracts.

7. How do you view the role of the Federal Government, and Tribal, State and local governments in the ongoing maintenance and administration of opportunity zones?

The federal government, in particular the Treasury, has a key role to play in monitoring the Opportunity Zones tax incentive through reporting requirements. The Treasury is uniquely positioned to efficiently collect national QOF- and investment-level data necessary to evaluate national, state, regional, and local impacts and outcomes of the tax incentive. State and local governments, as well as outside researchers, can then analyze the results of the tax incentive provided that the Treasury publicly releases the full data on an annual basis.

8. Is there any additional information regarding data collection and tracking for opportunity zones not already addressed that you would like to provide?

Currently, Treasury has not designated an authoritative source or map for determining whether a given property is located within a designated OZ. This creates some difficulty in determining the eligibility of vacant properties that lay on the edge of census tracts, since different mapping and geocoding software produce variation, particularly in the geo-location of empty land. For example, the Treasury’s CDFI Fund CIMS Mapping Tool produces different geo-location results from the U.S. Census Bureau’s Geocoder, which may lead to different eligibility determinations for an available site. A single authoritative map that could be used to validate OZ eligibility would save significant cost, time, and confusion for funds and prospective investors. Therefore, we request the Treasury to clarify through related guidance whether the Treasury’s CDFI Fund CIMS Mapping Tool *or* the U.S. Census Bureau’s Geocoder geocoding methodology should be followed and used in determining what census tract a site is located in. Subsequent OZ mapping tools created and maintained by independent OZ stakeholders could then consistently use that selected methodology as well.

We appreciate your consideration of these comments and welcome any future opportunity to work with the Department of Treasury to ensure that the Opportunity Zones tax incentive is resulting in equitable benefits for communities nationwide.