capital for healthy
families & communities

May 31, 2019

The Honorable David J. Kautter
Assistant Secretary (Tax Policy)
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Request for Information on Data Collection and Tracking for Qualified Opportunity Zones
Document Citation 84 FR 18648

Dear Assistant Secretary Kautter:

The Low Income Investment Fund (LIIF) is pleased to respond to the Request for Information (RFI) on Data Collection and Tracking for Qualified Opportunity Zones (QOZ).

LIIF is a certified Community Development Financial Institution (CDFI) that invests capital to support healthy families and communities. Since 1984, LIIF has provided $2.5 billion in financing and technical assistance in 31 states, leveraging over $12.5 billion in additional private capital and serving more than 2.1 million people. LIIF's investments have created and preserved 78,000 units of affordable housing; 271,000 child care spaces; 98,000 spaces in schools; and 36 million square feet of community facilities and commercial space. LIIF estimates that our work has created or maintained 159,000 jobs, and generated $65.1 billion in family income and societal benefits.[1] LIIF is a national organization with offices in San Francisco, Los Angeles, New York City, Washington, D.C. and Atlanta.

Like other CDFIs, LIIF's mission is to raise and deploy private capital to transform low-income communities. By combining loans, grants and technical assistance, we make possible high-impact projects in low-income communities that lack access to traditional bank financing because the transactions are perceived as too risky, costly or small. Over the last 35 years, LIIF has made more than 350 investments in communities that are now designated as QOZs. This represents 35 percent of our current portfolio.

Based on LIIF's more than 35 years of experience as an intermediary dedicated to transforming low-income communities, we believe the CDFI sector has an important role to play in ensuring that Opportunity Funds invest in projects that have a return for the community as well as investors. Our long track record of successful investment in some of the nation's most disadvantaged communities has provided best practices that inform our own lending and investment decisions, and which we believe are critical to inform the successful stewardship of capital into QOZs.

Of paramount importance in community development finance is the ability to accurately and completely capture the impacts and outcomes of lending and investments in low-income communities. Congress created the Opportunity Zones tax incentive with the goal of ending the systemic disinvestment that certain communities have experienced for decades. Being able to show measurable outcomes in these communities – be it poverty reduction, job creation, education attainment, high-quality child care, access to health care, and availability of affordable housing – is necessary to determine if Congress's intent is being met. Further, many of LIIF's investments combine various sources of federal government funding which allow us to

[1] https://www.liifund.org/calculator-tool/ (Social Impact Calculator illustrating economic impact of project investments in form of increased household income, improved health, long term earnings, etc.)

maximize our impact in communities. It is a minimum expectation that, as stewards of public and private capital, we concretely demonstrate an efficient and effective use of limited federal dollars.

We are delighted that the Treasury Department shares our perspective that reporting requirements are critical to ensuring Opportunity Zones are a successful policy, both for low-income communities and impact-minded investors. LIIF shares the following comments with our enthusiastic support for including strong data collection and reporting requirements in the rules and regulations structuring this new tax incentive.

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?*

   The impact of Opportunity Fund investments can be sufficiently observed as long as readily-held information about the investments themselves and actors involved is proactively collected and consistently shared. This should not impose a burden on investors given that the information will already be collected and held by the Fund. Further, CDFIs have been making loans in many of the over 8,700 designated opportunity zones and are already required to report transaction level data to the CDFI Fund at the Department of the Treasury each year as a condition to receiving funding through the CDFI Fund. Treasury has already determined that this level of reporting is appropriate to determine the impact of investment in low to moderate income communities.

   We recommend that the Treasury Department collect the following information directly from Opportunity Funds (not through a tax form) and that Treasury officials process the data and make it publicly available.

   <u>Data about Individual QOFs:</u>
   - Fund name
   - Fund EIN, SSN, DUNS
   - Fund address
   - Date QOF was established
   - Total assets held in QOF – including total debt and total equity
   - Eligible investments deployed in a Qualified Opportunity Zone Businesses (to calculate a deployment ratio)
   - Total investment income – gross yield on assets
   - Operating expenses
   - Investment losses
   - Single or multiple investor fund
   - Names of all investors with more than 10 percent share, include their percent share and their EIN/SSN/DUNS

   <u>Data about Individual QOF Investments:</u>
   - Information on investee
     - OZ investee business name
     - OZ investee business EIN
     - OZ investee business NAICS code
     - OZ investee business DUNS (required for operating businesses)
     - OZ investee business revenues for:
       - Most recent financial year
       - Next most recent financial year

- Total dollar amount of the investment
- Total dollar amount of project costs (to include non-OZ-linked funds)
- Total dollar amount of qualifying OZ-linked capital gains invested
- Total dollar amount of qualifying OZ-linked capital gains invested by use (needed to define "substantial improvements")
  - Total dollar amount for land acquisition
  - Total dollar amount for building acquisition
  - Total dollar amount for new construction (hard costs)
  - Total dollar amount for soft costs
  - Total dollar amount for equipment, working capital
- Investment closing date (day, month, year)
- Location of the investment
  - Street address, city, state, postal code
  - QOZ census tract ID
- Type of investment
  - 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 (in which case the QOF would then answer questions about both the business and real estate components of the investment)
- Intended impact of QOF investment
  - Education
  - Affordable housing
  - Jobs
  - Entrepreneurship
  - Access to healthy food
  - Child care
  - Positive environmental impact
  - Other
- For any investment type, information on job creation:
  - The number of full-time employees:
    - In initial report, at time of investment:
      - Projected jobs to be created – construction
      - Projected jobs to be created – permanent
    - In subsequent reports:
      - Actual jobs created – construction
      - Actual jobs created – permanent

    - Within each:
        - The number and/or percentage of new jobs that will go to local hires
        - The number and/or percentage of new jobs that will be living wages
    - Source of job estimates
- 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
        - Of those, the total number of affordable housing units for sale, and at what Area Median Income (AMI) level
    - Total number of housing units for rental
        - Of those, the total number of affordable housing units for rent, and at what Area Median Income (AMI) level

In addition to these discrete data points, we would also recommend that QOFs be required to provide a brief narrative description of each project investment, which would include:

- The nature of the project
- The benefits to the community or a community based organization
- The degree to which the project was developed in consultation with the community residents and/or mitigated against displacement
- The extent to which the project connects with local workforce development efforts for low- and moderate-income residents
- The extent to which the project could not have moved forward in the same manner without the Opportunity Zone incentives.

Collecting this information is standard for CDFIs and should not present an undue burden on Opportunity Fund investors.

Finally, we also support the approach mandated in the Investing in Opportunity Act and which was also included in the Conference Report that accompanied H.R. 1 (Report 115-466):

> *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 zone census tracts designated under the provision that have received 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.*

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. For example, should qualified opportunity zone businesses be required to report on a tax form the location by census tract of 1. Owned and leased tangible property or 2. Employees of a qualified opportunity zone business?*

We believe that reporting should be required through a mechanism separate from a tax form to avoid difficulties around public reporting of data. Draft IRS Form 8996 currently only collects information at Opportunity Fund level, and not at the investment level. Without information about the underlying businesses, it will not be possible to undertake an evaluation of the success of the Opportunity Zones initiative, nor will the Department of Treasury be able to comply with its statutory obligation to regularly report on the adequacy of the law. Further, collecting the above data points on a supplemental form or online portal, rather than during routine tax filings on Form 8996, would allow the information to be aggregated and disseminated more efficiently and effectively.

We encourage Treasury to begin thinking now about how to aggregate and share information about Opportunity Fund investments with the public with as much spatial granularity as possible so that others can also work to understand and assess this important initiative. As with the designation of Opportunity Zones, this particular task could be delegated to the Treasury Department's Community Development Financial Institutions Fund (CDFI Fund), which already has electronic systems in place for collecting similar data from CDFI Program awardees and NMTC allocatees -- though any such delegation of authority must be accompanied by administrative funds to support system redesigns as well as duties related to data collection and dissemination.

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 incentive?*

   Basic transaction-level and Fund-level data should be sufficient to determine the impacts of Opportunity Fund investments. However, in order to ensure the federal government's foregone tax revenue is spurring activity that wouldn't have otherwise occurred, it is also critical that the Treasury Department be able to determine whether a specific investment or sets of investments would have occurred "but for" the Opportunity Zones incentive. We believe the Treasury Department should also collect qualitative information from the Opportunity Funds where they can briefly describe the degree to which the Opportunity Zones incentive made a difference in allowing a project to move forward at all; or to move forward more quickly and/or with more favorable terms to the project than otherwise would have been possible without the Opportunity Zones incentive.

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

   The data points recommended above will benefit all Opportunity Zone stakeholders, including investors, as transparency and accountability is sound public policy.

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

   We estimate the costs of our recommended reporting to be low given that Opportunity Funds will already be tracking these metrics for their own internal information needs. However, we estimate that the cost of *not* collecting this information poses a significant risk to low-income communities and individuals through potentially predatory investments, as well as to the government in the form of potential waste, fraud and abuse.

   As noted above, we believe the CDFI Fund is well-positioned within the Treasury Department to collect this information and disseminate findings, although these efforts must be adequately funded. It would be prudent to use the knowledge and systems that are already in place to collect, analyze and report the data on Opportunity Fund investments since following a different format would generate additional costs to the Federal government.

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?*

   Data should be collected proactively on an annual basis and released as frequently to allow independent researchers to engage in a real time assessment of the landscape of Opportunity Zone investments (e.g., the types of businesses or real estate projects financed; the geographies being served), though it may take several years to ultimately determine the extent to which Opportunity Fund investments impacted the underlying characteristics or demographics of a neighborhood or census tract. The information will have the greatest benefit to stakeholders if it is recorded and reported with clear guidelines very early in the lifetime of the incentive rather than retroactively years later in the process.

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 Department, has a key role to play in monitoring the Opportunity Zones incentive through reporting requirements and publicly releasing this data to allow state and local governments as well as outside researchers to analyze the results of the incentive. The Treasury Department also has a role to play in honoring Congressional intent by encouraging impactful investments and guarding against potential malfeasance.

   Similarly, we believe that state and local governments, having helped identify Opportunity Zones, are in the best position to make sure that investments support the well-being of those communities. States and localities must develop their own incentives, whether through project subsidies or tax incentives, to support projects that bring true value to communities, as well as projects that help to prevent displacement of community residents. We would also encourage localities to adopt or strengthen inclusionary zoning requirements with respect to housing developments financed in Opportunity Zones.

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

   We believe that a robust structure for reporting and dissemination of data will add a critical level of transparency to the Opportunity Zones initiative and will better enable researchers to determine the program's effectiveness, but that there are additional administrative actions that the IRS can proactively take to help prevent waste, fraud and abuse, and to ensure that program objectives are being met. Most notably, we remain concerned that the IRS's current approach to certification, which allows QOFs to self-certify without so much as a cursory review of application materials, could open the door for bad or unscrupulous actors to participate in the program.

   Similar to the current practice under the New Markets Tax Credit Program, the IRS could screen out potential bad actors by requiring managers of Opportunity Funds to self-certify that neither the applicant entity nor its principals:

   (i) have, within a three-year period preceding the formation of the Opportunity Fund, been indicted, charged with or convicted of, or had a civil judgment rendered against it for commission of fraud or a criminal offense;
   (ii) have, within a three-year period preceding the formation of the Opportunity Fund, been indicted, charged with or convicted of, or had a civil judgment rendered against it for

violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(iii) are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in (i) and (ii).

Finally, we would like to note our support for recent bipartisan legislation, S. 1344, introduced by Senators Tim Scott (R-SC), Cory Booker (D-NJ), Todd Young (R-IN), and Maggie Hassan (D-NH) to require Opportunity Funds to report on their investments in QOZs. We believe this legislation demonstrates continued congressional support for data collection and reporting requirements.

We are pleased that the Treasury Department is considering the critical need for data collection and reporting requirements of Opportunity Fund investments and we look forward to working with the Treasury Department as rulemaking moves forward. Please contact me at jharwitz@liifund.org for any questions.

Sincerely,

Jonathan Harwitz

Jonathan Harwitz
Managing Director for Federal Policy & Government Affairs
Low Income Investment Fund