March 1, 2018

Mr. Scott Dinwiddie
Associate Chief Counsel
Income Tax & Accounting
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Dear Mr. Dinwiddie,

The Low Income Investment Fund (LIIF) submits the following comments regarding Revenue Procedure (Rev. Proc. 2018-16), relating to the Opportunity Zones provision in the recently enacted Tax Cuts and Jobs Act of 2017 (H.R. 1), and would like to offer comments with respect to program implementation. LIIF also wishes to join in the more comprehensive comments of Local Initiative Support Corporation (LISC).

LIIF is a leading national community development financial institution (CDFI). Since its founding in 1984, LIIF has invested $2.2 billion in projects serving low-income people and communities, and leveraged an additional $10.7 billion in other public and private sector capital. Through its financing and technical assistance, LIIF has supported more than 73,000 homes, 92,000 spaces for students, 269,000 child care spaces, 143,000 jobs and 12 million square feet of greener facilities. In addition, LIIF has served over 2.0 million people and generated $56.7 billion in family and societal benefits.

LIIF is excited at the potential of the Opportunity Zones program to unleash substantial patient, private capital into the underserved neighborhoods where LIIF invests. We are also keenly aware of Congress’s intent to get this capital flowing as quickly as possible—requiring states to move quickly to designate (and the Treasury Department to certify) Opportunity Zones and setting forth a sunset date for realizing otherwise deferred capital gains, thereby constraining the window in which potential participants could safely invest in Opportunity Funds. Accordingly, our recommendations below are designed to enable rapid program implementation, minimizing additional administrative burdens on participants while maximizing the program’s impact.

**Designation of Opportunity Zones**

As noted, states are under a tight deadline to complete the process of identifying their proposed Opportunity Zones. Insofar as the data and mapping resources so far made available to governors and relevant state agencies is supplemented with additional guidance, LIIF recommends that they
be encouraged to consider within this designation process the factors set forth in the Conference Report that accompanied H.R. 1 (Report 115-466) which states that:

"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 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." (emphasis added)

This language mirrors an amendment adopted during the Senate’s consideration of H.R. 1.

LIIF acknowledges that the language of H.R. 1 itself permits a more mechanistic interpretation of the Opportunity Zone designation process: Given the statute’s clear definition of which census tracts shall qualify, and how such census tracts may be aggregated by the states for submission, governors arguably need not consider the above-mentioned, or indeed, any factors in choosing from among eligible tracts. We strongly urge, however, that pursuing such a “check the box” approach would be a terribly wasted opportunity to effectuate Congressional intent to ensure that Opportunity Zone investments have maximum impact, namely, by leveraging other public and private place-based initiatives to revitalize communities.

To give but one example, consider the Strong Prosperous and Resilient Communities Challenge (SPARCC). This $90 million initiative—spearheaded by LIIF, Enterprise Community Partners and the National Resource Defense Council (NRDC) —is aimed at supporting regional investment in infrastructure and development, making it as equitable and sustainable as possible while supporting leaders and marginalized stakeholders to advocate for stronger, safer and healthier communities. The initiative is funded by The California Endowment, Ford Foundation, The JPB Foundation, The Kresge Foundation, and Robert Wood Johnson Foundation.

Inclusive of financing tools from the two CDFIs and funder support, $70 million of the initiative grant and debt capital will be used for projects that further equitable development outcomes across SPARCC regions that represent a mixture of market conditions ranging from rapid development and gentrification pressures to sustained long-term disinvestment. The SPARCC national and local partners are working to blend local investment from existing CDFIs, the public and private sector, philanthropies and SPARCC capital funds. Clearly, Opportunity Zone investments in affected census tracts would leverage this work to further capitalize critical opportunities for equitable development.

Similarly, in all of LIIF’s core markets, as well as when deploying national financing tools like the New Markets Tax Credit (NMTC), LIIF seeks to leverage and accelerate existing housing
and community development initiatives. The Conference Report to H.R. 1 makes clear that Congress intended this best practice to inform Opportunity Zone program implementation. To that end, we hope that you will encourage Governors to consider the variables outlined in the Conference Report, and require them (as suggested by LISC) to submit a brief narrative explanation discussing the factors that were considered by the state when selecting their Opportunity Zones.

**Certification of Qualified Opportunity Funds**

H.R. 1 requires that for an entity to be certified as an Opportunity Fund, Treasury must determine that it:

1. At the time of applying for certification, is “organized as a corporation or partnership for the purpose of investing in qualified opportunity zone property . . .” (termed the “legal entity/mission” test); and
2. At two junctures, has 90% of its assets invested in Opportunity Zones (“asset test”).

The statute itself does not establish additional review criteria as part of the Opportunity Fund certification process. Again, however, LIIF believes that the Conference Report communicates important additional insight into Congress’s preference with regard to program implementation, stating that the relevant provision:

> “intends that the certification process for a qualified opportunity fund will be done in a manner similar to the process for allocating the new markets tax credit. The provision provides the Secretary authority to carry out the process."

That Congress points the Treasury Department to NMTCs as a model for Opportunity Zone implementation is not surprising given how successful a tool the NMTC has been to attract private investment into essential community development projects. To date, LIIF has received $518 million in NMTC allocation authority in ten consecutive awards. LIIF has allocated these credits to support large-scale financing for projects such as charter schools, nonprofit facilities, health care clinics and transit-oriented developments across the country.

To be clear, H.R. 1 does not contemplate, nor does LIIF recommend, distribution of Opportunity Zone subsidies through an annual competitive application process, as Treasury does for the NMTC. First, unlike the NMTC, Opportunity Zone investments are not subject to an annual cap, limiting the number of potential program participants. Second, standing up a competition would unnecessarily delay program implementation, which as noted, already faces a tight timeline.
This said Treasury can certainly adopt some the best practices from its administration of the NMTC: Indeed, the Conference Report explicitly encourages the Department to do so. For example, LIIF urges the Treasury Department to require Opportunity Funds to identify, at the time of certification, one or more outcomes from a list of desirable community development outcomes that they will commit to achieving with their investments. Such an approach would mirror the NMTC allocation process, where CDEs are encouraged to commit to more rigorous outcomes than required by statute and then held to these commitments as part of their allocation agreement. Desirable outcomes include:

1. targeting investments in areas of severe economic distress;
2. offering below-market rates and terms to their borrowers;
3. investing more than the minimally required 85% of the NMTC investment proceeds into their low income communities;
4. financing (if applicable) affordable housing; and
5. Making “innovative” investments, including investments in small businesses.

The Treasury Department could draw from this menu, as well as include additional outcomes tailored to the nature of the Opportunity Zones program.

Similarly, Treasury could draw from the CDFI Fund’s successful use of a “community impacts” criterion in evaluating NMTC applications, where higher scores go to CDEs that demonstrate a likelihood of such impacts as creating high quality jobs; providing goods and services to low income community residents, or financing minority-owned businesses.

In the Opportunity Zone context, applicants could propose outcomes and community impacts at upon submitting their certification application, which could then be verified during a compliance audit after the investments have been made.

Thank you for considering these recommendations. We hope they will magnify the impact of this exciting new program, and look forward to working with you and the Treasury Department as Opportunity Zone implementation moves forward.

Sincerely,
Jonathan Harwitz
Managing Director for Federal Policy and Government Affairs