Fran Seegull Testimony, IRS Hearing on Investing in Opportunity Zones

U.S. Impact Investing Alliance Executive Director Fran Seegull testified before the Internal Revenue Service on the importance of data collection and transparency in Opportunity Zones at a public hearing held July 9, 2019. Her remarks are reproduced below.

Good morning/afternoon. I'm Fran Seegull, Executive Director of the U.S. Impact Investing Alliance. Thank you for the opportunity to speak with you today.

The U.S. Impact Investing Alliance and our members represent collectively over 1,000 investors and financial intermediaries who are actively engaged in deploying private capital to advance the public good. We believe in leveraging the power of markets to create measurable social, economic and environmental benefits, and that investors can play an important role in achieving desirable policy outcomes.

Many of our members and stakeholders have particularly deep knowledge of and track record in investing for community economic development. They include institutional investors, foundations, high net worth families, banks and Community Development Financial Institutions ("CDFIs") that understand the importance of place, local context and authentic community engagement when investing in low-income communities. For this reason, we have taken a keen interest in Opportunity Zones, Opportunity Funds and the development of pertinent regulations. It is based on consultation with our members that I offer the following testimony.

In previous comments before you, and in several iterations of written comments, we have underscored the critical importance of timely, accurate and consistent data collection and reporting. We believe that of the remaining issues to be addressed by Treasury in its rulemaking, this is perhaps the most important. We are heartened to see that Treasury released a Request for Information on Data Collection and Tracking in Opportunity Zones. We are likewise glad to see that this issue has been taken up by the White House Opportunity and Revitalization Council. We are grateful to those of you here today and your colleagues throughout the Administration for their efforts to elevate this topic.

Clarification of Rules to Prevent Abuse

Before I address data and reporting requirements, I would like to first quickly address the issue of rules to prevent abuse. It was encouraging that the Notice of Proposed Rulemaking included broad authority to recharacterize abusive transactions as non-qualifying. In final regulations, Treasury should seek to provide greater clarity about the circumstances in which this authority may be exercised.

Qualified Opportunity Funds are given great flexibility in deploying capital in Opportunity Zones. The authors of the Statute were clear that their goal was to see a broad range of operating businesses supported to meet the needs of Qualified Opportunity Zones. Treasury, in particular, with the latest proposed regulation, has approached the rulemaking process in a manner consistent with this intent. But this flexibility also creates significant room for abuse, and it would be impractical to enumerate every type of potential abuse.

In our written comments, we articulate a three-part approach on this topic. First, in final rules, the IRS Commissioner should maintain the broad authority to recharacterize abusive investments as such. Second, Treasury should define some clear potential abusive actions, such as land banking, to immediately prevent such predictable negative outcomes. And third, Treasury should consider the adoption of a safe harbor, such as independent certification of the community benefit practices of Opportunity Funds, to provide investors with an additional degree of certainty that their investments are being well-managed and do not violate abuse rules.

We provide greater detail on all points of this approach in our written comments, but on this last point, I would like to underscore that the private sector tools needed to implement independent certification are already under development. A broad range of groups, including the U.S. Impact Investing Alliance, have worked to develop frameworks, tools and methodologies which could be used as the basis for an independent certification program.

With a safe harbor tied to independent certification, we believe that significant numbers of Opportunity Fund managers would be incentivized to voluntarily take part. We believe that with sufficient participation, these market-led efforts would become financially viable. Standards would need to be instituted for which certifications qualify for safe harbor protection. Also, these certifications would need to be continuously monitored over the course of the program. We believe that the CDFI Fund would be naturally suited to handling this task given their experience managing other effective community development programs.

Adequate Data Tracking and Reporting
As discussed in my introduction, I want to spend the balance of my time on the vital importance of tracking and publicly reporting on fund- and transaction-level data about Opportunity Zone investments.

The Opportunity Zones market cannot function efficiently without access to basic, transparent data about Qualified Opportunity Funds and their investments. For this reason, we recommend that Treasury collect and publicly report on basic fund- and transaction-level data about Qualified Opportunity Funds activities in a consistent and timely manner. Doing so would achieve the goal of tracking the effectiveness of the policy and create multiple benefits directly increasing that effectiveness. While again, I applaud Treasury for its thoughtful Request for Information on this topic, the time-lagged and aggregated data envisioned in that document would be entirely insufficient to assess the efficacy of this policy.

Fund- and transaction-level reporting should be collected in a manner other than through a tax form, and the information should be made available to the public in a disaggregated, anonymized and timely manner. Such reporting would not create any meaningful burden on Qualified Opportunity Fund managers, and the public benefit of such reporting was articulated in a wide range of public comments submitted in response to the RFI.

The statutory language creating Opportunity Zones gives Treasury the necessary authority to collect and report basic fund and transaction data. Collection of this data will enable Qualified Opportunity Fund managers to track and certify their compliance with the Statute, and the Secretary is given the specific authority to promulgate regulations that facilitate the certification of Qualified Opportunity Funds.

Furthermore, while we primarily see this data collection effort as a means to promote the efficient formation and deployment of capital, an ancillary benefit would be to inform Treasury in promulgating and enforcing rules to prevent abuse, another point on which the Secretary has specific authority to institute reporting requirements.

Finally, Treasury has repeatedly and clearly articulated that the purpose of the Statute is to promote economic activity in Opportunity Zones. This intent is further supported by the statutory language and legislative history of regulation 1400Z. In previous written comments, we have discussed at length the benefits that basic and transparent reporting will have for market participants. To quickly summarize this point, reporting will increase investor confidence, enable more efficient capital matching and promote effective partnership with state and local government. Again, the Secretary is given broad authority to promulgate rules that advance this legislative purpose and could under that authority institute reporting requirements.

Such a reporting process would require a minimum level of staffing within Treasury to implement reporting, ensure completeness and accuracy of data, and prepare reports. The CDFI Fund provides a model through its role in implementing and overseeing the New Markets Tax Credit program, and we suggest that the Secretary consider leveraging this existing resource to support implementation of Opportunity Zones reporting requirements.

Conclusion

Thank you once more for this opportunity to testify. We remain deeply optimistic that, once these remaining points are clarified, this policy can be used to improve the lives of the 32 million residents living in Opportunity Zones today.

The taxpayers of this country have made and will make a tremendous investment in the economic potential of Opportunity Zones. I urge you here today to give us the tools we need to measure and affirm the impact of that investment.