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 February 14, 2019. Her remarks are reproduced below.

Thank you for the Opportunity to speak with you today.

My name is Fran Seegull, and I am Executive Director of the U.S. Impact Investing Alliance.

Our members represent collectively over 800 investors and financial intermediaries who are actively engaged in deploying private capital to advance the public good. We believe that it is possible to leverage 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 experience investing for community economic development. They include institutional investors, foundations, high net worth families, banks and Community Development Financial Institutions (CDFIs). These stakeholders understand the importance of place, local context and authentic community engagement when investing in low-income communities.

In consultation with our members, we have identified a number of priority issues related to Opportunity Zones implementation. We believe that these issues must be addressed during the regulatory process in order to ensure the formation of an efficient and effective market for Opportunity Zone investment.

To that end, I would like to quickly echo some of what has been submitted in written comments and some of what you will hear from other speakers today. Namely, it is imperative that the Department of Treasury make clear the applicability of Opportunity Zone investments into small and operating businesses. Current proposed regulations and subsequent rounds of guidance should be designed to limit or remove barriers to such investments.

At the same time, we must see the promulgation of robust rules to prevent abuse of the Opportunity Zones benefit. The needs of residents and workers in Opportunity Zones today are too great for us to tolerate any misappropriation of the public subsidy related to this benefit. We hope that the Department will remain open and responsive to public comment on both of these important topics.

My primary objective today, however, is to state the absolute necessity of consistent collection of data, including Opportunity Fund- and market level information, as part of the regulatory process. In our written comments and in my comments today, we seek to underscore that such collection is vital to efficient market formation, that it will benefit fund managers and their investors, and that the Department currently has the necessary authority to perform this function.

The goal of the Opportunity Zones tax benefit, as stated in the preamble to the proposed regulations, is clear: “to encourage economic growth and investment in designated distressed communities.” We believe that data will be essential both to creating these new economic opportunities and to ensuring that people living and working in Zones today are the ultimate beneficiaries.

Data Transparency Facilitates Market Formation and Development

Through a variety of mechanisms, the collection and reporting of basic data will encourage the flow of private investment capital off the sidelines and into Opportunity Zones.

First, information connects potential investors and Opportunity Fund managers to investment opportunities. Because investors have to deploy capital into Opportunity Funds within 180 days, it is important that we establish tools to quickly identify opportunities that align with their investment objectives and investment timing needs. The Department can facilitate these efforts through appropriately-scaled collection and reporting of basic Opportunity Fund data, to include publicly-available information that would enable investors, operating business owners, developers and other interested parties to connect with Opportunity Funds serving their markets.

Second, transparency around Opportunity Fund activity will help state and local leaders ensure their Opportunity Zones are able to attract investment capital. They might do so by deploying additional resources or by aligning zoning requirements and other economic development policies. Market data will allow community advocates and local officials alike to understand what's working to stimulate the flow of capital and to adjust state and local policy accordingly in real-time.

Third, consistent and transparent collection of Opportunity Fund data will allow for a rigorous evaluation of the Opportunity Zones policy itself. A common framework for collection and reporting of Opportunity Fund data should create a baseline data set. This will enable the long-term evaluation of the policy and its impacts on Opportunity Zones, both individually and in aggregate.

Data Transparency Produces Benefits for Opportunity Funds and their Investors

We also believe that an appropriately-scaled data collection effort could be implemented by the Department with minimal impact on the operations of Opportunity Funds or the enterprises in which they invest. Basic transaction data will be readily available to Opportunity Fund managers, and they will need to track much of the same information to ensure compliance with the statute. Standardizing this process could further help to reduce compliance costs for all market actors.

Standardized collection will further facilitate the formation of market-facing tools to enable Opportunity Zone investment. The U.S. Impact Investing Alliance, in partnership with the Beeck Center at Georgetown University, recently released the Opportunity Zones Reporting Framework. This voluntary standard includes both guiding principles for investment and a detailed data collection framework. It was created with the participation of a wide range of market actors including investors, foundation, prospective real estate and venture capital fund managers, private wealth platforms and community stakeholders. We are heartened by this broad industry participation, and we believe it underscores market demand for this type of information. A federal standard for collecting market data would complement and amplify this and other private efforts to organize the Opportunity Zones market.

Treasury Currently has the Necessary Authority to Collect Transaction Data

Finally, as laid out in our written comments, it is clear to us that the Department has the necessary statutory authority to implement our proposed data reporting standard. This action is needed to ensure the proper functioning of the Opportunity Zones market and to meet the legislative intent of the statute.

This much was underscored in a letter to Secretary Mnuchin, dated January 23 and signed by Senators Tim Scott and Cory Booker, along with more than a dozen of their colleagues. In it, they "urge Treasury to include in its final regulations reasonable reporting requirements, including Fund- and transaction-level information." Doing so, they state, "will move capital off the sidelines by connecting investors to funds and allowing community stakeholders to align local strategies and additional investments with Opportunity Fund capital."

Furthermore, in his recent Executive Order Establishing the White House Opportunity and Revitalization Council, President Trump prioritized the collection of data that can be used to measure the effectiveness of public and private investments in Opportunity Zones. Adopting the proposal laid out in our written comments would allow Treasury to be responsive to these calls from the White House and Capitol Hill.

As I stated previously, this action would also be responsive to the needs and input of investors, fund managers and other private market actors. Collection of the data requested in our written comments would be complementary to – and in some cases a necessary prerequisite for – privately funded and operated efforts to facilitate market formation.

It is also true that critics and skeptics have rightly begun to surface concerns about the possible unintended consequences of Opportunity Zones. As I have stated, Treasury must move swiftly to preempt possible abuses of this benefit, but it is also true that ill-conceived or ill-informed investments could fail. These investments could fail to generate financial returns, or they could fail to create lasting community benefits. Adopting the U. S. Impact Investing Alliance's our proposed reporting standard as articulated in our public comment letter would be a proactive step by the Department to avoid unintended consequences and maximize community benefit.

In closing, I'd like to remind us all that what we are discussing today goes far beyond the ability of any one tax payer to claim a capital gains deferral. We are talking instead about the economic futures of 35 million Americans living in Opportunity Zones today. We are talking about whether the communities they live in can survive and thrive in the coming years or whether they will continue to fade as others prosper.

We achieve nothing if the policy and the regulations surrounding it fail to motivate new investment into these communities. But our collective goal, as was stated by the Department itself, is to create lasting economic opportunities in distressed communities. If we maintain that focus, it becomes clear that facilitating data collection is an essential component of the Department's regulatory process.

Thank you for your time and the opportunity to comment on this important topic.