

UNITED STATES DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE

PUBLIC HEARING ON PROPOSED REGULATIONS  
"INVESTING IN QUALIFIED OPPORTUNITY FUNDS"  
[REG-115420-18]

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1 P R O C E E D I N G S

2 (10:32 a.m.)

3 MR. DINWIDDIE: All right. I think even  
4 though we don't have everybody, kind of a one- or  
5 two-minute warning to let everybody get to their  
6 seats, and we'll get this kicked off.

7 So, welcome everyone. By the way, I'm  
8 Scott Dinwiddie. I'm the Associate in Income Tax  
9 and Accounting which is the Division that gets the  
10 responsibility for this NPRM and the following TD.

11 But before we get into introductions and  
12 stuff, one, just make sure everybody is in the  
13 right place. This is the Public Hearing on the  
14 Proposed Regulations for Investing in Qualified  
15 Opportunity Funds, REG-115420-18.

16 So, hopefully, that's what you're all  
17 here for. (Laughter) There was a little bit of  
18 confusion because apparently the notice for this  
19 hearing, and the notice for the GLTE REG Hearing,  
20 GLTE NPRM Hearing which was yesterday. Although  
21 the notices were internally correct and provided  
22 the right information, they were posted under each

1 other's headings, I think on Regs.Gov.

2 So, I trust that everybody was able to  
3 navigate that. If you're not here for Opportunity  
4 Funds, then this is not the right hearing for you.  
5 But if you are here for Opportunity Funds, this is  
6 the right hearing.

7 This of course is the first NPRM. As  
8 many know we're also working on a second NPRM,  
9 which hopefully will see the light of day shortly,  
10 and we will no doubt see many of you if not all of  
11 you back for the second hearing, which will be  
12 scheduled once that NPRM is released.

13 So, let me introduce everybody, and then  
14 I'll go through a couple of just housekeeping and  
15 ministerial items, and then we'll get started.

16 As I said, I'm Scott Dinwiddie, the  
17 Associate in Income Tax and Accounting. To my far  
18 right, to me, and left of the table, is Erika  
19 Reigle, an Attorney in Branch 5, in Income Tax and  
20 Accounting. Erika not only works on this project,  
21 but she also will be the clock keeper for today,  
22 and we'll get into the clock in just a minute and

1       how that works.

2                   To her immediate left is Shareen Pflanz,  
3       Shareen is a Senior Technician Reviewer also works  
4       in Branch 5, also working on this project.

5                   And we've also got Kyle Griffin in  
6       Branch 4, who is one of the other Attorneys  
7       working on this project, keeps him up very late.  
8       Thank you, Kyle.

9                   To his left is Mike Novey, who is our  
10      Treasury Representative on the panel today. Mike  
11      is the Associate Tax Legislative Council in the  
12      Office in the Office of Tax Policy at the United  
13      States Department of Treasury.

14                  And to Mike's immediate left is Julie  
15      Hanlon-Bolton who is a Special Counsel in Income  
16      Tax and Accounting, and what that means is she's  
17      the Front Office Reviewer for this project. So,  
18      she's also a good person to know.

19                  So, those are your panelists today. We  
20      thank you for being here, those who are speaking  
21      particularly, but those who are just in the  
22      audience as well. We look forward to hearing your

1 oral comments, obviously, we have also received  
2 and reviewed the written comments that have been  
3 submitted so far, and we thank you for those.

4 So, a couple of housekeeping things  
5 before we kick off: one, obviously it's a crowded  
6 hearing, as you can see. I understand that there  
7 are still many people lined up trying to get  
8 through security. I apologize that it takes so  
9 long to get everybody through. I appreciate your  
10 understanding and patience.

11 That also means we will have people  
12 shuffling in probably throughout the hearing. So,  
13 you know, please just be considerate. Point them  
14 to open seats, if they're looking for a seat, and  
15 understand that that's, I think going to be going  
16 on for, if not the next hour, perhaps the entire  
17 hearing.

18 What else do I want to say? Oh. I  
19 think probably you have already seen, but just --  
20 it is going to be a long hearing obviously, we  
21 have 23 speakers on the list, everybody is  
22 allotted 10 minutes, so you can do the math, but



1 we've got at least four hours of presentation time  
2 potentially. I expect the Panelists up here will  
3 also ask some questions.

4 So the speakers know, I'll just skip to  
5 go through this. So, each speaker has 10 minutes,  
6 there is a timer that is up there at the lectern  
7 where speakers will come to present their  
8 comments. Your comments are being recorded, that  
9 you will be able to see a digital timer when  
10 you're up there speaking from where you're sitting  
11 now.

12 It looks like that black box with -- if  
13 you can maybe see some colored bulbs on top, that  
14 there's a yellow light that will -- a green light  
15 when you're speaking, a yellow light will go on  
16 with two minutes left of your 10- minute time, and  
17 a red light at 10 minutes, and then we'll bring  
18 out the hook.

19 But we just ask you to be considerate  
20 and try to keep within your time, because  
21 obviously, we do want to hear everybody who is  
22 schedule to speak today.

1           Let's see. What else? I want to make  
2           sure that everyone knows -- because it is going to  
3           be a long hearing -- that we will take a break at  
4           some point, most likely around 12:30, but sometime  
5           probably between 12:30 and 1:00 depending on how  
6           we are going, the flow of speakers how -- you  
7           know, how we've done getting through speakers, and  
8           we'll take, once again, depending on where we are,  
9           a 30-45-minute break.

10           You will need escorts. There's a  
11           cafeteria right here on the Seventh Floor. For  
12           those who want to use it, there are other local  
13           restaurants around, around nothing super close to  
14           our building. And we're not going to take an  
15           extensive break, but of course, for those who are  
16           not immediately up speaking, if you want to take a  
17           little extra time and come back, that's up to you.

18           But you won't be required to stay here,  
19           but you may want to use the cafeteria, because  
20           it's just convenient to be back in time for the  
21           hearing. But we'll go through that when we come  
22           to that break.

1           The restrooms are on my left your right  
2       for men, and my right your left for women. So, if  
3       you go out the hall and turn left that way, right  
4       that way, you'll see the signs for the restrooms,  
5       obviously, please use those if you need them. And  
6       what else, am I forgetting anything else for  
7       logistics? I think that's it.

8           Otherwise, thank you very much.  
9       Obviously, from the size of the crowd today I  
10      think it's representative of the interest and the  
11      energy around the new Ozone Rules. So, we  
12      appreciate all your interests. This is obviously  
13      an exciting area of the tax law with a great deal  
14      of potential to have significant impact throughout  
15      various parts of the country.

16           It's also, as you well know, rules that  
17      are not particularly specific, and provide a great  
18      deal of -- leave a great deal of questions, and  
19      obviously part of what we're here to do, and part  
20      of what this NPRM is doing, is trying to answer  
21      some of those unanswered questions.

22           So, you've seen an initial proposal, and

1 we look forward to your comments today, in terms  
2 of what you think are areas we should focus, or  
3 particular problems or solutions to the issues  
4 that arise as a result of these rules.

5 With that -- and we're just also -- we  
6 are just going to go through and call people up in  
7 order. If there are speakers who we get to and  
8 they're not here, and we have this, not only  
9 because we get long lines, but sometimes people  
10 are traveling in for the day, and they have travel  
11 delays.

12 If someone is not here we will skip over  
13 them, but that doesn't mean they lose their  
14 opportunity to speak, as long as they make it into  
15 the room before the hearing ends, we will slot  
16 them in, so that they get an opportunity to  
17 present what they were scheduled to present.

18 With that, but otherwise we'll just go  
19 in order, and call people up, and when they're  
20 done, call up the next person.

21 So, our first speaker; I think are two  
22 speakers. We've got Stefan Pryor. Also I guess I

1 will apologize if I mispronounce your names,  
2 please correct your name when you get to the  
3 microphone, so for the recording if nothing else.

4 But we've got Stefan Pryor, and Stefan  
5 --

6 MR. FOREMAN: Kurt Foreman.

7 MR. DINWIDDIE: All right. Okay.

8 Welcome gentlemen.

9 MR. PRYOR: Thank you, Scott. And thank  
10 you, Panel. We are pleased to be here. My name  
11 is Stefan Pryor. I serve as the Secretary of  
12 Commerce for the State Rhode Island, and my  
13 colleague, Kurt Foreman, is President and CEO of  
14 the Delaware Prosperity Partnership. We are  
15 co-signers along with 10 others for a total 12  
16 co-signers on a letter of comment on the OZ  
17 Proposed Rules. We are pleased to offer such  
18 comments.

19 We are a subset of a group called the  
20 State Economic Development Executives Network, or  
21 the S-E-D-E or SEDE Network, with representation  
22 on a bipartisan basis across the country of state

1 top economic development leaders. We have copies  
2 of our detailed letter.

3 What we'd like to express today, is that  
4 we hope for changes that enable the program to  
5 serve both real estate development and the  
6 fostering of operating businesses, and the  
7 attraction of investments to both.

8 We have a lot of experience of economic  
9 development programs in our states. We know that  
10 no economic development program is perfect. We  
11 may not achieve perfection with this one, but we  
12 think that progress can be made on this very  
13 important point, and that this program has  
14 enormous potential in our states.

15 We were privileged to select the zones  
16 in our states, and we are all eagerly working on,  
17 and with intensity, working on operationalizing  
18 this program. We are going to make four main  
19 recommendations today.

20 By the way, in each of our states, we  
21 are very heavily underway in the implementation  
22 process. In Rhode Island alone, a week from

1 today, we have a conference on the subject. We  
2 have a website we have established for the  
3 purpose. There's investment interests, there's  
4 developer interests, there's operating business  
5 interests; thus our four points.

6 Here's the first one. The requirement  
7 that businesses must meet to be considered  
8 qualified opportunities to own businesses should  
9 be clarified and adjusted in order to better  
10 facilitate investment in O Funds and operating  
11 businesses. The proposed regs we're discussing  
12 today help clarify some of the requirements for  
13 businesses to be considered and Ozone Business.

14 The 70 percent threshold used for  
15 defining the terms substantially, all with respect  
16 to the tangible property requirement set forth in  
17 the rules as amended, provides businesses with  
18 necessary flexibility to qualify for these  
19 investments. We therefore support this approach.

20 We're grateful for that change.  
21 However, we're concerned about the proposed  
22 criterion for Qualified Opportunity Zones

1 businesses that stipulate, "At least 50 percent of  
2 the gross income of a Qualified Opportunity Zone  
3 business, is derived from the active conduct of  
4 trade or business in the Qualified Opportunity  
5 Zone."

6 We fully recognize that we want to avoid  
7 mere holding companies or patent boxes arriving in  
8 our zones, we want to see authentic economic  
9 development activity, we share that goal.  
10 However, we are concerned that manufacturing  
11 businesses, e-commerce enterprises, and others  
12 that have the potential to spur significant  
13 economic activity, could be excluded inadvertently  
14 because of this rule, so we propose that it be  
15 revised.

16 We think that if we follow the precedent  
17 set under the New Market's Tax Credit Rules, the  
18 NMTC Rules; rely upon the tangible property  
19 concentration, akin to the rule, the 70 percent  
20 rule I just referred to; and does not have such a  
21 gross income rule. So, we would like to see you  
22 strike the, "in the zone" portion of the language



1 that refers to the 50 percent of gross income.

2 If you view that as impossible, we in  
3 the states would like to dialogue with you about  
4 it, perhaps a multi-pronged test is possible. If  
5 you think that it's impossible to go the route of  
6 eliminating that requirement, but we think with  
7 great vigor, that it ought to be eliminated, and  
8 this will enable investment in high-impact  
9 operating businesses that will generate jobs and  
10 wealth in the opportunity zones, as was intended  
11 by Congress.

12 You know, again, these dual goals are  
13 important to the states, we believe that  
14 congressional intent was that there be investment  
15 in real estate and operating businesses as a  
16 result of this program, and that such investment  
17 be spurred by it.

18 Point number two: the rule should  
19 provide sufficient flexibility for opportunity  
20 funds to reinvest interim gains without incurring  
21 a penalty or triggering a taxable event.

22 Here, we're particularly concerned with

1 the forthcoming regs, regarding the length of a  
2 reasonable period of time to reinvest, that the  
3 regs refer to a -- we believe that these  
4 regulations should reflect the kind of basic  
5 investment motivations and practices, where a  
6 diverse portfolio of investments is wise, and  
7 there is an ebb and flow to investment.

8 We're concerned by the lack of  
9 provisions ensuring the ability of opportunity  
10 funds to reinvest capital proceeds from the sale  
11 of qualified stock and partnership interests in  
12 Ozone businesses, without triggering a taxable  
13 event.

14 We believe this will reduce the  
15 incentive for opportunity funds to invest in  
16 operating businesses, which once again, we believe  
17 is a key priority of this program. It might  
18 actually draw a lopsided amount of investment into  
19 real estate, at the expense of investment and  
20 operating businesses.

21 You hear our theme. This is a concern  
22 as pertains to several of these technical

1 provisions that will have a profound effect if  
2 they're not revised.

3 We support the intent of the program to  
4 encourage long-term investment, our suggestion  
5 here is that while an investor must be required to  
6 hold its capital in an opportunity fund for 10  
7 years to recognize the full benefit, the funds  
8 themselves should have the flexibility to invest  
9 and divest from operating businesses on a shorter  
10 time scale without incurring a penalty.

11 So that is our recommendation on point  
12 number two of four. And my colleague, Kurt, will  
13 hit the two additional points.

14 MR. FOREMAN: Well, thank you very much  
15 for the opportunity to be here. They sent the two  
16 smaller states, so we are here to carry the water.  
17 So our third point is that the rule should offer  
18 sufficient flexibility to meet the requirements of  
19 the 90 percent asset test. We believe that the  
20 clarity in the rules, for the first state, for the  
21 90 percent asset test following the inception of a  
22 fund was positive.

1                   However, we recommend that the  
2 regulations provide opportunity funds with  
3 additional flexibility in meeting the requirements  
4 of this test. Under the proposed rules and  
5 opportunity fund has six months to deploy the  
6 capital that is raised before being subject to a  
7 potential penalty.

8                   Such a short timeframe could be too  
9 demanding of a newly-formed fund, and could delay  
10 or discourage the formation of potential funds, an  
11 outcome we would like to avoid, and recommend that  
12 this timeline be extended.

13                   We also recommend that the IRS consider  
14 including a provision granting flexibility to  
15 opportunity funds such that for the first 12  
16 months following the receipt of cash by a fund,  
17 the fund would be able to treat such as Qualified  
18 Opportunity Zone Property, for the purposes of the  
19 90 percent asset test, conditional on the cash  
20 being deployed into actual Qualified Opportunity  
21 Zone Property within one year of the Fund's  
22 receipt of the cash.

1                   This would allow funds to make  
2                   investments more flexibly and establish an  
3                   investment portfolio that meets the intent of the  
4                   law.

5                   Our final and fourth point is reporting  
6                   requirements should be simple and unobtrusive.  
7                   Finally, we encourage the adoption of simple,  
8                   unobtrusive reporting requirements to collect data  
9                   on funds and their investments.

10                   We believe it is important for this  
11                   operating to -- reporting to illuminate where the  
12                   incentive has been successful, and help identify  
13                   areas for both improvement and modification in the  
14                   future.

15                   These data will help us understand  
16                   whether the program is incentivizing investments  
17                   intended by Congress.

18                   Thanks for the opportunity to provided  
19                   testimony today. Both Stefan and I appreciate it,  
20                   and along with our colleagues at the State  
21                   Economic Development Officials Group. And we're  
22                   glad to be with you.

1           MR. PRYOR: One closing thought. These  
2 census tracts were selected because they are, in  
3 many cases struggling. They've been having  
4 challenges attracting investment. I think we owe  
5 it to the congressional cosponsors to all the  
6 framers of this program, and to ourselves, all who  
7 are investing energy, to ensure that we recognize  
8 that attracting investment for these dual  
9 purposes, real estate and operating businesses is  
10 so important.

11           Some of these census tracts is predicted  
12 by EIG and other partners who are working with us,  
13 that will not recover all the jobs lost due to the  
14 Great Recession. These are the census tracts that  
15 have been left behind, so we especially want to  
16 incentivize the various forms of investments that  
17 are possible. We thank you.

18           MR. DINWIDDIE: Any questions, members  
19 of? Okay. Thank you, Mr. Pryor --

20           MR. PRYOR: We left you with a minute  
21 and seven seconds.

22           MR. DINWIDDIE: And we appreciate that.

1 If everyone does that we'll get out of here before  
2 the sun sets. All right. (Laughter) Thank you  
3 both, Mr. Pryor and Mr. Foreman.

4 One other public service announcement I  
5 realize I fort to remind everyone including  
6 myself, to the extent you have a cell phone,  
7 please set it to, the ringer off, so we don't get  
8 disturbed by any dings or bings throughout.

9 Okay. Next up, and I'm not sure if our  
10 speaker is here, is Mr. Gerron Levi, on behalf of  
11 the National Community Reinvestment Coalition. I  
12 am not seeing anything, so we will hold his spot,  
13 if he's shows up later, hopefully he's not just  
14 stuck in line, or having otherwise travel  
15 problems.

16 So that will take us to number three,  
17 John Sciarretti and Michael Novogradac from  
18 Novogradac Opportunity Zones Working Group.  
19 Welcome, gentlemen. At the mic, so we all can --

20 MR. NOVOGRADAC: Great. Thank you. I'm  
21 Michael Novogradac. I'm Managing Partner of  
22 Novogradac & Company. We're a national public

1 accounting firm. I'm here with my Partner, John  
2 Sciarretti. And we are speaking on behalf of the  
3 Novogradac Opportunity Zones Working Group.

4 I do want to thank the Treasury  
5 Department for the hard work, and the IRS, in  
6 putting together the proposed regulations, and  
7 working on the next set of guidance. And we look  
8 forward to additional guidance coming over the  
9 weeks and months and years ahead.

10 The Opportunity Zones Working Group did  
11 -- the Novogradac Opportunity Zones Working Group  
12 did submit a comment letter on December 28, 2018.  
13 And my Partner, John, and I, wanted to address  
14 three of the issues that were included in that  
15 letter.

16 They are the valuation method for  
17 applying a 90 percent asset and a 70 asset tests,  
18 that's substantial improvements tests. These are  
19 actually two tests that are particularly relevant  
20 to us as tax accountants in advising Qualified  
21 Opportunity Zones and Qualified Opportunity Zones  
22 businesses.



1           And then we also want to touch upon the  
2           third issue as to the time that a business has to  
3           become a Qualified Opportunity Zone business.

4           I'm going address the first two issues,  
5           and I'll let John address the third issue.

6           So, I'll start with the valuation  
7           methods for applying the 90 percent and 70 percent  
8           asset tests. The proposed regulations do provide  
9           a requirement that entity use applicable financial  
10          statements, if they have applicable financial  
11          statements, to calculate the 90 percent and 70  
12          percent asset tests.

13          Don't worry, I'm not going to go into  
14          the explanation of applicable financial statements  
15          or, you know, some of the other calculation  
16          matters, but I just wanted to note that the effect  
17          of this rule, is that many entities would be  
18          required to measure compliance with those tests  
19          using GAAP- basis financials, generally accepted  
20          accounting principles.

21          And the Opportunity Zones Working Group  
22          believes that such a requirement is burdensome,

1 and has unintended consequences. And we believe  
2 in lieu of this requirement, all entities should  
3 have the ability to elect to use unadjusted cost  
4 basis.

5 Our concerns about GAAP financials that  
6 are shared pretty widely with the Working Group  
7 has to do with the practicality of using those  
8 financials, as well the pure appropriateness of  
9 using those to measure compliance with the 90  
10 percent and 70 percent tests. From a practicality  
11 perspective, financials aren't prepared every six  
12 months, audited financials, so you are interim  
13 measuring dates you really couldn't use audited  
14 financial statements. Also audited financial  
15 statements might not be available in time to  
16 assess the test, and oftentimes in the early years  
17 of a fine, you don't have audited financial  
18 statements, you have to get them at a later date  
19 and have some sort of transition rule.

20 But as far as the practicality issues,  
21 well, we're concerned about the actual results,  
22 audited financial statements you'll end up showing

1 assets on a depreciating basis, so you're getting  
2 your good assets, if you will, will be declining  
3 over time, so you would have to be running  
4 projections over 10 years, and the like, to sort  
5 of measure the test.

6 There's also impairment issues, there's  
7 consolidation issues, there's a host of areas  
8 where the GAAP financials could give you the  
9 incorrect result.

10 So, in summary, we just would like to be  
11 able to have entities elect to use the unadjusted  
12 cost phases for purposes of those tests.

13 The second issue, substantial  
14 improvements, the Opportunity Zones Working Group  
15 believes that taxpayers should have the option to  
16 elect to apply this more than 100 percent of your  
17 basis, substantial improvement tests on an  
18 aggregate- basis approach.

19 We think it's impractical in many  
20 situations to both look at every individual asset  
21 and trace improvements to each individual asset to  
22 decide if that individual asset has been

1 substantially improved, for purposes of that asset  
2 becoming a good asset.

3 We'd like to be able to have the entity  
4 elect to treat all of the businesses to assets as  
5 one, and then measure all their improvements and  
6 additions to property as one.

7 And we do note that that the statute  
8 itself doesn't say additions to the basis of the  
9 property, they say additions to the basis with  
10 respect to the property, and we think the "with  
11 respect to" language gives the IRS the authority  
12 to allow this aggregation election.

13 And then I'd also note another area of  
14 the tax law dealing with tax and revenue, and the  
15 definition of residential rental property, is  
16 generally applied on a building-by-building basis,  
17 but the IRS in the statute talks about buildings,  
18 but the IRS has treated a project as if it was one  
19 building, and it aggregated them for purposes of  
20 applying those tests. So by that analogy an  
21 aggregate basis election should be possible.

22 So in closing on the substantial

1 improvement test, we think businesses;  
2 particularly operating businesses should elect to  
3 aggregate their assets for purposes of measuring  
4 the test.

5 So those are two of the issues. The  
6 third issue has to do Qualified Opportunity Zones  
7 businesses. And I'll hand it over to John  
8 Sciarretti to address that issue.

9 MR. SCIARRETTI: Thank you, Mike. Thank  
10 you, Panelists, for allowing us to testify.

11 As Mike said, I'm going to talk about  
12 the eligibility, or a grace period for Qualified  
13 Opportunity Zones businesses to qualify. The  
14 statute itself provides that Qualified Opportunity  
15 Zones businesses have to be qualified when a  
16 qualified fund invests in that business, existing  
17 businesses. And for new businesses, they appear  
18 to get time to qualify. They just have to be  
19 organized for the purpose of becoming an  
20 Opportunity Zone business.

21 The statute doesn't provide any  
22 information of how long a business gets to

1       qualify. The regulations provided for a 31-month  
2       safe harbor for the purposes of reasonable working  
3       capital, and if you find yourself qualifying for  
4       that safe harbor, other requirements of an  
5       Opportunity Zone business, there are safe harbors  
6       for those other requirements.

7               The safe harbor is a little bit  
8       confusing. However, it appears that it doesn't  
9       qualify to all Qualified Opportunity Zones  
10      businesses.

11              And so, on behalf of the Opportunity  
12      Zones Working Group we request that regulations  
13      provide for a safe harbor for all Qualified  
14      Opportunity Zones businesses. We request that as  
15      long s the business were to -- or as long as the  
16      fund had a reasonable expectation that the  
17      business could qualify within 31 months, that that  
18      business would have up to 31 months to qualify.  
19      And we also note that that reasonable expectation  
20      can be supported by a written plan which is  
21      consistent with the working capital rules, and the  
22      regulations.

1           We also ask that Treasury make an  
2           exception for those businesses that, under certain  
3           facts and circumstances beyond their control,  
4           can't meet the 31 months safe harbor period. Or,  
5           under facts and circumstances based on a  
6           reasonable start up of that business, some  
7           businesses just take longer to start up.

8           And so, that concludes my testimony on  
9           the grace period today. And I will thank, on  
10          behalf of Mike and myself, and the Opportunity  
11          Zones Working Group, we thank you for allowing us  
12          to testify.

13          MR. DINWIDDIE: Great. I know I have at  
14          least one or two questions.

15          MR. SCIARRETTI: Okay.

16          MR. DINWIDDIE: And there may be others  
17          as well. So, your concern with the grace period  
18          not applying to all taxpayers, or all funds,  
19          obviously not all taxpayers but --

20          SPEAKER: All businesses --

21          MR. DINWIDDIE: -- all businesses, and I  
22          guess why do you think that the rules that are

1       there would not apply to all businesses? What is  
2       it about businesses that would prevent them for  
3       using the safe harbor that's there?

4               MR. SCIARRETTI: Okay. A plain reading  
5       of that text, it appears like a business has to  
6       have, number one, working capital --

7               MR. DINWIDDIE: Right.

8               MR. SCIARRETTI: -- in order to fit into  
9       the safe harbor. And it's confusing from the  
10       standpoint that whether that working capital has  
11       to be sufficient to cover the tangible property  
12       they would need to qualify.

13               And so, for instance if I needed to  
14       spend \$10 million to qualify, I would have to have  
15       \$10 million, you know, at the start of that  
16       31-month period. That's the way the text reads.  
17       And so, you know, that's confusing, and is it  
18       reasonable, is it consistent with normal business  
19       practices, in that, you know, businesses that  
20       surely draw capital from debt or even equity  
21       draws, you know, wouldn't neatly fit into that  
22       safe harbor.



1                   MR. DINWIDDIE: Right. Okay. So that's  
2 helpful, because I certainly don't think that's  
3 the intent so --

4                   (Laughter)

5                   MR. SCIARRETTI: Yeah. Good.

6                   MR. DINWIDDIE: Something that's not  
7 drawn down shouldn't count one way or the other.  
8 But anyway, so that's helpful. And then for Mr.  
9 Novogradac, I've got a question too. So, thank  
10 you, Mr. Sciarretti.

11                   So, on your -- your concern with the  
12 GAAP, and preferring to have -- requesting an  
13 election for cost basis; unadjusted cost basis,  
14 are you requesting an election at the opportunity  
15 fund level --

16                   MR. PRYOR: Yeah. I would envision that  
17 as being an election at the opportunity fund level  
18 or at the opportunity of his own business level to  
19 apply the test itself using that methodology. So  
20 it would be across all assets.

21                   MR. DINWIDDLE: Okay. Are there others  
22 who have questions for our speaker.

1           MR. NOVEY: One question about the  
2 suggested aggregate test for substantial  
3 improvement. Did you mean that all of the  
4 non-original use assets that have been proved  
5 should be in a single bucket so you could test  
6 them on an aggregate basis or did you intend for a  
7 humongous substantial improvement to some assets,  
8 sweep in other non-original use assets that have  
9 not been changed at all or improved?

10           MR. PRYOR: I think the idea was that  
11 business would look at their non-original use  
12 assets and then from that measuring date, look at  
13 what addition to bases they make with respect to  
14 that business, and additional qualifying assets  
15 that they add to the business over the 30 month  
16 period should be eligible to account for those  
17 non-original use assets?

18           MR. NOVEY: Would the application of  
19 this rule only to assets which are improved in  
20 some fashion be a plus for you all or not worth  
21 doing?

22           MR. PRYOR: Ask that question again.

1                   MR. NOVEY: What you suggested is that  
2 all non- original use assets would be tested  
3 against aggregate basis, aggregate increase in  
4 bases. An alternate way of doing it would be  
5 among the improve assets you would treat  
6 everything on an aggregate basis, but you would  
7 not say that a very generous set of improvements  
8 for some of your assets or maybe one of your  
9 largest assets would be sufficient to cause a  
10 whole bunch of non-original use unimproved assets  
11 to qualify?

12                   MR. PRYOR: I'm thinking you should be  
13 able to -- whatever assets are used in that trade  
14 or business would be aggregated together, as  
15 opposed to trying to look and see which assets are  
16 technical in some way improved as such that you  
17 would only have a sub set aggregation.

18                   MR. NOVEY: But would the less desired  
19 option be of user?

20                   MR. PRYOR: Yes, more is more. So, yes,  
21 that would be the use. Thank you.

22                   MS. HANLON-BOLTON: This is for you,

1 John. Back to your question, for the businesses  
2 you feel don't fit into our 31 month rule, would  
3 you have a separate rule, and second of all, would  
4 the time frame be 31 months or could we do  
5 something else?

6 MR. SCIAR: Yeah. I think it would be  
7 easier if you left the 31 month working capital  
8 safe harbor because that's what it's intended to  
9 be for, the non-qualifying financial property rule  
10 -- and left that alone because it's a good rule,  
11 but to try to sort of piggy back off that for the  
12 qualified business test. I think it would be  
13 difficult. It would be easier to have a separate  
14 rule that says a business that is really expected  
15 to qualify within up to 31 months. That would be  
16 the safe harbor in that you could still have the  
17 written plan to support that. Then obviously any  
18 sort of facts and circumstances that are beyond  
19 the business's control would not be a safe harbor,  
20 but it would be --

21 MS. HANLON-BOLTON: Are you talking  
22 about like a cure period?

1                   MR. SCIAR: Well, yes, I guess.  
2           National disasters are kind of the first thing  
3           that comes to mind, but other than that, let me  
4           give you an example. There are some real estate  
5           projects that the entitlement phase is 2 years or  
6           more. So, if you want to bring your equity in for  
7           that phase, you may not get the building built.  
8           It will be beyond the 31 month period. If it's  
9           reasonable under those circumstances and you have  
10          a plan and it all makes sense and improves the  
11          community, but you're beyond the 31 months, I  
12          think that's within the intent of the statutes.  
13          So, that would be sort of the exception, national  
14          disasters. As long as you're sort of working  
15          towards that pool being qualified, I think there's  
16          precedence in other parts of the Code where that  
17          sort of relief is available.

18                   MS. HANLON-BOLTON: Okay.

19                   MR. SCIAR: Great.

20                   MR. HOVEY: Any other questions? All  
21          right. Thank you, gentlemen. I appreciate it.  
22          Okay. I'm told that our speaker #2, I think it's

1 Gerron Levi, representing the national community,  
2 the investment coalition is here. Is that true?  
3 No? Yes? Okay. Well, we'll continue to hope that  
4 speaker shows up. With that, we'll continue to  
5 move on to Speaker #4 on our list, John Lettieri,  
6 representing the Economic Innovation Group.

7 MR. LETTIERI: Good morning. I see a lot  
8 of familiar faces in here today. So, good  
9 morning, my name is John Lettieri. I'm the  
10 President and CEO of the Economic Innovation  
11 Group, my firm is a research and advocacy  
12 organization based in Washington, D.C. I'm  
13 thankful for the opportunity to testify under the  
14 proposed rules regarding the implementation of the  
15 opportunity zoned incentive and I'm thankful for  
16 the Herculean effort of wading through all these  
17 comment letters that you all have undertaken.

18 EIG was deeply involved in the  
19 development of the Investing and Opportunity Act  
20 which garnered brought by partisan support which  
21 served as the basis for the opportunity zoned  
22 provision and the tax cut and jobs act of 2017.

1 Since opportunity zones became law, we've worked  
2 within an array of state holders nationwide,  
3 including state and local policyholders, community  
4 organizations, major philanthropies and leading  
5 investors to raise awareness, provide analysis and  
6 gather feedback. Those informed the detailed  
7 technical recommendations that we alongside a  
8 coalition of state holders, provided to the  
9 Department of Treasury and Internal Revenue  
10 Service in response to the notice of proposed  
11 rulemaking issued in October of last year.

12 Before addressing the key  
13 recommendations in our comment letter, it is  
14 important to underscore briefly the  
15 characteristics of the designated communities  
16 themselves. All the whole states use their  
17 selection authority to skew towards significantly  
18 lower income communities than the law required.  
19 In fact, our recent analysis found that  
20 opportunity zones are on average more distressed  
21 across nearly every available measure than both  
22 the total pool of eligible census tracts and the

1 subset of low income tracks it did not receive as  
2 a nation.

3 For example, 71 percent of opportunity  
4 zones meet the U.S. Treasury Department's  
5 definition of severely distressed. The average  
6 designated tract has a poverty rate of nearly  
7 double the national average and more than 1/5th  
8 have a poverty rate of 40 percent or higher which  
9 is true of only around 5 percent of communities  
10 nationwide. The median family income of the  
11 average opportunity zone is nearly 40 percent  
12 below the national level. Of the 31,000,000  
13 residents of opportunity zones nationwide, over  
14 14,000,000 live in communities that saw their  
15 median incomes actually decline during the  
16 national economic recovery and nearly 19,000,000  
17 live in ones in which the poverty rates rose. In  
18 an era in which educational attainment is  
19 increasingly critical to local prosperity, more  
20 adult opportunity zone residents lack a high  
21 school diploma than have obtained a college  
22 degree. So, improving access to economic



1 opportunity for residents of these communities is  
2 both a worthy and urgent policy goal. An  
3 opportunity zone gives us a once in a generation  
4 chance to make progress.

5 So, however, while there is intense  
6 interest in this new policy, there are several key  
7 issues that we believe are preventing many  
8 opportunity funds from performing and  
9 significantly limiting the nature and extent of  
10 new investment in the designated communities.  
11 While the incentive was designed to support a wide  
12 variety of needs across communities from clean  
13 energy to housing to commercial development, its  
14 central purpose was to drive investment into  
15 operating businesses in undeserved areas,  
16 particularly new ventures and existing small to  
17 medium sized businesses poised for growth. In a  
18 recent letter to Secretary Menusa dated January  
19 23, 2019, a bi-partisan group of 16 senators and  
20 representatives expressed an investment in  
21 operating businesses as "a central goal of the  
22 underlying legislation". This central goal must

1 be reflected in the rule making process in order  
2 to avoid many of the shortcomings of previous  
3 federal efforts to boost economic growth in low  
4 income communities.

5 As is reflected in an array of comment  
6 letters submitted in response to the proposed  
7 rulemaking, this remains of the first order of  
8 concern, not only in EIG and its coalition, but  
9 for mayors and governors, state economic  
10 development officials, business associations,  
11 CDFI's and many other important state holders. So  
12 accordingly, additional clarity is urgently needed  
13 in the following areas.

14 First, opportunity funds need reasonable  
15 time to deploy and redeploy capital raised from  
16 investors or return to funds from the sale of an  
17 asset. While the working capital safe harbor for  
18 opportunities on businesses provided in the  
19 regulations is a step in the right direction,  
20 similar timing flexibility is needed at the  
21 opportunity funds level. This allows them to  
22 raise, deploy, and redeploy capital. This is

1 particularly important for funds that are  
2 interested in making investments and operating  
3 businesses. Our comment letter includes 3 policy  
4 options that would allow funds the necessary time  
5 and flexibility and relief to make prudent and  
6 impactful investments.

7           Second, the rules must insure that  
8 investors' tax benefits will not be compromised  
9 when a fund sells an asset and reinvests the  
10 proceeds in another qualifying investment. In  
11 that same bi-partisan letter that I mentioned  
12 earlier, the signatory state "Congress tied the  
13 tax incentive to the longevity of an investor  
14 stake in an opportunity fund, not to an  
15 opportunity fund stake in any specific portfolio  
16 investment. This is why we specifically directed  
17 Treasury to provide adequate time for funds to  
18 reinvest capital that has been returned to the  
19 fund from an underlying portfolio investment". We  
20 hope that future guidance will reflect Congresses'  
21 intent and clear this major roadblock for the  
22 formation of multi asset opportunity funds.

1           Next, we strongly recommend the  
2       reconsideration of the requirement that 50% of the  
3       gross income of qualified opportunities on  
4       business be derived from the active conduct of  
5       trade or business in the opportunity zone which  
6       was mentioned earlier. If interpreted narrowly,  
7       this provision risks significantly hindering the  
8       exact type of business investment and activity  
9       that Congress intended with this policy and would  
10      place huge administrative burdens on qualifying  
11      businesses.

12           Turning to things that we appreciate, in  
13      particular about the proposed rulemaking, we  
14      applaud the approach that Treasury is taking on a  
15      number of key issues. For example, the proposed  
16      31 month safe harbor at the opportunity zone  
17      business level will help many fund investors to  
18      structure investments and time the acceptance of  
19      capital. Additionally, we strongly support the  
20      proposed definition of substantially all  
21      pertaining to the amount of a qualifying  
22      business's tangible assets located in the zone.

1 The proposed 70 percent threshold achieves the  
2 right balance to ensure that qualifying  
3 opportunity funds will not be discouraged when  
4 investing and operating business as Congress  
5 intended. Both of these rules should be finalized  
6 and as detailed in our comment letter, Treasury  
7 should also consider whether additional guidance  
8 in these areas is needed.

9           Additionally, the proposed regulations  
10 address a range of other issues, including that  
11 all capital gains are eligible for incentive; that  
12 partners may invest and defer partnership level  
13 gains, if the partnership does not; the debt of a  
14 qualified opportunity fund taxed as a partnership  
15 is not treated as an additional investment by the  
16 partners and that qualified opportunity fund  
17 investors may hold their interests in the funds  
18 and make the basis step up election until 2047.  
19 The final regulations should include all of these  
20 proposed rules.

21           We have additional questions and believe  
22 businesses need additional clarity on other

1       definitional clauses in the statutes such as how a  
2       business can meet the substantial improvement  
3       test, as was mentioned earlier and if property can  
4       be considered original use if vacant for one year  
5       as was done with the enterprise zones program.

6                 Finally, the future proposed regulations  
7       should include reporting requirements that would  
8       provide basic information about investments and  
9       opportunity zones communities to inform investment  
10      and policy decisions of the future.  Such data  
11      could include an inventory of investments by zone  
12      and could include the amount invested in each zone  
13      and limited information about the nature of the  
14      investment, similar to the requirements that were  
15      originally included in the Investing Opportunity  
16      Act.

17                So, in closing, we appreciate the hard  
18      work of the IRS and Treasury staff in setting up  
19      the regulatory framework of this new policy.  This  
20      initial concept was very much an important step in  
21      providing clarity on a number of important issues.  
22      I look forward to answering your questions.

1 SPEAKER: Any questions?

2 MS. HANLON-BOLTON: Yes. You had said  
3 the 50 percent growth income test will hinder  
4 investments. Can you just put a little bit more  
5 color on that?

6 MR. LETTIERI: Sure. It gets back to  
7 some of the comments that were made earlier. I  
8 think the type of businesses that risk being  
9 excluded from qualification under that test are  
10 very much the types of businesses that are both  
11 most poised for investment, growth businesses that  
12 would be attracted to investors and particularly  
13 impactful for the communities in which they  
14 reside.

15 MR. NOVEY: I'm just trying to  
16 understand what the result would be if we thought  
17 we had the authority to rid of the requirement of  
18 being in the zone. I assume you're saying that  
19 there is a 50 percent test because that's pretty  
20 clearly expected.

21 MR. LETTIERI: That's right.

22 MR. NOVEY: By Congress. So, what would

1 the requirements of that 50 percent test be and  
2 would there be zero nexus to the zone?

3 MR. LETTIERI: So, the statute seems  
4 interested in 2 things. One is where is your  
5 tangible property, which is answered by the  
6 substantially all test. And 2, are you an active  
7 conduct trader business such that the majority of  
8 your income derives from that active conduct?  
9 Those 2 things sit side by side, the locational  
10 requirement being substantially all of your  
11 tangible property. What is concerning to many of  
12 us about the gross income provision in the  
13 proposed rules is that it adds a locational  
14 requirement that's not found in the statute to the  
15 gross income requirement that's there. Parts the  
16 statute that are carried over from other areas of  
17 the Code specifically leave behind locational  
18 requirements on the sourcing of income. So, that's  
19 the concern and that inadvertently without safe  
20 harbors and other work arounds, what you risk  
21 excluding are businesses that would otherwise  
22 qualify on the tangible property test and all the



1 other tests included in the statute, but do not  
2 either know how to derive the source of their  
3 income specific to that zone or can't meet that  
4 test as was described earlier.

5 MR. NOVEY: Just to make sure I  
6 understand you, you're saying the reference to  
7 such business that is being picked up by this Code  
8 section wherein it's origin it's clearly referring  
9 to a business in the zone, such business as  
10 picked up by the 0 zone statute does not have any  
11 geographic considerations?

12 MR. LETTIERI: Pertaining to the  
13 sourcing of the income geographically itself, that  
14 is correct.

15 SPEAKER: Any other questions? Thank  
16 you, Mr. Lettier. Thank you very much. All right.  
17 Next up. Speaker #5, representing the National  
18 Minority Technology Council. Karl Cureton.

19 MR. CURETON: Cureton.

20 SPEAKER: Cureton. Thank you, sir.

21 MR. CURETON: Well, good morning,  
22 distinguished panel members and everyone here.

1 It's awesome to follow John. If Senator Scott was  
2 the father of the opportunity zone, I definitely  
3 would consider John the mother. So, the  
4 opportunity to fund a qualified opportunity zone  
5 business, you know, if looking at this proposed  
6 ruling, I really believe this is an opportunity to  
7 jump start America in both rural and urban  
8 centers. From a perspective of the qualified  
9 opportunity zone, we have concerns.

10 So, my name is Karl Cureton. I'm the  
11 founder and executive chairman of the National  
12 Minority Technology Council. I'm the CEO of the  
13 Council Exchange Board of Trade and the managing  
14 partner of the regional opportunity outcome fund.  
15 We did submit a public comment. In order to bring  
16 context to what I'm going to share today and have  
17 it make sense and hopefully make a difference, I  
18 did want to share a little bit about who we are to  
19 kind of bring context. The reason why is that we  
20 do represent 65,000 businesses and I think it is  
21 important for industry to speak.

22 For the past 20 years, I've served as

1 the founder and executive chairman of the National  
2 Minority Technology Council. The Council is a  
3 research based 501(c)(6) trade association  
4 registered in the Commonwealth of Virginia as a  
5 non-stock corporation representing the common  
6 business interests of 65,000 employers, minority  
7 employers, technology companies spread across 40  
8 SBA districts and we've generated 20 council  
9 regions. We have an industry aggregate sales of  
10 100 billion dollars and employ as a group some  
11 500,000 employees. Our vision is to steward this  
12 fast growing decade. This growth is possible and  
13 the opportunity fund proposed ruling has an impact  
14 for success. So, we thank you.

15 From our estimations, this proposed  
16 ruling has an opportunity to impact over 6,000  
17 minority technology companies over the coming  
18 decade. We estimate that these firms employ about  
19 48,000 employees. This group could double in size.  
20 Given the infrastructure systems, technological  
21 work required by the many business contracts --  
22 now, hear this, the contracts awarded because of

1 the opportunity fund activity.

2 We've got to think about the fact that  
3 billions of dollars are coming and we've got to  
4 think about the fact that that money is going  
5 somewhere. So we need to look at the acquisition  
6 side of this conversation, particularly the  
7 allocation of the investors funds to developers,  
8 intermediaries, and qualified opportunities on  
9 businesses. The counsel plays a key role in  
10 pooling resources of state holders, strengthening  
11 minority innovation and job creation through  
12 public, private partnerships and inclusive  
13 procurement solutions. The counsel is included in  
14 the U.S. Department of Commerce technology  
15 transfer innovation consortium, and a regional  
16 innovation stake holder. I'm giving you some  
17 context because I want to say something. I'm not  
18 going to say why I'm saying it. Earlier this year,  
19 the Council merged with the Council Exchange Board  
20 of Exchange. We're sponsoring a regional  
21 opportunity outcome fund or community outcome fund  
22 which is a research project to initiate a private

1 fund complex utilizing distributing intelligence  
2 model that will allow for an industry led public,  
3 private partnership that scales risk over multiple  
4 qualified opportunity joint ventures.

5 The exchange is operated exclusively as  
6 a business expense. We are 501(c)(6) non stock,  
7 and in looking from our perspective, not only are  
8 we developing research, the exchange in  
9 establishing an investment subsidiary to assist in  
10 capital asset acquisitions, unitization and  
11 technology transfer for minority technology  
12 companies. As a regional innovation eco- system,  
13 we are also looking at how it is that we can bring  
14 together areas like as HBCU'S, historical black  
15 college or universities integrating with state  
16 programs and a key part of this conversation is  
17 that in order to make all of this happen, we  
18 actually believe that there has been an oversight  
19 and we're saying this mainly because our  
20 experience relative to working with -- I was  
21 actually subject matter expert for Dr. Carson's  
22 convention center and was subject matter for the

1 White House HBCU and again, I'm bringing context.  
2 My wife, Brenda, is here, and I'm saying that  
3 because, of course, it's Valentine's Day.

4 Okay. So, it's from this industry  
5 perspective that I bring up the matter relating to  
6 the regulatory flexibility Act and the Treasury  
7 certification that small entities would not be  
8 impacted by 1400 Z.2. Taxpayers who invest in  
9 opportunity funds and qualified opportunity  
10 businesses will, from our perspective, have  
11 significant future economic impact, on substantial  
12 number of small entities, will have a significant  
13 impact. Unfortunately, Treasury has certified that  
14 these proposed regulations, if adopted, as it  
15 stands now, would not have a significant economic  
16 impact on substantial and very small entities that  
17 are directly effected by the proposed regulations.  
18 In fact, the GAO was signaled by Treasury in 2017  
19 that 1400 Z2 was a non major regulatory issue,  
20 non-major regulatory issue. So, if you look at  
21 the GO report, the criteria for that is, it is not  
22 going to impact 100 million dollars. We truly

1 believe that this is a multibillion dollar impact.  
2 It is important to note that Congress found that  
3 failure to recognize differences in scale and  
4 resources, a regulated entity has numerous  
5 instance adversely effected, competition to the  
6 market place, discourage innovation and restricted  
7 improvements for productivity. This regulation  
8 certainly speaks to our nation's core principle,  
9 to empower Americans to make independent financial  
10 decisions and to save for retirement and build  
11 wealth. This current Trump administration has  
12 articulated another principle, to foster economic  
13 growth and vibrant financial markets through more  
14 rigorous regulatory impact analysis that address  
15 systemic risk and market failure such as moral  
16 hazard and information asymmetry. So, if someone  
17 knows more information than the other guy, then  
18 there's information asymmetry and there's moral  
19 hazard.

20 So, representing 65,000 businesses that  
21 are minority, we are in a place where there are  
22 some areas that we don't know what we don't know.

1 We're just asking if in fact -- well, it is  
2 critical Treasury reconsiders its position to be  
3 in alignment with the White House's stated  
4 position that opportunity fund investment exist in  
5 part to fund new businesses. The Council highly  
6 recommends that the Treasury and the SBA take  
7 immediate action to include an initial regulatory  
8 flexibility analysis to the chief council for the  
9 advocacy of the SBA. What are not here today, from  
10 our perspective, are technology companies that are  
11 really prone and best suited and the reason why  
12 that is, is that there was not a triggering or  
13 signaling to perfect this process. The reason why  
14 that is there was not a triggering or a signaling  
15 to accomplish this process. Treasury must  
16 decertify its position concerning the regulatory  
17 flexibility act and consider the impact on U.S.  
18 small business eco-system. Furthermore, more  
19 consideration is needed on how Treasury defines  
20 qualified opportunities on businesses. This  
21 consideration could be best illuminated through  
22 the public comment process that would be availed



1 if in fact the impact analysis was triggered, but  
2 again, it was certified that there was not an  
3 impact so that the SBA was not brought in and a  
4 public comment on the SBA side was not afforded.

5 So, therefore it is the National  
6 Minority Technology Council's position, that the  
7 Treasury certification mitigates an opportunity to  
8 solicit and consider flexitarian and regulatory  
9 proposals to this important IRS code. This notice  
10 of proposed rule making did not make available for  
11 public comment an initial regulatory flexibility  
12 analysis. Such an analysis would describe the  
13 impact proposed rule on small entities. The  
14 initial regulatory flexible analysis, a summary  
15 would be published in the Federal Register and  
16 we'd all be able to find out how things work and  
17 we'd get even more comments. The kind of comments  
18 that we're getting now would be flushed out at the  
19 SBA level.

20 I still want to say that this is  
21 awesome. I give credit to Congress. I give credit  
22 to everyone to the fact that this is occurring. As

1 a technologist, I would ask Treasury to be mindful  
2 of the financial innovation that is on the  
3 horizon. Our research on how best to establish a  
4 fund complex has our industry considering the  
5 convergence between capital markets and financial  
6 innovation. We see this proposed ruling as a  
7 critical key to American's social safety net. We  
8 are doing good and will prove to be the best in  
9 most substantial return. We see this opportunity  
10 to bring capital to communities and unleash the  
11 power of human capital. Improving schools,  
12 cities, infrastructure, broadband grids,  
13 supporting innovative entitlement reform that  
14 requires new and sophisticated partnerships. I  
15 just thank you for this opportunity to testify.  
16 Godspeed your deliberations.

17 SPEAKER: Thank you, sir. Any questions  
18 from our panel?

19 MR. NOVEY: Assuming the arguendo --  
20 that's lawyers, that we heard in not going the  
21 route of not going the initial regulatory impact,  
22 should we (a) do you know what possible changes to

1 these regs would have been made if we had had that  
2 benefit, or is the problem that having failed to  
3 do that, no one knows what should have been done  
4 if we had done it. I guess the second question is  
5 are you recommending that we delay finalization  
6 until that process has gone through.

7 MR. CURETON: So, to answer your  
8 question first off, I am humbled by this process  
9 and I think my expertise is more on the economy  
10 and how the economy can grow and the innovation.  
11 So, this is a new territory for us. But I would  
12 share that one of the areas that we're really  
13 focused on is that large entities that have all  
14 the capital, that have all the longitude  
15 understanding, have all the expertise, have a jump  
16 start on what's going on, yet our economy is based  
17 on small business and innovation and guts and  
18 glory. So, what I'm saying, from a personal or an  
19 organizational perspective, I would share that we  
20 just need to consider the informational asymmetry  
21 and that we just need to consider inside of what  
22 we would say and that is having citizens having an

1 opportunity to understand the impact of this is  
2 critical. However, would I thwart the process of  
3 progress to do it? We need this right now. What I  
4 would say if I could, is there might be an  
5 opportunity of a divergence between the  
6 conversation relative to opportunity funds that  
7 are assets based that are looking at the real  
8 estate that are more aligned to the NFTC thought  
9 process and the qualified opportunity zone, which  
10 in fact, if I could get one thing because I've  
11 been really good and I said something to Brenda  
12 about Valentine's Day, I would say we might  
13 consider or you might consider taking and  
14 splitting it and saying, Well, let's consider the  
15 asset based conversation and drive the economy and  
16 make that happen, but let's also look perhaps at  
17 having the opportunity zone business be a 2027 --  
18 like delay that part one year and create an  
19 opportunity to say we're actually going to  
20 separate the two and have complete consideration  
21 between them. That way, there could be a longer  
22 deliberation relative to what is a qualified

1 opportunity zone and get the citizenry behind the  
2 decision making process on that but not thwart our  
3 opportunity for these census tracks to receive the  
4 benefit of this financial windfall that's going to  
5 happen this year.

6 MR. DINWIDDLE: Just one second.

7 MS. SEEGULL: Oh, pardon me.

8 MR. DINWIDDLE: Also I guess we have  
9 reached that capacity point where I have to ask if  
10 there are optional IRS people if you could give up  
11 your seats in order to allow people who are  
12 waiting the wings from the outside to join in. So  
13 I don't really want to kick people out but if you  
14 do have other things you could do and you don't  
15 mind giving up your seat, I think that would be  
16 appreciated by some who are waiting in the  
17 antechamber there who are from the outside. So.

18 MS. SEEGULL: Great, good morning.

19 MR. DINWIDDLE: And there are also some  
20 seats, excuse me. There are also some seats up  
21 front although we try to leave a little bit on  
22 each side of our recorder but there are still a

1 few seats around as well. So. Thank you,  
2 everybody, for your understanding, and thank you,  
3 for your patience. Okay. With that, we will get  
4 started with Fran Seegull form the U.S. Impact  
5 Investing Alliance.

6 MS. SEEGULL: Good morning, Scott and  
7 panel.

8 MR. DINWIDDLE: Good morning.

9 MS. SEEGULL: Thank you so much for the  
10 opportunity to speak with you today. My name is  
11 Fran Seegull. I'm the executive director of the  
12 U.S. Impact Investing alliance. Our members  
13 represent over 800 investors and financial  
14 intermediaries who are actively engaged in  
15 deploying private capital to advance the public  
16 good. We believe that it is possible to leverage  
17 the power of the markets to create measurable  
18 social, economic and environmental benefits and  
19 that investors can play an important role in  
20 achieving desirable policy outcomes.

21 Many of our members and stakeholders  
22 have particularly deep knowledge of and experience

1 investing for community economic development.  
2 They include institutional investors, foundations,  
3 high net worth individuals and families, banks and  
4 of course community development finance  
5 institutions. These stakeholders understand the  
6 importance of place, local context and authentic  
7 community engagement when investing in low income  
8 communities.

9 In consultation with our members, we  
10 identified a number of priority issues related to  
11 opportunity zones implementation. We believe that  
12 these issues must be addressed during the  
13 regulatory process in order to ensure the  
14 formation of an efficient and effective market for  
15 opportunity zones investment.

16 To that end, I would like to quickly  
17 echo, very quickly some of what has been submitted  
18 in written comments and some of what you will hear  
19 and have heard from other speakers today. Namely,  
20 it is imperative that the Department of Treasury  
21 make clear the applicability of opportunity zones  
22 investments into small and operating business.

1 Current proposed regulations and subsequent rounds  
2 of guidance should be designed to limit or remove  
3 barriers to such investments and operating  
4 business.

5 At the same time, we must see the  
6 promulgation of robust rules to prevent abuse of  
7 opportunity zone benefit. The needs of residents  
8 and workers in opportunity zones today are too  
9 great for us to tolerate any misappropriation of  
10 the public subsidy relative to this benefit. We  
11 hope that the Department will remain open and  
12 responsive to public comment on both of these  
13 important topics.

14 My primary objective today, however is  
15 to state the absolutely necessity of consistent  
16 collection of data including opportunity fund and  
17 market level information as part of the regulatory  
18 process. In our written comments and in my  
19 comments today, we seek to underscore that such  
20 collection is vital to efficient market formation  
21 and that it will benefit fund managers and their  
22 investors and that the department currently has a



1 necessary authority to perform this function.

2           The goal of the opportunity zones tax  
3 benefit as stated in the preamble to the proposed  
4 regulations is clear. To encourage economic  
5 growth and investment in designated distressed  
6 communities. We believe that data will be  
7 essential both to creating these new economic  
8 opportunities and to ensure that people living and  
9 working in the zone today are the ultimate  
10 beneficiaries. Through a variety of mechanisms,  
11 the collection and recording of basic data will  
12 encourage the flow of private investment capital  
13 off the sidelines and into opportunity zones.

14           First, information connects potential  
15 investors and opportunity fund managers to  
16 investment opportunities. Because investors have  
17 to deploy capital into opportunity funds within  
18 180 days, it is important that we establish tools  
19 and quickly identify opportunities that align with  
20 their investment objectives and investment timing  
21 needs. The Department can facilitate these  
22 efforts through appropriately scaled collection

1 and reporting of basic opportunity fund data to  
2 include publicly available information that would  
3 enable investors, operating business owners,  
4 developers and other interested parties to connect  
5 with opportunity funds serving their markets.

6 Second, transparency around opportunity  
7 fund activity will help state and local leaders  
8 ensure their opportunity zones are able to attract  
9 investment capital. They may do so by deploying  
10 additional resources or by aligning zoning  
11 requirements and other economic developed  
12 policies.

13 I have lost my spot. The nightmare  
14 scenario of the speaker. (Laughter) Transparency  
15 of state and local level. Yes. Market data will  
16 allow community advocates and local officials  
17 alike to understand what is working, to stimulate  
18 the flow of capital and to adjust state and local  
19 policy accordingly in real time.

20 Third, consistent and transparent  
21 collection of opportunity fund data will allow for  
22 rigorous evaluation of the opportunity zones

1 policy itself. A common framework for collection  
2 and reporting of opportunity fund data should  
3 create a baseline data set. They will enable the  
4 long term evaluation of the policy and its impacts  
5 on opportunity zones both individually and in  
6 aggregate.

7 We also believe that an appropriately  
8 scaled data collection effort could be implemented  
9 by the Department with minimal impact on the  
10 operations of opportunity funds or the enterprises  
11 in which they invest. Basic transaction data will  
12 be readily available to opportunity fund managers  
13 and they will need to track much of the same  
14 information to ensure compliance with the statute.

15 Standardizing this process could help --  
16 could further help to reduce compliance costs for  
17 all market actors. Standardized collection will  
18 further facilitate the formation of market facing  
19 tools to enable opportunity zone investment. The  
20 U.S. Impact Investing Alliance in partnership with  
21 the Beck Center at Georgetown University recently  
22 released the opportunity zones reporting

1 framework.

2 This voluntary standard includes both  
3 guiding principles for investment and a detailed  
4 data collection framework. It was created with a  
5 participation of a wide range of market actors  
6 including investors, foundations, perspective real  
7 estate and venture capital fund managers, the  
8 major private wealth platforms and community  
9 stakeholders. We are encouraged by this broad  
10 industry participations collaborations set with  
11 over 30 of such institutions, representatives from  
12 such institutions. And we believe it underscores  
13 market demand for this type of information. A  
14 federal standard for collecting market data would  
15 complement and amplify this and other private  
16 efforts to organize the opportunity funds market.

17 Finally, and as laid out in our written  
18 comments, it's clear to us that the Department has  
19 the necessary statutory authority to implement our  
20 proposed data reporting standard. This action is  
21 needed to ensure the proper functioning of  
22 opportunity zones market and to meet the

1 legislative intent of the statute. This was  
2 underscored in a letter to Secretary Mnuchin dated  
3 January 23 and signed by senators Tim Scott and  
4 Corey Booker along with many others, about a dozen  
5 of their colleagues.

6 In it they urge quote Treasury to  
7 include in its final regulations reasonable  
8 recording requirement including fund and  
9 transacting level information unquote. Doing so  
10 they state will quote move capital off the  
11 sidelines by connecting investors to funds and  
12 allowing community stakeholders to align local  
13 strategies and additional investments with  
14 opportunity fund capital.

15 Furthermore, in his recent executive  
16 order establishing the White House Opportunity and  
17 Revitalization Council, President Trump  
18 prioritized the collection of data that can be  
19 used to measure the effectiveness of public and  
20 private investment and opportunity zones.

21 Adopting the proposal laid out in the written  
22 comments would allow Treasury to be responsive to

1     these calls from the White House and from Capitol  
2     Hill.

3             And as I sated previously, this action  
4     would also be responsive to the needs and input of  
5     investors, fund managers and other private market  
6     actors. Collection of a data requested in our  
7     written comments would be complimentary to and in  
8     some cases a necessary prerequisite for privately  
9     funded and operated effort -- and operated efforts  
10    to facilitate market formation. It's also true  
11    that critics and skeptics have rightly begun to  
12    surface concerns about the possibly of unintended  
13    consequences of opportunity zone. Excuse me  
14    zones.

15            As I have stated, Treasury must move  
16    quickly to preempt possible abuses of this benefit  
17    but it will also -- but it was also true that  
18    ill-conceived or ill-informed investments could  
19    fail. These investments could fail to generate  
20    financial returns or they could fail to create  
21    lasting community benefits. Adopting the U.S.  
22    Impact Investing Alliances proposed reporting

1 standards as articulated in our public comment  
2 letter would be a proactive step by the Department  
3 to avoid unintended consequences and maximize  
4 community benefit.

5 In closing, I would like to remind all  
6 of us that what we are discussing today goes far  
7 beyond the ability of any one tax payer to claim a  
8 capital gains deferral. We are talking instead  
9 about the economic futures of 35 million Americans  
10 living in opportunity zones today. We are talking  
11 about whether the communities they live in can  
12 survive and thrive in the coming years or whether  
13 they will continue to fade as others prosper.

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

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

3                   MR. DINWIDDLE: Thank you. Any  
4                   questions from the panel? Seeing no questions,  
5                   thank you very much, Ms. Seegull.

6                   MS. SEEGULL: Thank you.

7                   MR. DINWIDDLE: Okay. Next up is  
8                   speaker number 7. Stockton Williams on behalf of  
9                   the National Council of State Housing Agencies.  
10                  Welcome.

11                  MR. WILLIAMS: Good morning. I'm  
12                  Stockton Williams, executive director of the  
13                  National Council of State Housing Agencies. We  
14                  appreciate the opportunity to share our comments.

15                  NCSHA represents the nation's state  
16                  housing finance agencies which as a group have  
17                  provided more than \$450 billion in financing to  
18                  help more than seven million households achieve  
19                  home ownership and rental housing opportunities.  
20                  Much of this investment is in areas now designated  
21                  as opportunity zones.

22                  A number of housing finance agencies



1 also administers programs that finance economic  
2 development, infrastructure, small business job  
3 creation. Much of it as well in opportunity  
4 zones. And as many of you know, having worked  
5 with us, the state HFA's have extensive experience  
6 working with Treasury and IRS on a variety of tax  
7 policies for housing and economic development  
8 including housing bonds, the long term housing tax  
9 credit, the new markets tax credit.

10 Most state HFA's were at the table with  
11 their governors and other state agencies advising  
12 on the opportunity zones designations and many are  
13 allocating their own resources to enhance the  
14 prospects for the successful launch and  
15 implementation of this important new tax  
16 incentive. States are sharing best practices and  
17 engaging with the investment community as well  
18 through NCSHA's opportunity zones task force which  
19 is charred by the Maryland Secretary for Housing  
20 and Community Development, Ken Holt, and the  
21 Michigan state Housing Development Authority  
22 Executive Director Earl Poleski.

1           We really appreciate the effort that you  
2 all and your colleagues have put into the  
3 regulations to date and have a couple of thing we  
4 wanted to mention today, some of which have  
5 already been alluded to. The first is with  
6 respect to the original use of opportunity zone  
7 property. The proposed regulations solicit  
8 comment on the definition of original use  
9 including whether some period of abandonment or  
10 underutilization should erase a properties history  
11 of prior use in the opportunity zone.

12           We recommend that IRS's regulations  
13 specify that land or property that has been vacant  
14 for a period of at least a year satisfies the  
15 original use requirement consistent with rules  
16 under the enterprise zone exempt facility  
17 provision 26 C.F.R. part 1. Research suggests  
18 that nearly 17 percent of land in large U.S.  
19 cities is vacant and the percentages are quite  
20 high in many smaller communities as well.

21           Given the impacts of land on housing  
22 prices, vacant land may represent an especially

1       beneficial opportunity for generating new  
2       affordable housing development and for that matter  
3       other real estate related development beneficial  
4       in opportunity zones.

5               The second comment that we have related  
6       to the substantial improvement of opportunity zone  
7       property. In general, the proposed regulations  
8       specify that tangible property is treated as  
9       substantially improved if additions to basis  
10       exceed the cost of the basis at the beginning of  
11       the 30 month period and of course the proposed  
12       regs further provide that the base is attributable  
13       to land on which a building sits is not taken into  
14       account.

15               We support both of those provisions and  
16       appreciate your responsiveness to feedback on  
17       those points from us and a number of commenters.  
18       We also suggest that IRS clarify that land and  
19       buildings acquired prior to 2018 may qualify as  
20       opportunity zone property so long as the  
21       substantial improvement of the property commences  
22       in 2018 or after consistent with the opportunity

1 zone rules.

2 The third area of comment which I will  
3 only briefly note because others have said it  
4 relates to the 50 percent rule for opportunity  
5 zone businesses that John Letarry and others have  
6 pointed to. We also agree that more flexibility  
7 is warranted there.

8 I think to give an example of the  
9 benefit of some more flexibility here in the  
10 housing context, one could imagine a small  
11 community development or home building firm  
12 located in an opportunity zone beginning to grow  
13 as a result of those E driven investment but then  
14 could realize opportunity to expand further by  
15 working outside of its zone. That would be a  
16 beneficial outcome certainly for that firm and for  
17 the zone to have some more flexibility.

18 Finally, just want to touch on a couple  
19 of things with reference to your next round of  
20 guidance which you alluded to. You have plenty to  
21 do with what is already been put forward but we do  
22 know and you have heard a lot about some other

1 areas and I just wanted to flag them for you. The  
2 first one would be familiar to you, the first  
3 relates to use of opportunity zone incentives with  
4 other federal tax credits.

5 There are illusions and implications  
6 that are encouraging regarding the ability to pair  
7 and combine opportunity zone investment with new  
8 markets, tax credits, historic tax credits, long  
9 term housing tax credits and the like. I think  
10 further clarifying and specifying the extent to  
11 which those are in fact eligible and in noting  
12 specifically in the areas where there may be some  
13 limitations would be incredibly important.

14 Second, regards a topic that I know you  
15 have also heard a lot about and you will hear more  
16 about today, the economic impacts of the  
17 opportunity zones in the communities they are  
18 intended to help. This is an enormously powerful  
19 incentive for investment in areas that have for  
20 too long been starved of it and it is certainly  
21 conceivable that some opportunity zone driven  
22 activities could result in a loss of affordable

1 housing either because they put upward pressure on  
2 rents and prices that pushes housing beyond what  
3 current lower income residents can reasonably  
4 afford or because they result in the actual  
5 removal of existing affordable housing unit, you  
6 know, that may be occupied by lower income current  
7 residents.

8           Either scenario, we would argue is  
9 contrary to the intent of the opportunity zones  
10 legislation, not in the interest of really, anyone  
11 we know who cares about the success of this  
12 program. So we encourage two things. One is for  
13 IRS to specify that qualified opportunity funds  
14 whose activities result or may result in a loss of  
15 affordable housing to current lower income  
16 residents in an opportunity zone specify publicly  
17 the actions they will take to try to mitigate that  
18 outcome.

19           In addition and I think more  
20 fundamentally we recommend that the IRS  
21 regulations expressly prohibit the intentional  
22 removal or conversion of existing affordable

1 housing in an opportunity zone unless new housing  
2 of comparable quality and affordability is  
3 provided in or near the zone with similar or basic  
4 better amenities. And for these purposes we would  
5 encourage a broad definition of affordable housing  
6 certainly to include rental or for sale units  
7 subject to rent or a price restrictions imposed by  
8 a federal, state or local program or through  
9 another legally binding means such as a community  
10 land trust.

11 Finally, we very much appreciate the  
12 flexibility and the light touch in the statute on  
13 reporting in compliance but as others have and  
14 will note, we do think that more information on  
15 the intentions and plans of qualified opportunity  
16 funds and the results of their activities are a  
17 very legitimate and important area where some  
18 reporting requirements could be established that  
19 would in no way impede the flow of capital or get  
20 in the way of the efficiency of the opportunity  
21 zones incentive.

22 Now those are our comments. Again we

1 appreciate your efforts to make this program  
2 successful and I'm happy to take any questions.

3 MR. DINWIDDLE: Any questions on the  
4 panel?

5 MR. NOVEY: You raised the suggestion  
6 that we whole consider for example a controlling  
7 headquarters in the zone being compatible with the  
8 50 percent test being satisfied. And we have  
9 heard a number of suggestions along those lines.  
10 We have also heard suggestions that basically it  
11 should be property only.

12 So in other words, do you think that if  
13 a company let's say had its computer servers in  
14 the zone but no jobs and if the balance of  
15 tangible property was such that it was all there  
16 in those servers but nobody was working there  
17 except perhaps an occasional repair visit, is that  
18 consistent with the statute?

19 MR. WILLIAMS: I suspect that it is  
20 given that it rests in this notion of the tangible  
21 property.

22 MR. NOVEY: But there -- so you don't



1 think that that 50 percent test should have any  
2 nexus to the zone?

3 MR. WILLIAMS: Well, I think in the  
4 scenario you described it would have a nexus,  
5 whether it achieving the full 50 percent, you  
6 know, is where the judgment call would lie.

7 MR. NOVEY: So you are saying that as  
8 long as the tangible property is in the zone that  
9 is enough nexus for the gross income?

10 MR. WILLIAMS: As long as the tangible  
11 property and the gross income tests would be met.

12 MR. NOVEY: Well, the gross income test  
13 might be met by any trade or business regardless  
14 where located. That's that we have heard.

15 MR. WILLIAMS: Right. But here we are  
16 talking about the two in combination.

17 MR. NOVEY: Well, the headquarters, yes.  
18 That's local. I'm talking about nothing but  
19 property in the zone and all the jobs elsewhere.

20 MR. WILLIAMS: All the jobs elsewhere?

21 MR. NOVEY: That's my question.

22 MR. WILLIAMS: I don't know if I have

1 thought about it at that level. We focus more on  
2 the tangible property --

3 MR. NOVEY: Some of your --

4 MR. WILLIAMS: -- and the business  
5 income.

6 MR. NOVEY: Some of your colleagues, not  
7 direct colleagues, but some of your co-commenters  
8 in the community who are interested in the O zones  
9 think that there should be no geographic component  
10 to the 50 percent test, only a trade or business  
11 component.

12 MR. WILLIAMS: Right.

13 MR. NOVEY: That would mean it would be  
14 satisfied by trade or business jobs elsewhere with  
15 none in the zone.

16 MR. WILLIAMS: Right. That's -- so  
17 that's beyond the scope of how we have thought  
18 about but, I mean, I appreciate the question.

19 MR. NOVEY: Thanks. (Laughter)

20 MR. DINWIDDLE: All right. Thank you  
21 very much for your comments. And your answers to  
22 the question. (Laughter)

1 MR. WILLIAMS: It wasn't so good.

2 MR. DINWIDDLE: No, that's all we ask.

3 MR. WILLIAMS: I had the hardest version  
4 of it.

5 MR. NOVEY: I did not mean to trap you  
6 with something you hadn't thought about.

7 (Laughter) I apologize.

8 MR. DINWIDDLE: Turns out it could be  
9 tough coming up here, right? (Laughter) So we  
10 appreciate your answers. So all right. Next up  
11 we have got speaker number 8, Lori Chatman  
12 representing Enterprise Community Partners. Ms.  
13 Chatman, good morning and welcome.

14 MS. CHATMAN: So, good morning. My name  
15 is Lori Chatman and I'm a Senior Vice President  
16 for Enterprise Community Partners and president of  
17 its CDFI Enterprise Community Loan Fund. And on  
18 behalf of Enterprise, I want to thank you for the  
19 opportunity to offer comments on the proposed  
20 rules for investing in qualified opportunity  
21 funds.

22 Enterprise is a leading provider of the

1 development capital and expertise it takes to  
2 create well designed homes and vibrant  
3 communities. And since 1982, we have raised over  
4 \$36 billion in equity, grants and loans to help  
5 build or preserve over \$529,000 affordable homes  
6 in diverse, thriving communities.

7 Enterprise has also announced one of the  
8 nation's first opportunity funds, the Rivermont  
9 Enterprise Emergent Communities Fund and in that  
10 fund, in partnership with Rivermont Capital and  
11 Beekman Advisors, the fund aims to raise 4250  
12 million and will invest in main streets and small  
13 cities and towns primarily in the southeast and  
14 also support local entrepreneurs across these  
15 towns in those places.

16 The guidance provided by IRS in this  
17 initial round of regulations was helpful in  
18 several areas and we are particularly pleased to  
19 see the IRS commit to addressing the information  
20 reporting requires in the next rounds of proposed  
21 rules.

22 Enterprise continues to stress that

1 transparency and accountability are the keystone  
2 to fulfilling the tax incentives original intent  
3 of transforming economically distressed  
4 communities and we urge the Treasury Department to  
5 collect and make publicly available when paired  
6 with existing federal, state and local community  
7 development initiatives such as low income housing  
8 tax credits and new markets tax credits.

9           Considering the alignment of mission  
10 between these tax credits and the new opportunity  
11 zones benefits, we strongly urge the IRS to issue  
12 regulations that most efficiently allow these  
13 credits to be paired with opportunity fund equity.

14           And finally, Enterprise would like to  
15 raise attention to two other potential concerns  
16 and suggestions with the first round of proposed  
17 rules. First, we are concerned that excluding the  
18 value of land from the substantial improvement  
19 test could unintentionally allow for predatory and  
20 speculative activity especially in high cost cites  
21 or high cost areas, excuse me, where vacant land  
22 or significantly under developed land would not be

1 subject to substantial improvement tests and could  
2 result in investors receiving tax benefit without  
3 making any improvement to the land.

4 We urge the IRs to explicitly prevent  
5 such predatory or speculative activity under the  
6 opportunity zones regulation.

7 Second, we suggest that real estate's  
8 investments have a separate and higher  
9 substantially all thresholds than the proposed 70  
10 percent threshold. Although the 70 percent  
11 threshold may make sense for investments and  
12 qualified business activity which may be more  
13 fluid and require such flexibility to be  
14 successful, real estate investments are static and  
15 should not need the same level of flexibility.

16 Thank you for the opportunity to share  
17 Enterprises perspective today and we look forward  
18 to working with Treasury to ensure opportunity  
19 zones are successful community investment tool  
20 that brings equitable and inclusive growth to  
21 more, to the more than 87,600 designated zones.

22 MR. DINWIDDLE: Okay. Thank you. Any

1 questions from the panel? No questions. Thank  
2 you very much for your comments. Okay.

3 Next up speaker number 9, Brett Palmer  
4 representing the small business investor alliance.

5 MR. PALMER: Good morning, my name is  
6 Brett Palmer, I'm president of the Small Business  
7 Investor Alliance. I would like to thank you for  
8 holding this hearing, seeking public input and  
9 trying to make the best out of a very challenging  
10 task. The Small Business Investor Alliance is a  
11 trade association that has been the voice of small  
12 business investing since 1958. Our members  
13 include small business investment companies,  
14 business development companies, domestic venture  
15 and private equity funds that are investing in  
16 small business.

17 Our remarks have been submitted in  
18 writing previously, they are -- my oral remarks  
19 today are to hopefully augment and add some color  
20 to those and provide some answers to some  
21 questions you might have. I would like to  
22 associate with myself with the remarks made by

1 Stefan Pryor and John Letarry earlier. They  
2 really cover a lot of some of the key technical  
3 point that are of interest to us.

4 Our focus really is on small business  
5 investing. The rules as proposed has focused a  
6 lot on real estate and real estate is -- easy is  
7 the wrong word because real estate certainly is  
8 complicated and financial in its own right but  
9 small business are harder. There are more of  
10 them, they do more things, they are often the  
11 small business owners are less sophisticated,  
12 their records are more difficult and as your task  
13 of not only implementing the law in a way that  
14 gets to the spirit of the law but while at the  
15 same time protecting the tax payer small  
16 businesses are harder and so I appreciate that  
17 your willingness to look at some of those things.

18 Our members, particularly our small  
19 business investment companies, have a legal  
20 mandate in many cases, and the SBIC's in  
21 particular to invest exclusively in domestic small  
22 business. They were created in 1958 and the Small



1 Business Investment Act which I would, you might  
2 want to take a look at, to facilitate capital  
3 flows to areas of the country that don't have  
4 enough capital flowing to domestic small  
5 businesses.

6 A Library of Congress study done not by  
7 us or the private sector, but the Library of  
8 Congress in 2007 found that SBIC backed businesses  
9 had created three million net new jobs and it  
10 supported six and a half million other small  
11 business jobs, many of which were in low income  
12 areas and that's a meaningful amount of jobs which  
13 is ultimately this is about is creating prosperity  
14 where currently poverty exists.

15 Currently SBIC's represent about 31  
16 billion of domestic small business investment and  
17 BDC's represent about \$70 or \$80 billion in  
18 domestic small and medium size investment, a  
19 meaningful amount.

20 Small business investing often times is  
21 looked at through the startup lens and startups  
22 are directly important but they are not the only

1 ones. There, the small business growth is a  
2 massive opportunity and it is a particular  
3 opportunity for underserved areas right now.

4 There is also a generational issue on  
5 small business which is particularly important now  
6 where you have hundreds of thousands of small  
7 business where they were founded by baby boomers  
8 or post baby boomers who are retiring and moving  
9 on. They have not invested in their business and  
10 they are moving on. If their kids can't take over  
11 the business and buy them out, that business often  
12 goes away even though it is a great business. A  
13 lot of our investors invest in those small  
14 business. The management company buys the  
15 business, they throttle up the business, they find  
16 new markets, they apply new technologies and they  
17 grow the business in ways that it had not been  
18 done, had not happened in 30 years or more. It is  
19 an important part of the economy that doesn't get  
20 enough attention.

21 And so with that, as you are looking at  
22 this, implementing this law, we would encourage

1 you to look at the small business side and  
2 particularly some of those areas. There were,  
3 some of them were touched on already, the 50  
4 percent gross receipts rule. It's an important  
5 rule and it's a good question because small  
6 businesses do want to not just recycle capital in  
7 their local markets, it's important to recycle  
8 capital in your own markets but also attract  
9 capital by selling things other places but at the  
10 same time you don't want to have a post office box  
11 and an LLC there and nothing else.

12 There are other opportunities for  
13 looking at and measuring what is an appropriate,  
14 you know, economic benefit locally because  
15 ultimately the benefit has to be to the  
16 opportunity zone and the surrounding areas. And  
17 again, I would encage you to take a look at the  
18 Small Business Investment Act because the SBIC's  
19 have, you know, 60 years of trial and error of  
20 learning of what worked and what didn't work in  
21 small business investing. They were the -- SBIC's  
22 were the first venture capital funds in the United

1 States. Its something that most folks in Silicon  
2 Valley are, you know, that are older meaning and  
3 still kind of values of different concept than  
4 everyplace else. But it really is an important  
5 element of what they do right and how they do it.  
6 The location of the activity, the production,  
7 where the jobs are, are all factors. For SBIC's,  
8 for example, they can invest not just in  
9 opportunity zones, they can invest anywhere  
10 domestically, a lot of them invest in LMI areas.  
11 But they are required to invest domestically and  
12 the jobs have to be domestically, it can't be used  
13 for outsourcing.

14 The question by Mr. Novey, I think his  
15 name was, I don't have my glasses on, I couldn't  
16 see, about the local impacts on jobs, it is a  
17 legitimate question in this day of technology.  
18 Because we have businesses that are selling other  
19 places. You want to manufacture if it's going to  
20 be an opportunity zone to be able to sell across  
21 the state, across the region, across the country  
22 and across the world. But a server farm, which is

1 great and important technology, might employ two  
2 people and cover 20 acres and they'll have short  
3 term gain and that is a benefit but is that  
4 producing a result that is sought, maybe.

5           And so, I think that we don't want to  
6 discourage any investment, including that server  
7 farm, but also there clearly should be an impact  
8 to the opportunity zone and to the businesses that  
9 are in that area growing, even if some of those  
10 are off shore. So, for example, under the Small  
11 Business Investment Act, a small business that's  
12 located in the United States is allowed to grow  
13 and attract and hire new people. They can hire  
14 people off shore but it's generally sales people.  
15 It has to be less than 50 percent of the employees  
16 are outside or outside of small business or  
17 outside of the country because ultimately, the  
18 economic gain has to be here. And that's  
19 something that I think is relevant and valuable  
20 and might want to be taken a look at. Because the  
21 gross receipts really should be broader but at the  
22 same time, you do have to struggle with what the

1 benefit is.

2 On the working capital safe harbor,  
3 that's an important one to look at too because for  
4 funds that are accumulating capital and these are  
5 private equity funds that have multiple limited  
6 partners that are investing into them. They are  
7 pulling it in from multiple places, they are  
8 investing in small businesses. Small business  
9 investment generally doesn't last ten years. It  
10 might in Silicon Valley if you have an early stage  
11 start-up but really for most businesses, it's  
12 really the three to five to maybe seven year hold  
13 during which time you totally reinvented the  
14 business.

15 Now, it's worth noting that in private  
16 equity investing in small businesses, it's  
17 different from what you often read about in the  
18 newspapers where private equity gets a black eye.  
19 They only way to make money in small business  
20 investing is to grow the business. It's not,  
21 you're going to get financial efficiencies by  
22 slashing your staff because you don't have many.

1 So, you know, it's really just a scale issue. So,  
2 that small business aspect, again, the scale  
3 matters.

4 And so, as you're looking at that safe  
5 harbor provision, one it's important that it be  
6 clear that opportunity zone funds can invest in  
7 not just a single opportunity zone but across any  
8 or all of them, whatever their strategy may be.  
9 And as the money gets returned from the small  
10 business investment, that it's able to be recycled  
11 in a reasonable amount of time to investments in  
12 any opportunity zone, not just that one. If you  
13 trap it too much, you're limiting the  
14 opportunities because the private sector investors  
15 that are going in should not be going for the tax  
16 benefit exclusively, they should be going in there  
17 for honest economic reasons and this just gets  
18 them to look at it and really see the  
19 opportunities in these under served areas.

20 So, I would encourage you to look at  
21 that recycling provision, make sure there is  
22 adequate time to go from one small business to

1 another. So long as the capital is committed to  
2 the fund and the fund is a qualified opportunity  
3 fund and that's where we go there. So, that  
4 rollover period is helpful.

5           Something that was touched on earlier on  
6 the self- certification aspect, because what we  
7 don't want to have happen, I'm sure you don't want  
8 to have happen and no one in this room wants to  
9 have happen is to have funds come and they really  
10 not produce the result that you want or have  
11 abuses out there. And so, I would again encourage  
12 you to take a look at the trials and errors that  
13 have already been learned in other government  
14 programs that have proven very successful,  
15 particularly again, on the SBIC side, to see what  
16 they've done to make sure that those businesses  
17 are being treated well. SBIC's, by the way, are  
18 even required when they license them to see what  
19 their track record is, not just for financial  
20 records but how they've dealt with small  
21 businesses and how they've grown and not leaving a  
22 track behind them.



1           But there are many lessons learned there  
2           that I would encourage you to take a look at. The  
3           career staff over at the SBA are very good and so  
4           we'll go from there. I know you're short on time  
5           and have lots of folks here so I'll stop there and  
6           open myself up to any questions you might have.

7           MR. DINWIDDLE: Any questions from  
8           members of the panel?

9           MR. PALMER: All right, well thank you  
10          very much for your time.

11          MR. DINWIDDLE: Mr. Palmer, thank you,  
12          we appreciate it. Okay, next up is speaker number  
13          ten, Reed Benet from Zeroto6t.

14          MR. BENET: So, the first thing I know  
15          is watch out for the guy in the bow tie. So, my  
16          name is Reed Benet. I'm a former Marine and the  
17          CEO of venture capital backed Zeroto6t. Thank you  
18          for your attempt at that.

19          MR. DINWIDDLE: Ah, Zeroto6t, got it.

20          MR. BENET: Doing business as  
21          HeroHomes.com. Most simply described as a Zillow  
22          or Realator.com for military vets of which I'm one

1 of them and there are 22 million of us. Just some  
2 background to support a point, we have a no money  
3 down home buying power called the VA loan  
4 guarantee which none us of know or virtually none  
5 of us know can be used to buy and be a resident  
6 landlord in a two, three or four family property.  
7 So, our solution to America's challenge is what we  
8 call local vets first vetrification versus  
9 gentrification. And if anybody likes  
10 vetrification, I own dot com so it's too late.

11 So, I support enterprise community  
12 partners approach to anchoring, you know, small  
13 cities and walkable main streets because one of  
14 the units can be a commercial unit. So, imagine a  
15 back to the future walkable main street with that  
16 living upstairs with some renters and they have a  
17 business downstairs. And our mission statement is  
18 by, for and with America's 22 million military  
19 vets to anchor and lead the great American  
20 renewal. So, like a Marine, we have small goals.

21 So, first of all, thank you Erica  
22 Reigle. Hard working, working on the weekend,

1 working when not being paid, I appreciate it and I  
2 don't expect any extra time. And also, my  
3 hardworking friends at the IRS, two months ago I  
4 filed my tax return, I'm waiting for my refund  
5 please. So, the first thing to get interactive  
6 here, who would describe themselves as an  
7 entrepreneur. May I see a show of hands? Okay,  
8 my wife defines us as glorified unemployed. And  
9 Jeff Hudson, I'd like to mention there and by  
10 doing that, I know who is paying for lunch. He's  
11 with Allegard which is doing an opportunity zone  
12 interactive marketplace.

13 So, like any good glorified unemployed  
14 entrepreneur, I'm admittedly and with the dog in  
15 the fight, essentially urging the IRS and Treasury  
16 to strangely enough do nothing or said another  
17 way, first do no harm. So, I don't know how the  
18 comments have looked to you, excuse me, it's my  
19 first time here and I'm speaking my version of the  
20 truth. But it looks like angels dancing on a pin  
21 variety of self-institutional interests. Multiple  
22 interpretations of intent, crabs in a barrel, in

1 many cases. And arguably, I'd say that community  
2 economic citizen and housing development, we've  
3 never achieved it in a material and scalable  
4 fashion and therefore, further regulation and  
5 clarification as well meaning as it may be has  
6 never seemed to solve that.

7 So, EV 5's new market tax credits, low  
8 income housing tax credits, hub zones, with do  
9 respect, SBIC's. I would try to start one so I do  
10 have a dog in the fight there, and affordable  
11 housing such as Microsoft's recent announcement  
12 that they were going to put a half billion dollars  
13 into affordable housing in Seattle while at the  
14 same time, admitting that it was "hardly enough"  
15 from the president.

16 And finally, as an entrepreneur, and I  
17 say this with a certain wistful respect for people  
18 with day jobs. For us that feel fear and look in  
19 the mirror and have a spouse asking us why don't  
20 we get a day job, I'd argue that the effort to  
21 "help us" as well-meaning as it is and arguably  
22 prepredicting what innovation is going to look

1 like and I don't mean this in the pejorative sense  
2 but the definitional sense is perhaps oxymoronic.

3 And so, what I would suggest is that the  
4 concept of a regulatory sand box which is used in  
5 Singapore for the fintech industry where we  
6 basically see what innovation looks like as per  
7 the most basics of the law which is extremely  
8 broad. And then, of course, support things that  
9 are good. Obviously, take down things that are  
10 bad and maybe, again, uniquely do nothing as a  
11 solution to supporting innovation and supporting  
12 this spectacular thing called the potentially  
13 spectacular if we don't mess it up, God love us,  
14 in regards to the opportunity zones.

15 So again, I don't think you could  
16 prepredict me running around knowing that there  
17 are 22 million vets with \$10 to 18 trillion of no  
18 money down buying power to anchor community  
19 economic citizen and housing development. What am  
20 I, well it's evolving every time I see, you know,  
21 something you people put out trying to help? Am I  
22 an opportunity zone, am I going to sell stock

1 because I'm going to move to an opportunity zone,  
2 am I a general partner or a partnership? Am I  
3 investing in businesses such as the vet owned  
4 businesses that are in their own properties? Am I  
5 developing real estate, am I facilitating real  
6 estate, am I doing co-ownership construction  
7 loans, long term debt, securitization? All these  
8 things are influx and it doesn't help -- half the  
9 regulations don't help in the flexibilities of  
10 trying to be "innovative". As I said, we're  
11 trying to do vetrification versus gentrification  
12 so I think everybody would like that. And I get  
13 back to the concept of first do no harm.

14 So, Carl in the front row, my new  
15 friend, he mentioned that we don't exactly have to  
16 do things immediately, that we can take some time.  
17 I think that pretty much overlaps with my  
18 suggestion of either the regulatory sand box or  
19 being hesitant. Supposedly there is \$6 trillion  
20 that can be invested. Nobody is going to do it  
21 immediately so there might be a couple "bad  
22 things" that come out that are still within the

1 constraints of the law. And okay, they got a  
2 deal, but those are the types of things we can  
3 regulate against.

4 And in terms of Ms. Seigel, calling for  
5 transparency, what I'd argue with the deal should  
6 be if you fully disclose what you're doing and I  
7 mean fully disclose, and in real time. We'd have  
8 real time transparency in terms of what's going on  
9 instead of, and I agree with her, instead of, you  
10 know, understanding what is going on kind of  
11 retroactively in a kind of it's all aggregated  
12 into some type of report or something like that.  
13 So, the deal would be, let's see what you got but  
14 you have to tell us what you're doing and you have  
15 to basically tell everybody else. So, that  
16 wouldn't be for everyone to do but it would also  
17 be for those who think they have a solution such  
18 as we do and our proud of it and don't mind if  
19 others would copy us that that would be a  
20 reasonable deal.

21 So, finally my prosaic suggestion other  
22 than the big strategic ideas is that I don't

1 understand why the territories of U.S. Virgin  
2 Islands and P.R., Puerto Rico, you must be  
3 physically located there. Because I'm presently  
4 having efforts to help both of them and so you're  
5 excluding me from one for another. I'd also say  
6 that, you know, in many cases like I think it's  
7 Act 2122 where they've been able to get a lot of  
8 hedge fund money down there to help with economic  
9 development. It shows you that, and I know that  
10 people have been coming through about kind of  
11 nexus in geography and stuff like that. I would  
12 urge general, complete flexibility at least in the  
13 beginning until we see what happens and what's the  
14 best way to do it. Thank you very much. I  
15 welcome any questions.

16 MR. DINWIDDLE: Thank you, Mr. Benet.  
17 Any questions from the panelists?

18 MR. BENET: Even the guy with the bow  
19 tie?

20 MR. NOVEY: I'm snowed with how thorough  
21 you are.

22 MR. DINWIDDLE: Thank you, sir. Okay,



1 our next speaker, number 11, William Cunningham  
2 from Creative Investment Research. Welcome sir.

3 MR. CUNNINGHAM: Welcome. Good morning,  
4 thank you for hosting this. I am William Michael  
5 Cunningham. I run a company called Creative  
6 Investment Research. We create impact investments  
7 and have been doing so for the past 30 years.  
8 Now, my testimony concerns the general goals,  
9 regulations and fairness of the opportunity zone  
10 program. According to real capital analytics and  
11 economic innovation group, there are 8,762 census  
12 tracts that have been designated. There are 1.6  
13 million businesses in these designated census  
14 tracts. There are 24 million jobs in these census  
15 tracts, 50 billion in annual acquisition volume  
16 and 34 billion in commercial construction starts.

17 Now, we're perhaps the premiere firm in  
18 understanding and analyzing environmental, social  
19 and governance trends as they impact global  
20 economic systems. Our research is focused on  
21 long-term changes that will affect and influence  
22 the economy, financial systems, society and the

1 environment at large.

2           So, these comments, the comments I'm  
3 about to make follow our track record, follow from  
4 basically the research that we've done. On July  
5 3, 1993, I wrote to Mary Shapiro who was a  
6 Commissioner at the U.S. Securities and Exchange  
7 Commission about correspondence we received dated  
8 July 2, 1993 from an officer of the Nigerian  
9 Ministry of Finance. I requested that the SEC  
10 immediately warn the public. We looked at that  
11 letter and we said this is very good, this is  
12 going to be very damaging to the public. The SEC  
13 acknowledged receiving our letter on October 29,  
14 1993. A timely warning was never issued to the  
15 public.

16           The SEC instead investigated me. In  
17 1992, I designed one of the first mortgaged back  
18 securities that was backed by one to four family  
19 mortgage loans from Asia American, African  
20 American, and Hispanic American banks. We put  
21 that into a Fannie Mae security and it really was  
22 the start of those institutions coming into the

1 mortgage market.

2 Follow that up on June 15, 2000, I  
3 testified before the House Financial Services  
4 Committee and I warned them that ethical issues  
5 that we were seeing at Fannie and Freddie  
6 indicated that both entities were at risk of  
7 significantly damaging the home mortgage  
8 marketplace. We know that both entities declared  
9 bankruptcy in 2008.

10 So, what we focus on is performance. We  
11 focus on what's real. We know that the actual  
12 documented performance of the Trump administration  
13 is as follows: Twice as many farmers in Illinois,  
14 Indiana and Wisconsin declared bankruptcy in 2018  
15 compared to 2008, according to statistics from the  
16 seventh circuit court of appeals. Those farmers  
17 have been damaged by sinking commodity prices and  
18 stiff tariffs from China and Mexico in retaliation  
19 for Trump's tariffs.

20 Millions of American's are currently  
21 experiencing a tax refund decrease. The average  
22 American tax refund was 8.4 percent lower in the

1 first week of 2019 then it was one year ago under  
2 the pre-Trump tax code. Finally, and most  
3 importantly and most germane for this discussion,  
4 a real estate investment firm co-founded by  
5 President Donald Trump's son-in-law and advisor,  
6 Jared Kushner, will benefit from the opportunity  
7 zone program. This means that Mr. Trump will  
8 benefit directly himself. We think this is a  
9 violation of Article 1 section 9 and clause 8 of  
10 the U.S. Constitution and I'll talk about what our  
11 preferred solution is for that problem.

12 The opportunity zone program diverts  
13 needed tax revenue from public and public purposes  
14 and places the revenue in the hands of a  
15 demographic unrepresented of the U.S. Population  
16 as a whole, mainly wealthy and white people.  
17 Given the desperate conditions of the community  
18 selected, the opportunity zone community selected,  
19 it's no surprise that state and local governments  
20 and non-profits, all these guys, of course they're  
21 in favor of the opportunity zone program. They're  
22 being starved, they should be able to get money

1 directly from the federal government to actually  
2 do what they need to do, to repair the damage  
3 that's been done in a lot of these communities.  
4 Instead, we're going to flow that money through a  
5 bunch of wealthy white people. Thank you very  
6 much. How's that going to work out?

7           The program protects the economic  
8 interests of a narrow group of persons and  
9 institutions in exchange for anticipated future  
10 public benefits that will never materialize. Look  
11 at 14th Street Northwest Washington, D.C. Look at  
12 in 1960, look at in 2010 if you think I'm making  
13 this up. It used to be I went to -- I grew up  
14 here, went to John Wesley AME Zion Church at 14th  
15 and Corcoran in 1970. That neighborhood was 85  
16 percent Black. What is it now?

17           So, we see this program as possibly,  
18 possibly having immense negative social returns  
19 specifically for the African American community.  
20 There are some ways to fix the program and again,  
21 I'll talk about that. But it basically, it's  
22 based on greed. The opportunity zone program is

1 based on greed and the facilitation of greed and  
2 it follows a pattern of falsification and fraud  
3 that for us is easy to detect as we did in 1993.

4 So, one of the risk fears and we talk to  
5 investors. I was in the pool of diversity  
6 investing advisors to a pension fund called  
7 CALPERS. When we identified the risk of the  
8 opportunity zone program, we say one of the risks  
9 is that somebody is going to file an injunction  
10 seeking to block the allocation of these benefits  
11 to investors based on the emoluments clause that I  
12 mentioned, that violation.

13 So, if you want to look at ways that you  
14 might fix that problem, you might put in a  
15 regulation that says that no senator, congressman  
16 or president or their relatives is eligible for  
17 the opportunity zone tax credit, okay? So, that  
18 would take care of that, and their relatives. I'm  
19 not talking about staff but if you happen to be  
20 staff and relative then you'd be eliminated from  
21 benefitting from that.

22 You know, a rule that basically mandates

1 that social impact data from opportunity zone  
2 investments be placed on a public blockchain. And  
3 I would encourage that you use Ethereum, the  
4 Ethereum blockchain as opposed to the Bitcoin  
5 blockchain to do that. And make that social  
6 impact data available to analysts on a  
7 blockchain where it is immutable and it can't be  
8 manipulated would be one way to surface the actual  
9 social return. Now if you want to do that, the  
10 person to call is Karima Williams at a place  
11 called Consensus, Karima Williams at Consensus.  
12 Or you can talk to the young man, where are my  
13 guys, stand up guys. These are young interns,  
14 young African American men who are involved in  
15 tech. I know they've looked at blockchain,  
16 they've look at all this sort of thing. So, if  
17 you're looking for guys to program that  
18 blockchain, I brought them with me.

19 So, I think that basically summarizes  
20 our approach. We get it, we get it. The needs in  
21 the communities are so large. People are so  
22 desperate for solutions to the economic issues

1 that they face that they've glommed onto this  
2 opportunity zone program as the way to relieve  
3 some of the economic pressures in these  
4 communities. Based on the performance of this  
5 administration that I just outlined, we would have  
6 to conclude that this program might be a fraud.  
7 Any questions?

8 MR. DINWIDDLE: Any questions from the  
9 panel? No.

10 MR. CUNNINGHAM: Thank you very much.

11 MR. DINWIDDLE: Thank you, Mr.

12 Cunningham. All right, next up a pair of speakers  
13 for slot number 12. Adam Harden and Chris  
14 Goodrich. Welcome gentlemen.

15 MR. GOODRICH: My name is Chris  
16 Goodrich. I'm here representing the State Bar of  
17 Texas tax section and the comments that we  
18 submitted to Treasury regarding the proposed  
19 regulations. Our first comment relates to the  
20 interaction of the rules for opportunity zones  
21 with passive activity loss deduction limitations.  
22 Consider the fact that as a general rule, a



1 taxpayer can only deduct losses from a passive  
2 activity against his or her passive income.  
3 However, there is an exception for that that says  
4 when you dispose of your entire interest in a  
5 passive activity, you can then deduct those losses  
6 against your other active income.

7           There is also an exception under an  
8 existing Treasury regulation, 469 4 g that says  
9 that where a taxpayer disposes of substantially  
10 all but not all of the passive activity, a  
11 taxpayer may, under certain circumstances, treat  
12 the portion of the passive activity disposed of as  
13 an activity separate from the balance of the  
14 activity still existing. And this relates to when  
15 somebody is selling their initial property that  
16 gives rise to capital gain that is then being  
17 rolled over and deferred until 2026. That's the  
18 part that we're focusing in on right now.

19           The first question is if you take a look  
20 at 469 g, what it says is we recognize that there  
21 is a disposition of the entire interest when the  
22 gain recognized equals the gain realized. The

1 problem is you have to say, well gain realized  
2 when? Was it upon initial disposition of the  
3 passive activity that gave rise to the capital  
4 gain being rolled over or is it somehow a gain  
5 realized later in 2026? And if you say it's the  
6 latter, the problem is that the basis step up  
7 rules for 10 percent and 15 percent after 5 and 7  
8 years respectively, means that the gain realized  
9 upon the original disposition will never recognize  
10 the gain recognition subsequently in 2026. So,  
11 that's the first problem. If you say, okay no  
12 it's the gain realized, when the gain is  
13 recognized subsequently around 2026 or earlier if  
14 there is a sale of the opportunity zone  
15 investment, then you have a match up and it works.

16 The next question is, if you have your  
17 suspended losses from a sold passive activity  
18 exceed the year of sale gain that is recognized  
19 from the sale, what happens with the -- when will  
20 the excess suspended losses actually become  
21 deductible. Is it going to be in the year of  
22 selling the passive activity that gave rise to the

1 rollover gain or will it be later as the gain is  
2 recognized after year, in 2026 or earlier  
3 disposition of the opportunity zone investment.

4           The first approach, saying that you're  
5 going to recognize the passive activities losses  
6 immediately and allow them to be used in the year  
7 of sale of the investment giving rise to the  
8 rollover gain is it's simple, it's least  
9 burdensome. Also, if the gain realized upon the  
10 original disposition, then it may be possible to  
11 have a rule that says that for purposes of the  
12 opportunity zone provisions we're going to treat  
13 that as having been a construction gain recognized  
14 at least for the purposes of allowing the total  
15 deduction of all the suspended losses. And that  
16 has the advantage of frankly being able to side  
17 step the issue on when you have gain realized as  
18 an initial disposition of the passive activity or  
19 is it subsequently in the year 2026 or the sale of  
20 the opportunity zone.

21           Admittedly, the second approach would be  
22 to defer the deduction of all the suspended

1 passive activity losses until you actually  
2 recognize the gain in 2026 or the earlier  
3 disposition of the opportunity zone investment.  
4 This would be consistent with how things are  
5 treated right now for purposes of the installment  
6 sale provisions and for purposes of like kind  
7 exchanges.

8 Our second comment relates to our  
9 support of the 70 percent test for defining  
10 substantially all. We think that while money is  
11 easy to raise for institutional investors, large  
12 wealthy family offices and perhaps private equity  
13 funds, it is a lot more difficult for the small  
14 business community to raise funds. And so, they  
15 need a little bit more flexibility in trying to  
16 figure out how to put their deal together. So,  
17 banks require higher levels of equity than they  
18 did prior to 2029 and because they're trying to  
19 figure out how the make the deal all work.

20 My last comment relates to asset  
21 valuation. This comment has been made by a prior  
22 speaker. But we respectfully request that the

1 used unadjusted cost basis as opposed to a  
2 depreciated cost basis and valuing the assets.  
3 This provides for simplicity and it doesn't take  
4 something that, over a period of time, that once  
5 qualified all of the sudden ceases to qualify  
6 because of paper depreciation deductions. Thank  
7 you. Our next comment.

8 MR. HARDEN: So, before I get started,  
9 the SEC investigation reference earlier reminded  
10 me to say while I'm here in front of the IRS, I  
11 did receive your calls from the call center. I'm  
12 in the process of getting my iTunes gift cards to  
13 you. Please don't arrest me.

14 So, I thought I would have ten minutes  
15 to speak separately so I was patting myself on the  
16 back for my six-minute speech so I'm going to  
17 speed read through here. So, my name is Adam  
18 Harden, I'm a tax attorney with Norton Rose  
19 Fulbright based in our Texas offices. I'm here  
20 today to present on behalf of the state bar of  
21 Texas in my capacity as the co-chair of the Taxes  
22 and Finance Committee. We first wish to thank you

1 for providing this platform in which industry  
2 participants and community stakeholders may come  
3 together. To provide input in order to seamlessly  
4 implement investment initiative which will help  
5 bring capital resources and balanced opportunities  
6 to areas of Texas and of our country that deeply  
7 need them.

8 So, one of the primary goals of these  
9 qualified opportunity zones is to incentivize a  
10 connection of investor capital with distressed  
11 communities of the country that maybe have the  
12 greatest need for reinvestment. Having lived in  
13 both Houston and San Antonio, I highlight the fact  
14 that most of the downtown area of both cities are  
15 located within opportunity zones. And I highlight  
16 the fact that most of the other opportunity zones  
17 are scattered throughout east Texas, west Texas,  
18 the panhandle region and through the Rio Grande  
19 Valley.

20 So, in other words, this program has the  
21 capacity to benefit both urban and rural white  
22 collar and blue collar, Democrat and Republican

1 communities and it provides an opportunity for all  
2 Texans and we thank you for your herculean efforts  
3 to help implement this.

4 So, with that said, I would like to  
5 speak about the substantial improvement test. The  
6 code states that the qualified opportunity zone  
7 property held by a qualified opportunity fund must  
8 satisfy one of the following requirements. The  
9 second one being, the qualified opportunity zone  
10 fund substantially improves the property. So, the  
11 proposed regulations provide that the tangible  
12 property is treated as substantially improved by  
13 the QIF only if during the 30-month period  
14 beginning after the date of the acquisition of the  
15 property. Additions to the basis of the property  
16 in the hands of the QIF exceed an amount equal to  
17 the adjusted basis of the property at the  
18 beginning of the 30- month period in the hands of  
19 the QIF. In other words, the basis must be  
20 doubled.

21 So, although a taxpayer may have a  
22 reasonable expectation and indeed a desire to

1     deploy the capital and double its basis within 30  
2     months, unforeseen challenges may cause a  
3     reasonable delay in what would otherwise be  
4     considered achievable project schedules.  If  
5     you've ever remodeled a home or a bathroom, you  
6     know this happens all the time.  In fact, in the  
7     tax-exempt bond context, Treasury has recognized  
8     the possibility of these unforeseen events and has  
9     implemented certain temporary period expenditure  
10    timelines and safe harbors found in regulation  
11    sections 1.148-2 and 1.148-7.

12           So, under the regulations as drafted,  
13    many of our clients have asked whether the  
14    30-month substantial improvement period can be  
15    extended if there are extenuating circumstances  
16    beyond the control of the QIF.  Currently, that  
17    answer is no.  There exists no provision for an  
18    extension.  Therefore, we would respectfully  
19    request that the proposed regulations be expanded  
20    to address the real-world challenges associated  
21    with spending in a timely manner certain funds for  
22    the purposes of construction and/or improving



1       tangible property.

2                   And to that end, we recommend  
3       expenditure schedule safe harbors similar to those  
4       found in 148-2 and 148-7 be included in the final  
5       regulations with respect to good faith attempts to  
6       comply with the 30-month requirement.

7       Specifically, we recommend three items.   Creation  
8       of a 30- month basis improvement safe harbor,  
9       similar to the two-year exception found in 148-7e  
10      that would allow a taxpayer to meet the  
11      substantial improvement test if it increased the  
12      basis 10 percent within 8 months, the first  
13      spending period.   At least 50 percent within 16  
14      months, the second spending period, at least 75  
15      percent within 24 months, the third spending  
16      period and at least 100 percent within 30 months,  
17      the fourth spending period.

18                   Extension with respect to the above  
19      spending schedule safe harbor for reasonable  
20      retainage similar to that found in 148-7e2 which  
21      states that an issue of tax-exempt bonds does not  
22      fail to satisfy the spending requirement for the

1 fourth spending period as a result of unspent  
2 amounts for reasonable retainage if those amounts  
3 are allocated to expenditures within three years  
4 of the issue date. Similarly, if a taxpayer has  
5 increased its basis at least 95 percent at that  
6 30-month mark and finishes its substantial  
7 improvement within the subsequent six-month  
8 period, we believe the taxpayer should still be  
9 considered to have satisfied the 30- month  
10 requirement of the proposed regulations. And I'll  
11 skip down to the final stand alone.

12 Finally, we respectfully request that an  
13 additional standalone exception be made if a  
14 taxpayer that reasonably expected to meet the  
15 30-month substantial improvement requirement fails  
16 to meet the deadline due to the project being  
17 located in a federally declared disaster area.  
18 This is important, we've seen this a lot in the  
19 Gulf region. There exists a long-standing  
20 tradition of leniency by both the service and  
21 Treasury for taxpayers and businesses that suffer  
22 from qualified disasters. We suggest including a

1 30-month extension for those taxpayers who are  
2 located within such areas and such extension may  
3 begin as of the date of the natural disaster or at  
4 a later date that may be deemed more appropriate  
5 as dictated by the scope of the recovery. Again,  
6 we thank you for allowing me to go over my time.

7 MR. DINWIDDLE: Thank you. Thank you  
8 for staying pretty much within your time.

9 MS. HANLON-BOLTON: I have a question.

10 MR. DINWIDDLE: Yes, some questions.

11 MS. HANLON-BOLTON: So, for your last  
12 thoughts on the federally declared area. Like I  
13 know in some of the other credit areas we have we  
14 do notices when these things happen and we extend  
15 the period for the individual do fulfill the  
16 rules. So, you saying just do it in a reg?

17 MR. HARDEN: Exactly.

18 MS. HANLON-BOLTON: Okay.

19 MR. DINWIDDLE: Any other questions,  
20 okay. Thank you, gentlemen. Let's see we're just  
21 past 12:30. Let me just check if speaker number  
22 two has arrived. No? Oh you're 13, you're ready

1 to go but I think we're going to take a break but  
2 I appreciate that you're here. But did Darren  
3 Levi from the National Community Reinvestment  
4 Coalition arrive? Okay, I'm afraid there has been  
5 a delay. I appreciate your readiness number 13  
6 but we are both at about 12:30 and half way  
7 through. So, I think this is a good place to take  
8 a break because we do need a break. I know it's  
9 going to be a logistical challenge to get  
10 everybody out and back in, in short order but I  
11 would like to try to do it in about 45 minutes or  
12 so. So, we're going to take a break here and if  
13 we can reconvene at 1:15 to continue.

14 MS. HANLON-BOLTON: Can I just --  
15 there's some rules I have to let you know about.  
16 If you are staying in the building and you are  
17 eating our cafeteria, that is fine. But due to  
18 security reasons, we have set aside part of the  
19 cafeteria in the back so you're going to have to  
20 go through the first part of the cafeteria. But  
21 in the back, we've set aside tables for you all.

22 MR. DINWIDDLE: And the escorts can show

1 --

2 MS. HANLON-BOLTON: And the escorts will  
3 be showing you where to go.

4 MR. DINWIDDLE: Okay, is that it?

5 MS. HANLON-BOLTON: Yeah, that's it.

6 MR. DINWIDDLE: Okay, thank you. We'll  
7 reconvene at 1:15.

8 (Recess)

9 MR. DINWIDDLE: Thank you everybody. I  
10 know we still have, I think, some people who are  
11 finishing lunch, but we're well past 1:15, so I  
12 think it's more than appropriate to get going so  
13 we can give all of our speakers an opportunity.

14 So, once again, thank you to the morning  
15 speakers. We appreciate everybody's comments and  
16 also all of your consideration for your fellow  
17 speakers in sticking to the time allotments. With  
18 that, unless I have any housekeeping items, we are  
19 going to start up again. We will just proceed at  
20 this point, I think, until we finish barring some  
21 real delay for some reason.

22 So, with that, we'll start with Speaker

1 No. 13, Ms. Jill Homan.

2 MS. HOMAN: Yes.

3 MR. DINWIDDLE: Okay; representing  
4 Javlin 19 Investments. Welcome to the lectern.

5 MS. HOMAN: Good afternoon -- good  
6 afternoon. There we go -- wake everybody up.

7 MR. DINWIDDLE: The after lunch crowd is  
8 tough.

9 MS. HOMAN: I know. So, thank you,  
10 distinguished panel, for allowing me to speak; I  
11 appreciate it. My name is Jill Homan and I'm  
12 president of Javelin 19 Investments. We're a  
13 Washington, D.C.-based real estate development,  
14 investment, and advisory firm focused on  
15 opportunity zones with more than 155 million in  
16 investments. I have more than 15 years'  
17 experience in real estate acquisitions in  
18 development totaling over 400 million in total  
19 capitalization.

20 Finally, by way of background, I serve  
21 on the board of directors of the First Opportunity  
22 Zone Focused Trade Association, the Opportunity

1 Zone Association of America (OZAA). I appreciate  
2 this chance to speak with you today. While my  
3 company is partnering on a number of opportunity  
4 zone real estate development projects, I am most  
5 proud of co-developing a \$50 million student  
6 housing project in an opportunity zone in  
7 Maryland. We are starting construction in July.  
8 There, we are doing exactly what the legislation  
9 envisioned -- fulfilling a need -- housing for  
10 students in retail -- which has a noticeable  
11 community-based affect. While my written summary,  
12 which was submitted, addressed eight subjects, in  
13 the interest of time, I'll concentrate on those  
14 subjects most likely to unlock still hesitant  
15 investors -- which are five topics.

16 The first -- relaxing the 180-day  
17 investment period for individuals who realized a  
18 gain during the first year of implementation of  
19 the opportunity zone program. In the proposed  
20 regulations, Treasury allowed a partner in a  
21 partnership which generated a gain to start the  
22 180-day period at the end of the taxable year, and

1 that made perfect sense. But many individual  
2 taxpayers recognized a gain after January 1, 2018,  
3 and in the early months of OZ activity, they were  
4 reluctant to invest within the 180-day period  
5 because of then absence of clear guidelines on a  
6 number of material subjects.

7 Treasury could provide relief and  
8 incentivize substantial immediate new investments  
9 by allowing taxpayers -- regardless of whether the  
10 gain was recognized at the individual level or  
11 through ownership in an entity -- the ability to  
12 commence the 180-day period to invest at the end  
13 of calendar year 2018.

14 Next -- reasonable cause exception of  
15 Code Section 1400Z-2(f)(3). Treasury has already  
16 recognized the need for a reasonable cause  
17 exception to the 90 percent requirement of Code  
18 Section 1400Z-2(d)(1). The Real Estate Investment  
19 Trust income tax rules found in Internal Revenue  
20 Code 856(c)(6)(b) and Treasury Reg. 1.8567 provide  
21 a workable test for determining whether such a  
22 failure is due to a reasonable cause. In the REIT



1 context, there is reasonable cause that the REIT  
2 exercise ordinary business care and prudence and  
3 not willful neglect in attempting to satisfy the  
4 requirements of such care and prudence is  
5 exercised at the time each transaction is entered  
6 into by the REIT.

7           Likewise, the Qualified Opportunity Fund  
8 could be held to a similar standard over the  
9 holding period of the investment demonstrating the  
10 requisite ordinary business care and prudence to  
11 meet the reasonable cause exception.

12           Third -- what constitutes an active  
13 trade or business? The active conduct of an  
14 opportunity zone business could easily be defined  
15 in a manner consistent with the new market tax  
16 credit program by adopting a regulation similar to  
17 Treasury Reg. Section 1.45D-1(d)(4)(iv)(a). The  
18 active conduct requirement would be satisfied if  
19 the qualified opportunity zone business generates  
20 revenue within three years after the date the  
21 qualified opportunity zone property is acquired.

22           Given that the legislation permits a

1 full 30 months for the substantial improvement of  
2 a property -- allowing 36 months for the qualified  
3 opportunity fund or qualified opportunity zone  
4 business to become active in the conduct of a  
5 trade or business -- is reasonable and consistent  
6 with the legislative intent of the statute.

7 Further, the reasonable cause exception  
8 I suggest under Code Section 1400Z-2(f)(3) should  
9 also apply in an opportunity zone business if an  
10 opportunity zone business is reasonably expected  
11 to generate revenue within three years of the  
12 acquisition of the qualified opportunity zone  
13 property but, ultimately, does not owe into a  
14 reasonable cause.

15 Fourth -- a safe harbor for a qualified  
16 opportunity fund that directly own qualified  
17 opportunity zone business property. Many  
18 qualified opportunity funds will raise capital  
19 prior to the time it is needed to be deployed at  
20 the qualified opportunity zone property level.  
21 The proposed regulations generously provide a  
22 31-month safe harbor for a qualified opportunity

1 zone businesses; that is, qualified opportunity's  
2 own partnerships or corporations, in which a  
3 qualified opportunity fund invests. But the safe  
4 harbor does not apply to a qualified opportunity  
5 fund that intend to directly own and operate  
6 qualified opportunity zone business property.

7 For this reason, I recommend that cash  
8 raised by a qualified opportunity fund be treated  
9 as qualified opportunity zone property for all  
10 purposes of Section 1400Z-2 for a period of 12  
11 months after such cash is invested in the  
12 qualified opportunity fund. If, and to the  
13 extent, the equity capital contributed into the  
14 qualified opportunity fund is not invested in  
15 qualified opportunity fund property within the 12  
16 month period, such capital would no longer be  
17 treated as qualified opportunity zone property for  
18 purposes of Code Section 1400Z-2(f) unless the  
19 qualified opportunity fund can demonstrate  
20 reasonable cause for failing to satisfy the 12-  
21 month rule.

22 The result of this rule would enable a

1 qualified opportunity fund to have 12 months to  
2 accumulate and then deploy equity capital when  
3 acquiring qualified opportunity and business  
4 property directly.

5 And lastly -- original use under Section  
6 1400Z-2 (d)(2)(D)(i)(2). I concur with those who  
7 have suggested that original use include the  
8 concept of investing in and reinvigorating a  
9 property which has been vacant or has choose  
10 disbanded for a period of time. Many zoning  
11 ordinances and bylaws consider no more than two  
12 years -- some of us suggested one year, today --  
13 an appropriate abandonment metric.

14 This concludes my remarks. I appreciate  
15 the opportunity to share with your comments and  
16 recommendations on what I think will encourage  
17 more investment in such a worthwhile program.  
18 Thank you for your attention.

19 MR. DINWIDDLE: All right. I don't know  
20 if there are other questions. I do have a  
21 question --

22 MS. HOMAN: Sure.

1 MR. DINWIDDLE: -- and it may be  
2 somewhat of a naïve question, but in terms of the  
3 safe harbor you recommend for a QOF to hold and  
4 accumulate cash -- I guess the question is can't  
5 the QOF itself manage that by just not having  
6 capital calls or otherwise taking in investments  
7 until a period in which its ready to deploy those;  
8 or is that just not practical in reality?

9 MS. HOMAN: So, there's instances -- so,  
10 I spend a lot of time with the investor community  
11 and those who are -- whether family offices or  
12 high-end wealth investors looking to invest in a  
13 fund -- and many of those have sold businesses and  
14 don't have the ability to time their gains; and  
15 then they haven't anticipated lining up  
16 investments. And so, the whole time period is a  
17 challenge. And so, any relief in just that time  
18 period will be incredibly helpful. I know -- I'm  
19 actually working with a family, for example, and  
20 they've had a gain event at the end of the year,  
21 and they have this year to really find and  
22 identify gains, and it's really the intent of the

1 program to try to get this capital into the zones  
2 but sometimes investors don't necessarily have the  
3 right investments identified.

4 MR. DINWIDDLE: Right. So, I hear the  
5 problem is really matching up the 180 days with  
6 then the limitation of when the QOF has to invest;  
7 and that really is creating a potential difficulty  
8 in effectively deploying the capital.

9 MS. HOMAN: Correct. It really starts  
10 from there, particularly if your perspective is an  
11 investor, it really starts from there. But then  
12 it's also -- it's at the other end when you're a  
13 developer. So, for example, our project -- you  
14 know, when I say we're starting construction,  
15 we're ready to go; and we're actually in the  
16 market right now working with investors and close  
17 to forming a fund. And so, you know, we're  
18 working on a real estate development project time  
19 line that we then need to map on this timing  
20 constraints. And, you know, our intent is to,  
21 obviously, meet all the timing constraints, but it  
22 just becomes complicated also from a developer's

1 perspective -- if that makes sense.

2 MR. DINWIDDLE: It does; no; that's  
3 helpful. Thank you.

4 MS. HOMAN: Great.

5 MR. DINWIDDLE: Are there any other  
6 questions?

7 MS. HANLON-BOLTON: Yes, I have a  
8 question on relaxing the 180-day rule. So, what  
9 you're suggesting is that we come out with a rule  
10 saying time the 180 day from end of January -- I  
11 mean end of 2018, so they have until the end of  
12 June, basically?

13 MS. HOMAN: Correct; because I know real  
14 life examples. A mentor of mine had a gain and  
15 you would've think all I've been talking about is  
16 opportunity zones for a year, and called me a  
17 couple of weeks ago, Jill, so I have this gain.  
18 And so, it's just -- there's individuals who had  
19 that gain event and not only were not comfortable,  
20 but you also have a time period where the terrific  
21 law firms and accounting firms are still getting  
22 up to speed and getting comfortable with, you

1 know, these investors making substantial  
2 investments. And so, you also have not just the  
3 investors' concern but their counselors' concerns;  
4 and then you also have the marketplace.

5 At the time we thought we had to have a  
6 project ready to go within six months because we  
7 didn't have that safe harbor. So, from a  
8 practical point of view, what that meant, I needed  
9 to get the capital from the fund or through a  
10 business into the property within six months which  
11 meant I needed to have my construction pricing all  
12 done, my drawings, you know, everything done. And  
13 so, it was both the issue of getting up to speed  
14 for the community and also having the right  
15 projects that were absolutely ready to go. And  
16 so, there wasn't really a marketplace that had  
17 been formed; and, you know, this is still a  
18 marketplace that's still being formed; but we're  
19 so much further along now, and the 31 months is  
20 terrific; but enabling those individual investors  
21 an opportunity to participate in the program would  
22 be outstanding.



1 MS. HANLON-BOLTON: Great. Thank you.

2 MS. HOMAN: Great. Thank you very much.

3 MR. DINWIDDLE: Thank you, Ms. Homan.

4 Next up -- Speaker No. 14, Kevin Kimble,  
5 representing Financial Services Innovation  
6 Coalition. Welcome.

7 MR. KIMBLE: Good afternoon; thank you  
8 guys. My name is Kevin Kimble. I'm the executive  
9 director and founder of the Financial Services  
10 Innovation Coalition; and I thank you for the  
11 opportunity to speak today.

12 I must start off by saying we are  
13 opposed to opportunity zones conceptually as a way  
14 of funding economic development; and we've  
15 consulted with the academics and community  
16 leaders, and economic development experts in our  
17 network of people, and they have been hard pressed  
18 to find a way in which opportunity zones will  
19 benefit them in their areas.

20 So, we've been in 20 states in the last  
21 2 years, going to low-income communities trying to  
22 figure out ways to do economic development.

1 They've looked at this program and the way current  
2 financial markets operate, they've been left out  
3 and this program doesn't have any downward  
4 pressure to include them in the way this is going  
5 to go forth.

6 I'm going to give you two data points  
7 that we kind of focus in as we talk by this. By  
8 2040, 50 percent of the U.S. population is going  
9 live in 8 states, right. That means 42 states  
10 will not have enough population to engender this  
11 kind of innovation or investment, right; there  
12 won't be enough volume there to make it worth  
13 anyone's while to invest. The way Arkansas  
14 doesn't have cellphone service in, you know, 20  
15 percent of the state, etc.

16 Black wealth -- from an African American  
17 perspective -- Black wealth has not changed since  
18 1968. It is estimated to be zero by 2053. We've  
19 had tons of economic development programs over the  
20 last 50 years. None of them have done anything to  
21 increase that. So, CRA; enterprise zones; new  
22 market tax credits; you name it, none of them have

1 ever actually helped underserved communities.

2 So, while we don't believe this program  
3 is redeemable. As I said, we have come up with  
4 some ideas for discussions about rules that could  
5 at least limit the damage.

6 The first is we want diversity on boards  
7 and investment committees. No enterprise, no  
8 opportunity zone should be allowed to get a tax  
9 credit if they don't have racial, gender, and  
10 community representation for each of the places  
11 that it invest. It must be demonstrated that the  
12 board has an approval process that is inclusive  
13 for that kind of benefits to the defined  
14 communities in which it's going to be served.

15 The second is a diverse portfolio. Each  
16 fund must be diversified geographically and by  
17 population size, and investment size. For  
18 instance, 40 percent of a portfolio should be made  
19 up of investments under \$20 million or less; and  
20 should be in communities with populations under  
21 250,000; and we request that you put a limitation  
22 of P/E ratios, or -- I'm sorry -- ROIs under 5

1 percent.

2 The third provisions is diverse  
3 investees. We know that blacks, and minorities,  
4 and women have been left out of the venture  
5 capital marketplace. So, we would require that 50  
6 percent of investments in these projects be run by  
7 minority or women firms to ensure that the funds  
8 are distributed evenly and more people  
9 participate.

10 Fourth, the funds should dedicate a  
11 portion of their funds to local initiatives that  
12 are dedicated to providing home ownership,  
13 affordable housing, and other investments to  
14 native residents.

15 And fifth, 20 percent of apartments or  
16 condos being financed by a fund should be  
17 dedicated to rent-controlled housing. Our  
18 perception is that we know the investors won't  
19 like this. We know (laughter) -- but we rather  
20 see this program fail than another \$2 trillion  
21 dollars have to be borrowed by taxpayers to fund,  
22 you know, the investments of billionaires; and if

1 they are not willing to make these investments  
2 then we know that the idea that they're somehow  
3 serious about economic empowerment, economic  
4 development is false.

5 I will leave you with one anecdotal. We  
6 were in Sacramento in December. We did an  
7 economic empowerment event down there. We went to  
8 a school -- a high school. In the summer they had  
9 a fire. It's December and the fire damage still  
10 hasn't been repaired. They had no clean drinking  
11 water for the students. A \$3- to \$5 million  
12 dollar investment would have fixed that. This  
13 program -- we're going to give a lot of money to  
14 this program, and none of those benefits will get  
15 down to that level. So, we'd much rather see  
16 another way which the government itself does  
17 things it should do and stop leaving it to the  
18 private sector; but if not, at least try to  
19 include some of this. Thank you.

20 MR. DINWIDDLE: Thank you. Any  
21 questions?

22 MR. NOVEY: I acknowledge that there is

1 nothing more maddening then presenting a real  
2 problem to a government person whose response is  
3 that's not my job -- that is a horrible job for  
4 somebody to do. I have to add to that though that  
5 our responsibility is focused on the text of the  
6 statute, taking into account what we can infer  
7 from the statutory structure and other context  
8 that what Congress wanted us to do because,  
9 basically, it's their game, as with any tax  
10 statute.

11 And so, from the way you presented it,  
12 you acknowledge that there are a fair number of  
13 things that would be very desirable for a program  
14 like this that you don't currently see in the  
15 statute that it is our responsibility to  
16 interpret.

17 MR. KIMBLE: Correct.

18 MR. NOVEY: Can you identify for us the  
19 one thing which you think is closest to being  
20 within our capacity to act.

21 MR. KIMBLE: Based on, you know, my  
22 reading of the statute and the rule that you put

1 out, I believe you can require the geographic  
2 diversity to qualify. I do believe that's one of  
3 the things you can do; and also when you talked  
4 about the ability to -- where jobs -- you asked  
5 the question of whether jobs were attached to the  
6 property or not -- I think in those ways you can  
7 affect this. I do believe you can require --  
8 because there is a civic requirement that there's  
9 societal benefit -- I mean it's part of the  
10 preamble -- I do think you can look at some of  
11 that and bootstrap some of this to make it work.

12 I mean we've petitioned Congress to  
13 change -- I mean we are petitioning Congress for  
14 these changes -- but I do think there are some  
15 requirements you can place on this under your --  
16 with the 50 percent rules on profits and income.  
17 So, I think, there's some things you can do.

18 I mean we'd be glad to work with you  
19 further if you have questions. We have some  
20 experts that we have talked to and be glad to try  
21 to help you.

22 MR. NOVEY: Our mailboxes are open; our

1 phone calls too; but I'm trying to take good  
2 notes, but something if it comes in, in writing,  
3 it's particularly helpful.

4 MR. KIMBLE: Absolutely. Thank you,  
5 guys.

6 MR. DINWIDDLE: Thank you. Okay. That  
7 takes us to Speaker No. 15, Dan Cullen,  
8 representing the Institute of Portfolio  
9 Alternatives. Mr. Cullen.

10 MR. CULLEN: Good afternoon.

11 MR. DINWIDDLE: Good afternoon.

12 MR. CULLEN: Thank you, panel, for the  
13 opportunity to come here and speak today. My name  
14 is Dan Cullen. I'm a partner at the law firm of  
15 Baker McKenzie; and I have the privilege of being  
16 a director on the Institute for Portfolio  
17 Alternatives, commonly known as the IPA.

18 Today, I'm speaking on behalf of the IPA  
19 which represents approximately 200 member  
20 companies and over 1500 individual members  
21 involved in all aspects of the nation's portfolio  
22 diversifying investments industry. The IPA brings



1 together the investment managers; broker dealers;  
2 investment advisors; and industry service  
3 professionals. We're dedicated to driving  
4 transparency and innovation in the marketplace.

5 On behalf of the IPA, I appreciate the  
6 time and effort that the Treasury Department and  
7 the IRS has devoted to developing the QOZ proposed  
8 regulations, as well as an opportunity to speak to  
9 you today with respect to the proposed and pending  
10 QOZ guidance.

11 My testimony today highlight some of the  
12 key issues we presented in our public comment  
13 letter that we presented. I would like to focus  
14 on four key issues. The first one has to deal  
15 with flexibility in structuring the exit from  
16 these funds. The second topic will the use of  
17 debt financing in connection with these funds.  
18 I'd then would like to talk about the use of  
19 traditional tax-free or tax-deferred transactions  
20 in connection with these funds; and then, finally,  
21 the construct of rollovers within the funds during  
22 the 10-year holding period.

1           In connection with the first topic --  
2 properly structuring the exit -- I'd like to echo  
3 the statements of the speaker who just spoke  
4 before me. The statute's specific language  
5 created a construct which requires an investment  
6 vehicle -- a partnership or a corporation -- as an  
7 aggregation vehicle from which investments would  
8 be made in these communities. Diversification  
9 isn't always required, but it's beneficial and  
10 important.

11           When I was a young attorney, one of my  
12 mentors told me after reviewing a draft of one of  
13 my agreements that it would be good for me to  
14 remember that it is -- although important -- to  
15 specifically craft how somebody comes into a fund,  
16 but it's equally, if not more important, to make  
17 sure you've crafted how they're going to exit the  
18 fund.

19           There are those who are interpreting the  
20 statute narrowly, in my view, to say that on exit  
21 one can and should only be able to sell an  
22 interest in the fund; and it brings to bear a

1 question as to whether or not one could sell  
2 assets and qualify for the exclusion benefit after  
3 the 10-year holding period.

4 History has shown that diversification  
5 is important. Single asset funds in and of  
6 themselves, where selling assets or selling the  
7 interest would be a little easier, will limit the  
8 scope and intent of what I think this legislation  
9 was desired to do. Having funds that are  
10 diversified and are multi-asset funds,  
11 geographically, will increase the public policy  
12 intended by the statute, but also increase the two  
13 parties that we're trying to bring together.  
14 We're trying to bring together the capital of the  
15 wealth that's in our country, and the communities  
16 that have the need, allowing greater flexibility  
17 on exit from multi-asset funds is going to be  
18 critical.

19 To do this, you're going to need to  
20 allow asset sales. I acknowledge importance of  
21 your obligations and the framework in which you  
22 must operate to implement what has been provided

1 to you in the statute. I believe you can do so  
2 here.

3 Specifically, I'd ask you to provide the  
4 following: When a QOF, structured as a  
5 partnership for U.S. federal income tax purposes,  
6 disposes of an asset in connection with a plan of  
7 liquidation -- whether its partial or in full --  
8 one should be allowed to have first the step up in  
9 the bases of the asset, followed by a step up a  
10 bases in the partnership interests.

11 As long as -- regardless of the time  
12 period involved -- that it is done as part of the  
13 written plan of liquidation, you'll comply with  
14 the statutory requirement that there be a sale of  
15 QOF interest. As we know, in almost area of the  
16 code, a redemption is viewed as a sale or  
17 exchange.

18 The reason why this is also important  
19 from an economic standpoint is history has shown  
20 that if you construct a transaction that requires  
21 a sale of an entity, buyers will require a  
22 discount in that purchase price because they don't

1 know the latent liabilities that may or may not  
2 exist within that entity. Allowing for asset  
3 sales is going to give greater confidence that  
4 both the return on capital will be there, thereby  
5 increasing the frequency of which there'll be  
6 investments within these communities.

7           If you fail to provide that, what you  
8 are doing through this statute is imposing an  
9 unintended economic penalty by forcing only  
10 interest sales that was not intended. I think the  
11 solution is straightforward. I would ask that you  
12 allow that as long as the asset sales are in  
13 connection with the plan of liquidation, that it  
14 be permitted.

15           Second, I would encourage the ability to  
16 use debt financing proceeds. Section 1400Z added  
17 to the Internal Revenue Code; it didn't amend or  
18 take away from subchapter K. I would like us to  
19 continue to be able to utilize debt financing  
20 proceeds distributions in a manner that is already  
21 allowed under the Section 752 Regs. I  
22 acknowledge, inherent within the statute, is this

1 concept that the equity invested should remain  
2 invested for a 10-year period of time to fulfill  
3 the long-term commitment that this program is  
4 intended to provide for these communities.

5 So, I realize that a rational limitation  
6 allowing debt finance distributions to only be in  
7 connection with -- as long as supported by  
8 evaluation -- appreciation above the zero-basis  
9 dollars invested in these funds would be a  
10 reasonable solution; and I ask you to take that  
11 into consideration.

12 The third topic is tax deferred  
13 transactions within these funds. Setting up these  
14 funds isn't going to be as easy as one would  
15 think. I love the fact that inherent in the  
16 statute we're requiring economic development. The  
17 fact that it has to be original use or substantial  
18 improvement really speaks to what we're trying to  
19 drive in these communities. But let's be honest,  
20 development and startup businesses is the hardest  
21 lift for real estate professional or  
22 entrepreneurs; and there are going to be winners

1 and there are going to be those that are  
2 unsuccessful; and we should support both of them.

3 Part of supporting both of them is  
4 allowing them to combine or divide within the  
5 construct that we've already provided within the  
6 Internal Revenue Code. So, whether there be a  
7 stock-for-stock tax deferred reorganization, or a  
8 Section 721 roll-up transaction -- like one would  
9 see in an up-reach transaction -- we should  
10 continue to allow the inherent benefits under  
11 Section 1400Z-2, to continue.

12 I know we can do this; we've been doing  
13 this for years. In an up-reach transaction, we  
14 simply track the 704(c) built-in gain through to  
15 its completion. We can do the same here; and I  
16 encourage you to allow that. What that will allow  
17 is those funds that are struggling can be  
18 aggregated with others to continue to fulfill the  
19 purpose, rather than require them to stand on  
20 their own.

21 Finally, the last request I would make  
22 is in connection with the statute's requirement

1 that you provide some sort of reasonable period  
2 for rollovers of investments within the 10-year  
3 holding period. That one remember -- again,  
4 because an importance of this being original use  
5 or substantially improved -- that these are  
6 difficult projects. You've already acknowledged  
7 inherent in your actions in the proposed  
8 regulations that there needed to be a runway, and  
9 that the 90 percent test's 6-month timing period  
10 didn't match with development associated with  
11 original use. And so, wisely, you gave us a  
12 31-month period as long as you have a working  
13 capital safe harbor. When you think as what needs  
14 to be reasonable when you have a rollover within  
15 that 10-year period, you can look to other areas  
16 of the code that have determined what is  
17 reasonable.

18 One might look to Section 1033, and look  
19 at the three-year period that is provided there  
20 when one has a condemnation proceeding and is  
21 given three years to reinvest the proceeds from  
22 that condemnation.



1           A third idea is to design one or more  
2       hybrid platforms that enable conventionally-owned  
3       private or publicly-traded companies that intend  
4       to locate in Opportunity Zones to contract with  
5       groups of managers and workers, employees,  
6       organized as professional employment  
7       organizations, PEO's or staffing companies, where  
8       those staffing companies, are themselves  
9       structured as ESOPs or cooperatives.

10           These entities could be either be de  
11       novo, start ups, or conversions of existing PEO  
12       staffing company entities that become employed  
13       out.

14           Fourth, through any of the three prior  
15       points of entry, I hope we might be able to design  
16       new structures for collaboration with Opportunity  
17       Zone Funds that will be taken off here, that will  
18       make it possible for employees, workers and  
19       managers in these firms to participate in the  
20       appreciation of real estate value, and building a  
21       real estate value that will happen in these  
22       structures. That should be possible.

1           None of these four points of entry into  
2           the opportunity zone and employee ownership idea,  
3           will be possible however, without regulatory  
4           clarification.

5           The addition to Qualified Opportunity  
6           Zones Regulations we hope this Body will consider,  
7           involves permission to use a financial instrument  
8           called structured or synthetic equity which, in an  
9           earlier era, 1997 to '99, three relevant bodies,  
10          the Joint Tax Committee of Congress, the Treasury,  
11          IRS, and the ESOP community agreed with the Chief  
12          Congress' legislative intent in promoting employee  
13          ownership.

14          Those discussions created both rules and  
15          norms that have governed professional practice  
16          since. In short, we are hoping that the language  
17          that was developed in that era, to be found in  
18          what's called Section 409(p) of the code will be  
19          incorporated by reference to Opportunity Zones.

20          Without wading too far into the  
21          technical details of ESOP investing, the optimal  
22          use of ESOP's structures takes place if employees

1 own 100 percent of the stock of the enterprise,  
2 making use of what is called an S corporation  
3 ESOP, (inaudible) that 1997, '99 time period  
4 reference.

5 Outside investors whose capital is often  
6 necessary to help grow these enterprises,  
7 typically invest alongside the ESOP using  
8 instruments worked out by Congress and Treasury,  
9 the aforementioned structured or synthetic equity.

10 Specifically, we hope this body will  
11 consider adding to your definition of qualified  
12 Opportunity Zone stock language that permits  
13 synthetic or structured equity, within the meaning  
14 of the already-established 409(p).

15 This language has been tried and tested.  
16 Our hope is that this Body might, incorporate it  
17 by reference and make use of it as precedent.  
18 Thank you very much.

19 MR. DINWIDDIE: Thank you. Any  
20 questions? Okay.

21 MR. MACKIN: Thank you.

22 MR. DINWIDDIE: Thank you for your

1 comments. We appreciate it. Okay. Our next  
2 speaker, Steve Glickman from Develop Advisors.  
3 Thanks.

4 MR. GLICKMAN: Good afternoon. Thanks  
5 for having me here, thanks to everyone for being  
6 here. It's a long day right. I don't know how  
7 many IRS Hearings have 90-minute waits outside,  
8 but this one did.

9 So, my name is Steve Glickman. I'm the  
10 Founder of Develop, LLC, we are a new Advisory  
11 firm. I just launched last September to work  
12 Opportunity Zones Funds in the broader  
13 marketplace. Before that I was the Founder and  
14 CEO of the Economic Innovation Group, along with  
15 John Lettieri who spoke earlier, and I was the CEO  
16 of that organization for five years, so they are  
17 the beginning of when the Opportunity Zones'  
18 statute was first drafted, and then ultimately  
19 implemented.

20 Over the last six months I've traveled  
21 around the country, I've met with hundreds of  
22 investors and wealth managers, real estate

1 developers and investors, venture capitalists,  
2 mayors, community leaders, and fund managers,  
3 trying to help them figure out this marketplace,  
4 how to use this program.

5           There is a tremendous amount of capital  
6 and energy and enthusiasm in that market, there  
7 are hundreds of funds, they're raising tens of  
8 billions of dollars of capital, or at least trying  
9 to, and those funds all range of all shapes and  
10 sizes from \$25 million regional funds to  
11 multi-billion-dollar national funds.

12           There are dozens of Opportunity Zone  
13 conferences every month, hundreds of articles  
14 being written about it, so that's all great news.  
15 But here's the bad news, all this activity has  
16 generated an enormous amount of speculation about  
17 how this program works, most of it is wrong, most  
18 of it misinterprets both the statute and the Regs,  
19 and also I believe in my cases, wrongly interprets  
20 the intent of the program, and the result of all  
21 that conflicting information, and without more  
22 regulatory clarity, the marketplace is somewhat

1 frozen now.

2 I talked to a number of the large wealth  
3 managers around the country, they control  
4 trillions of dollars of capital, much of which is  
5 interested in this program, and maybe essentially  
6 not been willing to put in the market yet, or put  
7 funds on their platforms, because they're confused  
8 about the rules.

9 So, I'll try to highlight nine issues  
10 that I hear commonly, and I'll go through them  
11 very briefly, because I only have 30 minutes, I  
12 understand. (Laughter)

13 Many of which have been covered, but let  
14 me run through quickly, I'm happy to meet  
15 afterwards or to answer any questions you guys  
16 might have.

17 First is the timing of when initial  
18 investments have to be deployed, we've talked about  
19 this at length, let me say, without a doubt, and I  
20 think part of your letter from the congressional  
21 co-sponsors last month, Congress intended this  
22 program to be used by diversified portfolio-style

1 funds, being intended for Treasury and IRS to come  
2 up with the time period for both investment and  
3 reinvestment.

4 I think the ideas you've heard  
5 frequently today, but a 12-month ramp up, or grace  
6 period at the beginning of that investment period  
7 makes sense. The reality is, these funds are in a  
8 complicated asset class. They have to do real  
9 estate development, which requires a lot of moving  
10 pieces, many of which are not within their  
11 control, or they have to identify businesses  
12 around the country, many of which have been  
13 outside of capital markets for investment.

14 That takes time to ramp up that  
15 infrastructure, particularly because many of these  
16 are new funds, and I think without a ramp up  
17 period, we will miss some of the market activity  
18 we could otherwise be seeing.

19 Related to that is the reinvestment of  
20 interim gains, this is the most important issue I  
21 believe that needs to be address in the Regs,  
22 again, made clear in the congressional letter is

1 Congress intended there to be reinvestment in  
2 these funds, and intended that reinvestment to be  
3 done in a way that didn't either sacrifice the tax  
4 benefit or lengthen the holding period, than in  
5 investor had to invest in their Opportunity Funds.

6 The benefit is meant to be tied to an  
7 investor's stake in the fund, not in the  
8 individual assets, and the program was meant for  
9 investors to move from asset to asset within the  
10 tenure time that they were invested in the Fund.

11 This is particularly important for  
12 business investors, many times the liquidity event  
13 for a business investors won't be in their  
14 control. There will be a merger, or there will be  
15 an acquisition (inaudible) minority stake in the  
16 company and before that 10 years, they will find  
17 themselves facing an event that could blow up the  
18 economic -- the tax benefit for all the investors  
19 of the fund.

20 Other cases, because they have to make a  
21 fiduciary decision to sell early. They should be  
22 allowed to reinvest that proceeds and hope for the



1 remainder of that tenure holding period in a new  
2 asset to achieve the full benefit.

3 This is an issue I haven't heard today,  
4 that investment by LPs into funds through  
5 aggregated vehicles. So, what I mean by that, is  
6 investors have 180 days to invest in funds, many  
7 wealth managers would normally accomplish that by  
8 creating vehicles to aggregate that capital and  
9 then provide advice on which funds those investors  
10 should be looking at, because they have a certain  
11 track record, or have a certain understanding of  
12 the program.

13 I'm not suggesting to extend the 180-day  
14 period, which is set up in the statute, but it's  
15 unclear whether an investor has to invest directly  
16 in the fund, or can do so through an intermediary  
17 or an aggregator, and I believe that will allow  
18 for far more capital, and far more institutional  
19 wealth managers to participate in the marketplace.

20 The treatment of land. So the  
21 regulations make clear that land can never be  
22 originally used, in the revenue ruling, but also

1 that it doesn't have to be substantially improved  
2 in the case a building is being improved on top of  
3 it. I think it's much quite a bit of confusion in  
4 the market of what happens when you just buy wrong  
5 land.

6 The intent of the program lists for land  
7 to be qualified business property; that means that  
8 it should have to be substantially improved, land  
9 making was not considered in the drafting of the  
10 program to be use of the program without some sort  
11 of improvement of that land.

12 I do think Treasury and IRS has to make  
13 clear though how the treatment of raw land, as  
14 developers call dirt, would be considered in this  
15 program.

16 Substantial improvement: substantial  
17 improvement, many times I've heard of the  
18 circumstance where a real estate developer has to  
19 substantially improve the property and we have a  
20 statue within 30 months increased its basis by 100  
21 percent, but that property then is incomplete,  
22 it's not capable of generating revenue, requires

1 new investment to be completed.

2 Right now there's a great deal of lack  
3 of clarity, of whether that sort of property will  
4 meet the test. It was certainly intended for  
5 developments that lasted longer than 30 months to  
6 be allowed as long as it met the improvement test,  
7 but because of the nature of the definition of  
8 how active businesses and gross income are  
9 treated, I believe that Treasury and IRS should  
10 clarify that point as well.

11 Two very common issues, again in the  
12 real estate context which I think Dan Cullen  
13 explained pretty well, at least one of them our  
14 refinancing depreciation. Regularly, developers  
15 are struggling with the issue of refinancing, and  
16 tax-free distributions.

17 I believe they should be allowed as they  
18 are now, under partnership tax law, but I do  
19 believe that Congress intended for the original  
20 equity to stay invested for the period of time of  
21 their investment in that asset, and thus  
22 refinancing should only be allowed to the extent

1 it represents appreciation. So, a return on  
2 capital as opposed to a return of capital.

3 Similarly in the case of accelerated  
4 depreciation, there's a question of whether  
5 investors will get the full step up in basis, and  
6 whether or they will be on the hook for  
7 depreciation recapture. I think that there's a  
8 bit of conflict here, on how that will be treated,  
9 or least for a lack of clarity.

10 In my view, there's nothing in the  
11 statute that requires depreciation recapture and  
12 would argue that accelerated depreciation should  
13 be allowed, as it is now under the code; without  
14 depreciation recapture if you qualify for the full  
15 step up in basis.

16 We've talked about the gross income tax  
17 test at length. So, let me just say briefly two  
18 points. One, when Congress pulled from 1397-C to  
19 use elements of the Enterprise Zone Statute to  
20 define the Opportunity Zone Statute, it only  
21 pulled from sections 2, 4 and 8, it did not pull  
22 from any of the other four sections that included

1 a tighter geography, and it did it by design.

2 The gross income test was never meant to  
3 apply to the zone in which the businesses were  
4 located. The reason for that is that the zone's  
5 businesses are located, are by definition,  
6 low-income, high-poverty, and thus for growth  
7 businesses to be successful, they would have to be  
8 able to sell all over the country and all over the  
9 world.

10 There's nothing in the statute that  
11 requires a tie to geography, and I believe that  
12 that additional regulatory language is a misread  
13 of congressional intent, and more importantly will  
14 sharply limit the ability to use this program to  
15 invest in high-growth business, in manufacturing,  
16 and others that were really the focus of this  
17 program from the beginning.

18 I want to address and advance the  
19 question on server farms, or data centers. This  
20 program does not test job creation, and should  
21 now. While those are -- it was meant to be a  
22 program designed for economic development, and

1 while those are not the types of investments that  
2 create a lot of jobs, and I think would be a  
3 minority of the investments in this program  
4 regardless, there are programs that lead to  
5 economic development, they provide local property  
6 taxes, and sales taxes on the extensive amount of  
7 construction, energy use and equipment purchases  
8 that are needed in those types of facilities.

9           So, I do not believe IRS should be  
10 picking and choosing between different types of  
11 economic development, as long as it meets the  
12 statute.

13           Exits from diversified funds, this is  
14 also frankly an extremely important issue. That  
15 there's a widespread belief in the market that  
16 diversified funds cannot be created in the statute  
17 because exits at the asset level will create tax  
18 events before the full step up in basis, even  
19 after the fund has held its investments and assets  
20 for 10 years or more.

21           That was certainly not the intent. I  
22 believe a wind-down period is both expected by the

1 market given the number of diversified funds that  
2 have been created, and it's the only way to get  
3 large-scale capital flowing through this program.

4 And I do hope that the IRS will provide  
5 for some kind of wind-down period after a fund has  
6 met its tenure holding requirement, to allow for  
7 it to wind down individual assets before it  
8 redeems interest in the fund to ensure there's no  
9 unintended tax consequences for investors, that  
10 have met all the requirements of the program.

11 And then last issue I want to point out  
12 is carried interest. The regulations make clear  
13 that special allocations and Opportunity Zone  
14 Funds are allowed -- are allowable for  
15 incentivized interest.

16 In a typical fund structure, a GP or  
17 management company would invest 1 to 5 percent of  
18 capital for a 20 percent stake in the fund, which  
19 are treated for capital gains for tax purposes,  
20 and given the allowance of the special allocation,  
21 I believe that 1 to 5 percent if used -- if funded  
22 by (inaudible) over capital gains, should receive

1 the full 20 percent treatment.

2 And the main reason is I think a very  
3 important one about alignment between GPs and LPs.  
4 Fund managers will in most cases have full control  
5 over the investment decision of the funds. If  
6 their incentives are not aligned in terms of the  
7 length that they have -- this is my last comment,  
8 I know I'm over -- Thank you. Thank you for  
9 bearing with me.

10 If those incentives are not aligned so  
11 that GP and LP share that same interest based on  
12 how funds are typically structured, I believe  
13 you'll see funds not meet that full tenure, or  
14 really in most cases 12-year holding times that  
15 required by the time of fund raising then dissolve  
16 the fund, and will tend to revert back to their  
17 five- or seven-year holding spans which is not,  
18 again, what the legislation intended.

19 So, I had other concluding remarks,  
20 which is to say, I thank you for the time, and I'm  
21 happy to take any questions.

22 MR. DINWIDDIE: Thank you. Before we



1 take it to questions, I'll just respond to your  
2 comment or question. That normally there's not a  
3 90-minute line to get into an IRS Hearing. And I  
4 do appreciate your perseverance, and on behalf of  
5 the Agency, I apologize for --

6 MR. GLICKMAN: I skipped the line as a  
7 speaker, I cut in front of many people, probably,  
8 in this room.

9 MR. DINWIDDIE: I actually understand  
10 that, and I understand, unfortunately, that at  
11 some point this morning we exceeded, or reached  
12 capacity, and of course then that becomes a fire  
13 hazard, and security did turn away non-speakers  
14 for which I think that's very unfortunate, and not  
15 our intent by any means.

16 I will just use this moment to say, you  
17 know, to the extent you know anyone who had that,  
18 please apologize -- to please accept or apologies  
19 from the IRS. There seems to have been some  
20 confusion, and I'm not sure exactly why, because  
21 we had provided security ahead of time, a list of  
22 the number of people who were planning to attend.

1           We will make sure for the future  
2 hearing, form NPRM- or other hearings, obviously  
3 this is a popular topic, and we appreciate all of  
4 the comments, we do appreciate those who waited in  
5 line a long time. And we will use a larger  
6 facility to make sure, at least to try to make  
7 sure that we don't have the same problem in the  
8 future.

9           Anyway I just wanted to get that out  
10 there. You kind of gave me the opening for it.

11           MR. GLICKMAN: For the record, there  
12 will be future hearings, though?

13           MR. DINWIDDIE: Well, there will be a  
14 future hearing on NPRM-2, I'm not sure there will  
15 be a future hearing on this, since this is the  
16 hearing on NPRM-1, which we hope to finalize this  
17 regulation. But we will see, because as with any  
18 regulation that's under process, there's a lot to  
19 do, and as we have heard here there are a lot of  
20 comments, and we're not done with all of them yet.

21           So, with that, anyway as an interlude.  
22 Let me see if there are any actual questions

1 regarding your comments. Okay. Well, we  
2 appreciate --

3 MR. GLICKMAN: Thank you for the time.

4 MR. DINWIDDIE: Thank you very much.

5 SPEAKER: Maybe JFK Stadium next time.

6 (Laughter)

7 MR. DINWIDDIE: I don't think we need  
8 something quite as large as JFK Stadium, which was  
9 the recommendation from the audience.

10 Okay. Next we'll turn to speaker number  
11 20, Mark Wilensky. Is Mark here? Oh. There he  
12 is. Okay. I know I saw him earlier, so.  
13 Welcome!

14 MR. WILENSKY: I am Mark Wilensky. I am  
15 an Attorney at Meltzer Lippe, I'm here  
16 representing the American Bar Association Section  
17 of Taxation with submitted comments, particularly  
18 the real estate community's comments on January  
19 10th.

20 There were a lot recommendations in  
21 those comments as comments with that, many of the  
22 issues that we covered have already been discussed

1 here today at length.

2 I chose two, for time limitations, and  
3 I'll talk about the comments regarding 752, and  
4 I'll go a little slower than some of the other  
5 speakers, because the issues have already been  
6 addressed, and also comments that we had regarding  
7 land, which obviously are frustrating a lot of  
8 people, out there in the community.

9 So, Section 752 comments were --  
10 understood that the proposed regulations do say  
11 that the 752 allocation of debt would not be  
12 treated as a separate investment, or separate  
13 interest for purposes of determining -- have the  
14 step up replies, that you wouldn't have two  
15 separate interests. But there is a lot of  
16 confusion about the interaction between 1400-Z2,  
17 and Subchapter K, and how the 752 Debt Allocation  
18 Rules, come into effect.

19 Do you get basis? Does the investor get  
20 basis for it's such share of 752 debt. Given the  
21 statute talks about the basis of the investment  
22 being zero, while people are generally confused

1 here, and our recommendation was certainly that we  
2 need clarification that the partnership basis  
3 includes the 752 debt share for purposes of loss  
4 deductions during the period the investment is  
5 held, and for purposes of distributions.

6 For instance, distribution of profits,  
7 so if it's \$10 a profit for year one, does basis  
8 increase beyond zero -- does normal Subchapter K  
9 Rules apply during the holding period of the  
10 investment. Certainly ask for clarification that  
11 losses can be deducted to the extended basis under  
12 Subchapter K.

13 Going forward, we recommended that  
14 non-liquidating cash distributions did not result  
15 in taxable gains to the extent they would not  
16 result in taxable gain under Section 731. We also  
17 recommended that the treatment of non-liquidating  
18 distributions of property also receive the usual  
19 subchapter K benefits. We recognized that to the  
20 extent property is distributed, that might clearly  
21 reduce the 2026 gain pickup because the investment  
22 would be substantially less because of the prior

1 property distribution. And to avoid any abusive  
2 situation we thought in 2026 the gain pickup would  
3 include the prior value of property distributions.  
4 Now, clearly, if a taxpayer chose to have a  
5 non-liquidating distribution of property prior to  
6 2026, it would also potentially reduce its 10-year  
7 step-up opportunity, and so we don't necessarily  
8 see that happening a lot, but that there are  
9 circumstances where we could see a taxpayer taking  
10 that route.

11 Treatment of -- we talked about whether  
12 or not in our comments a special anti-abuse rule  
13 was needed. Our comments did not suggest that the  
14 investments stay given the normal -- in particular  
15 given the normal operation of a lot of real estate  
16 programs, particularly with guaranteed financing,  
17 Section 8 financing or whatever, FHA loans, where  
18 the loans are 90, 95 percent of value after  
19 several months of holding, and that's typical in  
20 the lending and business market in real estate.  
21 We did not think that the initial investment had  
22 to stay in the partnership.

1           On the other hand, we thought that there  
2           were enough anti-abuse rules in the subchapter K  
3           to address abusive situations where it's just cash  
4           in with the intent of financing out the money.  
5           But if that's customary in the market, if the debt  
6           is used to pull the cash out, it would be up to  
7           the anti-abuse rule out there already I think to  
8           deal with that situation.

9           We had a lot of questions about the  
10          step-up. It's creating a lot of confusion where  
11          the statute refers to the step-up in basis to the  
12          value of the interest and whether that value is  
13          the net value of the interest or the gross value  
14          or the partner share of gross value. If it was  
15          net value, you can imagine -- and there are some  
16          people in the tax world who think it's net value  
17          -- that's going to create a fairly useless step-up  
18          if you don't then add back in the debt share.  
19          Many, many examples you can think of pretty easy.  
20          It just won't work if it's net. So our hope is  
21          that it's a gross fair market value approach.

22                 And there are situations where we did

1 have an issue whether or not if you do step up and  
2 you acquire losses, to what extent are losses  
3 recaptured? Obviously there's going to be  
4 negative basis -- negative capital, excuse me,  
5 negative capital in circumstances where there's  
6 been debt finance distributions in excess of basis  
7 or if, in fact, there have been losses.

8 So we had a typical situation where  
9 someone puts in \$100 and it's worth 1,000 and they  
10 pull out the 1,000 through debt. If it was net,  
11 clearly there's going to be a large gain for that  
12 investor if you only gets stepped up to net. If  
13 the person waits the extra two days and he's well  
14 advised and his advisor says, no, no, no, don't  
15 pull out that cash, don't pull out the cash, then  
16 you'll get a full step up. Okay. But, you know,  
17 we're in a situation now where two relatively  
18 similarly situated taxpayers were treated very  
19 differently. We don't think this should be a big  
20 trap for the unwary.

21 Okay, moving on to land, we talked a lot  
22 about land here today. I do think Revenue 2018-29



1 was helpful. It did create a lot of confusion. I  
2 mean, you do have a situation where a fund is  
3 taking 24 months to renovate property, which  
4 without a working capital exception at the fund  
5 level adds to, you know, confusion out there in  
6 the tax world. I mean, was that fund paying  
7 penalties along the way for all that cash it was  
8 holding? We don't think so. That was probably  
9 not intended.

10 But besides that point, we just had a  
11 question of whether or not the land is a good  
12 asset, you know. So the situation we have -- and  
13 we had pushback here on aggregation. We heard it  
14 already this morning. But the ruling seems to  
15 suggest some sort of aggregation, that somehow the  
16 land, even though it's untouched, in the ruling  
17 it's somehow a good asset for the 90 percent test.  
18 It's unclear.

19 The land is -- nothing has happened. In  
20 the ruling nothing happened. Not a dollar is  
21 added to the land. So was the land -- are you  
22 saying the land is a good asset or not for the 90

1 percent test? And we'll have a lot of situations,  
2 as the community has spoken today, where really  
3 it's the funds investing in partnerships that  
4 already own the land. I mean, that's going to  
5 happen a lot. Funds are going to invest. They're  
6 pulling together cash and they're going to invest  
7 in partnerships that already own land.

8 And that land has been sitting in that  
9 partnership for a long time and they're going to  
10 construct buildings or renovate buildings, one or  
11 the other, vacant land or just knock down the old  
12 buildings and construct new buildings on that  
13 land. And so how does that work, you know? And  
14 our recommendation was, generally speaking,  
15 somewhat consistent with 2018-29, well, yeah, the  
16 land wasn't purchased after 2017 technically, but  
17 it's still a good asset to the extent you've  
18 substantially improved or put up a new building as  
19 it were on that land.

20 We also talked about remediation cost  
21 for the land. What happens if the -- that's it?  
22 Okay.

1 MR. DINWIDDIE: That is the 10 minutes.

2 MR. WILENSKY: I welcome your questions.

3 MR. DINWIDDIE: I would just add we do  
4 appreciate the ABA comments. They were well  
5 considered, obviously fairly lengthy. A number of  
6 the topics you've touched on are really issues  
7 that no doubt we'll talk about if you stay tuned  
8 for NPRM-2. But I don't know if there are any  
9 specific questions from anybody.

10 MR. WILENSKY: Appreciate it. Thank  
11 you.

12 MR. DINWIDDIE: All right, Mark. Thank  
13 you very much.

14 Okay, that takes us to speaker number  
15 21, Regina Staudacher -- you can certainly correct  
16 my pronunciation -- from Howard & Howard. Good  
17 afternoon.

18 MS. STAUDACHER: Good afternoon. Good  
19 afternoon and thank you for the opportunity today.  
20 My name is Gina Staudacher. I am a member of the  
21 law firm Howard & Howard where we have offices in  
22 and near many Opportunity Zone locations. I am

1 going to be brief because I do have a flight to  
2 catch back to Detroit, but I really appreciate all  
3 of the comments that were made.

4 I am here representing the comments from  
5 many family offices and small businesses in  
6 regions that could be very much affected by  
7 investments in these locations, including areas  
8 such as Flint, Michigan, and Peoria, Illinois, and  
9 other areas like that, as well as working with  
10 their economic development communities to find an  
11 answer that will work for investments in those  
12 communities.

13 So first, I want to commend all of you  
14 on the thoughtful comments that came out in the  
15 proposed regulations last year. They were  
16 tremendously helpful and they did allow us to pull  
17 the trigger on a number of investments that we  
18 were already looking at. So it did put some speed  
19 and action into investments from family offices,  
20 so that was a very exciting -- those were very  
21 exciting transactions that did happen as a result  
22 of your good work.

1 So I do, I commend you for those regulations and  
2 for -- although it may not have felt speedy at the  
3 time, but when they did come out they were very  
4 helpful.

5 So given, again, the length of today's  
6 sessions and a lot of repetitive comments, I'm  
7 going to limit my first -- I did submit some  
8 comments ahead of time although they were brief.

9 My first comment is in the area of  
10 estate planning, and the second is in the area of  
11 the ability to sell the underlying assets.

12 First, in the area of estate planning.  
13 We encourage you to consider expansion of the  
14 regulations to allow an election by a grantor or  
15 its estate, to bifurcate the election, the  
16 Qualified Opportunity Fund election, in the  
17 instance where a grantor may die before December  
18 20, 2026. Now I know that sounds specific, but the  
19 reason for that is that to the extent that we have  
20 family offices and estate plans that are already  
21 in existence, unwinding some of that to take  
22 advantage of the transfer of wealth into

1 Opportunity Zone instances could be even more  
2 complex and is pushing those types of options  
3 outside of their estate plan. So it's something  
4 to think about.

5 Without relief in this area we do think  
6 that we could have limited utility of the OZF to  
7 be used as an integral part of current estate  
8 plans where significant wealth could be  
9 transferred into new opportunities on property or  
10 businesses. Hence we encourage Treasury and the  
11 IRS to consider a provision that would allow  
12 grantor trust options where the QOF election can  
13 be made at the grantor level while allowing the  
14 trust to invest proceeds in a Qualified  
15 Opportunity Fund. Similar to the  
16 partner/partnership situation but different  
17 because of the grantor trust situation.

18 This would result in the same amount of  
19 tax paid, but allow for taxpayers who already have  
20 existing estate plans utilizing grantor trust, to  
21 participate in OZF investment strategy.

22 And then my next comment mirrors many of

1 the others in front of me. Seeking clarification  
2 and maybe expansion on the definition and  
3 eligibility of the sale of the underlying  
4 investment as a means to exit the OZF Qualified  
5 Opportunity Fund itself. And based on our current  
6 efforts in advising small businesses and family  
7 offices, we have found that the sale of an  
8 interest in the Qualified Opportunity Fund is the  
9 only means by which exiting that investment is a  
10 deterrent to that investment.

11 The results of having to sell the  
12 interest of the Qualified Opportunity Fund to exit  
13 an investment creates unnecessary complexity in  
14 structuring a workable structure for a Qualified  
15 Opportunity Fund investment and impedes the  
16 marketability of the Fund and its underlying  
17 assets. We believe that Congress did not intend  
18 for this result, as this poses significant and  
19 unnecessary exit challenges that are contrary to  
20 normal business practices and diminish the  
21 marketability of the OZF in reducing the overall  
22 value of the underlying assets.

1           In summary, we are seeking improved  
2           guidance regarding the liquidation of QOF  
3           investments, and particularly the ability to sell  
4           the underlying asset as an option to exit an OZF  
5           investment.

6           This concludes my comments, and I thank  
7           you very much for this opportunity.

8           MR. DINWIDDIE: Thank you.

9           MS. HANLON-GOLTON: Thank you.

10          MR. DINWIDDIE: Any questions? So thank  
11          you very much.

12          Okay. That brings us to Speaker Number  
13          22, Scott Dacey. All right, I will let the  
14          speaker introduce himself, but I think you're here  
15          on behalf of the Salt River Pima Americopa Indian  
16          Community.

17          MR. HARVIER: Good afternoon. First of  
18          all I would like to thank the panel for giving me  
19          this opportunity here this evening to voice my  
20          comments into record. Those of you that might  
21          know Scott Dacey, I'm not Scott Dacey. Or you'd  
22          think Scott Dacey stayed out in the sun quite a



1 bit.

2 Just by way of introduction, my name is  
3 Martin Harvier, I'm the current President of the  
4 Salt River Pima Americopa Indian Community in  
5 Arizona. Our Community is located in the Phoenix  
6 Metropolitan area where we share common borders  
7 with the Cities of Scottsdale, Tempe, and Mesa.  
8 We were established by Executive Order in June of  
9 1879 by then President Rutherford B. Hayes.

10 Today the Community has nearly 10,600  
11 members that are enrolled in our Community. And  
12 our Reservation land base is approximately 52,600  
13 acres, all of which are located in a designated  
14 Opportunity Zone.

15 By way of background, we learned of the  
16 Opportunity Zone Program some months after the  
17 enactment of the Tax Cuts and Jobs Act when we  
18 were approached by the Arizona Commerce Authority  
19 to consider being nominated to participate in the  
20 Program. Ultimately Governor Doug Ducey did  
21 nominate the census track that included our entire  
22 Reservation, and the Federal Government approved

1 our nomination.

2 Following the designation we began  
3 working with developers, and quickly learned the  
4 land status of Tribal Reservation Land may be a  
5 limiting factor in using the Opportunity Zone  
6 designation. Very simply because Tribal and  
7 allotted lands are held in trust by the United  
8 States Government on behalf of the Community and  
9 our members. And therefor are not to be sold.

10 Without the US Treasury providing a  
11 long-term ground lease option our participation in  
12 the Program likely will be minimal. It should be  
13 noted that of the 22 Tribes located in Arizona, 17  
14 of them, in 15 counties, possess lands that were  
15 designated as Opportunity Zones. We know that  
16 many Tribes outside of Arizona have also received  
17 this designation, primarily because of economic  
18 challenges facing many Reservations throughout  
19 America.

20 While our Community is pleased to have  
21 received this opportunity, I would like to take a  
22 moment to outline the specific problems that exist

1 in the proposed regulation facing Tribes, and  
2 perhaps any other jurisdictions that are looking  
3 at economic development projects on publicly owned  
4 lands, including State, County, and other  
5 government owned lands.

6 As with most publicly owned lands,  
7 Federal Indian trust lands cannot be transferred  
8 through a sale. As a result, in our experience  
9 long-term ground leases are typically used where  
10 third-party development is occurring on trust  
11 land. These ground leases are proving to be  
12 problematic because a leasehold interest is not  
13 treated as a qualifying asset under the  
14 Opportunity Zone provision.

15 Qualified Opportunity Zone business  
16 properties must be acquired by purchase. And the  
17 term "acquired by purchase" does not appear to  
18 include a leasehold interest such as a ground  
19 lease.

20 Specifically, an Opportunity Fund must  
21 hold at least percent of its assets in Qualified  
22 Opportunity Zone property, which includes

1 Qualified Opportunity Zone business property. And  
2 with respect to the Opportunity Zone businesses,  
3 at least 70 percent of the real property owned or  
4 leased by the trade or business must be Qualified  
5 Opportunity Zone business property.

6 Since a leasehold interest involving a  
7 ground lease is not considered Qualified  
8 Opportunity Zone business property, which is a  
9 qualified asset, the value of such leasehold  
10 interest cannot exceed 10 percent of the Qualified  
11 Opportunity Funds total asset or 30 percent of the  
12 tangible property asset of a Qualified Opportunity  
13 Zone business.

14 The proposed regulations incorporate a  
15 method for measuring asset values by using the  
16 value of the asset recorded on the applicable  
17 finance statement or the Qualified Opportunity  
18 Fund or the Qualified Opportunity Zone business.

19 Further, the proposed regulation also  
20 incorporate another method for measuring asset  
21 values when the applicable finance statement  
22 method is not applicable, by using the cost of the

1     asset.

2                   Recent changes to the GAP accounting  
3     acquired the recognition of leasehold interest at  
4     the present value of the prospective lease  
5     payments over the term of the lease, often between  
6     50 and 99 years. Under the applicable finance  
7     statement method the extensive term of these  
8     leasehold interests likely results in a  
9     non-qualifying asset value of greater than 10  
10    percent of the Qualified Opportunity Fund's total  
11    asset, and possibly exceeding more than 30 percent  
12    of the tangible property asset of the Qualified  
13    Opportunity Zone business. Which may cause the  
14    Qualified Opportunity Fund to fail the 90 percent  
15    asset test and may cause the Qualified Opportunity  
16    Zone business to fail the 70 percent tangible  
17    property test as well.

18                   As a result, the value of the leasehold  
19    interest involving the long-term ground lease is  
20    unclear with respect to using the cost of asset as  
21    a method.

22                   Solutions. With these points in mind,

1 our Community would like to propose both a  
2 short-term and long-term solution. The short-term  
3 solution is to clarify the proposed regulation.  
4 And the long-term solution is to seek a technical  
5 change to the Opportunity Zone portion of the Tax  
6 Cuts and Jobs Act of 2017.

7 In this rule making process it is  
8 important to provide certainty for transactions  
9 using long-term ground leases. The alternative,  
10 it can provide certainty, would be to provide  
11 Qualified Opportunity Funds and Qualified  
12 Opportunity Zone businesses with the ability to  
13 choose to use income tax basis for determining  
14 asset values with respect to the 90 percent asset  
15 test and the 70 percent tangible property test.  
16 An operating lease typically has no income tax  
17 bases. Accordingly, by using income tax basis to  
18 determine the value of an asset, the leasehold  
19 interest for an operating lease will have zero  
20 value for the purpose of the 90 percent asset  
21 test, and 70 percent tangible property test.

22 We believe having a non-qualifying asset

1 with zero value should not be problematic. We are  
2 aware of the preamble to the proposed regulations  
3 request, comments on the suitability of the two  
4 valuation methods, and whether another method,  
5 such as adjusted tax basis, would be better for  
6 the purpose of assurance and administration.

7 We believe using income tax basis would  
8 be administratively convenient. Since the  
9 Opportunity Zone provisions already use income tax  
10 bases for determining the non-qualifying financial  
11 property limitations set forth in the Code, with  
12 regard to the long-term solution we believe there  
13 is merit to consider a technical change to the  
14 underlying law that specifically recognizes the  
15 use of long-term ground leases as being suitable  
16 instruments when evaluating appropriate investment  
17 conditions for Opportunity Zones.

18 I am hopeful you will consider and  
19 include the Community's recommendation into the  
20 final regulations. Providing clarity will unlock  
21 the full benefit of the Opportunity Zone  
22 incentives on Tribal Lands and on State and

1 Municipal owned lands.

2 And in closing, again I want to thank  
3 the panel for this opportunity. You know,  
4 becoming the President of my Community didn't call  
5 for me to be a tax lawyer.

6 MR. DINWIDDIE: It helps.

7 MR. HARVIER: And I'm still not a tax  
8 lawyer. But in meeting with staff and attorneys,  
9 you know, as a Tribal Leader I do have the  
10 responsibility to provide for my Members. And I  
11 see this as an opportunity for development in our  
12 Community. If we're going to be identified as a  
13 Zone, an Opportunity Zone, if a developer comes to  
14 our community and they don't get the same benefits  
15 that they get across the street, they're going to  
16 go across the street. And I'm just hoping today  
17 with the comments that I've submitted, that it  
18 would be looked at some changes again on Tribal  
19 Property. I appreciate the time. Thank you.

20 MR. DINWIDDIE: Thank you. Any  
21 questions? No? We have heard from many people  
22 that in addition to the question of long-term



1 leases where real estate is not susceptible to any  
2 other kind of transfer of use, many startups that  
3 might be appropriate development vehicles in low  
4 income communities, necessarily will operate with  
5 leased property, personal property in terms of  
6 what they use to run the business. And we have  
7 heard many people say that if the statute says  
8 that owned and leased property goes into the  
9 denominator for what is now proposed to be a 70  
10 percent test, there ought to be some way in which  
11 it can get into the numerator as well.

12 So the question that I have for you is  
13 that is it correct to assume that other than the  
14 disproportionate impact that a leasing rule would  
15 have for your Community, technically the leasing,  
16 if there is a response to that leasing question in  
17 the regulations, there are not distinctive needs  
18 that your situation would require to be addressed,  
19 that anything which addresses leasing more  
20 generally would be equally useful or not useful,  
21 as far as you're concerned?

22 MR. HARVIER: Well I think, again, the

1 land itself being held in trust for the Community  
2 and the Tribe, again I don't believe there's any  
3 type of agreement or promise that anybody can make  
4 as far as that land just because of how it's held.

5 MR. DINWIDDIE: I'm saying only that you  
6 all have no choice but to lease.

7 MR. HARVIER: Exactly.

8 MR. DINWIDDIE: A lot of other people  
9 lease even though they could sell. And a lot of  
10 businesses end up with leased real and personal  
11 property, and they have asked us to respond to  
12 that business exitancy from the investors' side.  
13 And from what you've described, it seems as if a  
14 rule that addresses that need, or fails to address  
15 that need, would be equally good or not good for  
16 you all. And I just want to make sure that there  
17 isn't a special aspect to your circumstances.

18 MR. HARVIER: No.

19 MR. DINWIDDIE: I do appreciate that.

20 Thank you.

21 MR. HARVIER: Thank you.

22 MS. HANLON-BOLTON: So I've been told

1 recently that the, for lack of a better word,  
2 permitting process for you to lease out land to  
3 outside the Tribe, you have to go through the  
4 Department of Agriculture -- Interior.

5 MR. HARVIER: Interior.

6 MS. HANLON-BOLTON: Interior. How long  
7 is that process?

8 MR. HARVIER: Well, I'll tell you, I  
9 think other Tribes process might take a little bit  
10 longer. I think we have a good relationship with  
11 the Interior and the Bureau of Indian Affairs.  
12 And, you know, they're still in the process  
13 because a lot of the land leased is owned by  
14 individual Tribal Members, it's actually trying to  
15 locate those Tribal Members so that they can sign  
16 off on development.

17 MS. HANLON-BOLTON: Okay. So it doesn't  
18 necessarily add, you know, two years to the  
19 process or --

20 MR. HARVIER: No, I think it just --  
21 well --

22 MS. HANLON-BOLTON: It depends.

1 MR. HARVIER: It's a process, but I  
2 believe we have a good professional staff to have  
3 good relationships.

4 MS. HANLON-BOLTON: Okay. Thank you.

5 MR. DINWIDDIE: Anything else?

6 MR. HARVIER: Thank you.

7 MR. DINWIDDIE: Thank you. Okay. That  
8 brings us to the last name on the list, Number 23,  
9 is it Todd Leverette? Todd Leverette representing  
10 Democracy at Work Institute.

11 MR. LEVERETTE: Good afternoon  
12 everybody.

13 MR. DINWIDDIE: Good afternoon.

14 MR. LEVERETTE: When I found out I was  
15 going to be the last speaker, I knew I would  
16 either be playing the role of the best for last  
17 guy or the guy stopping everyone from going home.  
18 And from the looks on everybody's faces, I think  
19 I'm the latter. Or maybe I do both.

20 Well once again, my name is Todd  
21 Leverette. And I serve as a Program Manager of  
22 the Legacy Business Initiative at the Democracy at

1 Work Institute. Where we uplift the ploy and  
2 incubate employee ownership as a tool for building  
3 a better and more just social and economic system  
4 here in this country.

5 You heard from one of my compatriots and  
6 colleagues in the employee ownership field, Mr.  
7 Chris Mackin, who did a great job earlier of  
8 explaining ESOPs in the employee ownership world  
9 generally, and some of the real impact that the  
10 employee ownership world has on wealth creation in  
11 this country.

12 Note that I come representing the  
13 employee ownership world broadly, advocating both  
14 on behalf of ESOPs and advocating on behalf of the  
15 world of worker Co-Operatives, which are built  
16 upon many of the same principles and best  
17 practices that animate ESOPs, those of shared  
18 ownership of business enterprises by their  
19 workers, broad risk and profit sharing, and the  
20 stabilization and anchoring of living wage jobs in  
21 the communities where they're needed the most.

22 Work of Co-Operative are also afforded a

1 preferred tax status enjoyed by the wider world of  
2 Co-Operatives under Sub Chapter T of the Internal  
3 Revenue Code, which some of you may be familiar  
4 with.

5 In the Co-Operative, worker  
6 Co-Operatives are very often the form of employee  
7 ownership that microbusinesses that are making  
8 less than a million dollars a year, and that are  
9 often found in economically underinvested  
10 neighborhoods, like those pulled out by  
11 Opportunity Zones, utilize when the cost of a ESOP  
12 plan may be out of reach for them.

13 So as all that has been said here today  
14 is discussed, I implore you to think about  
15 language and interpretations that are inclusive of  
16 all forms of employee ownership, ESOPs, worker  
17 Co-Operatives, and other forms such as employee  
18 ownership trusts. And I'm always available to  
19 help if you guys need help doing that.

20 You've heard some people come before you  
21 today, specifically heard Mr. Chris Mackin come  
22 before you today and explain why it's important

1 that such a landmark piece of legislation, meant  
2 to bring investment to the zip codes and  
3 neighborhoods, and most importantly the people,  
4 that need it the most, why it is it's important  
5 that this legislation be read as much as possible  
6 in a way that includes the people and the  
7 businesses that reside within those communities  
8 and should include one of the greatest tools, and  
9 I believe this honestly, one of the greatest tools  
10 ever created for business and job preservation for  
11 employees' quality of life improvement and family  
12 wealth creation, and business owner succession.  
13 And I'm referring to employee ownership models of  
14 business ownership, including ESOPs and worker  
15 Co-Ops.

16 So I'm not going to repeat what Chris  
17 has so eloquently and persuasively said, but as  
18 the last speaker and the guy keeping everybody  
19 from going home, I feel that it's my  
20 responsibility to highlight and accentuate some of  
21 those important points that he brought up a little  
22 bit earlier.

1           First of all I'd like to accentuate his  
2       recommendation, Mr. Mackin's recommendation to  
3       include synthetic equity or structured equity  
4       within the definition of Qualified Opportunity  
5       Zone stock. This would allow for employee owned  
6       enterprises like ESOPs and worker Co-Ops, the  
7       businesses that I would argue are in the best  
8       position to distribute the benefits of the  
9       enterprise growth that will come from Opportunity  
10      Zones to those workers and families that actually  
11      live and/or work in those Zones. This would allow  
12      for these enterprises to participate and to  
13      flourish along with other business enterprises  
14      that are able to take advantage of Opportunity  
15      Zone based investment.

16           And the employee ownership world will be  
17      there with you to take the ball and take the  
18      impact of these employee owned enterprises and  
19      take them to the next level.

20           As Chris was saying, there's a healthy  
21      and growing world of market and socially aware  
22      impact capital that if allowed to, can serve as a



1 multiplier of the possible positive impact of  
2 Opportunity Zones.

3 Specifically and related to what I've  
4 been saying, there's been an emergence of  
5 financial vehicles, i.e. funds, including one that  
6 I'm working on, one that Chris is working on, that  
7 are meant to incubate these employee owned  
8 enterprises across the United States.

9 Specifically I'm working on one with the  
10 organization where I'm employed, the Democracy of  
11 Work Institute, to leverage employee ownership  
12 models, including ESOPs in the communities that  
13 need it the most. And the specific fund model  
14 that I'm working on is looking to deal exclusively  
15 with businesses that have a majority/minority  
16 employee bases. So businesses that have  
17 significant number of minority employees that they  
18 employ, can we make those businesses employee  
19 owned enterprises.

20 Finally, I want to stress the need to  
21 ensure that a substantial and direct benefit of  
22 this program accrue to the people that live in

1     these zip codes and the families that cared in,  
2     worked in, and invested their life and labor and  
3     capital in these zip codes long before the summer  
4     of 2018. So relatedly there probably should be  
5     some type of, if possible, job creation and/or  
6     retentional requirement within the Opportunity  
7     Zones.

8             And if that can't be done, then maybe  
9     this legislation, as much within your power, needs  
10    to be tailored narrowly so that any possible  
11    damage, and we've heard a lot of speakers talk  
12    today about some of the damage that could be  
13    caused by this legislation, that that damage would  
14    be ameliorated. And I think that's exactly what  
15    Congress would want to close, I'd like to say it's  
16    an honor to be a part of this process. This is my  
17    first time being able to participate in the system  
18    in this way, and it's quite humbling. It gives me  
19    a greater understanding and respect of the  
20    strength of our democratic systems here in this  
21    Country. So I definitely appreciate the  
22    opportunity.

1           And since I'm the last person, may I be  
2   so bold to say that on behalf of everybody in the  
3   room, thank you all very much for sticking with us  
4   through a very long day. I hope that everybody's  
5   comments have been valuable to you, and thank you  
6   for your thoughtful consideration of our words.

7           MR. DINWIDDIE: Thank you.

8           MR. LEVERETTE: You're clapping because  
9   I'm done.

10          MR. DINWIDDIE: Make sure this isn't the  
11   last time you come to help us with a regulation.

12          MR. LEVERETTE: I'll be back.

13          MR. DINWIDDIE: Good.

14          MR. LEVERETTE: Thank you very much.

15          MR. DINWIDDIE: All right. I know we  
16   did have one other name on the list, Speaker  
17   Number 2, Heron, Levi, who was listed. I just  
18   wanted to make sure that if she wanted to speak  
19   she has an opportunity. She left? Okay, that's  
20   fine. Just didn't want to not provide her an  
21   opportunity she was on the list for.

22                 At this point we have concluded the

1 speakers on the list. I would also provide an  
2 opportunity, although it's always a hazard, but  
3 nonetheless, if there's anybody else who is still  
4 in the audience who would like to come to the  
5 lectern and provide any comments, you are free to  
6 do so. Please introduce yourself when you come to  
7 the microphone, for the record. And we'll limit  
8 you to 10 minutes as well.

9 MS. TAYLOR: Good afternoon, and again  
10 thank you for your patience. My name is Maka  
11 Taylor, I am resident of Washington, DC. St.  
12 Louis is where I'm from though, so St. Louise to  
13 Southeast is what I represent.

14 And what I was hearing, so I'm on record  
15 with the OAS saying that non-profits, if they were  
16 doing their work in the manner they should, the  
17 human condition would just generally be better.  
18 No harm, no foul, just where we are.

19 My specific focus is in making sure,  
20 since we already know that the top down kind of  
21 didn't work because of the open V that we're  
22 working with in the economy now. That as we're

1 implementing this I would like to propose that we  
2 have a delegate community ordained and advocating  
3 in the style up, one whoever is proposing or has a  
4 hedge fund or who has the funds, that we have  
5 somebody from the community in that space to  
6 oversight. And also I want the people -- excuse  
7 me, I didn't plan on talking, I'm kind of shaking  
8 in the throat. That's okay.

9 But I also want to say the data is going  
10 to be very important here. And data from people  
11 like me who may have lived the experience and have  
12 just a tad bit more understanding on how the  
13 process works programmatically and trying to get  
14 in and figuring out who's who, to have someone  
15 with that knowledge, hands-on training another  
16 group of individuals to actually execute kind of  
17 an army of over lookers and onlookers to make sure  
18 that whatever the impact of these Opportunity  
19 Zones are, they actually reach the people that  
20 they're supposed to.

21 And I'm blind eyed, I have only the head  
22 in the fight that I want to help, and I'm here for

1 that. So I believe that we need a delegate on  
2 each one of these funds, whoever gets it. Well  
3 right now I know that W.C. Smith kind of is in my  
4 area. I want to make sure that we're managing  
5 that, and whatever he has in that, we're seeing  
6 that in representation of the community that their  
7 said to benefit.

8 So that's pretty much it, the delegate,  
9 and making sure that the community, hands-on, has  
10 a place in making sure that it actually comes back  
11 to the people it's supposed to help.

12 Thank you.

13 MR. DINWIDDIE: Any questions? Thank  
14 you. All right. Is there anyone else who would  
15 like to -- yes, one other. Please come up and  
16 introduce yourself at the microphone.

17 MR. CARNEY: Thank you for this  
18 opportunity at this late juncture in the day. My  
19 name is Brent Carney, I'm a Partner at the law  
20 firm of Maraziti Falcon. We're located in Short  
21 Hills, New Jersey. And our firm serves as special  
22 redevelopment counsel for three cities in New

1 Jersey. One is the City of Newark, the City of  
2 Perth Amboy, and the Township of Carney's Point.

3 In serving as special redevelopment  
4 counsel, the State of New Jersey has legislation  
5 that describes how areas are declared and in need  
6 of redevelopment. And with respect to  
7 redevelopment areas, I'm concerned about the  
8 definition of "original use," or actually the lack  
9 of the definition of "original use." And in  
10 particular what I'm thinking about is the  
11 demolition of buildings. Because typically these  
12 areas that are declared in need of redevelopment  
13 do not necessarily, for redevelopment purposes,  
14 they need to be demolished and not actually  
15 continue on with the original use because the  
16 original use actually qualified them for an area  
17 in need of redevelopment.

18 So I'm actually nervous standing here  
19 myself. And unlike a court of law where I'm not  
20 necessarily prepared, I wasn't planning on  
21 speaking today.

22 But there were comments about if it's

1 vacant land for at least a year then that original  
2 use should be taken into account.

3 I would also submit that in addition to  
4 vacant land, that where you have buildings that  
5 need to be demolished for redevelopment purposes,  
6 that the definition of "original use" would erase  
7 the prior use for that purpose. I don't know if  
8 I've made it more confusing, but I'll take any  
9 questions on that topic.

10 MR. NOVEY: We've heard some  
11 criticism that the original use criterion would in  
12 some cases create economic pressure on the present  
13 or future owner of the building to demolish it so  
14 that it could have something that was not  
15 previously used, that it could get benefit on.

16 We've heard some criticism  
17 when it did not see its way clear to substantially  
18 improve it by putting in improvements. You seem  
19 to be talking about it in a different way but is  
20 that other problem something you think is a  
21 concern.

22 MR. CARNEY: Well, I think it is a



1 concern. And when the comment was brought up  
2 about vacant land, if it's been vacant for a year,  
3 my mind was already going right to, well what if  
4 you demolish a building and the property is now  
5 vacant for a year. I don't think that was  
6 probably the intent. In New Jersey, and I'm sure  
7 in other states, there is statutory criteria.  
8 There are public hearings to declare an area in  
9 need of redevelopment. And I think if it meets,  
10 at least in New Jersey, if it meets that stringent  
11 requirement of how an area is declared in need of  
12 redevelopment, then I think in that case, the  
13 definition of original use should wipe out the  
14 prior use. So that those buildings could be  
15 demolished and new buildings can be put in to  
16 revitalize the area.

17           And just as a simple example, perhaps  
18 it's an industrial use and it is industrial use  
19 that needs to be taken down to make way for a  
20 building that has, say commercial on the first  
21 floor, residential on the upper floors. That  
22 creates a revitalization in the area. And right

1 now, without that in the definition of original  
2 use, I think the opportunity zone where it  
3 overlaps with a redevelopment area will have very  
4 limited potential. It will be much smaller type  
5 projects. It would just be the rehabilitation of  
6 an existing building, for example within the  
7 30-month period.

8 One other thing is, I don't see a  
9 timeframe established with a definition of  
10 original use. With substantial improvement, there  
11 is a timeframe in the draft regulations of 30  
12 months. I don't see any timeframe at all for  
13 original use if the IRS regulations go the way  
14 that I'm suggesting. And I would suggest that I  
15 think 30 months is a tight timeframe for  
16 substantial improvement and I would recommend that  
17 perhaps there not be a timeframe or that the  
18 timeframe be, I mean, obviously the opportunity  
19 zones themselves expire within ten years. But  
20 that sufficient time be allowed for the demolition  
21 of buildings and the redevelopment in those areas  
22 where there is a redevelopment area that overlaps

1 with an opportunity zone.

2 MR. DINWIDDLE: Any other questions?

3 Thank you. All right, once again, is there  
4 anybody else from the floor who wants to speak?

5 If not, I don't see anybody else so I think that  
6 is the end of our presentations. I would like to  
7 say thank you very much to all our speakers today.  
8 We had clearly very just a wealth of knowledge and  
9 insights and that were brought to bear on a wide  
10 variety of areas that are relevant to writing  
11 effective and helpful regulations in this area,  
12 refining what we already have. So, we greatly  
13 appreciate that. I say thank you again to all the  
14 speakers.

15 To the rest of you in the audience,  
16 thank you for bearing with us and some of the  
17 logistical difficulties that we faced,  
18 particularly those who had to wait in line an  
19 extensive period of time to get access to the  
20 building. So, thank you very much for your  
21 patience in doing that. I'd also like to say a  
22 special thank you to the escorts who have helped

1 us all day to make sure that those of you who are  
2 here as visitors can get in and around the  
3 building. With that, we will officially conclude  
4 this hearing on the proposed regulations investing  
5 in qualified opportunity funds reg 115420-18.  
6 Thank you all.

7 (Whereupon, at 15:32 p.m., the  
8 HEARING was adjourned.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 DISTRICT OF COLUMBIA

3 I, Carleton J. Anderson, III, notary  
4 public in and for the District of Columbia, do  
5 hereby certify that the forgoing PROCEEDING was  
6 duly recorded and thereafter reduced to print under  
7 my direction; that the witnesses were sworn to tell  
8 the truth under penalty of perjury; that said  
9 transcript is a true record of the testimony given  
10 by witnesses; that I am neither counsel for,  
11 related to, nor employed by any of the parties to  
12 the action in which this proceeding was called;  
13 and, furthermore, that I am not a relative or  
14 employee of any attorney or counsel employed by the  
15 parties hereto, nor financially or otherwise  
16 interested in the outcome of this action.

17  
18  
19 (Signature and Seal on File)

20 -----  
21 Notary Public, in and for the District of Columbia

22 My Commission Expires: March 31, 2021