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TURNING OVER STONES: ADVOCATING FOR STRONGER REPORTING REQUIREMENTS FOR OPPORTUNITY ZONES

ABSTRACT

In 2017, Congress passed Sections 1400Z-1 and 1400Z-2 into the Internal Revenue Code, effectively codifying new tax legislation dubbed 'Opportunity Zones.' This legislation, which received bipartisan support, was meant to provide investors with a tax break to incentivize investment in low-income communities. The Opportunity Zone program is a substantial tax expenditure for Congress, and one that proponents believe can attract investment into parts of the United States suffering from diminutive economic growth. However, critics doubt this program will benefit those living in distressed communities, and fear that Opportunity Zones will instead promote gentrification while giving wealthy investors unnecessary tax breaks.

It is unclear which side of the argument is correct because specific, detailed data illustrating the effectiveness of Opportunity Zones simply isn't available. This Note will address why data collection is currently limited and proposes a solution at gathering more specific data to determine if Opportunity Zones truly benefit residents of low-income communities.

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INTRODUCTION

In the book *Moneyball: The Art of Winning an Unfair Game*, author Michael Lewis tells the true story of how the Oakland Athletics baseball team used data to gain a competitive advantage in the early 2000s despite having one of the lowest payrolls in baseball.[1] Lewis quotes John Henry, the former owner of the Florida Marlins baseball team who made a fortune in financial markets, on how data collection serves as a valuable tool in both baseball and finance.[2] Henry said, "People in both fields operate with beliefs and biases. To the extent you can eliminate both and replace them with data you gain a clear advantage."[3]

Republicans and Democrats, conservatives and liberals, and other leaders in government form policy ideas based partly upon how they see the world.[4] Political leaders may dispute whether they think a policy is smart or worthwhile, but once that policy is passed through Congress, there must be a system in place to objectively measure whether that policy is a winner or a loser, like a baseball team or a stock. Unfortunately, this is not always the case.

In 2017, the Tax Cuts and Jobs Act passed a tax incentive known as Opportunity Zones ("OZs").[5] This tax incentive was introduced with bipartisan support and was created to help spur investment in low-income communities.[6] However, those using the tax incentive are not required to report much data at all, and for reasons that will be discussed, these programs are difficult to monitor. Worse yet, skeptics such as Congresswoman Rashida Tlaib believe wealthy developers are using OZs to exploit low-income communities.[7]

In Part I, this Note will discuss the history of Opportunity Zones, and the social benefit that the program was meant to provide. "Social benefit" will be used in this Note to describe broadly any positive impact that OZ investment might have on individuals living in low-income communities, including increased employment, improved living conditions, better access to health care, higher wages, and more. The Note will also explain the statutory requirements of the program, and Part II will discuss support for and criticisms of OZs. Part III will explore the difficulty in monitoring whether OZs benefit low-income communities. Last, Part IV will propose a method to collect industry-specific,

1. *See generally* MICHAEL LEWIS, MONEYBALL: THE ART OF WINNING AN UNFAIR GAME (2004).

2. *Id.* at 90.

3. *Id.* at 90–91.

4. Sheheryar Banuri et al., *Biased Policy Professionals,* 33 WORLD BANK ECON. REV. 310, 311 (2019), https://doi.org/10.1093/wber/lhy033.

5. I.R.C. § 1400Z (2018).

6. Stan Veuger, *'Opportunity Zones' don't actually work*, AMER. ENTER. INST. (Sept. 4, 2020), https://www.aei.org/articles/opportunity-zones-dont-actually-work/.

7. Press Release, Rep. Rashida Tlaib, Congresswoman Rashida Tlaib Introduces Bill to Repeal Controversial Opportunity Zones (Nov. 22, 2019), https://tlaib.house.gov/media/press-releases/congresswoman-rashida-tlaib-introduces-bill-repeal-controversial-opportunity.

standardized data to help measure social benefit, and will suggest an authoritative body to collect, analyze, and publish this data.

I. HISTORY OF OPPORTUNITY ZONES

A. Legislative History

Opportunity Zones are the newest in a line of place-based tax incentives, preceded most notably by the New Markets Tax Credit and the Low-Income Housing Tax Credit.[8] Professor Michelle Layser of the University of Illinois, an expert in tax law, defines a "place-based incentive" as a tax expenditure used to drive investment to low-income areas.[9] A "tax expenditure" is not actually an expense paid by the federal government, but is foregone tax revenue attributable to a provision in the Internal Revenue Code ("the Code") that provides a tax credit, exclusion, deferral, or some other benefit to taxpayers.[10] "Place-based" incentives are tax expenditures that provide a tax benefit to taxpayers who invest within a specific geographic area, often times in "entrenched pockets of poverty."[11] They have become popular amongst lawmakers partly because they present a palatable alternative to direct welfare spending, which is often an unpopular political strategy.[12]

The initial Opportunity Zone model was created by Jared Bernstein and Kevin Hassett in a 2015 white paper published by the Economic Innovation Group ("EIG"),[13] a Washington think tank led by former tech mogul Sean Parker.[14] Hassett grew up in a part of Massachusetts that had struggled economically and wanted to help spur development in these types of distressed communities.[15] Hassett was not paid for his work, motivated instead by a desire to help those in struggling communities.[16]

8. Michelle D. Layser, *The Pro-Gentrification Origins of Place-Based Investment Tax Incentives and a Path Toward Community Oriented Reform,* 2019 WIS. L. REV. 745, 762, 788 (2019) [hereinafter *Pro-Gentrification Origins*].

9. Michelle D. Layser, *How Place-Based Tax Incentives Can Reduce Geographic Inequality* 3–4 (U. Ill. Tax L. Rev., Research Paper No. 20-09), https://ssrn.com/abstract=3516469 (last updated Oct. 23, 2020) [hereinafter *Place-Based Tax Incentives*].

10. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-21-30, IMPROVED OVERSIGHT NEEDED TO EVALUATE TAX EXPENDITURE PERFORMANCE 1 (2020), https://www.gao.gov/products/gao-21-30 [hereinafter IMPROVED OVERSIGHT NEEDED].

11. *Place-Based Tax Incentives, supra* note 9, at 4.

12. *Id.* at 11–12.

13. Rachel M.B. Atkins et al., *What is the Impact of Opportunity Zones on Employment Outcomes?*, 3 NYU STERN SCH. OF BUS. (Sept. 18, 2020), https://ssrn.com/abstract=3673986.

14. Jim Tankersley, *Tucked Into the Tax Bill, a Plan to Help Distressed America*, N.Y. TIMES (Jan. 29, 2018), https://www.nytimes.com/2018/01/29/business/tax-bill-economic-recovery-opportunity-zones.html.

15. *Id.*

16. *Id.*

Parker was interested in this project as a way to address rural America's struggle to recover from the Great Recession, as disproportionate shares of economic growth focused in large metropolitan areas.[17] For context, before 2010, metropolitan areas with at least one million residents provided just under half of America's jobs, but from 2010 to 2016, that number jumped to three-quarters of net job creation.[18] Meanwhile, rural areas only experienced three percent growth.[19] According to John Lettieri, President and CEO of EIG, the "deeply uneven" economic recovery from the Great Recession prompted the development of Opportunity Zones.[20] These Zones, according to Lettieri, "are the most innovative and ambitious federal attempt to encourage long-term private investment in low-income communities in at least a generation."[21]

After theorizing the Opportunity Zone program, EIG got involved in developing the Investing in Opportunity Act ("IIOA") bill.[22] EIG worked closely with Republican Senator Tim Scott and Democratic Senator Cory Booker, who became the lead sponsors of the IIOA.[23] This bill garnered bipartisan support and was included in the Tax Cuts and Jobs Act, and is now referred to as the Opportunity Zones provision.[24] Senator Scott, who grew up in a community that struggled economically,[25] claimed that Opportunity Zones would help "create a spark" in some of the most distressed communities in America.[26]

B. Statutory Requirements

Opportunity Zones are codified in Sections 1400Z-1 and 1400Z-2 of the Code.[27] A Qualified Opportunity Zone ("QOZ") is a population census tract that the governor of the relevant state nominates as such.[28] Such a nomination must then be certified by the Secretary of the Treasury.[29] To be eligible for nomination, a census tract must be a "low-income community."[30] A tract with a poverty rate of at least twenty percent will qualify as a low-income

17. *Id.*
18. *Id.*
19. Tankersley, *supra* note 14.
20. *Expanding Opportunities for Small Businesses Through the Tax Code: Hearing Before the Committee on Small Business and Entrepreneurship,* 115th Cong. 14 (2018) (statement of John Lettieri, President & CEO, Economic Innovation Group).
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.*
25. Tankersley, *supra* note 14.
26. 163 Cong. Rec. S8205-06 (daily ed. Dec. 21, 2017) (statement of Sen. Scott).
27. I.R.C. § 1400Z-1 (2018); 26 U.S.C. § 1400Z-2 (2018).
28. I.R.C. § 1400Z-1(a) (2018).
29. I.R.C. § 1400Z-1(b)(1)(B) (2018).
30. I.R.C. § 1400Z-1(b)(1) (2018).

community.[31] Alternatively, a tract with a median income below eighty percent of the statewide median income will qualify, if that tract is not in a metropolitan area.[32] Tracts in a metropolitan area may qualify if their median income is below eighty percent of either statewide or metropolitan median income, whichever is greater.[33] If none of these conditions are met, a tract may nevertheless qualify if it is contiguous with a census tract meeting one of the above conditions and has a median income less than 125% of the qualifying, neighboring census tract.[34]

Tax breaks are provided to investors of Qualified Opportunity Funds ("QOFs").[35] QOFs are investment vehicles organized as a corporation or partnership for the purpose of investing in Qualified Opportunity Zone property.[36] This property may simply be qualified business property or may be a stock or partnership interest in entities that own qualified business property.[37] Generally, qualified business property is new or substantially improved tangible property, such as a building.[38]

QOFs must have at least ninety percent of assets invested in QOZ property.[39] However, there is no application or approval process for an entity to become a QOF.[40] Rather, the entity simply must file two tax forms, 8996 and 8997, with their annual income tax return.[41] Meanwhile, individuals invested in these QOFs claim deferrals on capital gains by reporting them on Form 8949, where sales and dispositions of capital assets are recorded by taxpayers every year.[42]

Tax breaks for QOF investors are better the longer the investment is held.[43] Investors may place existing capital assets with unrealized capital gains into Opportunity Funds, and these gains will not be taxed until 2026 or until they are disposed.[44] Additionally, investors can step up the basis on their original investment by ten percent if the capital gains are placed in Opportunity Funds

31. I.R.C. § 45D(e)(1)(A) (2018).

32. I.R.C. § 45D(e)(1)(B)(i) (2018).

33. I.R.C. § 45D(e)(1)(B)(ii) (2018).

34. I.R.C. § 1400Z-1(e) (2018).

35. I.R.C. § 1400Z-2(d)(1) (2018).

36. *Id.*

37. I.R.C. § 1400Z-2(d)(2) (2018).

38. JOINT COMMITTEE ON TAXATION, QUALIFIED OPPORTUNITY ZONES: AN OVERVIEW 22, 41 (2019), https://www.jct.gov/publications/2019/qualified-opportunity-zones-an-overview/ [hereinafter AN OVERVIEW].

39. I.R.C. § 1400Z-2(d)(1) (2018).

40. AN OVERVIEW, *supra* note 38, at 20.

41. IMPROVED OVERSIGHT NEEDED, *supra* note 10, at 15.

42. *Instructions for Form 8949*, IRS, https://www.irs.gov/pub/irs-pedf/i8949 (last updated Jan. 26, 2021); *see also Form 8949*, IRS (2020), https://www.irs.gov/pub/irs-pdf/f8949.pdf.

43. Tax Pol'y Ctr., *What are Opportunity Zones and how do they work?,* URBAN INST. & BROOKINGS INST., https://www.taxpolicycenter.org/briefing-book/what-are-opportunity-zones-and-how-do-they-work (last updated May 2020) [hereinafter *What are Opportunity Zones*].

44. I.R.C. § 1400Z-2(a)(2) (2018); *What are Opportunity Zones, supra* note 43.

for at least five years, and fifteen percent if the investment lasts for at least seven years.[45] Last, investors can fully exclude taxes on capital gains produced through their investment in Opportunity Funds when that investment is held for at least ten years by stepping the basis of the property up to fair market value.[46]

II. SUPPORT & CRITICISM

Despite initial bipartisan support, Opportunity Zones have become a topic of political debate. Former President Trump touted the tax incentives as one of his biggest successes and planned to expand the program in a second term, were he to beat President Joe Biden.[47] However, critics such as Congresswoman Rashida Tlaib, who introduced legislation in 2019 to repeal OZs from the Code, feel that the provision represents "yet another form of corporate greed" that hurts communities.[48]

A. Proponents: An Improvement over Prior Place-Based Tax Incentives

Former President Trump and other proponents of Opportunity Zones believe this tax provision will help communities experiencing slow economic growth.[49] The "spatial mismatch" theory advanced by some OZ supporters argues that, because people can become trapped in low-income areas, offering place-based incentives directly to these geographical areas can help draw investment and job opportunities to these people.[50] Others argue that attracting highly skilled people to productive urban centers may generate benefits that will then "spill over" to other areas of that local economy.[51]

Proponents also see Opportunity Zones as an improvement over older place-based incentives. The place-based incentive most often compared to Opportunity Zones is the New Markets Tax Credit ("NMTC"), introduced in 2000 to subsidize financing projects located in poor neighborhoods.[52] The program operates through businesses or partnerships called Community Development Entities ("CDEs"), which apply to the U.S. Treasury Department's

45. I.R.C. § 1400Z-2(b)(2)(B) (2018); *What are Opportunity Zones*, *supra* note 43.

46. I.R.C. § 1400Z-2(c) (2018); *What are Opportunity Zones*, *supra* note 43.

47. Lydia O'Neal, *Opportunity Zones Get Big Push as Critics Question Who They Help*, BLOOMBERG TAX (Sept. 8, 2020), https://news.bloombergtax.com/daily-tax-report/opportunity-zones-get-big-push-as-critics-question-who-they-help.

48. Tlaib, *supra* note 7.

49. John P. Bailey, *Why 'Opportunity Zones' could solve unemployment in slow growth areas*, AMER. ENTER. INST. (Apr. 6, 2018), https://www.aei.org/articles/why-opportunity-zones-could-solve-unemployment-in-slow-growth-areas/.

50. Scott Eastman & Nicole Kaeding, *Opportunity Zones: What We Know and What We Don't,* 630 TAX FOUND. 1, 7 (Jan. 2019), https://taxfoundation.org/opportunity-zones-what-we-know-and-what-we-dont/.

51. *Id.*

52. I.R.C. § 45D(a)(1); *The Pro-Gentrification Origins*, *supra* note 8, at 787.

Community Development Financial Institutions ("CDFI") Fund to receive federal tax credits.[53] For a CDE to receive tax credits, the CDE must be certified by the Secretary of the Treasury, and must have a primary mission of serving or providing investment capital for low-income communities.[54] Further, there must be residents of the low-income community on any governing or advisory board the CDE has.[55]

Once the CDFI Fund awards tax credits to CDEs, the CDEs will sell them to investors and use the funds to make investments in low-income communities.[56] Investors in a qualified CDE can claim a tax credit for five percent of their investment for the first three years, and six percent of the investment for the remaining four years after that.[57] In total, this means investors can receive a tax credit for up to thirty-nine percent of the NMTC project.[58]

The White House Council of Economic Advisers ("CEA") touts several advantages of Opportunity Zones over New Markets Tax Credits from the perspective of the investor.[59] First, the total tax benefit available through NMTCs is capped at thirty-nine percent, whereas investors in OZs can fully exclude capital gains invested for longer than ten years.[60] Additionally, while the application process for NMTCs is complex, Opportunity Zone tax deductions give less sophisticated investors a chance to receive a tax benefit for investing in low-income communities.[61] Last, OZ restrictions are generally less strict than NMTC's restrictions, where the investor will lose their entire tax benefit if funds are not invested in CDEs for at least seven years, or are not compliant with program requirements.[62]

Opportunity Zones also allow for more investing opportunities than the Low-Income Housing Tax Credit ("LIHTC"). LIHTCs, born in the Tax Reform Act of 1986,[63] provide tax incentives for developing and rehabilitating

53. URBAN INST., ANALYSIS OF SELECTED NEW MARKETS TAX CREDIT PROJECTS 1–2 (2007).

54. I.R.C. § 45D(c)(1)(A) (2018).

55. I.R.C. § 45D(c)(1)(B) (2018).

56. Tax Pol'y Ctr., *What is the new markets tax credit, and how does it work?*, URB. INST. & BROOKINGS INST., https://www.taxpolicycenter.org/briefing-book/what-new-markets-tax-credit-and-how-does-it-work (last updated Jan. 2021) [hereinafter *What is the New Markets Tax Credit*].

57. I.R.C. § 45D(a)(2)–(3).

58. *What is the New Markets Tax Credit*, *supra* note 56.

59. COUNCIL OF ECON. ADVISERS, THE IMPACT OF OPPORTUNITY ZONES: AN INITIAL ASSESSMENT 6 (2020).

60. *Id.*; *What are Opportunity Zones, supra* note 43.

61. *See* COUNCIL OF ECON. ADVISERS, *supra* note 59, at 7.

62. *Id.*

63. MARK P. KEIGHTLEY, CONG. RSCH. SERV., RS22389, AN INTRODUCTION TO THE LOW-INCOME HOUSING TAX CREDIT 1 (2019).

affordable rental housing for low-income households.[64] The federal government issues tax credits to state and territorial governments, who then distribute these credits to state housing finance agencies ("HFAs").[65] Then, HFAs award the tax credits to private developers of affordable rental housing projects.[66]

While LIHTCs are focused exclusively on affordable housing projects, OZs can be used to support investment in any type of tangible asset class located within an OZ.[67] Additionally, as is the case with NMTCs, there are statutory limits on the dollar amounts of LIHTCs allocated by the government every year.[68] Contrarily, there are no restrictions on how many capital gains investors can defer by investing in QOFs.[69]

B. Opponents: A Trickle-Down Policy Designed for the Wealthy

Nevertheless, the Opportunity Zones program has received a great deal of skepticism. One of the primary concerns is that QOF projects are not required to hire, provide job training, or even provide services to those living in QOZs.[70] This may lead to developments funded within OZs that do little to "create a spark" for low-income communities. For instance, a census tract in Portland, Oregon, is listed as an Opportunity Zone because nearly half of its residents are considered poor.[71] However, a Ritz-Carlton hotel and "the most expensive condos that Portland has yet seen" are under construction there, incentivized by OZs and other tax breaks.[72] Another example is a superyacht marina in Miami-Fort Lauderdale under construction in an OZ tract with a median income under eighty percent.[73] Whether these types of luxury developments will help benefit the OZs' poor residents is questionable.[74]

In fact, these types of projects suggest that Opportunity Zones promote gentrification.[75] Gentrification has rarely been a stated goal of government because most consider it to be an "unintended, regrettable" consequence of policy.[76] With little restriction on the types of eligible projects, however,

64. I.R.C. § 42; Tax Pol'y Ctr., *What is the Low-Income Housing Tax Credit and how does it work?*, URB. INST. & BROOKINGS INST., https://www.taxpolicycenter.org/briefing-book/what-low-income-housing-tax-credit-and-how-does-it-work (last updated May 2020) [hereinafter *What is the Low-Income Housing Tax Credit*].

65. *What is the Low-Income Housing Tax Credit*, *supra* note 64.

66. *Id.*

67. IMPROVED OVERSIGHT NEEDED, *supra* note 10, at 9.

68. *Id.* at 10.

69. *Id.*

70. *Pro-Gentrification Origins*, *supra* note 8, at 770.

71. Calvin H. Johnson, *Repeal Opportunity Zones*, 169 TAX NOTES FED. 625, 627 (2020).

72. *Id.*

73. *Id.*

74. *Id.*

75. *Pro-Gentrification Origins*, *supra* note 8, at 769–71.

76. *Id.* at 772.

investors will receive tax breaks to build movie theatres, art centers, hotels, luxury housing, and commercial buildings.[77] Thus, this tax provision might simply be encouraging the transformation of a space used by poor residents into a space to be used by the wealthy.[78]

Another major concern is the requirements for tracts to be eligible as QOZs. Since poverty rates of census tracts determine eligibility, some census tracts may contain both low-income and high-income communities and nevertheless qualify.[79] Furthermore, the Code allows some census tracts bordering qualifying tracts to also qualify, when these tracts might not need economic assistance.[80]

For instance, in 2018 Amazon's proposed location for its second headquarters in Long Island City, New York, was eligible as a "contiguous tract," despite Queens County having a median household income of approximately $62,000, a 20.5% Black/African-American population and 28% Hispanic or Latino population.[81] For comparison, the U.S. Census estimates that the median household income in New York City from 2015 to 2019 was $63,998, with a 24.3% Black or African American population and a 29.1% Hispanic or Latino population.[82] While slightly below the New York City average, this tract is likely not struggling from the "deeply uneven" economic growth following the Great Recession. Furthermore, Amazon's proposal happened as Queens lost 22,700 Black homeowners between 2005 and 2017, partly due to rapidly increasing housing prices.[83]

Another concern is that policymakers are simply folding OZ tax breaks into existing development strategies rather than creating new opportunities for low-income communities.[84] OZ incentives can be combined with New Markets Tax Credits to attract more financing to existing projects.[85] Thus, OZ incentives may be claimed through investments that would have happened regardless.[86]

The structure of the Opportunity Zones provision, as well as the projects underway in cities like Portland, New York, and Miami, suggest that Opportunity Zones are not working to uplift areas outside of major markets struggling to recover from the Recession, or even improving lives of those in low-income metropolitan areas. Instead, these projects seem more readily built

77. *Id.* at 769; *see also* Johnson, *supra* note 71, at 625.

78. *Pro-Gentrification Origins*, *supra* note 8, at 760.

79. Veuger, *supra* note 6.

80. *Id.*

81. Bre Jordan, *Denouncing the Myth of Place-Based Subsidies as the Solution for Economically Distressed Communities: An Analysis of Opportunity Zones as a Subsidy for Low-Income Displacement,* 10 COLUM. J. RACE & L. 66, 96–97 (2020).

82. QUICKFACTS NEW YORK CITY, NEW YORK, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/fact/table/newyorkcitynewyork/PST045219 (last visited Feb. 17, 2021).

83. Jordan, *supra* note 81, at 97.

84. Veuger, *supra* note 6.

85. *Pro-Gentrification Origins, supra* note 8, at 770.

86. Veuger, *supra* note 6.

to provide wealthy investors with tax breaks in a "longshot" effort to encourage trickle-down benefits to low-income areas.[87] Given this concern, more research must be done to demonstrate why Opportunity Zones and other place-based incentives should not be abandoned in favor of direct grants to low-income individuals.[88]

III. A LACK OF DATA FOR SOCIAL BENEFITS

As currently constructed, Opportunity Zones suffer from a lack of reasonable reporting requirements to measure social benefits of the program. However, the need for expanded data collection measuring the economic activity of OZs is generally agreed upon.[89] In fact, both Senator Scott and House Majority Whip James Clyburn have introduced bills recommending changes in reporting protocol for Opportunity Zones.[90] For proponents, better reporting requirements could help prove that Opportunity Zones are making a big impact on low-income neighborhoods. For skeptics, improved data collection could highlight concerns that OZs are not actually helping low-income communities.

A. Qualified Opportunity Funds Do Not Collect or Report Useful Data

Thus far, data collection for Opportunity Zones is scant. To file as a QOF, entities must complete Form 8996.[91] On that form, the corporation or partnership filing must list the QOZ tract that it is holding its investment in.[92] The entity must also report the total value of its stock or partnership interest, owned property value, and leased property value.[93] Further, on Form 8997, QOFs must also file initial and then annual statements listing each QOF investment along with the amount of short and long-term capital gains deferred.[94] Meanwhile, individuals claiming a deduction via QOF investment need only list on Form 8949 the employer identification number ("EIN") of the QOF fund, the amount of their QOF investment, and the amount of gain deferred.[95]

87. Jordan, *supra* note 81, at 87; *see also* Tatiana Kimbo & Richard Phillips, *How Opportunity Zones Benefit Investors and Promote Displacement*, JUST TAXES BLOG (Aug. 10, 2018), https://itep.org/how-opportunity-zones-benefit-investors-and-promote-displacement/ (last visited Dec. 28, 2020) ("In fact, additional investment driven by opportunity zones could have the unintended effect of fueling higher real estate prices that serve to displace low-income citizens and businesses rather than benefit them.").

88. *Place-Based Tax Incentives, supra* note 9, at 12.

89. O'Neal, *supra* note 47.

90. H.R. 5042, 116th Cong. § 7 (2019); S. 1344, 116th Cong. § 1 (2019).

91. AN OVERVIEW, *supra* note 38, at 20.

92. *Form 8996*, IRS (2020), https://www.irs.gov/pub/irs-pdf/f8996.pdf.

93. *Id.*

94. IMPROVED OVERSIGHT NEEDED, *supra* note 10, at 15 tbl.1; *Form 8997*, IRS (2020), https://www.irs.gov/pub/irs-pdf/f8997.pdf.

95. *Instructions for Form 8949*, *supra* note 42.

The Internal Revenue Service ("IRS") alone administers Opportunity Zones and does not monitor performance of OZs in any way beyond tax compliance.[96] The IRS considers its role as limited to administering the tax code and ensuring taxpayer compliance and believes that it should seek to do so efficiently.[97] Thus, the IRS has no plan to collect any additional information beyond information on tax forms.[98] The agency is currently uninterested in collecting information related to policy goals, outcomes of the investments, or most importantly, impact on low-income communities.[99]

Even useful information that the IRS currently collects is not publicly available, at least in the short term.[100] Complete tax data from individuals is generally not available until eighteen months after the end of a tax year.[101] Further, some data from tax forms 8996 and 8997 may not be captured in an easily accessible format, creating challenges for use in analysis.[102] Data collected by the IRS might also be permanently protected by taxpayer privacy safeguards, meaning that any performance evaluation done on OZs may not be available publicly.[103]

Outside of data collected by the IRS, data collected by the Census Bureau may be helpful because OZs are based on census tracts.[104] The Council of Economic Advisers, for example, found that census tracts selected as OZs currently have an average poverty rate more than double of other census tracts and a higher rate of high school dropouts.[105] Theoretically, changes over time in census tract demographics such as employment rate, poverty rate, and education level could demonstrate the benefit of the OZ program.[106] However, without any way to directly track where QOFs are investing, and what they are investing in, the usefulness of this data is limited.[107] For instance, researchers might look at increased median incomes in the area over time as a measure of success, but this may instead represent new residents moving in and old residents moving out.[108]

96. IMPROVED OVERSIGHT NEEDED, *supra* note 10, at 11, 13.

97. *Id.* at 13.

98. *Id.*

99. *See id.*

100. *Id.* at 16.

101. IMPROVED OVERSIGHT NEEDED, *supra* note 10, at 16.

102. *Id.*

103. *Id.*

104. Daniel Marcin, *Opportunity Zones: A Place-Based Incentive for Investment in Low-Income Communities*, 22 CITYSCAPE 101, 107 (U.S. Dep't of Hous. & Urb. Dev. 2020), https://www.jstor.org/stable/10.2307/26926898.

105. COUNCIL OF ECON. ADVISERS, *supra* note 59, at 11.

106. *See id.* at 23 (measuring the "year-over-year" change in average sale price of OZ properties).

107. IMPROVED OVERSIGHT NEEDED, *supra* note 10, at 18.

108. Marcin, *supra* note 104, at 108.

What also makes tracking effectiveness complex is that OZs may not be the only incentive an investor uses. For example, OZ and NMTC credits use the same statutory criteria to identify low-income community census tracts,[109] and both credits may be used on the same project. This makes it difficult to isolate the effects of one program relative to a mix of programs.[110]

Even with more data, comparing QOFs in various QOZs will be difficult without standardizing data. QOZs were designated by governors, who were generally able to designate twenty-five percent of eligible tracts in their state as QOZs.[111] As long as the tracts qualified under the Code, governors did not have to follow a specific set of criteria when designating tracts.[112] So, some governors may have chosen to nominate tracts in already improving areas, while others focused on truly impoverished areas.[113] This lack of standardization makes it much harder to compare QOZs to one another and will "confound simplistic attempts at evaluation."[114] It also impairs the ability for analysts to use a "counterfactual" to compare eligible tracts that did receive the QOZ designation to those that did not.[115]

Given the lack of useful available information, research done on OZs thus far has struggled to measure the impact on residents in OZ tracts. For instance, the White House Council of Economic Advisers estimated that, at the end of 2019, QOFs raised $75 billion in private capital, $52 billion of which was new investment.[116] It suggests this capital investment explains why private equity investment in OZ businesses grew twenty-nine percent, relative to eligible communities not selected as OZs.[117] The council also estimated a 1.1% increase in housing values in OZ tract areas.[118]

However, the CEA also found that almost half of QOFs were focused on real estate, with the majority focusing on commercial real estate.[119] Almost the entire other half of QOFs described their industry, vaguely, as a "Pooled Investment Fund" with investments across industries.[120] Only nine percent of QOFs reported a focus on health care, technology, construction, and investment.[121] Whether these commercial real estate or "pooled investment funds" are committed to hiring or serving residents of the Opportunity Zones or

109. IMPROVED OVERSIGHT NEEDED, *supra* note 10, at 9.
110. Eastman & Kaeding, *supra* note 50, at 8.
111. Marcin, *supra* note 104, at 107.
112. *Id.*
113. *Id.*
114. *Id*.
115. *Id.* at 108.
116. COUNCIL OF ECON. ADVISERS, *supra* note 59, at 15.
117. *Id.* at 4.
118. *Id.*
119. *Id.* at 20.
120. *Id.*
121. COUNCIL OF ECON. ADVISERS, *supra* note 59, at 20 fig.8.

are instead interested in building Ritz-Carlton hotels is unclear without further information.

The lack of valuable data raises two questions critical for OZ success: What data should be collected to measure OZ success, and who should oversee collecting and reporting it? To decide these questions, it may first be helpful to demonstrate why collecting data for place-based incentives can be tricky, and then examine the oversight in place with other place-based incentives.

B. Other Tax Expenditure Programs Collect and Report Data

Place-based incentives are harder to evaluate than other tax expenditures because benefits are distributed to investors and not directly to low-income taxpayers. For comparison, consider the research done on the effect of Earned Income Tax Credits ("EITCs").[122] These refundable tax credits are distributed directly to low to moderate-income taxpayers, and researchers can use information directly from tax records to measure the credits' impact. For instance, researchers analyzing IRS records found significant increases in student test scores amongst families claiming the credit and have also found that EITCs have been able to lift millions out of poverty, help children go to college, and boost the employment of single mothers.[123] Such data has confirmed the effectiveness of the program, and the program has received bipartisan support.[124]

Since tax benefits for OZs do not go directly to low-income individuals and families, information filed by QOFs on tax forms 4996 and 4997 and by investors on form 8989 are not as helpful for evaluating impact on individuals living within Opportunity Zones. Thus, QOFs must collect and report information beyond that required on current tax forms. Further, because the IRS has been reluctant to expand its role beyond monitoring taxpayer compliance, another governmental body will need to take responsibility for collecting and monitoring data from QOFs.

Despite their shortcomings, older place-based incentives have attempted to monitor data relevant to their stated welfare goals. For New Markets Tax Credits, CDEs are required to have a "primary mission of serving low-income communities" and are required to have at least twenty percent of their governing boards staffed by members of the local community.[125] Additionally, the CDFI

122. Chuck Marr et al., *EITC and Child Tax Credit Promote Work, Reduce Poverty, and Support Children's Development, Research Finds*, CTR. ON BUDGET & POL'Y, at 1 (Oct. 1, 2015), https://www.cbpp.org/research/federal-tax/eitc-and-child-tax-credit-promote-work-reduce-poverty-and-support-childrens, at 1.

123. *Id.* at 1–2.

124. *EITC Attracts Bipartisan Praise and Proposals*, COMM. FOR RESPONSIBLE FED. BUDGET, http://www.crfb.org/blogs/eitc-attracts-bipartisan-praise-and-proposals (last updated Mar. 11, 2014).

125. Chad Qian, *An Overview of the New Markets Tax Credit,* TAX FOUND. (July 8, 2019), https://taxfoundation.org/new-markets-tax-credit-nmtc/.

Fund evaluates CDE applications based upon four criteria: business strategy, capitalization strategy, management strategy, and community impact.[126] This fund also collects data to evaluate economic and societal outcomes.[127] This type of data includes number of jobs by type, numbers of rental and for-sale housing units, and the capacity of educational, child care, and health care facilities.[128] While the IRS administers the tax compliance aspects of the NMTC, the CDFI Fund administers the policy goals of the program to ensure it meets its mission to expand economic opportunity for those who need it.[129] Even with these requirements, however, empirical evidence on the impact of NMTCs is limited,[130] and evaluations of this program have suffered at times due to inconsistent and incomplete reporting from the CDEs.[131]

Meanwhile, the Low-Income Housing Tax Credit has direct oversight from the IRS, while state and local housing finance agencies ("HFAs") are responsible for administration.[132] The Department of Housing and Urban Development ("HUD") collects both mandatory and voluntary data on LIHTCs.[133] In the Housing and Economic Recovery Act of 2008, Congress required state HFAs to furnish to the HUD information regarding the race, ethnicity, family composition, age, income, use of rental assistance, disability status, and monthly rental payments of households residing in each property receiving LIHTCs.[134] The HUD also voluntarily collects project-level data and has sponsored studies of the LIHTC program.[135] The Government Accountability Office ("GAO") issued a report in 2015, however, stating the HUD's data collection could be improved, as its data on the number and location of LIHTC projects is limited.[136] Furthermore, the agency has not established performance metrics to measure its priority goal of maintaining and expanding affordable housing to "build strong resilient and inclusive communities."[137]

What is worrisome is that, rather than improve upon these two place-based tax incentives, Opportunity Zones have the least reporting requirements of the

126. Jordan, *supra* note 81, at 77.

127. IMPROVED OVERSIGHT NEEDED, *supra* note 10, at 16.

128. *Id.* at 17.

129. *Id.* at 14.

130. Qian, *supra* note 125.

131. U.S. GOV. ACCOUNTABILITY OFF., GAO-14-500, NEW MARKET TAX CREDIT: BETTER CONTROLS AND DATA ARE NEEDED TO ENSURE EFFECTIVENESS 20 (2014) [hereinafter BETTER CONTROLS AND DATA].

132. CONG. RSCH. SERV., THE LOW-INCOME HOUSING TAX CREDIT: POLICY ISSUES (2019).

133. U.S. GOV. ACCOUNTABILITY OFFICE, GAO-15-330, JOINT IRS-HUD ADMINISTRATION COULD HELP ADDRESS WEAKNESSES IN OVERSIGHT 6 (2015) [hereinafter JOINT IRS-HUD ADMINISTRATION].

134. Housing and Economic Recovery Act of 2008 § 36(a), 42 U.S.C. § 1437z-8 (2008).

135. JOINT IRS-HUD ADMINISTRATION, *supra* note 133, at 23.

136. *Id.*

137. *Id.* at 23–24.

three. The IRS alone administers Opportunity Zones, and does not monitor performance of these zones in any way beyond statutory compliance.[138] Congress did not create any sort of program to help monitor Opportunity Zones, as they did with NMTCs by creating the CDFI Fund.[139] Further, OZ administration is not assisted by other existing governmental bodies, as LIHTCs are with data collection from the HUD.[140] Without a formal application process, QOFs are not required to state—or even possess—any goals related to benefitting low-income individuals living within Opportunity Zones.

Interestingly, Senators Cory Booker and Tim Scott included reporting requirements for Opportunity Zones in the original draft of IIOA.[141] The bill required the Treasury Department to collect data on the number of funds created, and their impact on underserved communities.[142] Both senators recognized how important reporting requirements are to measuring the impact of the program on job creation, poverty reduction, and support for new businesses.[143] However, these requirements were dropped from the final provision passed in the Tax Cuts and Jobs Act.[144]

C. The Treasury Alone Cannot Collect & Evaluate Data

Even if Opportunity Zones were required to report data on the social benefit of the program, a governmental body would need to oversee receiving the data, standardizing it, and making it available for public analysis. Both political parties have suggested that the Treasury play a bigger role in OZ data collection, but it is unclear how the Treasury will do so.[145] House Majority Whip Clyburn introduced a bill in 2019 that would require the Secretary of the Treasury to collect and make publicly available a list of investment vehicles certified as QOFs.[146] The bill would also require the Comptroller General, head of the GAO, to submit to Congress a report on the effectiveness of program policies, including potential indicators for measuring social benefit such as employment rates and new business start-ups.[147] Unfortunately, the bill does not explain how the Treasury Department and GAO would find such information. In a report

138. IMPROVED OVERSIGHT NEEDED, *supra* note 10, at 13.

139. *Id.* at 12.

140. *Id*. at 11–12.

141. S. 293, 115th Cong. § 2(c) (1st Sess. 2017).

142. *Id*.

143. Press Release, Sen. Cory Booker, Booker, Scott, Hassan, Young Introduce Bipartisan Bill to Strengthen Reporting Requirements for Opportunity Zone Tax Incentive (May 8, 2019), https://www.booker.senate.gov/news/press/booker-scott-hassan-young-introduce-bipartisan-bill-to-strengthen-reporting-requirements-for-opportunity-zone-tax-incentive.

144. *Id.*

145. IMPROVED OVERSIGHT NEEDED, *supra* note 10, at 17.

146. H.R. 5042, 116th Cong. §6 (1st Sess. 2019).

147. *Id.*

published in October of 2020, the GAO found that data useful for evaluating social benefits of OZs simply isn't being collected anywhere.[148]

Meanwhile, Senators Cory Booker and Tim Scott introduced a bill in 2019 that would reintroduce the reporting requirements taken out of their original IIOA bill.[149] Their bill would require the Treasury Department to collect data on "the impacts and outcomes of zone designation," which might include employment metrics, poverty rates, "and other metrics as determined by the Secretary."[150] Like House Majority Whip Clyburn's bill, however, this bill fails to acknowledge how the Treasury would collect such information.

Even if useful data for measuring social benefit were reported by QOFs, the Department of Treasury would still need help from another governmental body to appropriately manage this data.[151] Unfortunately, the governmental bodies assisting other place-based tax incentives may not be suitable for OZs. Officials from the Department of Treasury reported that they do not have legal authority to redirect CDFI Fund appropriations to collect OZ data,[152] and furthermore, CDFI fund managers have found that the OZ tax incentive is "not a good match" for CDFI investments.[153] Although the HUD has taken responsibility for launching the Opportunity Zones website, it may not be the best candidate to take on data collection duties, given the difficulty it has had monitoring the LIHTC program. As will be discussed, the best approach towards collecting OZ data requires expertise and support from multiple governmental bodies.

IV. SOLUTIONS

A. Establish Mandatory Reporting Requirements

Tracking whether Opportunity Zones are benefitting inhabitants of distressed communities will require a robust amount of data. Given that OZ investments can be made in a wide variety of industries, the kind of data that will best measure success may vary. Additionally, because OZs do not directly target individuals living within their tracts, measuring success can be complex, and relying on one or a few data points to measure growth may be misleading. For instance, an increase in property value in an OZ may show an increase of

148. IMPROVED OVERSIGHT NEEDED, *supra* note 10, at 16.
149. S. 1344, 116th Cong. §1 (1st Sess. 2019); Booker, *supra* note 143.
150. S. 1344, 116th Cong. §1 (1st Sess. 2019).
151. IMPROVED OVERSIGHT NEEDED, *supra* note 10, at 14.
152. *Id*. at 13.
153. *Can Opportunity Zones Address Concerns in the Small Business Economy?: Hearing Before the Committee On Small Business' Subcommittee on Economic Growth, Tax, and Capital Access* (2019) (Statement of Jennifer Vasiloff, Chief External Affairs Officer, Opportunity Finance Network).

wealth within that community, or may reflect a pricing out of poorer individuals, and displacement associated with gentrification.[154]

Fortunately, the federal government has already identified a reporting framework where QOFs would collect extensive data useful for measuring social benefit. In 2018, the White House created the White House Opportunity and Revitalization Council ("the Council") to explore ways in which federal agencies can partner with OZ investors and provide social services necessary to support community revitalization.[155] The Council was composed of a vast number of different federal departments, including the HUD, the Treasury, the Department of Justice, the Department of Commerce, the Department of Labor, and several more.[156]

In 2020, the Council issued a best practices memo to President Trump.[157] In the memo, the Council identified a voluntary reporting framework constructed by the U.S. Impact Investing Alliance and the Beeck Center for Social Impact and Innovation at Georgetown University, named the Opportunity Zones Reporting Framework (hereinafter, "Framework").[158] The Framework emphasizes the importance of community engagement and impact, and calls for reporting data in a standardized fashion that allows regional and national aggregation.[159]

In this framework, QOFs would first offer information regarding their community engagement goals,[160] like the report CDEs give to the CDFI Fund when applying for NMTCs. QOFs would craft a mission statement or impact objective for their business and state their intended investment focus.[161] The Framework would then encourage QOFs to collect and report data relating to their impact objective and their goals.[162] To aggregate data effectively, the Framework suggests that all QOFs use consistent, standardized data to help measure performance and impact on communities.[163]

154. *Pro-Gentrification Origins, supra* note 8, at 766.

155. Eastman & Kaeding, *supra* note 50, at 10; WHITE HOUSE OPPORTUNITY & REVITALIZATION COUNCIL, OPPORTUNITY NOW, https://opportunityzones.hud.gov/thecouncil (last visited Dec. 30, 2020) [hereinafter OPPORTUNITY NOW].

156. OPPORTUNITY NOW, *supra* note 155.

157. WHITE HOUSE OPPORTUNITY & REVITALIZATION COUNCIL: OPPORTUNITY ZONES BEST PRACTICES REPORT TO THE PRESIDENT 4 (2020).

158. *Id.* at 8.

159. U.S. IMPACT INVESTING ALL., BEECK CTR. AT GEO. UNIV. & FED. RES. BANK OF N.Y., PRIORITIZING AND ACHIEVING IMPACT IN OPPORTUNITY ZONES 2–3 (2019), https://static1.squarespace.com/static/5c5484d70b77bd4a9a0e8c34/t/5d1144358bc6b10001a5af3f/1561412661497/Opportunity+Zones+Reporting+Framework+-+June+2019.pdf [hereinafter PRIORITIZING AND ACHIEVING IMPACT IN OPPORTUNITY ZONES].

160. *Id.* at 3.

161. *Id.*

162. *Id.*

163. *Id.* at 2.

The type of data that would be standardized would include basic data such as the size and structure of the fund, what type of investors held an interest in the fund, and where these investors resided.[164] The QOFs would then report standardized information on each of their business investments, including the number of employees in the business, the number of employees from low to mid-income communities, new jobs created by the business, and the number of employees from low-income communities and other disadvantaged groups.[165]

To help easily identify the types of investments made by QOFs, the Framework also advocates for QOFs to identify the appropriate North American Industry Classification System ("NAICS") code for their investments.[166] NAICS is used primarily as an industry classification system that collects, tabulates, and analyzes data of businesses within the U.S. economy.[167] It categorizes different business industries using two to six number digits depending on the industry.[168] Though NAICS is primarily used for statistical analysis, it has also been used for other purposes, including by state governments offering tax incentives to businesses classified in specific NAICS industries.[169]

The Framework also suggests collecting "transaction-level" data applicable to the specific investment to measure social benefit.[170] To do so, QOFs would need to determine what data would be relevant to measuring community impact within their specific industry.[171] For example, a real estate QOF might report total square footage of the real estate project, and whether the building under construction is commercial or residential.[172] The QOF would further report how many affordable units have been created or renovated, as well as the percentage of units within the complex that are affordable units.[173]

Standardizing reporting requirements would help provide meaningful data regarding Opportunity Zones' impact on local communities and would help avoid the issue of inconsistent data faced by the NMTC and LIHTC programs. Establishing common reporting criteria might help researchers better compare QOFs in different QOZs and in different industries. Further, requiring QOFs to use NAICS codes to identify their specific industry might prevent QOFs from using vague terms such as "Pooled Investment Fund" to describe their investments.

164. PRIORITIZING AND ACHIEVING IMPACT IN OPPORTUNITY ZONES, *supra* note 159, at 3.

165. *Id.*

166. *Id.* at 4.

167. *Frequently Asked Questions*, N. AM. INDUS. CLASSIFICATION SYS., https://www.census.gov/eos/www/naics/faqs/faqs.html#q1 (last visited Feb. 21, 2021).

168. *Id.*

169. *Id.*

170. PRIORITIZING AND ACHIEVING IMPACT IN OPPORTUNITY ZONES, *supra* note 159, at 3.

171. *Id.* at 4.

172. *Id.*

173. *Id.*

Beyond collecting standardized data for all QOFs, collecting industry-specific data is also crucial, given that QOFs can invest in almost any industry. If QOFs are required to use a NAICS code for classifying their investments, NAICS codes could be paired with industry-specific metrics that those QOFs would need to collect and track. For instance, if the NAICS code for real estate projects is 53,[174] all QOZ real estate investments would classify under 53. Thus, any QOZ investment classifying under 53 would then have to report additional data relating to the real estate industry, such as whether the investment is commercial or residential, and the number of affordable units rented.[175] Ensuring that QOFs of the same industry are tracking and reporting the same types of data simplifies comparing and analyzing these QOFs.

Given the abundance of skepticism around Opportunity Zones, and the complexity of the program, Congress should amend the Code to make a reporting schedule like the Framework a requirement rather than a recommendation. The entire Framework is expansive and requiring QOFs to follow all its suggestions may not be necessary. However, at a minimum, QOFs should be required to identify the industries they are invested in, establish a social benefit they wish to provide to individuals in QOZs, and collect standardized, industry specific data to measure that benefit. When considering the cost of the OZ program—the Joint Committee on Taxation estimates that Qualified Opportunity Zones from 2020–2024 represent an $8.2 billion tax expenditure[176]—requiring QOFs to provide some information regarding their activities seems like a reasonable request. Were the QOFs required to report this information, the next step would be identifying where this information should be reported to, given the IRS's hesitance to get involved.

B. Re-establish the White House Opportunity & Revitalization Council

Up until the inauguration of President Joe Biden, there was a council in place that could solve this problem. In fact, it was the very same council that recommended the Framework: the White House Opportunity and Revitalization Council. The Council was chaired by the Secretary of the HUD, and its members included the Assistant to the President for Domestic Policy, the Secretary of the Treasury, the Attorney General, the Secretary of Education, the Secretary of Agriculture, the Secretary of Health and Human Services, the Secretary of

174. EXEC. OFF. OF THE PRESIDENT, OFF. OF MGMT. & BUDGET, NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM 61 (2017), https://www.census.gov/naics/reference_files_tools/2017_NAICS_Manual.pdf.

175. PRIORITIZING AND ACHIEVING IMPACT IN OPPORTUNITY ZONES, *supra* note 159, at 4.

176. JOINT COMM. ON TAX'N, ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2020–2024 30 (2020), https://www.jct.gov/publications/2020/jcx-23-20/ [hereinafter ESTIMATES].

Labor, and many other leaders across government agencies.[177] Further, as part of their duties, the Secretary of HUD and other Council members engaged in extensive conversations and meetings with community leaders.[178] The Council's "main goals" included assessing actions that each agency could take to focus federal investments on, and to stimulate economic development of, urban and economically distressed communities, including QOZs.[179]

Taking charge of collecting and analyzing data reported by QOFs regarding their impact on low-income communities would meet this goal head on. In fact, this was a part of the original mission of the Council, as the Executive Order that established the Council charged it with "evaluating what data, metrics, and methodologies [could] be used to measure the effectiveness of public and private investments."[180] Further, the Council planned to help Congress "develop legislation that will address the collection of any additional information that would be useful in assessing the value of the Opportunity Zones incentive to distressed communities."[181] The Council, supported by members from multiple federal agencies, was well equipped to take on the difficult project of collecting and understanding data from QOFs, which can invest in real estate, technology, health care, and almost any other industry.

In fact, the Council could help develop industry-specific standards that would measure whether the QOF investment was benefitting those living in the Opportunity Zone. These industry-specific standards might then be assigned to a NAICS code to standardize the data. For instance, if the Council found that social benefit provided by real estate businesses was best captured by measuring affordable housing units created, the Council could recommend passing legislation requiring that QOFs invested in real estate projects report this metric. All QOF investments filing under the NAICS real estate code would then be required to collect this additional, industry-specific data, and report that data to the Council.

The challenge the Council would face from here is how to handle and analyze this data. Certainly, collecting the data will not automatically lead to complete transparency and clear reporting. The Council would have to decide how QOFs should report this data, how the Council would store this data, and to what extent this data could and should be made publicly available. Additionally, since this approach would require QOFs to report key metrics, there would need to be a system in place to audit QOF reporting.

177. WHITE HOUSE OPPORTUNITY & REVITALIZATION COUNCIL: REPORT TO THE PRESIDENT 9 (2019).

178. *Id.*

179. *Id.* at 10.

180. *Id.* at 132.

181. *Id.* at 131.

Unfortunately, the White House Opportunity and Revitalization Council terminated on January 21, 2021.[182] It is therefore imperative that President Biden's administration re-establish the Council. If Opportunity Zones are to remain in the Code, there must be a system in place to measure whether the tax provision is helping communities suffering from the "deeply uneven" recovery, as Senator Scott, Kevin Hassett, and Sean Parker all hoped it would do.

Given there is almost no information collected to measure social benefit, this proposed solution represents the first step towards solving the problem in monitoring Opportunity Zones. Rather than relying on limited IRS and Census data, this proposal will make QOFs responsible for reporting firsthand how their investments are impacting local communities. An $8.2 billion tax expenditure[183]—and, more importantly, the great number of communities stuck in economic hardship—demand a program that works as its supporters promised it would. Collecting valuable data to measure social benefit will help an honest evaluation of OZs finally begin.

CONCLUSION

The recent bipartisan support of Opportunity Zones suggests that this program and other place-based tax incentives will not disappear anytime soon. Without a valuable means of evaluating OZs, debates will persist over the effectiveness of this program and other place-based incentives. Meanwhile, there is a real danger that OZs are failing to improve the lives of people in low-income communities, and instead are working primarily to the benefit of wealthy investors. Thus, it is imperative that QOFs report standardized, industry-specific data to an agency equipped to handle it. Implementing objective data will help remove biases from both proponents and skeptics, and finally shed light on whether Opportunity Zones can "create a spark" in struggling communities and help improve the lives of those living in them.

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182. IMPROVED OVERSIGHT NEEDED, *supra* note 10, at 15.
183. ESTIMATES, *supra* note 176.

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