

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 tracts 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 engage 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