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INTERNAL REVENUE SERVICE

PUBLIC HEARING ON PROPOSED REGULATIONS

"INVESTING IN QUALIFIED OPPORTUNITY FUNDS"
[REG-115420-18]

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(10:32 a.m.)

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

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

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

So, hopefully, that's what you're all here for. (Laughter) There was a little bit of confusion because apparently the notice for this hearing, and the notice for the GLTE REG Hearing, GLTE NPRM Hearing which was yesterday. Although the notices were internally correct and provided the right information, they were posted under each
other's headings, I think on Regs.Gov.

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

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

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

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

To her immediate left is Shareen Pflanz, Shareen is a Senior Technician Reviewer also works in Branch 5, also working on this project. And we've also got Kyle Griffin in Branch 4, who is one of the other Attorneys working on this project, keeps him up very late.

Thank you, Kyle.

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

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

So, those are your panelists today. We thank you for being here, those who are speaking particularly, but those who are just in the audience as well. We look forward to hearing your
oral comments, obviously, we have also received and reviewed the written comments that have been submitted so far, and we thank you for those.

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

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

What else do I want to say? Oh. I think probably you have already seen, but just -- it is going to be a long hearing obviously, we have 23 speakers on the list, everybody is allotted 10 minutes, so you can do the math, but
we've got at least four hours of presentation time potentially. I expect the Panelists up here will also ask some questions.

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

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

But we just ask you to be considerate and try to keep within your time, because obviously, we do want to hear everybody who is schedule to speak today.
Let's see. What else? I want to make sure that everyone knows -- because it is going to be a long hearing -- that we will take a break at some point, most likely around 12:30, but sometime probably between 12:30 and 1:00 depending on how we are going, the flow of speakers how -- you know, how we've done getting through speakers, and we'll take, once again, depending on where we are, a 30-45-minute break.

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

But you won't be required to stay here, but you may want to use the cafeteria, because it's just convenient to be back in time for the hearing. But we'll go through that when we come to that break.
The restrooms are on my left your right for men, and my right your left for women. So, if you go out the hall and turn left that way, right that way, you'll see the signs for the restrooms, obviously, please use those if you need them. And what else, am I forgetting anything else for logistics? I think that's it.

Otherwise, thank you very much.

Obviously, from the size of the crowd today I think it's representative of the interest and the energy around the new Ozone Rules. So, we appreciate all your interests. This is obviously an exciting area of the tax law with a great deal of potential to have significant impact throughout various parts of the country.

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

So, you've seen an initial proposal, and
we look forward to your comments today, in terms of what you think are areas we should focus, or particular problems or solutions to the issues that arise as a result of these rules.

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

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

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

So, our first speaker; I think are two speakers. We've got Stefan Pryor. Also I guess I
will apologize if I mispronounce your names, please correct your name when you get to the microphone, so for the recording if nothing else. But we've got Stefan Pryor, and Stefan --

MR. FOREMAN: Kurt Foreman.

MR. DINWIDDIE: All right. Okay.

Welcome gentlemen.

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

We are a subset of a group called the State Economic Development Executives Network, or the S-E-D-E or SEDE Network, with representation on a bipartisan basis across the country of state
top economic development leaders. We have copies of our detailed letter.

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

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

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

By the way, in each of our states, we are very heavily underway in the implementation process. In Rhode Island alone, a week from
today, we have a conference on the subject. We have a website we have established for the purpose. There's investment interests, there's developer interests, there's operating business interests; thus our four points.

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

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

We're grateful for that change.

However, we're concerned about the proposed criterion for Qualified Opportunity Zones
businesses that stipulate, "At least 50 percent of
the gross income of a Qualified Opportunity Zone
business, is derived from the active conduct of
trade or business in the Qualified Opportunity
Zone."

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

We think that if we follow the precedent
set under the New Market's Tax Credit Rules, the
NMTC Rules; rely upon the tangible property
concentration, akin to the rule, the 70 percent
rule I just referred to; and does not have such a
gross income rule. So, we would like to see you
strike the, "in the zone" portion of the language
that refers to the 50 percent of gross income.

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

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

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

Here, we're particularly concerned with
the forthcoming regs, regarding the length of a reasonable period of time to reinvest, that the regs refer to a -- we believe that these regulations should reflect the kind of basic investment motivations and practices, where a diverse portfolio of investments is wise, and there is an ebb and flow to investment.

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

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

You hear our theme. This is a concern as pertains to several of these technical
provisions that will have a profound effect if they're not revised.

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

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

MR. FOREMAN: Well, thank you very much for the opportunity to be here. They sent the two smaller states, so we are here to carry the water. So our third point is that the rule should offer sufficient flexibility to meet the requirements of the 90 percent asset test. We believe that the clarity in the rules, for the first state, for the 90 percent asset test following the inception of a fund was positive.
However, we recommend that the regulations provide opportunity funds with additional flexibility in meeting the requirements of this test. Under the proposed rules and opportunity fund has six months to deploy the capital that is raised before being subject to a potential penalty.

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

We also recommend that the IRS consider including a provision granting flexibility to opportunity funds such that for the first 12 months following the receipt of cash by a fund, the fund would be able to treat such as Qualified Opportunity Zone Property, for the purposes of the 90 percent asset test, conditional on the cash being deployed into actual Qualified Opportunity Zone Property within one year of the Fund's receipt of the cash.
This would allow funds to make investments more flexibly and establish an investment portfolio that meets the intent of the law.

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

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

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

Thanks for the opportunity to provided testimony today. Both Stefan and I appreciate it, and along with our colleagues at the State Economic Development Officials Group. And we're glad to be with you.
MR. PRYOR: One closing thought. These census tracts were selected because they are, in many cases struggling. They've been having challenges attracting investment. I think we owe it to the congressional cosponsors to all the framers of this program, and to ourselves, all who are investing energy, to ensure that we recognize that attracting investment for these dual purposes, real estate and operating businesses is so important.

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

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

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

MR. DINWIDDIE: And we appreciate that.
If everyone does that we'll get out of here before the sun sets. All right. (Laughter) Thank you both, Mr. Pryor and Mr. Foreman.

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

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

So that will take us to number three, John Sciarretti and Michael Novogradac from Novogradac Opportunity Zones Working Group.

Welcome, gentlemen. At the mic, so we all can --

MR. NOVOGRADAC: Great. Thank you. I'm Michael Novogradac. I'm Managing Partner of Novogradac & Company. We're a national public
accounting firm. I'm here with my Partner, John Sciarretti. And we are speaking on behalf of the Novogradac Opportunity Zones Working Group.

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

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

They are the valuation method for applying a 90 percent asset and a 70 asset tests, that's substantial improvements tests. These are actually two tests that are particularly relevant to us as tax accountants in advising Qualified Opportunity Zones and Qualified Opportunity Zones businesses.
And then we also want to touch upon the third issue as to the time that a business has to become a Qualified Opportunity Zone business.

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

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

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

And the Opportunity Zones Working Group believes that such a requirement is burdensome,
and has unintended consequences. And we believe in lieu of this requirement, all entities should have the ability to elect to use unadjusted cost basis.

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

But as far as the practicality issues, well, we're concerned about the actual results, audited financial statements you'll end up showing
assets on a depreciating basis, so you're getting your good assets, if you will, will be declining over time, so you would have to be running projections over 10 years, and the like, to sort of measure the test.

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

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

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

We think it's impractical in many situations to both look at every individual asset and trace improvements to each individual asset to decide if that individual asset has been
substantially improved, for purposes of that asset becoming a good asset.

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

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

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

So in closing on the substantial
improvement test, we think businesses; particularly operating businesses should elect to aggregate their assets for purposes of measuring the test.

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

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

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

The statute doesn't provide any information of how long a business gets to
qualify. The regulations provided for a 31-month safe harbor for the purposes of reasonable working capital, and if you find yourself qualifying for that safe harbor, other requirements of an Opportunity Zone business, there are safe harbors for those other requirements.

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

And so, on behalf of the Opportunity Zones Working Group we request that regulations provide for a safe harbor for all Qualified Opportunity Zones businesses. We request that as long as the business were to -- or as long as the fund had a reasonable expectation that the business could qualify within 31 months, that that business would have up to 31 months to qualify. And we also note that that reasonable expectation can be supported by a written plan which is consistent with the working capital rules, and the regulations.
We also ask that Treasury make an exception for those businesses that, under certain facts and circumstances beyond their control, can't meet the 31 months safe harbor period. Or, under facts and circumstances based on a reasonable start up of that business, some businesses just take longer to start up.

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

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

MR. SCIARRETTI: Okay.

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

SPEAKER: All businesses --

MR. DINWIDDIE: -- all businesses, and I guess why do you think that the rules that are
there would not apply to all businesses? What is it about businesses that would prevent them for using the safe harbor that's there?

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

MR. DINWIDDIE: Right.

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

And so, for instance if I needed to spend $10 million to qualify, I would have to have $10 million, you know, at the start of that 31-month period. That's the way the text reads. And so, you know, that's confusing, and is it reasonable, is it consistent with normal business practices, in that, you know, businesses that surely draw capital from debt or even equity draws, you know, wouldn't neatly fit into that safe harbor.
MR. DINWIDDIE: Right. Okay. So that's helpful, because I certainly don't think that's the intent so --

(Laughter)

MR. SCiarretti: Yeah. Good.

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

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

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

MR. DINWIDDLE: Okay. Are there others who have questions for our speaker.
MR. NOVEY: One question about the suggested aggregate test for substantial improvement. Did you mean that all of the non-original use assets that have been proved should be in a single bucket so you could test them on an aggregate basis or did you intend for a humongous substantial improvement to some assets, sweep in other non-original use assets that have not been changed at all or improved?

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

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

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

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

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

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

MS. HANLON-BOLTON: This is for you,
John. Back to your question, for the businesses you feel don't fit into our 31 month rule, would you have a separate rule, and second of all, would the time frame be 31 months or could we do something else?

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

MS. HANLON-BOLTON: Are you talking about like a cure period?
MR. SCIAR: Well, yes, I guess.

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

MS. HANLON-BOLTON: Okay.

MR. SCIAR: Great.

MR. HOVEY: Any other questions? All right. Thank you, gentlemen. I appreciate it. Okay. I'm told that our speaker #2, I think it's
Gerron Levi, representing the national community, the investment coalition is here. Is that true? No? Yes? Okay. Well, we'll continue to hope that speaker shows up. With that, we'll continue to move on to Speaker #4 on our list, John Lettieri, representing the Economic Innovation Group.

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

EIG was deeply involved in the development of the Investing and Opportunity Act which garnered brought by partisan support which served as the basis for the opportunity zoned provision and the tax cut and jobs act of 2017.
Since opportunity zones became law, we've worked within an array of state holders nationwide, including state and local policyholders, community organizations, major philanthropies and leading investors to raise awareness, provide analysis and gather feedback. Those informed the detailed technical recommendations that we alongside a coalition of state holders, provided to the Department of Treasury and Internal Revenue Service in response to the notice of proposed rulemaking issued in October of last year.

Before addressing the key recommendations in our comment letter, it is important to underscore briefly the characteristics of the designated communities themselves. All the whole states use their selection authority to skew towards significantly lower income communities than the law required. In fact, our recent analysis found that opportunity zones are on average more distressed across nearly every available measure than both the total pool of eligible census tracks and the
subset of low income tracks it did not receive as a nation.

For example, 71 percent of opportunity zones meet the U.S. Treasury Department's definition of severely distressed. The average designated tract has a poverty rate of nearly double the national average and more than 1/5th have a poverty rate of 40 percent or higher which is true of only around 5 percent of communities nationwide. The median family income of the average opportunity zone is nearly 40 percent below the national level. Of the 31,000,000 residents of opportunity zones nationwide, over 14,000,000 live in communities that saw their median incomes actually decline during the national economic recovery and nearly 19,000,000 live in ones in which the poverty rates rose. In an era in which educational attainment is increasingly critical to local prosperity, more adult opportunity zone residents lack a high school diploma than have obtained a college degree. So, improving access to economic
opportunity for residents of these communities is both a worthy and urgent policy goal. An opportunity zone gives us a once in a generation chance to make progress.

So, however, while there is intense interest in this new policy, there are several key issues that we believe are preventing many opportunity funds from performing and significantly limiting the nature and extent of new investment in the designated communities.

While the incentive was designed to support a wide variety of needs across communities from clean energy to housing to commercial development, its central purpose was to drive investment into operating businesses in undeserved areas, particularly new ventures and existing small to medium sized businesses poised for growth. In a recent letter to Secretary Menusa dated January 23, 2019, a bi-partisan group of 16 senators and representatives expressed an investment in operating businesses as "a central goal of the underlying legislation". This central goal must
be reflected in the rule making process in order
to avoid many of the shortcomings of previous
federal efforts to boost economic growth in low
income communities.

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

First, opportunity funds need reasonable
time to deploy and redeploy capital raised from
investors or return to funds from the sale of an
asset. While the working capital safe harbor for
opportunities on businesses provided in the
regulations is a step in the right direction,
similar timing flexibility is needed at the
opportunity funds level. This allows them to
raise, deploy, and redeploy capital. This is
particularly important for funds that are interested in making investments and operating businesses. Our comment letter includes 3 policy options that would allow funds the necessary time and flexibility and relief to make prudent and impactful investments.

Second, the rules must insure that investors' tax benefits will not be compromised when a fund sells an asset and reinvests the proceeds in another qualifying investment. In that same bi-partisan letter that I mentioned earlier, the signatory state "Congress tied the tax incentive to the longevity of an investor stake in an opportunity fund, not to an opportunity fund stake in any specific portfolio investment. This is why we specifically directed Treasury to provide adequate time for funds to reinvest capital that has been returned to the fund from an underlying portfolio investment". We hope that future guidance will reflect Congresses' intent and clear this major roadblock for the formation of multi asset opportunity funds.
Next, we strongly recommend the reconsideration of the requirement that 50% of the gross income of qualified opportunities on business be derived from the active conduct of trade or business in the opportunity zone which was mentioned earlier. If interpreted narrowly, this provision risks significantly hindering the exact type of business investment and activity that Congress intended with this policy and would place huge administrative burdens on qualifying businesses.

Turning to things that we appreciate, in particular about the proposed rulemaking, we applaud the approach that Treasury is taking on a number of key issues. For example, the proposed 31 month safe harbor at the opportunity zone business level will help many fund investors to structure investments and time the acceptance of capital. Additionally, we strongly support the proposed definition of substantially all pertaining to the amount of a qualifying business's tangible assets located in the zone.
The proposed 70 percent threshold achieves the right balance to ensure that qualifying opportunity funds will not be discouraged when investing and operating business as Congress intended. Both of these rules should be finalized and as detailed in our comment letter, Treasury should also consider whether additional guidance in these areas is needed.

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

We have additional questions and believe businesses need additional clarity on other
definitional clauses in the statutes such as how a business can meet the substantial improvement test, as was mentioned earlier and if property can be considered original use if vacant for one year as was done with the enterprise zones program.

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

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

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

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

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

MR. LETTIERI: That's right.

MR. NOVEY: By Congress. So, what would
the requirements of that 50 percent test be and
would there be zero nexus to the zone?

MR. LETTIERI: So, the statute seems
interested in 2 things. One is where is your
tangible property, which is answered by the
substantially all test. And 2, are you an active
conduct trader business such that the majority of
your income derives from that active conduct?
Those 2 things sit side by side, the locational
requirement being substantially all of your
tangible property. What is concerning to many of
us about the gross income provision in the
proposed rules is that it adds a locational
requirement that's not found in the statute to the
gross income requirement that's there. Parts the
statute that are carried over from other areas of
the Code specifically leave behind locational
requirements on the sourcing of income. So, that's
the concern and that inadvertently without safe
harbors and other work arounds, what you risk
excluding are businesses that would otherwise
qualify on the tangible property test and all the
other tests included in the statute, but do not
either know how to derive the source of their
income specific to that zone or can't meet that
test as was described earlier.

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

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

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

MR. CURETON: Cureton.

SPEAKER: Cureton. Thank you, sir.

MR. CURETON: Well, good morning,
distinguished panel members and everyone here.
It's awesome to follow John. If Senator Scott was the father of the opportunity zone, I definitely would consider John the mother. So, the opportunity to fund a qualified opportunity zone business, you know, if looking at this proposed ruling, I really believe this is an opportunity to jump start America in both rural and urban centers. From a perspective of the qualified opportunity zone, we have concerns.

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

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

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

We've got to think about the fact that billions of dollars are coming and we've got to think about the fact that that money is going somewhere. So we need to look at the acquisition side of this conversation, particularly the allocation of the investors funds to developers, intermediaries, and qualified opportunities on businesses. The counsel plays a key role in pooling resources of state holders, strengthening minority innovation and job creation through public, private partnerships and inclusive procurement solutions. The counsel is included in the U.S. Department of Commerce technology transfer innovation consortium, and a regional innovation stake holder. I'm giving you some context because I want to say something. I'm not going to say why I'm saying it. Earlier this year, the Council merged with the Council Exchange Board of Exchange. We're sponsoring a regional opportunity outcome fund or community outcome fund which is a research project to initiate a private
fund complex utilizing distributing intelligence model that will allow for an industry led public, private partnership that scales risk over multiple qualified opportunity joint ventures.

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

My wife, Brenda, is here, and I'm saying that
because, of course, it's Valentine's Day.

Okay. So, it's from this industry
perspective that I bring up the matter relating to
the regulatory flexibility Act and the Treasury
certification that small entities would not be
impacted by 1400 Z.2. Taxpayers who invest in
opportunity funds and qualified opportunity
businesses will, from our perspective, have
significant future economic impact, on substantial
number of small entities, will have a significant
impact. Unfortunately, Treasury has certified that
these proposed regulations, if adopted, as it
stands now, would not have a significant economic
impact on substantial and very small entities that
are directly effected by the proposed regulations.

In fact, the GAO was signaled by Treasury in 2017
that 1400 Z2 was a non major regulatory issue,
non-major regulatory issue. So, if you look at
the GO report, the criteria for that is, it is not
going to impact 100 million dollars. We truly
believe that this is a multibillion dollar impact.

It is important to note that Congress found that failure to recognize differences in scale and resources, a regulated entity has numerous instance adversely effected, competition to the market place, discourage innovation and restricted improvements for productivity. This regulation certainly speaks to our nation's core principle, to empower Americans to make independent financial decisions and to save for retirement and build wealth. This current Trump administration has articulated another principle, to foster economic growth and vibrant financial markets through more rigorous regulatory impact analysis that address systemic risk and market failure such as moral hazard and information asymmetry. So, if someone knows more information than the other guy, then there's information asymmetry and there's moral hazard.

So, representing 65,000 businesses that are minority, we are in a place where there are some areas that we don't know what we don't know.
We're just asking if in fact -- well, it is critical Treasury reconsiders its position to be in alignment with the White House's stated position that opportunity fund investment exist in part to fund new businesses. The Council highly recommends that the Treasury and the SBA take immediate action to include an initial regulatory flexibility analysis to the chief council for the advocacy of the SBA. What are not here today, from our perspective, are technology companies that are really prone and best suited and the reason why that is, is that there was not a triggering or signaling to perfect this process. The reason why that is there was not a triggering or a signaling to accomplish this process. Treasury must decertify its position concerning the regulatory flexibility act and consider the impact on U.S. small business eco-system. Furthermore, more consideration is needed on how Treasury defines qualified opportunities on businesses. This consideration could be best illuminated through the public comment process that would be availed
if in fact the impact analysis was triggered, but again, it was certified that there was not an impact so that the SBA was not brought in and a public comment on the SBA side was not afforded.

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

I still want to say that this is awesome. I give credit to Congress. I give credit to everyone to the fact that this is occurring. As
a technologist, I would ask Treasury to be mindful of the financial innovation that is on the horizon. Our research on how best to establish a fund complex has our industry considering the convergence between capital markets and financial innovation. We see this proposed ruling as a critical key to American's social safety net. We are doing good and will prove to be the best in most substantial return. We see this opportunity to bring capital to communities and unleash the power of human capital. Improving schools, cities, infrastructure, broadband grids, supporting innovative entitlement reform that requires new and sophisticated partnerships. I just thank you for this opportunity to testify. Godspeed your deliberations.

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

MR. NOVEY: Assuming the arguendo -- that's lawyers, that we heard in not going the route of not going the initial regulatory impact, should we (a) do you know what possible changes to
these regs would have been made if we had had that benefit, or is the problem that having failed to do that, no one knows what should have been done if we had done it. I guess the second question is are you recommending that we delay finalization until that process has gone through.

MR. CURETON: So, to answer your question first off, I am humbled by this process and I think my expertise is more on the economy and how the economy can grow and the innovation. So, this is a new territory for us. But I would share that one of the areas that we're really focused on is that large entities that have all the capital, that have all the longitude understanding, have all the expertise, have a jump start on what's going on, yet our economy is based on small business and innovation and guts and glory. So, what I'm saying, from a personal or an organizational perspective, I would share that we just need to consider the informational asymmetry and that we just need to consider inside of what we would say and that is having citizens having an
opportunity to understand the impact of this is critical. However, would I thwart the process of progress to do it? We need this right now. What I would say if I could, is there might be an opportunity of a divergence between the conversation relative to opportunity funds that are assets based that are looking at the real estate that are more aligned to the NFTC thought process and the qualified opportunity zone, which in fact, if I could get one thing because I've been really good and I said something to Brenda about Valentine's Day, I would say we might consider or you might consider taking and splitting it and saying, Well, let's consider the asset based conversation and drive the economy and make that happen, but let's also look perhaps at having the opportunity zone business be a 2027 -- like delay that part one year and create an opportunity to say we're actually going to separate the two and have complete consideration between them. That way, there could be a longer deliberation relative to what is a qualified
opportunity zone and get the citizenry behind the
decision making process on that but not thwart our
opportunity for these census tracks to receive the
benefit of this financial windfall that's going to
happen this year.

MR. DINWIDDLE: Just one second.

MS. SEEGULL: Oh, pardon me.

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

MS. SEEGULL: Great, good morning.

MR. DINWIDDLE: And there are also some
seats, excuse me. There are also some seats up
front although we try to leave a little bit on
each side of our recorder but there are still a
few seats around as well. So. Thank you, everybody, for your understanding, and thank you, for your patience. Okay. With that, we will get started with Fran Seegull form the U.S. Impact Investing Alliance.

MS. SEEGULL: Good morning, Scott and panel.

MR. DINWIDDLE: Good morning.

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

Many of our members and stakeholders have particularly deep knowledge of and experience
investing for community economic development. They include institutional investors, foundations, high net worth individuals and families, banks and of course community development finance institutions. These stakeholders understand the importance of place, local context and authentic community engagement when investing in low income communities.

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

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

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

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

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

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

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

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

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

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

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

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

Finally, and as laid out in our written comments, it's clear to us that the Department has the necessary statutory authority to implement our proposed data reporting standard. This action is needed to ensure the proper functioning of opportunity zones market and to meet the
legislative intent of the statute. This was underscored in a letter to Secretary Mnuchin dated January 23 and signed by senators Tim Scott and Corey Booker along with many others, about a dozen of their colleagues.

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

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

Adopting the proposal laid out in the written comments would allow Treasury to be responsive to
these calls from the White House and from Capitol Hill.

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

As I have stated, Treasury must move quickly to preempt possible abuses of this benefit but it will also -- but it was also true that ill-conceived or ill-informed investments could fail. These investments could fail to generate financial returns or they could fail to create lasting community benefits. Adopting the U.S. Impact Investing Alliances proposed reporting
standards as articulated in our public comment letter would be a proactive step by the Department to avoid unintended consequences and maximize community benefit.

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

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

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

MS. SEEGULL: Thank you.

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

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

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

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

Most state HFA's were at the table with
their governors and other state agencies advising
on the opportunity zones designations and many are
allocating their own resources to enhance the
prospects for the successful launch and
implementation of this important new tax
incentive. States are sharing best practices and
engaging with the investment community as well
through NCSHA's opportunity zones task force which
is charred by the Maryland Secretary for Housing
and Community Development, Ken Holt, and the
Michigan state Housing Development Authority

Executive Director Earl Poleski.
We really appreciate the effort that you all and your colleagues have put into the regulations to date and have a couple of thing we wanted to mention today, some of which have already been alluded to. The first is with respect to the original use of opportunity zone property. The proposed regulations solicit comment on the definition of original use including whether some period of abandonment or underutilization should erase a properties history of prior use in the opportunity zone.

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

Given the impacts of land on housing prices, vacant land may represent an especially
beneficial opportunity for generating new affordable housing development and for that matter other real estate related development beneficial in opportunity zones.

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

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

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

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

Finally, just want to touch on a couple of things with reference to your next round of guidance which you alluded to. You have plenty to do with what is already been put forward but we do know and you have heard a lot about some other
areas and I just wanted to flag them for you. The first one would be familiar to you, the first relates to use of opportunity zone incentives with other federal tax credits.

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

Second, regards a topic that I know you have also heard a lot about and you will hear more about today, the economic impacts of the opportunity zones in the communities they are intended to help. This is an enormously powerful incentive for investment in areas that have for too long been starved of it and it is certainly conceivable that some opportunity zone driven activities could result in a loss of affordable
housing either because they put upward pressure on rents and prices that pushes housing beyond what current lower income residents can reasonably afford or because they result in the actual removal of existing affordable housing unit, you know, that may be occupied by lower income current residents.

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

In addition and I think more fundamentally we recommend that the IRS regulations expressly prohibit the intentional removal or conversion of existing affordable
housing in an opportunity zone unless new housing of comparable quality and affordability is provided in or near the zone with similar or basic better amenities. And for these purposes we would encourage a broad definition of affordable housing certainly to include rental or for sale units subject to rent or a price restrictions imposed by a federal, state or local program or through another legally binding means such as a community land trust.

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

Now those are our comments. Again we
appreciate your efforts to make this program successful and I'm happy to take any questions.

MR. DINWIDDLE: Any questions on the panel?

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

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

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

MR. NOVEY: But there -- so you don't
think that that 50 percent test should have any nexus to the zone?

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

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

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

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

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

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

MR. WILLIAMS: All the jobs elsewhere?

MR. NOVEY: That's my question.

MR. WILLIAMS: I don't know if I have
thought about it at that level. We focus more on
the tangible property --

MR. NOVEY: Some of your --

MR. WILLIAMS: -- and the business
income.

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

MR. WILLIAMS: Right.

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

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

MR. NOVEY: Thanks. (Laughter)

MR. DINWIDDLE: All right. Thank you
very much for your comments. And your answers to
the question. (Laughter)
MR. WILLIAMS: It wasn't so good.

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

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

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

(Laughter) I apologize.

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

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

Enterprise is a leading provider of the
development capital and expertise it takes to
create well designed homes and vibrant
communities. And since 1982, we have raised over
$36 billion in equity, grants and loans to help
build or preserve over $529,000 affordable homes
in diverse, thriving communities.

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

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

Enterprise continues to stress that
transparency and accountability are the keystone
to fulfilling the tax incentives original intent
of transforming economically distressed
communities and we urge the Treasury Department to
collect and make publicly available when paired
with existing federal, state and local community
development initiatives such as low income housing
tax credits and new markets tax credits.

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

And finally, Enterprise would like to
raise attention to two other potential concerns
and suggestions with the first round of proposed
rules. First, we are concerned that excluding the
value of land from the substantial improvement
test could unintentionally allow for predatory and
speculative activity especially in high cost cites
or high cost areas, excuse me, where vacant land
or significantly under developed land would not be
subject to substantial improvement tests and could result in investors receiving tax benefit without making any improvement to the land.

We urge the IRS to explicitly prevent such predatory or speculative activity under the opportunity zones regulation.

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

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

MR. DINWIDDLE: Okay. Thank you. Any
questions from the panel? No questions. Thank you very much for your comments. Okay.

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

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

Our remarks have been submitted in writing previously, they are -- my oral remarks today are to hopefully augment and add some color to those and provide some answers to some questions you might have. I would like to associate with myself with the remarks made by
Stefan Pryor and John Letarry earlier. They really cover a lot of some of the key technical point that are of interest to us.

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

Our members, particularly our small business investment companies, have a legal mandate in many cases, and the SBIC's in particular to invest exclusively in domestic small business. They were created in 1958 and the Small
Business Investment Act which I would, you might want to take a look at, to facilitate capital flows to areas of the country that don't have enough capital flowing to domestic small businesses.

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

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

Small business investing often times is looked at through the startup lens and startups are directly important but they are not the only
ones. There, the small business growth is a massive opportunity and it is a particular opportunity for underserved areas right now.

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

And so with that, as you are looking at this, implementing this law, we would encourage
you to look at the small business side and particularly some of those areas. There were, some of them were touched on already, the 50 percent gross receipts rule. It's an important rule and it's a good question because small businesses do want to not just recycle capital in their local markets, it's important to recycle capital in your own markets but also attract capital by selling things other places but at the same time you don't want to have a post office box and an LLC there and nothing else.

There are other opportunities for looking at and measuring what is an appropriate, you know, economic benefit locally because ultimately the benefit has to be to the opportunity zone and the surrounding areas. And again, I would encourage you to take a look at the Small Business Investment Act because the SBIC's have, you know, 60 years of trial and error of learning of what worked and what didn't work in small business investing. They were the -- SBIC's were the first venture capital funds in the United
States. Its something that most folks in Silicon Valley are, you know, that are older meaning and still kind of values of different concept than everyplace else. But it really is an important element of what they do right and how they do it. The location of the activity, the production, where the jobs are, are all factors. For SBIC's, for example, they can invest not just in opportunity zones, they can invest anywhere domestically, a lot of them invest in LMI areas. But they are required to invest domestically and the jobs have to be domestically, it can't be used for outsourcing.

The question by Mr. Novey, I think his name was, I don't have my glasses on, I couldn't see, about the local impacts on jobs, it is a legitimate question in this day of technology. Because we have businesses that are selling other places. You want to manufacture if it's going to be an opportunity zone to be able to sell across the state, across the region, across the country and across the world. But a server farm, which is
great and important technology, might employ two
people and cover 20 acres and they'll have short
term gain and that is a benefit but is that
producing a result that is sought, maybe.

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

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

Now, it's worth noting that in private equity investing in small businesses, it's different from what you often read about in the newspapers where private equity gets a black eye. They only way to make money in small business investing is to grow the business. It's not, you're going to get financial efficiencies by slashing your staff because you don't have many.
So, you know, it's really just a scale issue. So, that small business aspect, again, the scale matters.

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

So, I would encourage you to look at that recycling provision, make sure there is adequate time to go from one small business to
another. So long as the capital is committed to
the fund and the fund is a qualified opportunity
fund and that's where we go there. So, that
rollover period is helpful.

Something that was touched on earlier on
the self-certification aspect, because what we
don't want to have happen, I'm sure you don't want
to have happen and no one in this room wants to
have happen is to have funds come and they really
not produce the result that you want or have
abuses out there. And so, I would again encourage
you to take a look at the trials and errors that
have already been learned in other government
programs that have proven very successful,
particularly again, on the SBIC side, to see what
they've done to make sure that those businesses
are being treated well. SBIC's, by the way, are
even required when they license them to see what
their track record is, not just for financial
records but how they've dealt with small
businesses and how they've grown and not leaving a
track behind them.
But there are many lessons learned there that I would encourage you to take a look at. The career staff over at the SBA are very good and so we'll go from there. I know you're short on time and have lots of folks here so I'll stop there and open myself up to any questions you might have.

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

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

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

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

MR. DINWIDDLE: Ah, Zeroto6t, got it.

MR. BENET: Doing business as HeroHomes.com. Most simply described as a Zillow or Realator.com for military vets of which I'm one.
of them and there are 22 million of us. Just some background to support a point, we have a no money down home buying power called the VA loan guarantee which none of us of know or virtually none of us know can be used to buy and be a resident landlord in a two, three or four family property. So, our solution to America's challenge is what we call local vets first verification versus gentrification. And if anybody likes verification, I own dot com so it's too late.

So, I support enterprise community partners approach to anchoring, you know, small cities and walkable main streets because one of the units can be a commercial unit. So, imagine a back to the future walkable main street with that living upstairs with some renters and they have a business downstairs. And our mission statement is by, for and with America's 22 million military vets to anchor and lead the great American renewal. So, like a Marine, we have small goals. So, first of all, thank you Erica Reigle. Hard working, working on the weekend,
working when not being paid, I appreciate it and I
don't expect any extra time. And also, my
hardworking friends at the IRS, two months ago I
filed my tax return, I'm waiting for my refund
please. So, the first thing to get interactive
here, who would describe themselves as an
entrepreneur. May I see a show of hands? Okay,
my wife defines us as glorified unemployed. And
Jeff Hudson, I'd like to mention there and by
doing that, I know who is paying for lunch. He's
with Allegard which is doing an opportunity zone
interactive marketplace.

So, like any good glorified unemployed
entrepreneur, I'm admittedly and with the dog in
the fight, essentially urging the IRS and Treasury
to strangely enough do nothing or said another
way, first do no harm. So, I don't know how the
comments have looked to you, excuse me, it's my
first time here and I'm speaking my version of the
truth. But it looks like angels dancing on a pin
variety of self-institutional interests. Multiple
interpretations of intent, crabs in a barrel, in
many cases. And arguably, I'd say that community economic citizen and housing development, we've never achieved it in a material and scalable fashion and therefore, further regulation and clarification as well meaning as it may be has never seemed to solve that.

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

And finally, as an entrepreneur, and I say this with a certain wistful respect for people with day jobs. For us that feel fear and look in the mirror and have a spouse asking us why don't we get a day job, I'd argue that the effort to "help us" as well-meaning as it is and arguably prepredicting what innovation is going to look
like and I don't mean this in the pejorative sense but the definitional sense is perhaps oxymoronic.

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

So again, I don't think you could prepredict me running around knowing that there are 22 million vets with $10 to 18 trillion of no money down buying power to anchor community economic citizen and housing development. What am I, well it's evolving every time I see, you know, something you people put out trying to help? Am I an opportunity zone, am I going to sell stock
because I'm going to move to an opportunity zone, am I a general partner or a partnership? Am I investing in businesses such as the vet owned businesses that are in their own properties? Am I developing real estate, am I facilitating real estate, am I doing co-ownership construction loans, long term debt, securitization? All these things are influx and it doesn't help -- half the regulations don't help in the flexibilities of trying to be "innovative". As I said, we're trying to do vetrification versus gentrification so I think everybody would like that. And I get back to the concept of first do no harm.

So, Carl in the front row, my new friend, he mentioned that we don't exactly have to do things immediately, that we can take some time. I think that pretty much overlaps with my suggestion of either the regulatory sand box or being hesitant. Supposedly there is $6 trillion that can be invested. Nobody is going to do it immediately so there might be a couple "bad things" that come out that are still within the
constraints of the law. And okay, they got a deal, but those are the types of things we can regulate against.

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

So, finally my prosaic suggestion other than the big strategic ideas is that I don't
understand why the territories of U.S. Virgin Islands and P.R., Puerto Rico, you must be physically located there. Because I'm presently having efforts to help both of them and so you're excluding me from one for another. I'd also say that, you know, in many cases like I think it's Act 2122 where they've been able to get a lot of hedge fund money down there to help with economic development. It shows you that, and I know that people have been coming through about kind of nexus in geography and stuff like that. I would urge general, complete flexibility at least in the beginning until we see what happens and what's the best way to do it. Thank you very much. I welcome any questions.

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

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

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

MR. DINWIDDLE: Thank you, sir. Okay,
our next speaker, number 11, William Cunningham
from Creative Investment Research. Welcome sir.

MR. CUNNINGHAM: Welcome. Good morning, thank you for hosting this. I am William Michael Cunningham. I run a company called Creative Investment Research. We create impact investments and have been doing so for the past 30 years.

Now, my testimony concerns the general goals, regulations and fairness of the opportunity zone program. According to real capital analytics and economic innovation group, there are 8,762 census tracts that have been designated. There are 1.6 million businesses in these designated census tracts. There are 24 million jobs in these census tracts, 50 billion in annual acquisition volume and 34 billion in commercial construction starts.

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

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

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

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

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

Millions of American's are currently experiencing a tax refund decrease. The average American tax refund was 8.4 percent lower in the
first week of 2019 then it was one year ago under the pre-Trump tax code. Finally, and most importantly and most germane for this discussion, a real estate investment firm co-founded by President Donald Trump's son-in-law and advisor, Jared Kushner, will benefit from the opportunity zone program. This means that Mr. Trump will benefit directly himself. We think this is a violation of Article 1 section 9 and clause 8 of the U.S. Constitution and I'll talk about what our preferred solution is for that problem.

The opportunity zone program diverts needed tax revenue from public and public purposes and places the revenue in the hands of a demographic unrepresented of the U.S. Population as a whole, mainly wealthy and white people. Given the desperate conditions of the community selected, the opportunity zone community selected, it's no surprise that state and local governments and non-profits, all these guys, of course they're in favor of the opportunity zone program. They're being starved, they should be able to get money
directly from the federal government to actually
do what they need to do, to repair the damage
that's been done in a lot of these communities.
Instead, we're going to flow that money through a
bunch of wealthy white people. Thank you very
much. How's that going to work out?

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

So, we see this program as possibly,
possibly having immense negative social returns
specifically for the African American community.
There are some ways to fix the program and again,
I'll talk about that. But it basically, it's
based on greed. The opportunity zone program is
based on greed and the facilitation of greed and it follows a pattern of falsification and fraud that for us is easy to detect as we did in 1993.

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

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

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

So, I think that basically summarizes our approach. We get it, we get it. The needs in the communities are so large. People are so desperate for solutions to the economic issues
that they face that they've glommed onto this opportunity zone program as the way to relieve some of the economic pressures in these communities. Based on the performance of this administration that I just outlined, we would have to conclude that this program might be a fraud.

Any questions?

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

MR. CUNNINGHAM: Thank you very much.

MR. DINWIDDLE: Thank you, Mr. Cunningham. All right, next up a pair of speakers for slot number 12. Adam Harden and Chris Goodrich. Welcome gentlemen.

MR. GOODRICH: My name is Chris Goodrich. I'm here representing the State Bar of Texas tax section and the comments that we submitted to Treasury regarding the proposed regulations. Our first comment relates to the interaction of the rules for opportunity zones with passive activity loss deduction limitations. Consider the fact that as a general rule, a
taxpayer can only deduct losses from a passive activity against his or her passive income. However, there is an exception for that that says when you dispose of your entire interest in a passive activity, you can then deduct those losses against your other active income.

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

The first question is if you take a look at 469 g, what it says is we recognize that there is a disposition of the entire interest when the gain recognized equals the gain realized. The
problem is you have to say, well gain realized when? Was it upon initial disposition of the passive activity that gave rise to the capital gain being rolled over or is it somehow a gain realized later in 2026? And if you say it's the latter, the problem is that the basis step up rules for 10 percent and 15 percent after 5 and 7 years respectively, means that the gain realized upon the original disposition will never recognize the gain recognition subsequently in 2026. So, that's the first problem. If you say, okay no it's the gain realized, when the gain is recognized subsequently around 2026 or earlier if there is a sale of the opportunity zone investment, then you have a match up and it works. The next question is, if you have your suspended losses from a sold passive activity exceed the year of sale gain that is recognized from the sale, what happens with the -- when will the excess suspended losses actually become deductible. Is it going to be in the year of selling the passive activity that gave rise to the
rollover gain or will it be later as the gain is recognized after year, in 2026 or earlier disposition of the opportunity zone investment.

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

Admittedly, the second approach would be to defer the deduction of all the suspended
passive activity losses until you actually recognize the gain in 2026 or the earlier disposition of the opportunity zone investment. This would be consistent with how things are treated right now for purposes of the installment sale provisions and for purposes of like kind exchanges.

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

My last comment relates to asset valuation. This comment has been made by a prior speaker. But we respectfully request that the
used unadjusted cost basis as opposed to a
depreciated cost basis and valuing the assets.
This provides for simplicity and it doesn't take
something that, over a period of time, that once
qualified all of the sudden ceases to qualify
because of paper depreciation deductions. Thank
you. Our next comment.

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

So, I thought I would have ten minutes
to speak separately so I was patting myself on the
back for my six-minute speech so I'm going to
speed read through here. So, my name is Adam
Harden, I'm a tax attorney with Norton Rose
Fulbright based in our Texas offices. I'm here
today to present on behalf of the state bar of
Texas in my capacity as the co-chair of the Taxes
and Finance Committee. We first wish to thank you
for providing this platform in which industry participants and community stakeholders may come together. To provide input in order to seamlessly implement investment initiative which will help bring capital resources and balanced opportunities to areas of Texas and of our country that deeply need them.

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

So, in other words, this program has the capacity to benefit both urban and rural white collar and blue collar, Democrat and Republican
communities and it provides an opportunity for all Texans and we thank you for your herculean efforts to help implement this.

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

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

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

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

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

Extension with respect to the above spending schedule safe harbor for reasonable retainage similar to that found in 148-7e2 which states that an issue of tax-exempt bonds does not fail to satisfy the spending requirement for the
fourth spending period as a result of unspent amounts for reasonable retainage if those amounts are allocated to expenditures within three years of the issue date. Similarly, if a taxpayer has increased its basis at least 95 percent at that 30-month mark and finishes its substantial improvement within the subsequent six-month period, we believe the taxpayer should still be considered to have satisfied the 30-month requirement of the proposed regulations. And I'll skip down to the final stand alone.

Finally, we respectfully request that an additional standalone exception be made if a taxpayer that reasonably expected to meet the 30-month substantial improvement requirement fails to meet the deadline due to the project being located in a federally declared disaster area. This is important, we've seen this a lot in the Gulf region. There exists a long-standing tradition of leniency by both the service and Treasury for taxpayers and businesses that suffer from qualified disasters. We suggest including a
30-month extension for those taxpayers who are located within such areas and such extension may begin as of the date of the natural disaster or at a later date that may be deemed more appropriate as dictated by the scope of the recovery. Again, we thank you for allowing me to go over my time.

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

MS. HANLON-BOLTON: I have a question.

MR. DINWIDDLE: Yes, some questions.

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

MR. HARDEN: Exactly.

MS. HANLON-BOLTON: Okay.

MR. DINWIDDLE: Any other questions, okay. Thank you, gentlemen. Let's see we're just past 12:30. Let me just check if speaker number two has arrived. No? Oh you're 13, you're ready
to go but I think we're going to take a break but I appreciate that you're here. But did Darren Levi from the National Community Reinvestment Coalition arrive? Okay, I'm afraid there has been a delay. I appreciate your readiness number 13 but we are both at about 12:30 and half way through. So, I think this is a good place to take a break because we do need a break. I know it's going to be a logistical challenge to get everybody out and back in, in short order but I would like to try to do it in about 45 minutes or so. So, we're going to take a break here and if we can reconvene at 1:15 to continue.

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

MR. DINWIDDLE: And the escorts can show
MS. HANLON-BOLTON: And the escorts will be showing you where to go.

MR. DINWIDDLE: Okay, is that it?

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

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

(Recess)

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

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

So, with that, we'll start with Speaker
No. 13, Ms. Jill Homan.

MS. HOMAN: Yes.

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

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

MR. DINWIDDLE: The after lunch crowd is tough.

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

Finally, by way of background, I serve on the board of directors of the First Opportunity Zone Focused Trade Association, the Opportunity...
Zone Association of America (OZAA). I appreciate this chance to speak with you today. While my company is partnering on a number of opportunity zone real estate development projects, I am most proud of co-developing a $50 million student housing project in an opportunity zone in Maryland. We are starting construction in July. There, we are doing exactly what the legislation envisioned -- fulfilling a need -- housing for students in retail -- which has a noticeable community-based affect. While my written summary, which was submitted, addressed eight subjects, in the interest of time, I'll concentrate on those subjects most likely to unlock still hesitant investors -- which are five topics.

The first -- relaxing the 180-day investment period for individuals who realized a gain during the first year of implementation of the opportunity zone program. In the proposed regulations, Treasury allowed a partner in a partnership which generated a gain to start the 180-day period at the end of the taxable year, and
that made perfect sense. But many individual taxpayers recognized a gain after January 1, 2018, and in the early months of OZ activity, they were reluctant to invest within the 180-day period because of then absence of clear guidelines on a number of material subjects.

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

Next -- reasonable cause exception of Code Section 1400Z-2(f)(3). Treasury has already recognized the need for a reasonable cause exception to the 90 percent requirement of Code Section 1400Z-2(d)(1). The Real Estate Investment Trust income tax rules found in Internal Revenue Code 856(c)(6)(b) and Treasury Reg. 1.8567 provide a workable test for determining whether such a failure is due to a reasonable cause. In the REIT
context, there is reasonable cause that the REIT exercise ordinary business care and prudence and not willful neglect in attempting to satisfy the requirements of such care and prudence is exercised at the time each transaction is entered into by the REIT.

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

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

Given that the legislation permits a
full 30 months for the substantial improvement of
a property -- allowing 36 months for the qualified
opportunity fund or qualified opportunity zone
business to become active in the conduct of a
trade or business -- is reasonable and consistent
with the legislative intent of the statute.

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

Fourth -- a safe harbor for a qualified
opportunity fund that directly own qualified
opportunity zone business property. Many
qualified opportunity funds will raise capital
prior to the time it is needed to be deployed at
the qualified opportunity zone property level.
The proposed regulations generously provide a
31-month safe harbor for a qualified opportunity
zone businesses; that is, qualified opportunity's own partnerships or corporations, in which a qualified opportunity fund invests. But the safe harbor does not apply to a qualified opportunity fund that intend to directly own and operate qualified opportunity zone business property.

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

The result of this rule would enable a
qualified opportunity fund to have 12 months to
accumulate and then deploy equity capital when
acquiring qualified opportunity and business
property directly.

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

This concludes my remarks. I appreciate
the opportunity to share with your comments and
recommendations on what I think will encourage
more investment in such a worthwhile program.

Thank you for your attention.

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

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

MS. HOMAN: So, there's instances -- so, I spend a lot of time with the investor community and those who are -- whether family offices or high-end wealth investors looking to invest in a fund -- and many of those have sold businesses and don't have the ability to time their gains; and then they haven't anticipated lining up investments. And so, the whole time period is a challenge. And so, any relief in just that time period will be incredibly helpful. I know -- I'm actually working with a family, for example, and they've had a gain event at the end of the year, and they have this year to really find and identify gains, and it's really the intent of the
program to try to get this capital into the zones but sometimes investors don't necessarily have the right investments identified.

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

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

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

    MS. HOMAN: Great.

    MR. DINWIDDLE: Are there any other questions?

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

    MS. HOMAN: Correct; because I know real life examples. A mentor of mine had a gain and you would've think all I've been talking about is opportunity zones for a year, and called me a couple of weeks ago, Jill, so I have this gain. And so, it's just -- there's individuals who had that gain event and not only were not comfortable, but you also have a time period where the terrific law firms and accounting firms are still getting up to speed and getting comfortable with, you
know, these investors making substantial investments. And so, you also have not just the investors' concern but their counselors' concerns; and then you also have the marketplace.

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

MS. HOMAN: Great. Thank you very much.

MR. DINWIDDIE: Thank you, Ms. Homan.

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

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

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

So, we've been in 20 states in the last 2 years, going to low-income communities trying to figure out ways to do economic development.
They've looked at this program and the way current financial markets operate, they've been left out and this program doesn't have any downward pressure to include them in the way this is going to go forth.

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

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

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

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

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

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

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

And fifth, 20 percent of apartments or condos being financed by a fund should be dedicated to rent-controlled housing. Our perception is that we know the investors won't like this. We know (laughter) -- but we rather see this program fail than another $2 trillion dollars have to be borrowed by taxpayers to fund, you know, the investments of billionaires; and if
they are not willing to make these investments
then we know that the idea that they're somehow
serious about economic empowerment, economic
development is false.

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

MR. DINWIDDLE: Thank you. Any
questions?

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

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

MR. KIMBLE: Correct.

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

MR. KIMBLE: Based on, you know, my
reading of the statute and the rule that you put
out, I believe you can require the geographic
diversity to qualify. I do believe that's one of
the things you can do; and also when you talked
about the ability to -- where jobs -- you asked
the question of whether jobs were attached to the
property or not -- I think in those ways you can
affect this. I do believe you can require --
because there is a civic requirement that there's
societal benefit -- I mean it's part of the
preamble -- I do think you can look at some of
that and bootstrap some of this to make it work.

I mean we've petitioned Congress to
change -- I mean we are petitioning Congress for
these changes -- but I do think there are some
requirements you can place on this under your --
with the 50 percent rules on profits and income.

So, I think, there's some things you can do.

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

MR. NOVEY: Our mailboxes are open; our
phone calls too; but I'm trying to take good
notes, but something if it comes in, in writing,
it's particularly helpful.

   MR. KIMBLE: Absolutely. Thank you,
guys.

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

   MR. CULLEN: Good afternoon.

   MR. DINWIDDLE: Good afternoon.

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

   Today, I'm speaking on behalf of the IPA
which represents approximately 200 member
companies and over 1500 individual members
involved in all aspects of the nation's portfolio
diversifying investments industry. The IPA brings
together the investment managers; broker dealers; investment advisors; and industry service professionals. We're dedicated to driving transparency and innovation in the marketplace.

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

My testimony today highlight some of the key issues we presented in our public comment letter that we presented. I would like to focus on four key issues. The first one has to deal with flexibility in structuring the exit from these funds. The second topic will the use of debt financing in connection with these funds. I'd then would like to talk about the use of traditional tax-free or tax-deferred transactions in connection with these funds; and then, finally, the construct of rollovers within the funds during the 10-year holding period.
In connection with the first topic -- properly structuring the exit -- I'd like to echo the statements of the speaker who just spoke before me. The statute's specific language created a construct which requires an investment vehicle -- a partnership or a corporation -- as an aggregation vehicle from which investments would be made in these communities. Diversification isn't always required, but it's beneficial and important.

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

There are those who are interpreting the statute narrowly, in my view, to say that on exit one can and should only be able to sell an interest in the fund; and it brings to bear a
question as to whether or not one could sell
assets and qualify for the exclusion benefit after
the 10-year holding period.

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

To do this, you're going to need to
allow asset sales. I acknowledge importance of
your obligations and the framework in which you
must operate to implement what has been provided
to you in the statute. I believe you can do so here.

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

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

The reason why this is also important from an economic standpoint is history has shown that if you construct a transaction that requires a sale of an entity, buyers will require a discount in that purchase price because they don't
know the latent liabilities that may or may not exist within that entity. Allowing for asset sales is going to give greater confidence that both the return on capital will be there, thereby increasing the frequency of which there'll be investments within these communities.

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

Second, I would encourage the ability to use debt financing proceeds. Section 1400Z added to the Internal Revenue Code; it didn't amend or take away from subchapter K. I would like us to continue to be able to utilize debt financing proceeds distributions in a manner that is already allowed under the Section 752 Regs. I acknowledge, inherent within the statute, is this
concept that the equity invested should remain
invested for a 10-year period of time to fulfill
the long-term commitment that this program is
intended to provide for these communities.

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

The third topic is tax deferred
transactions within these funds. Setting up these
funds isn't going to be as easy as one would
think. I love the fact that inherent in the
statute we're requiring economic development. The
fact that it has to be original use or substantial
improvement really speaks to what we're trying to
drive in these communities. But let's be honest,
development and startup businesses is the hardest
lift for real estate professional or
entrepreneurs; and there are going to be winners
and there are going to be those that are unsuccessful; and we should support both of them.

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

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

Finally, the last request I would make is in connection with the statute's requirement
that you provide some sort of reasonable period
for rollovers of investments within the 10-year
holding period. That one remember -- again,
because an importance of this being original use
or substantially improved -- that these are
difficult projects. You've already acknowledged
inherent in your actions in the proposed
regulations that there needed to be a runway, and
that the 90 percent test's 6-month timing period
didn't match with development associated with
original use. And so, wisely, you gave us a
31-month period as long as you have a working
capital safe harbor. When you think as what needs
to be reasonable when you have a rollover within
that 10-year period, you can look to other areas
of the code that have determined what is
reasonable.

One might look to Section 1033, and look
at the three-year period that is provided there
when one has a condemnation proceeding and is
given three years to reinvest the proceeds from
that condemnation.
A third idea is to design one or more hybrid platforms that enable conventionally-owned private or publicly-traded companies that intend to locate in Opportunity Zones to contract with groups of managers and workers, employees, organized as professional employment organizations, PEO's or staffing companies, where those staffing companies, are themselves structured as ESOPs or cooperatives.

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

Fourth, through any of the three prior points of entry, I hope we might be able to design new structures for collaboration with Opportunity Zone Funds that will be taken off here, that will make it possible for employees, workers and managers in these firms to participate in the appreciation of real estate value, and building a real estate value that will happen in these structures. That should be possible.
None of these four points of entry into the opportunity zone and employee ownership idea, will be possible however, without regulatory clarification.

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

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

Without wading too far into the technical details of ESOP investing, the optimal use of ESOP's structures takes place if employees
own 100 percent of the stock of the enterprise, making use of what is called an S corporation ESOP, (inaudible) that 1997, '99 time period reference.

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

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

This language has been tried and tested. Our hope is that this Body might, incorporate it by reference and make use of it as precedent.

Thank you very much.

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

MR. MACKIN: Thank you.

MR. DINWIDDIE: Thank you for your
comments. We appreciate it. Okay. Our next speaker, Steve Glickman from Develop Advisors.

Thanks.

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

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

Over the last six months I've traveled around the country, I've met with hundreds of investors and wealth managers, real estate
developers and investors, venture capitalists, mayors, community leaders, and fund managers, trying to help them figure out this marketplace, how to use this program.

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

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

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

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

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

First is the timing of when initial investments have to deployed, we've talked about this at length, let me say, without a doubt, and I think part of your letter from the congressional co-sponsors last month, Congress intended this program to be used by diversified portfolio-style
funds, being intended for Treasury and IRS to come up with the time period for both investment and reinvestment.

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

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

Related to that is the reinvestment of interim gains, this is the most important issue I believe that needs to be address in the Regs, again, made clear in the congressional letter is
Congress intended there to be reinvestment in these funds, and intended that reinvestment to be done in a way that didn't either sacrifice the tax benefit or lengthen the holding period, than in investor had to invest in their Opportunity Funds.

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

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

Other cases, because they have to make a fiduciary decision to sell early. They should be allowed to reinvest that proceeds and hope for the
remainder of that tenure holding period in a new asset to achieve the full benefit.

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

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

The treatment of land. So the regulations make clear that land can never be originally used, in the revenue ruling, but also
that it doesn't have to be substantially improved in the case a building is being improved on top of it. I think it's much quite a bit of confusion in the market of what happens when you just buy wrong land.

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

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

Substantial improvement: substantial improvement, many times I've heard of the circumstance where a real estate developer has to substantially improve the property and we have a statute within 30 months increased its basis by 100 percent, but that property then is incomplete, it's not capable of generating revenue, requires
new investment to be completed.

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

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

I believe they should be allowed as they are now, under partnership tax law, but I do believe that Congress intended for the original equity to stay invested for the period of time of their investment in that asset, and thus refinancing should only be allowed to the extent
it represents appreciation. So, a return on
capital as opposed to a return of capital.

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

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

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

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

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

I want to address and advance the question on server farms, or data centers. This program does not test job creation, and should now. While those are -- it was meant to be a program designed for economic development, and
while those are not the types of investments that create a lot of jobs, and I think would be a minority of the investments in this program regardless, there are programs that lead to economic development, they provide local property taxes, and sales taxes on the extensive amount of construction, energy use and equipment purchases that are needed in those types of facilities.

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

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

That was certainly not the intent. I believe a wind-down period is both expected by the
market given the number of diversified funds that have been created, and it's the only way to get large-scale capital flowing through this program.

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

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

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

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

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

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

MR. DINWIDDIE: Thank you. Before we
take it to questions, I'll just respond to your comment or question. That normally there's not a 90-minute line to get into an IRS Hearing. And I do appreciate your perseverance, and on behalf of the Agency, I apologize for --

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

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

I will just use this moment to say, you know, to the extent you know anyone who had that, please apologize -- to please accept or apologies from the IRS. There seems to have been some confusion, and I'm not sure exactly why, because we had provided security ahead of time, a list of the number of people who were planning to attend.
We will make sure for the future hearing, form NPRM- or other hearings, obviously this is a popular topic, and we appreciate all of the comments, we do appreciate those who waited in line a long time. And we will use a larger facility to make sure, at least to try to make sure that we don't have the same problem in the future.

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

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

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

So, with that, anyway as an interlude. Let me see if there are any actual questions
regarding your comments. Okay. Well, we appreciate --

MR. GLICKMAN: Thank you for the time.

MR. DINWIDDIE: Thank you very much.

SPEAKER: Maybe JFK Stadium next time.

(Laughter)

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

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

Welcome!

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

There were a lot recommendations in those comments as comments with that, many of the issues that we covered have already been discussed
here today at length.

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

So, Section 752 comments were -- understood that the proposed regulations do say that the 752 allocation of debt would not be treated as a separate investment, or separate interest for purposes of determining -- have the step up replies, that you wouldn't have two separate interests. But there is a lot of confusion about the interaction between 1400-22, and Subchapter K, and how the 752 Debt Allocation Rules, come into effect.

Do you get basis? Does the investor get basis for it's such share of 752 debt. Given the statute talks about the basis of the investment being zero, while people are generally confused
here, and our recommendation was certainly that we need clarification that the partnership basis includes the 752 debt share for purposes of loss deductions during the period the investment is held, and for purposes of distributions.

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

Going forward, we recommended that non-liquidating cash distributions did not result in taxable gains to the extent they would not result in taxable gain under Section 731. We also recommended that the treatment of non-liquidating distributions of property also receive the usual subchapter K benefits. We recognized that to the extent property is distributed, that might clearly reduce the 2026 gain pickup because the investment would be substantially less because of the prior
property distribution. And to avoid any abusive situation we thought in 2026 the gain pickup would include the prior value of property distributions. Now, clearly, if a taxpayer chose to have a non-liquidating distribution of property prior to 2026, it would also potentially reduce its 10-year step-up opportunity, and so we don't necessarily see that happening a lot, but that there are circumstances where we could see a taxpayer taking that route.

Treatment of -- we talked about whether or not in our comments a special anti-abuse rule was needed. Our comments did not suggest that the investments stay given the normal -- in particular given the normal operation of a lot of real estate programs, particularly with guaranteed financing, Section 8 financing or whatever, FHA loans, where the loans are 90, 95 percent of value after several months of holding, and that's typical in the lending and business market in real estate. We did not think that the initial investment had to stay in the partnership.
On the other hand, we thought that there were enough anti-abuse rules in the subchapter K to address abusive situations where it's just cash in with the intent of financing out the money. But if that's customary in the market, if the debt is used to pull the cash out, it would be up to the anti-abuse rule out there already I think to deal with that situation.

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

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

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

Okay, moving on to land, we talked a lot about land here today. I do think Revenue 2018-29
was helpful. It did create a lot of confusion. I mean, you do have a situation where a fund is taking 24 months to renovate property, which without a working capital exception at the fund level adds to, you know, confusion out there in the tax world. I mean, was that fund paying penalties along the way for all that cash it was holding? We don't think so. That was probably not intended.

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

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

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

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

We also talked about remediation cost for the land. What happens if the -- that's it? Okay.
MR. DINWIDDIE: That is the 10 minutes.

MR. WILENSKY: I welcome your questions.

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

MR. WILENSKY: Appreciate it. Thank you.

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

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

MS. STAUDACHER: Good afternoon. Good afternoon and thank you for the opportunity today. My name is Gina Staudacher. I am a member of the law firm Howard & Howard where we have offices in and near many Opportunity Zone locations. I am
going to be brief because I do have a flight to
catch back to Detroit, but I really appreciate all
of the comments that were made.

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

So first, I want to commend all of you
on the thoughtful comments that came out in the
proposed regulations last year. They were
tremendously helpful and they did allow us to pull
the trigger on a number of investments that we
were already looking at. So it did put some speed
and action into investments from family offices,
so that was a very exciting -- those were very
exciting transactions that did happen as a result
of your good work.
So I do, I commend you for those regulations and for -- although it may not have felt speedy at the time, but when they did come out they were very helpful.

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

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

First, in the area of estate planning. We encourage you to consider expansion of the regulations to allow an election by a grantor or its estate, to bifurcate the election, the Qualified Opportunity Fund election, in the instance where a grantor may die before December 20, 2026. Now I know that sounds specific, but the reason for that is that to the extent that we have family offices and estate plans that are already in existence, unwinding some of that to take advantage of the transfer of wealth into
Opportunity Zone instances could be even more complex and is pushing those types of options outside of their estate plan. So it's something to think about.

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

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

And then my next comment mirrors many of
the others in front of me. Seeking clarification and maybe expansion on the definition and eligibility of the sale of the underlying investment as a means to exit the OZF Qualified Opportunity Fund itself. And based on our current efforts in advising small businesses and family offices, we have found that the sale of an interest in the Qualified Opportunity Fund is the only means by which exiting that investment is a deterrent to that investment.

The results of having to sell the interest of the Qualified Opportunity Fund to exit an investment creates unnecessary complexity in structuring a workable structure for a Qualified Opportunity Fund investment and impedes the marketability of the Fund and its underlying assets. We believe that Congress did not intend for this result, as this poses significant and unnecessary exit challenges that are contrary to normal business practices and diminish the marketability of the OZF in reducing the overall value of the underlying assets.
In summary, we are seeking improved guidance regarding the liquidation of QOF investments, and particularly the ability to sell the underlying asset as an option to exit an OZF investment.

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

MR. DINWIDDIE: Thank you.

MS. HANLON-GOLTON: Thank you.

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

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

MR. HARVIER: Good afternoon. First of all I would like to thank the panel for giving me this opportunity here this evening to voice my comments into record. Those of you that might know Scott Dacey, I'm not Scott Dacey. Or you'd think Scott Dacey stayed out in the sun quite a
Just by way of introduction, my name is Martin Harvier, I'm the current President of the Salt River Pima Americopa Indian Community in Arizona. Our Community is located in the Phoenix Metropolitan area where we share common borders with the Cities of Scottsdale, Tempe, and Mesa. We were established by Executive Order in June of 1879 by then President Rutherford B. Hayes.

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

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

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

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

While our Community is pleased to have received this opportunity, I would like to take a moment to outline the specific problems that exist
in the proposed regulation facing Tribes, and
perhaps any other jurisdictions that are looking
at economic development projects on publicly owned
lands, including State, County, and other
government owned lands.

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

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

Specifically, an Opportunity Fund must
hold at least percent of its assets in Qualified
Opportunity Zone property, which includes
Qualified Opportunity Zone business property. And with respect to the Opportunity Zone businesses, at least 70 percent of the real property owned or leased by the trade or business must be Qualified Opportunity Zone business property.

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

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

Further, the proposed regulation also incorporate another method for measuring asset values when the applicable finance statement method is not applicable, by using the cost of the
Recent changes to the GAP accounting acquired the recognition of leasehold interest at the present value of the prospective lease payments over the term of the lease, often between 50 and 99 years. Under the applicable finance statement method the extensive term of these leasehold interests likely results in a non-qualifying asset value of greater than 10 percent of the Qualified Opportunity Fund's total asset, and possibly exceeding more than 30 percent of the tangible property asset of the Qualified Opportunity Zone business. Which may cause the Qualified Opportunity Fund to fail the 90 percent asset test and may cause the Qualified Opportunity Zone business to fail the 70 percent tangible property test as well.

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

Solutions. With these points in mind,
our Community would like to propose both a short-term and long-term solution. The short-term solution is to clarify the proposed regulation. And the long-term solution is to seek a technical change to the Opportunity Zone portion of the Tax Cuts and Jobs Act of 2017.

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

We believe having a non-qualifying asset
with zero value should not be problematic. We are aware of the preamble to the proposed regulations request, comments on the suitability of the two valuation methods, and whether another method, such as adjusted tax basis, would be better for the purpose of assurance and administration.

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

I am hopeful you will consider and include the Community’s recommendation into the final regulations. Providing clarity will unlock the full benefit of the Opportunity Zone incentives on Tribal Lands and on State and
Municipal owned lands.

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

MR. DINWIDDIE: It helps.

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

MR. DINWIDDIE: Thank you. Any questions? No? We have heard from many people that in addition to the question of long-term
leases where real estate is not susceptible to any other kind of transfer of use, many startups that might be appropriate development vehicles in low income communities, necessarily will operate with leased property, personal property in terms of what they use to run the business. And we have heard many people say that if the statute says that owned and leased property goes into the denominator for what is now proposed to be a 70 percent test, there ought to be some way in which it can get into the numerator as well.

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

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

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

MR. HARVIER: Exactly.

MR. DINWIDDIE: A lot of other people lease even though they could sell. And a lot of businesses end up with leased real and personal property, and they have asked us to respond to

that business exitancy from the investors' side.

And from what you've described, it seems as if a rule that addresses that need, or fails to address that need, would be equally good or not good for you all. And I just want to make sure that there isn't a special aspect to your circumstances.

MR. HARVIER: No.

MR. DINWIDDIE: I do appreciate that.

Thank you.

MR. HARVIER: Thank you.

MS. HANLON-BOLTON: So I've been told
recently that the, for lack of a better word, permitting process for you to lease out land to outside the Tribe, you have to go through the Department of Agriculture -- Interior.

   MR. HARVIER: Interior.

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

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

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

   MR. HARVIER: No, I think it just --

   well --

   MS. HANLON-BOLTON: It depends.
MR. HARVIER: It's a process, but I believe we have a good professional staff to have good relationships.

MS. HANLON-BOLTON: Okay. Thank you.

MR. DINWIDDIE: Anything else?

MR. HARVIER: Thank you.

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

MR. LEVERETTE: Good afternoon everybody.

MR. DINWIDDIE: Good afternoon.

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

Well once again, my name is Todd Leverette. And I serve as a Program Manager of the Legacy Business Initiative at the Democracy at would.
Work Institute. Where we uplift the ploy and incubate employee ownership as a tool for building a better and more just social and economic system here in this country.

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

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

Work of Co-Operative are also afforded a
preferred tax status enjoyed by the wider world of Co-Operatives under Sub Chapter T of the Internal Revenue Code, which some of you may be familiar with.

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

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

You've heard some people come before you today, specifically heard Mr. Chris Mackin come before you today and explain why it's important
that such a landmark piece of legislation, meant
to bring investment to the zip codes and
neighborhoods, and most importantly the people,
that need it the most, why it is it's important
that this legislation be read as much as possible
in a way that includes the people and the
businesses that reside within those communities
and should include one of the greatest tools, and
I believe this honestly, one of the greatest tools
ever created for business and job preservation for
employees' quality of life improvement and family
wealth creation, and business owner succession.
And I'm referring to employee ownership models of
business ownership, including ESOPs and worker
Co-Ops.

So I'm not going to repeat what Chris
has so eloquently and persuasively said, but as
the last speaker and the guy keeping everybody
from going home, I feel that it's my
responsibility to highlight and accentuate some of
those important points that he brought up a little
bit earlier.
First of all I'd like to accentuate his recommendation, Mr. Mackin's recommendation to include synthetic equity or structured equity within the definition of Qualified Opportunity Zone stock. This would allow for employee owned enterprises like ESOPs and worker Co-Ops, the businesses that I would argue are in the best position to distribute the benefits of the enterprise growth that will come from Opportunity Zones to those workers and families that actually live and/or work in those Zones. This would allow for these enterprises to participate and to flourish along with other business enterprises that are able to take advantage of Opportunity Zone based investment.

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

As Chris was saying, there's a healthy and growing world of market and socially aware impact capital that if allowed to, can serve as a
multiplier of the possible positive impact of Opportunity Zones.

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

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

Finally, I want to stress the need to ensure that a substantial and direct benefit of this program accrue to the people that live in
these zip codes and the families that cared in, worked in, and invested their life and labor and capital in these zip codes long before the summer of 2018. So relatedly there probably should be some type of, if possible, job creation and/or retentional requirement within the Opportunity Zones.

And if that can't be done, then maybe this legislation, as much within your power, needs to be tailored narrowly so that any possible damage, and we've heard a lot of speakers talk today about some of the damage that could be caused by this legislation, that that damage would be ameliorated. And I think that's exactly what Congress would want to close, I'd like to say it's an honor to be a part of this process. This is my first time being able to participate in the system in this way, and it's quite humbling. It gives me a greater understanding and respect of the strength of our democratic systems here in this Country. So I definitely appreciate the opportunity.
And since I'm the last person, may I be so bold to say that on behalf of everybody in the room, thank you all very much for sticking with us through a very long day. I hope that everybody's comments have been valuable to you, and thank you for your thoughtful consideration of our words.

MR. DINWIDDIE: Thank you.

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

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

MR. LEVERETTE: I'll be back.

MR. DINWIDDIE: Good.

MR. LEVERETTE: Thank you very much.

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

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

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

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

My specific focus is in making sure,
since we already know that the top down kind of
didn't work because of the open V that we're
working with in the economy now. That as we're
implementing this I would like to propose that we have a delegate community ordained and advocating in the style up, one whoever is proposing or has a hedge fund or who has the funds, that we have somebody from the community in that space to oversight. And also I want the people -- excuse me, I didn't plan on talking, I'm kind of shaking in the throat. That's okay.

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

And I'm blind eyed, I have only the head in the fight that I want to help, and I'm here for
that. So I believe that we need a delegate on
each one of these funds, whoever gets it. Well
right now I know that W.C. Smith kind of is in my
area. I want to make sure that we're managing
that, and whatever he has in that, we're seeing
that in representation of the community that their
said to benefit.

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

Thank you.

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

MR. CARNEY: Thank you for this
opportunity at this late juncture in the day. My
name is Brent Carney, I'm a Partner at the law
firm of Maraziti Falcon. We're located in Short
Hills, New Jersey. And our firm serves as special
redevelopment counsel for three cities in New
Jersey. One is the City of Newark, the City of Perth Amboy, and the Township of Carney's Point.

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

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

But there were comments about if it's
vacant land for at least a year then that original use should be taken into account.

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

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

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

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

And just as a simple example, perhaps it's an industrial use and it is industrial use that needs to be taken down to make way for a building that has, say commercial on the first floor, residential on the upper floors. That creates a revitalization in the area. And right
now, without that in the definition of original use, I think the opportunity zone where it overlaps with a redevelopment area will have very limited potential. It will be much smaller type projects. It would just be the rehabilitation of an existing building, for example within the 30-month period.

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

MR. DINWIDDLE: Any other questions?

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

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

To the rest of you in the audience, thank you for bearing with us and some of the logistical difficulties that we faced, particularly those who had to wait in line an extensive period of time to get access to the building. So, thank you very much for your patience in doing that. I'd also like to say a special thank you to the escorts who have helped
us all day to make sure that those of you who are
here as visitors can get in and around the
building. With that, we will officially conclude
this hearing on the proposed regulations investing
in qualified opportunity funds reg 115420-18.

Thank you all.

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

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CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

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

(Signature and Seal on File)

Notary Public, in and for the District of Columbia

My Commission Expires: March 31, 2021