

Incremental OZ Reform Could Be a Step Backward

To the Editor:

There's a lot to like about the Opportunity Zones Transparency, Extension, and Improvement Act.¹ Among other things, it would eliminate some abusive zones and require more reporting. Still, it tackles none of the program's deepest flaws. Opportunity Zones (OZs) were meant to target persistently left behind communities. This did not feature in the law as passed, and the proposal does nothing to fix that.

As sold to the public, OZs were supposed to fill the gaps of existing programs. According to the 2015 paper that debuted the concept,² the economy had improved since the Great Recession, but not for everyone. The largest, most remote islands of poverty were stuck in a downward spiral. Jared Bernstein and Kevin A. Hassett argued that in these places, the "difficulty with which unemployed workers relocate" leads to "distressed and traumatized workers who face plummeting incomes, stalling career progressions, and cracking self-confidence." To break that spiral, they recommended specifically targeting these places.

OZs may achieve some other good, but they have not kept this promise. As the Urban Institute noted, "the structure of the incentive appears to be least workable for the projects that could have the highest impact" around the issues described in the 2015 paper.³ By adopting the 8,000-person census tracts used in the New Markets Tax Credit, the OZ statute made no special effort to target large, remote islands of poverty. And by subsidizing taxable gains, it deters investment into the neediest communities. Ironically, the communities

overlooked by other programs have been overlooked yet again.

The latest proposal does nothing to address this. Extra reporting asks the wrong questions. To determine whether OZs fill the gaps in existing programs, it's not enough to accumulate increasingly fine-grained details about their operations, such as number of employees or residential units. One must also ask about the communities that they do *not* serve. In 2019 and 2020, 63 percent of zones received zero capital under the program.⁴ Congress should be asking why those zones are different from the others. And if the difference is systemic, how can we encourage investment in them.

As for eliminating abusive zones, the most prosperous 1 percent of zones were already doing quite well when they were selected in 2018. Investors noticed: In 2019 and 2020 those zones received 42 percent of total investment.⁵ Marie Sapirie's article describes this as causing "public relations difficulties." I hear this phrase so often that I suspect it too has a public relations origin. In reality, the difficulty is chronic.⁶ No matter how many tiers of wealth you eliminate, the zones will always have prosperous outliers. If we evict investors from those places, they will just relocate one level down. This game of musical chairs does nothing to stop investors from preferring Zones with wealthy neighbors, which is the opposite of the program's goals. The only gesture in the proposal that might help poor communities landlocked by other poor communities is the new "Community Dynamism Fund," which allocates \$1 billion for use by the states. But if this is the intent, it underscores the hollowness of the OZ experiment. Here we see an aggressive private-sector program turning to an old-school

¹ See Marie Sapirie, "Will Congress Finally Reform Opportunity Zones?" *Tax Notes Federal*, Apr. 25, 2022, p. 548.

² Jared Bernstein and Kevin A. Hassett, "Unlocking Private Capital to Facilitate Economic Growth in Distressed Areas," Economic Innovation Group, Apr. 2015.

³ Brett Theodos et al., "An Early Assessment of Opportunity Zones for Equitable Development Projects," Urban Institute (June 17, 2020).

⁴ Patrick Kennedy and Harrison Wheeler, "Neighborhood-Level Investment From the U.S. Opportunity Zone Program: Early Evidence," Apr. 13, 2022 (updated draft).

⁵ *Id.*

⁶ See Andrew Gradman, "What Good Is OZ Reporting if We Don't Agree on the Goals?" 38 *Tax Mgmt. Real Est. J.* 3 (Mar. 16, 2022) (arguing that OZ's deference to the NMTC's 8,000-person census tracts is the program's original sin).

government subsidy to patch up its holes; investors get to keep their OZ party going in exchange for a \$1 billion bribe, paid for by taxpayers at large.

According to Brett Theodos of the Urban Institute, OZ's "expense . . . is not justified by its slim social benefits." Before we authorize cosmetic fixes, we should be asking the experts what should be done to achieve the program's declared goals. If we settle for small steps like these, we'll never hold the program accountable to its original promise.

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