SMALL BUSINESS MAJORITY

Office of Associate Chief Counsel, Income Tax and Accounting
Attention: Erika C. Reigle and Kyle C. Griffin
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

RE: *Comments on the Proposed Rule on "Investing in Qualified Opportunity Funds" (REG-115420-18)*

Dear Ms. Reigle and Mr. Griffin:

As a leading representative of the 28 million small businesses in America, Small Business Majority is writing in response to the IRS's proposed rule governing investments made through Qualified Opportunity Funds (QOFs).

Small Business Majority is a national small business advocacy organization, founded and run by small business owners to ensure America's entrepreneurs are a key part of a thriving and inclusive economy. We actively engage our network of more than 58,000 small business owners in support of public policy solutions, and deliver information and resources to entrepreneurs that promote small business growth and drive a strong, sustainable job-creating economy.

Access to capital has been a persistent problem for entrepreneurs, particularly since the recession. Indeed, our scientific opinion polling found 90% of small business owners nationwide believe the availability of credit for small businesses is a problem, and 61% agree it is harder to get a loan now than it was in 2008. And, while it has eased in some parts of the small business community, there are significant gaps that remain in critical areas, especially for women and people of color, and in rural communities. For example, according to the 2016 Federal Reserve Small Business Credit Survey, only 40% of minority-owned firms seeking funding received the full amount sought, compared to 68% of non-minority owned firms.[1]

Opportunity Zones were created as a potential solution to infuse capital in underserved neighborhoods by allowing investors to use capital gains to finance development projects in low- and moderate-income areas. While we applaud the creation of Opportunity Zones as a mechanism for financing entrepreneurial activity in underserved communities, we are concerned the proposed regulations do not adequately ensure benefits from these developments will go to the targeted populations. The proposed rule specifies guidelines focused on real estate development, ignoring the potential for Opportunity Zones to benefit small businesses directly.

The guidelines could be updated to more clearly allow for use by angel investors and other equity investments in entrepreneurs looking to start businesses in Opportunity Zones. The proposed rule must also go farther in defining what constitutes a qualified business operation in an Opportunity Zone than the current definition of "substantially all," a vague definition that leaves open the

[1] Federal Reserve Bank of Cleveland, 2016 Small Business Credit Survey: Report on Minority-Owned Firms," https://www.opportunityfund.org/assets/docs/sbcs%20minority-owned%20businesses%20report%202016.pdf

possibility of abuse and fraud from fake operations registered in an Opportunity Zone but that do not employ workers, run operations or produce and sell goods or services within the designated area.

More guidelines are necessary to increase transparency and ensure that the benefits of Opportunity Zone developments benefit the local communities in which they are located. For example, guidelines could be modeled after the current process for certifying a Community Development Entity (CDE), which requires that the development entity is established with a mission of providing capital for low-income communities and individuals. QOFs should meet this same standard of accountability by requiring investors declare their mission or intent to use investments to create positive community outcomes. This also includes granting more authority to state and local government entities who can better ensure projects meet the real needs of their local communities.

We also recommend revisions to the guidelines around performance measurement and reporting requirements, which do not do enough to ensure investments reach Main Street small businesses. We recommend clarifying reporting requirements that would define clear goals for small business investment. Our recommendations, which we previously detailed in testimony before the U.S. Senate Small Business Committee, include requiring reporting metrics that measure program success based on the number of jobs created, where those jobs are located, employee wages and the number of businesses created, particularly businesses formed by women or people of color.

Finally, the rules should more clearly address whether investments through Opportunity Zone Funds will qualify for Community Reinvestment Act (CRA) credit. Assuming the guidelines are strengthened to guarantee Opportunity Zone investments are targeted at low- and moderate-income communities and that a bank's investment in a QOF does not reduce their responsibilities in existing assessment areas, banks should be allowed to earn CRA credit for loans given to entrepreneurs in the newly created Opportunity Zones. This would leverage the benefits of the tax-advantaged equity investments being made under the Opportunity Zones legislation. Similarly, guidelines could ease the process of combining these investments with other tax credits, including the New Markets Tax Credit, potentially increasing the impact of such investments.

Small businesses play tremendous roles in driving economic activity and supporting job creation. Opportunity Zones were developed in a strongly bipartisan process to address the need for more equity investment in underserved communities, and we welcome the creation of this policy tool to spur investment in low-income entrepreneurs. Still, Opportunity Zone investments will only succeed in meeting their stated goals if they are targeted to benefit true small businesses and their communities rather than simply creating yet another tax break for expensive real estate developments. We strongly encourage the IRS and the Department of the Treasury to revise its proposed rule in line with the above feedback and are appreciative of the opportunity to comment on this important topic for our nation's small business owners.

Sincerely,

John C. Arensmeyer

John Arensmeyer
Founder and CEO