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United States Senate

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HEALTH, EDUCATION, LABOR, AND PENSIONS
SMALL BUSINESS AND ENTREPRENEURSHIP

The Honorable Steven T. Mnuchin
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Dear Secretary Mnuchin:

As you know, Opportunity Zones, a provision passed in the *Tax Cuts and Jobs Act of 2017 (TCJA)*, is a tax benefit intended to spur private investment in low-income areas throughout the country, many of which have been left behind by the national recovery after the Great Recession. In developing the *Investing in Opportunity Act*, the original legislative vehicle for Opportunity Zones, my Congressional colleagues and I recognized the widening economic divide between prosperous and low-income communities, and sought to create an incentive that would move capital off the sidelines and into operating businesses and real estate activities that spur job creation and economic growth in places that need it most. Congress designed this incentive to be broadly applicable to rural and urban communities across the country, flexible in the types of investments it encourages, and scalable to allow the risks and costs of investing in needy communities to be borne by many investors together through a fund structure.

Today, public and private stakeholders nationwide are eagerly awaiting regulatory clarity on Opportunity Zones. As the lead sponsor of the Opportunity Zones provision and a Senate conferee for TCJA, I write to underscore key aspects of congressional intent for the provision, and urge you to take these issues into account as the Treasury Department and the Internal Revenue Service (IRS) draft the initial Notice of Proposed Rulemaking for Opportunity Zones investments.

1. Congress gave Treasury wide latitude to issue guidance that facilitates broad uptake of this incentive. As the rulemaking process moves forward, Treasury must use its authority to establish a regulatory framework that meets reasonable market-based needs for flexibility and scalability for investors organizing to serve both new and existing operating businesses, as well as to invest in real estate projects. For example, practical flexibility is particularly important in defining key terms and applying certain tests found in the statute in a manner that will encourage the market behavior for which this incentive was designed.

2. The purpose of tying the tax benefit to investment in Opportunity Funds was to allow for and encourage the pooling of capital and risk among a wide array of investors, who can then invest in a portfolio of businesses or projects. While some Opportunity Funds will no doubt be established to invest in a single business or project, Treasury must be careful not to artificially or inadvertently limit the practical ability of Opportunity Funds to raise

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capital from multiple investors and invest in multiple holdings. The Fund structure is particularly critical for mitigating market risks tied to investment in operating businesses.

3. Congress tied the tax benefit to the longevity of an investor's stake in an Opportunity Fund, *not* an Opportunity Fund's stake in any specific portfolio investment. This is a critical distinction, because Congress recognized that many Funds – particularly those investing in operating businesses – would have "churn" (investment portfolio turnover as funds invest and later divest). 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. Such Fund-level activity should in no way interrupt the tax benefit to the Fund's investors, so long as they do not take a distribution of capital from the Fund or dissolve their stake in the Fund prior to holding for 10 years.

In summary, I urge the Department of the Treasury to exercise its broad authority under the Opportunity Zones statute to ensure the goals of this policy are realized to the benefit of America's low-income communities.

Thank you for your continued leadership on this important issue.

Sincerely,

Senator Tim Scott

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