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Cottage Industry in Opportunity Zone Data Forms to Fill Vacuum.

- **Treasury, Congress slow to compensate for missing reporting requirements**
- **Voluntary reporting would hit the philanthropic tip of a self-interested iceberg of investors**

The 2017 tax law's opportunity zone tax breaks are supposed to provide incentives for investors to help lift low-income neighborhoods out of poverty. Critics say they'll accelerate gentrification while shielding wealthy people's stock profits from taxes.

Neither side has much to back up their view, because there's no federal requirement for the government to collect and share data on development spurred by the incentives. On a recent conference call with reporters, Chairman of the Council of Economic Advisers Kevin Hassett cited Bureau of Labor Statistics data indicating that wages grew in the census tracts chosen for the incentives, but later said it may be because "relatively high-skilled people" are moving in.

Investors have formed 112 funds with $26 billion in investing capacity, according to a list compiled by the San Francisco-based accounting and consulting firm Novogradac & Co. LLP. Yet for now they're largely operating in the dark.

"If opportunity zones fail, they won't be renewed. They shouldn't be renewed," said Michael Froman, MasterCard Inc.'s vice chairman and president of strategic growth and a former U.S. Trade Representative, at a March conference at Stanford University. "We're likely to get a better outcome if we start with better inputs, and that requires more information."

In the absence of a federal mandate, a cross-country patchwork of efforts—by nonprofits, academics, think tanks, companies, and local governments—is underway to collect data. Much of the scope of information collected is, at least for now, dependent on the willingness of investors and companies to share it. Some efforts are private, or predominantly concerned with helping investors find spots ripe for development rather than helping to track demographic and economic transformations.

"All of these efforts will be modest compared to what the actual activity" prompted by the the tax incentives will be, said Brett Theodos, a senior fellow at the Urban Institute who has asked the IRS to collect a list of specific data points. "We also need a robust federal reporting requirement."

Philanthropic, impact-investor types could represent just 5 percent or 10 percent of the market, while the remainder may be more self-interested, said Aaron Seybert, a social investment officer at the Troy, Mich.-based Kresge Foundation, which requires the opportunity funds it backs to report their effects on surrounding communities.

"We've got to be really careful about the things we hold up as examples, particularly for a market that's very difficult to quantify," Seybert said.

Under tax code Section 1400Z-2, investors can defer and even reduce the capital gains tax liabilities on their profits from stock and other investments by plugging the money into “opportunity funds” that invest in 8,764 predominantly low-income census tracts designated by state governments.

Funds only have until 2026 to get the program’s tax deferral, and the chance to shield 15 percent of the investment from capital gains tax in return for holding the assets for seven years vanishes after 2019. Plenty of investors and tax professionals believe these tax breaks will eventually get an extension—but only if there’s a data-backed reason to do so.

The Push for More

Lawmakers stripped from the legislation requirements for the Treasury Department to report to Congress on the extent to which investors improved the opportunity zones in which they invested.

The original authors of the legislation, Sens. Cory Booker (D-N.J.) and Tim Scott (R-S.C.), plan to introduce a bill in early May to reinstate and expand the federal reporting requirements. But those mandates don’t go into as much detail as what many advocates for added transparency are now requesting from the Internal Revenue Service. Even if that legislation reaches the president’s desk, passage may take quite a while, as Democrats intend to hold multiple hearings on the law before making any changes to it.

When it released a new batch of proposed regulations, the IRS issued a request for public input on what information it ought to collect, but those reporting guidelines are expected to be pretty modest, and are likely to appear in a third round of regulations—the release of which could be months away.

In the private sector, JPMorgan Chase & Co., Bank of America Merrill Lynch, the Federal Reserve Bank of New York, Morgan Stanley, and UBS Group AG are among those that have given their input on what a framework for transparency should look like.

That framework, from the U.S. Impact Investing Alliance and Georgetown University’s Beeck Center for Social Impact and Innovation, has won the support of many socially-minded investors, nonprofits, and state and local governments. Among its adopters is the Kresge Foundation, which along with the Rockefeller Foundation has offered to guarantee millions in funds’ losses if they meet certain qualifications and adhere to the organizations’ covenants, which include reporting requirements.

It recommends that the IRS collect information like the demographics of a fund’s general partners, whether or not it notified the public of its underlying business’s development plans, the business’s employment of disadvantaged groups, the number of jobs it created, and its net new affordable housing units.

The Alabama Model

When asked who is doing the best job in terms of data collection, people involved in the opportunity zone market often point to Alabama, which has 158 opportunity zones.

Birmingham-based nonprofit Opportunity Alabama works as a liaison between the state government and investors to make sure the latter’s gains get to tracts that need them. Its founder, Alex Flachsbart, is planning to trade expertise for information: In exchange for his organization’s guidance on the best spots in the state to invest and develop, participating funds have to provide detailed information on how they’re transforming their Alabama neighborhoods.

Flachsbart, a former attorney with Balch & Bingham LLP, said he plans to incorporate the USIIA/Beeck Center framework into a memorandum of understanding with investors and hire someone to collect and manage data. So far, he said, every fund he has worked with has agreed to disclose data.

Opportunity Alabama is a 501(c)(3) nonprofit, supported by the foundations of two Birmingham-based companies, Southern Co. subsidiary Alabama Power and insurer Protective Life Corp. In addition to offering services to opportunity funds, OPAL's website offers connections and assistance navigating the market to "partners"—read: financial backers—though Flachsbart said there aren't any paying partners yet. He's still working out how to monetize the nonprofit's work and keep it going long-term, which may involve charging the funds, though he plans to keep it free for now.

And he, too, conceded that drawing funds in with the promise of state-specific guidance in return for data disclosure could risk only capturing the activity of the do-gooders.

"I think any sort of voluntary reporting program is going to face those challenges," Flachsbart said. "I don't think that doesn't make them worth doing."

Maps, Exchanges, and a 'Scorecard'

New York-based SMB Intelligence Inc. has built a map of new businesses across the country, categorizing them to show whether they're located in a designated opportunity zone, and then listing whether they are minority- or women-owned, whether the area is gentrifying, and the tract's median income, among other details.

The firm offers more thorough data reports—using public government statistics, media, and real estate sources through a methodology it won't disclose publicly—on business activity in the census tracts to its clients, which include funds, nonprofits, and government agencies.

SMB's founder and CEO Steve Waters said it might make the information public if got the support of an investor, but added that he worries that funds with less-than-noble intentions, such as predatory lending, might take advantage of the information.

Steve Glickman, a former economic adviser to President Barack Obama, helped craft the opportunity zones incentives. He was one of the founders of the Economic Innovation Group, which is among those leading the push for more transparency. To track changes in the zones over time, Glickman partnered with a data-mapping firm to grade nearly 8,000 opportunity zone census tracts based on high-level economic indicators, such as population growth and median income—and released the map publicly, on his opportunity zone advising company's website.

"This is definitely an outcome analysis on whether these communities are improving over the next 10 years," he said. "These are the objective indicators of how they're doing now."

MasterCard's philanthropic arm is partnering with the nonprofit Accelerator for America to use the company's own access to spending patterns to paint a detailed picture of what's happening in designated zones. The corporation's Center for Inclusive Growth is creating a "scorecard" to show consumer spending data in the census tracts at frequent time intervals, Arturo Franco, vice president at the center, said during the March conference. The specifics of what figures will be collected and how are still in development, he said.

The state of Maryland and a Cleveland-based startup called the Opportunity Exchange are working to essentially advertise designated tracts to investors through online platforms. Neither Maryland's platform nor Opportunity Exchange has a disclosure requirement for investors who participate, but Opportunity Exchange founder Peter Truog said that if his exchange gains enough traction nationwide, it will serve as a useful sample for studying projects.

“That’s the ideal world we hope to build toward,” said Truog, another contributor to USIIA’s framework. “I’m optimistic that we’ll have a critical mass.”

No State Control

Maryland’s legislature has introduced bills (S.B. 756, H.B. 1162, and S.B. 174) that would impose some reporting requirements on funds and the state government by extending existing state incentives to businesses located in or expanding in opportunity zones and the establishment of a state fund to further entice investors, and it’s not the only state to make such proposals.

Jana Persky, Colorado’s Opportunity Zone Program director, said that plenty of state incentives that can be paired with the federal tax breaks require applications and reporting that could be useful for keeping track of opportunity zone developments at the state level. But outside of that, she said, state governments are pretty limited.

“We don’t have any approval process or ability to stop a project,” Persky said, noting that while they have state-level ramifications, the tax breaks are federal ones. “We don’t control any of the money.”

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