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IRS Opportunity Zone Form Doesn't Quell Transparency Concerns.

- **Unclear how much information Treasury, IRS can make public**
- **Transparency advocates look to Congress to address data gap**

A new draft tax form for investors taking advantage of opportunity zone incentives affirms the need for Congress to bolster reporting requirements for the perks, according to those advising on and studying them.

The incentives, part of the 2017 tax act, were meant to spark economic development in nearly 9,000 mostly low-income census tracts across the U.S. by offering investors the ability to defer and reduce capital gains taxes. The tax law didn't include any data reporting requirements, which advocates say are needed to paint a more holistic and objective picture of whether the tax breaks are helping communities or accelerating gentrification to the benefit of wealthy investors.

The IRS Oct. 31 released a proposed [Form 8996](#) that would require opportunity funds to disclose the employer identification numbers, census tract numbers, and assets of the businesses in which they invest, as well as the funds' own structures and assets. The IRS went about as far as many observers expected: The form would give the agency enough information to ensure investors are following the program's rules, but doesn't require more granular information, like job creation and poverty alleviation data requested by numerous organizations.

"This will be unlikely to satisfy many of us who are just looking for a more comprehensive data regime," said John Lettieri, president of the Economic Innovation Group, which helped develop the incentives.

IRS Authority

The data the IRS is seeking makes sense in light of the authority the IRS has and its ability to enforce the tax law and its opportunity zone regulations, according to Michael Novogradac, managing partner of Novogradac & Co. LLP. The San Francisco-based accounting and advisory firm focuses on real estate and affordable housing.

"This demonstrates what information is needed to assess compliance," Novogradac said.

The original opportunity zones legislation, authored by Sens. Cory Booker (D-N.J.) and Tim Scott (R-S.C.), included data reporting requirements for investors. However that language wasn't included in the 2017 tax law in order to ensure the package complied with the Senate's procedural rules.

The new form was released days after House lawmakers met to discuss ways to improve the opportunity zones program through congressional action. There is some interest in Congress of adding those requirements to the tax code. Booker and Scott introduced a bill ([S. 1344](#)) to establish opportunity zone reporting requirements, while a House companion ([H.R. 2593](#)) was introduced by Reps. Ron Kind (D-Wis.) and Mike Kelly (R-Pa.).

Lettieri, who attended the congressional meeting to discuss improvements to the program, said that the IRS document could help inform any related legislation Congress considers.

There may not be much information to collect just yet, as the pool of funds using the capital gains tax breaks is still small and growing, said Steve Glickman, who helped create the incentives and now advises investors as CEO of Develop LLC.

"We're still very much in the early days here," he said. "There's always going to be anecdotal investments that don't meet the spirit and intent of the program."

Will Public See Data?

Absent congressional action, transparency advocates are concerned that the public may not ever get to see the data collected by the Internal Revenue Service and Treasury Department because the federal government is prohibited from publicly disclosing tax return information under tax code [Section 6103](#).

"I worry this information won't ever be shared with the general public," said Brett Theodos, a senior fellow at the Urban Institute who has researched the incentives and [requested](#) detailed data collection and disclosure on them. "We need more data. I would like additional detail to be able to evaluate the program."

A Treasury spokesperson said the department "intends to publish all of the Opportunity Zone data that it gathers through this form as soon as possible in a manner consistent with the law."

Booker, in an Oct. 31 statement, emphasized the need for public disclosure of more detailed data.

"For starters, this information needs to be public, not available only to the Treasury Department," he said. "Additionally, there needs to be transaction-level reporting so that we can properly evaluate the impact of the program and ensure that investments are being effectively allocated to low-income communities."

There may also be concerns of taxpayer privacy and identity theft when it comes to employer identification numbers, said Lisa Zarlenga, a partner at Steptoe & Johnson LLP and a former Treasury official. Even publicizing the number of funds investing in a particular census tract could lead to privacy problems if there are only one or two in that area, she said.

And while the IRS is likely reluctant to make these kinds of public disclosures on its own, the issue could be a thorny one for lawmakers to navigate as they seek to boost the incentives' transparency.

"It's a hard thing to balance," Zarlenga said. "I don't envy the lawmakers trying to figure this out."

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