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Edward H. Chu

September 16, 2022

The Honorable Michael S. Regan  
 Administrator  
 U.S. Environmental Protection Agency  
 1200 Pennsylvania Avenue, NW  
 Washington, D.C. 20460

Dear Administrator Regan:

The Environmental Financial Advisory Board ("EFAB") was engaged by the Office of Policy on the topic of potential roles for EPA in attracting private investment to Opportunity Zones. EFAB took up a Charge on this topic at its February 11-13, 2020 meeting and further refined the Charge at its April 20-20, 2021 meeting. EFAB's scope of work for the Charge included:

**Facilitating Investment (Marketplace/Matchmaking):** Advise EPA on how to enhance the Agency's approach to encourage increased Opportunity Zone ("OZ") funds investment into both rural and urban communities alongside existing EPA funding tools, programs, regulatory/permitting flexibility and federal and state partners.

Provide examples and advice and support to communities, including ways to minimize risk for investors, and to investors seeking to direct OZ Fund investment into low-income, minority, and/or otherwise vulnerable communities, reflecting environmental justice principles. Note where community benefits standards and guidance have been developed [or are so far lacking] that may be relevant to OZ-funded projects in these communities and the value of such community benefits can be achieved.

Provide recommendations on where EPA may uniquely be situated to coordinate with investors and other agencies in encouraging/identifying OZ investment opportunities in high-priority communities from an environmental justice standpoint, including low-income, minority, tribal, and indigenous communities that bear disproportionate environmental risks and damages.

This letter provides advice, examples and recommendations on how EPA can facilitate attracting more private investment to communities that qualify for investment under the OZ program.

### **Executive Summary**

By definition, communities designated as OZs have a high degree of overlap with people of color, low-income, and indigenous communities as well as communities with Environmental Justice ("EJ") concerns, and as such these communities are eligible for a range of public funds from various agencies, particularly HUD, and subsidized private capital enabled programs such as NMTC investment and USDA and SBA guarantees.

Many of our communities encounter barriers to accessing all of these sources of capital, inclusive of OZ capital. Frequently, these barriers are non-financial, such as staff capacity, planning resources, access to technical vendors (particularly for smaller projects), and underdeveloped

networks. These barriers exacerbate challenges already present as financial barriers for many communities, such as limited borrowing capacities and shrinking ratepayer bases.

In the EFAB's deliberations regarding the OZ Charge from EPA, including conversations with practitioners managing OZ funds (see Appendix), it became clear that the areas under EPA's purview could uniquely help address certain of these barriers in order to enable both private and public capital to flow to these communities. As a tactical matter, given the uncertainty around the permanence of the OZ tax benefits, it is prudent to plan for any action on behalf of the EPA in such a way to create better enabling conditions for as wide a selection of capital as possible, in order to increase long-term access and supports for low-income, people of color and/or indigenous communities and communities with EJ concerns, hereinafter referred to also as "high priority" communities. Additionally, given the scope of programs and activities both at federal and state levels and when EPA resources tend to be deployed by communities in project development, it would be challenging and potentially inappropriate for the EPA to play a "matchmaking" role with private investors managing OZ funds. EPA's primary role and expertise is as a regulator and as an overseer of various environmental grant and low-cost financing programs.

Better for private investors and / or interested OZ communities to approach the EPA and its grant and loan program state partners for assistance migrating regulation hurdles and requirements and for seeking technical assistance optimizing EPA's grant and low-cost financing program opportunities.

Nevertheless, the EPA has an impactful role to play in a number of areas by investing in communities' planning and fundraising capacities, grant funding for environmental remediation and project predevelopment, data collection and aggregation around OZ-funded projects with other agencies, and preferential terms and treatment under existing financing programs. These investments can strengthen the capacity of communities to access not only OZ funds but a wider range of private and public sources of investment capital for key development and infrastructure projects. As the expert panel indicated, all of these activities also meaningfully reduce risk for private investors who may later invest in community projects enabled by these activities.

In summary, given uncertainty around OZ longevity, the EFAB team recommends that the EPA examines its *existing* activities, programs and tools with an eye towards improvements that specifically benefit high priority communities more broadly, in lieu of creating new programs, resources or funding sources tailored specifically to OZ funding sources, and which changes can be implemented relatively quickly, with limited administrative complications. One recent example of this is the Fiscal Year 2023 Brownfield Multipurpose, Assessment, Revolving Loan Fund, and Cleanup Grants announcement, wherein the EPA was able to remove matching requirements due to additional funding from the Bipartisan Infrastructure Law.

Focusing on predevelopment, technical assistance, and planning capacity will reduce project and investor risk, while also providing necessary supports to under-resourced communities both urban and rural. As the EPA's existing programs are generally more flexible than other agency sources for project funding, continuing to value and expand that flexibility to encourage high priority communities to develop project capacity, and ensuring EPA programs enable or don't conflict with less flexible funding sources from other agencies, is a uniquely impactful role for the agency. Finally, a collaborative and interagency approach to data gathering and sharing can be emphasized in order for community benefits to be better captured and communicated both from OZ-funded projects as well as other projects with multiple federally subsidized funding sources in high priority communities.

We highlight the successful partnership the EPA formed with FEMA to produce a Memorandum of Understanding regarding hazard mitigation funds and SRF funds, and the recently announced partnership with USDA, “*Closing America’s Wastewater Access Gap Community Initiative*,” as examples of the collaborative interagency possibilities.<sup>1</sup>

### **The EPA’s Unique Role: Focus on Enabling Conditions**

An evident barrier to accessing private investor capital, including OZ funds, is having met the baseline conditions for private capital to flow: completed and approved plans, environmental remediation completed, permits obtained, zoning addressed, utility infrastructure availability, technical vendors (e.g. engineering) procured and, especially in the west, sufficient water rights/access. Since these are preconditions before a dollar of private capital will commit to any project, communities must have the resources to address these before even soliciting investors. In addition, from the community perspective, a lack of awareness and understanding of the direct, indirect, and induced community benefits related to OZ projects which can support communities from a broader economic standpoint, as well as enhancing necessary infrastructure reliability and sustainability, can limit their interest for pursuing OZ funds and projects in favor of other funding sources. Funding capacity development within disadvantaged and overburdened communities can facilitate long lasting benefits and further leverage the OZ objectives.

Examples of enabling actions within EPA’s existing purview could include:

#### **PREDEVELOPMENT & CAPACITY BUILDING**

- Providing increased flexible grant funds for planning development projects (inclusive of hiring the human resources necessary to do so), and inclusive of funds to support community outreach and genuine engagement.
- Identifying and addressing environmental remediation issues high priority communities *before* “shovel readiness” or planning is fully complete, including potentially providing grant funds for the execution and development of a remediation action (mitigation) plan.
- Sharing a “shovel-worthy” checklist – with potential funding sources and estimated timelines attached to each element - so communities are aware of the preconditions needed before investor dollars can be attracted to a project.

#### **PRIORITY ALLOCATIONS OF LARGE FUNDING PROGRAMS AT STATE LEVEL**

- Prioritizing applications for SRF loans with principal forgiveness, WIFIA funds, and Brownfield remediation grants for high priority communities that also qualify for OZ, USDA and NMTC funds (which is already in evidence in aligning funding with the Justice40 initiative).
- Enabling SRF loans to include high priority communities to secure professional services to conduct planning for off-site infrastructure in support of OZ development projects to enhance related community benefits.

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<sup>1</sup> <https://www.epa.gov/newsreleases/biden-harris-administration-launches-epa-usda-partnership-provide-wastewater>

**INTERAGENCY COLLABORATION AND AWARENESS**

- Education of local public officials around the available sources of capital *across* agencies and guidance on applying (USDA, HUD, etc.) – for example, adding to the Community Calendar <sup>2</sup>application information around relevant HUD grant application timelines that most commonly overlap with community projects
- Collaborating with HUD, Treasury, and other agencies on a reference database for communities to access examples of other successful OZ-funded projects, or if this is not readily available:
  - EPA could instead expand upon its OZ “case study” library to provide several case studies that showcase common funding sources & timelines for OZ projects – ideally those that happened in communities with EJ concerns – with an emphasis on the best “matching” funding sources (e.g. twinning tax credits, grant sources)
  - Expand case studies to include discussion of direct and indirect community benefits resulting from OZ investments – however, without improved data available on OZ-funded projects, this may be limited only to anecdotal information
  - Collaborate on comprehensive guidance to assist communities in identification of community benefits that can be derived from an OZ-funded development and the funding available to leverage OZ projects to enhance water and wastewater infrastructure rehabilitation, while limiting adverse affordability impacts
- Actively encourage interagency working groups to discuss funding program compatibility and areas of friction across funding sources available to high priority communities. This requires a “silo-busting,” collaborative approach and flexibility that EPA may be uniquely positioned to encourage among agencies and has already demonstrated capacity around in partnerships mentioned above with FEMA and USDA, for example.

We recognize there are many competing priorities and workloads underway at the EPA. In order to implement any of the above recommendations over time, we suggest prioritization of activities in the following order.

**Begin with alignment with other public funding sources**

It should be noted that none of the above is possible without first aligning EPA funding eligibility criteria with other agency definitions of high-priority communities with EJ concerns to maximize the range of funding sources made available to these communities and proactively identify where there is friction between these funding sources. Such alignment should include communities with EJ concerns in existing funded initiatives at the federal level as identified in the Infrastructure Bill and Inflation Bill (e.g. Justice40.) The recent Brownfields grant announcement for FY23 is a successful example of aligning existing EPA resources with increased federal resources and prioritizing communities that are most likely to also be eligible for various subsidized investment streams such as OZ funding. Given the extensive array of multiple local, state, and federal grant and investment programs available to communities today, guidance notes from the EPA on how to access certain funding sources alongside other federal or state programs, for example where match requirements can be met across funding streams, could be a worthwhile project led by EPA/DEP offices at the state level.

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<sup>2</sup> <https://www.epa.gov/grants/epa-grant-competition-calendar-community-grants>

**Make incremental updates to existing grant and predevelopment EPA funding programs**

One of the differentiating benefits the EPA uniquely enjoys is its flexibility in its grant programs – TA and predevelopment grants specifically – which are the first resources that communities need to get projects off the ground. These resources are particularly valuable when projects are also funded by larger but more rigidly constructed programs run by other agencies. In terms of prioritization of recommendations, EPA might consider updates to existing programs like TAG, EJSG, OLEM, etc. in ways that support priority access to these funds for high priority communities and ensure uses of funds include capacity, planning, and other hard-to-finance predevelopment activities.

As the expert panel indicated, many communities will struggle to attract OZ and other private funding because they lack the basic infrastructure (water, sewer, etc.) to support such projects. Various federal programs have offered funds for different phases of work related to infrastructure engineering and construction. However, it is difficult to navigate the federal funding process to obtain funding that would support the work from preliminary engineering to design to construction management and construction as these all tend to be housed in separate programs (and thus, applications). The recent Infrastructure and Jobs Act’s philosophy guiding the allocation of funds has provided a potential solution in the Department of Transportation’s (“DOT”) RAISE grant program, which encouraged communities to develop applications that stack funds from various component programs. Stacking grants for planning, predevelopment, construction, and so on through the life of a project can provide a community with funding from start to finish, reduce speculative risk in infrastructure development, and meet holistic infrastructure needs of both communities and developers seeking to invest private capital. Critically, to enable communities to think holistically about project funding needs, DOT delegated support to its divisions, rather than funneling all its funds through State DOTs, avoiding a layer of complexity to the program.

**Consider significantly increasing funding for Environmental Finance Centers (“EFCs”) and similar regional intermediaries.**

EFCs have a sense of community needs and planned projects, as well as experience helping communities access multiple funding sources for projects – both public and private. Additionally, they are positioned to have relationships in place with private sector capital and can coordinate between State-level EPA/DEP offices and private sector investors. Increasing funding for EFCs should also reflect their relationships with high priority communities per the first action recommended above. EFCs could additionally function as the front line of targeted EPA grant programs for community-led predevelopment work in redevelopment projects. One example of this is the EPA’s 2021 grant award to the Southwest Environmental Finance Center (“SEFC”) to work with improving small public water systems across the country.<sup>3</sup>

**Conclusion**

We thank the EPA for the opportunity to provide advice, examples and recommendations on how EPA can facilitate attracting more private investment to low-income, people of color, and indigenous communities and communities with EJ concerns.

Sincerely,

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<sup>3</sup> <https://www.bizjournals.com/albuquerque/news/2021/05/21/unm-receives-epa-grant-funding.html>

A handwritten signature in black ink that reads "Kerry E. O'Neill". The signature is written in a cursive style with a large, stylized 'K' and 'O'.

Kerry E. O'Neill, Chair  
Environmental Financial Advisory Board

Margot M. Kane and William Stannard, OZ Working Group Co-Chairs  
Environmental Financial Advisory Board

Enclosure

cc: Edward H. Chu, Designated Federal Officer, Environmental Financial Advisory Board  
Radhika Fox, Assistant Administrator for Water

## APPENDIX

**U.S. Environmental Protection Agency Environmental Financial  
Advisory Board**

Opportunity Zones Workgroup Practitioner Panel  
Virtual Public Meeting via Zoom  
Thursday, August 26 – 12:00-1:30 pm Eastern Time

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**Executive Summary**

**Purpose:** To hear from Opportunity Zones (OZ) practitioners who work on OZ investments in disadvantaged communities across the country and were willing to share their experiences to support the EFAB Opportunity Zones workgroup's charge.

**Panelists:** Diverse selection of OZ fund managers based in the Southwest, Mid-Atlantic, and Northeast whose work reflects EPA interests (e.g., rural and disadvantaged communities, investments in operating businesses, housing, and mixed-use real estate under OZ requirements).

- Alecia Hill – Investment Associate, Enterprise Community Investment, Inc.
- Jonathan D. Tower – Managing Partner, Arctaris
- Stephanie Copeland – Managing Partner, Four Points Funding

**Key Insights & Takeaways**

- Pre-conditions to potential investment(s):
  - *Access to and understanding of soft costs (e.g., planning, predevelopment, and risk assessment at the community level)* – Historically marginalized communities may lack awareness of their environmental risk in planning projects.
  - *Adequate water infrastructure, quality, and access* – Water rights are sometimes requested by communities before developers are granted permits. These issues cannot be left until later stages in project development, such as arranging financing. Investors won't take these risks and are sensitive to what the delay(s) addressing them will cost.
  - *Community buy-in* – Proposed projects should reflect community priorities and have active support from key stakeholders, including those frequently underrepresented.
- On government involvement:
  - Federal agencies and sources, notably HUD, ARPA, and SSBCI, have successfully paired existing financing and grant products with OZ-qualifying projects and investors.
  - Government funding sources at the project level can add so many requirements that appreciation is suppressed, especially for smaller scale projects in rural settings.
  - Consistent communication and streamlined processes are key.
- On community role:
  - Prospectuses are insufficient for investors because they don't capture the complexity of project risks. A more predictable environment for investors to enter is needed.
  - Communities should be informed of the risks investors and developers are taking too.
- OZ can make infrastructure payback faster – The structure of OZ investment funds enables them to recognize a faster ROI on infrastructure investments and pay for deferred maintenance

thanks to accelerated depreciation, which may be useful for communities who seek investment in water/wastewater infrastructure.

- Additional uncertainty (e.g., census tract changes, timeline for certain tax incentives) can depress investor appetite.