

EMPOWERMENT ZONES/ENTERPRISE COMMUNITIES:
THE NEW CURE FOR DISTRESSED URBAN COMMUNITIES
OR THE SAME OLD BAND-AID?

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In August 1993, President Bill Clinton signed into law the Omnibus Budget Reconciliation Act of 1993. This Act included new legislation authorizing the creation of nine Empowerment Zones (six urban and three rural) and ninety-five Enterprise Communities (sixty-five urban and thirty rural) at a cost to the federal government of \$3.5 billion over five years.¹ This new program of Zones and Communities is part of President Clinton's complex package of programs geared toward public-private partnerships developed to help stimulate the economy, create jobs, and revitalize economically distressed urban communities.

Although hailed by the administration as a new program, state created enterprise zones currently exist in thirty-seven states.² Legislation to create federal enterprise zones was introduced as early as 1980 by Jack Kemp when he was a member of Congress, and later by officials in both the Reagan and Bush administrations. When presented by President Ronald Reagan, it failed to garner the necessary support from Congress. In the aftermath of the Los Angeles riots, President George Bush also included an enterprise zone proposal in his 1993 fiscal budget. However, he ultimately vetoed

legislation passed by the Democrat-controlled Congress because it contained minor provisions that would increase government spending and he feared being attacked for breaking his pledge of "no new taxes."³ Recognizing the bipartisan support for enterprise zones, and having no other ready alternative, the Clinton administration again picked up the charge for enterprise zones as a strategy to help rebuild distressed communities such as South Central Los Angeles.

The Clinton administration has thrown its support behind this new Empowerment Zone/Enterprise Community legislation. The President, in a memorandum issued September 9, 1993, stated that he and the vice president believe that "the best way to serve distressed communities . . . is through a comprehensive, coordinated and integrated approach that combines bottom up initiatives and private sector innovations with responsive Federal-State support."⁴ Toward this end, he appointed Vice President Al Gore as chair of the newly created Community Enterprise Board and appointed all of his cabinet secretaries and several presidential assistants as members.

The Department of Housing and Urban Development (HUD), the federal agency

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responsible for designating the urban Zones and Communities, has publicly proclaimed this new program as a way to alleviate the distress of poor urban communities.⁵ HUD officials, including Secretary Cisneros, have traveled the country speaking to local officials and low income communities, drumming up enthusiasm for this new program and encouraging local communities to submit applications for designation as a Zone or a Community.

In spite of the hype and fanfare, the question remains whether Empowerment Zones or Enterprise Communities will accomplish all that is hoped by the Clinton administration: to stimulate the economy, create jobs for low and moderate income people, and revitalize communities? Historically, state enterprise zones have focused on tax incentives to lure businesses to distressed neighborhoods, relying on these businesses to create jobs and lead to the rebirth of these communities through a trickle-down theory.⁶ The new federal program provides tax incentives and massive amounts of social services funds to selected communities and requires community participation in the designation of how these funds are spent. While this addition to the model is constructive, there are other concerns with this legislation, as well as serious questions as to the efficacy of a tax incentive driven program to meet the job creation and physical revitalization needs of our most distressed communities. After a brief overview of the federal legislation, the question of whether this new program can meet its ambitious goals will be discussed.

I. EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES: LAW AND REGULATIONS

A. *The Law*

The legislation authorizing the creation of Zones and Communities is very prescriptive. As a threshold matter, only certain communities may apply for such designation. In order to be designated a Zone or Community, a local community must meet specific population and geographic size requirements and each census tract within the designated area must have a threshold poverty rate of at least 20%, with 90% of these census tracts having a poverty rate of 25% and 50% having a poverty rate of at least 35%. At least one Zone must be located in two states with a combined population of the two areas of 50,000 or less, and may not include more than three noncontiguous locations.⁷

As outlined in the legislation and interim regulations, an application for designation is generated by a specific geographic community seeking designation as a zone or community. In reality, because of the complexity of the law, regulations and application process, this process will be controlled in most instances by the local government. In Philadelphia, for instance, the mayor has selected the communities for which an application will be submitted, has appointed a team to develop and draft the application and is coordinating the requisite community participation activities. In addition, both the local and state governments must approve the application

and provide assurances that the Strategic Plan ("Plan") will be implemented as stated in the application.

B. *The Strategic Plan*

The Strategic Plan is the heart and soul of the Empowerment Zone/Enterprise Community application. Each applicant must develop a detailed Plan for meeting the purposes and objectives of the legislation. The Plan must describe a coordinated strategy and activities that address four key principles: economic opportunity, sustainable community development, community-based partnerships, and strategic vision for change.⁸ In addition, the Plan must incorporate several elements, including: the identification of the groups and individuals who assisted in the development of the Plan; the role of the participants in the creation, development and future implementation of the Plan; the community's vision for revitalizing the designated area; key barriers to implementing the Plan; and how the Social Service Block Grant (SSBG) funds (commonly called Title XX funds) designated for the Zone or Community will be spent.⁹

C. *Designation Process*

All applications for urban designation as a Zone or Community are submitted to HUD and all applications for rural designation are submitted to the Department of Agriculture. The final date of submission is June 30, 1994. The agencies will make

their designations based on the strength of the application, particularly the Strategic Plan, and its likelihood of successful implementation.¹⁰

D. *Benefits of Designation*

The benefits of designation of an Empowerment Zone are different than those of an Enterprise Community. Designation as an urban Zone provides the area with the right to an additional \$50 million of Title XX funds for two years. Designation as a rural Zone provides \$20 million of Title XX funds for two years. In contrast, each Enterprise Community receives only a one-year additional allocation of three million dollars.¹¹ Designation as a Zone provides a wage tax credit for up to ten years for employers located in the Zone who employ Zone residents.¹² Both Zone and Community areas are eligible for a new kind of tax exempt facility bonds for facilities located in the designated area.¹³ Finally, areas with either a Zone or Community designation receive priority status in the competitive application for other sources of federal funds, potentially worth hundreds of millions of dollars, if the Strategic Plan articulates both the need and a plan for utilization of these additional dollars.¹⁴

II. WILL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES SAVE OUR CITIES?

At the state level, enterprise zones have failed to produce the desired effects of jobs for low income residents, increased capital

investment, and physical revitalization of the community.¹⁵ The driving forces behind these enterprise zone programs are the incentives and opportunities offered to businesses, usually in the form of tax breaks or comparable incentives. The community residents and their needs for jobs, social services, and revitalization of the neighborhoods are generally not the focus of most enterprise zone programs, despite the fact that the zones receive designation status because of the high levels of poverty and unemployment.¹⁶ Often the businesses that benefit from the enterprise designation are capital and not labor intensive. In some instances businesses that benefit from locating in an enterprise zone employ virtually no employees. One study conducted by two Cornell University professors which evaluated the effects of the Evansville, Indiana state enterprise zone program found that 36% of the tax breaks went to firms with almost no employees and that were using the zone as a tax shelter for warehouses where trucks simply loaded and unloaded materials.¹⁷ Because the state program is not a direct subsidy to low income residents, but rather to the businesses that locate in enterprise zone communities, the theory is one of trickle down: residents will realize an indirect benefit as the result of "increased job opportunities" in the community. Not surprisingly, studies of state enterprise zones, including a study by the General Accounting Office of the state of Maryland's enterprise zone program, found that tax incentives, as the cornerstone of state enterprise zone programs, produced no

evidence that the program produced growth in employment.¹⁸

Is the new federal program, with its emphasis on community participation and increased social service funding, a radical enough departure from the traditional enterprise zone model to be successful in meeting its goals? It is too early to tell. The HUD Interim Regulations for the Designation of Empowerment Zones and Enterprise Communities states as its purpose: "to stimulate the creation of new jobs, particularly for the disadvantaged and long-term unemployed and to promote revitalization of economically distressed areas."¹⁹

Despite the stated purposes, the program may fail if careful evaluation and monitoring by HUD is not made of both the development and implementation of the Strategic Plan, and if the Plan is not evaluated from the perspective of its effect on low income communities and their residents. The following are a few examples of critical issues that will determine the success of Empowerment Zones and Enterprise Communities as tools for revitalizing distressed urban areas.

A. *Benefits to Long-Term Unemployed and Disadvantaged*

The program anticipates creation of jobs that will benefit residents of the Zone or Community. However, neither the legislation nor the interim regulations adequately protect the jobs for low income community residents. The regulations require that the Strategic Plan outline among

its key principles the creation of economic opportunities, including job creation, entrepreneurial initiatives, small business expansion, and training for jobs that offer upward mobility.²⁰ However, there is no requirement that these jobs be granted to low income, chronically unemployed, or disadvantaged zone residents and there is no requirement that HUD evaluate the Strategic Plan based on its effectiveness in targeting benefits and resources to such persons. It is easy to imagine that jobs will more readily be available to persons less marginally connected to the job market, or persons who live in the zone but who are not part of the population living below the poverty line.

In addition, neither the regulations nor the statute stresses the importance of attracting new industries that are labor (not capital) intensive and that create jobs for other than highly skilled workers. Relocation of businesses that rely on high technology, such as the medical and computer industries, fails to meet the needs of community residents if the job opportunities made available require highly skilled personnel.

Finally, there is no objective test set forth in either the legislation or the regulations for evaluating the quality of the jobs created. Jobs may be created for which the employer receives a generous wage credit but may only marginally improve the employee's standard of living. In order for low income residents to benefit from such an indirect job creation program, emphasis must be placed on the creation of quality jobs, jobs that provide adequate wages and benefits to support a family and opportunities for skills and career

advancement.²¹

B. *Participation in the Creation of the Strategic Plan*

A major criticism of previous enterprise zone programs by low income community advocates is the lack of mandated community participation.²² The new federal program addresses this issue by requiring the participation of "specific groups, organizations and individuals in the production of the Plan, . . . evidence that the participants, taken as a whole, broadly represent the racial, cultural and economic diversity of the community," and an explanation of the "role of the participants in the creation, development and future implementation of the plan."²³

This emphasis on community participation is essential if the Strategic Plan is to benefit low income, long-term unemployed, and chronically disadvantaged members of the community. The legislation and the Interim Rules mandate the cooperation and participation of individuals and organizations which signify a cross representation of the community, a marked improvement over earlier enterprise zone programs. However, unlike other federal programs administered by HUD, such as the Community Development Block Grant Program (CDBG),²⁴ there are no minimum requirements for citizen participation, such as open forums, community participation hearings, or a notice and comment period before the zone area is selected by the applicant, or at any time after the planning process begins.²⁵ Meaningful community

participation that includes the input of residents will only be achieved if HUD takes seriously its obligations of monitoring and review and if it takes the time to determine whether the participants adequately represent the residents, organizations, and institutions that make up the community.²⁶

C. Regulatory Waivers

Similar to other enterprise zone programs, this new federal program provides an opportunity for federal regulatory waivers, if such regulations impede the successful implementation of the Strategic Plan. Although not included in the authorizing legislation, the Interim Rules also seek requests for statutory changes.²⁷ Such waiver requests are not subject to citizen participation hearings, notice and comment, opportunities for appeal or any degree of public disclosure beyond the participants in the Strategic Plan. While one HUD official has stated that no waiver requests will be accepted without written verification and assurances of the community's desire for such a waiver,²⁸ greater protection for community residents would be awarded by a clear, regulatory process that insured community understanding and approval of waiver requests. Historically, regulatory waivers have often been used to weaken protections that benefit low income communities, to reduce the number of affordable housing units, and to pave the way for gentrification or urban renewal.²⁹ Care must be taken to insure that the adverse implications of any waiver requests, particularly those that are

statutory, are made known to the community so that the community can make its own determination of the value of such a request.

D. Physical and Social Infrastructure

The successful implementation of any Plan should include a detailed Plan for the physical and social revitalization of the infrastructure, including schools, roads, transportation, crime prevention, and other amenities of the community.³⁰ The designation as a Zone or Community should not be so narrowly defined as to limit the potential for growth to the development of a few jobs, but should be taken as an opportunity to engage in a real community planning process.

The new federal program provides the outlines for such an opportunity. Participants are asked to consider how the "community's approaches to economic development, social/human services, transportation, housing, sustainable community development, public safety, drug abuse prevention, and educational and environmental concerns will be addressed in a coordinated fashion."³¹ Again, this opportunity will only be meaningful if the local authorities provide the resources to the community for this detailed planning process and HUD critically evaluates the application to determine whether these issues are addressed.

CONCLUSION

Much hope is placed on the new federal Empowerment Zone/Enterprise Community

program. It is unrealistic to assume that this program, even if run perfectly, could singlehandedly turn around distressed communities. Even conservatives largely credited with developing the American model of the enterprise zone caution against inflated expectations. Carl Horowitz, of the conservative Heritage Foundation, a policy analyst specializing in Housing and Urban Affairs admitted, "Those rioters [in L.A.] were not rioting because they did not have an enterprise zone."³² Nonetheless, it is only one of a handful of programs currently available to distressed communities. While the odds are this program will have many of the same faults as state enterprise zone programs, there are a few positive changes to this program that may allow for greater success than such programs in the past. In addition, there are not many other opportunities for communities to be provided with such vast sums of Social Service Block Grant funds and priority for other federal grant and loan dollars. Until we have better programs that provide money to distressed communities and real job creation, advocates for low income communities who participate in the Empowerment Zone/Enterprise Community process should push for meaningful participation of community members, seek real job creation for low income and long term unemployed residents, and monitor the application and implementation process so as to insure the accountability of both the local authorities and HUD.

ENDNOTES

1. This new legislation is found at 26 U.S.C.A. § 1391 (West 1993).
2. See Jill Zuckerman, *Riots Resurrect Enterprise Zones*, 50 CONG. Q., May 9, 1992, at 1253.
3. See Nicholas Lehmann, *The Myth of Community Development*, N.Y. TIMES., Jan. 9, 1994, § 6 (Magazine) at 27, 30.
4. 29 WEEKLY COMP. PRES. DOC. 1716 (Sept. 9, 1973).
5. HUD is authorized to designate the urban Zones and Communities. The Department of Agriculture will designate the rural Zones and Communities. Both agencies published interim regulations Jan. 18, 1994, the same day the application packet was officially released. See 59 Fed. Reg. 2686 (1994)(to be codified at 7 C.F.R. pt. 25)(regulating rural zones); 59 Fed. Reg. 2700 (to be codified at 24 C.F.R. pt. 597) (regulating urban zones).
6. See Anna Yee, *Enterprise Zones: Not Perfect, But Some Real Potential* (Jan. 5, 1994) (unpublished report by National Economic Development Law Center, on file with author).
7. See 26 U.S.C.A. §§ 1391 & 1392.

The specificity of the statute on issues such as population and geographic size reinforced a widely held belief that certain neighborhoods meeting these detailed criteria were taken into consideration when the legislation was drafted. Such neighborhoods, including South Central Los Angeles, Harlem, and the most impoverished areas of Chicago were considered by many to be sure winners in the competition for designation of an Empowerment Zone even before the application process officially began.
8. See § 597.200(c) of the Interim Rules in 59 Fed. Reg. 2700, 2705 (to be codified at 24 C.F.R. § 597 [hereinafter *Interim Rules*]).
9. See § 570.200(d) of the *Interim Rules* for a complete listing of the elements of the Strategic Plan.
10. See § 597.301(a) of the *Interim Rules*.
11. See 26 U.S.C.A. § 1394(c).
12. *Id.* at § 1396.
13. *Id.* at § 1394.
14. See U.S. DEP'T OF HOUSING & URBAN DEV., U.S. DEP'T OF AGRIC., GUIDEBOOK FOR COMMUNITY BASED STRATEGIC PLANNING FOR EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES (listing the federal programs for which an applicant could seek priority status to further the goals of the Strategic Plan).
15. See generally Ellen Aprill, *Caution: Enterprise Zones*, 66 SO. CAL. L. REV. 1341 (1993).
16. See generally Yee, *supra* note 6.
17. See Robert Guskind, *Enterprise Zones: Do They Work?*, J. OF HOUSING, Jan./Feb. 1990, at 47, 51.
18. See Aprill, *supra* note 15, at 1352-53; Guskind, *supra* note 17, at 52.

19. See § 597.2 of *Interim Rules*.
20. See § 597.200(c)(1) of *Interim Rules*.
21. See Yee, *supra* note 6, at 7-9.
22. *Id.*, at 5-7.
23. See § 597.200(d)(1) to (3) of *Interim Rules*.
24. See 42 U.S.C. § 5304(a)(1) (1988).
25. Concerns of too little information provided too late to allow for meaningful community participation appear to be true for several communities across the country. A conference call on empowerment zones facilitated by the National Economic Development and Law Center, with advocates from Legal Services Programs around the country, held on April 15, 1994, revealed that many communities had not yet begun a community planning process despite the application deadline of June 30, 1994. In one community, Camden, N.J., the city officials appointed 20 business people to the strategic planning committee but refused to release the names to the community, and held a closed meeting that certain community advocates were prohibited from attending.
26. HUD will most likely take the citizen participation requirement seriously. Michael Savage, Deputy Director, Office of Economic Development, Department of Housing and Urban Development, stated that HUD would review all community participation activities, including minutes of all meetings held in developing the strategic plan, to evaluate whether there was true participation in the development of the Plan. Telephone Interview with Michael Savage (Apr. 15, 1994).
27. See § 597.200(d)(17) of *Interim Rules*.
28. Telephone Interview with Savage, *supra* note 26.
29. See Center for Community Change (CCC), Comments to the *Interim Rules*, Feb.17, 1994 (CCC is a national non-profit technical assistance and advocacy organization).
30. While research on state enterprise zones is generally unfavorable, one study suggests that the greater the government intervention and the greater the administrative resources devoted to operating the enterprise zone program, the greater the overall success of the program. See Aprill, *supra* note 15, at 1352.
31. § 597.200(d)(11) of *Interim Rules*.
32. See Zuckerman, *supra* note 2, at 1253.