Empowerment Zones and Enterprise Communities
Under the Omnibus Budget and Reconciliation
Act of 1993:
A Promising Concept with Some Modifications

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INTRODUCTION

For as long as there have been cities, the state of the urban environment has caused concern. The biblical tale of the cities of Sodom and Gomorrah provides an early example. If you recognize the names of the subject cities in that possibly apocryphal story, you may also remember the ultimate approach to “urban renewal” taken by the Almighty, who had earlier expressed despair to Abraham over the cities’ wickedness.¹ The Almighty destroyed Sodom and Gomorrah, along with all but four inhabitants, with a rain of sulfurous fire.²

Several thousand years have passed since that event. However, the problems of the urban environment persist. By any measure—housing, education, medical care, economic opportunity—a substantial number of America’s inner-city residents now live in privation greater than had existed even prior to the advent of the Great Society.³ Further, census data establish that these indicia of grinding poverty appear in rural

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¹ Genesis 18:20-21 (King James) (“And the Lord said, Because the cry of Sodom and Gomorrah is great, and because their sin is very grievous; I will go down now, and see whether they have done altogether according to the cry of it which is come unto me; and if not, I will know.”).

² Genesis 19:24-25 (King James) (“Then the Lord rained upon Sodom and upon Gomorrah brimstone and fire from the Lord out of heaven; And he overthrew those cities, and all the plain, and all the inhabitants of the cities, and that which grew upon the ground.”).

environs as well. Finally, and perhaps most alarmingly, the perpetuation of a permanent underclass now appears to be a distinct possibility. Thus, not surprisingly, a level of concern about our cities that sometimes approaches hopelessness remains a continuing feature of American political culture.

Over the past decade, the concept of federal “enterprise zones” has gained popularity as a potential means of revitalizing distressed communities. Presidents Reagan and Bush both endorsed the idea, but neither signed enterprise zone legislation. In 1993, President Clinton signed into law the Omnibus Budget and Reconciliation Act of 1993 (OBRA ’93). Through amendments to the Internal Revenue Code, OBRA ’93 permits, for the first time, federal participation in the establishment of enterprise communities and empowerment zones within the continental United States. It remains to be seen, however,

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4 Economic performance in rural areas is tied to agriculture, natural resource development, energy, and durable goods production. During the 1980s, a sharp decline in these areas left a substantial number of rural Americans unemployed. In 1990, nearly 1.6 million rural Americans who sought employment were unable to find a job. Arloc Sherman, Children’s Defense Fund, Falling by the Wayside: Children in Rural America 23-26 (1992); see also Guy Gugliotta, War on Poverty: Three Decades and No Victory, Wash. Post, Dec. 26, 1993, at A1 (citing Appalachia as an example of the intractability of rural poverty).


6 Enterprise zones are economically depressed areas which have been targeted for revitalization on the basis of legislatively mandated criteria. The objective is to encourage economic development in the designated areas by offering various incentives to qualifying businesses located therein.

States have been experimenting with enterprise zones for more than a decade. The first American zone established on the state level appears to have been designated in Florida in 1980. See Willie Logan, Jr. & Lee Ann Barron, Florida’s Enterprise Zone Program: The Program After Sunset, in Enterprise Zones: New Directions in Economic Development 91 (Roy E. Green ed., 1991) [hereinafter Enterprise Zones].


8 In November of 1992, Congress passed legislation that would have permitted the establishment of federal enterprise zones in the continental United States. The bill, H.R. 11, 102d Cong., 1st Sess. § 101 (1991), however, was pocket vetoed by President Bush. See Aprill, supra note 7, at 1342. For a careful analysis of that legislation, see Scott A. Tachirig, Aiming the Tax Code at Distressed Areas: An Examination and Analysis of Current Enterprise Zone Proposals, 43 Fla. L. Rev. 991 (1991).


10 OBRA ’93 employs the basic concept of enterprise zones described in supra note 6 with a twist. It provides for two different designations: “enterprise communities” and “empowerment zones.” Businesses located in empowerment zones will be given a broader range of federal tax benefits than those located in enterprise communities. For the purpose of this article, the term “enterprise zone” will be used when referring to enterprise communities and empowerment zones collectively. When referring to one of the zones individually, its specific name will be used.

11 It should be noted that the federal government has been participating in the development of enterprise zones outside the continental United States since 1976, when an amendment to the Internal
whether OBRA '93 can be an effective catalyst for revitalizing blighted areas.

Whether this legislative effort will succeed is an important question. The problem of inner-city decay is not being addressed in any systemic fashion, and the subject seems to be one that has largely disappeared from our national agenda. In OBRA '93, Congress uses tax expenditures, as opposed to direct expenditures, to provide federal assistance to designated areas. As such, the legislation takes a somewhat different approach to federal fiscal intervention. Further, OBRA '93 more directly implicates the financial involvement of state and local governments in revitalization efforts than has been true in prior federal efforts. For each of these reasons, OBRA '93 deserves to be thoughtfully addressed, notwithstanding its quite modest scale.\footnote{Empowerment zones and enterprise communities are expected to cost the federal government almost $2.5 billion during the first five years of the experiment. Appendix A: Estimated Budget Effects of the Revenue Provisions of H.R. 2264 (The Omnibus Reconciliation Act of 1993) as passed by the Congress, Fiscal Years 1994-1998, 1993-162 Daily Tax Rep. (BNA) L-46 (1993). Compare with ibid., supra note 7, at 1347-48.}

Part I of this article provides a brief overview of the principal provisions in OBRA '93. Part II discusses three major differences between OBRA '93 and typical state enterprise zone legislation and argues that these differences greatly increase OBRA '93’s chances for success. This assertion is significant since state enterprise zones have been viewed as, at best, only mildly successful. Notwithstanding OBRA '93’s improvement over state enterprise zone legislation, Part III of this article reveals weaknesses in OBRA '93 that threaten to compromise successful implementation of the enterprise zone concept. Part III further suggests ways in which Congress could remedy these weaknesses to improve this legislation. Finally, this article concludes by arguing that OBRA '93 could be an effective catalyst for revitalizing blighted areas if Congress amends the legislation in accordance with the suggestions set out in Part III of this article.

\section{I. Overview of Principal OBRA '93 Provisions}

OBRA '93 gives selected departments of the federal government the

power to designate eligible areas as empowerment zones or enterprise communities.\(^{13}\) To be eligible for designation, an area must meet criteria for population,\(^{14}\) economic distress,\(^{15}\) geographic size and location,\(^{16}\) and poverty rates.\(^{17}\) Actual designation as either an empowerment zone or an enterprise community is predicated upon joint nomination by a state and local government possessing authority to do so\(^{18}\) and the nominators certification that the nominated area is not already included in a previously designated or presently nominated enterprise community or empowerment zone.\(^{19}\) In addition, OBRA '93 requires that the nomination be accompanied by a strategic plan detailing the resources which will be made available to the effort.\(^{20}\)

\(^{13}\) OBRA '93 provides for an aggregate of nine empowerment zones (six urban and three rural) and 95 enterprise communities (65 urban and 30 rural). I.R.C. § 1391 (West 1994). The Secretary of Housing and Urban Development is responsible for the designation of urban enterprise communities and empowerment zones, and the Secretary of Agriculture is responsible for the designation of rural enterprise communities and empowerment zones. Id. § 1393(a)(1)(A). Under this legislation, an area is rural if it is outside a metropolitan statistical area or is designated as such by the Secretary of Agriculture in conjunction with the Secretary of Commerce. An urban area is an area not classified as rural. Id. §§ 1393(a)(1)(B), 1393(a)(2)-(5).

\(^{14}\) Urban nominated areas must have a maximum population of the lesser of 200,000, or the greater of 50,000 or 10% of the population of the most populous city located within the nominated area. The population of a rural nominated area cannot exceed 30,000. Id. § 1392(a)(1)(A)-(B).

\(^{15}\) Nominated areas must evidence pervasive poverty, unemployment, and general distress. Id. § 1392(a)(2). The conference committee report explaining OBRA '93 provides that “general distress may be indicated by factors such as high crime rates, high vacancy rates, or designation of an area as a disaster area or high intensity drug trafficking area ... job loss ..., and economic distress due to closures of military bases or restrictions on timber harvesting.” 93 Stand. Fed. Tax Rep. (CCH) ¶ 933,787 [hereinafter CCH, Law and Explanations].

\(^{16}\) Urban nominated areas must not exceed twenty square miles, must have a continuous boundary and must be located entirely within no more than two contiguous states. Rural nominated areas have a limit of 1,000 square miles. A rural area may consist of not more than three noncontiguous parcels when located in more than one state or may be located entirely within no more than three contiguous states. The nominated area cannot include any portion of a central business district unless the area is one characterized by pervasive poverty. I.R.C. § 1392(a)(3)(A)-(D) (West 1994).

\(^{17}\) Nominated areas must have a pervasive poverty rate of at least 20%. Furthermore, the poverty rate cannot be less than 25% for 90% of the population tracts within the nominated area and cannot be less than 35% for at least 50% of those tracts. Special rules relate to both determining the poverty rate for census tracts with small populations and adjusting requirements for enterprise communities. See id. § 1392(a)(4)(A)-(C).

\(^{18}\) See generally id. § 1391. In accordance with § 1393, a “local government” is a general purpose political subdivision of a state or some combination thereof. Further, if an area has been nominated by an economic development corporation chartered by the State, the area is treated as having been nominated by a state or local government. Id. § 1393(a)(5)-(7).

\(^{19}\) Id. § 1391(e)(5).

\(^{20}\) [A] strategic plan ...

(A) describes the coordinated economic, human, community, and physical development plan and related activities proposed for the nominated area, ...

(C) identifies the amount of State, local, and private resources that will be available in the nominated area and the private/public partnerships to be used, which may include participation by, and cooperation with, universities, medical centers, and other private and public entities, [and]

(D) identifies the funding requested under any Federal program in support of the proposed economic, human, community, and physical development and related activities . . .
illustrating the process by which there will broad-based community participation in the formulation of the plan,21 and identifying the baselines and benchmarks that will be used to monitor the plan on a regular basis.22

Qualifying businesses located in either enterprise communities or empowerment zones will be able to use the proceeds of tax-exempt enterprise zone facility bonds up to specified limits to provide “enterprise zone facilities.”23 All businesses in empowerment zones will be permitted to use an employment credit for qualified zone employees,24 and qualifying businesses therein will also be able to take advantage of an increase in the allowable deduction for certain depreciable business assets.25 Significantly, OBRA ’93 prohibits businesses which relocate from outside to inside an enterprise zone in order to take advantage of the benefits available to businesses in such zones—a process known as “churning”—from receiving any of the aforementioned benefits.26

OBRA ’93 provides that all zones are to be designated by the end of the 1995 calendar year.27 Designations will last up to ten years, with the

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21 See generally id. § 1394 titled, “Tax-Exempt Enterprise Zone Facility Bonds.” For the purposes of § 1394, an enterprise zone business includes qualifying business entities and proprietorships located within enterprise communities or empowerment zones. Id. § 1394(b)(3). A qualifying business is a business which is actively conducted within the enterprise community or empowerment zone, has an employee force comprised of at least 35% zone residents, and generates at least 80% of its gross income from intra-zone activity. Id. §§ 1397B. Qualifying businesses may borrow $3,000,000 with respect to a single empowerment zone or enterprise community and $20,000,000 across all empowerment zones and enterprise communities. The bonds are subject to the overall volume limitation on state and local private activity bonds. See generally id. § 141 et. seq.

22 The empowerment zone employment credit is a declining percentage of the first $15,000 of qualified zone wages (excluding wages eligible under the Targeted Jobs Tax Credit) paid or incurred by the employer to a qualified zone employee during the taxable year. It includes all wages paid to either full-time or part-time qualified zone employees and is phased out entirely effective January 1, 2005. Id. § 1397A(a).

An employee is deemed to be a “qualified zone employee” if substantially all of the employee’s business services are performed within the empowerment zone of the employer and the employee’s principal place of abode is within the empowerment zone. The credit is thus available to any empowerment zone employer irrespective of whether the business itself is a “qualifying business.” Id. § 1396(d)(4)(A)-(B).

23 OBRA ’93 increases the deduction limit available under I.R.C. § 179 by up to $20,000 for qualifying businesses in empowerment zones. Id. § 1397A(a).

24 Id. § 1391(f)(2)(F). However, OBRA ’93 does provide assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary. Id.

25 The designation process has recently been completed. The six urban empowerment zones are: Atlanta, Baltimore, Chicago, Detroit, New York, and Philadelphia-Camden N.J. The rural designees
last of the zones expiring no later than December 31, 2005.\textsuperscript{28} OBRA '93 also gives the Secretary of Housing and Urban Development (in the case of urban areas) and the Secretary of Agriculture (in the case of rural areas) authority to revoke designation prior to the completion of the ten-year period when either the state or local government in which the zone or community is located has modified the boundaries of the area or has failed to comply with or is failing to make progress in achieving the baselines and benchmarks set forth in the strategic plan.\textsuperscript{29}

II. THE ENTERPRISE ZONE CONCEPT: STATE VERSUS FEDERAL APPROACHES

OBRA '93, like state enterprise zone legislation, targets economically depressed areas for revitalization on the basis of legislatively mandated criteria\textsuperscript{30} and offers incentives to qualifying businesses located therein.\textsuperscript{31} The federal legislation, however, differs from typical state enterprise zone legislation in three significant respects. First, OBRA '93 provides enterprise zone businesses with easier access to capital than does most state legislation. Second, OBRA '93 requires state and local governments to dedicate resources to the enterprise zone project, thereby increasing the likelihood of infrastructure development in those areas. Finally, OBRA '93 attempts to define zone objectives and requires the establishment of baselines and benchmarks by which zone performance can be regularly monitored.

\textsuperscript{28} I.R.C. § 1391(d). An earlier termination date may be designated by the nominating governments. Id.

\textsuperscript{29} Id.

\textsuperscript{30} For an overview of states' principal eligibility criteria, see Enid Beaumont, Enterprise Zones and Federalism, in Enterprise Zones, supra note 6, at 41, 55. For a discussion of OBRA '93's principal eligibility criteria, see supra notes 14-22 and accompanying text.

\textsuperscript{31} For an overview of the incentives offered by particular state enterprise zone programs, see Richard Elling & Ann Workman Sheldon, Determinants of Enterprise Zone Success: A Four State Perspective, in Enterprise Zones, supra note 6, at 136, 139. (Table 9.1 suggests that incentives provided by states varied widely but all focused on business investment and tax incentives. The underlying premise was that in order to stimulate economic development, the cost of doing business should be reduced and that this could most efficiently be accomplished by lowering governmentally imposed taxes and regulatory costs. Importantly, state and local governments assumed no additional financial role in the effort). For a discussion of OBRA '93's primary business incentives, see supra notes 23-25 and accompanying text.
A. Access to Capital

Most new businesses face an immediate need for capital first for start-up expenses and then to maintain their facilities and retain a workforce. Because most new businesses fail to obtain the capital to meet these needs, a substantial number fail within one year. Thus, it comes as no surprise that entrepreneurs consider the immediate availability of capital to be more important than advantageous tax treatment of capital gains from the profitable sale or exchange of a capital asset. Access to capital may be particularly difficult to obtain in areas that qualify for designation as enterprise zones. Businesses in distressed communities may be considered poor credit risks, or they may be victims of the discriminatory practice of "redlining." Though there have been exceptions, state enterprise zones have not paid much attention to providing enterprise zone businesses with access to capital.

Under OBRA '93, entrepreneurs in both enterprise communities and empowerment zones can look to enterprise zone facility bonds as a source of capital. Bonds issued under the terms of Section 1394, Tax Exempt Enterprise Zone Facility Bonds, are private activity bonds (PABs). In order to use these bonds, thirty-five percent of a qualifying

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32 See Bryan Lysaght, Reluctant Entrepreneurs, Corporate Detroit Mag., Feb. 1993, at 18 ("The failure of new businesses can be as high as 50 to 60 percent in the first year.").
33 See Cap Gains? Small Change to Small Start-Ups, Wall St. J., Aug. 12, 1993, at A13 ("During a small business's growth stage, the income tax is pivotal. The business owner must wrestle with it for decades. The capital gains tax is a one-shot deal, coming at the very end, if at all."); Aprill, supra note 7, at 1357 ("Capital gains preferences, in particular, benefit investors only in the future, if and when the business is sold at a profit."). Note that H.R. 11, the enterprise zone bill pocket vetoed by President Bush, emphasized capital gains preferences. See id. at 1362; Tschirgi, supra note 8, at 1015.
34 See Anthony D. Tabi, Banking, Finance, and Community Economic Empowerment: Structural Economic Theory, Procedural Civil Rights, and Substantive Racial Justice, 107 Harv. L. Rev. 1465, 1486 (1994) ("Redlining originally referred to the practice of literally drawing a red line around certain neighborhoods on a city map and refusing to make loans for property or businesses located within the demarcated zones.").
36 "The term 'exempt facility bond' includes any bond issued as part of an issue 95% of more of the net proceeds (as defined in I.R.C. § 150(a)(3)) of which are to be used to provide any enterprise zone facility." I.R.C. § 1394(a) (West 1994).
37 PABs are not backed by the faith and credit of the government. Rather, legally they are self-liquidating, i.e., serviced only by the proceeds of the enterprise for which they provide venture
business' employees must be zone residents and the business must generate eighty percent of its gross income from its operations within the zone. In addition to providing empowerment zone businesses access to facility bonds, OBRA '93 also provides them with more generous expensing of qualifying property. Furthermore, an empowerment zone wage credit is available to any intra-zone business employing a zone resident. In addition to providing zone businesses access to capital, these provisions are intended to serve as incentives for both job creation and job targeting.

B. Infrastructure Investment

Extensive research has shown quite convincingly that business location decisions are affected only marginally by tax considerations. Factors such as the availability of suitable facilities, a workforce sufficient in size and preparation, adequate public amenities (e.g., transportation, police service, and health care), a satisfactory educational system, and decent affordable housing are of primary importance. Thus, blighted areas seeking to promote economic development must replicate these factors or at least demonstrate the capacity to develop them.

Areas likely to be designated empowerment zones and enterprise communities will probably suffer from low levels of investment in public and human capital. Furthermore, they are unlikely to possess a demonstrable capacity to reverse their decline and begin the process of

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39 Under I.R.C. § 179, instead of taking a deduction for depreciation, a taxpayer may elect to treat all or some of the cost of qualifying property as a currently deductible expense. Under OBRA '93, the total dollar amount that can be expensed in a single tax year under § 179 has been increased from $10,000 to $17,500. Qualifying businesses in empowerment zones may expense an additional $20,000 in § 179 property as long as such property is also qualified zone property. Thus the maximum dollar limit for qualifying businesses in empowerment zones is $37,500. Id. §§ 179(b)(1), 1397A.
40 Id. § 1396(d).
41 "Job creation," as the name suggests, is accomplished simply by the creation of more jobs. "Job targeting" refers to the employment of certain types of individuals, typically minorities, the unemployed, and the impoverished. By requiring that 35% of the employees be zone residents, OBRA '93 promotes job targeting as well as job creation. See id. § 1397B.
43 Andrew Kolesar, Note, Can State and Local Tax Incentives and Other Contributions Stimulate Economic Development, 44 Tax Law. 285, 289 (1990); see also April, supra note 7, at 1352-53; Tschirgi, supra note 8, at 1030.
44 Kolesar, supra note 43, at 289-95.
revitalization. Rather, in the words of the committee report explaining OBRA '93, such areas will be characterized by "factors such as high crime rates, high vacancy rates, or designation of an area as a disaster area or high intensity drug trafficking area ... job loss ... and economic distress."\(^{45}\) Given the crumbling infrastructure in prospective enterprise communities and empowerment zones on the one hand, and the importance of a healthy infrastructure to economic development on the other, OBRA '93's requirement for infrastructure investment is quite likely the most important feature of the legislation.\(^{46}\)

American state enterprise zones, like the prospective federal enterprise communities and empowerment zones, have generally been mixed commercial/residential areas. However, because incentives for state enterprise zones have traditionally been modeled after British zones, which include only commercial properties,\(^{47}\) state zones have relied predominantly on business investment and tax incentives to promote economic development in the designated areas.\(^{48}\) By failing to require state and local governments to invest funds in enterprise zones, state enterprise zone legislation has not created the conditions which attract new businesses to economically blighted areas.\(^{49}\) By requiring

\(^{45}\) See CCH, Law and Explanations, supra note 15 and accompanying text.

\(^{46}\) While OBRA '93 does not explicitly provide for infrastructure development, it does require the strategic plan to include a detailed description of both state and local resources that will be brought to bear in the zone effort. I.R.C. § 1391(0)(2)(C) (West 1994). Congress assumes that these resources will be used for infrastructure investment. As discussed infra notes 78-80, however, state and local expenditures are not always used in this way. OBRA '93 should be amended to ensure that public resources will be used for general public purposes. See generally infra notes 78-91.

\(^{47}\) The "enterprise zone" concept originated in the late 1970s in England and is the brainchild of Peter Hall. Peter Hall, The British Enterprise Zone, in Enterprise Zones, supra note 6, at 179. As a result of observing the undesirable societal effects of business' emigration from England's inner cities, Hall proposed to the British Royal Town Planning Institute the creation of commercial "freeports" to halt the resultant economic deterioration. Id. at 180. Hall envisioned spurred economic activity by reducing the costs of conducting a business in such areas by cutting taxes, decreasing regulation and reducing social services. Id. at 180-81. It was believed that these modifications, when combined with tax and investment incentives, would spur economic activity and thereby create jobs. Id. Incentives were exclusively commercial in character, as were the British zones themselves. Id. at 179-91.

Though the American zones varied significantly as implemented, the British zone concept proved attractive to a number of state-side policymakers. Laura A. Nicolette, The Enterprise Zone Community Development Act of 1993 — H.R. 15, Urban Enterprise Zones: Do or Die Legislation for Our Nation's Cities, 17 Seton Hall Legis. J. 603, 609-11. There are currently 38 states with some form of enterprise zone legislation. Id. at 610 n. 49.

\(^{48}\) See Erickson and Friedman, supra note 35 and accompanying text.

\(^{49}\) Only recently have states begun to contemplate direct public investment in enterprise zones. New York state is a case in point. The New York Economic Development Zones Act includes the following language in its preamble:

It is further found and declared that it is the public policy of the state to achieve these goals through the mutual cooperation of all levels of state and local government and the business community.

both state and local financial support of a nominated area, OBRA '93 takes an important step to insure infrastructure investment in zone areas. This requirement is consistent with a lesson that can be drawn from the states' experience during the last decade: If revitalization is to be comprehensive, infrastructure investment through government participation at all levels is essential.

C. Clearly Defined Objectives and Benchmarks for Monitoring Success

Despite high hopes, state enterprise zones have been considered, at best, only marginally successful. Poorly defined goals, however, have made an accurate assessment of most state zones very difficult. Furthermore, even when objectives have been clearly defined and data have been accurately compiled, observers often differ over which data are relevant in determining whether a zone's objectives have been met. Thus, most attempts to measure performance of prior zones appear flawed in some fashion. The experiences of Indiana and Maryland are illustrative of the latter point.

Job creation has been a major objective of enterprise zones in both Indiana and Maryland—two of the states which have had the longest experience with enterprise zones. If job creation is the zone objective, the primary determinant for measuring success presumably would be the number of jobs created. However, determining which "jobs" should be considered has proven difficult. Zone proponents argue that


Former Housing and Urban Development Secretary, Jack Kemp, stated that enterprise zones are "a vital measure to bring hope to the disadvantaged, the poor and the unemployed and to let them know that we have not forgotten our goal of justice, opportunity and prosperity for all." Id. at 372.


52 See Franklin J. James, The Evaluation of Enterprise Zone Programs, in Enterprise Zones, supra note 6, at 230 ("[T]he goals of a program typically provide the most appropriate and valid basis for assessing program success.").

But see Michael Brintnell & Roy E. Green, Framework for a Comparative Analysis of State-Administered Enterprise Zone Programs, in Enterprise Zones, supra note 6, at 83 ("One of the major reasons for the lack of evaluation research on state-administered enterprise zone programs has been that the concept's integral components have not been sufficiently defined. Policymakers and analysts have thus had difficulty establishing criteria for individual or comparative analysis of state programs.").

zone designation has been the catalyst for realized increases in the number of businesses—and hence jobs—in the designated areas. For example, Frank O’Bannon, Lieutenant Governor of the State of Indiana, and charged with oversight of that state’s enterprise zones, has testified that “[f]rom 1986 to 1990 ... [n]ew employment in the zone businesses ... is estimated conservatively at 17,000 people ....”54 Similar increases were noted in the absolute number of jobs in Maryland enterprise zones.55 However, it is less clear that these jobs came from “new” businesses; there is evidence suggesting that, to some extent, the new zone jobs result from relocating businesses.56 Thus, critics of enterprise zones, troubled by the extent to which zone investment increases appear attributable to businesses’ relocation into the area, contend that no real expansion has occurred; mere “relocation” is not the equivalent of economic growth flowing from “new” businesses.57

OBRA ’93 attempts to remedy both of these flaws. First, it identifies three enterprise zone objectives: job creation,58 job targeting,59 and community development.60 Second, it requires state and local governments to identify specific baselines and benchmarks which will be used for monitoring the zone’s success at meeting its objectives.61

III. IMPROVING OBRA ’93

Assuming Congress has correctly identified the critical elements for a


55 A General Accounting Office (GAO) study found that employment among participating firms increased between 8% and 76% during the four years following implementation of the programs. Grasso and Crosse, supra note 53, at 127. The study concluded, however, that this growth could not be attributed to zone incentives.


57 The British experiment was ultimately judged a failure because a substantial portion of the activity in those zones was attributed to the relocation of businesses, an effect deemed undesirable in the British view. As a result, the British enterprise zones are being phased out, and the remaining British zone designations will expire in 1999. Papke, supra note 51, at 48.

58 “Job creation” simply refers to the creation of new jobs. See supra note 41. OBRA ’93 promotes job creation by providing newly-established businesses located in enterprise communities and empowerment zones with various benefits and by denying these benefits to relocating businesses. See supra notes 23-26 and accompanying text; H.R. Rep. No. 111, 103d Cong., 1st Sess., at 797-99 (1993) [hereinafter House Report No. 111].

59 “Job targeting” refers to the employment of certain types of individuals. See supra note 41. OBRA ’93 promotes job targeting through the wage credit. See supra note 24 and accompanying text; House Report No. 111, supra note 58, at 794-95.

60 OBRA ’93 promotes community development through required infrastructure spending. See supra note 46 and accompanying text; House Report No. 111, supra note 58, at 793-94.

successful enterprise zone plan—access to capital, infrastructure investment, and clearly defined objectives which can be measured by specified baselines and benchmarks—it is not clear that legislators have properly crafted the statutory requirements. Some modifications are clearly warranted. With regard to some provisions, Congress need merely clarify ancillary matters; with others, more serious substantive revisions are required. This Part of the discussion makes suggestions with regard to six aspects of OBRA '93: (A) zone designation, (B) strategic plans, (C) the role of sanctions, (D) enterprise zone facility bonds, (E) requirements for becoming a “qualified” business, and (F) tax breaks targeted for empowerment zone businesses. This Part also suggests that enterprise zone oversight be streamlined by placing full responsibility in the Department of the Treasury. Such revisions will greatly increase the likelihood of OBRA '93’s success.

A. Zone Designation

Among the items needing improvement are the standards governing zone designation. OBRA '93 limits the number of empowerment zones and enterprise communities, thereby forcing administrators to make difficult choices among numerous qualified candidates. Importantly, OBRA '93 provides no guidance in choosing among worthy areas. Because economic decline is pervasive, some observers object to limiting the number of enterprise communities and empowerment zones. Others fear that designations may be driven by political considerations.

62 See Susan B. Hansen, Comparing Enterprise Zones to Other Economic Development Techniques, in Enterprise Zones, supra note 6, at 20-21 ("Economists are by no means in agreement as to which declining regions should be, in effect, written off and which should be aided."); April, supra note 7, at 1349 ("If we limit the number of zones, we must anticipate battles over designating the zones that will dissipate funds and undermine the program. If we do not limit the number of zones, their cost will increase as their effectiveness decreases.").

63 See I.R.C. § 1391 (West 1994).

64 Gene Steuerle, Enterprise Zones, Part Two: Programs Likely to Fail, 55 Tax Notes 1413 (1992) ("[E]fficiency and equity principles inform us that it is usually poor public policy to offer benefits selectively to some individuals, but not to others who are in equal circumstances. . . . To the extent enterprise zones create distinctions on the basis of geography, they can be justified only on such grounds as experimentation or to gain temporary advantages of mass in attacking a problem.").

It is interesting to note that OBRA ’93’s zone designation requirements stand in sharp contrast to the "Low Income Housing Credit." See I.R.C. § 42 (West 1994). Section 42 provides a tax credit to be taken over a ten-year period for qualifying low-income rental housing and is intended to boost the supply of housing available to low-income individuals. Availability of the credit is not geographically driven and is not limited to a predetermined number of taxpayers. Further, eligibility for the credit is not determined within the federal agency. Rather, the credit is available to any taxpayer able to present a credit allocation from the appropriate credit authority. The credit authority will be a state or local government authority charged with determining eligibility under standards carefully defined by the Internal Revenue Service and dispensing such allocations in accordance with limitations annually determined for each state. See id.

65 See Jeffrey M. Euston, Clinton’s Empowerment Zones: Hope for the Cities or a Failing
Nonetheless, limitations are an appropriate part of OBRA '93.

Were the number of zones unlimited, OBRA '93 would quite likely prove too costly for the federal government to support. Further, limiting the number of zones will provide several benefits. The restrictions will allow for a limited "test period" before more resources are assigned to the effort. Limitations also will allow communities to concentrate their efforts on a few of the most disadvantaged areas, thus increasing the chance of successful revitalization. Furthermore, the fear that designations will be driven by political considerations is mitigated by the eligibility requirements of the statute.

Nonetheless, Congress should respond to critics by providing more guidance regarding the designation process. For example, Congress could name specific empowerment zone and enterprise community sites in the legislation. Congress could also wait to choose the more coveted empowerment zones from among the most worthy enterprise zone designees or could even choose them by lottery. While Congress was correct to limit the number of zones, it must provide more detailed standards to govern the designation process in order to ensure fairness and exclude undesirable considerations.

See supra note 27 and accompanying text.

See April, supra note 7, at 1349 ("If, because of political pressures, a great many zones are created, they will not be sufficiently differentiated from surrounding areas and will lose the benefit of special treatment.").
B. The Strategic Plan

In order for an area to be considered for designation, nominating state and local governments must commit—through the submission of a strategic plan—to various revitalization measures for the nominated area.\textsuperscript{70} First, nominators must provide a detailed description of the resources which will be made available for the revitalization effort. Second, they must provide for broad-based community participation in the formulation of the plan. Third, they must provide a system for monitoring zone performance. Finally, they must not include in the strategic plan any action to assist any establishment in churning, i.e., relocating from an area outside the nominated area. If an application is accepted, these declarations become the standard by which the zone’s progress is measured and by which its status as a designate is regularly evaluated.\textsuperscript{71} Although these requirements may prove burdensome, most are necessary to ensure that state and local governments will be intensely involved in the revitalization effort as contemplated in OBRA '93. Nonetheless, some of these rules are unnecessary or ill conceived and should be eliminated or modified to ensure the strategic plan’s effectiveness as a tool for aiding economic renewal.

1. Detailed Description of Resources

The detailed description of resources requirement has three components under the legislation. First, it requires the strategic plan to describe the coordinated economic, human, community, and physical development plan and related activities proposed for the nominated area.\textsuperscript{72} Second, it requires a detailed listing of economic and in-kind support to be provided from state, local, and private resources as well as expected private/public partnerships.\textsuperscript{73} Finally, the detailed description requires a description of all federal funding requested.\textsuperscript{74}

Among these components, the detailed listing of economic and in-kind support to be provided from state, local and private resources may be the most difficult to produce. For example, this revenue may to be based upon estimates predicated on the projected positive effect of public expenditures upon property values.\textsuperscript{75} As a result, nominators

\textsuperscript{70} See I.R.C. \textsection 1391(f)(2) (West 1994).
\textsuperscript{71} See id. \textsection 1391(d)(2)(B).
\textsuperscript{72} Id. \textsection 1391(f)(2)(A).
\textsuperscript{73} Id. \textsection 1391(f)(2)(C).
\textsuperscript{74} Id. \textsection 1391(f)(2)(D).
\textsuperscript{75} This could very well be the case if a locality chooses to use tax increment financing, for example, to pay for public improvements incident to an urban renewal effort. When tax increment financing is used, private activity bonds are issued to underwrite the cost of public improvements. To
may be unable to accurately identify "the amount of State, local, and private resources that will be available in the nominated area."76 Greater sensitivity to the nuances of state and local finance should be reflected in the statute. One means of doing that would be to explicitly permit the "amounts" that "will be available" to be reliable estimates based on projected collections.

Even if nominated areas are generally able to comply with OBRA '93's detailed description of resources requirements, they may not be able to ascertain what particular provisions require. For example, the legislation contemplates public/private partnerships, but it fails to adequately define the nature of such partnerships.77 Must these "partnerships" partake in particular legal formalities? What constitutes "participation by" or "cooperation with" private and public entities? OBRA '93 provides no answers. Congress should clarify the nature of this requirement, and in doing so, it ought to define "partnership" broadly. Formal ties and intensive government involvement with each entity are not necessary for the purposes of this legislation and should not be required.

Finally, legislators should clarify the requirements governing public investment to insure these funds are put to their most productive uses. Critics of enterprise zones and other similar proposals have noted the tendency of local governments to provide specialized assistance to particular industries.78 For example, Alabama successfully wooed Mercedes-Benz to Vance, Alabama with an incentive package totaling

finance these bonds, the assessments of property in the designated area for property-tax purposes are frozen at their pre-renewal level. Amounts collected pursuant to those assessments are disbursed in accordance with the pre-existing arrangements. However, as the value of the affected properties increases, increased property tax collections (flowing from increased assessments) are earmarked for repayment of the bonds. Thus, the amount of revenue realized by the locality will be dependent upon the positive effect of public improvements on the value of affected property. In this context, those projected amounts could well be a part of government's contribution to the effort. Obviously, one hopes for a robust increase in the values of such properties, but this is not assured. See generally Jonathan M. Davidson, Tax Increment Financing as a Tool for Community Development, 56 U. Det. J. Urb. L. 405 (1979).

Note that if the interest on tax increment bonds is to qualify as federally tax-exempt interest on private activity bonds, such bonds must meet the requirements of I.R.C. §144(c) "Qualified Redevelopment Bonds."

77 Id. (partnerships include "participation by, and cooperation with, universities, medical centers, and other private and public entities").
78 See, e.g., John P. Elwood, Rethinking Government Participation in Urban Renewal: Neighborhood Revitalization in New Haven, 12 Yale L. & Pol'y Rev. 138 (1994); For the past four decades, New Haven has been in the vanguard of a growing movement among municipalities to offer public funds to developers and companies as inducements to attract business ... the currency of which is prime office space, specialty retail shops, amenities, attractions .... This practice of offering publicly funded inducements to private firms has gained currency among the states.

Id. at 147.
more than $250 million. The package included “$60 million to train Mercedes-Benz employees and workers in related industries, $92 million to clear and improve the 1,000-acre factory site and $77 million to upgrade local sewer, electrical and water lines.”

Critics object that Alabama has agreed to bear expenses which ought properly to be—and otherwise would have been—borne by Mercedes-Benz. If the project succeeds and projected benefits are in fact realized, there will be little to criticize. However, if Mercedes-Benz ever decides to leave the Vance site, the effects of these specifically-targeted government improvements may be more of a burden than a boom. The specialized skills workers will acquire to work at the Mercedes plant will be of little use to other companies. In addition, Mercedes-Benz site improvements are going to be tailored to the specific needs of Mercedes and will likely be of little value to other possible employers. In short, Alabama risks receiving little or no public return for its public investment.

In contrast to Vance, Alabama is Tupelo, Mississippi. Tupelo’s public investment decisions have been geared toward enhancing the city’s general public infrastructure. The city spends heavily to build a skilled work force, investing generously in the public schools and in local colleges. It also acts quickly to address minority grievances.

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79 Vance, Alabama has a population of 480. It is located in Tuscaloosa County, home of the University of Alabama. William Booth, Expecting More Than Just Another Benz in the Road, Wash. Post, Oct. 24, 1993, at A3. Of course, it is quite likely that the availability of a tract of unimproved land of this size was, standing alone, an important element in Mercedes-Benz’s decision to locate in Vance. Whether this alone would have been enough is open to question. North Carolina had also been in the hunt for the giant enterprise and, no doubt, offered a competitive package of incentives.

80 Id.

81 The location of the Mercedes-Benz plant is expected to have a significant impact on employment in the Vance area. Mercedes-Benz plans to hire about 1,500 workers from the Vance area, and another 10,000 people could be employed in related industries as suppliers and other businesses open. Id.

82 This assumes the constitutionality of schemes to lure firms. At least one commentator has suggested that such schemes may run afoul of the commerce clause of the Constitution. See State Tax Cut Schemes To Lure Firms May Be On Shaky Constitutional Ground, Daily Tax Reports (BNA) No. 220, at G-8, (Nov. 17, 1994).

83 The experience of Pennsylvania is instructive. Pennsylvania invested more than $71 million in state money in an effort to bring a Volkswagen Rabbit plant into the state, and the plant closed after only ten years of operation. See Kolesar, supra note 43, at 304 (1990). The effects of the concessions are described by Hansen, supra note 62, at 12. (Characterizing the undertaking as “The Rabbit That Ate Pennsylvania,” Hansen reports that the incentive package worked out to a cost of between $23,000 and $26,000 per job; tax concessions to the surrounding communities were only partially offset by sales tax revenues and increased property values; and in the year in which the plant produced 80,000 rabbits, its property taxes were less than the value of one vehicle.).


85 Id.
Furthermore, Tupelo encourages the owners of local businesses to buy farmland (which is then zoned for industrial use) and advertise the existence of factory or warehouse space nationally.87 In the last decade, Tupelo reports that it has added an average of 1,000 new jobs a year and that its per-capita income is the second highest in the state.88 Eighteen Fortune 500 companies are among the companies establishing locations there.89 Finally, the unemployment rate in Tupelo hovers around four percent, more than two percentage points below that of Mississippi as a whole.90

As the above discussion illustrates, specialized spending for particular industries could prove catastrophic to areas distressed enough to qualify for zone designation. General infrastructure investment, on the other hand, could lead to long-term community enhancement. Unfortunately, impoverished localities will likely be more tempted to pursue specialized spending schemes in order to more expeditiously draw enterprises to their area. In order to discourage these dangerous endeavors, Congress should explicitly provide that the commitment of public funds required under OBRA '93 contemplates expenditures for general public purposes only.91

2. Broad-Based Participation in the Plan

In order to ensure full participation by the affected community, OBRA '93 requires the strategic plan to adequately describe "the coordinated economic, human, community, and physical development plan and related activities for the nominated area"92 and "the process by which the affected community is a full partner in the process of developing and implementing the plan and the extent to which local institutions and organizations have contributed to the planning process."93

The potential size of enterprise zones, however, may create problems in fulfilling this requirement. Urban enterprise communities may be up to twenty square miles and rural zones may be up to one thousand

86 Id.
87 Id.
88 Id.
89 Id.
90 Id.
91 See, e.g., Mark Taylor, Note, A Proposal to Prohibit Industrial Relocation Subsidies, 72 Tex. L. Rev. 669, 678-692 (1994) (raising a number of concerns regarding industrial relocation subsidies).
93 Id. § 1391(f)(2)(B).
square miles.\textsuperscript{94} In either case, community participation may be hampered. In fact, this requirement may prove difficult to meet notwithstanding logistical difficulties since designated areas are unlikely to be characterized by robust "local institutions and organizations."\textsuperscript{95} Further, Congress has given no guidance as to what entities must participate to have effective participation by the "affected community." Does participation by mini-city councils count? What about block clubs? Specially formed committees? Section 501 organizations? Agricultural co-ops? OBRA '93 leaves numerous other questions unresolved as well. For example, who must coordinate the plan? What types of activities constitute "related activities"? What kind of process is necessary? Will a series of public hearings suffice? Will a "good faith" effort to provide opportunities to participate in the decision-making process be enough? How is "full partner[ship]" of the "affected community" to be established? How is "contribution" by local institutions and organizations to be determined? Will commitments of both monetary and in-kind contributions constitute support? Finally, is the examination of process a threshold consideration or does there need to be continuing reassessment of the inclusiveness of the political process in the affected area?

The legislative history does not explain the community involvement provision. Some have suggested that it is an attempt to replicate the dynamics of a functional political unit motivated by economic self-interest.\textsuperscript{96} It is not clear, however, that such a goal could be accomplished in areas as large as those contemplated under OBRA '93. Others have suggested that the provision attempts to ensure an inclusive political process, similar to that of the Model Cities program.\textsuperscript{97} If that is the goal, however, two factors should be considered. First, the required commitment by at least two nominating governments acting in tandem seems adequate to ensure inclusiveness. Second, as a result of the Voting Rights Act and extensive district reapportionment, the political process is demonstrably much more inclusive than it was when the Great Society initiative was extant. Thus, nomination is likely to be the

\textsuperscript{94} Id. § 1392(a)(3)(A).

\textsuperscript{95} Id. § 1391(f)(2)(B).

\textsuperscript{96} Stuart M. Butler, The Conceptual Evolution of Enterprise Zones, in Enterprise Zones, supra note 6, at 34-35 (suggesting that this requirement reflects the influence of urban writers who assert that area residents are integral to the community and that community institutions are essential to economic development).

product of an inclusive political process characterized by public notice and opportunity to participate. 98 In sum, OBRA '93's requirement for broad-based community participation will prove difficult or impossible to administer, while benefiting enterprise communities and empowerment zones little, if at all. It should thus be eliminated as an independent goal. 99

3. Monitoring the Plan

The strategic plan requires the nominators to provide for appropriate zone monitoring in order to ensure that the resources described in the plan are brought to bear and that the plan objectives are satisfied. 100 To aid in the monitoring process, the legislation requires the plan to identify "baselines, methods, and benchmarks which will be used for measuring the zone's success in carrying out the strategic plan." 101 The presumption is that the requirement of predetermined baselines, methods, and benchmarks will facilitate the gathering of reliable data detailing the economic activity in the zone. The statute, however, does not delineate which types of data would be most useful in monitoring zone performance. Useful data include the number of bids on public projects and the number of contracts awarded, data reflecting the use of tax and investment incentives, and information about infrastructure expenditures, such as the number and type of new street lights and the amount of cement poured. 102 Leading economic indicators such as housing starts, increases in home ownership, and increases in the availability of appropriately priced housing units would be especially useful in monitoring the zone. Finally, demographic data reflecting changes in population, crime rates, and school drop-out levels are relevant. OBRA '93 should explicitly provide for the use of these types of data to monitor the success of enterprise zones.

98 Statutes, generally termed "sunshine laws," requiring governmental meetings to be open to the public have been adopted in every state. See, e.g., Jennifer A. Bensch, Government in the Sunshine Act Seventeen Years Later: Has Government Let the Sunshine In?, 61 Geo. Wash. L. Rev. 1475 (1993).

99 It should be noted that OBRA '93 elsewhere requires that "community" resources be dedicated to the process, but does so without requiring involvement in formal "Community organizations." This requirement is more consistent with the character of potential zone areas as identified above. See I.R.C. §§ 1391(f)(2)(A), (D) (West 1994).

100 Id. § 1391(f)(2)(E). The states' failure to adequately monitor state enterprise zones has subjected them to significant criticism. See Roy E. Green & Michael Brinntall, Conclusions and Lessons, in Enterprise Zones, supra note 6, at 251.


102 This data also responds to the legislation's required identification of "State, local, and private resources that will be available in the nominated area." See id. § 1391(f)(2)(C).
Since OBRA '93 prohibits the churning of businesses, monitoring must focus on the number of "new" businesses and "new" jobs in the zone. As previously indicated, there is evidence that the states have had difficulty separating "new" businesses from those which have simply relocated into the zone. Therefore, if the statute must prohibit churning, it may be wiser and more effective to have the federal government, rather than the states, monitor whether businesses are relocating into the zones.

Finally, OBRA '93 requires the establishment of baselines and benchmarks designed to measure "the extent to which poor persons and families will be empowered to become economically self-sufficient." Yet the statute does not define "poor persons and families." It would be logical for that definition to correspond to the eligibility requirements set forth in Internal Revenue Code § 1392, which are determined by poverty rates. Congress should expressly provide for such a definition. OBRA '93 also fails to explain how "empowerment" should be measured. The most sensible method of appraisal would be the number of area residents employed by qualifying businesses in enterprise zones. Again, however, the legislation should provide for such a measurement.

4. Prohibition on "Churning"

OBRA '93 explicitly prohibits assistance to relocating businesses. It is not entirely clear, however, that the concern over churning is warranted. On the most practical level, the concern seems overblown, since it is hard to imagine that a significant number of businesses would relocate into nominated areas solely to take advantage of specified tax benefits. Such a move would likely be from a relatively thriving area to one characterized by economic, political, and social dysfunction. Moreover, a business would likely have to enlarge or alter its workforce

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103 Id. § 1391(f)(2)(F). "Churning" refers to the process of relocating businesses from outside to inside an enterprise zone in order to take advantage of the benefits available to businesses in such zones. See supra note 26 and accompanying text.

104 See supra notes 53-57.

105 See generally infra notes 109-115 and accompanying text for arguments that OBRA '93 should not prohibit churning.

106 It has been suggested that determining which jobs were relocated from outside the zone could be estimated through means such as tracking employer identification numbers. Papke, supra note 51, at 45. The Internal Revenue Service is uniquely positioned to undertake such tracking.


108 Cf. Tai, supra note 34, at 1516 (posing a "community-empowerment" approach "that will promote economic and social structures under which we can have procedural fairness and fair outcomes, procedural equality and vibrant, economically healthy, self-determined communities").

and adjust its mode of operation in order to meet OBRA '93's job targeting and operational requirements. Furthermore, due to the combined effect of minimum wage and employee benefit package requirements, relocation cannot significantly reduce employee costs, the largest single category of expense in many businesses.

On the other hand, the aggregate effect of all of the benefits offered to a qualifying zone business could, for some, tip the balance in favor of leaving a relatively affluent area with higher operational costs for a nominated area with its lower operating costs. Indeed, reduced governmentally-imposed costs could prove to be the margin of difference.

Relocation has been deemed an undesirable outcome in several prior experiments. Criticism of churning surfaced in assessments of the Indiana and Maryland experiments, and British zones are being phased out primarily for that reason. There are several reasons for the concern over churning. Relocating businesses may depart areas already in economic decline, thus exacerbating problems in the departed area. Secondly, due to the tax benefits qualifying zone businesses receive, a relocating business will cause an overall decrease in tax revenues rather than the increase provided by new businesses. Finally, relocation in response to zone incentives may signal instability—such businesses might leave the zone if a more attractive opportunity becomes available, thereby causing instability within the zone. Probably for all of these reasons, as well as the fear of political repercussions if relocation was not explicitly addressed, the statute bars churning: economic activity must flow solely from new or expansion enterprises.

The law's anti-churning provision may serve the overall objective of expanding the scope of economic activity through an expansive package of attractive benefits limited to new or expansion businesses. The conventional wisdom is that notwithstanding their greater risk of failure, new or expansion enterprises are more likely than relocated ones.

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110 See supra note 23 and accompanying text for a summary of those requirements.
111 See supra notes 53-57 and accompanying text.
112 See supra note 57 and accompanying text.
113 I.R.C. § 1391(f)(2)(F) (West 1994) permits “assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary...”
to be stable residents that promote long-term economic development.\textsuperscript{114} However, this belief assumes the market is efficiently allocating investment when in fact, targeted areas will be characterized by inefficiently low investment. Therefore, dramatic measures are required if allocative inefficiencies are to be redressed, including the risk that successful businesses will relocate.

There are other factors that weigh in favor of allowing relocating businesses to qualify for enterprise zone benefits. First, enterprise zone success is necessary to reassure uneasy taxpayers and bondholders, and success will be more likely if established businesses are allowed to participate. Second, relocation serves the public interest by placing jobs in areas of greater need.\textsuperscript{115} Finally, a financially stable business is precisely the desired zone resident.

Regardless of whether one is for or against churning, everyone should agree that companies previously located in foreign countries should be able to receive enterprise zone benefits. Such relocations would not exacerbate economic decline or signal instability in any American locale; nor would they decrease tax collections for the federal government. They would only improve an enterprise zone’s chances for success.

A remaining difficult question relates to businesses located in areas surrounding the zone which are in an economic situation comparable to the enterprise zone.\textsuperscript{116} The zone business will enjoy a competitive advantage by virtue of the enterprise zone benefits it receives. Relocation of the extra-zone business, however, is not a long-term answer. The competitive advantage has only an interim effect on comparative marginal costs. Qualification as an enterprise zone business is unlike the much longer term “benefit” and possible competitive edge that flows from permanent conferral of §501(c)(3) tax exempt status. Furthermore, the surrounding businesses are protected,

\textsuperscript{114} See Butler, supra note 96, at 36.

\textsuperscript{115} See Papke, supra note 51, at 39 (observing that efficiency gains may be realized by business relocations through greater use of under-utilized resources and the production of “positive externalities such as reductions in social unrest”).

\textsuperscript{116} Franklin James describes this concern as follows:

[Enterprise zone programs can have effects outside zones which are important to consider. Zone incentives, if significant, could so enhance the competitiveness of zone establishment as to hurt business competitors outside zones. To the extent that zone incentives generate the reshuffling of business locations ... or that they distort the location choices of new establishments, they will also weaken the economies of surrounding communities. If so, then gains in employment and investment within zones could be matched by employment and investment declines outside the zone.]

Franklin J. James, The Evaluation of Enterprise Zone Programs, in Enterprise Zones, supra note 6, at 236; see also Aprili, supra note 7, at 1348.
to a certain extent, by the fact that an enterprise zone designation lasts for only a proscribed period of time.\textsuperscript{117} Thus, to the extent that location within a zone confers an economic and competitive advantage, the advantage is relatively short-lived. Furthermore, assuming the enterprise zone program is renewed, Congress may consider barring an area’s redesignation for favored status for some period of time post-designation in order to allow the larger regional market to correct itself. Indeed, the requirements to be a zone business (that zone residents compose thirty-five percent of the employees and that eighty of gross income flow from the zone) may prove temporally self-limiting if the effort is successful.\textsuperscript{118}

\textit{C. The Role of Sanctions}

Once designated, the empowerment zone or enterprise community may exist for up to ten years.\textsuperscript{119} OBRA ’93 provides that the designation may be revoked if the appropriate Secretary determines that a state or locality has “modified the boundaries of the area” or “is not complying substantially with or fails to make progress in achieving the benchmarks in its strategic plan.”\textsuperscript{120}

1. Boundary Modification

While OBRA ’93 clearly prohibits localities from changing zone boundaries at will, it is not clear that sanctions will or should be imposed for every adjustment. For example, the relatively common practice of annexation redraws political lines,\textsuperscript{121} but such reorganization is itself unlikely to compromise ongoing revitalization in designated areas. Merely requiring the governments involved to reaffirm their commitment to the economic effort would probably provide a sufficient safeguard. Since enterprise zones may endure for up to a decade, their terms should be flexible enough to accommodate the long-term needs of local government, among these the need for periodic political

\textsuperscript{117} See I.R.C. § 1391(d)(1)(A) (West 1994) (imposing a ten-year time limit on each zone).

\textsuperscript{118} There is, of course, an obvious exception to this observation. The beneficial effect of lower-interest loans will continue to be an advantage throughout the life of the obligation, assuming that the interest rate on such bonds remains below prevailing market rates.

\textsuperscript{119} I.R.C. § 1391(d)(1)(A) (West 1994). There is no consensus on an ideal time limit. The British employed a ten-year period, as did Congress in previously proposed legislation. See Butler, supra note 96, at 34.

\textsuperscript{120} I.R.C. § 1391(d)(2) (West 1994).

\textsuperscript{121} While annexation is restricted by state law in some areas of the country, it has been used actively by southern and southwestern cities to expand their territory and prevent “white flight.” See, e.g., Gene Marlowe, A Tale of Two Cities, Atlanta J.-Constitutional, Dec. 12, 1992, at A19; G. Scott Thomas, How About Metro Government?, Bus. First-Buffalo, May 31, 1993.
reorganization.

2. Failure to Make Progress

Absolute revocation of a zone’s designation for “failure to make progress” would be a mistake for at least four reasons. First, it is to be expected that progress in a zone will be uneven and episodic for quite some time. In fact, data probably will not reveal measurable recovery until late in the zone’s life. Second, difficulties in demonstrating acceptable gains every year may discourage reporting efforts or promote distorted reporting. Third, it will be difficult to determine what constitutes “[failure] to make progress in achieving ... benchmarks.”

Fourth, revocation will inevitably entail waste of human and material resources.

As a result, Congress should consider alternatives to OBRA ’93’s single sanction of absolute revocation. Probationary status or re-nomination if the deficiency is cured within a reasonable time are practical and desirable alternatives. The possibility of rehabilitation would encourage both the initial investment and the sustained effort necessary to make an enterprise zones a success. Providing an opportunity for rehabilitation would also lessen the tension between the “strategic plan” as an aspirational document and the “strategic plan” as a measuring rod.

If Congress is unwilling to revoke the single sanction of absolute revocation, it should at least amend that provision to provide more guidance to the Secretaries of Agriculture and Housing and Urban Development who have to interpret it. Congress should also take steps to insure that the provision does not lead to unnecessarily harsh and unfair results. For example, as the statutory language now stands, if progress is not being made in one part of a designated area, the entire zone is in jeopardy of losing its designation. Congress should permit the redefining of zone boundaries in such situations so as to exclude from zone designation only that part of the zone which is failing. Furthermore, since a decision to revoke a zone’s designation will most likely be beyond the direct control of individual businesses, OBRA ’93 should afford some protection to individual businesses which are planned but not yet operative at the time a zone’s designation is

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123 It is worthwhile to note that when an enterprise zone facility bond issuance ceases to meet the requirements for tax-exempt interest status, that status can be reinstated where the issuer and user make a good faith attempt to meet the requirements for exemption and succeed in correcting the failure within a reasonable time after the failure is discovered.
revoked. This matter could easily be addressed under the general language of section 1397D, which directs the Secretary of the Treasury to prescribe "regulations dealing with inadvertent failures of entities to be enterprise zone businesses."\textsuperscript{124}

Designation as an enterprise zone is likely to result in a preference for unrelated applications pending before other federal agencies,\textsuperscript{125} yet OBRA '93 fails to explain how revocation would affect such funding requests.\textsuperscript{126} Likewise, the effect of revocation on federal awards already made is not addressed in the statute. For example, if an award had been made on the strength of the strategic plan, it is unclear whether the nominators must return funds allocated to the area now revoked. Congress should address these issues.

D. Enterprise Zone Facility Bonds: Providing Capital to High-risk Enterprises

State and local governments often finance capital expenditures by issuing bonds. These bonds fall into two general categories: general obligation bonds and revenue bonds. General obligation bonds are secured by the faith and credit of the issuing government. In the context of bond issuances, "faith and credit" means that the taxing power of the issuing government is the bondholder's security.

Revenue bonds may be issued either by an agency of the government or by a quasi-governmental entity. These bonds are secured by a previously specified stream of income, typically the income generated by the project the bonds are financing. For example, revenue bonds issued to pay for the construction of a new bridge would be paid off with toll money from the bridge. Importantly, the governmental entity assumes no obligation to use its taxing power to repay revenue bonds.

Interest earned on general obligation bonds enjoys tax-exempt status.\textsuperscript{127} However, the interest earned on revenue bonds is by definition taxable interest on private activity bonds and enjoys tax-exempt status only if the issuance falls within one of several carefully prescribed categories defined by the Code.\textsuperscript{128} Enterprise zone facility bonds are by

\textsuperscript{124} I.R.C. § 1397D(3) (West 1994).
\textsuperscript{125} Such preferences are likely despite the fact that neither the statute nor the legislative history of the statute states that designated areas should receive a preference in funding requests.
\textsuperscript{126} Under I.R.C. §§ 1391(d)(2), (d)(2)(D) (West 1994), federal funding requested to support revitalization efforts is to be identified in the strategic plan.
\textsuperscript{127} I.R.C. § 103 (West 1994).
\textsuperscript{128} Private activity bonds are bonds that meet (1) both the private business test and the private security interest test or (2) the private loan financing test. See id. § 141. The interest on such bonds is
definition private activity bonds and the interest on these bonds will be
tax-exempt only if the issuance meets the requirements imposed by
OBRA '93.129

The use of enterprise zone facility bonds is potentially troubling in
light of the experience with their spiritual predecessors, industrial
development bonds (IDBs). IDBs, a variety of revenue bond, were
issued prior to 1982 to encourage local economic development by
providing financing for public projects that would be owned or leased
by private entities.130 Because of the tax-exempt status of the interest
thereon, IDB-financed expansion ultimately imposed costs on the
federal fisc that outweighed the benefits to state and local
governments.131 Furthermore, the wide availability of the bonds in the
market effectively eliminated the competitive advantage intended to be
derived by the IDB issuers.132 Finally, the use of IDBs to underwrite
what were actually private sector costs blurred the public/private
distinction.133 For these reasons, Congress aggressively limited the use
of IDBs by defining them as private activity bonds, thereby making the
interest on the bonds taxable unless they meet certain requirements
imposed by the Internal Revenue Code.

not exempt from taxation unless the bonds meet the requirements of I.R.C. §§ 142 (Exempt Facility
Bonds), 143 (Mortgage Revenue Bonds), 144 (Qualified Small Business Issue), or 145 (Qualified 501
(c)(3) Bonds), and they fall within the volume cap imposed on such bonds by § 146.

129 See I.R.C. § 1394 (West 1994).

130 Specifically, IDBs were issued for the purpose of acquiring or developing land for industrial
park sites.

131 Interest rates paid by the government on tax-exempt bonds had historically approximated 60-
75% of that paid on taxable bonds. These rates eventually rose to 80-85%. This erosion lessened the
cost-effectiveness of tax-exempt financing since more benefit flowed to bond investors. Further, the
availability of tax-exempt financing for exempt activities caused distortions in the allocation of capital
resources. Favored activities were subsidized at the expense of other activities. Joint Committee on
[hereinafter Explanation, TEFRA-82].

132 A majority of states had issued IDBs in some form before Congress finally moved to limit the
S.E.2d 745 (1968), a case involving the constitutionality of IDBs in North Carolina, the court noted
that forty-two states had found governmental financing of industrial development to serve a public
purpose.

133 Generally, if the primary object of a governmental expenditure or pledge of credit serves a
"public purpose" it is legal, even though there may be an incidental private benefit. On the other
hand, if the expenditure primarily serves some private end, the expenditure is illegal even if there
may be incidental public benefit.

In the 1982 legislation, the interest on revenue bonds issued to finance "public improvements"
such as streets, sewers and other publicly owned facilities retained tax-exempt status. The interest on
bonds issued to finance "private activities" such as housing and economic development projects
would be taxable unless the requirements imposed by the Internal Revenue Code were met. Congress
viewed these restrictions as necessary to "help eliminate inappropriate uses and to help restore the
benefit of tax-exempt financing for traditional governmental purposes." Explanation, TEFRA-82,
supra note 131, at 99.
The economic activity fostered through enterprise zone facility bonds may be viewed as, at best, mixed private/public activity, raising the spectre of IDB-type problems. However, Congress appears to have anticipated and moved to limit the replication of at least some of the problems of IDBs in the enterprise bond setting. For example, the limits placed on amounts available to individual taxpayers ($3,000,000 per taxpayer per zone and $20,000,000 per taxpayer across all zones) should provide sufficient wherewithal for labor-intensive enterprises while curbing opportunities for abuse by individual taxpayers. Further, the limits on the total number of zones reduces possible inter-zone competition. Finally, revitalization of these areas serves the public interest. Overall, because businesses located in red-lined areas have difficulty obtaining capital, tax exempt enterprise facility bonds, despite their risks, are crucial to the success of the enterprise zone experiment.

The risk inherent in the underlying businesses, however, means that these bonds are likely to be difficult to market. For instance, they are unlikely to receive the warm reception from investors accorded to mortgage subsidy bonds in the 1970s. Indeed, given the very high risk of failure in the underlying enterprises, there may be little real incentive for states to use any part of their volume cap to issue bonds that will prove difficult to place. To some extent, a market may develop as banks move to comply with the requirements of the Community

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134 I.R.C. § 1394(c)(1) (West 1994).
135 In general, the thesis underlying American enterprise zones is that small labor-intensive enterprises are the greatest contributors to sustained economic growth. Butler, supra note 96, at 35-37. The limit on borrowing permitted for individual taxpayers may have been imposed with labor-intensive businesses in mind. However, the limit may also restrict the scope of possible new enterprises, thus making the proliferation of undercapitalized businesses more likely.
136 See supra note 34 and accompanying text.
137 During the 1970s, state housing financing agencies responded to the dual problems of frozen subsidies for multi-family housing and increasing mortgage rates with mortgage subsidy bonds. The proceeds of the bonds were used either to provide funds for mortgages to be made through local lenders or to purchase mortgages already financed by those lenders. The combination of tax-exempt interest and high security made these bonds very attractive to investors. By percentage, bonds issued for this purpose by state and local governments swelled from 1.8% in 1976 to 20.4% in 1979. It was estimated that, without Congressional intervention, 31.9% of tax-exempt interest issuances would have been for this purpose in 1980. Table 2.: Percentage Distribution of Purpose for Issuing Tax-Exempt Bonds by State and Local Governments, 1976-1980, at 542. Escalating expense to the federal fisc because of the tax-exempt interest as well as debate over "public purpose" led to sharp restrictions in 1980. See House Report No. 96-1167 2d Sess. Omnibus Reconciliation Act of 1980, 1980-2 Internal Revenue Cumulative Bulletin 531, 541-545. Presently, mortgage subsidy bonds are categorized as private activity bonds making them subject to the issuing state's volume cap and the interest thereon will be tax-exempt only if the housing will benefit low- and moderate-income persons as defined by the Code. I.R.C. § 143 (West 1994).
138 Enterprise zone facility bonds are subject to the overall volume limitation on state and local private activity bonds. See supra note 23 and accompanying text.
Redevelopment Act. Nonetheless, Congress should move to enhance the attractiveness of these bonds. It can do so in two ways: by relaxing the prohibition against relocating businesses, and by reducing the impact of these bonds on the state volume cap.

Enterprise zone facility bond volumes are to be included in the cap on all private activity bonds for each state. Therefore, there is the additional question of which state’s volume cap should be affected by facility bonds issued for businesses in multi-state enterprise communities and empowerment zones. Since each facility bond issuance is treated separately and identified with individual businesses, a business’ location will presumably dictate the affected state volume cap. However, this may not be the most desirable solution. For example, that state may have issued the maximum permissible volume of all private activity bonds in a particular tax year. In such circumstances, notwithstanding the designated area’s unmet need, the viability of the undertaking may be threatened by the inability to generate needed capital. In the Conference Committee Report, the committee referred to the desirability of uniform benefits throughout the defined area. This suggests that Congress may have intended to permit some flexibility here. Nevertheless, the peculiar problem of multi-state designations remains unaddressed in the statute. Consequently, whether intended or not, geographic limitations already a part of the Internal Revenue Code are likely to determine the applicable volume cap. Congress should prevent this by providing for alternative outcomes, such as permitting nominating governments in multi-state areas to place funds, borrowed through enterprise zone facility bonds, in a common pool. In so doing, available borrowing capacity could be tapped without regard to

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139 See Taibi, supra note 34, at 1520-21 (banks may receive Community Redevelopment credit for investing in Community Development Financial Institutions).

140 See supra notes 109-18 and accompanying text for an evaluation of the prohibition against relocating businesses.

141 Under the Clinton proposal, only 25% of the amount of such bonds would count against a state’s private activity bond cap if enterprise zone residents had more than a 50% ownership interest in the business that is the principal user of the bond proceeds. If the resident ownership requirement were not met, 50% of the bonds would count against the state’s bond cap. This was included in the House version of OBRA ’93 but was dropped in conference. Congress should reduce the impact of enterprise zone facility bonds on the applicable volume cap without requiring a showing of resident interest.

142 This may be an immediate concern since one of the designated empowerment zones is multi-state: Philadelphia, PA/Camden, NJ. See supra note 27 and accompanying text for a listing of the recently designated empowerment zones.

143 See CCH, Law and Explanations, supra note 15, at n.27 (“The conferees intend that, in the case of an urban empowerment zone located in two States ... the incentives afforded the zone on the account of the designation will be distributed equitably between the two States.”).
geographic limitations.

E. Requirements for Obtaining Qualifying Businesses Status

OBRA '93 imposes three requirements on businesses wishing to become “qualifying businesses.” The business must not be of a type prohibited by the legislation, it must generate at least eighty percent of its gross income intra-zone, and at least thirty-five percent of its employee force must be zone residents. At first glance, limitations such as these are troublesome; they require a level of administrative oversight which is uncharacteristic of normal economic activity. However, the limits may prevent the diversion of capital to uses unlikely to generate long-term economic benefits for a zone.

"[P]rivate or commercial golf courses, country clubs, massage parlors, hot tub facilities, suntan facilities, racetrack or other facilities used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises" are denied “qualifying business status.” Congress has deemed incentives to such businesses inappropriate. It may be true that these businesses will not contribute significantly to the long-term development of employees, and thus will not be of much help to a zone. Nevertheless, Congress should be careful not to further limit the definition of “qualifying business” to exclude other businesses. Such prohibitions would discourage legitimate zone investors and encourage Congress to micromanage the program in ways likely to create significant administrative problems.

Receipt of enterprise zone preferences is further limited by OBRA '93’s job targeting requirement and its geographic limitations on income source. The rationale for the job targeting mandate is obvious: OBRA '93 seeks to revitalize zone areas by promoting investment in the zone’s human capital. Without the hiring requirement this objective is unlikely to be realized. However, the thirty-five percent requirement may prove difficult to meet; gainful employment of zone residents will inevitably be impeded by the effects of prior

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144 I.R.C. § 1397B(d)(5)(A) (West 1994) (citing § 144 (c)(6)(B)). It is interesting to note that a number of businesses that can be seen as equally undesirable have been left off the list. They include pool halls, X-rated videotape rental stores, tattoo parlors, and topless bars. See Alexander Polinsky, Enterprise Communities - Less Than Meets the Eye, Tax Notes, July 19, 1993, at 252.

145 Under I.R.C. § 1397B(b), if a business is to be characterized as a “qualifying business,” at least 80% of its gross income must be generated intra-zone by an employee force performing substantially all of their services in that area, and at least 35% of the employees must be zone residents.

146 See Aprill, supra note 7, at 1349.
social and educational deprivation. Indiana’s experience is illustrative. On average only nineteen percent of their new businesses’ zone employees have been zone residents. Further, zone residents are likely to be the least well paid of the zone businesses’ employees. Since the Internal Revenue Service is not in the business of monitoring the hiring patterns of businesses, limiting hiring involvement to imposing percentage requirements serves the job targeting objective but may inadvertently create highly stratified categories of employees.

The geographic limitations on income source may be even more difficult to meet. While these limitations are designed to prevent predatory practices by enterprise zone businesses against border enterprises not receiving tax subsidies, they are a detriment to the survival of new businesses within the zones. Due to the likely time lag between business start-ups and genuine economic recovery, enterprise zones will lack significant economic activity at the outset. Therefore, it will be difficult for new businesses to pay their expenses by extracting eighty percent of their gross income from an area of chronic economic underperformance. The administrative costs imposed upon employers and employees by the job targeting requirement also should be recognized. First, employers are unlikely to have the ability, at least initially, to meet the targeting requirements in an administratively acceptable fashion. Furthermore, to do so would require the employers to intrude into employees’ personal lives.

Structuring a business so that it truly enriches an enterprise zone is a difficult task. Job targeting and geographic limits on income source is one approach, but as the previous discussion suggests, that approach complicates administration and threatens the survival of fledgling zone businesses. Instead, legislators should encourage zone businesses to invest in employee skills development by offering employers who do so a refundable tax credit for some percentage of wages paid to zone residents. Unlike depreciation or the section 179 deduction, the

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147 See O’Bannon, supra note 54; see generally Tupelo experience, supra notes 84-90.
148 See Papke, supra note 51, at 53 (“Firms reported 2,897 new jobs created in 1988, with 14.7% of those jobs going to zone residents. The preliminary 1990 data indicate that zone residents comprised 4.1% of total zone employment, and 19% of all new zone jobs.”).
149 See supra note 116 and accompanying text.
150 See, e.g., Elevating the Skills of the American Workforce, Council on Competitiveness (urging the federal government to encourage the development of worker training programs by offering tax incentives to businesses that provide training programs and by imposing taxes to penalize companies that do not).

Again, Tupelo’s experience is instructive. Tupelo, recognizing that poorly educated labor means that only low-wage, low-skill industries will be drawn, invests heavily in vocational training. See supra notes 84-90 for additional discussion regarding the Tupelo experience.
payment of wages represents an actual expenditure; and therefore, the granting of a credit is justified. The credit should be refundable because the advantage of being a qualifying business should not be lost due to insufficient positive income. A refundable credit would also avoid shifting to zone businesses the expense of educating employees who are, at least under most state constitutions, entitled to a publicly financed “adequate basic education.”

F. For Empowerment Zones Only: More Liberal Expensing and Wage Credits

1. Increase in Expensing

Increased expensing of certain depreciable property is allowed for qualifying businesses in empowerment zones. While this could prove very helpful to some businesses, OBRA '93 is designed to encourage labor-intensive enterprises. Therefore, the increased expensing deduction will be of limited utility in many instances. Furthermore, it is of no use to businesses lacking a positive income flow. Thus, the increased spending deduction will probably contribute little to the success of an empowerment zone and should be removed from the legislation.

2. The Empowerment Zone Wage Credit

The empowerment zone wage credit is available to all businesses within the zone for the first $15,000 of wages paid to full or part-time employees who reside in the empowerment zone and perform substantially all of their employment services there. Theoretically, the combination of this credit with the requirement that qualifying businesses hire at least thirty-five percent of their employees from within the zone will contribute greatly to the employment of zone residents. This is unlikely to be the case, however. First, even non-qualifying businesses, including those that hire less than thirty-five percent of their employees from within the zone, can use the credit.

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152 I.R.C. § 1397A (West 1994). Under I.R.C. § 179, instead of taking a deduction for depreciation, taxpayers may elect to treat all or some of the cost of qualifying property as a currently deductible expense. The 1993 Revenue Reconciliation Act (of which OBRA '93 is a part), increased the total amount that can be expensed in a single tax year from $10,000 to $17,500. It also provided that qualifying businesses in empowerment zones may expense an additional $20,000 in § 179 property if such property is also qualified zone property. Thus, qualifying businesses in empowerment zones may expense up to $37,500. Id.
153 Id. § 1396.
154 Id.
Secondly, businesses can only receive the credit for wages paid to employees who both live in the empowerment zone and perform substantially all of their service within the zone. These jobs will most likely be the lowest paid positions available. In addition, to the extent zone employees could benefit from extra-zone exposure to other businesses or other branches of the same business, that option is barred by the geographic limitations placed on site of service. Thus, the opportunity to develop simply through exposure is sharply limited. In addition, the credit poses substantial administrative concerns. As discussed previously, the administrative burden of establishing the required residency could be significant, and the requirement that employers certify adherence to geographic limits may also be difficult to meet.

Congress' experiment with the Targeted Jobs Tax Credit (TJTC) enacted in 1978 is illustrative. Under the TJTC, an employer could claim forty percent of the first $6,000 in annual wages paid to an employee within a targeted group. The TJTC expired at the end of the 1994 calendar year and, to date, has not been extended. Importantly, a recent Department of Labor study concluded that an extension of the TJTC in its present form would be unproductive. This conclusion was based upon data suggesting "[t]hat the credit does not help the groups targeted, costs too much and, when it does work, provides only low-skilled, part-time jobs."

During hearings before the House Ways and Means Subcommittee on Select Revenue Measures last fall, Labor Secretary Robert Reich suggested ways to improve the TJTC. His suggestions included predicing availability of the credit on the inclusion of some learning

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155 I.R.C. § 51 (West 1994).
156 The targeted groups were: (1) vocational rehabilitation referrals, (2) economically disadvantaged youths, (3) economically disadvantaged Vietnam-era veterans, (4) SSI recipients, (5) general assistance recipients, (6) economically disadvantaged former convicts, (7) economically disadvantaged cooperative education students, (8) AFDC recipients and WIN registrants, and (9) economically disadvantaged summer youth employees. See, Joint Committee on Taxation, Present Law and Issues Relating to the Targeted Jobs Tax Credit, (H.R. 452, H.R. 815, and H.R. 2098) (JCS-13-89), May 24, 1989. The total credit per employee was capped at $2,400 annually. I.R.C. § 51 (West 1994). Congress avoided any interaction between the Empowerment Zone Wage Credit and the TJTC by making the two credits mutually exclusive. Id. at § 1396 (c)(3).
158 Id. It should be noted that substantial disagreements with the Department of Labor's conclusions have been reported.
component.\footnote{According to Reich, education might be accomplished by: [E]xpanding the credit so it is available for the work-based learning slots created in conjunction with school-to-work programs. Alternatively, legislative and administrative reforms could be made to make the credit accessible for low-income participants in school-to-work programs. A third avenue in this area would be to make the credit available for expenses incurred by providing formal training to TTTC-eligible workers. Id. at G-7.} Given the fact that a wage credit predicated upon zone residency and a geographic service requirement will not likely contribute significantly to the long-term economic empowerment of zone residents, it may be wise to heed Secretary Reich’s advice with regard to TJTC and impose a learning component requirement for receipt of the empowerment zone wage credit.\footnote{This suggestion was made earlier with regard to job creation. See supra notes 150-151 and accompanying text.}

G. The Role of the Department of the Treasury

Responsibility for administering the enterprise zone program is currently diffused among numerous departments. The Secretary of Treasury is responsible for ensuring taxpayer compliance with the provisions of the Internal Revenue Code in general, the Secretary of Housing and Urban Development (HUD) is to designate urban enterprise zones, and the Secretary of Agriculture is to designate agricultural zones.\footnote{I.R.C. § 1393 (West 1994).} Further, the Secretary of Commerce may be consulted in the determination of whether a particular area is a “rural area.”\footnote{Id. § 1393(a)(2)(B).} Thus, the Secretaries of three, and sometimes four, federal agencies have a direct role to play in the process of zone designation. This diverse involvement is reminiscent of the Model Cities project,\footnote{Hetzel and Pinsky, supra note 97, at 745-48.} where the involvement of numerous agencies led to several inter-agency conflicts. If Congress fails to learn from the mistakes of the Model Cities project, OBRA '93 will surely be hampered.

Historically, extra-departmental involvement in revenue matters has been generally limited. There are several provisions in the Internal Revenue Code that require prior certification by a department secretary in order to have a particular provision take effect.\footnote{See, e.g., I.R.C. § 893(b) (West 1994) (Secretary of State); id. at § 2002(e) (Secretary of Agriculture).} That involvement is predicated upon the peer secretary’s ability to bring some expertise to bear. Once the certification process is complete, however, the peer
secretary’s involvement ends. In a departure from this pattern, OBRA ’93 calls for continuing oversight by the Secretaries of HUD and the Department of Agriculture.

As noted previously, area designation is driven largely by non-quantitative considerations. In view of presumed agency expertise within their jurisdictions, it is certainly within Congress’ discretion to employ that expertise in making designations. If, however, post-designation monitoring is modified to focus primarily on data collection, consolidating oversight entirely within the Department of the Treasury becomes the most rational choice. The Internal Revenue Service is already charged with ensuring taxpayer compliance with the Internal Revenue Code. Thus, placing the enterprise community and empowerment zone programs entirely under Treasury oversight permits an efficient use of resources in that it subjects all participants in the effort to the oversight of a single agency. Further, the Internal Revenue Service already has analogous experience with tax-exempt entities and low-income housing. If oversight is relocated and placed within Treasury, the only remaining HUD/Agriculture involvement would be during the eligibility procedure, an obligation that could be fulfilled through a certification process.

CONCLUSION

On balance, Congress has moved constructively in including in OBRA ’93 language permitting federal participation in domestic enterprise zones. The increased access to capital made possible by the use of enterprise zone facility bonds, the attention paid to infrastructure development by means of the requirement for state and local support of the enterprise zone, and the statute’s requirement for baselines and benchmarks by which the enterprise zone’s success may be monitored are all important improvements to the enterprise zone concept.

As this article has shown, however, there are weaknesses in OBRA ’93 which threaten to compromise successful implementation of the program. First, the legislation does not provide enough guidance for determining empowerment zone and enterprise community

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166 See supra notes 62-65 and accompanying text.
167 See supra notes 101-02 and accompanying text for arguments to this effect.
168 For example, after the project is certified by the Secretary of the Interior, administration of the low-income housing credit is entirely within the IRS. The selection criteria employed by the IRS are very similar to what Congress has included in the Strategic plan requirements. I.R.C. §42(m)(1)(C) (West 1994).
designations. Second, the strategic plan—the principal tool of the federal enterprise zone effort—is simultaneously too narrowly and too broadly structured to serve effectively its intended end. Third, the statute's single sanction of absolute revocation for boundary modifications and failing to make progress sufficient progress is too harsh a penalty. Fourth, the enterprise zone facility bond provision—which constitutes a critical component of the enterprise zone legislation—does not provide enough incentives for investors and does not address problems that will arise between states issuing bonds. Fifth, the requirements for obtaining "qualified" business status should be modified. Sixth, the tax incentives available to empowerment zone businesses should include a refundable credit for required educational expenditures. Finally, the administration of enterprise zones should be centralized and become the responsibility of the Department of Treasury.

Fortunately, however, each of these weaknesses is remediable, and the most efficacious remedies fall well within the range of existing legislative prerogatives. Part III of this article suggests ways in which Congress can amend the provisions of OBRA '93 to combat the aforementioned weaknesses. If it does, enterprise zones as permitted by OBRA '93 can be an effective catalyst for revitalizing blighted areas. Since these areas can be ignored only at our own peril, constructive engagement with programs such as this appears to offer the best hope of affording American citizens their presumptive birthright to "life, liberty, and the pursuit of happiness."