

RON WYDEN, OREGON , CHAIRMAN

DEBBIE STABENOW, MICHIGAN
MARIA CANTWELL, WASHINGTON
ROBERT MENENDEZ, NEW JERSEY
THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
SHERRON BROWN, OHIO
MICHAEL F. BENNET, COLORADO
ROBERT P. CASEY, Jr., PENNSYLVANIA
MARK R. WARNER, VIRGINIA
SHELDON WHITEHOUSE, RHODE ISLAND
MAGGIE HASSAN, NEW HAMPSHIRE
CATHERINE CORTEZ MASTO, NEVADA
ELIZABETH WARREN, MASSACHUSETTS

MIKE CRAPO, IDAHO
CHUCK GRASSLEY, IOWA
JOHN CORNYN, TEXAS
JOHN THUNE, SOUTH DAKOTA
RICHARD BURR, NORTH CAROLINA
ROB PORTMAN, OHIO
PATRICK J. TOOMEY, PENNSYLVANIA
TIM SCOTT, SOUTH CAROLINA
BILL CASSIDY, LOUISIANA
JAMES LANKFORD, OKLAHOMA
STEVE DAINES, MONTANA
TODD YOUNG, INDIANA
BEN SASSE, NEBRASKA
JOHN BARRASSO, WYOMING

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

JOSHUA SHEINKMAN, STAFF DIRECTOR
GREGG RICHARD, REPUBLICAN STAFF DIRECTOR

January XX, 2022

[QOF Address]

Dear [QOF point of contact]:

As Chairman of the U.S. Senate Committee on Finance, which has jurisdiction over federal tax matters, I am investigating the operation and effects of Qualified Opportunity Funds (Opportunity Funds), investment vehicles organized for the purpose of investing in Qualified Opportunity Zones (Opportunity Zones).¹ The Opportunity Zone program was established by Congress on a party line basis in 2017² and was intended “to spur economic development and job creation in distressed communities throughout the country and U.S. possessions by providing tax benefits to investors who invest eligible capital into these communities.”³ Given the lack of transparency and reporting requirements for Opportunity Funds, I am writing to request information about the organization, operation and economic impact of [QOF].⁴

I have long been concerned that the Opportunity Zone program may permit wealthy investors another opportunity to avoid billions of dollars in taxes without meaningfully benefitting the distressed communities the program was intended to help. A report released by the Government Accountability Office (GAO) heightened my concern about the effects of the Opportunity Zone program. The GAO report notes that representatives of several Opportunity Funds indicated that they would have proceeded with projects in what are now designated zones without the tax incentives provided by the Opportunity Zone program.⁵ Nearly all of the Opportunity Funds examined by GAO were focused on real estate development projects, including a project in Las Vegas that will provide on-site gaming and another project to develop climate-controlled self-storage units.⁶ Many of the Opportunity Funds GAO examined plan to hold their investments for

¹ I.R.C. §§ 1400Z-1 to 2 (2018).

² Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017).

³ See *Opportunity Zones Frequently Asked Questions*, Internal Revenue Service, [<https://www.irs.gov/credits-deductions/opportunity-zones-frequently-asked-questions>].

⁴ GAO, *Opportunity Zones: Improved Oversight Needed to Evaluate Tax Expenditure Performance*, GAO-21-30, (Washington, D.C.: Oct. 8, 2020).

⁵ GAO, *Opportunity Zones: Census Tract Designations, Investment Activities, and IRS Challenges Ensuring Taxpayer Compliance*, GAO-22-1040, (Washington, D.C.: Oct. 7, 2020).

⁶ *Id.* at 19, 42, 61.

at least 10 years, which will allow the Opportunity Funds to realize tax-free gains on these investments when they sell them.⁷

Furthermore, the GAO report emphasized past findings concerning the lack of reporting requirements included in the Opportunity Zone program.⁸ Currently, there are no safeguards or transparency measures in place to ensure taxpayers are not simply subsidizing high-end real estate investments by billionaires without demonstrating the benefit they are providing to low income-communities they claim to help. Accordingly, I have introduced legislation to reform the Opportunity Zone program, including requiring annual, public information reporting from Opportunity Funds, and annual statements to the IRS from fund investors.⁹ This legislation would also prohibit investments in casinos, luxury apartments and stadiums as well as tighten existing rules to ensure that these incentives support new investments and do not provide tax-free gains for investments in projects that were already underway.

According to public reports, it appears that the Opportunity Zone program is already helping subsidize luxury real estate development by wealthy developers, and in many cases will allow these investors to realize the gains on their investments completely tax-free.¹⁰ Among the investments that have reportedly qualified for these generous tax breaks, are projects that include luxury apartment buildings and hotels, high-end office towers, self-storage facilities and a “superyacht marina.”¹¹ This so-called “superyacht marina” site in Palm Beach includes ongoing construction of two luxury waterfront apartment towers with 399 units, featuring a resort-size, heated pool overlooking the intracoastal waterway; a 120-foot day dock with 12 20-foot slips for boats; VIP cabanas and a spa and a sauna. The penthouse floors will apparently also have their own private pools.¹² Other examples of projects being funded by this program include a 35 story tower in Portland featuring a Ritz Carlton Hotel and condos going for as much as \$7.5 million, a Virgin Hotel in New Orleans, a 46 story glass-wrapped apartment tower in Houston featuring a pool with cabanas and daybeds, and a large new office tower in Miami’s already booming design district.¹³

Given these concerns and the lack of information being provided by participants in the Opportunity Zone program to federal regulators, I request that you provide the following

⁷ *Id.* at 24.

⁸ GAO, *Opportunity Zones: Improved Oversight Needed to Evaluate Tax Expenditure Performance*, GAO-21-30, (Washington, D.C.: Oct. 8, 2020).

⁹ Wyden Introduces Legislation to Reform Opportunity Zone Program, Nov. 6, 2019, [<https://www.finance.senate.gov/ranking-members-news/wyden-introduces-legislation-to-reform-opportunity-zone-program->].

¹⁰ *How a Trump Tax Break to Help Poor Communities Became a Windfall for the Rich*, THE NEW YORK TIMES, Aug. 31, 2019, [<https://www.nytimes.com/2019/08/31/business/tax-opportunity-zones.html>].

¹¹ *Id.*; *A Trump Tax Break To Help The Poor Went To a Rich GOP Donor’s Superyacht Marina*, PROPUBLICA, Nov. 14, 2019, [<https://www.propublica.org/article/superyacht-marina-west-palm-beach-opportunity-zone-trump-tax-break-to-help-the-poor-went-to-a-rich-gop-donor>].

¹² *Waterfront towers under way on West Palm Beach’s North End*, THE PALM BEACH POST, April 6, 2021, [<https://www.palmbeachpost.com/story/news/2021/04/06/residential-towers-break-ground-west-palms-northern-waterfront/7089852002/>].

¹³ *How a Trump Tax Break to Help Poor Communities Became a Windfall for the Rich*, THE NEW YORK TIMES, Aug. 31, 2019, [<https://www.nytimes.com/2019/08/31/business/tax-opportunity-zones.html>].

information and documents about the organization and operation of [QOF] and any other QOF that you are an investor in:

1. Please list all projects that your Opportunity Fund is currently invested in and provide the following information for each project:
 - a. which Opportunity Zone the project is located in;
 - b. how much money the Opportunity Fund invested in the project;
 - c. how many temporary jobs the project will create; and,
 - d. how many permanent jobs the project will create.
2. For each project listed in response to question one, please explain:
 - a. how and when you conceived or learned of the project;
 - b. if you chose the site of the project, how you selected it;
 - c. the extent to which your investments in other projects were redirected to the project because the project is in an Opportunity Zone;
 - d. how long after the date of your investment you intend to maintain the investment; and,
 - e. what tax benefits you expect to receive as a result of the project's eligibility for the Opportunity Zone program.
3. For each project listed in response to question one, please indicate if prior to December 22, 2017—with or without the involvement of the Opportunity Fund or investors in the Opportunity Fund—to the best of your knowledge:
 - a. any party created any fixed record of the project's conception (e.g., MOUs, business plans, renderings, drafts of designs or plans, etc.), and, if so, please provide copies of any such fixed records you possess;
 - b. any party had sought or received capital investment for the project;
 - c. any party had solicited investors or customers for the project;
 - d. any party had commenced formal planning for any construction related to the project; or,
 - e. any party had begun construction related to the project.
4. For each project listed in response to question one, please indicate if you advocated—either directly or indirectly using any medium—for the nomination by public officials of the Opportunity Zone in which the project is located.
 - a. For each project which you did advocate for inclusion of the project in a Opportunity Zone, whether or not the Opportunity Zone you advocated for was ultimately nominated, please explain when, how, and to which public officials you advocated, and provide copies of any written communications relevant to the advocacy.
5. For any real estate projects that your Opportunity Fund is currently invested in, please provide the following information for each project:
 - a. The average price per sq. ft that residential units will be marketed at to potential buyers or tenants.
 - b. The average price per sw. ft that commercial real estate units will be marketed at to potential buyers or tenants.

- c. The percentage of units that will be made available for low income housing.
- d. The amount of permanent jobs that will be created by each project.

I ask that you provide the requested information as soon as possible but no later than February XX, 2022. If you have any questions you may contact my Senate Finance oversight staff at 202-224-4515. Thank you for your prompt attention to this matter.

Sincerely,

Ron Wyden
Chairman
Committee on Finance