

Congress of the United States
Washington, DC 20515

Secretary Steven T. Mnuchin
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Dear Secretary Mnuchin:

The Opportunity Zone tax incentive, enacted into law as part of the Tax Cuts and Jobs Act of 2017 (TCJA), is intended to deliver transformational impact, including new jobs and higher wages, in low-income areas throughout the country, many of which have been left behind by the national recovery after the Great Recession. Thank you for your enthusiastic support of Opportunity Zones, and for the hard work of your staff to ensure this incentive helps expand economic opportunity for local residents of designated communities. As original cosponsors of the underlying *Investing in Opportunity Act*, we write to express both praise of and concerns with Treasury's proposed regulations under Code section 1400Z-2, released on October 19, 2018, and urge you to address key issues that are critical to this provision working according to congressional intent.

In deciding to include the Investing in Opportunity Act, the original legislative vehicle for Opportunity Zones, in the TCJA as enacted, Congress designed this incentive to be broadly applicable to rural and urban communities, flexible in the types of investments it encourages, and scalable, by allowing the risks and costs of investing in distressed communities to be borne by many investors together through a fund structure. Treasury's proposed regulations take an important first step towards realizing the intent of the Opportunity Zones incentive and providing clarity for community leaders and investors. However, a number of important questions remain, especially in regards to investments in operating businesses—a central goal of the underlying legislation. To that end, we write to call your attention to the following:

1. Treasury exercised its broad statutory authority to provide market clarity and encourage broad uptake of the Opportunity Zones incentive. We were pleased that the proposed rules address the amount of Opportunity Zone Business Property a business must have in order to become a Qualified Opportunity Zone Business eligible for investment from an Opportunity Fund. Treasury's proposed 70 percent threshold to meet the "substantially all" test ensures both a high standard and basic practical flexibility for local businesses and prospective investors, and should be included in the final rulemaking. The proposed regulations also provide valuable clarity on a range of issues for those looking to form or invest in Opportunity Funds, including the types of gains that are eligible for the tax benefit; partnership rules for the deferral of capital gains; the ability for Opportunity Funds to be formed as LLCs that are taxed as partnerships or corporations; and, the amount of time investors may hold their interests in Opportunity Funds.

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2. We are concerned with the proposed rule requiring an Opportunity Zone business to derive 50 percent of its gross income from the active conduct of a trade or business “in the qualified opportunity zone.” Since many businesses derive income from the sale of goods and services outside of a single census tract, this would significantly limit the ability for local operating businesses to qualify for Opportunity Fund investment, contrary to congressional intent. Even for those businesses who might qualify under this rule, it would impose immense new administrative burdens to track and report the location of each source of business income. As noted above, the statute already provides a tangible property test to ensure qualifying businesses are predominantly located within a designated community. Thus, Treasury should remove this added locational requirement and hew closely to the language in Code section 1397C(b)(2), as cross-referenced by Code section 1400Z-2(d)(3)(A)(ii), which simply requires that a qualifying business to derive at least 50 percent of its total gross income from the active conduct of its trade or business.
3. Opportunity Funds need rules that ensure adequate time to make qualifying investments after receiving capital from their investors or from the disposition of a portfolio holding. Timing flexibility is particularly needed around initial investment and reinvestment periods, which fundamentally impact the ability to form and maintain multi-asset Funds that spread risks and costs across a portfolio of investments as Congress intended. The proposed regulations provide a working capital safe harbor period for businesses that receive Opportunity Fund investment, demonstrating Treasury’s ability to address necessary timing issues. However, similar flexibility is needed for Opportunity Funds themselves—particularly for those looking to invest in a portfolio of Qualified Opportunity Zone Businesses. Congress gave Treasury explicit authority to write regulations to carry out the purposes of this provision, and we hope future regulations will further Congressional intent by addressing the basic timing flexibility needed for Opportunity Funds to provide capital to businesses in designated communities.
4. Congress tied the tax incentive to the longevity of an investor’s stake in an Opportunity Fund, not to an Opportunity Fund’s stake in any specific portfolio investment. This is a critical distinction, because Congress recognized that many Opportunity Funds – particularly those investing in operating businesses – would experience “churn” in their investments, as some portfolio businesses grow and seek new investment, while others are liquidated, within the lifespan of the fund. This is why we specifically directed Treasury to provide adequate time for Opportunity Funds to reinvest capital that has been returned to the fund from an underlying portfolio investment. Such fund-level activity should in no way disallow the tax benefit to the Opportunity Fund’s investors, provided they do not take distributions from the fund or sell their fund interest prior to meeting the 10-year holding period. Clarifying this in the final regulations would eliminate a significant roadblock for investors, and open the door for catalytic investments in operating businesses.

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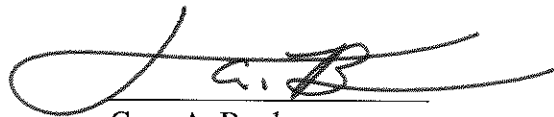
5. *The Investing in Opportunity Act* included basic transparency measures and directed Treasury to produce reports on the incentive and its impacts on communities, but the provision was dropped from the TCJA for procedural reasons. Consistent with your statutorily-granted authority, we urge Treasury to include in its final regulations reasonable reporting requirements, including of Fund- and transaction- level information, in order to prevent against waste, fraud, and abuse, and to ensure that the incentive is delivering impact for communities. Further, making this data available will move capital off the sidelines by connecting investors to funds and allowing community stakeholders to align local strategies and additional investments with Opportunity Fund capital.

We thank you and the dedicated staff at the Department of the Treasury for your work on drafting the Notice of Proposed Rulemaking. It marks a significant, positive step in the implementation of this incentive. We look forward to continuing to work with you and your team on finalizing regulations that will allow this tool to drive new business investment in America's low-income communities.

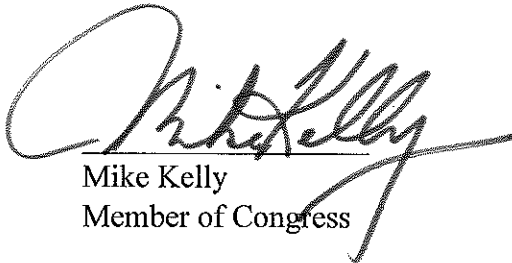
Sincerely,



Tim Scott
United States Senator



Cory A. Booker
United States Senator



Mike Kelly
Member of Congress



Ron Kind
Member of Congress



Rob Portman
United States Senator

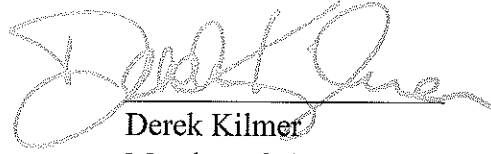


Todd Young
United States Senator

Congress of the United States
Washington, DC 20515



Suzan DelBene
Member of Congress



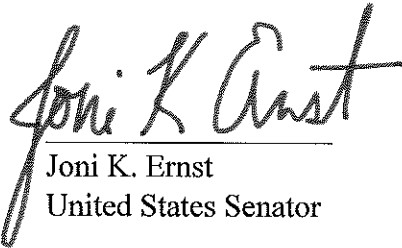
Derek Kilmer
Member of Congress



Terri A. Sewell
Member of Congress



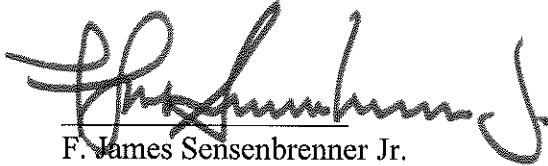
Chris Collins
Member of Congress



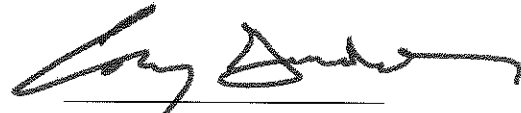
Joni K. Ernst
United States Senator



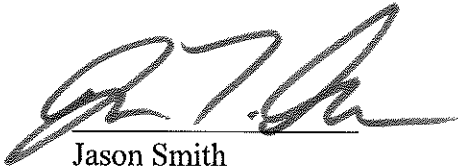
Shelley Moore Capito
United States Senator



F. James Sensenbrenner Jr.
Member of Congress



Cory Gardner
United States Senator



Jason Smith
Member of Congress



Steve Stivers
Member of Congress