AFR Americans for Financial Reform

May 5, 2022

RE: Support for the Opportunity Zone Reform Act

Dear Member of Congress,

The 26 undersigned organizations—including housing and economic justice advocates—write in support of the Opportunity Zones Reform Act, a bill to be introduced by Rep. Lloyd Doggett and Sen. Sherrod Brown and currently cosponsored by 24 additional Members of Congress.[1] The Opportunity Zones (OZones) program was tucked in the 2017 Republican tax cut legislation and its flawed design and poor implementation by the Trump Treasury created a tax giveaway for real estate tycoons masquerading as economic development for low-income communities. The Opportunity Zones Reform Act would structurally reform the program to prevent abuses, hold investors accountable to local community priorities, strengthen information collection, and to impose performance goals tied to community benefits as a condition for receiving tax breaks.

Forbes magazine wrote that the OZones program could become "one of the biggest tax giveaways in American history" and the New York Times called it a "once-in-a-generation bonanza for elite investors."[2] It is estimated that the average 2019 household income of OZones investors is greater than $1 million,[3] and AFR estimated the tax giveaway to these individuals could be worth $26 billion.[4]

In its current form, the OZones program is essentially a big tax cut for real estate investors with little to no benefits for the communities they are supposed to serve. The Government Accountability Office (GAO) reports that almost all (90 percent) of the OZone investments are real estate projects like hotels and apartment buildings and *not* permanent job-creating businesses.[5] These projects create mostly temporary construction jobs with very limited to no positive spillover effects on the economy of the communities in which they are located.[6] Even

[1] Representatives Adam; Bowman; Boyle; Chu; Cohen; Evans; Garcia (Chuy); Gomez; Grijalva; Jayapal; Jones; Khanna; Lee; Leger Fernandez; Levin (Andy); Maloney; Newman; Pocan; Porter; Takano; Torres, Richie; Schakowsky; Sherman; Watson Coleman

[2] Bertoni, Steven. "An unlikely group of billionaires and politicians has created the most unbelievable tax break ever." *Forbes*. July 18, 2018; Drucker, Jesse and Eric Lipton. "How a Trump Tax Break to Help Poor Communities Became a Windfall for the Rich." *The New York Times.* August 31, 2019.

[3] Kennedy, Patrick and Harrison Wheeler. "Neighborhood-Level Investment from the U.S. Opportunity Zone Program: Early Evidence." April 12, 2021. At p. 4.

[4] Valdes Viera, Oscar and Patrick Woodall. "Wall Street's Big Opportunity: Opportunity Zones are a corporate tax break masquerading as community development." Americans for Financial Reform Education Fund. June 2020. At p. 13.

[5] Government Accountability Office (GAO). "Opportunity Zones: Census Tract Designations, Investment Activities, and IRS Challenges Ensuring Taxpayer Compliance." GAO-22-104019. October 7, 2021. At p. 49; Wessel, David. Statement Before the Subcommittee on Oversight of the Ways & Means Committee of the U.S. House of Representatives. November 12, 2021. At p. 3; Kennedy and Wheeler (2021) at p. 9.

[6] Atkins, Rachel M. B. et al. "What is the Impact of Opportunity Zones on Employment?" January 26, 2021. At p.2; Sage, Alan et al. "Where is the Opportunity in Opportunity Zones?" February 19, 2021. At p. 2.

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more fundamentally, the GAO found that most of these investors "would have made the same investments without the incentive,"[7] making the tax break simply a giveaway.[8]

Recent research examining the first two years of the OZones program finds that the majority of the investments are going to a small subset of the most prosperous or already gentrifying areas—those where the profit potential is the highest. Estimates show that just 1 percent of OZones census tracts have received 48 percent of total OZones investments, and *5 percent of all tracts account for 87 percent of total investments*.[9] The areas that have received virtually all of the investments are also those that experienced major shifts in their demographic composition over the last decade and that now are relatively better-off with "higher incomes, home values, educational attainment, and pre-existing income and population growth."[10]

There is also widespread expectation and concern that OZones investments will worsen gentrification.[11] OZones deliver generous benefits to wealthy investors who plow money into rapidly gentrifying areas and booming cities,[12] raising rents and exacerbating the affordable housing crisis and pushing existing lower-income residents of the designated OZones areas out of their communities.

Gentrification was baked into the program's flawed design and implementation. One study finds the probability of OZones eligibility was *nearly twice* as high for gentrifying tracts than non-gentrifying tracts.[13] While another study finds that 68 percent of the OZ census tracts were either gentrifying or adjacent to gentrifying tracts at the time of their selection.[14] The correlation between gentrified areas and the selection of OZones tracts is likely to accelerate the rate of gentrification.[15] This is in line with evidence showing that prior place-based development tax incentives contributed to demographic changes, "as low-income residents were displaced by increases in property values and rental costs" and were replaced by higher-income people moving into the areas.[16]

Displacement due to rising rents threatens Black, Native American, Pacific Islanders, and Latinx families in particular, who are more likely to be renters than white families, far more likely to be

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[7] GAO (2021) at p. 22.
[8] Drucker, Jesse and Eric Lipton. "How a Trump Tax Break to Help Poor Communities Became a Windfall for the Rich." *The New York Times*. August 31, 2019.
[9] Kennedy and Wheeler (2021) at p. 11.
[10] Kennedy and Wheeler (2021) at p. 1.
[11] Kurban, Haydar et al. "Was gentrification a factor in designation of Opportunity Zones: A study of 100 most populous cities with DC as a case study." February 24, 2021. At p. 17; Brazil, Noli and Amanda Portier. "Investing in Gentrification: The Eligibility of Gentrifying Neighborhoods for Federal Place-Based Economic Investment in U.S. Cities." October 19, 2020; Green, Jamaal and Wei Shi. "Classifying Opportunity Zones- A Model-Based Clustering Approach." Departmental Papers (City and Regional Planning). 52. February 2022.
[12] Green and Shi (2022).
[13] Brazil and Portier (2020).
[14] Kurban, Haydar et al. (2021) at p. 24.
[15] Kurban, Haydar et al. (2021) at p. 17.
[16] Government Accountability Office (GAO). "Empowerment Zone and Enterprise Community Program: Improvements Occurred in Communities but Effect of the Program is Unclear." GAO-06-727. September 2006 at 115; also: Brazil and Portier (2020).

extremely low-income renters, and more likely to be severely rent-cost burdened.[17] Low-income Asian American families also face a particular threat of gentrification and displacement because they are disproportionately concentrated in the hottest and highest-cost housing markets.[18]

Additionally, the program currently lacks any meaningful disclosure requirements, which seriously hinders oversight and accountability and is a major challenge to directly examine the threat to affordable housing and displacement in communities of color. The GAO reported that "there are insufficient data available to evaluate" how the tax break is impacting neighborhoods and the lack of transparency makes it difficult for the IRS to make sure that the "high-risk" super-rich O-Zone investors don't improperly abuse the tax break.[19]

Representative Lloyd Doggett and Senator Sherrod Brown's Opportunity Zones Reform Act is much needed legislation to structurally reform the OZones program to prevent abuses of the tax breaks, hold investors accountable to local community priorities, strengthen information collection, and to impose performance goals tied to community benefits as a condition of receiving tax breaks.

Among other things, **the Opportunity Zones Reform Act would**:

- Require that OZones projects create good jobs for communities by tying tax benefits to community benefits like the creation of at least one full-time job (at prevailing wages and offering paid leave) per $35,000 in capital gains tax relief.
- Prohibit investments in posh hotels and luxury condos as well as in stadiums, private planes, luxury boxes, and self-storage property from qualifying for the tax breaks.
- Impose accountability standards by requiring Opportunity Funds (the investment vehicles that carry out the investments) to include community representation on their boards, to provide meaningful opportunities for community input, and to better align their mission to provide investment capital for low-income communities.
- Establish transparency standards requiring investors to report information to Treasury, which will be made available on a publicly searchable database and allow the public to evaluate whether OZones tax breaks have had economic or community benefits.
- Sunset OZones designations for higher-income census tracts.
- Ensure that banks cannot receive credit under the Community Reinvestment Act (CRA) solely based on investments being made in OZones.

It is imperative to fix the structural flaws currently making Opportunity Zones an incentive for building luxury apartments and condos, which will raise rents and displace the families living in the designated neighborhoods.

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[17] Aurand, Andrew et al. "The Gap" A Shortage of Affordable Homes." National Low Income Housing Coalition. March 2021 at 13 and 14; Wedeen, Sophia. "Black and Hispanic Renters Face Greatest Threat of Eviction in Pandemic." Joint Center for Housing Studies of Harvard University. January 11, 2021; Pech, Chhandara et al. "Crisis to Impact: Reflecting on a Decade of Housing Counseling Services in Asian American Communities." National Coalition of Asian Pacific American Community Development and the University of California, Los Angeles. December 2020.

[18] National Coalition For Asian Pacific American Community Development (National CAPACD). Data for Organizing. Accessed April 11, 2022.

[19] GAO (2021) at pp. 7-8 and 42-43.

The undersigned organizations support enactment of the Opportunity Zone Reform Act to close loopholes, require community input in investment decisions, increase transparency and accountability, and tie the tax breaks to community benefits like job creation and affordable housing construction.

Sincerely,

Alliance for Housing Justice

Americans for Financial Reform

Americans for Tax Fairness

Bargaining for the Common Good (BCG)

California Reinvestment Coalition

Center for Community Progress

Consumer Action

Indivisible

Integrated Community Solutions, Inc.

Long Island Housing Services, Inc.

Main Street Alliance

MHAction

MICAH- Metropolitan Interfaith Council on Affordable Housing

National CAPACD - National Coalition for Asian Pacific American Community Development

National Coalition For The Homeless

National Consumer Law Center (on behalf of its low-income clients)

National Council of Asian Pacific Americans (NCAPA)

National Fair Housing Alliance

National Housing Law Project

National Housing Resource Center

Poverty and Race Research Action Council

Progressive Change Campaign Committee

Prosperity Now

Public Advocates Inc.

Small Business Majority

Woodstock Institute