

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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June 24, 2020

The Honorable Steven T. Mnuchin
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Mnuchin:

The Subcommittee on Economic and Consumer Policy requests documents and information on the Department of the Treasury's administration of the Opportunity Zone program established by the Tax Cuts and Jobs Act.¹ In particular, we are concerned about possible abuses in the Department's designation of certain census tracts as "qualified opportunity zones" (QOZ) in Detroit, Los Angeles, and Oklahoma City.

As the Department has stated, Opportunity Zones "are designed to spur economic development and job creation in distressed communities."² The statute targeted distressed communities by making census tracts eligible as QOZs if they have high rates of poverty or sufficiently low average incomes. Only a limited number of tracts in each state may be designated as QOZs, and the Department's role is to certify lists of eligible tracts selected and nominated by the states.³ Designation as a QOZ provides an incentive for community development projects by reducing or eliminating capital gains taxes for investments in QOZs.⁴

It appears that the Department designated tracts in Detroit, Los Angeles, and Oklahoma City as "low-income communities" even though they do not appear to meet the statutory income qualifications for low-income communities.⁵ Erroneous designation of higher-income tracts as low-income communities undermines the purpose of the Opportunity Zone program since it gives valuable tax breaks to developers that do not benefit the distressed communities the law was designed to help. It would be especially concerning if investors that obtained tax breaks for

¹ Pub. L. 115-97, § 13823 (codified at Internal Revenue Code § 1400Z-1 to 2).

² Internal Revenue Service, *Opportunity Zones Frequently Asked Questions* (updated Oct. 22, 2019) (online at www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions) (accessed on Feb. 12, 2020).

³ Internal Revenue Code § 1400z-1.

⁴ Internal Revenue Code § 1400z-2.

⁵ Internal Revenue Code § 45D(e).

their planned developments improperly influenced the designation process and were contributors to officials who designated areas as Opportunity Zones.

Opportunity Zone Eligibility

To be eligible as a QOZ under the Tax Cuts and Jobs Act, a census tract must: (1) meet the definition of a low-income community (LIC), or (2) be contiguous with a low-income community and have a median family income (MFI) that does not exceed 125 percent of the MFI for the contiguous low-income community (Eligible Non-LIC Contiguous Tract).⁶

There are four ways to qualify as a low-income community:

1. The poverty rate is at least 20 percent;
2. The MFI does not exceed 80 percent of the MFI for the state or relevant metropolitan area;
3. The census tract has a population of less than 2,000, is “within an empowerment zone,” and is contiguous to a low-income community (designated as such under a different low-income community provision); or
4. The census tract is within a “high migration rural county,” and the MFI does not exceed 85 percent of the MFI for the state or relevant metropolitan area.⁷

On July 9, 2018, the Department designated as QOZs the following census tracts that raise concerns:

- Tracts 26163517200, 26163517000, and 26163520800 in Detroit, Michigan (the Detroit Tracts);
- Tracts 06037206020 and 06037206031 in Los Angeles, California (the Los Angeles Tracts); and
- Tract 40109103200 in Oklahoma City, Oklahoma (the Oklahoma City Tract).⁸

None of these tracts appears to qualify as a low-income community, according to data from the 2015 American Community Survey (ACS). For all of the tracts, the poverty rates were lower than 20%, and the MFIs were greater than the MFIs for the states or relevant metropolitan areas. None is in a rural county. None had a population of less than 2000, except for Detroit Track 26163520800.

⁶ Internal Revenue Code § 1400z-1(b)(1) & (e).

⁷ Internal Revenue Code § 45D(e).

⁸ Internal Revenue Service, *Internal Revenue Bulletin 2018-28* (July 9, 2018) (online at www.irs.gov/pub/irs-drop/n-18-48.pdf).

As for Detroit Tract 26163520800, its population is less than 2000 and thus appears to have been potentially eligible as a low-population tract “within an empowerment zone.” However, according to publicly available Treasury maps of qualified investment areas based on 2015 data, this tract is not within an empowerment zone and should not qualify under that provision.⁹

Detroit Tract 26163517000 and Los Angeles Tract 06037206031 are especially dubious since their eligibility was not based on low-income community status, but rather on their contiguity to the suspect tracts Detroit Tract 26163517200 and Los Angeles Tract 06037206020.¹⁰

“Technical Corrections” that Included the Suspect Tracts

On February 8, 2018, Treasury’s Community Development Financial Institutions (CDFI) Fund published an “Information Resource” workbook containing sortable lists of “all census tracts originally eligible for designation as a QOZ.”¹¹ Under this original list of eligible tracts, the Detroit Tracts, the Los Angeles Tracts, and the Oklahoma City Tract were not deemed to be eligible for QOZ status.

However, a few weeks later, Treasury issued technical corrections to include them. On February 27, 2018, the CDFI Fund updated the Information Resource, adding and subtracting tracts from the original workbook based on “technical corrections.” According to the CDFI Fund:

This updated version reflects a more inclusive census tract contiguity analysis and corrects some data formatting errors in the original file. It now includes qualified high migration tracts, low-population tracts within Empowerment Zones, and territorial data that meet the definition of a Low-Income Community, but were inadvertently excluded from earlier data.¹²

The Detroit Tracts, the Los Angeles Tracts, and the Oklahoma City Tract were listed in the “Additions” to the Information Resource as either low-income communities or Eligible Non-LIC Contiguous Tracts.

Nomination and Confirmation

The Subcommittee is concerned that Treasury did not exercise meaningful oversight over the governors’ selections of Opportunity Zones and may have acted as a rubber stamp. The Tax Cuts and Jobs Act delegated two discretionary tasks during the designation process:

⁹ See Department of the Treasury, Community Development Financial Institutions Fund, *CDFI Information Mapping System (CIMS)* (online at www.cims.cdfifund.gov/preparation/?config=config_cdfi.xml).

¹⁰ See Department of the Treasury, Community Development Financial Institutions Fund, *Opportunity Zone Resources* (online at www.cdfifund.gov/Pages/Opportunity-Zones.aspx) (accessed on Mar. 18, 2020).

¹¹ *Id.*

¹² *Id.*

(1) nomination of tracts by states' chief executive officers, and (2) final certification of those nominations by Treasury. But it did not set any guidelines for nomination or certification.¹³

Unconstrained discretion in the hands of the officials involved in nominating and certifying tracts as Opportunity Zones poses obvious risks. One risk is that the program's benefits will not be distributed equitably. Without any standards or guidelines enforced by Treasury for allocating Opportunity Zones, governors would be free to pick and choose "winners" without fairly taking into consideration the needs of all of the various communities that make up their states. We are worried that the voices of some communities may not have been heard during the nomination process and were left out of the final selections.

In Illinois, for instance, there are disparities in the allocation of Opportunity Zones that affected Hispanic-majority communities. Although 25% of the state's census tracts that were eligible as low-income communities were designated as Opportunity Zones, only 10% of those eligible tracts with a majority-Hispanic population were designated. This disparity appears even when taking poverty rate into account. For eligible tracts with a poverty rate between 40% and 49.9%, 53% overall were designated as Opportunity Zones, while 27% of the Hispanic-majority tracts were designated. For eligible tracts with poverty rates between 25% and 29.9%, 20% overall were designated as Opportunity Zones, while 9% of the Hispanic-majority tracts were designated.¹⁴

There is nothing in the Opportunity Zone statutes or regulations that prevents improper influence from affecting governors' decisions on which tracts to nominate or Treasury's decisions on whether to certify. According to news reports, Treasury reportedly "decided to adjust its process" for a tract in Storey County, Nevada after sustained lobbying efforts by state officials.¹⁵ It also has been reported that the designation of the Detroit Tracts may have been due to improper influence during Treasury's publication of "technical corrections," as well as in the state and local officials' nomination of the tracts for QOZ status.¹⁶

Designating tracts as Opportunity Zones was just the first step toward the intended goal of spurring investments in low-income communities to build them up and advance promise of "Opportunity." However, one recently-released report alleges that the program has not lived up to that promise, finding that Opportunity Zones "are providing the biggest benefits to projects with the highest returns, which are rarely aligned with equitable development."¹⁷

¹³ Internal Revenue Code § 1400z-1(b).

¹⁴ Tax Policy Center, *Tract-Level Data on All Opportunity Zones* (online at https://edit.urban.org/sites/default/files/urbaninstitute_tractlevelozanalysis_update1242018.xlsx).

¹⁵ *After Nevada GOP Push, Treasury Changed Lucrative Policy Benefiting One County*, Washington Post, (June 22, 2018) (online at www.washingtonpost.com/business/economy/after-nevada-gop-push-treasury-quietly-changed-policy-benefiting-one-county/2018/06/22/d142acfc-74c5-11e8-b4b7-308400242c2e_story.html).

¹⁶ *How a Tax Break to Help the Poor Went to NBA Owner Dan Gilbert*, ProPublica (Oct. 24, 2019) (online at www.propublica.org/article/how-a-tax-break-to-help-the-poor-went-to-nba-owner-dan-gilbert).

¹⁷ Urban Institute, *The Opportunity Zone Incentive Isn't Living Up to Its Equitable Development Goals. Here Are Four Ways to Improve It* (June 17, 2020) (online at www.urban.org/urban-wire/opportunity-zone-incentive-isnt-living-its-equitable-development-goals-here-are-four-ways-improve-it).

In order to assist the Subcommittee in its review of this matter, please provide the following information by July 13, 2020:

1. A description of all issues addressed by the “technical corrections” of the Information Resource, including “data formatting errors in the original file,” “territorial data” that were “inadvertently excluded from earlier data,” and the “more inclusive census tract contiguity analysis”;
2. A list of tracts that were changed in the “technical corrections” of the Information Resource;
3. For each tract listed in 2:
 - a. whether it was marked as LIC, Eligible Non-LIC Contiguous Tracts, or neither in the original;
 - b. whether it was marked as LIC, Eligible Non-LIC Contiguous Tracts, or neither in the technical correction;
 - c. the poverty rate and its source;
 - d. the median family income of the tract and its source;
 - e. the median family income of the state and its source;
 - f. the median family income of the relevant metropolitan area and its source;
 - g. the population of the tract and its source;
 - h. whether the tract is within an empowerment zone and the source of that information;
 - i. whether the tract is a “high migration rural county” and the source of that information; and
 - j. for (c) through (i), whether there was any change to the figure for the “technical corrections” and why the change was made;
4. A description of Treasury’s interpretation of the phrase “within an empowerment zone” for purposes of Opportunity Zone eligibility; how that interpretation was applied to Detroit Tract 26163520800; and a description of the CDFI Fund’s interpretation of the phrase “within an empowerment zone” for purposes of the “2010 Census Tract” and “2015 Census Tract” layers presented in the CDFI Information Mapping System (CIMS), including an explanation of any difference in interpretation between those two layers;
5. All policies and procedures regarding or relating to the certification of nominations by Treasury, including standards for governors’ nomination of tracts, any considerations of equitable allocations among different constituent groups; Treasury’s review of nominations and any scrutiny for inequitable allocations or improper influence; any process for complaints or appeals; and any guidelines concerning communications with state and local officials and other outside entities;

6. All reports and analyses regarding actual and projected effects of the Opportunity Zone program, including the impact of specific rules and regulations issued by Treasury, on equitable development, resident and community engagement in investment decisions, small businesses, and job creation; and
7. All documents referring or relating to the Opportunity Zone program for the Detroit Tracts, the Los Angeles Tracts, and the Oklahoma City Tract from January 1, 2017, to the present, including documents concerning eligibility, nomination, or certification, communications concerning the tracts prior to the passage of the Tax Cuts and Jobs Act, and documents concerning Qualified Opportunity Fund investments in the tracts.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. An attachment to this letter provides additional instructions for responding to the Committee’s request. If you have any questions regarding this request, please contact Subcommittee staff at (202) 225-5051.

Sincerely,



Raja Krishnamoorthi
Chairman
Subcommittee on Economic and Consumer Policy



Rashida Tlaib
Member of Congress

Enclosure

cc: The Honorable Michael Cloud, Ranking Member

Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.