The Real Estate Roundtable

March 25, 2025

The Honorable Tim Scott
U.S. Senate
104 Hart Senate Building
Washington, DC 20510

The Honorable Mike Kelly
U.S. Representative
1701 Longworth House Office Building
Washington, DC 20515

Dear Senator Scott and Representative Kelly:

Thank you for your tremendous leadership on issues related to economic development, entrepreneurship and the Opportunity Zone tax incentives. The OZ incentives have spurred private investment, job creation, and housing construction in low-income communities historically deprived of capital and economic opportunity. Today, the OZ benefits have largely expired. The Real Estate Roundtable encourages you to include in reconciliation legislation a long-term extension of the OZ incentives, as well as additional reforms to scale their impact and improve their effectiveness.

Poverty and underinvestment tend to be geographically concentrated. By leveraging private capital and focusing investment where it is needed, Opportunity Zones provide significant "bang for the buck" when combatting capital flight, chronic unemployment, and housing affordability challenges. Despite major hurdles such as COVID and high interest rates, recent estimates suggest Opportunity Zones have attracted over $120 billion in capital.

In the context of real estate, projects financed through opportunity funds are an economic multiplier and a catalyst for permanent, lasting job creation. Opportunity funds have boosted the construction and availability of housing across the income spectrum. They have financed hotels, grocery-anchored retail centers, and office buildings that allow new businesses to gain a presence and create jobs in long-neglected neighborhoods. OZ capital creates durable improvements that boost local tax revenue and allow communities to invest in their schools, law enforcement, and more. The results are clear. In 2023, 20 percent of new apartments in the United States were located in an Opportunity Zone, up from 8 percent prior to enactment.

The opportunity fund structure encourages and supports a business model where local entrepreneurs with knowledge and expertise of the surrounding area can partner with outside investors, creating a new cadre of businesses leaders in the community. When entrepreneurs are able to combine OZ investment with other federal incentives, like the historic rehabilitation tax credit, the result are property improvements that safeguard and showcase historical landmarks, attract visitors, and keep the community's heritage alive.

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Well-designed reforms will ensure the OZ tax incentives achieve even greater scale and transformative results for low-income communities. Reconciliation legislation should provide a long-term extension of OZ deadlines, expand the types of capital eligible for OZ investment, add new benefits for converting older commercial buildings to housing, and more. Our recommendations are described in detail in the attached supplement. If enacted, they will help drive a new era of investment, growth, and job creation in struggling parts of the country.

We look forward to working with you on these initiatives. Please do not hesitate to contact me regarding this or any other matter.

Sincerely,

Jeffrey D. DeBoer
President and Chief Executive Officer

Extend and Improve Opportunity Zone Tax Incentives

Real Estate Roundtable
Tax Policy Advisory Committee
March 27, 2025

The Opportunity Zone tax incentives enacted in 2017 spurred a wave of private investment and entrepreneurship in low-income communities that have struggled for decades to attract capital or create well-paying jobs and economic opportunities for residents. First introduced by Senator Tim Scott and embraced on a bipartisan basis by Members in both the House and Senate,[1] the incentives have boosted the construction and availability of housing across the income spectrum. Any major tax legislation in 2025 should include a long-term extension of the OZ incentives, as well as additional reforms to scale their impact and improve their effectiveness.

By the end of 2022, the Opportunity Zone tax incentives had helped mobilize $84.7 billion in investment for low-income areas in need.[2] More recent estimates suggest Opportunity Zones have attracted over $120 billion in capital.[3] The rationale for place-based incentives, whether in rural or urban neighborhoods, is that poverty and underinvestment tends to be geographically concentrated. Targeted and well-designed incentives, such as Opportunity Zones, provide significant "bang for the buck" when addressing capital flight, chronic unemployment, and housing affordability challenges.

Today, 72 percent of U.S. counties contain at least one Opportunity Zone, and 32 million people live in the 8,764 OZ-designated census tracts. The average poverty rate is 27 percent in Opportunity Zones. Over 32 percent of the nation's contaminated sites (brownfields) are located within OZ tracts. These areas are in desperate need of more capital to create the infrastructure and commercial environments for local businesses to grow and expand, and more investment to create safe spaces for residents to live, work and play.

The OZ tax incentives defer and reduce the capital gains burden on investors that redeploy prior gains to new economic opportunities in distressed neighborhoods and then exempts the gain on those new, long-term investments if they are maintained for at least 10 years. In short, the provisions help channel investment to areas where it is needed and then reward capital for staying invested, long-term, in the community.

In the context of real estate, projects financed through opportunity funds are an economic multiplier and a catalyst for permanent, lasting job creation. Opportunity funds have financed market-rate, affordable, workforce, and senior housing; grocery-anchored retail centers; and office buildings that allow new and growing businesses to gain a presence and create jobs in long-neglected neighborhoods. One Roundtable member has delivered—or is under construction on—over 1,600 multifamily units and over 39,000 square feet of retail in OZ neighborhoods of Richmond, VA,

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[1] *See* Opportunity Zones Transparency, Extension, and Improvement Act (H.R. 5761, 118th Cong.) introduced by Representatives Mike Kelly (R-PA), Terri Sewell (D-AL), and others.

[2] Joint Committee on Taxation, *Tax Incentives for Economic Development and Financing* (JCX-36-24), July 26, 2024.

[3] Jason Watkins and Peter Lawrence, *New Administration Sparks Optimism around Opportunity Zones*, Novogradac News and Analysis (Feb. 24, 2025).

Raleigh, NC, Knoxville, TN, and Charleston, SC, representing over $600 million in development investment. In one example, the member's six mixed-use OZ investments in Richmond are generating 372 jobs annually, $401 million in annual GDP for the Greater Richmond area during construction, and $7.5 million in annual revenue for the Commonwealth of Virginia and local governments and $3.1 million in annual revenue to the federal government during the operations phase. These new revenues are supporting other public investments, including schools, highways and bridges, and public safety.

Other Roundtable members are using capital raised through opportunity funds to finance the construction of 621 housing units in Oakland, 1,576 units in Raleigh-Durham, 421 units in Nashville, 296 in Los Angeles, 1,310 in Boston, and 226 in Asbury Park, New Jersey.

New research has found that the OZ tax incentives, in aggregate, have boosted the number of residential addresses in Opportunity Zones (a proxy for growth in the housing supply) by more than 312,000 units.[4] This estimate excludes existing housing that is rehabilitated using OZ financing. The same study found that Opportunity Zones are an extremely efficient housing incentive that costs the federal government an estimated $19,678 in lost tax revenue per new residential address.[5] The increase in both market-rate and affordable housing supply reduces rents, creates opportunities for middle and low-income households, and "reduce[s] the risk that the benefits of revitalization lead to displacement."[6]

Projects are not limited to housing. Another Roundtable member is using OZ funding to clean up a brownfields site in Port Chester, New York to create a mixed-use development with retail, restaurants, green space, a hotel, apartments, assisted living, and affordable housing while another member is constructing a life science facility in Durham, North Carolina. These OZ-financed activities are boosting local tax revenue and serving as a magnet for jobs, visitors, and economic activity.

The opportunity fund structure encourages and supports a business model where local entrepreneurs with knowledge and expertise of the surrounding area often partner with outside investors, creating a new cadre of businesses leaders in the community. When entrepreneurs are able to combine OZ investment with other federal incentives, like the historic rehabilitation tax credit, the result are property improvements that safeguard and showcase historical landmarks, attract visitors, and keep the community's heritage alive.

Prior place-based federal tax incentives struggled to demonstrate significant positive outcomes. In contrast, Opportunity Zones have succeeded where prior tax incentives failed because they rely on a bottom-up, market-driven approach that provides investors and entrepreneurs with tax clarity, rather than a highly centralized and bureaucratic process for awarding incentives that artificially limits their reach, creates additional costs and lengthy delays, and ensures investor uncertainty. The decentralized design of Opportunity Zones allows more investors and stakeholders to participate in the market and invest in qualifying projects that generate economic mobility, better jobs, new housing, and safer communities.

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[4] Benjamin Glasner, Adam Ozimek, and John Lettieri, *The Impact of Opportunity Zones on Housing Supply* (March 11, 2025) at 18.
[5] *Id.* at 19.
[6] *Id*. at 20.

Going forward, The Real Estate Roundtable recommends the following improvements to the current OZ tax incentives:

- **Provide a long-term extension of OZ deadlines.** In the case of new investments, two of the three OZ tax incentives have either expired altogether (basis step-up for gain rolled into an opportunity fund) or phased down (temporary deferral of gain rolled into an opportunity fund). The third and most important benefit, the exclusion of gain on OZ investments held at least 10 years, expires for new investments made after December 31, 2026. In order to ensure that Opportunity Zones continue to attract investment, Congress should provide a long-term extension of OZ deadlines that aligns with the duration of the overall legislation. A long-term extension will avoid disruption to the growing ecosystem of opportunity funds and the network of OZ investors that are mobilizing private capital for low-income communities and creating new jobs, housing, and economic opportunities for their residents.

- **Remove limitations on the type of capital eligible for investment in opportunity funds.** Under current law, only unrecognized gain from a prior investment is eligible for OZ tax benefits. Individuals cannot invest other types of earnings in an opportunity fund, such as wages or pass-through business income. This artificial restriction on the income eligible for investing in Opportunity Zones distorts the marketplace and dramatically reduces the potential pool of capital available for OZ investing. It also discriminates against taxpayers whose principal source of savings is their job or small business. Allowing taxpayers to invest income from any source in opportunity funds would allow the Opportunity Zone program to scale to new heights and attract exponentially more capital at a lower cost to the federal Treasury per-dollar of investment because the new sources of capital would not qualify for the basis step-up and gain deferral.

- **Add a new OZ tax benefit for the conversion of older, obsolete commercial buildings to housing.** Tax legislation should expand the OZ tax incentives to include a tax credit for converting older, vacant, and underutilized properties to housing. Real estate needs have changed since the pandemic. Today, high vacancy rates in office and other commercial buildings in city centers, suburbs, and rural communities alike has resulted in reduced foot traffic and economic activity. This hurts surrounding small businesses, workers, and local communities that depend on property tax revenue to finance schools, police, and more. At the same time, the United States has a severe shortage of housing and needs 4.3 million more apartments to bring down housing costs and overcome years of underbuilding. OZ legislation should build on the existing historic rehabilitation tax credit and incorporate a modified version of the credit proposed in the bipartisan *Revitalizing Downtowns and Main Streets Act*—the credit could specifically incentivize commercial-to-residential conversions inside OZ census tracts.

- **Establish a rolling deferral period and reinstate basis step-up for new OZ investments.** Under the Tax Cuts and Jobs Act, the recognition of gain from a prior investment is deferred until December 31, 2026 if the gain is reinvested in a qualified opportunity fund. As a result, the deferral benefit was greatest at the time of enactment (9-year deferral) and has gradually diminished every year since for new OZ investments. Similarly, the statutory date for recognition of the prior gain meant that the potential step-up in the basis of the deferred gain was no longer available for investments made after December 31, 2021. These diminishing returns associated with the OZ tax benefits and OZ investing could be eliminated by replacing the statutory recognition date for deferred gain with a rolling deferral period in which gain is deferred for 7 to 9 years after an investment is made. This would ensure that the incentive to invest in Opportunity Zones does not automatically begin declining as soon as the legislation is enacted. In addition, legislation should reinstate ithe 10% and 5% basis step-up benefit for investments held at least 5 and 7 years, respectively.

- **Codify, lengthen, and improve the OZ working capital safe harbor.** The regulatory OZ working capital safe harbor provides qualified opportunity funds with much-needed time to plan, organize, permit, and get off the ground ambitious OZ projects without running afoul of strict rules concerning the timing of expenditures. However, the 31-month working capital safe harbor period remains challenging for large-scale and truly transformative, ground-up real estate developments. Unforeseen delays related to zoning, permitting, and other disruptions (severe weather, labor stoppages, natural disasters, financing delays, etc.) often cause well-intentioned projects to take longer than anticipated. COVID, for instance, resulted in a large number of projects (particularly those with any office component) needing to be entirely re-worked. While a 24-month relief period was provided to mitigate the impact of delays caused by COVID, the relief proved insufficient when interest rates began to climb shortly thereafter, leading to the unfortunate abandonment of many projects.

  In order to encourage the pooling of blind capital from diverse sources for broad-based, diversified opportunity funds, legislation should codify and extend the working capital safe harbor from 31 to 48 months. Second, legislation should provide a reasonable cause exception that further extends the safe harbor to the extent reasonably necessary to address delays caused by events outside of the developer's control. Third, legislation should also clarify that, during the working capital safe harbor period, incidental or temporary gross income earned from "vacant" property is excluded for purposes of the OZ rule requiring an opportunity fund to earn at least 50% of its gross income from an active trade or business. Under the regulatory rules, a property is treated as vacant if more than 80% of the building or land is not currently being used.

- **Increase flexibility of opportunity fund ownership, investment, restructuring and leasing arrangements.** The current complexity of the OZ law and regulations is an obstacle to greater investment and reinvestment of private capital in low-income communities. For example, the current rules make it difficult for an opportunity fund to construct a new housing or commercial development, then sell the development during the 10-year investment period in order to generate cash to reinvest in another productive OZ project. Similarly, the drafters clearly did not contemplate or consider situations where certain types of lease structures are necessary to combine multiple incentives, such as OZs and historic tax credits, to generate the necessary level of outside financing. The rules also prevent an opportunity fund that is unable to identify direct business investment opportunities from investing in another opportunity fund that has an extensive project pipeline. H.R. 5761 would partially address these challenges by authorizing "qualified feeder funds," but additional reforms are needed. Tax legislation should clarify that (i) income derived from master leases of property developed in Opportunity Zones is treated as income from the active conduct of a trade or business, (ii) QOFs may invest in other QOFs that invest in QOZBs (directly or indirectly through tiered entities), (iii) QOZBs may invest (directly or indirectly through tiered entities) in other QOZBs, and (iv) QOFs and QOZBs may engage in mergers and divisions on a tax-deferred basis like other non-OZ partnerships.

- **Modify the substantial improvement threshold.** Under current law, in order to qualify for OZ benefits, project expenditures must exceed 100% of the taxpayer's basis in the existing building. The 100% threshold is excessive and exponentially greater than the 20% substantial improvement test that applies for purposes of the low-income housing credit. Putting vacant and dilapidated buildings back in service revitalizes surrounding areas and strengthens communities, irrespective of whether the level of investment exceeds the taxpayer's basis in the property. Tax legislation should reduce the substantial improvement test to a more reasonable 50% threshold. This change would allow a broader range of real estate rehabilitation and redevelopment projects to qualify for OZ benefits. Rising construction costs have forced many developers to focus on properties for higher-income renters in order to make projects financially viable. Lowering the substantial improvement threshold would help spur much-needed investment in communities where average income and rent levels cannot support ground up construction.

- **Promote greater foreign investment.** Current regulations provide only a limited mechanism allowing non-US investors to participate in the OZ incentives, yet these foreign capital sources may provide significant new investment which could further accelerate the economic development within Opportunity Zones. Proposed regulations created additional administrative and financial burdens rather than enabling foreign taxpayers to invest in Opportunity Zones. Tax legislation could include a simplified process for foreign investors to obtain OZ tax benefits, including: elimination of the "security" requirement contained in the proposed regulations, easing the financial burdens on foreign investments into Opportunity Zones; expedited approval processes and clear coordination with existing codified foreign withholding regimes, providing foreign investors with the necessary time to invest eligible capital gains; and greater benefits for foreign capital gains for which a treaty benefit has been waived, such as increasing the basis step ups for 5- and 7-year holding periods.

- **Establish information reporting and transparency requirements.** Many opportunity funds are going to great lengths to quantify and demonstrate the impact their investments are having on jobs, local economies, and the surrounding communities. However, these practices are not uniformly adopted. Local stakeholders and federal policymakers need more consistent information to analyze and evaluate the effects of OZ investments. Tax legislation should include the information reporting and transparency provisions included in the bipartisan *Opportunity Zones Transparency, Extension, and Improvement Act*.

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Real estate investment in Opportunity Zones energizes local economies and elevates everyday lives by creating the permanent spaces and lasting structures—the built environment—needed for small businesses, startups, and restaurants to operate and flourish. If enacted, the legislative recommendations above will stimulate even greater OZ investment and allow private capital to flow to where it is most needed and beneficial. Please do not hesitate to contact Ryan McCormick, Senior Vice President and Counsel at The Real Estate Roundtable (rmccormick@rer.org) if you or your staff have questions or would like more information.