

116TH CONGRESS
1ST SESSION

S. 2994

To amend the Internal Revenue Code of 1986 to require information reporting with respect to the qualified opportunity zone tax incentives enacted by the 2017 tax reform legislation, to require public reports related to such tax incentives, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 5, 2019

Mr. SCOTT of South Carolina (for himself, Mr. GRASSLEY, Mr. YOUNG, Mr. GARDNER, Ms. ERNST, Mr. CASSIDY, Mr. RUBIO, and Mrs. CAPITO) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to require information reporting with respect to the qualified opportunity zone tax incentives enacted by the 2017 tax reform legislation, to require public reports related to such tax incentives, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Improving and Rein-
5 stating the Monitoring, Prevention, Accountability, Cer-

1 tification, and Transparency Provisions of Opportunity
2 Zones” or the “IMPACT Act”.

3 **SEC. 2. FINDINGS.**

4 Congress makes the following findings:

5 (1) The 8,764 census tracts designated as
6 qualified opportunity zones under section 1400Z-1
7 of the Internal Revenue Code of 1986 span across
8 all 50 States, the District of Columbia, and 5 Terri-
9 tories and overwhelmingly represent communities
10 that have been economically left behind as the Amer-
11 ican economy has surged forward.

12 (2) The average poverty rate of qualified oppor-
13 tunity zone residents is 28.9 percent.

14 (3) Seventy-one percent of qualified opportunity
15 zones meet the Treasury Department’s definition of
16 “severely distressed”.

17 (4) More adults in qualified opportunity zones
18 lack a high school diploma than have a four-year col-
19 lege degree.

20 (5) The Investing in Opportunity Act, which
21 originally proposed opportunity zones, originally in-
22 corporated reporting requirements to evaluate the
23 impact the incentive will have on designated commu-
24 nities and it is critical that Congress act to reinstate
25 reporting requirements as soon as possible.

1 **SEC. 3. INFORMATION REPORTING ON QUALIFIED OPPOR-**
 2 **TUNITY FUNDS.**

3 (a) IN GENERAL.—

4 (1) FILING REQUIREMENTS FOR FUNDS AND
 5 INVESTORS.—Subpart A of part III of subchapter A
 6 of chapter 61 of the Internal Revenue Code of 1986
 7 is amended by inserting after section 6039J the fol-
 8 lowing new sections:

9 **“SEC. 6039K. RETURNS WITH RESPECT TO QUALIFIED OP-**
 10 **PORTUNITY FUNDS.**

11 “(a) IN GENERAL.—Every qualified opportunity fund
 12 shall file an annual return (at such time and in such man-
 13 ner as the Secretary may prescribe) containing the infor-
 14 mation described in subsection (b).

15 “(b) INFORMATION FROM FUNDS.—The information
 16 described in this subsection is—

17 “(1) the name, address, and taxpayer identifica-
 18 tion number of the qualified opportunity fund,

19 “(2) whether the qualified opportunity fund is
 20 organized as a corporation or a partnership,

21 “(3) the value of the total assets held by the
 22 fund as of each date described in section 1400Z–
 23 2(d)(1),

24 “(4) the value of all qualified opportunity zone
 25 property held by the fund on each such date,

1 “(5) with respect to each investment held by
2 the fund in qualified opportunity zone stock or a
3 qualified opportunity zone partnership interest—

4 “(A) the name, address, and taxpayer
5 identification number of the corporation in
6 which such stock is held or the partnership in
7 which such interest is held, as the case may be,

8 “(B) each North American Industry Clas-
9 sification Code that applies to the trades or
10 businesses conducted by such corporation or
11 partnership,

12 “(C) the census tracts in which the quali-
13 fied opportunity zone property of such corpora-
14 tion or partnership is located,

15 “(D) the amount of the investment in such
16 stock or partnership interest as of each date de-
17 scribed in section 1400Z-2(d)(1),

18 “(E) the value of property held by such
19 corporation or partnership on each such date
20 which is owned by such corporation or partner-
21 ship,

22 “(F) the value of property held by such
23 corporation or partnership on each such date
24 which is leased by such corporation or partner-
25 ship,

1 “(G) the approximate number of residen-
 2 tial units (if any) for any real property held by
 3 such corporation or partnership, and

4 “(H) whether the approximate average
 5 monthly number of full-time equivalent employ-
 6 ees of such corporation or partnership for the
 7 year is—

8 “(i) equal to or less than 25,

9 “(ii) greater than 25 and equal to or
 10 less than 50,

11 “(iii) greater than 50 and equal to or
 12 less than 75,

13 “(iv) greater than 75 and equal to or
 14 less than 100,

15 “(v) greater than 100 and equal to or
 16 less than 500,

17 “(vi) greater than 500 or equal to or
 18 less than 1,000, or

19 “(vii) greater than 1,000,

20 “(6) with respect to each item of qualified op-
 21 portunity zone business property held by the fund—

22 “(A) the North American Industry Classi-
 23 fication Code that applies to the trades or busi-
 24 nesses in which such property is held,

1 “(B) the census tract in which the prop-
2 erty is located,

3 “(C) whether the property is owned or
4 leased,

5 “(D) the value of the property as of each
6 date described in section 1400Z-2(d)(1), and

7 “(E) in the case of real property, number
8 of residential units (if any),

9 “(7) whether the average monthly number of
10 full-time equivalent employees of the qualified oppor-
11 tunity fund for the year is—

12 “(A) equal to or less than 25,

13 “(B) greater than 25 and equal to or less
14 than 50,

15 “(C) greater than 50 and equal to or less
16 than 75,

17 “(D) greater than 75 and equal to or less
18 than 100,

19 “(E) greater than 100 and equal to or less
20 than 500,

21 “(F) greater than 500 or equal to or less
22 than 1,000, or

23 “(G) greater than 1,000,

1 “(8) with respect to each person who disposed
 2 of an investment in the qualified opportunity fund
 3 during the year—

4 “(A) the name and taxpayer identification
 5 number of such person,

6 “(B) the date or dates on which the invest-
 7 ment disposed was acquired, and

8 “(C) the date or dates on which any such
 9 investment was disposed and the amount of the
 10 investment disposed, and

11 “(9) such other information as the Secretary
 12 may require.

13 “(c) DEFINITIONS.—For purposes of this section—

14 “(1) IN GENERAL.—Any term used in this sec-
 15 tion which is also used in subchapter Z of chapter
 16 1 shall have the meaning given such term under
 17 such subchapter.

18 “(2) FULL-TIME EQUIVALENT EMPLOYEES.—
 19 The term ‘full-time equivalent employees’ means,
 20 with respect to any month, the sum of—

21 “(A) the number of full-time employees (as
 22 defined in section 4980H(c)(4)) for the month,
 23 plus

24 “(B) the number of employees determined
 25 (under rules similar to the rules of section

1 4980H(c)(2)(E)) by dividing the aggregate
 2 number of hours of service of employees who
 3 are not full-time employees for the month by
 4 120.

5 **“SEC. 6039L. INFORMATION ON PERSONS INVESTING IN**
 6 **QUALIFIED OPPORTUNITY FUNDS.**

7 “(a) IN GENERAL.—Every taxpayer who makes an
 8 investment in a qualified opportunity fund shall provide
 9 an annual statement (at such time and in such manner
 10 as the Secretary may prescribe) containing the informa-
 11 tion described in subsection (b) with respect to each such
 12 investment.

13 “(b) INFORMATION FROM INVESTORS.—The infor-
 14 mation described in this subsection is—

15 “(1) the name, address, and taxpayer identifica-
 16 tion number of the taxpayer,

17 “(2) the name and taxpayer identification num-
 18 ber of the qualified opportunity fund in which the
 19 investment was made,

20 “(3) a description of such investment,

21 “(4) the date such investment was made,

22 “(5) the amount of short-term and long-term
 23 capital gains for which an election was made under
 24 section 1400Z–2(a)(1) for such investment,

1 “(6) in the case of any disposition of such in-
 2 vestment during the taxable year—

3 “(A) a description of the investment dis-
 4 posed,

5 “(B) the date of the disposition, and

6 “(C) the amount of any previously deferred
 7 short-term and long-term capital gain included
 8 in income as a result of such disposition, and

9 “(7) such other information as the Secretary
 10 may require.

11 “(c) DEFINITIONS.—Any term used in this section
 12 which is also used in subchapter Z of chapter 1 shall have
 13 the meaning given such term under such subchapter.”.

14 (2) PENALTIES.—Part II of subchapter B of
 15 chapter 68 of the Internal Revenue Code of 1986 is
 16 amended by inserting after section 6725 the fol-
 17 lowing new section:

18 **“SEC. 6726. FAILURE TO COMPLY WITH INFORMATION RE-**
 19 **PORTING REQUIREMENTS RELATING TO**
 20 **QUALIFIED OPPORTUNITY FUNDS.**

21 “(a) INFORMATION RETURNS BY FUNDS.—

22 “(1) IN GENERAL.—In the case of any person
 23 required to file a return under section 6039K fails
 24 to file a complete and correct return under such sec-
 25 tion the time and in the manner prescribed therefor,

1 such person shall pay a penalty of \$500 for each day
2 during which such failure continues.

3 “(2) LIMITATION.—

4 “(A) IN GENERAL.—The maximum penalty
5 under this subsection on failures with respect to
6 any 1 return shall not exceed \$10,000.

7 “(B) LARGE FUNDS.—In the case of any
8 person the gross assets of which (determined on
9 the last day of the taxable year) are in excess
10 of \$10,000,000, subparagraph (A) shall be ap-
11 plied by substituting ‘\$50,000’ for ‘\$10,000’.

12 “(3) INFLATION ADJUSTMENT.—

13 “(A) IN GENERAL.—In the case of any
14 failure relating to a return required to be filed
15 in a calendar year beginning after 2020, each
16 of the dollar amounts in paragraphs (1) and (2)
17 shall be increased by an amount equal to such
18 dollar amount multiplied by the cost-of-living
19 adjustment determined under section 1(f)(3) for
20 the calendar year determined by substituting
21 ‘calendar year 2019’ for ‘calendar year 2016’ in
22 subparagraph (A)(ii) thereof.

23 “(B) ROUNDING.—

24 “(i) IN GENERAL.—If the dollar
25 amount in paragraph (1), after being in-

1 creased under subparagraph (A), is not a
 2 multiple of \$10, such dollar amount shall
 3 be rounded to the next lowest multiple of
 4 \$10.

5 “(ii) ASSET THRESHOLD.—If the
 6 \$10,000,000 dollar amount in paragraph
 7 (2)(B), after being increased under sub-
 8 paragraph (A), is not a multiple of
 9 \$10,000, such dollar amount shall be
 10 rounded to the next lowest multiple of
 11 \$10,000.

12 “(iii) OTHER DOLLAR AMOUNTS.—If
 13 any dollar amount in paragraph (2) (other
 14 than the amount to which clause (ii) ap-
 15 plies), after being increased under sub-
 16 paragraph (A), is not a multiple of \$1,000,
 17 such dollar amount shall be rounded to the
 18 next lowest multiple of \$1,000.

19 “(b) STATEMENTS BY INVESTORS.—

20 “(1) IN GENERAL.—If—

21 “(A) any person is required to file a state-
 22 ment under section 6039L for any period, and

23 “(B) fails—

24 “(i) to file such statement on or be-
 25 fore the required filing date, or

1 “(ii) fails to include all of the infor-
2 mation required to be shown on the state-
3 ment or includes incorrect information,
4 such person shall pay a penalty of \$5,000.

5 “(2) REDUCTION WHERE CORRECTION IN SPEC-
6 IFIED PERIOD.—If any failure described in para-
7 graph (1)(B) is corrected on or before the day 60
8 days after the required filing date, the penalty im-
9 posed by paragraph (1) shall be \$500 in lieu of the
10 amount determined under such paragraph.

11 “(3) DE MINIMIS ERRORS.—If—

12 “(A) there are one or more such failures
13 described in paragraph (1)(B)(ii) relating to an
14 incorrect dollar amount, and

15 “(B) no single amount in error differs
16 from the correct amount by more than \$100,
17 then no correction shall be required, and, for pur-
18 poses of this section, such statement shall be treated
19 as having been filed with all correct required infor-
20 mation.

21 “(4) PENALTY IN CASES OF INTENTIONAL DIS-
22 REGARD.—If one or more failures described in para-
23 graph (1)(B) are due to intentional disregard of the
24 filing requirement (or the correct information report-

1 ing requirement), then, with respect to each such
2 failure—

3 “(A) paragraphs (2) and (3) shall not
4 apply, and

5 “(B) the amount of the penalty determined
6 under paragraph (1) shall be \$25,000.

7 “(5) INFLATION ADJUSTMENT.—

8 “(A) IN GENERAL.—In the case of any
9 failure relating to a statement required to be
10 filed in a calendar year beginning after 2020,
11 each of the dollar amounts in paragraphs (1),
12 (2), and (4) shall be increased by an amount
13 equal to such dollar amount multiplied by the
14 cost-of-living adjustment determined under sec-
15 tion 1(f)(3) for the calendar year determined by
16 substituting ‘calendar year 2019’ for ‘calendar
17 year 2016’ in subparagraph (A)(ii) thereof.

18 “(B) ROUNDING.—The amount of any in-
19 crease under subparagraph (A) shall be round-
20 ed to the nearest multiple of \$100 (\$10 in the
21 case of any increase in the amount under para-
22 graph (2)).”.

23 (3) CLERICAL AMENDMENTS.—

24 (A) The table of sections for subpart A of
25 part III of subchapter A of chapter 61 of such

1 Code is amended by inserting after the item re-
 2 lating to section 6039J the following new items:

“Sec. 6039K. Returns with respect to qualified opportunity funds.
 “Sec. 6039L. Information on persons investing in qualified opportunity funds.”.

3 (B) The table of sections for part II of
 4 subchapter B of chapter 68 of such Code is
 5 amended by inserting after the item relating to
 6 section 6725 the following new item:

“Sec. 6726. Failure to comply with information reporting requirements relating
 to qualified opportunity funds.”.

7 (4) EFFECTIVE DATE.—The amendments made
 8 by this subsection shall apply to taxable years begin-
 9 ning after the date of the enactment of this Act.

10 (b) REPORTING OF DATA ON OPPORTUNITY ZONE
 11 TAX INCENTIVES.—

12 (1) IN GENERAL.—As soon as practical after
 13 the date of the enactment of this Act, and annually
 14 thereafter, the Secretary of the Treasury, or the
 15 Secretary’s delegate (referred to in this section as
 16 the “Secretary”), in consultation with the Director
 17 of the Bureau of the Census and such other agencies
 18 as the Secretary determines appropriate, shall make
 19 publicly available a report on qualified opportunity
 20 funds.

21 (2) INFORMATION INCLUDED.—The report re-
 22 quired under paragraph (1) shall include the fol-
 23 lowing information:

1 (A) The number of qualified opportunity
2 funds.

3 (B) The aggregate amount of assets held
4 in qualified opportunity funds.

5 (C) The aggregate amount of investments
6 made by qualified opportunity funds in qualified
7 opportunity fund property across each industry
8 class under the North American Industry Clas-
9 sification Code.

10 (D) The percentage of census tracts des-
11 ignated as qualified opportunity zones that have
12 received qualified opportunity fund investments.

13 (E) For each census tract designated as a
14 qualified opportunity zone, whether the average
15 monthly number of full-time equivalent employ-
16 ees of qualified opportunity zone businesses for
17 the preceding 12-month period is—

18 (i) equal to or less than 25;

19 (ii) greater than 25 and equal to or
20 less than 50;

21 (iii) greater than 50 and equal to or
22 less than 75;

23 (iv) greater than 75 and equal to or
24 less than 100;

1 (v) greater than 100 and equal to or
 2 less than 500;

3 (vi) greater than 500 or equal to or
 4 less than 1,000; or

5 (vii) greater than 1,000.

6 (F) The percentage of the total amount of
 7 investments made by qualified opportunity
 8 funds in—

9 (i) qualified opportunity zone property
 10 which is real property; and

11 (ii) other qualified opportunity zone
 12 property.

13 (G) For each census tract, the aggregate
 14 approximate number of residential units for in-
 15 vestments made by qualified opportunity funds
 16 in real property.

17 (H) The aggregate amount of investments
 18 made by qualified opportunity funds in each
 19 census tract.

20 (3) ADDITIONAL INFORMATION.—

21 (A) IN GENERAL.—Beginning with the re-
 22 port submitted under paragraph (1) for the 6th
 23 year after the date of the enactment of this Act,
 24 the Secretary shall include in such report the
 25 impacts and outcomes of a designation of a cen-

1 sus tract as a qualified opportunity zone as
2 measured by economic indicators, such as job
3 creation, poverty reduction, new business starts,
4 and other metrics as determined by the Sec-
5 retary.

6 (B) SEMI-DECENNIAL INFORMATION.—

7 (i) IN GENERAL.—In the case of any
8 report submitted under paragraph (1) in
9 the 6th year or the 11th year after the
10 date of the enactment of this Act, the Sec-
11 retary shall include the following informa-
12 tion:

13 (I) For each census tract des-
14 ignated as a qualified opportunity
15 zone, a comparison (based on aggre-
16 gate information) of the factors listed
17 in clause (ii) between the 5-year pe-
18 riod ending on the date of the enact-
19 ment of Public Law 115–97 and the
20 most recent 5-year period for which
21 data is available.

22 (II) For each census tract des-
23 ignated as a qualified opportunity
24 zone, a comparison (based on aggre-
25 gate information) of the factors listed

1 in clause (ii) for the most recent 5-
2 year period for which data is available
3 between such census tract and any
4 census tract that was a low-income
5 community eligible to be designated as
6 a qualified opportunity zone but was
7 not so designated.

8 (ii) FACTORS LISTED.—The factors
9 listed in this paragraph are the following:

10 (I) The unemployment rate.

11 (II) The number of persons
12 working in the census tract, including
13 the percentage of such persons who
14 were not residents in the census tract
15 in the preceding year.

16 (III) Individual, family, and
17 household poverty rates.

18 (IV) Median family income of
19 residents of the census tract.

20 (V) Demographic information on
21 residents of the census tract, includ-
22 ing age, income, education, race, and
23 employment.

1 (VI) The average percentage of
 2 income of residents of the census tract
 3 spent on rent annually.

4 (VII) The number of residences
 5 in the census tract.

6 (VIII) The average value of resi-
 7 dential property in the census tract.

8 (IX) The number of affordable
 9 housing units in the census tract.

10 (X) The number and percentage
 11 of residents in the census tract that
 12 were not employed for the preceding
 13 year.

14 (XI) The number of new business
 15 starts in the census tract.

16 (XII) The distribution of employ-
 17 ees in the census tract by North
 18 American Industry Classification
 19 Code.

20 (4) PROTECTION OF IDENTIFIABLE RETURN IN-
 21 FORMATION.—In making reports required under this
 22 subsection, the Secretary shall establish appropriate
 23 procedures to ensure that any amounts reported do
 24 not disclose taxpayer return information that can be

1 associated with any particular taxpayer or competi-
2 tive or proprietary information.

3 (5) DEFINITIONS.—Any term used in this sub-
4 section which is also used in subchapter Z of chapter
5 1 of the Internal Revenue Code of 1986 shall have
6 the meaning given such term under such subchapter.

○