The Social Impact Side of the Qualified Opportunity Zone Discussion: What Can Treasury Do?

ABA Tax Section Meeting
Washington, DC
Closely Held Business Committee
May 10, 2019; 4:55 p.m.
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5. HUD Request for Information, April 17, 2019.


7. Proposed U.S. Senate Amendment to Opportunity Zone Legislation for Opportunity Zone Data Collection.

S. 293

To amend the Internal Revenue Code of 1986 to provide for the deferral of inclusion in gross income for capital gains reinvested in opportunity zones.

IN THE SENATE OF THE UNITED STATES

February 2, 2017

Mr. Scott (for himself, Mr. Booker, Mr. Blunt, Mr. Bennet, Mr. Graham, Mr. Coons, Mrs. Capito, Mrs. Gillibrand, Mr. Peters, Mr. Gardner, Mr. Young, and Mr. Warner) 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 provide for the deferral of inclusion in gross income for capital gains reinvested in opportunity zones.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Investing in Opportunity Act”.

SEC. 2. OPPORTUNITY ZONES.

(a) In General.—Chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following:
“Subchapter Z—Opportunity Zones

(“Sec. 1400Z–1. Designation.
“Sec. 1400Z–2. Deferral for capital gains invested in opportunity zones.

“SEC. 1400Z–1. DESIGNATION.

“(a) QUALIFIED OPPORTUNITY ZONE DEFINED.—
For the purposes of this subchapter, the term ‘qualified opportunity zone’ means a population census tract that is a low-income community that is designated as a qualified opportunity zone.

“(b) DESIGNATION.—

“(1) GOVERNOR.—

“(A) IN GENERAL.—For purposes of subsection (a), a population census tract that is a low-income community is designated as a qualified opportunity zone if—

“(i) not later than the end of the determination period, the governor of the State in which the tract is located—

“(I) nominates the tract for designation as a qualified opportunity zone, and

“(II) notifies the Secretary in writing of such nomination, and

“(ii) the Secretary certifies such nomination and designates such tract as a
qualified opportunity zone before the end of the consideration period.

“(B) EXTENSION OF PERIODS.—A governor may request that the Secretary extend either the determination or consideration period, or both (determined without regard to this subparagraph), for an additional 30 days.

“(C) DEEMED DESIGNATION IF SECRETARY FAILS TO ACT.—Unless the tracts are ineligible for designation, if the Secretary declines in writing to make such certification and designation or fails to act before the end of the consideration period, such nomination shall be deemed to be certified and designated, effective on the day after the last day of the consideration period.

“(2) SECRETARY.—If a governor fails to make the nominations and notifications by the end of the periods referred to in paragraphs (1)(A) and (1)(B), the Secretary shall designate and certify population census tracts that are low-income communities as qualified opportunity zones, as permitted by subsection (e).

“(c) OTHER DEFINITIONS.—For purposes of this subsection—
“(1) Low-income communities.—The term ‘low-income community’ has the same meaning as when used in section 45D(e).

“(2) Definition of periods.—

“(A) Consideration period.—The term ‘consideration period’ means the 30-day period beginning on the date on which the Secretary receives notice under subsection (b)(1)(A)(i)(II), as extended under subsection (b)(1)(B).

“(B) Determination period.—The term ‘determination period’ means the 90-day period beginning on the date of the enactment of the Investing in Opportunity Act, as extended under subsection (b)(1)(B).

“(d) Guidance for Opportunity Zone Nominations.—When considering the nomination of qualified opportunity zones, governors should strive for the creation of qualified opportunity zones that are geographically concentrated and contiguous clusters of population census tracts and should give particular consideration to areas that—

“(1) are currently the focus of mutually reinforcing State, local, or private economic development
initiatives to attract investment and foster startup activity,

“(2) have demonstrated success in geographically targeted development programs, such as promise zones, new market tax credit, empowerment zones, and renewal communities, and

“(3) have recently experienced significant layoffs due to business closures or relocations.

“(e) NUMBER OF DESIGNATIONS.—

“(1) IN GENERAL.—Except as provided by paragraph (2), the number of population census tracts in a State that may be designated as qualified opportunity zones under this section may not exceed 25 percent of the number of low-income communities in the State.

“(2) EXCEPTION.—If the number of low-income communities in a State is less than 100, then a total of 25 of such tracts may be designated as qualified opportunity zones.

“(f) DESIGNATION OF TRACTS CONTIGUOUS WITH LOW-INCOME COMMUNITIES.—

“(1) IN GENERAL.—A population census tract that is not a low-income community may be designated as a qualified opportunity zone under this section if—
“(A) the tract is contiguous with the low-income community that is designated as a qualified opportunity zone, and

“(B) the median family income of the tract does not exceed 125 percent of the median family income of the low-income community with which the tract is contiguous.

“(2) LIMITATION.—Not more than 5 percent of the population census tracts designated in a State as a qualified opportunity zone may be designated under paragraph (1).

“(g) PERIOD FOR WHICH DESIGNATION IS IN EFFECT.—A designation as a qualified opportunity zone shall remain in effect for the period beginning on the date of the designation and ending at the close of the 10th calendar year beginning on or after such date of designation.

“SEC. 1400Z–2. DEFERRAL FOR CAPITAL GAINS INVESTED IN OPPORTUNITY ZONES.

“(a) SPECIAL RULES WHEN GAIN FROM SALE OF PROPERTY INVESTED IN OPPORTUNITY ZONE PROPERTY.—

“(1) EXCLUSION OF GAIN INVESTED IN OPPORTUNITY ZONE PROPERTY.—In the case of gain from the sale to, or exchange with, an unrelated person of
any property held by the taxpayer, at the election of
the taxpayer—

“(A) gross income for the taxable year
shall not include so much of such gain as does
not exceed the aggregate cost of all qualified
opportunity zone property acquired by the tax-
payer during the 180-day period beginning on
the date of such sale or exchange, and

“(B) the amount of gain excluded by sub-
paragraph (A) shall be included in gross income
as provided by paragraph (2).

“(2) DEFERRAL OF GAIN INVESTED IN OPPOR-
TUNITY ZONE PROPERTY.—

“(A) YEAR OF INCLUSION.—Except as
provided by subparagraph (C), gain to which
paragraph (1)(B) applies shall be included in
income in the taxable year in which the quali-
fied opportunity zone property related to such
gain is sold or exchanged in the amount deter-
mined under subparagraph (B).

“(B) AMOUNT INCLUDIBLE.—The amount
of gain determined under this clause shall be—

“(i) 100 percent of such gain in the
case of the sale or exchange of the quali-
fied opportunity zone property with respect
to which gain is deferred under paragraph (1) that is held for less than 5 years,

“(ii) 90 percent of such gain in the case of the sale or exchange of the qualified opportunity zone property with respect to which gain is deferred under paragraph (1) that is held for at least 5 years but less than 7 years, and

“(iii) 85 percent of such gain in the case of the sale or exchange of the qualified opportunity zone property with respect to which gain is deferred under paragraph (1) that is held for at least 7 years.

“(C) Property held after 2026 treated as sold.—For purposes of subparagraph (A), any qualified opportunity zone property that has not been sold or exchanged on or before December 31, 2026, shall be treated as sold on December 31, 2026.

“(3) Exclusion of gain on qualified opportunity zone property held for at least 10 years.—Except as provided in paragraph (2), in the case of the sale or exchange of qualified opportunity zone property, or an investment in a qualified opportunity fund, held for at least 10 years, gross income
for the taxable year shall not include any gain from
the sale or exchange of such property or investment.

“(4) One election per property.—No elec-
tion may be made under paragraph (1) with respect
to a sale or exchange if an election previously made
with respect to such sale or exchange is in effect.

“(b) Basis Rules Relating to Qualified Oppor-
tunity Zone Property.—

“(1) Reduced by gain deferred under
subsection (a)(1).—The basis of a qualified oppor-
tunity zone property immediately after its acquisi-
tion under subsection (a) shall be reduced by the
amount of gain deferred by reason of subsection
(a)(1)(A) with respect to such property.

“(2) Increase for gain recognized under
subsection (a)(2).—The basis of qualified oppor-
tunity zone property shall be increased by the
amount of gain recognized by reason of subsection
(a)(2) with respect to such property.

“(3) Subsequent increase in basis for
property held for at least 5 years but less
than 10 years.—In the case of qualified oppor-
tunity zone property held for at least 5 years but
less than 10 years—
“(A) Property held for 5 years.—For qualified opportunity zone property held for at least 5 years, the basis of such property shall be increased by an amount equal to 10 percent of the amount of gain deferred by reason of subsection (a)(1)(A) with respect to such property.

“(B) Property held for 7 years.—For qualified opportunity zone property held for at least 7 years, the basis of such property shall be increased by an amount equal to 5 percent of the amount of gain deferred by reason of subsection (a)(1)(A) with respect to such property.

“(c) Qualified Opportunity Zone Property.—For purposes of this section:

“(1) In general.—The term ‘qualified opportunity zone property’ means property which is—

“(A) qualified opportunity zone stock,

“(B) qualified opportunity zone partnership interest,

“(C) qualified opportunity zone business property, or

“(D) an interest in a qualified investment fund.
“(2) Qualified opportunity zone stock.—

“(A) In general.—Except as provided in subparagraph (B), the term ‘qualified opportunity zone stock’ means any stock in a domestic corporation if—

“(i) such stock is acquired by the taxpayer after December 31, 2017, at its original issue (directly or through an underwriter) from the corporation solely in exchange for cash,

“(ii) as of the time such stock was issued, such corporation was a qualified opportunity zone business (or, in the case of a new corporation, such corporation was being organized for purposes of being a qualified opportunity zone business), and

“(iii) during substantially all of the taxpayer’s holding period for such stock, such corporation qualified as a qualified opportunity zone business.

“(B) Redemptions.—A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this paragraph.

“(3) Qualified opportunity zone partnership interest.—The term ‘qualified opportunity
zone partnership interest’ means any capital or prof-
its interest in a domestic partnership if—

“(A) such interest is acquired by the tax-
payer after December 31, 2017, from the part-
nership solely in exchange for cash,

“(B) as of the time such interest was ac-
quired, such partnership was a qualified oppor-
tunity zone business (or, in the case of a new
partnership, such partnership was being orga-
nized for purposes of being a qualified oppor-
tunity zone business), and

“(C) during substantially all of the tax-
payer’s holding period for such interest, such
partnership qualified as a qualified opportunity
zone business.

“(4) QUALIFIED OPPORTUNITY ZONE BUSINESS
PROPERTY.—

“(A) IN GENERAL.—The term ‘qualified
opportunity zone business property’ means tan-
gible property used in a trade or business of the
taxpayer if—

“(i) such property was acquired by
the taxpayer by purchase (as defined in
section 179(d)(2)) after December 31, 2017,
“(ii) the original use of such property in the qualified opportunity zone com-
mences with the taxpayer or the taxpayer substantially improves the property, and
“(iii) during substantially all of the taxpayer’s holding period for such prop-
erty, substantially all of the use of such property was in a qualified opportunity zone.
“(B) Substantial Improvement.—For purposes of subparagraph (A)(ii), property shall be treated as substantially improved by the tax-
payer only if, during any 30-month period begin-
ing after the date of acquisition of such property, additions to basis with respect to such property in the hands of the taxpayer exceed an amount equal to the adjusted basis of such property at the beginning of such 30-month pe-
riod in the hands of the taxpayer.
“(C) Related Party.—For purposes of subparagraph (A)(i), the related person rule of section 179(d)(2) shall be applied pursuant to paragraph (8) of this subsection in lieu of the application of such rule in section 179(d)(2)(A).
“(5) Qualified opportunity fund.—The term ‘qualified opportunity fund’ means any investment vehicle organized as a corporation or a partnership for the purpose of investing in qualified opportunity zone property (other than another qualified opportunity fund) that holds at least 90 percent of its assets in qualified opportunity zone property, determined—

“(A) on the last day of the first 6-month period of the taxable year of the fund, and

“(B) on the last day of the taxable year of the fund.

“(6) Qualified opportunity zone business.—

“(A) In general.—The term ‘qualified opportunity zone business’ means a trade or business—

“(i) in which substantially all of the tangible property owned or leased by the taxpayer is qualified opportunity zone business property,

“(ii) which satisfies the requirements of paragraphs (2), (4), and (8) of section 1397C(b), and
“(iii) which is not described in section 144(e)(6)(B).

“(B) SPECIAL RULE.—For purposes of subparagraph (A), tangible property that ceases to be a qualified opportunity zone business property shall continue to be treated as a qualified opportunity zone business property for the lesser of—

“(i) 5 years after the date on which such tangible property ceases to be so qualified, or

“(ii) the date on which such tangible property is no longer held by the qualified opportunity zone business.

“(d) APPLICABLE RULES.—

“(1) IN GENERAL.—For purposes of this section and except as otherwise provided in this section, rules similar to the rules applicable to deferred like kind exchanges under section 1031 shall apply except that reinvestment in opportunity zone property need not require an intermediary party.

“(2) RELATED PERSONS.—For purposes of this subsection, persons are related to each other if such persons are described in section 267(b) or 707(b)(1),

determined by substituting ‘20 percent’ for ‘50 per-
cent’ each place it occurs in such sections.

“(3) **Decedents.**—In the case of a decedent, amounts recognized under this section shall, if not properly includible in the gross income of the dece-
dent, be includible in gross income as provided by section 691.

“(4) **Regulations.**—The Secretary shall pre-
scribe such regulations as may be necessary or ap-
propriate to carry out the purposes of this section, including—

“(A) rules providing for proportionate in-
clusion in income and increases in basis for purposes of subsections (a) and (b) in cases in which a sale or exchange of any qualified oppor-
tunity zone property with respect to which gain is deferred under subsection (a)(1)(A) is less than all of such property,

“(B) rules requiring taxpayers to provide such information as the Secretary determines to be necessary or appropriate for the identifica-
tion of both the assets sold (including basis and sale price) and the assets acquired and invest-
ments made, and

“(C) rules to prevent abuse.
“(e) Failure of Qualified Opportunity Fund To Maintain Investment Standard.—

“(1) In general.—If a qualified opportunity fund fails to meet the 90-percent requirement of subsection (c)(5), the qualified opportunity fund shall pay a penalty for each month it fails to meet the requirement in an amount equal to the product of—

“(A) the excess of—

“(i) the amount equal to 90 percent of its aggregate assets, over

“(ii) the aggregate amount of qualified opportunity zone property held by the fund, multiplied by

“(B) the underpayment rate established under section 6621(a)(2) for such month.

“(2) Special rule for partnerships.—In the case that the qualified opportunity fund is a partnership, the penalty imposed by paragraph (1) shall be taken into account proportionately as part of the distributive share of each partner of the partnership.

“(3) Reasonable cause exception.—No penalty shall be imposed under this subsection with
respect to any failure if it is shown that such failure
is due to reasonable cause.”.

(b) BASIS ADJUSTMENTS.—Section 1016(a) of such
Code is amended by striking “and” at the end of para-
graph (36), by striking the period at the end of paragraph (37) and inserting “, and”, and by inserting after para-
graph (37) the following:

“(38) to the extent provided in section 1400Z–
2(b).”.

(c) REPORT TO CONGRESS.—The Secretary of the
Treasury, or the Secretary’s delegate, shall submit a re-
port to Congress on the opportunity zone incentives en-
acted by this section beginning 5 years after the date of
enactment of this Act and annually thereafter. The report
shall include an assessment of investments held by qual-
ified opportunity funds nationally and at the State level.
To the extent such information is available, the report
shall include the number of qualified opportunity funds,
the amount of assets held in qualified opportunity funds,
the composition of qualified opportunity fund investments
by asset class, the percentage of qualified opportunity zone
census tracts designated under subchapter Z of the Inter-
nal Revenue Code of 1986 (as added by this section) that
have received qualified opportunity fund investments. The
report shall also include an assessment of the impacts and
outcomes of the investments in those areas on economic indicators including job creation, poverty reduction, and new business starts, and other metrics as determined by the Secretary.

(d) CLERICAL AMENDMENT.—The table of subchapters for chapter 1 of such Code is amended by adding at the end the following new item:

“SUBCHAPTER Z. OPPORTUNITY ZONES”.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.
CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

Effective date.—The provision is effective for amounts paid after the date of enactment.

17. Opportunity zones (sec. 13823 of the Senate amendment and new secs. 1400Z–1 and 1400Z–2 of the Code)

PRESENT LAW

The Code occasionally has provided several incentives aimed at encouraging economic growth and investment in distressed communities by providing Federal tax benefits to businesses located within designated boundaries.\textsuperscript{1191}

One of these incentives is a federal income tax credit that is allowed in the aggregate amount of 39 percent of a taxpayer investment in a qualified community development entity (CDE).\textsuperscript{1192} In general, the credit is allowed to a taxpayer who makes a "qualified equity investment" in a CDE which further invests in a "qualified active low-income community business." CDEs are required to make investments in low income communities (generally communities with 20 percent or greater poverty rate or median family income less than 80 percent of statewide median). The credit is allowed over seven years, five percent in each of the first three years and six percent in each of the next four years. The credit is recaptured if at any time during the seven-year period that begins on the date of the original issue of the investment the entity (1) ceases to be a qualified CDE, (2) the proceeds of the investment cease to be used as required, or (3) the equity investment is redeemed. The Department of Treasury's Community Development Financial Institutions Fund ("CDFI") allocates the new markets tax credits.

The maximum annual amount of qualified equity investments is $3.5 billion for calendar years 2010 through 2019. The new markets tax credit is set to expire on December 31, 2019. No amount of unused allocation limitation may be carried to any calendar year after 2024.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides for the temporary deferral of inclusion in gross income for capital gains reinvested in a qualified oppor-
tunity fund and the permanent exclusion of capital gains from the sale or exchange of an investment in the qualified opportunity fund.

The provision allows for the designation of certain low-income community population census tracts as qualified opportunity zones, where low-income communities are defined in Section 45D(e). The designation of a population census tract as a qualified opportunity zone remains in effect for the period beginning on the date of the designation and ending at the close of the tenth calendar year beginning on or after the date of designation.

Governors may submit nominations for a limited number of opportunity zones to the Secretary for certification and designation. If the number of low-income communities in a State is less than 100, the Governor may designate up to 25 tracts, otherwise the Governor may designate tracts not exceeding 25 percent of the number of low-income communities in the State. Governors are required to provide particular consideration to areas that: (1) are currently the focus of mutually reinforcing state, local, or private economic development initiatives to attract investment and foster startup activity; (2) have demonstrated success in geographically targeted development programs such as promise zones, the new markets tax credit, empowerment zones, and renewal communities; and (3) have recently experienced significant layoffs due to business closures or relocations.

The provision provides two main tax incentives to encourage investment in qualified opportunity zones. First, it allows for the temporary deferral of inclusion in gross income for capital gains that are reinvested in a qualified opportunity fund. A qualified opportunity fund is an investment vehicle organized as a corporation or a partnership for the purpose of investing in qualified opportunity zone property (other than another qualified opportunity fund) that holds at least 90 percent of its assets in qualified opportunity zone property. The provision intends that the certification process for a qualified opportunity fund will be done in a manner similar to the process for allocating the new markets tax credit. The provision provides the Secretary authority to carry out the process.

If a qualified opportunity fund fails to meet the 90 percent requirement and unless the fund establishes reasonable cause, the fund is required to pay a monthly penalty of the excess of the amount equal to 90 percent of its aggregate assets, over the aggregate amount of qualified opportunity zone property held by the fund multiplied by the underpayment rate in the Code. If the fund is a partnership, the penalty is taken into account proportionately as part of each partner's distributive share.

Qualified opportunity zone property includes: any qualified opportunity zone stock, any qualified opportunity zone partnership interest, and any qualified opportunity zone business property.

The maximum amount of the deferred gain is equal to the amount invested in a qualified opportunity fund by the taxpayer during the 180-day period beginning on the date of sale of the asset to which the deferral pertains. For amounts of the capital gains that exceed the maximum deferral amount, the capital gains must be recognized and included in gross income as under present law.
If the investment in the qualified opportunity zone fund is held by the taxpayer for at least five years, the basis on the original gain is increased by 10 percent of the original gain. If the opportunity zone asset or investment is held by the taxpayer for at least seven years, the basis on the original gain is increased by an additional 5 percent of the original gain. The deferred gain is recognized on the earlier of the date on which the qualified opportunity zone investment is disposed of or December 31, 2026. Only taxpayers who rollover capital gains of non-zone assets before December 31, 2026, will be able to take advantage of the special treatment of capital gains for non-zone and zone realizations under the provision.

The basis of an investment in a qualified opportunity zone fund immediately after its acquisition is zero. If the investment is held by the taxpayer for at least five years, the basis on the investment is increased by 10 percent of the deferred gain. If the investment is held by the taxpayer for at least seven years, the basis on the investment is increased by an additional five percent of the deferred gain. If the investment is held by the taxpayer until at least December 31, 2026, the basis in the investment increases by the remaining 85 percent of the deferred gain.

The second main tax incentive in the bill excludes from gross income the post-acquisition capital gains on investments in opportunity zone funds that are held for at least 10 years. Specifically, in the case of the sale or exchange of an investment in a qualified opportunity zone fund held for more than 10 years, at the election of the taxpayer the basis of such investment in the hands of the taxpayer shall be the fair market value of the investment at the date of such sale or exchange. Taxpayers can continue to recognize losses associated with investments in qualified opportunity zone funds as under current law.

The Secretary or the Secretary’s delegate is required to report annually to Congress on the opportunity zone incentives beginning 5 years after the date of enactment. The report is to include an assessment of investments held by the qualified opportunity fund nationally and at the State level. To the extent the information is available, the report is to include the number of qualified opportunity funds, the amount of assets held in qualified opportunity funds, the composition of qualified opportunity fund investments by asset class, and the percentage of qualified opportunity zone census tracts designated under the provision that have received qualified opportunity fund investments. The report is also to include an assessment of the impacts and outcomes of the investments in those areas on economic indicators including job creation, poverty reduction and new business starts, and other metrics as determined by the Secretary.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement generally follows the Senate amendment with the following modifications. First, the provision provides that each population census tract in each U.S. possession that is a low-income community is deemed certified and designated as a
qualified opportunity zone effective on the date of enactment. Second, the provision clarifies that chief executive officer of the State (which includes the District of Columbia) may submit nominations for a limited number of opportunity zones to the Secretary for certification and designation. This change clarifies that the mayor of the District of Columbia may also submit nominations. Third, the provision clarifies that there is no gain deferral available with respect to any sale or exchange made after December 31, 2026, and there is no exclusion available for investments in qualified opportunity zones made after December 31, 2026. The agreement also makes some technical changes to the Senate amendment to make it clear which taxpayer may claim the tax benefits.

18. **Provisions relating to the low-income housing credit**

(secs. 13411 and 13412 of the Senate amendment and sec. 42 of the Code)

**PRESENT LAW**

**In general**

The low-income housing credit may be claimed over a 10-year period for the cost of building rental housing a sufficient portion of which is rent restricted and occupied by tenants having incomes below specified levels.\(^{1193}\) Qualified basis is the low-income portion of the building times the eligible basis. The amount of the credit for any taxable year in the credit period is the applicable percentage of the qualified basis of each qualified low-income building. The applicable percentage for new buildings that are not Federally subsidized, is computed to yield a present value of 70 percent of the qualified basis over a 10-year period. For other buildings the applicable percentage is calculated to yield 30 percent. Rehabilitation expenses are treated as a separate new building.

**Increase in credit for certain high cost areas**

In the case of a building located in a qualified census tract or difficult development area, the eligible basis of a building is 130 percent of eligible basis. This “basis boost also applies to rehabilitation expenditures that are treated as a separate new building.

A “difficult development area” is an area designated by the Secretary of Housing and Urban Development (“HUD”) as having high construction, land, and utility costs relative to the area’s median income. The portions of metropolitan statistical areas that may be designated for this purpose cannot exceed an aggregate area having 20 percent of the population of such metropolitan statistical areas. A comparable rule applies to nonmetropolitan areas.

A “qualified census tract” means any census tract which is designated by HUD in which either: (1) 50 percent or more of the households have an income which is less than 60 percent of the area median income for the year; or (2) the poverty rate in that tract is 25 percent. The portion of a metropolitan statistical area that may be designated for this purpose cannot exceed an area having 20 percent of the population of such metropolitan statistical area. Each metropolitan statistical area is treated as a separate

\(^{1193}\) Sec. 42.
from the aircraft owner and remit it to the IRS. The Chief Counsel Advice resulted in increased audit activity by the IRS on aircraft management companies.

In May 2013, the IRS suspended assessment of the federal excise tax with respect to aircraft management services while it developed guidance on the tax treatment of aircraft management issues. In a 2015 opinion, an Ohio district court held that the existing revenue rulings (in effect for the tax period April 1, 2005, through June 30, 2009, the period that was the subject of the litigation) regarding the possession, command and control test, failed to provide precise and not speculative notice of a collection obligation as it related to whole-aircraft management contracts. As a result, the court ruled as a matter of law that because precise and not speculative notice was not received, the aircraft management company plaintiff did not have a collection obligation with respect to the Federal excise tax on payments received for whole-aircraft management services.

In 2017, the IRS decided not to pursue examination of the issue of whether amounts paid to aircraft companies by the owners or lessors of the aircraft are taxable until further guidance is made available. According to the IRS, for any exam in suspense the aircraft management fee issue was conceded and the taxpayers were notified accordingly. The IRS has not issued further guidance on this issue.

**Explanation of Provision**

The provision exempts certain payments related to the management of private aircraft from the excise taxes imposed on taxable transportation by air. Exempt payments are those amounts paid by an aircraft owner for management services related to maintenance and support of the owner's aircraft or flights on the owner's aircraft. Applicable services include support activities related to the aircraft itself, such as its storage, maintenance, and fueling, and those related to its operation, such as the hiring and training of pilots and crew, as well as administrative services such as scheduling, flight planning, weather forecasting, obtaining insurance, and establishing and complying with safety standards. Aircraft management services also include such other services as are necessary to support flights operated by an aircraft owner.

Payments for flight services are exempt only to the extent that they are attributable to flights on an aircraft owner's own air-craft. Thus, if an aircraft owner makes a payment to a management company for the provision of a pilot and the pilot provides his services on the aircraft owner's aircraft, such payment is not subject to Federal excise tax. However, if the pilot provides his services to the aircraft owner on an aircraft other than the aircraft owner's (for instance, on an aircraft that is part of a fleet of aircraft available for third-party charter services), then such payment is subject to Federal excise tax.

The provision provides a pro rata allocation rule in the event that a monthly payment made to a management company is allocated in part to exempt services and flights on the aircraft owner's aircraft, and in part to flights on aircraft other than the aircraft owner's. In such a circumstance, Federal excise tax must be collected on that portion of the payment attributable to flights on aircraft not owned by the aircraft owner.

Under the provision, a lessee of an aircraft is considered an aircraft owner provided that the lease is not a "disqualified lease." A disqualified lease is any lease of an aircraft from a management company (or a related party) for a term of 31 days or less.

**Effective Date**

The provision is effective for amounts paid after the date of enactment.

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**C. Opportunity Zones (sec. 13823 of the Act and new secs. 1400Z-1 and 1400Z-2 of the Code)**

**Prior Law**

Congress has occasionally provided incentives aimed at encouraging economic growth and investment in distressed communities by providing Federal tax benefits to businesses located within designated boundaries.
One of these incentives is a Federal income tax credit, the new markets tax credit, which totals 39 percent of a taxpayer investment in a qualified community development entity (“CDE”). In general, the credit is allowed to a taxpayer who makes a qualified equity investment in a CDE which further invests in a qualified active low-income community business. CDEs are required to make investments in low-income communities (generally communities with poverty rates that equal or exceed 20 percent or whose median family income is less than 80 percent of the statewide median income). The credit is allowed over seven years, five percent in each of the first three years and six percent in each of the next four years. The credit is recaptured if at any time during the seven-year period that begins on the date of the original issue of the investment the entity (1) ceases to be a qualified CDE, (2) the proceeds of the investment cease to be used as required, or (3) the equity investment is redeemed. The Department of Treasury's Community Development Financial Institutions Fund (“CDFI”) allocates the new markets tax credits.

The maximum annual amount of qualified equity investments is $3.5 billion for calendar years 2010 through 2019. Any amount of unused allocation may be carried forward for five calendar years. The new markets tax credit expires on December 31, 2019. No amount of unused allocation limitation may be carried to any calendar year after 2024.

**Explanation of Provision**

**In general**

The provision allows taxpayers to make an election when investing in a qualified opportunity fund. The election results in the following three tax benefits: (1) the temporary deferral of inclusion in gross income of capital gains, (2) the partial exclusion of such capital gains from gross income to the extent invested in the qualified opportunity fund for a certain length of time, and (3) the permanent exclusion of post-acquisition capital gains from the sale or exchange of an interest in a qualified opportunity fund held for at least 10 years.

The provision allows for the designation of certain low-income community population census tracts as qualified opportunity zones. In addition, a limited number of other census tracts that are not low-income communities can be designated if they are contiguous to a designated low-income community and the median family income of such tracts does not exceed 125 percent of the median family income of the contiguous low-income community. The designation of a population census tract as a qualified opportunity zone remains in effect for the period beginning on the date of the designation and ending at the close of the tenth calendar year beginning on or after the date of designation.

The chief executive officer of the State, possession, or the District of Colombia (i.e., Governor or mayor in the case of the District of Columbia) may submit nominations for a limited number of opportunity zones to the Secretary for certification and designation. If the number of low-income communities in a State is less than 100, the Governor may designate up to 25 tracts, otherwise the Governor may designate tracts not exceeding 25 percent of the number of low-income communities in the State.

**Qualified opportunity funds**

A qualified opportunity fund is an investment vehicle organized as a corporation or a partnership for the purpose of investing in qualified opportunity zone property (other than another qualified opportunity fund) that holds at least 90 percent of its assets in qualified opportunity zone property. The provision intends that the certification process for a qualified opportunity fund will be carried out in a manner similar to the process for allocating the new markets tax credit. The Secretary is granted the authority to administer this process.

If a qualified opportunity fund fails to meet the 90 percent requirement, unless the fund establishes reasonable cause, the fund is required to pay a monthly penalty of the excess of the amount equal to 90 percent of its aggregate assets, over the aggregate amount of qualified opportunity zone property held by the fund multiplied by the underpayment rate in the Code. If the fund is a partnership, the penalty is taken into account proportionately as part of each partner's distributive share.
Qualified opportunity zone property

Qualified opportunity zone property means: (1) qualified opportunity zone stock, (2) qualified opportunity zone partnership interest, and (3) qualified opportunity zone business property.

Qualified opportunity zone stock consists of stock in a domestic corporation that is a qualified opportunity zone business. There are three requirements that must be met for property to be considered qualified opportunity zone stock. First, the stock must be acquired at original issuance (directly or indirectly through an underwriter) solely for cash after December 31, 2017. Second, the corporation must have been a qualified opportunity zone business when the stock was issued (or, for a new corporation, was being organized to be a qualified opportunity zone business). Third, the corporation must qualify as a qualified opportunity zone business during substantially all of the qualified opportunity fund's holding period for the stock.

Qualified opportunity zone partnership interest consists of capital or profits interests in a domestic partnership that is a qualified opportunity zone business. There are three requirements that must be met for property to be considered a qualified opportunity zone partnership interest. First, the interest must be acquired from the partnership solely for cash after December 31, 2017. Second, the partnership must have been a qualified opportunity zone business when the interest was acquired (or, for a new partnership, was being organized to be a qualified opportunity zone business). Third, the partnership must qualify as a qualified opportunity zone business during substantially all of the qualified opportunity fund's holding period for the interest.

Qualified opportunity zone business property consists of tangible property used in the trade or business of a qualified opportunity fund or qualified opportunity zone business. There are three main requirements that must be met for property to be considered qualified opportunity zone business property. First, the property must be acquired by purchase after December 31, 2017. Second, the original use of the property in the qualified opportunity zone must begin with the qualified opportunity fund or qualified opportunity zone business, or the qualified opportunity fund or qualified opportunity zone business must substantially improve the property. Only new or substantially improved property qualifies as opportunity zone business property. Third, substantially all of the property must be in a qualified opportunity zone during substantially all of qualified opportunity fund or qualified opportunity zone business's holding period for the property. Property is treated as substantially improved only if capital expenditures on the property in the 30 months after acquisition exceeds the property's adjusted basis on the date of acquisition.

A qualified opportunity zone business is any trade or business in which substantially all of the underlying value of the tangible property owned or leased by the business is qualified opportunity zone business property. In addition, (1) at least 50 percent of the total gross income of the trade or business must be derived from the active conduct of business in the qualified opportunity zone, (2) a substantial portion of the business's intangible property must be used in the active conduct of business in the qualified opportunity zone, and (3) less than 5 percent of the average of the aggregate adjusted bases of the property of the business is attributable to nonqualified financial property. Nonqualified financial property means debt, stock, partnership interests, annuities, and derivative financial instruments (including options, futures, forward contracts, and notional principal contracts), other than (1) reasonable amounts of working capital held in cash, cash equivalents, or debt instruments with a term of no more than 18 months, and (2) accounts or notes receivable acquired in the ordinary course of a trade or business for services rendered or from the sale of inventory property. Seventh, the business cannot be a golf course, country club, massage parlor, hot tub or suntan facility, racetrack or other facility used for gambling, or store whose principal business is the sale of alcoholic beverages for consumption off premises.

Tangible property that ceases to be a qualified opportunity zone business property continues to be treated as a qualified opportunity zone business property for the lesser of five years after the date on which such tangible...
property ceases to be so qualified, or the date on which such tangible property is no longer held by the qualified opportunity zone business. [1490]

**Tax treatment of a deferred-gain investment**

A taxpayer may elect to temporarily defer and partially exclude capital gains from gross income to the extent that the taxpayer invests the amount of those gains in a qualified opportunity fund. The maximum amount of the deferred gain is equal to the amount invested in a qualified opportunity fund by the taxpayer during the 180-day period beginning on the date of the asset sale that produced the gain to be deferred. Capital gains in excess of the deferred amount must be recognized and included in gross income.

In the case of any investment in a qualified opportunity fund, only a portion of which consists of the investment of gain with respect to which an election is made, such investment is treated as two separate investments, consisting of one investment that includes only amounts to which the election applies (herein "deferred-gain investment"), and a separate investment consisting of other amounts. The temporary deferral and permanent exclusion provisions do not apply to the separate investment. For example, if a taxpayer sells stock at a gain and invests the entire sales proceeds (capital and return of basis) in a qualified opportunity zone fund, an election may be made only with respect to the capital gain amount. No election may be made with respect to amounts attributable to a return of basis, and no special tax benefits apply to such amounts.

The basis of a deferred-gain investment in a qualified opportunity zone fund immediately after its acquisition is zero. If the deferred-gain investment in the qualified opportunity zone fund is held by the taxpayer for at least five years, the basis in the deferred-gain investment is increased by 10 percent of the original deferred gain. If the opportunity zone asset or investment is held by the taxpayer for at least seven years, the basis in the deferred gain investment is increased by an additional five percent of the original deferred gain. Some or all of the deferred gain is recognized on the earlier of the date on which the qualified opportunity zone investment is disposed of or December 31, 2026. The amount of gain recognized is the excess of the lesser of the amount deferred and the current fair market value of the investment (taking into account any increases at the end of five or seven years). The taxpayer's basis in the investment is increased by the amount of gain recognized. No election under the provision may be made after December 31, 2026.

**Exclusion of capital gains from the sale or exchange of an investment in a qualified opportunity fund**

The provision excludes from gross income the post-acquisition capital gains on deferred-gain investments in opportunity zone funds that are held for at least 10 years. Specifically, in the case of the sale or exchange of an investment in a qualified opportunity zone fund held for more than 10 years, a further election is allowed by the taxpayer to modify the basis of such deferred-gain investment in the hands of the taxpayer to be the fair market value of the deferred-gain investment at the date of such sale or exchange.

In the case of a fund organized as a pass-through entity, investors recognize gains and losses associated with both deferred-gain and non-deferred gain investments in the fund, under the rules generally applicable to pass-through entities. Thus, for example, investor-partners in a fund organized as a partnership would recognize income and increase their basis with respect to their distributive share of the fund's taxable income.

The Treasury Department has proposed guidance addressing this provision. [1491]

**Example**

Assume a taxpayer sells stock for a gain of $1,000 on January 1, 2019, and invests $1,000 in the stock of a qualified opportunity fund. Assume also that the taxpayer holds the investment for 10 years and then sells the investment for $1,500.

The taxpayer's initial basis in the deferred-gain investment is zero. After five years, the basis is increased to $100. After seven years, the basis is increased to $150. At the end of 2026, assume that the fair market value of the deferred-gain investment is at least $1,000, and thus the taxpayer has to recognize $850 of the deferred
capital gain. So at that point the basis in the deferred-gain investment is $1,000 ($150 + $850). If the taxpayer holds the deferred-gain investment for 10 years and makes the election to increase the basis, the $500 post-acquisition capital gain on the sale is excluded.

Effective Date

The provision is effective on the date of enactment (i.e., on December 22, 2017).

SUBTITLE D—INTERNATIONAL TAX PROVISIONS PRIOR LAW

The following discussion provides an overview of general principles of taxation of cross-border activity as well as a detailed explanation of provisions in prior law that are relevant to the provisions in the Act.

A. General Overview of International Principles of Taxation

International law generally recognizes the right of each sovereign nation to prescribe rules to regulate conduct and persons (whether natural or juridical) with a sufficient nexus to the sovereign nation. The nexus may be based on nationality, i.e., a nexus based on a connection between the relevant person and the sovereign nation, or may be territorial, i.e., a nexus based on a connection between the relevant conduct and the sovereign nation. Nonetheless, most legal systems respect limits on the extent to which their laws may be given extraterritorial effect. The broad acceptance of such norms extends to authority to regulate cross-border trade and economic dealings, including taxation.

The exercise of sovereign jurisdiction to tax is usually based on either the nationality of the person taxed or the jurisdiction in which the taxed conduct occurs. These concepts have been refined and adapted to form the principles for determining whether sufficient nexus with a jurisdiction exists to conclude that the jurisdiction may enforce its right to tax. The elements of nexus and the nomenclature of the principles may differ based on whether the tax is a direct tax or an indirect tax. A direct tax is imposed directly on a person (known as a capitation tax), property, or income from property, the burden of which the taxpayer bears and generally cannot shift to another. In contrast, indirect taxes are taxes on consumption or the production of goods or services, such as sales or use taxes, value-added taxes, or customs duties. Taxpayers may be able to shift the burden of indirect taxes to others (e.g., by raising prices).

Although governments since ancient times have imposed direct taxes on property and indirect taxes and duties on specific transactions, the history of direct taxes in the form of income taxes is relatively recent. When determining how to allocate the right to tax a particular item of income, most jurisdictions consider principles based on either the source of the income or the residence of the person earning the income. By contrast, when determining how to allocate the right to collect indirect taxes, most jurisdictions consider either the origin or the destination of the item being taxed. The balance of this Part A describes the source, residence, origin, and destination principles in more detail and how jurisdictions resolve overlapping claims of jurisdiction.

1. Source and residence principles

Direct taxes based on a person's citizenship, nationality, or residence are residence-based taxes. Such taxes may reach the worldwide activities of such person, and, for that reason, are the broadest assertion of taxing authority. For individuals, the test for residence may depend on citizenship, nationality, a physical presence test, or some combination. For all other persons, determining residency may be as simple as determining the person's place of organization, or may require more complex consideration of the person's management and control, or even level of activities in a jurisdiction.

Direct taxes based on where activities occur, or where property is located, are source-based taxes. If a person conducts activities or owns property in a jurisdiction, taxing such activities or property may require allocation and apportionment of expenses attributable to the activity or property to ensure that only the portion of profits that have the required nexus with the jurisdiction are subject to tax. Most jurisdictions, including the United States,
By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**Section 1. Purpose.** Fifty-two million Americans live in economically distressed communities. Despite the growing national economy, these communities are plagued by high poverty levels, failing schools, and a scarcity of jobs. In December 2017, I signed into law a bill originally introduced as the Tax Cuts and Jobs Act (Act), which established a historic new Federal tax incentive that promotes long-term equity investments in low-income communities designated as “qualified opportunity zones” by the Governors of States or territories. In order to further facilitate such investment, my Administration will implement reforms that streamline existing regulations, protect taxpayers by optimizing use of Federal resources, stimulate economic opportunity and mobility, encourage entrepreneurship, expand quality educational opportunities, develop and rehabilitate quality housing stock, promote workforce development, and promote safety and prevent crime in urban and economically distressed communities.

This order establishes a White House Council to carry out my Administration’s plan to encourage public and private investment in urban and economically distressed areas, including qualified opportunity zones. The Council shall lead joint efforts across executive departments and agencies (agencies) to engage with State, local, and tribal governments to find ways to better use public funds to revitalize urban and economically distressed communities.

**Sec. 2. Establishment.** There is established a White House Opportunity and Revitalization Council (Council). The Council shall be chaired by the Secretary of Housing and Urban Development (HUD), or the Secretary’s designee. The Assistant to the President for Domestic Policy, or the designee of the Assistant to the President for Domestic Policy, shall serve as Vice Chair of the Council.

(a) **Membership.** In addition to the Chair and Vice Chair, the Council shall consist of the following members, or their designees:

(i) the Secretary of the Treasury;
(ii) the Attorney General;
(iii) the Secretary of the Interior;
(iv) the Secretary of Agriculture;
(v) the Secretary of Commerce;
(vi) the Secretary of Labor;
(vii) the Secretary of Health and Human Services;
(viii) the Secretary of Transportation;
(ix) the Secretary of Energy;
(x) the Secretary of Education;
(xi) the Administrator of the Environmental Protection Agency;
(xii) the Director of the Office of Management and Budget;
the Administrator of the Small Business Administration;
(xiv) the Assistant to the President for Economic Policy;
(xv) the Chairman of the Council of Economic Advisers;
(xvi) the Chairman of the Council on Environmental Quality; and
(xvii) the heads of such other agencies, offices, or independent regulatory
agencies as the Chair may, from time to time, designate or invite.

(b) Administration. The Vice Chair shall convene regular meetings
of the Council, determine its agenda, and direct its work, all under the guidance
of the Chair. The Department of Housing and Urban Development shall
provide funding and administrative support for the Council to the extent
permitted by law and within existing appropriations. The Secretary of HUD
shall designate a HUD officer or employee to serve as the Executive Director
of the Council, who shall be responsible for coordinating the Council’s
work.

Sec. 3. Mission and Function of the Council. The Council shall, to the
extent permitted by law, work across agencies, giving consideration to existing
agency initiatives, to:

(a) assess the actions each agency can take under existing authorities
to prioritize or focus Federal investments and programs on urban and economic-
distressed communities, including qualified opportunity zones;

(b) assess the actions each agency can take under existing authorities
to minimize all regulatory and administrative costs and burdens that discour-
age public and private investment in urban and economically distressed
communities, including qualified opportunity zones;

(c) regularly consult with officials from State, local, and tribal governments
and individuals from the private sector to solicit feedback on how best
to stimulate the economic development of urban and economically distressed
areas, including qualified opportunity zones;

(d) coordinate Federal interagency efforts to help ensure that private and
public stakeholders—such as investors; business owners; institutions of higher
education (including Historically Black Colleges and Universities, as defined
by 50 U.S.C. 3224(g)(2), and tribally controlled colleges and universities,
as defined by 25 U.S.C. 1801(a)(4)); K–12 education providers; early care
and education providers; human services agencies; State, local, and tribal
leaders; public housing agencies; non-profit organizations; and economic
development organizations—can successfully develop strategies for economic
growth and revitalization;

(e) recommend policies that would:
(i) reduce and streamline regulatory and administrative burdens, including
burdens on applicants applying for multiple Federal assistance awards;
(ii) help community-based applicants, including recipients of investments
from qualified opportunity funds, identify and apply for relevant Federal
resources; and
(iii) make it easier for recipients to receive and manage multiple types
of public and private investments, including by aligning certain program
requirements;
(f) evaluate the following:
(i) whether and how agencies can prioritize support for urban and economi-
cally distressed areas, including qualified opportunity zones, in their
grants, financing, and other assistance;
(ii) appropriate methods for Federal cooperation with and support for
States, localities, and tribes that are innovatively and strategically facili-
tating economic growth and inclusion in urban and economically distressed
communities, including qualified opportunity zones, consistent with pre-
serving State, local, and tribal control;
(iii) whether and how to develop an integrated web-based tool through
which entrepreneurs, investors, and other stakeholders can see the full
range of applicable Federal financing programs and incentives available to projects located in urban and economically distressed areas, including qualified opportunity zones;

(iv) whether and how to consider urban and economically distressed areas, including qualified opportunity zones, as possible locations for Federal buildings, through consultation with the General Services Administration;

(v) whether and how Federal technical assistance, planning, financing tools, and implementation strategies can be coordinated across agencies to assist communities in addressing economic problems, engaging in comprehensive planning, and advancing regional collaboration; and

(vi) what data, metrics, and methodologies can be used to measure the effectiveness of public and private investments in urban and economically distressed communities, including qualified opportunity zones.

Sec. 4. Reports. The Assistant to the President for Domestic Policy shall, on behalf of the Council, be responsible for submitting to the President:

(a) Within 90 days of the date of this order, a detailed work plan for how, and by when, the Council will accomplish the goals detailed in section 3 of this order;

(b) Within 210 days of the date of this order, a list of recommended changes to Federal statutes, regulations, policies, and programs that would encourage public and private investment in urban and economically distressed communities, including qualified opportunity zones;

(c) Within 1 year of the date of this order, a list of recommended changes to Federal statutes, regulations, policies, and programs that would help State, local, and tribal governments to better identify, use, and administer Federal resources in urban and economically distressed communities, including qualified opportunity zones;

(d) Within 1 year of the date of this order, a list of best practices that could be integrated into public and private investments in urban and economically distressed communities, including qualified opportunity zones, in order to increase economic growth, encourage new business formation, and revitalize communities; and

(e) Any subsequent reports that the President may request or that the Council may deem appropriate.

Sec. 5. Amendments to Executive Order 13845. Executive Order 13845 of July 19, 2018 (Establishing the President’s National Council for the American Worker) is hereby amended as follows:

(a) Subsection 7(d) of the order is deleted and the following text is inserted in lieu thereof: “consider the recommendations of the American Workforce Policy Advisory Board (Board) established in section 8 of this order and, as appropriate, adopt recommendations that would significantly advance the objectives of the Council;”;

(b) Subsection 8(b)(i) of the order is amended by deleting the text “appointed by the President” and replacing it with the following text: “appointed by the Secretary of Commerce”.

Sec. 6. General Provisions. (a) The heads of agencies shall assist and provide information to the Council, consistent with applicable law, as may be necessary for the Council to carry out its functions.

(b) The heads of agencies shall consider the reports and recommendations of the Council in carrying out their responsibilities related to urban and economically distressed communities.

(c) The Council shall terminate on January 21, 2021, unless extended by the President.

(d) Nothing in this order shall be construed to impair or otherwise affect: (i) the authority granted by law to an executive department, agency, or the head thereof; or
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(e) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(f) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,

December 12, 2018.
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6155–N–01]

Review of HUD Policy in Opportunity Zones

AGENCY: Office of the Assistant Secretary for Policy Development and Research (PD&R), Department of Housing and Urban Development (HUD).

ACTION: Request for information.

SUMMARY: Consistent with Executive Order 13853, “Establishing the White House Opportunity and Revitalization Council,” this document informs the public that HUD intends to maximize the beneficial impact of investment in Opportunity Zones. HUD is reviewing its existing policies, practices, planned actions, regulations, and guidance regarding HUD-administered programs and laws to identify actions HUD can take to encourage beneficial investment, both public and private, in urban and economically distressed communities, including qualified Opportunity Zones. HUD seeks input and recommendations from the public regarding potential agency actions.

DATES: Comment Due Date: June 17, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this request for information. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Public Finance and Regulatory Analysis Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW, Room 8216, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages the public to submit ideas electronically. Electronic submission of ideas allows the submitter maximum time to formulate and present the suggestion, ensures timely receipt by HUD, and enables HUD to make the ideas received immediately available to the public. Suggestions submitted electronically through the www.regulations.gov website can be viewed by interested members of the public. Members of the public should follow the instructions provided on that site to submit suggestions electronically.

Note: To receive consideration, ideas must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the request for information.

No Facsimile Submissions: Facsimile (fax) submissions are not acceptable.

Public review of information received: All information properly submitted for consideration by HUD will be available for inspection and downloading at www.regulations.gov. Members of the public without ready access to the internet may request an appointment to review the information submitted by calling the Public Finance and Regulatory Analysis Division at 202–402–2967 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 1–800–877–8339 (this is a toll-free number). An appointment for public inspection and copying of the information must be scheduled in advance and will occur between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Daniel Marcin, Economist, Public Finance and Regulatory Analysis Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW, Room 8216, Washington, DC 20410–0500; telephone number 202–402–2967 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Context: Opportunity Zones and the White House Opportunity and Revitalization Council

The 2017 Tax Cuts and Jobs Act (Pub. L. 115–97) created new tax incentives for investments made in Opportunity Zones to spur economic development and job creation by encouraging long-term investment in low-income communities nationwide. Opportunity Zones are designated census tracts that provide incentives for long-term private sector investment in economically distressed communities. State executives nominated census tracts of communities most in need of private investment to the U.S. Department of the Treasury, which then certified the tracts as Opportunity Zones. The Opportunity Zone designation encourages investment in these certified census tracts by granting investors extensive Federal tax advantages for using their capital gains to finance new projects and enterprises (or substantially improve existing projects and enterprises) located within Opportunity Zones.

Executive Order 13853 created the White House Opportunity and Revitalization Council with the HUD Secretary (or the Secretary’s designee) as the Chair. This Executive Order directs the Council to:

(a) Assess the actions each Federal agency can take under existing authorities to prioritize or focus Federal investments and programs on urban and economically distressed communities, including qualified opportunity zones;

(b) Assess the actions each agency can take under existing authorities to minimize all regulatory and administrative costs and burdens that discourage public and private investment in urban and economically distressed communities, including qualified opportunity zones;

(c) Regularly consult with officials from State, local, and tribal governments and individuals from the private sector to solicit feedback on how best to stimulate the economic development of urban and economically distressed areas, including qualified opportunity zones;

(d) Coordinate Federal interagency efforts to help ensure that private and public stakeholders—such as investors; business owners; institutions of higher education (including Historically Black Colleges and Universities, as defined by 50 U.S.C. 3224(g)(2), and tribally controlled colleges and universities, as defined by 25 U.S.C. 1801(a)(4)); K–12 education providers; early care and education providers; human services agencies; State, local, and tribal leaders; public housing agencies; non-profit organizations; and economic development organizations—can successfully develop strategies for economic growth and revitalization;

(e) Recommend policies that would:

(i) Reduce and streamline regulatory and administrative burdens, including burdens on applicants applying for multiple Federal assistance awards;

(ii) Help community-based applicants, including recipients of investments from qualified opportunity funds, identify and apply for relevant Federal resources; and

(iii) Make it easier for recipients to receive and manage multiple types of public and private investments, including by aligning certain program requirements;

(f) Evaluate the following:

(i) Whether and how agencies can prioritize support for urban and economically distressed areas, including...
qualified opportunity zones, in their grants, financing, and other assistance;
(ii) Appropriate methods for Federal cooperation with and support for States, localities, and tribes that are innovatively and strategically facilitating economic growth and inclusion in urban and economically distressed communities, including qualified opportunity zones, consistent with preserving State, local, and tribal control;
(iii) Whether and how to develop an integrated web-based tool through which entrepreneurs, investors, and other stakeholders can see the full range of applicable Federal financing programs and incentives available to projects located in urban and economically distressed areas, including qualified opportunity zones;
(iv) Whether and how to consider urban and economically distressed areas, including qualified opportunity zones, as possible locations for Federal buildings, through consultation with the General Services Administration;
(v) Whether and how Federal technical assistance, planning, financing tools, and implementation strategies can be coordinated across agencies to assist communities in addressing economic problems, engaging in comprehensive planning, and advancing regional collaboration; and
(vi) What data, metrics, and methodologies can be used to measure the effectiveness of public and private investments in urban and economically distressed communities, including qualified opportunity zones.

II. Overview of Opportunity Zones

There are more than 8,700 Census tracts designated by a Governor or other chief administrative official as Opportunity Zones across all 50 States, the District of Columbia, and five U.S. territories. The following are relevant data and characteristics of the Opportunity Zones and those who reside within Opportunity Zones:
- Nearly 35 million Americans live in communities designated as Opportunity Zones.
- On average, the median family income in an Opportunity Zone is 37 percent below the State median.
- More than one-in-five of all Opportunity Zones have a poverty rate over 40 percent, compared to just over one-in-eight “low-income communities” (LICs) and one-in-20 Census tracts nationwide.
- 71 percent of Opportunity Zones meet the U.S. Treasury Department’s definition of “severely distressed.”
- Life expectancy is on average three years shorter for Opportunity Zone residents than it is nationally.
- Approximately 22 percent of Opportunity Zone adult residents have not attained a high school diploma, compared to 13 percent nationally.

III. HUD-Supported Programs and Initiatives Within Opportunity Zones

Below is a snapshot of HUD’s programs and initiatives within Opportunity Zones. These statistics are being provided in order to facilitate the public’s thought process—as well as generate ideas and answers to the questions asked later in this request for information—regarding HUD’s existing program presence within Opportunity Zones. Most numbers are rounded to the nearest thousand. Where percentages of the total are given, those percentages exclude data for which location is unreliable or misleading.

General
- 2,394,000 persons living in HUD-assisted housing within Opportunity Zones, representing about 27 percent of residents of HUD-assisted housing.
- 14 proposed EnVision Center sites inside or within 1 mile of an Opportunity Zone.

Office of Public and Indian Housing (PIH)
- 371,000 public housing units within Opportunity Zones, representing about 38 percent of the total.
- 738,000 persons living in public housing within Opportunity Zones, representing about 39 percent of the total.
- 2,254 public housing developments within Opportunity Zones, or about 33 percent of the national total.
- 465,000 housing choice voucher (HCV) units within Opportunity Zones, 22 percent of the total.
- 992,000 persons with HCVs, or 21 percent of the national total, living within Opportunity Zones.
- 62,000 project-based voucher (PBV) units within Opportunity Zones, which is 32 percent of the total.
- 116,000 persons living in PBV units within Opportunity Zones, representing 32 percent of the total.
- 65 Choice Neighborhood Grants—with a total of approximately $571,643,000 in grant funding—from 2010–2016 within Opportunity Zones. These 68 percent of all Choice Neighborhood Grants and 86 percent of national Choice Neighborhood Grant spending. 46 of these grants were Planning Grants, and the other 19 were Implementation Grants.

Office of Housing
- 337,000 project-based rental assistance (PBRA) units within Opportunity Zones, or 27 percent of the national total.
- 546,000 persons living in PBRA units within Opportunity Zones, or 27 percent of the total.
- 2,400 Multi-Family (MF) housing properties with Federal Housing Administration (FHA) mortgage insurance within Opportunity Zones, representing 21 percent of multifamily housing properties with FHA mortgage insurance.
- $14,755,260,000 in unpaid principal balance for MF properties with FHA mortgage insurance within Opportunity Zones, for 17 percent of the national total.
- 617,000 FHA-insured Single-Family properties within Opportunity Zones, or 8 percent of the total.
- $75,353,474,000 in unpaid principal balance for Single-Family properties with FHA mortgage insurance within Opportunity Zones, or 6 percent of all Single-Family unpaid principal balance.
- 536 healthcare facilities with FHA mortgage insurance in Opportunity Zones, representing 12 percent of all such facilities.
- $4,017,448,000 in unpaid principal balance for healthcare facilities with FHA insurance in Opportunity Zones, representing 12 percent of the total unpaid principal balance on FHA-insured mortgages on healthcare facilities.

Almost one-third of Rental Assistance Demonstration (RAD) Component 1 conversions fall within Opportunity Zones.

Office of Community Planning and Development (CPD)
- Over 1,200 cities, urban counties, States, Puerto Rico, and U.S. Territories received over $3,000,000,000 in Community Development Block Grant (CDBG) funding each year between fiscal years 2014 and 2019. Since all communities can potentially receive CDBG funding, either directly from HUD or through their respective State government, funds could be used to...
assist activities and projects in Opportunity Zones nationwide.

- There are 600 outstanding Section 108 guaranteed loans with an outstanding loan balance of $1,250,000,000 for community and economic development projects nationwide. Under the Section 108 Loan Guarantee Program, CDBG grantees nationwide have approximately $14 billion in available borrowing capacity that could potentially be deployed in Opportunity Zones.

- Approximately $84,000,000,000 in Community Development Block Grant—Disaster Recovery (CDBG–DR) funds has been awarded since 2001 to help cities, counties, and States recover from Presidentially-declared disasters. Nearly half of this amount has been awarded in response to disasters occurring between 2015 and 2017. Since CDBG–DR assistance may fund a broad range of recovery activities, these funds could be used in eligible disaster-impacted Opportunity Zones.

- 256,000 HOME Investment Partnerships Program (HOME) housing projects completed—with a total of approximately $2,853,095,000 in grant funds expended—from 1996–2018 within Opportunity Zones.

Office of Field Policy and Management (FPM)

- There are 186 Opportunity Zones within HUD’s 14 Urban Promise Zones.
- An approximate numerical breakdown of Opportunity Zones throughout HUD’s 10 regions:
  
  **Region I:** 344
  
  **Region II:** 683
  
  **Region III:** 741
  
  **Region IV:** 2,529
  
  **Region V:** 1,339
  
  **Region VI:** 1,043
  
  **Region VII:** 341
  
  **Region VIII:** 272
  
  **Region IX:** 344
  
  **Region X:** 278

**IV. Purpose of This Request for Information**

HUD has determined that it should undertake a substantive review of existing policies, practices, planned actions, regulations and guidance regarding HUD-administered programs to identify actions HUD can take to encourage beneficial investment in urban and economically distressed communities, including Opportunity Zones, while continuing to fulfill its mission to create strong, sustainable, inclusive communities and quality affordable homes for all. In conducting this review, HUD believes that it would benefit from the information and perspectives of State, local and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole. HUD is, therefore, requesting information to guide and enhance this review.

**VI. Specific Information Requested**

To assist in HUD’s approach to Opportunity Zones, HUD invites ideas and information on the following questions:

1. How should HUD use its existing authorities to maximize the beneficial impact of public and private investments in urban and economically distressed communities, including Opportunity Zones? For example:
   a. What actions can HUD take under existing authorities to prioritize or focus Federal investments and programs on urban and economically distressed communities, including Opportunity Zones?
   b. What actions can HUD take under existing authorities to minimize all of the regulatory and administrative costs and burdens that discourage public and private investment in urban and economically distressed communities, including Opportunity Zones?
   c. What tools can HUD provide to make local communities, investors and other stakeholders more aware of the full range of applicable Federal financing programs and incentives available to projects located in urban and economically distressed areas, including Opportunity Zones?
   d. What policies could HUD implement that would help community-based applicants, including recipients of investments from Qualified Opportunity Funds, identify and apply for relevant Federal resources?
   e. What policies could HUD implement that would make it easier for recipients to receive and manage multiple types of public and private investments, including by aligning certain program requirements?

2. HUD is considering creating an information portal on Opportunity Zones. What types of information should HUD include in such a tool? How can it be made accessible to and most usable by HUD’s various stakeholders and customers? If the portal includes information on Federal financing programs and incentives beyond those offered by HUD, what types of information would be most useful to include?

3. In what ways could HUD structure preference points for Opportunity Zones and incorporate policy objectives in the rating factors for applications in discretionary grant competitions to increase the incentive to invest in Opportunity Zones? In addition, how should HUD prioritize support for urban and economically distressed areas, including Opportunity Zones, in its grants, financing, and other assistance?

4. What types of technical assistance should be offered through HUD?

5. What role can HUD play in helping to ensure that existing residents, businesses, and community organizations in Opportunity Zones benefit from the influx of investment and remain the focus of their community’s growth moving forward?

6. How can HUD properly evaluate the impact of Opportunity Zones on communities?

7. How should HUD interact with other stakeholders to maximize the success of the Opportunity Zone incentive? For example:
   a. How should HUD interact with officials from State, local, and tribal governments, institutions, local and regional agencies, businesses, and individuals from the private sector to most effectively encourage beneficial investment in urban and economically distressed areas?
   b. How should HUD participate in Federal interagency efforts to help ensure that private and public stakeholders can successfully develop strategies for economic growth and revitalization in urban and economically distressed areas?

Stakeholders might include investors; business owners; institutions of higher education (including Historically Black Colleges and Universities, as defined by 50 U.S.C. 3224(g)(2), and tribally controlled colleges and universities, as defined by 25 U.S.C. 1801(a)(4)); K–12 education providers; early care and education providers; human services agencies; State, local, and tribal leaders; public housing agencies; non-profit organizations; and economic development organizations.

c. How should Federal technical assistance, planning, financing tools, and implementation strategies be coordinated across agencies to assist communities in addressing economic problems, engaging in comprehensive planning, and advancing regional collaboration?

8. How might Qualified Opportunity Fund investments support the goal of ending homelessness?

9. Are there other aspects of Opportunity Zones that should be considered and are not addressed in this request for information?
I. Background

II. Methodology

III. The Use of Inflation Factors

IV. Geographic Areas and Area Definitions
DEPARTMENT OF THE TREASURY

Request for Information on Data Collection and Tracking for Qualified Opportunity Zones

AGENCY: Department of the Treasury.

ACTION: Notice and request for information.

SUMMARY: The Department of the Treasury (Treasury Department) is publishing this notice and request for information to seek public input on the development of public information collection and tracking related to investment in qualified opportunity funds (QOFs).

DATES: Comments on this notice and request for information should be received by May 31, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this notice according to the instructions for “Electronic Submission of Comments” below. All submissions must refer to this document. The Treasury Department encourages the early submission of comments.

Electronic Submission of Comments

Interested persons must submit comments electronically through the Federal eRulemaking Portal at http://www.regulations.gov. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Treasury Department to make them available to the public. Comments submitted electronically through the http://www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through the method specified above.

No Facsimile Comments: Facsimile (FAX) comments will not be accepted.

Public Inspection of Public Comments: In general, all properly submitted comments will be available for inspection and downloading at http://www.regulations.gov.

Additional Instructions: Please note the number of the question to which you are responding at the top of each response. Though the responses will be screened for appropriateness, in general comments received, including attachments and other supporting materials, are part of the public record and are immediately available to the public. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Craig Johnson, Office of Tax Analysis, 202–622–2000. All responses to this notice and request for information should be submitted via http://www.regulations.gov to ensure consideration.

SUPPLEMENTARY INFORMATION: Section 13823 of the Tax Cuts and Jobs Act, Pub. L. 115–97, 131 Stat. 2054, 2184 (2017) (TCJA), amended the Internal Revenue Code to add sections 1400Z–1 and 1400Z–2. Sections 1400Z–1 and 1400Z–2 seek to encourage economic growth and investment in designated distressed communities (qualified opportunity zones) by providing Federal income tax benefits to taxpayers who invest in businesses located within these zones through a QOF. The purpose of information collection and tracking is to measure the effectiveness of the policy in achieving its stated goals, and ensure that this investment opportunity remains an attractive option for investors to use.

A QOF is required to file Form 8996 as part of its annual Federal income tax return. On this form, the QOF reports the amount of assets in the QOF and what portion of those assets are qualified opportunity zone property. Based on annual data provided in Form 8996, with a lag of approximately two years following the taxable year, the Treasury Department could determine and report publicly on (i) the number of QOFs, (ii) the aggregate amount of investment in QOFs, and (iii) the portion of that investment reported by QOFs as qualified opportunity zone property.

However, the information reported on the current version of Form 8996 lacks sufficient granularity for the Treasury Department to determine the amount and type of investment that flows into an individual qualified opportunity zone through a QOF. This type of information would be valuable for evaluating the success of the qualified opportunity zone tax incentive on increasing investment and economic activity within qualified opportunity zones.

In the coming weeks, the Treasury Department anticipates that possible revisions to the Form 8996 (OMB Control number 1545–0123) could be proposed for tax years 2019 and following. Subject to tax administration limitations, the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and other requirements under law, it is expected that such proposed revisions to the Form 8996 could require additional information such as (1) the employer identification number (EIN) of the qualified opportunity zone businesses owned by a QOF and (2) the amount invested by QOFs in qualified opportunity zone businesses located in particular census tracts designated as qualified opportunity zones. Notice of the availability of the draft Form 8996 and request for comment will be available at IRS.gov/DraftForms.

Treasury Department is seeking public comment on the following questions:

1. What data would be useful for tracking the effectiveness of providing tax incentives for investment in qualified opportunity zones to bring economic development and job creation to distressed communities?
Comments could address (A) suggested measures that would signal improved economic development in local target markets as well as spillover to neighboring areas, (B) measures of job creation specific to the distressed community, (C) who would collect the data, (D) the frequency of data to be collected, and (E) sources from which to collect data.

2. In addition to the anticipated revisions to Form 8996 discussed in the Summary of this Notice and Request for Information, is there other information that could appropriately be collected on a tax form that would be helpful in measuring the effectiveness of the opportunity zone incentives. For example, should qualified opportunity zone businesses be required to report on a tax form the location by census tract of (1) owned and leased tangible property or (2) employees of a qualified opportunity zone business?

Comments could address (A) suggested alternative sources to collect this information, (B) the detail required, such as geocoding or type of property, and (C) the cost of data reporting.

3. What data would be useful for measuring how much would have been invested in qualified opportunity zones in the absence of the opportunity zone incentives?

Comments could address (A) suggested measures for the current economic viability of investment in similarly distressed, but non-qualified census tracts, and (B) current economic trends in qualified and non-qualified census tracts.

4. What data would be useful for ensuring that the investment opportunity remains an attractive option for investors?

Comments could address (A) information on the quantity and location of investment, (B) the type of property or businesses generating investment interest, and (C) sources from which to collect data.

5. What are the costs and benefits of various methods of information collection? Who should perform this data collection?

Comments could address (A) methods of collection and data submission, (B) costs associated with each method, including time burden and other cost considerations, and (C) any specific advantages that a particular method might offer.

6. What considerations should government officials take into account when considering data to analyze the effectiveness of the qualified opportunity zone incentives to promote economic development to distressed areas? Over what time period should this analysis occur?

Comments could address (A) specific concerns of investing in distressed areas, (B) the ability of job creation to match local labor force skills, (C) opportunity zone investment crowding out other private or public investment, and (D) risk factors not elsewhere noted.

7. How do you view the role of the Federal Government, and Tribal, State and local governments in the ongoing maintenance and administration of opportunity zones?

Comments could address: Monitoring, tracking, facilitation, or any other role government could serve to improve the effectiveness of the opportunity zone incentives.

8. Is there any additional information regarding data collection and tracking for opportunity zones not already addressed that you would like to provide?


David J. Kautter, Assistant Secretary (Tax Policy).
116TH CONGRESS
1ST SESSION

S.

To require the Secretary of the Treasury to collect data and issue a report on the opportunity zone tax incentives enacted by the 2017 tax reform legislation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. BOOKER introduced the following bill; which was read twice and referred to the Committee on

A BILL

To require the Secretary of the Treasury to collect data and issue a report on the opportunity zone tax incentives enacted by the 2017 tax reform legislation, 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. COLLECTION OF DATA ON OPPORTUNITY ZONE
4 TAX INCENTIVES.
5 (a) IN GENERAL.—The Secretary of the Treasury, or
6 the Secretary’s delegate (referred to in this Act as the
7 “Secretary”), shall collect information on investments held
8 by qualified opportunity funds (as defined in section


1400Z-2(d) of the Internal Revenue Code of 1986) nationally and at the State level, which shall include—

(1) the number of such qualified opportunity funds,

(2) the amount of assets held in qualified opportunity funds,

(3) the composition of qualified opportunity fund investments by asset class,

(4) the percentage of qualified opportunity zone census tracts designated under subchapter Z of the Internal Revenue Code of 1986 (as added by section 13823 of Public Law 115-97) that have received qualified opportunity fund investments, and

(5) the impacts and outcomes of zone designation in those areas on economic indicators, including job creation, poverty reduction, new business starts, and other metrics as determined by the Secretary.

(b) INVESTMENTS.—For any investment described in subsection (a), the Secretary shall collect relevant information regarding each such investment, including—

(1) the total amount of the investment and the date on which such investment was made,

(2) the type of investment, such as whether the investment is in an existing business, new business,
or real property, and the location of such business
or property,

(3) the type of activity being supported by such
investment, such as single-family or multi-family res-
idential properties, commercial properties, or the
economic sectors in which the business operates,

(4) in the case of a business, the approximate
number of full-time employees at the time the invest-
ment in such business was made, and

(5) in the case of real property, the approxi-
mate total square footage and the approximate num-
ber of residential units, as applicable.

(c) COLLECTION OF INFORMATION.—For purposes of
any information described in this section, the Secretary
shall establish appropriate procedures and measures to en-
sure that—

(1) collection of such information is performed
in a manner so as to prevent duplicative or redun-
dant reporting, and

(2) any personally identifiable data included in
such information is properly protected and withheld
from disclosure to the public.

SEC. 2. REPORT TO CONGRESS.

The Secretary shall submit a report to Congress on
the opportunity zone incentives enacted by section 13823
of Public Law 115-97, beginning 5 years after the date
of enactment of this Act and annually thereafter, which
shall include the information described in section 1(a).

SEC. 3. INFORMATION REGARDING INVESTMENTS.

Subject to subsection (c) of section 1, the Secretary
shall make the information submitted pursuant to sub-
section (b) of such section publicly available, with such in-
formation to be made available not later than the date
which is 1 year after the date of enactment of this Act
and annually thereafter, following the initial reporting of
such information by any qualified opportunity fund.
An act to amend Section 12097.5 of the Government Code, relating to economic development.

LEGISLATIVE COUNSEL’S DIGEST


Existing law authorizes the Governor’s Office of Business and Economic Development to develop content on its internet website or through other mediums to be used for public dissemination, through outreach activities, in order to provide information and resources to inform the general public about place-based and other geographically targeted economic development programs, including California Promise Zones and California Opportunity Zones. Existing law requires the Governor’s Office of Business and Economic Development to convene, at least annually, representatives from various programs and agencies across the state and from various federal programs and agencies for the purpose of discussing how California can leverage Promise Zones and Opportunity Zones to meet state and local community and economic development needs.

This bill would require the Governor’s Office of Business and Economic Development, in cooperation with the Office of Planning and Research, to track specified information regarding California Opportunity Zone and California Promise Zone investments and to post that information on the Governor’s Office of Business and Economic Development’s internet website.

The bill would require...
Fund managers, among other things, to track and provide specified information in this regard. The bill would require a taxpayer who seeks a deferral or reduction of any tax liability for capital gains under the Personal Income Tax Law or the Corporation Tax Law as a result of investments made in a California Opportunity Zone or a California Promise Zone pursuant to the Budget Act for the 2019—20 fiscal year, or any bill related to that Budget Act, to comply with these requirements in order to receive that deferral or reduction.


The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

(a) California established 879 Opportunity Zones in 2017 pursuant to the Investing in Opportunity Act (26 U.S.C. Secs. 1400Z-1 and 1400Z-2), enacted as part of the federal Tax Cuts and Jobs Act of 2017 (PL 115-97), which provides taxpayers with favorable capital gains tax treatment for investment in those zones. The aim is to provide private capital to help improve conditions in disadvantaged communities.

(b) The tax benefits associated with the Opportunity Zones policy will allow investors to leverage more capital for projects in these communities while also reducing their capital gains tax bill. Investment in Opportunity Zones has the potential to reduce economic inequality and barriers to employment facing low-income and underinvested communities.

(c) The U.S. Impact Investing Alliance, the Beeck Center for Social Impact and Innovation at Georgetown University, and the Federal Reserve Bank of New York last year developed a set of Guiding Principles for Opportunity Zones to encourage Opportunity Zone investments that produce positive economic and social outcomes and minimize unintended consequences, such as gentrification and displacement of zone residents.

(d) The Guiding Principles for Opportunity Zones are as follows:

(1) Community engagement: Opportunity Funds should integrate the needs of local communities into the formation and implementation of the funds, reaching low-income and underinvested communities with attention to diversity.
(2) Equity: Opportunity Fund investments should seek to generate equitable community benefits, leverage other incentives, and aim for responsible exits.

(3) Transparency: Opportunity Funds should be transparent and accountable, with processes and practices that remain fair and clear.

(4) Measurement: Opportunity Fund investors should monitor, measure, and track progress against specific impact objectives, identifying key outcome measures and allowing for continuous improvement.

(5) Outcomes: Opportunity Fund metrics should track real change, with an understanding that both quantitative and qualitative measures are valuable indicators of progress.

(e) The Guiding Principles for Opportunity Zones, implemented through a detailed reporting framework, will help ensure that Opportunity Zone investment results in inclusive growth and shared prosperity.

SECTION 1.

SEC. 2. Section 12097.5 of the Government Code is amended to read:

12097.5. (a) (1) The Governor’s Office of Business and Economic Development is hereby authorized to develop content on its internet website or through other mediums to be used for public dissemination, through outreach activities, in order to provide information and resources to inform the general public about place-based and other geographically targeted economic development programs, including, but not limited to, federal Promise Zones within California that are designated by the United States Department of Housing and Urban Development; and Opportunity Zones designated by the United States Treasury, pursuant to Sections 1400Z-1 and 1400Z-2 of the Internal Revenue Code.

(2) The information and resources shall include, but not be limited to, how the local jurisdictions or census tracts were created, where locals and investors may get additional information, and updates regarding federal programs as that information becomes available.

(b) The Governor’s Office of Business and Economic Development shall convene, at least annually, representatives from various programs and agencies across the state and from various
federal programs and agencies for the purpose of discussing how
California can leverage Promise Zones and Opportunity Zones to
meet state and local community and economic development needs.
The convention topics shall include, but not be limited to,
discussions on enhanced engagement opportunities and targeted
outreach to assist designated areas in their efforts to access state
resources and services.
(c) (1) The Governor’s Office of Business and Economic
Development shall, in cooperation with the Office of Planning and
Research, track the following information regarding California
Opportunity Zone and California Promise Zone investments:
(A) Qualified spending.
(B) Economic gains.
(C) Employment numbers.
(D) Job training.
(A) Investment intention and community engagement.
Opportunity Fund managers shall report information that will
encourage effective market formation and enable community
engagement before and during investments, including the
following:
(i) The following prospective information:
(I) The geographic focus, including, but not limited to, state,
ZIP Code, and urban or rural focus.
(II) The intended investment focus, such as housing, small
business, or growth business.
(III) The target investment size.
(IV) A mission statement or impact objective.
(ii) The following base fund demographics:
(I) The size of the fund, including total assets and eligible
deferred gain assets.
(II) The types of investors, such as corporate, partnership, or
individual filers.
(III) The taxpaying residence of investors, aggregated by state
and portion of fund assets.
(IV) The structure of the fund as a single or multiasset fund.
(V) The population demographics of the Opportunity Zone,
including racial and gender composition.
(iii) Community engagement information, as follows:
(I) The following community support indicators:
(iia) A community engagement narrative.
(ib) A community needs assessment.
(ic) Information on nongovernmental organization partnerships.
(id) Public notice of development.
(II) Information on engagement with regional economic development strategies.

(B) Impact measurement and reporting. Opportunity Fund managers shall track and report basic transaction-level data, a core set of community impact metrics that are widely applicable to Opportunity Funds, and additional metrics applicable to the specific investment thesis and impact vertical of the fund. Information reported pursuant to this subparagraph shall be in a manner that facilitates regional and national aggregation of data and shall include the following:

(i) The following transaction data reporting:

(I) The size of the investment.
(II) The location of the investment, by census tract or street address.

(III) The NAICS Code of any operating business.

(IV) The type of qualifying property.

(ii) The following core community impact information:

(I) Information on jobs, including all of the following:

(ia) The number of permanent, seasonal, and construction employees.

(ib) The net number of new jobs created.

(ic) The number of employees from low- and moderate-income communities.

(id) Information on the employment of disadvantaged groups, such as returning citizens and veterans.

(II) The following entrepreneurship information, if applicable:

(ia) The NAICS Code of commercial tenants.

(ib) The percentage of women-owned and minority-owned enterprises.

(ic) The percentage of first-time business owners.

(III) The following real estate information, if applicable:

(ia) Information on affordable housing, including the net new number of affordable housing units developed, the number of net additional individuals housed based on that development, the percentage of units in the development that are affordable, and the number of affordable units renovated.
(ib) The square footage of developed real estate, including commercial, residential, and infrastructure improvements.

(C) Investment thesis reporting. Opportunity Fund managers shall select, measure, and report on metrics specific to the investment thesis and impact vertical of the fund. If possible, the information reported pursuant to this subparagraph shall be reported in alignment with accepted industry standards and methodologies.

(D) Lasting community impact. Opportunity Fund managers shall seek opportunities to create durable community benefits by prioritizing responsible investment exit strategies where feasible.

(E) Responsible exits. Opportunity Fund managers shall report on existing considerations at the outset of investment and commit to preserve community wealth. An Opportunity Fund manager may provide a side letter, term sheet, or other nonbinding exit plan that may, but is not required to, include the following considerations:

(i) A stakeholder right of first refusal.
(ii) Employee stock ownership plans.
(iii) Continuity of management.

(F) Transparent outcomes reporting. Opportunity Fund managers shall commit to work forthrightly and transparently with independent evaluators and researchers to provide the information required by this subparagraph.

(G) Any other economic indicator the Governor’s Office of Business and Economic Development and the Office of Planning Research deem appropriate.

(2) The Governor’s Office of Business and Economic Development shall post information gathered pursuant to this subdivision on its internet website.

(3) A taxpayer who seeks a deferral or reduction of any tax liability for capital gains under the Personal Income Tax Law (Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code) or the Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) as a result of investments made in a California Opportunity Zone or a California Promise Zone pursuant to the Budget Act for the 2019–20 fiscal year, or any bill related to that
Budget Act, shall comply with the requirements of this subdivision in order to receive that deferral or reduction.

(d) As used in this section:

(1) “California Opportunity Zone” means a census tract in this state that has been designated by the United States Treasury as an Opportunity Zone, pursuant to Sections 1400Z-1 and 1400Z-2 of the Internal Revenue Code.

(2) “California Promise Zone” means a community in this state that has been designated by the United States Department of Housing and Urban Development as a Promise Zone.