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Tax Incentives for Opportunity Zones

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SUMMARY

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Tax Incentives for Opportunity Zones

The 2017 tax revision (P.L. 115-97) temporarily authorized Opportunity Zone (OZ) tax incentives, which are intended to encourage private investment in economically distressed communities. OZ tax incentives are allowed for investments held by Qualified Opportunity Funds (QOFs) in qualified OZs. In 2018, the Community Development Financial Institutions (CDFI) Fund in the Treasury Department designated qualified census tracts that are eligible for OZ tax incentives after receiving recommendations from head executives (e.g., governors) at the state level. Qualified OZ designations for census tracts are in effect through the end of 2026.

OZ tax incentives include (1) a temporary tax deferral for capital gains reinvested in a QOF, (2) a step-up in basis for any investment in a QOF held for at least five years (10% basis increase) or seven years (15% basis increase), and (3) a permanent exclusion of capital gains from the sale or exchange of an investment in a QOF held for at least 10 years.

This report discusses (1) which census tracts have been designated as an OZ, (2) what types of entities are eligible as QOFs, (3) the tax benefits of investments in QOFs, (4) a summary of IRS/Treasury regulations implementing OZs, (5) what economic effects can be expected from OZ tax incentives, and (6) what policy issues Congress has raised with respect to OZs.

This report also discusses several issues for Congress regarding the implementation of OZ tax incentives. First, the Internal Revenue Service (IRS) has determined that the list of census tracts designated as qualified OZs cannot be altered absent enactment of new legislation. Second, given that Treasury and IRS have promulgated final regulations regarding tax-related issues pertaining to OZ transactions, state and local governments are likely to play a larger role in the types of projects that will be funded in OZs. Some states have enacted their own OZ tax incentives to further encourage investment in their jurisdictions. Additionally, local government entities will generally be in charge of approving and permitting individual projects within an OZ. Third, although state and local governments will likely now have a more direct role in individual OZ transactions, the federal government may still be involved. For example, then-President Trump issued an executive order requiring executive agencies to determine how they could prioritize or focus federal programs in economically distressed communities, including OZs. Agencies were charged with reducing regulatory and administrative costs that could discourage public and private investment in such areas. Fourth, Congress could consider extending deadlines for specific OZ tax benefits. Under current law, an investor would have needed to roll over a capital gain by the end of 2019 in order to get seven years of credit and by the end of 2021 to get five years of credit for holding their investment in a QOF, for the purposes of the 15% basis adjustment and the 10% basis adjustment, respectively.

OZs have also been subject to a number of congressional oversight concerns. Based on the requests of individual Members of Congress, the Treasury Inspector General and the Government Accountability Office (GAO) have conducted or are currently conducting investigations regarding the qualified OZ designation process and potential effectiveness of OZs to spur investment in low-income areas, respectively. Additionally, there has been a broader concern, from both Members of Congress and commentators, on the lack of information and transparency regarding QOFs, their investments, and their investors required under current law. More QOF disclosure on tax forms could aid the IRS in administering OZ tax incentives as well as providing data that could be used to evaluate these provisions. Although current law limits the IRS's ability to disclose detailed taxpayer-provided data to the public without taxpayer consent, the agency could release aggregated data, such as amounts of OZ investments organized at state or local levels or the tax benefits claimed by income level. This information could provide Congress and the public with a better idea of how the direct benefits of OZ tax incentives are distributed. However, additional disclosure could increase compliance costs and could dissuade some investors from investing in OZs.

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The 2017 tax revision (P.L. 115-97) temporarily authorized Opportunity Zone (OZ) tax incentives, which are intended to encourage private investment in economically distressed communities.[1] In 2018, the Community Development Financial Institutions (CDFI) Fund in the Treasury Department designated qualified census tracts that are eligible for OZ tax incentives after receiving recommendations from a state's chief executive officer (CEO), generally the governor. Qualified OZ designations are in effect through the end of 2026.

Investments eligible for OZ tax incentives must be channeled through a qualified opportunity fund (QOF). The tax benefits for these QOF investments include (1) a temporary tax deferral for capital gains reinvested in a QOF, (2) a step-up in basis for any investment in a QOF held for at least five years (10% basis increase) or seven years (15% basis increase), and (3) a permanent exclusion of capital gains from the sale or exchange of an investment in a QOF held for at least 10 years. These incentives effectively increase the after-tax rate of return of QOF investments to their investors.

This report describes what census tracts have been designated as an OZ, what types of entities are eligible as QOFs, the tax benefits of investments in QOFs, what economic effects can be expected from OZ tax incentives, and several issues for Congress regarding the implementation and oversight of OZ tax incentives.

For further reading on the CDFI Fund's other programs and analysis of related policy issues, see CRS Report R42770, *Community Development Financial Institutions (CDFI) Fund: Programs and Policy Issues*. (Throughout this report, the CDFI Fund is referred to simply as "the Fund".) For updated guidance regarding OZ tax incentives, see websites created by the Fund and Internal Revenue Service (IRS).[2]

Opportunity Zone Designations

Opportunity Zones were nominated by states' CEOs (e.g., governors) in early 2018. Specifically, states' CEOs nominated, in writing, a limited number of census tracts to the Secretary of the Treasury to be designated eligible for OZ tax incentives.[3] These nominations were due by March 21, 2018.[4] A nominated tract must have been either (1) a qualified low-income community (LIC), using the same criteria as eligibility under the New Markets Tax Credit (NMTC),[5] or (2) a census tract that was contiguous with a nominated LIC if the median family income of the tract did not exceed 125% of that contiguous, nominated LIC.[6] In principle, these requirements appear to have

[1] These provisions are found in Internal Revenue Code (IRC) Sections 1400Z-1 and 1400Z-2.

[2] CDFI Fund, "Opportunity Zone Resources," at https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx; and IRS, "Opportunity Zones Frequently Asked Questions," at https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions.

[3] For the purposes of OZ tax incentives, a "state" includes the District of Columbia and any U.S. possession.

[4] IRS Rev. Proc. 2018-16, p. 3, at https://www.irs.gov/pub/irs-drop/rp-18-16.pdf.

[5] See IRC Section 45D(e). Qualifying LICs, under the NMTC, include census tracts that have at least one of the following criteria: (1) a poverty rate of at least 20%; (2) a median family income below 80% of the greater of the statewide or metropolitan area median family income if the LIC is located in a metropolitan area; or (3) a median family income below 80% of the median statewide family income if the LIC is located outside a metropolitan area. In addition, designated targeted populations may be treated as LICs. For more information, see CRS Report RL34402, *New Markets Tax Credit: An Introduction*, by Donald J. Marples and Sean Lowry.

[6] See IRS Rev. Proc. 2018-16, p. 2, at https://www.irs.gov/pub/irs-drop/rp-18-16.pdf.

been intended to provide governors with the ability to identify LICs, or low- to moderate-income areas adjacent to LICs, in which to direct OZ tax benefits.[7]

P.L. 115-97 explicitly limits the number of census tracts within a state that can be designated as qualified OZs based on the following criteria:

- If the number of LICs in a state is less than 100, then a total of 25 census tracts may be designated as qualified OZs.
- If the number of LICs in a state is 100 or more, then the maximum number of census tracts that may be designated as qualified OZs is equal to 25% of the total number of LICs.
- Not more than 5% of the census tracts designated as qualified OZs in a state can be non-LIC tracts that are contiguous to nominated LICs. This effectively limits the number of census tracts that are *not* economically distressed or low income from receiving the OZ designation.

The official list of designated Opportunity Zones was published in IRS Notice 2018-48 and IRS Notice 2019-42.

Qualified Opportunity Funds

P.L. 115-97 defined a QOF as any investment vehicle organized as a corporation or partnership for the purpose of investing in a qualified opportunity zone property (other than another QOF) and which holds at least 90% of its assets in qualified OZ property. A qualified OZ property can be a stock or partnership interest in a business located within a qualified OZ or tangible business property located in a qualified OZ. Examples of potential QOF investments in qualified OZ property include purchasing a building located in a qualified OZ, purchasing stock in a business located in a qualified OZ, or purchasing machinery used by a business located in a qualified OZ.

A qualified OZ property must have been acquired by the QOF after December 31, 2017. For each month that a QOF fails to meet the 90% requirement it must generally pay a penalty. The penalty is calculated based on the monthly shortage multiplied by an underpayment rate (short-term federal interest rate plus three percentage points).

The IRS instructs a corporation or partnership seeking to become a QOF to self-certify its status by filling out Form 8996 as part of its annual income tax filings.[8] (This self-certification process differs from the NMTC, in which the Fund takes prospective action to certify "community development entities" (CDEs) before they can receive an NMTC allocation.)

[7] See Senator Tim Scott, "Op-ed: Opportunity Zones Are Really Working," *Washington Examiner*, October 18, 2019, at https://www.washingtonexaminer.com/opinion/op-eds/sen-tim-scott-opportunity-zones-are-really-working. In his op-ed, Senator Scott, who co-sponsored the original, standalone bill proposing OZs, says that "…instead of taking a top-down approach to addressing poverty, Opportunity Zones empower our community leaders, mayors, and governors to come together to decide for themselves which of their neighborhoods should be designated to participate." That standalone bill in the 115th Congress was the Investing in Opportunity Act (H.R. 828; S. 293).

[8] For more information, see IRS, "Opportunity Zones Frequently Asked Questions," at https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions.

Tax Benefits for Qualified OZ Investments

P.L. 115-97 provides three main tax incentives to encourage investment in qualified OZs. These benefits are briefly summarized, followed by an illustrative example showing how the three benefits reduce the amount of capital gains subject to taxation for OZ investors:

1. **Temporary deferral of capital gains that are reinvested in qualified OZ property:** Taxpayers can defer capital gains tax due upon the sale or disposition of a (presumably non-OZ) asset if the capital gain portion is reinvested within 180 days in a QOF.[9] Under current law, the deferral of gain is available on qualified investments up until the *earlier of* (a) the date on which the investment in the QOF is sold or exchanged, or (b) December 31, 2026.[10]

   In other words, this deferral is only in effect until December 31, 2026. Any reinvested capital gains in a QOF made before this date must be realized on December 31, 2026. Thus, investors would realize the deferred gain in their 2026 income filings, even if they do not sell or dispose of their investment in a QOF. Any reinvested capital gains in a QOF after this date are not eligible for deferral.
2. **Step-up in basis for investments held in QOFs:** If the investment in the QOF is held by the taxpayer for at least five years, the basis on the original gain is increased by 10% of the original gain. Basis is generally the value of capital gain when the investment is sold, before it is reinvested in a QOF.[11] (An increase in basis, all else unchanged, reduces the amount of the investment subject to taxation and hence reduces tax liability.) If the OZ 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% of the original gain.
3. **Exclusion of capital gains tax on qualified OZ investment returns held for at least 10 years:** The basis of investments maintained (a) for at least 10 years and (b) until at least December 31, 2026, will be eligible to be marked up to the fair market value of such investment on the date the investment is sold. Effectively, this amounts to an exclusion of capital gains tax on any gains earned from the investment in the QOF (over 10 years) when the investment is sold or disposed.

Table 1 illustrates the tax benefits of a hypothetical investment of $100,000 in a QOF made in 2019. This investment could be $100,000 in capital gains earned from the sale or disposition of another asset (e.g., real property) from outside an OZ that is reinvested into a QOF within 180 days from the date of that sale or disposition. Taxes on these capital gains are deferred while the investment is held in a QOF. As investments made after 2021 no longer qualify for either the 10% or 15% basis adjustments, investments made in 2022 or later would be eligible for a smaller incentive than shown in **Table 1**.

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[9] For more background on capital gains taxation, see CRS Report 96-769, *Capital Gains Taxes: An Overview*, by Jane G. Gravelle; and p. 391 in CRS Committee Print CP10004, *Tax Expenditures: Compendium of Background Material on Individual Provisions — A Committee Print Prepared for the Senate Committee on the Budget, 2020*, by Jane G. Gravelle et al.

[10] IRC Section 1400Z-2(b)(1).

[11] For example, an investor buys a piece of commercial real estate for $500,000 and then sells it two years later for $600,000. Although the investor realized $100,000 in capital gain on the sale of the real estate, the gain would not be recognized (subject to tax) upon sale if reinvested within 180 days in a QOF. The "basis adjustments" would affect the $100,000 reinvested capital gains. This calculation is illustrated in **Table 1**.

Column A shows the investment's value over time, assuming a 7% annually compounded rate of return. This hypothetical investment is simplified to assume that an initial investment in a QOF is made in year one and the QOF constantly reinvests any returns to that initial investment (i.e., the QOF does not pay out periodic dividends to the investor during the life of the investment).

Column B shows the increase in adjusted basis earned from holding that investment in a QOF over time: 10% of the original capital gain of $100,000 after the investment is held in a QOF for at least five years (10% of $100,000 = $10,000), and 15% after the capital gain is held for at least seven years (15% of $100,000=$15,000).

Column C shows the mandatory recognition of reinvested capital gains at the end of 2026.[12] Even if the investor retains their investment in the QOF beyond 2026, they must still recognize or pay capital gains tax on $85,000 in capital gains under this hypothetical example. This adjustment amount is calculated as $100,000 in capital gains initially rolled over into the QOF in 2019 (i.e., tax deferred) minus the $15,000 in basis adjustment for holding their investment in the QOF for seven years.

Column D shows the amount of capital gains subject to taxation if the investment in a QOF is sold or disposed of in any of the 10 years shown in the table. Of note, if the investment was sold after being held for 10 years, then any capital gains earned on the initially reinvested $100,000 would be completely excluded from tax. In the hypothetical example, the investor earned an additional $96,715 from their initial investment of $100,000. Therefore, if they held that QOF investment for 10 years and then sold it, they would not pay tax on the $96,715 in gains as well as not paying tax on $15,000 worth of the original investment. (They would have realized $85,000 in capital gains in 2026, and paid capital gains tax on that amount.) In other words, for their investment valued at $196,715 in 2029, the investor would have paid tax on $85,000 of this amount in 2026, with the remainder being tax-free. This calculation illustrates that a major economic incentive to investing in a QOF is the permanent exclusion of capital gains earned after the acquisition of the QOF investment.[13]

[12] Ibid.

[13] After P.L. 115-97 was enacted, some commentators raised concerns that legislative text created an ambiguity as to whether taxpayers could actually claim the exclusion of qualified OZ investment return gains after 10 years. This was because the capital gains tax exclusion on OZ investment returns provision requires the QOF to hold investments in an OZ for 10 years. The OZ designations were authorized by P.L. 115-97 through 2026. Thus, unless Congress extended OZ designations in subsequent legislation, it would have only been possible for QOFs to hold investments in qualified OZs for a maximum of nine years (i.e., 2018 through 2026). However, the Department of the Treasury released proposed regulations on October 19, 2018, clarifying that the benefit available in year 10 would still be available even if the designations expire at the end of 2026. The proposed regulations state that the benefit will be available until December 31, 2027. Treasury claims that this interpretation is consistent with the legislative intent of P.L. 115-97. See Department of the Treasury, "Treasury, IRS Issue Proposed Regulations on New Opportunity Zone Tax Incentive," press release, October 19, 2018, at https://www.irs.gov/newsroom/treasury-irs-issue-proposed-regulations-on-new-opportunity-zone-tax-incentive. The related passage is on p. 16 of the proposed regulation. Final regulations for Opportunity Zones were published in the *Federal Register* on January 21, 2020, and have been effective since March 13, 2020. See Internal Revenue Service (IRS), Treasury, "Investing in Qualified Opportunity Funds," 85 *Federal Register* 1866-2001, January 13, 2020.

Table 1. Illustration of Opportunity Zone (OZ) Tax Benefits for a Hypothetical Investment of $100,000 in Reinvested Capital Gains Made in 2019

(Assuming an annual rate of return of 7%)

	A	B	C	D
Year	**Investment Value[a]**	**Basis Adjustment**	**Mandatory Recognition of Reinvested Capital Gain**	**Taxable Capital Gains if Sold**
2019	$100,000	$0	-	$100,000
2020	$107,000	$0	-	$107,000
2021	$114,490	$0	-	$114,490
2022	$122,504	$0	-	$122,504
2023	$131,080	$0	-	$131,080
2024	$140,255	$10,000	-	$130,255
2025	$150,073	$10,000	-	$140,073
2026	$160,578	$15,000	$85,000	$60,578
2027	$171,819	-	-	$71,819
2028	$183,846	-	-	$83,846
2029	$196,715	-	-	$0[b]

Source: CRS calculations.

Notes:

a. This hypothetical calculates OZ tax benefits from an initial investment of $100,000 in capital gains earned from outside of an OZ (e.g., sale of appreciated real property) that is rolled over (i.e., not taxed) into a qualified opportunity fund (QOF), assuming constant reinvestment over the life of the OZ investment (i.e., no periodic dividends issued from the qualified opportunity fund to the investor).

b. Investments maintained (a) for at least 10 years and (b) until at least December 31, 2026, will be eligible for permanent exclusion of capital gains tax on any gains from the qualified OZ portion of the investment when sold or disposed. In this hypothetical, the $196,715 in earnings over the 10 years that the investment is held in a QOF would be excluded from capital gains tax, and tax would be due on the initial $100,000 in outside capital gains rolled over into the QOF after applying the OZ adjusted basis increase benefit of 15% (i.e., tax due on $85,000 in capital gains).

Note that **Table 1** only shows the tax-related benefits of investing in a QOF. It does not include the economic benefits of temporarily deferring capital gains tax on the initial $100,000 investment, which would depend on the time value of money, which is the economic concept that an amount of money available at the present time is generally worth more than the same amount in the future. Accordingly, investors would prefer to defer paying tax because the money they would use to otherwise pay the tax could be put to some other use with a higher rate of return (e.g., investing in other assets) while their tax bill is deferred. From an income tax collection perspective, though, deferral of capital gains tax just delays a tax liability from one period to another.

Actual QOF investment structures could differ from the arrangement in **Table 1**. With a similar tax benefit, the New Markets Tax Credit (NMTC), investors have developed financial structures that increase the amount of other funding from private or public sources (i.e., increasing leverage

on the NMTC investment).[14] Additional layers of financing structures could increase the complexity of investment arrangements and costs attributed to fees and transactional costs instead of development, which could ultimately reduce investment in development projects, all else being equal.[15]

OZ tax incentives are in effect from the enactment of P.L. 115-97 on December 22, 2017, through December 31, 2026. There is no gain or deferral available with respect to any sale or exchange made after December 31, 2026, and there is no exclusion available for investments in qualified OZs made after December 31, 2026.

Implementing Regulations

The Department of the Treasury and IRS issued multiple sets of proposed regulations related to investments in a QOF (under Section 1400Z-2). Notices of Proposed Rulemaking (NPRM) were published in the *Federal Register* on October 29, 2018, and May 1, 2019.[16] The final regulations were published in the *Federal Register* on January 13, 2020.[17] These regulations inform investors, QOFs, and other parties that have invested in or are considering investing in projects located within qualified OZs. A comprehensive analysis of the lengthy, final regulations is outside the scope of this report.[18]

With that said, commentators have noted that the final regulations provide guidance on a range of transactional matters, such as what types of capital gains may be invested, what qualifies as qualified OZ business property, when QOF transactions trigger or do not trigger recognition of capital gain, when capital gains qualify for the purposes of the 10-year exclusion, and other exit considerations for investors.[19] Some of these positions are consistent with those established in the regulations proposed in 2018 and 2019, whereas other positions in the final regulations represent a change from the proposed regulations.

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[14] Under the NMTC, the investor receives a credit equal to 5% of the total amount paid for the stock or capital interest at the time of purchase. For the final four years, the value of the credit is 6% annually. Investors must retain their interest in a qualified equity investment throughout the seven-year period. The NMTC value is 39% of the cost of the qualified equity investment and is claimed over a seven-year credit allowance period. For more information, see CRS Report RL34402, *New Markets Tax Credit: An Introduction*, by Donald J. Marples and Sean Lowry.

[15] For more discussion, see Government Accountability Office (GAO), *New Markets Tax Credit - Better Controls and Data Are Needed to Ensure Effectiveness*, GAO-14-500, July 2014, pp. 5-20, at https://www.gao.gov/assets/670/664717.pdf.

[16] Internal Revenue Service (IRS), Department of the Treasury, "Investing in Qualified Opportunity Funds," 83 *Federal Register* 54279-54296, October 29, 2018; and 84 *Federal Register* 18652-18693, May 1, 2019. The regulatory docket (including public comments) on the May proposed rule is available at https://www.regulations.gov/document?D=IRS-2019-0022-0001.

[17] IRS, Department of the Treasury, "Investing in Qualified Opportunity Funds," 85 *Federal Register* 1866-2001, January 13, 2020.

[18] The final regulation is 136 pages long in the triple-column version printed in the Federal Register, above, and is 544 pages long in the preliminary version posted on the IRS website at https://www.irs.gov/pub/irs-drop/td-9889.pdf.

[19] For shorter summaries of the final regulation, see Marie Sapirie, "Do You Hear the People Sing? A Guide to the Final O-Zone Regs," *Tax Notes Federal*, January 6, 2020; and John Sciarretti and Michael Novogradac, *Final OZ Regulations - Quick Take*, Novogradac, December 19, 2019, https://www.novoco.com/notes-from-novogradac/final-oz-regulations-quick-take. For more detailed summaries of the final regulation, see Lisa M. Zarlenga, John Cobb, and Caitlin R. Tharp, *Final Opportunity Zone Regulations Provide Some Much-Needed Clarity*, Steptoe & Johnson LLP, December 27, 2019, at https://www.steptoe.com/en/news-publications/final-opportunity-zone-regulations-provide-some-much-needed-clarity.html; and Lisa M. Brill et al., *Opportunity Zones: Final Regulations Provide Additional Flexibility*, Shearman & Sterling, January 14, 2020, at https://www.shearman.com/perspectives/2020/01/opportunity-zones-final-regulations-provide-additional-flexibility.

The final regulations became officially effective on March 13, 2020, but commentators and practitioners have noted that they appear to have mixed guidance for retroactive application. The preamble of the final regulations notes that taxpayers may choose to either rely on the final regulations or the proposed regulations, as long as they pick one or the other consistently.[20] Individual sections of the final regulations, though, appear to allow a taxpayer to apply either the final or a proposed version of the regulations on a section-by-section basis.[21] IRS and Treasury could clarify this issue in subsequent guidance.

Expected Economic Effects of OZs

Because OZs are a relatively new tax benefit, there are limited data that can be used to assess their specific impacts on economic development. Nonetheless, economic theory and examination of several other geographically targeted federal programs and incentives for economic development may provide insights on the expected economic effects of OZs. Examples of similar economic development incentives that are administered through the tax code include the NMTC,[22] the low-income housing tax credit (LIHTC),[23] and the tax credit for the rehabilitation of historic structures.[24] Below is a brief discussion of potential economic effects of OZs.

Effects on Employment

Current place-based economic development tax policies tend to be structured to directly benefit owners of capital who invest in particular communities or in particular types of projects and to indirectly benefit the residents of low-income communities. The OZ tax incentives follow this structure by delivering a direct benefit to the owners of capital through capital gains tax relief. Benefits delivered in this manner effectively reduce the cost of investment (i.e., the cost of capital). Economic theory would predict that tax subsidies for capital would not directly benefit workers (e.g., in the form of higher wages).[25] While it is too soon for detailed analysis of the OZ tax incentives, research on the NMTC has shown limited effects on employment.[26]

[20] Some commentators have noted that this choice in applicable regulations could increase short-term complexity and decisions for taxpayers. Stephanie Cumings, "O-Zone Rules Applicability Date Raises Dilemma for Investors," *Tax Notes Federal*, January 15, 2020.

[21] For example, see Stephanie Cumings, "Confusion Looms About Which Set of O-Zone Regs to Apply," *Tax Notes Today Federal*, January 29, 2020.

[22] See CRS Report RL34402, *New Markets Tax Credit: An Introduction*, by Donald J. Marples and Sean Lowry.

[23] See CRS Report RS22389, *An Introduction to the Low-Income Housing Tax Credit*, by Mark P. Keightley.

[24] See National Park Service, "Tax Incentives for Preserving Historic Properties," at https://www.nps.gov/tps/tax-incentives.htm.

[25] Economic theory suggests that the substitution effect (the use of more capital, relative to labor) could offset the benefits of the output effect (the use of more labor, due to more investment and expanded economic activity). The net effect of these tax subsidies will depend on which effect is larger. For more discussion on the effects of economic development policies targeting capital versus labor, see CRS Report R42770, *Community Development Financial Institutions (CDFI) Fund: Programs and Policy Issues*, by Sean Lowry.

[26] Harger, K., A. Ross, and H. Stephens, "What matters the most for economic development? Evidence from the Community Development Financial Institutions Fund," Papers in Regional Science 98, no. 2, pp. 883-904, 2019.

Effects on Investment

Studies find that place-based economic development incentives tend to shift investment from one area to another, rather than result in a net increase in aggregate economic activity.[27] Previous analysis of economic development tax incentives suggests that any one of these tax incentives on its own might be insufficient to generate a positive investment return from an otherwise unprofitable development project.[28] However, developers may be able to "stack" the benefits of multiple federal tax incentives (as well as any state and local incentives). The sum of these benefits could make a project located in one area more profitable than alternatives.

OZs and New Markets Tax Credit (NMTC)

With limited information currently available on the economic effects of OZs, policymakers may compare them to another place-based economic development tax incentive—the NMTC. The NMTC is a nonrefundable tax credit intended to encourage private capital investment in eligible, impoverished, low-income communities. NMTCs are allocated by the CDFI under a competitive application process. Investors who make qualified equity investments reduce their federal income tax liability by claiming the credit.

While both the NMTC and OZs are geographically targeted and provide tax incentives to investors, several differences between OZs and the NMTC may lessen the applicability of any findings on the NMTC to OZs.

One key difference is that OZ tax benefits are available to most investment in OZs, whereas NMTC tax benefits are available to a more limited set of approved investments. This follows from the NMTC being limited to a set amount per year ($5 billion through 2025) while the OZ benefits are uncapped.

A second difference is that there are no statutory requirements for outcome-based reporting of OZ tax benefits, whereas NMTC tax benefits are subject to such reporting. A Government Accountability Office (GAO) report found a lack of statutory authority for OZ data collection.[29] In contrast, NMTC investments are subject to more statutory restrictions and structural layers of accountability to low-income populations and communities than OZs. For example, the Fund evaluates NMTC applications based on a set of factors. One factor is the potential impact that the investments supported will have on "community outcomes," including benefits to low-income persons and jobs directly induced by the investments.[30] Investments made by QOFs are eligible to benefit a broad range of potential projects, regardless of their potential "community outcomes."[31] A final difference concerns community focus. Investment vehicles for OZs are not required to have a community focus, whereas those for NMTCs are required to have a primary mission of serving or providing investment capital to low-income communities.

As a result of these differences between NMTCs and OZs, research findings from the NMTC may not be applicable to OZs. In addition, studying OZs is further complicated because they could direct more investment to low-income communities than the NMTC (as a result of being uncapped), but the investment may be less focused to achieve community outcomes.

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[27] For a discussion of the economic literature on geographically targeted development policies, see CRS Report R42770, *Community Development Financial Institutions (CDFI) Fund: Programs and Policy Issues*.

[28] U.S. Government Accountability Office, *New Markets Tax Credit Appears to Increase Investment by Investors in Low-Income Communities, but Opportunities Exist to Better Monitor Compliance*, GAO-07-296, January 31, 2007, pp. 35-37, https://www.gao.gov/assets/gao-07-296.pdf.

[29] U.S. Government Accountability Office, *OPPORTUNITY ZONES: Improved Oversight Needed to Evaluate Tax Expenditure Performance*, GAO-21-20, October 8, 2020, https://www.gao.gov/products/GAO-21-30#summary.

[30] For examples of such criteria, see the "Community Outcomes" section of CDFI Fund, *NMTC Program—Allocation Application Frequently Asked Questions*, June 7, 2018, at https://www.cdfifund.gov/Documents/Updated%202018%20NMTC%20Application%20FAQs%20Document%20-For%20Posting%20MASTER.pdf.

[31] QOF investments made in the following categories are not eligible as investments in "qualified OZ business property": any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises. See IRC Section 1400Z-2 and IRC Section 144(c)(6)(B). Further, any capital gains earned from investments from the above types of projects are not be eligible for OZ tax benefits.

Revenue Effects

The Joint Committee on Taxation initially estimated that the OZ tax incentives would result in a revenue loss to the federal government of $1.6 billion over 10 years.[32] Subsequent tax expenditure estimates were higher: a revenue loss of $8.2 billion over 5 years.[33] The revenue loss within the initial 10-year and most recent 5-year budget windows is due to the relatively small revenue losses associated with the deferral of capital gains tax and the OZ basis adjustments in years 5 and 7. The largest tax benefit associated with OZ tax incentives, the exclusion of capital gains tax on qualified OZ investment returns in year 10, would fall outside of the 10-year budget window. Those revenue losses would not be expected until 2028 (i.e., FY2028-FY2029).

Issues for Congress

Changing Designation of Qualified Opportunity Zones

Some Members of Congress have inquired whether Treasury or IRS have the authority to change designation of qualified OZs from one eligible census tract to another. One potential reason to change an OZ designation could be to support investment in an area that has more viable development projects for investors. However, the IRS has stated that such requests cannot be accommodated because IRC Section 1400Z-1 authorized only one determination and designation period for Treasury and IRS to certify and designate census tracts as qualified OZs.[34] Under this reasoning, new legislation would need to be enacted to change the amount of qualified OZs, open a new round of OZ designations (e.g., using the most recent economic data), or change criteria for qualified OZs.

Roles of Federal and Subnational Governments

The federal government played an active role in establishing the rules for OZs and continues to administer the tax benefits to QOFs that engage in OZ-eligible activities. Congress enacted OZs as part of the 2017 tax revision (P.L. 115-97). The Fund formally designated census tracts as QOFs that were eligible under the statutory criteria and nominated by state CEOs (e.g., governors). Treasury and the IRS then promulgated regulations on the OZ tax benefits and issued additional transactional guidance. As discussed more in "Coordination of Federal Economic Development Programs with Opportunity Zones," other agencies could assume a larger role in providing financial incentives for investment in qualified OZs.

Absent further congressional legislation, subnational governments will likely play a larger role in the types of individual projects and activities that will be supported by OZ investment. For example, governors and state legislatures could seek to promote OZs within their jurisdictions as attractive options for investment, or enact state-level incentives to enhance potential private-

[32] Joint Committee on Taxation, *Estimated Revenue Effects of the Conference Agreement for* H.R. 1*, The "Tax Cuts and Jobs Act,"* JCX-67-17, December 18, 2017, p. 6, at https://www.jct.gov/publications.html?func=startdown&id=5053.

[33] U.S. Congress, Joint Committee on Taxation, *Estimates of Federal Tax Expenditures for Fiscal Years 2020-2024*, committee print, 116th Cong., November 5, 2020, JCX-23-20, at https://www.jct.gov/publications/2020/jcx-23-20/.

[34] Letter 2019-0025 from William A. Jackson, Chief, Branch 5, IRS Office of Associate Chief Counsel, to Honorable Donald Norcross, Member, U.S. House of Representatives, September 27, 2019, at https://www.irs.gov/pub/irs-wd/19-0025.pdf.

sector returns in OZs.[35] Like state officials, local government entities can also provide further incentives to attract OZ investments. Local zoning agencies and mayoral offices may have the most direct effect on what projects can proceed within specific OZs. These officials can approve or deny building permits, or grant approval of permits based on the projects meeting certain conditions (e.g., building height variances, promotion of certain goals about population density, mixed-income housing units).

Coordination of Federal Economic Development Programs with Opportunity Zones

In 2018, then-President Trump issued an executive order that created the interagency White House Opportunity and Revitalization Council, whose goal was to "encourage public and private investment in urban and economically distressed areas, including qualified opportunity zones."[36] This council, chaired by the Secretary of the U.S. Department of Housing and Urban Development, was tasked with assessing actions that each federal agency could take under its existing authority to prioritize or focus federal programs in economically distressed communities, including qualified OZs, and reduce regulatory and administrative costs that could discourage such public and private investment. Pursuant to the executive order, some agencies have promulgated regulations or issued press releases explaining how they are working toward these goals.[37]

Proponents of such activities could argue that federal coordination of benefits could enhance the incentive effects of OZs. Examinations of past federal economic development incentives, such as the NMTC, have indicated that one federal incentive, alone, might not be sufficient to drive private-sector investment in distressed communities.[38] By "stacking" multiple government benefits in qualified OZs, though, economic development assistance could be more successful in driving private and public investment in qualified OZs. Critics of this approach could argue that such coordination could undermine assessments of the OZ tax incentives and could make the OZ tax incentives appear to be more effective in increasing economic outcomes than they would otherwise if measured in isolation.

Timeline of Tax Benefits

In order to benefit from the 10% (or 15%) step-up in basis for capital gains rolled over into a QOF and held for five (or seven) years, investors would have needed to roll over their capital gains into a QOF by the end of calendar year 2021 (or 2019). By doing so, investors would be able to obtain a full five (or seven) years holding period needed for the 10% (or 15%) basis adjustment.

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[35] For example, see J. Brian Charles, "States, Cities Add Sweeteners to Attract 'Opportunity Zone' Investors," *Governing*, April 17, 2019, at https://www.governing.com/topics/finance/gov-opportunity-zones-extra-incentives.html; and Novogradac, "State Opportunity Zones Legislation," at https://www.novoco.com/resource-centers/opportunity-zones-resource-center/state-opportunity-zones-legislation.

[36] Executive Order 13853, "Establishing the White House Opportunity and Revitalization Council," 83 *Federal Register* 65071, December 18, 2018, at https://www.federalregister.gov/documents/2018/12/18/2018-27515/establishing-the-white-house-opportunity-and-revitalization-council.

[37] For example, see U.S. Department of Commerce, "Review of DOC Policy in Opportunity Zones," 84 *Federal Register* 45946-45949, September 3, 2019.

[38] For example, see p. 34 in U.S. Government Accountability Office, *Tax Policy: New Markets Tax Credit Appears to Increase Investment by Investors in Low-Income Communities, but Opportunities Exist to Better Monitor Compliance*, GAO-07-296, January 2007, https://www.gao.gov/new.items/d07296.pdf

Congress could decide that there was not sufficient time for QOFs to form and raise money from investors, who might have waited to participate in OZ investments until they conducted more research or reviewed developing regulations. To allow for more investments to qualify for the 10% (or 15%) step-up in basis, the mandatory recognition of deferred capital gains in IRC 1400Z-2 could be delayed to allow these benefits time to accrue. In the 117th Congress, H.R. 7467 would extend the OZ deferral period through the end of 2028 and allow the 15% step-up in basis on a six-year holding period and H.R. 970 would extend OZ deadlines by two years. Critics of such proposals, however, could oppose such policies, citing a concern that the OZ tax incentives largely benefit investors, rather than low-income communities and their current residents.

Congressional Oversight

Congressional oversight of OZs has focused on how they are designated, their efficacy as a means to increase investment in low-income areas, and their reporting requirements. Each issue is discussed below.

Designation of Qualified Opportunity Zones

Some Members of Congress have expressed concern that politically connected individuals might have had an unfair or improper influence on the geographical designation of certain census tracts as qualified OZs. Reports alleging such influence have been published in various media outlets.[39] In 2019, Senator Cory Booker, Representative Emmanuel Cleaver, and Representative Ron Kind sent a letter to Acting Treasury Inspector General (IG) Richard Delmar asking that the designation process be investigated.[40] The Treasury IG has reportedly accepted that request, although the exact scope of the investigation has not been publicly disclosed.[41]

Related to this issue, the Urban Institute previously analyzed the census tracts designated by the CEOs of the states and the District of Columbia, "scoring" each against measures of the investment flows they are receiving and the socioeconomic changes they have already experienced.[42] Tracts that were selected by the state's respective CEO and designated as QOZs were compared with eligible, nondesignated tracts not selected by the CEO. CEOs in Montana, DC, Alaska, and Georgia selected areas with the lowest levels of preexisting investment.[43] Conversely, CEOs in Hawaii, Vermont, Nebraska, and West Virginia selected areas with the highest levels of preexisting investment. Additionally, the researchers found

> Designated [OZ] tracks [*sic*] do have lower incomes, higher poverty rates, and higher unemployment rates than eligible nondesignated tracts (and the US overall average, which

[39] For example, see Jeff Ernsthausen and Justin Elliott, "One Trump Tax Cut Was Meant to Help the Poor. A Billionaire Ended Up Winning Big," *ProPublica*, June 19, 2019, at https://www.propublica.org/article/trump-inc-podcast-one-trump-tax-cut-meant-to-help-the-poor-a-billionaire-ended-up-winning-big; Eric Lipton and Jesse Drucker, "Symbol of '80s Greed Stands to Profit From Trump Tax Break for Poor Areas," *NY Times*, October 26, 2019, at https://www.nytimes.com/2019/10/26/business/michael-milken-trump-opportunity-zones.html; and Jeff Ernsthausen and Justin Elliott, "How a Tax Break to Help the Poor Went to NBA Owner Dan Gilbert," *ProPublica*, October 24, 2019, at https://www.propublica.org/article/how-a-tax-break-to-help-the-poor-went-to-nba-owner-dan-gilbert.

[40] See Letter from Sen. Booker et al. (October 31, 2019).

[41] Justine Coleman, "Treasury Watchdog to Investigate Trump Opportunity Zone Program," *The Hill*, January 15, 2020, at https://thehill.com/policy/finance/478521-treasury-watchdog-to-investigate-trump-opportunity-zone-program.

[42] Brett Theodos, Brady Meixell, and Carl Hedman, *Did States Maximize Their Opportunity Zone Selections?* Urban Institute, May 21, 2018, at https://www.urban.org/research/publication/did-states-maximize-their-opportunity-zone-selections. State-by-state comparisons are available in a spreadsheet on the linked page.

[43] Ibid., at 4.

> is as expected given eligibility criteria). Housing conditions trend in similar ways, with lower home values, rents, and homeownership rates. The designated tracts are also notably less white and more Hispanic and black than eligible nondesignated tracts. Age compositions are comparable. Education levels are somewhat lower among designated tracts than eligible nondesignated tracts.... In terms of this program, there appears to be no targeting on the basis of urbanization.[44]

In the 117th Congress, several bills would modify OZ designations. H.R. 7467 would allow state CEOs to remove OZ designations from tracts where median family income now exceeds 130% of the national median family income and allow those CEOs to designate a replacement census tract, while H.R. 4177 would allow state CEOs to designate an additional 5% of the state's eligible census tracts, and H.R. 1740 would designate all of Puerto Rico as an OZ.

Efficacy of OZs to Improve Economic Conditions of Low-Income Areas

In 2019, House Ways and Means Committee Chairman Richard E. Neal, Senate Finance Committee then-Ranking Member Ron Wyden, House Ways and Means Oversight Subcommittee then-Chairman John Lewis, and Senator Cory Booker wrote a letter to GAO requesting it to "study the [OZ] program to review its effectiveness in spurring investment in low-income areas compared to other federal incentives, zone designations and program compliance."[45] Among several research questions, the request asked GAO to compare OZ tax incentives to other economic development tax incentives, such as the NMTC and LIHTC, and compare the characteristics of census tracts that were eligible but not designated to those that were designated. GAO issued its final report in October 2020 and found that OZs have fewer limits on permissible project types and fewer controls to limit revenue losses.[46] GAO also found that insufficient data were being collected to evaluate OZ performance. GAO found that addressing the latter concern may require congressional action.

Early academic research on Opportunity Zones has generally found modest to no effect on economic outcomes. Focusing on employment, preliminary evidence is mixed, with research using establishment-level data finding the reduction in capital gains taxes for OZ investment increasing job growth by 3 to 4.5 percentage points relative to census tracts that were eligible but did not receive OZ designations.[47] Other research using census tract-level data and controlling for predesignation trends fails to find an effect on employment, and research focusing on job postings also fails to find an increase in job postings in OZ census tracts.[48] Other preliminary research has found initial OZ investment to be concentrated in a limited number of designated census tracts

[44] Ibid., at 8.

[45] House Ways and Means Committee Chairman Richard Neal, "Neal, Wyden, Lewis, Booker Request GAO Study on Opportunity Zone Program," press release, November 6, 2019, at https://waysandmeans.house.gov/media-center/press-releases/neal-wyden-lewis-booker-request-gao-study-opportunity-zone-program.

[46] U.S. Government Accountability Office, *Opportunity Zones: Improved Oversight Needed to Evaluate Tax Expenditure Performance*, GAO-21-30, October 8, 2020, https://www.gao.gov/products/gao-21-30.

[47] Alina Arefeva et al., "The Effect of Capital Gains Taxes on Business Creation and Employment: The Case of Opportunity Zones," December 13, 2021, https://ssrn.com/abstract=3645507 or http://dx.doi.org/10.2139/ssrn.3645507.

[48] Matthew Freedman, Shantanu Khanna, and David Neumark, "JUE Insight: The Impacts of Opportunity Zones on Zone Residents," *NBER Working Paper 28573*, November 2021, https://www.nber.org/system/files/working_papers/w28573/w28573.pdf; and Rachel Atkins et al., "What is the Impact of Opportunity Zones on Employment?" July 31, 2021, NYU Stern School of Business, https://ssrn.com/abstract=3673986.

that appear to have positive predesignation economic trends[49] and little to no initial effect on housing prices.[50]

Data and Reporting Requirements on Beneficial Investors and Projects

Testimony before some committees has reinforced suggestions that Congress lacks adequate information for oversight of OZ tax benefits and that further data-reporting requirements are needed.[51] QOFs are not required by statute to provide periodic public reports on the locations of their investments or economic impacts of those investments on low-income communities. The ability of the IRS and Treasury to disclose such information is currently limited by general provisions protecting taxpayer confidentiality absent the taxpayer's consent.[52] However, Treasury or Joint Committee on Taxation (JCT) economists could conduct an in-house study measuring the effects of the tax provision without publicly disclosing confidential taxpayer data, and Congress could amend taxpayer confidentiality rules to permit or require disclosure.

Under its existing authority, the IRS has sought public input on ways to modify the Form 8996, which is filed annually by taxpayers that have self-elected QOF status, to increase the amount of data collected on OZ investments.[53] Starting with the 2019 tax year (2020 tax filing season), the IRS now asks for more data on the value and location of qualified OZ property owned or leased by the QOF, as well as any qualified OZ stock or partnership interests.[54]

Currently, data and metrics on investment in OZs are provided by government and private industry sources. For example, a working paper utilizing federal business tax returns indicated that $18.9 billion in new OZ investment was claimed on electronically filed returns and that roughly $6 billion in new OZ investment was claimed via paper returns.[55] The authors find that reported OZ investment is overwhelmingly concentrated in equity investments in businesses that specialize in real estate, construction, and finance. Novogradac, an accounting and consulting firm that focuses on economic development tax incentives, reported that a total of 1,035 QOFs nationwide had raised $28.37 billion in equity as of March 2022.[56] The names, contact information, and investment focus areas of QOFs that elected to provide such information are

[49] Patrick Kennedy and Harrison Wheeler, "Neighborhood-Level Investment from the U.S. Opportunity Zone Program: Early Evidence," April 15, 2021, https://ssrn.com/abstract=4024514.

[50] Jiafeng Chen, Edward L. Glaeser, and David Wessel, "The (Non-) Effect of Opportunity Zones on Housing Prices," *NBER Working Paper 26587*, December 2019, https://www.nber.org/papers/w26587.

[51] For example, see U.S. Congress, House Committee on Ways and Means, Subcommittee on Oversight, *The Opportunity Zone Program and Who it Left Behind*, 117th Cong., November 16, 2021 at https://waysandmeans.house.gov/legislation/hearings/oversight-subcommittee-hearing-opportunity-zone-program-and-who-it-left-behind and U.S. Congress, House Committee on Small Business, Subcommittee on Economic Growth, Tax, and Capital Access, *Can Opportunity Zones Address Concerns in the Small Business Economy?* 116th Cong., October 17, 2019, at https://smallbusiness.house.gov/calendar/eventsingle.aspx?EventID=2901.

[52] See IRC Section 6103.

[53] Department of the Treasury, "Request for Information on Data Collection and Tracking for Qualified Opportunity Zones," 84 *Federal Register* 18648-18649, May 2, 2019. Regulatory docket available at https://www.regulations.gov/document?D=TREAS-DO-2019-0004-0001.

[54] For the most recent official version see, IRS, "Form 8996 – Qualified Opportunity Fund," at https://www.irs.gov/pub/irs-pdf/f8996.pdf.

[55] Patrick Kennedy and Harrison Wheeler, "Neighborhood-Level Investment from the U.S. Opportunity Zone Program: Early Evidence," April 15, 2021, https://ssrn.com/abstract=4024514.

[56] Novogradac, "Opportunity Funds Listing" (accessed April 25, 2022), at https://www.novoco.com/resource-centers/opportunity-zone-resource-center/opportunity-funds-listing. In addition, Novogradac has identified another 383 QOFs that have not yet reported raising equity.

also listed on Novogradac's website, as well as other third-party sites.[57] Some of these third-party data sources also indicate the minimum investment required for an investor to participate in a particular QOF.

Several bills introduced in the 117th Congress are intended to promote oversight and transparency of OZs. For example, H.R. 7467 would require QOFs to report the physical location of an OZ investment, the industry of the investment, and the number of jobs supported by the investment. The bill would also require investors to report information on their investments in QOFs that would allow the IRS the ability to link the investor to a specific QOF and to their deferred gains invested in a QOF.

More QOF disclosure on tax forms could aid the IRS in ensuring the proper administration of OZ tax incentives. Although the IRS would be limited in disclosing such taxpayer-provided data to the public without the taxpayer's consent, it could release some aggregated amounts of OZ investments organized at state or local levels or the tax benefits claimed by income level in order to provide the public with a better idea of how the direct benefits of OZ tax incentives are distributed. If substantial disclosure, public or private, were required by investors or QOFs, though, then that could be a disincentive for some participation in OZ-related investments. More detailed forms could also increase compliance costs for QOFs.

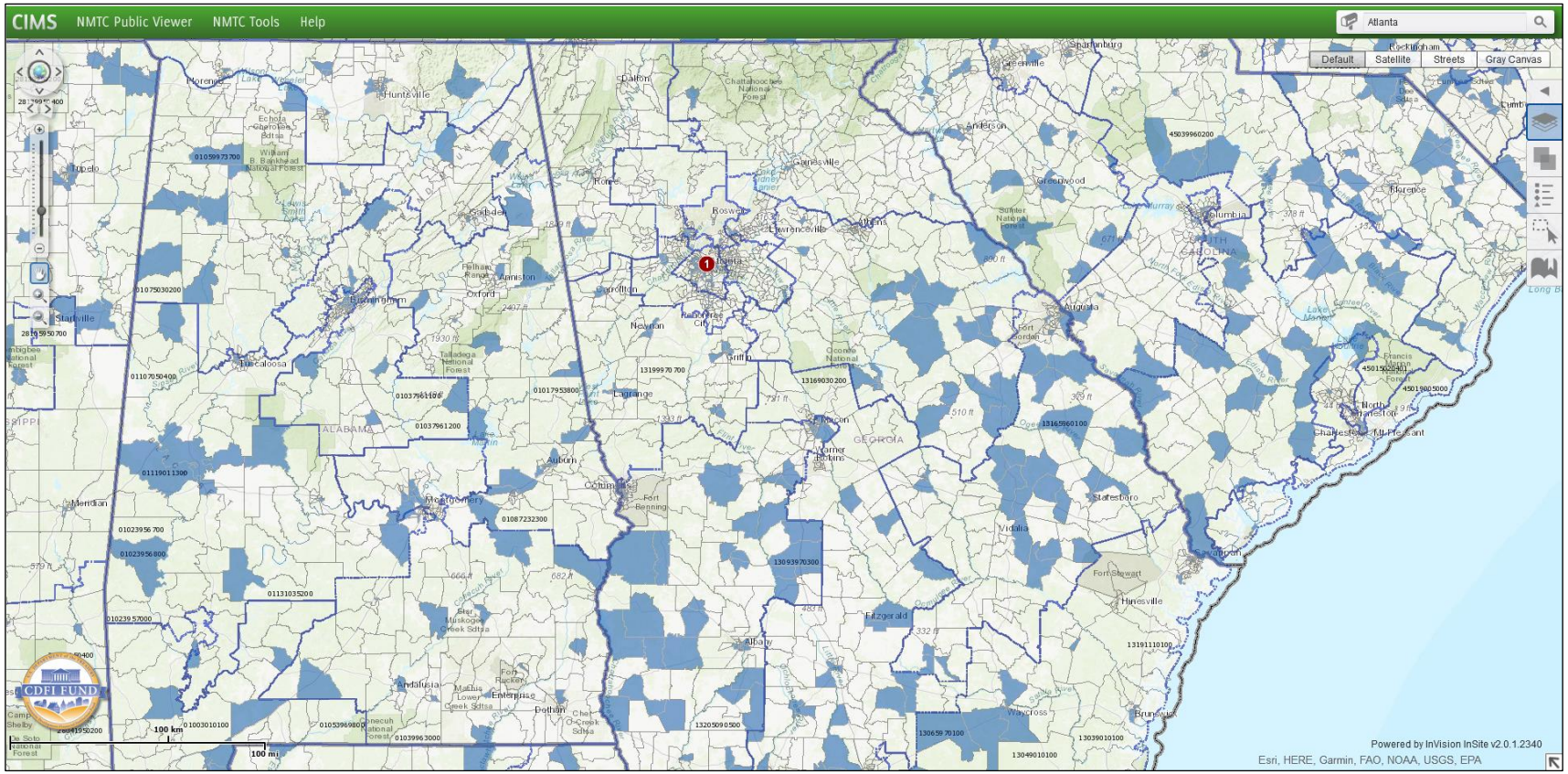
[57] For example, see OpportunityDb, "Opportunity Zone Fund Directory," at https://opportunitydb.com/funds/.

Appendix A. Illustration of CDFI OZ Mapping Tool

Figure A-1 provides an illustrative screenshot of the Fund's online mapping tool. This image displays census tracts that have been designated as a qualified OZ in the Southeast, primarily Alabama, Georgia, and South Carolina. Designated OZs are shown in blue. A complete list of qualified OZs is available on the Fund's "Opportunity Zone" website.[58]

[58] See CDFI Fund, "List of Designated Qualified Opportunity Zones," at https://www.cdfifund.gov/sites/cdfi/files/documents/designated-qozs.12.14.18.xlsx. Qualified OZs are also published in IRS Notice 2018-48, Designated Qualified Opportunity Zones Under Internal Revenue Code § 1400Z-2, at https://www.irs.gov/pub/irs-drop/n-18-48.pdf; and IRS Notice 2019-42, Amplification of Notice 2018-48 to Include Additional Puerto Rico Designated Qualified Opportunity Zones, at https://www.irs.gov/pub/irs-drop/n-19-42.pdf.

Figure A-1. CDFI Fund Mapping Tool Showing Designated Opportunity Zones (OZs) in the Southeast



Source: CRS screenshot of CDFI Fund, CIMS mapping tool, accessed November 11, 2018, at https://www.cims.cdfifund.gov/preparation/?config=config_nmtc.xml.

Notes: Designated OZs are shown in blue. Congressional district borders have been enabled in the above screenshot

Appendix B. Number of Census Tracts Eligible in Each State for Qualified OZ Designation

Table 2 displays the maximum number of census tracts in each state or territory that were eligible for OZ designation under each of the two nomination criteria. These data, from February 27, 2018, were posted on the Fund's website before the qualified OZ recommendations issued by state or territory CEOs were certified.

Table 2. Maximum Number of Census Tracts Eligible for Opportunity Zone Designation, by State or Territory, 2018

	A	B	C
State/Territory	Total Number of Low-Income Community (LIC) Tracts in State/Territory	Maximum Number of Tracts That Can Be Nominated (the Greater of 25% of All LICs or 25 If State/Territory Has Fewer Than 100 LICs)	Maximum Number of Eligible Non-LIC Contiguous Tracts That Can Be Nominated (5% of Column B)
Alabama	629	158	8
Alaska	55	25	2
American Samoa	16	25	See Notes
Arizona	671	168	9
Arkansas	340	85	5
California	3,516	879	44
Colorado	501	126	7
Connecticut	286	72	4
Delaware	80	25	2
District of Columbia	97	25	2
Florida	1,706	427	22
Georgia	1,039	260	13
Guam	31	25	2
Hawaii	99	25	2
Idaho	109	28	2
Illinois	1,305	327	17
Indiana	621	156	8
Iowa	247	62	4
Kansas	295	74	4
Kentucky	573	144	8
Louisiana	597	150	8
Maine	128	32	2
Maryland	593	149	8

State/Territory	A Total Number of Low-Income Community (LIC) Tracts in State/Territory	B Maximum Number of Tracts That Can Be Nominated (the Greater of 25% of All LICs or 25 If State/Territory Has Fewer Than 100 LICs)	C Maximum Number of Eligible Non-LIC Contiguous Tracts That Can Be Nominated (5% of Column B)
Massachusetts	550	138	7
Michigan	1,152	288	15
Minnesota	509	128	7
Mississippi	399	100	5
Missouri	641	161	9
Montana	90	25	2
Nebraska	176	44	3
Nevada	243	61	4
New Hampshire	105	27	2
New Jersey	676	169	9
New Mexico	249	63	4
New York	2,055	514	26
North Carolina	1,007	252	13
North Dakota	50	25	2
Northern Mariana Islands	20	25	See Notes
Ohio	1,280	320	16
Oklahoma	465	117	6
Oregon	342	86	5
Pennsylvania	1,197	300	15
Puerto Rico	835	See Notes	See Notes
Rhode Island	78	25	2
South Carolina	538	135	7
South Dakota	69	25	2
Tennessee	702	176	9
Texas	2,510	628	32
Utah	181	46	3
Vermont	48	25	2
Virgin Islands	13	25	See Notes
Virginia	847	212	11
Washington	555	139	7
West Virginia	220	55	3
Wisconsin	479	120	6

Wyoming	33	25	2

Source: CDFI Fund, "Opportunity Zones Information Resources," February 27, 2018, at https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx.

Notes: These data are no longer available on the CDFI Fund website, above, and were accessed before publication of earlier versions of this CRS report.

Puerto Rico: The Bipartisan Budget Act of 2018 (P.L. 115-123) deemed each census tract in Puerto Rico that is a low-income community to be certified and designated as a qualified OZ. Treasury added two census tracts to the 835 census tracts initially deemed eligible low-income communities.

USVI: The U.S. Virgin Islands could nominate Eligible Non-LIC Contiguous Tracts, provided that the nominated non-LIC tracts do not exceed 5% of all nominated tracts (both low-income communities and nominated contiguous tracts). Thus the USVI could nominate no more than one of its Eligible Non-LIC Contiguous Tracts.

Northern Mariana Islands and American Samoa: Neither the Northern Mariana Islands nor American Samoa had any Eligible Non-LIC Contiguous Tracts.

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