

The Opportunity Zones Transparency, Extension, and Improvement Act

*Senators Cory Booker, Tim Scott, Mark Warner, Todd Young, and Chris Van Hollen
and Representatives Ron Kind (D-WI-03), Mike Kelly (R-PA-16), Terri Sewell (D-AL-07),
Dan Kildee (D-MI-05), and Jackie Walorski (R-IN-02)*

Section-by-Section Summary

Findings

The 8,764 census tracts designated as qualified opportunity zones under section 1400Z-1 of the Internal Revenue Code of 1986 span across all 50 States, the District of Columbia, and 5 Territories and overwhelmingly represent communities that have been economically left behind as the American economy has surged forward.

The average poverty rate of qualified opportunity zone residents is 26.4 percent, nearly double the national average. They cover 54 percent—more than half—of the country’s pockets of concentrated persistent poverty, meaning census tracts in which at least 40 percent of the population has lived in poverty since at least 1980. More adults in qualified opportunity zones lack a high school diploma than have a four-year college degree.

Subtitle I -- Modification Of Tracts Qualified To Be Designated As Qualified Opportunity Zones

SEC. 101. Modification Of Tracts Qualified To Be Designated As Qualified Opportunity Zones.

This section requires the early sunset of the Opportunity Zone designation for census tracts with a high median family income (MFI), which comprise a small percentage of the overall OZ map. In general, these tracts do not align with the intent of the incentive to draw capital to underserved and overlooked communities.

In general, Opportunity Zone census tracts with a MFI that exceeds 130 percent of the national MFI would not retain their OZ status. However, high-MFI Opportunity Zones with a poverty rate of 30 percent or higher for non-student populations would remain Opportunity Zones. In addition, state executives would be permitted to seek a determination from Treasury to add or remove sunset tracts. State executives are allowed to replace the sunset tracts and designate an equivalent number of qualifying low-income census tracts as Opportunity Zones, and required to consult with the local jurisdictions in which the replacement census tracts are located.

The section establishes a timeline and process, led by Treasury, for the identification of tracts that meet the criteria for early sunset, the appeal by state executives to the Secretary for certain disqualifying tracts to retain their OZ designation, and for the nomination by state executives of additional tracts for de-designation that do not meet the purpose of the policy (e.g. graveyards, swamplands, etc.). The timeline is as follows:

- As soon as is practical and not more than 12 months after the date of enactment: Department of the Treasury publishes an initial list of disqualified Opportunity Zones census tracts and the list of

Note: OZ = Opportunity Zone; QOF = Qualified Opportunity Fund; QOZP = Qualified Opportunity Zone Property; QOZB = Qualified Opportunity Zone Business

non-Opportunity Zone low-income communities that are eligible to be nominated as replacement Opportunity Zones. Treasury also publishes regulations or guidance regarding the state executives' election of additional tracts to disqualify.

- Not more than 60 days after the publication of the initial list of disqualifying tracts: State executives must submit to Treasury a request to retain the OZ designation for a disqualifying tract they believe is consistent with the purposes of the subchapter, and/or submit to Treasury additional Opportunity Zones census tracts for disqualification, the continued status of which they believe does not meet the purpose of the subchapter and therefore should be disqualified. Treasury must agree with these determinations in order for the tracts to be either removed or added to the list of disqualifying tracts.
- Not more than 105 days after the publication of the initial list of disqualifying tracts: Treasury must publish the final list of disqualifying tracts.
- Thirty days after the publication of the final list of disqualified tracts: The disqualified tracts included in Treasury's final list are no longer Qualified Opportunity Zones.
- Not more than 45 days after the publication of the final list of disqualifying tracts: State executives submit nominations to Treasury for replacement tracts.

Replacement tracts will retain their Qualified Opportunity Zone status for 10 years, beginning on the date of designation. The latest available census data must be used to determine disqualifying and replacement tracts.

The section also provides guidance for existing investments in OZ tracts that sunset early. The rule for pre-existing investments applies to any trade or business (or intended trade or business) of a QOF, QOZB for all purposes of section 1400Z-2. A qualified pre-existing trade or business is defined as any trade or business if 1) before the date of enactment, the trade or business files a registration statement with the SEC, prepares an offering memorandum, or prepares a similar disclosure document that discloses the intent of such trade or business to invest in the disqualified OZ tract; 2) before the date on which that disqualified tract appeared on either the initial or final list of disqualified tracts published by Treasury, the trade or business has made or has entered into a binding agreement to make an investment of more than \$250,000 in the disqualified tract; or (3) the Secretary determines that the trade or business relied on the designation of the OZ tract and will suffer a loss as a result the tract's disqualification as an OZ. Investments made in QOFs operating in a disqualified tract before the tract's designation sunsets are preserved, as long as the trade or business sufficiently relies on the OZ designation as provided in (i)-(iii) above.

This language protects early-stage projects or businesses that were begun in reliance on the original OZ designation, which is important for start-up businesses or significant real estate development projects that might take months to complete. However, even if a QOF or QOZB is established before the sunset of the OZ designation, it may not undertake new projects or enter into new trades or businesses.

Note: OZ = Opportunity Zone; QOF = Qualified Opportunity Fund; QOZP = Qualified Opportunity Zone Property; QOZB = Qualified Opportunity Zone Business

SEC. 102. Certain Former Industrial Tracts Permitted To Be Designated As Opportunity Zones [H.R.7183 “Rust to Revitalization Act”]

This section allows for certain zero population census tracts to be eligible for Opportunity Zones designation. In order to qualify, these tracts must be zero population, adjacent to a current Opportunity Zone on at least one side, formerly used for an industrial purpose, and contain a brownfield site (as determined by the EPA or appropriate State authority). This section is intended to narrowly expand the map of Opportunity Zones to include these places that are in need of revitalization and often have trouble securing financing, but have the potential to be centers of economic activity in the community.

State executives are required to identify the census tracts that meet the criteria and submit the list to Treasury for review and certification as Opportunity Zones.

Subtitle II -- Information Reporting Requirements [S.2994 “IMPACT Act”]

SEC. 201. Information Reporting On Qualified Opportunity Funds

The following sections are to be added to the Internal Revenue Code after Sec. 6039J.

Sec. 6039K. Returns With Respect To Qualified Opportunity Funds

This section codifies and expands the information required to be reported on IRS Form 8996. It adds new requirements to report the number of persons employed through OZ investments, thereby providing data on job creation and firm growth without burdening small businesses and funds alike. Specifically, it requires QOFs to report:

- The QOFs name, address, TIN, how the fund is structured, the value of total assets held by the fund as of the required reporting dates, including the value of all qualified Opportunity Zone property held by the fund on such date.
- With respect to each investment held by the QOF in Qualified Opportunity Zone stock or partnership interests, the QOF must report: the name, address, and TIN of the corporation in which the stock/partnership interest is held, the North American Industry Classification (NAIC) code that applies to the trade or business conducted by the corporation or partnership, the census tracts in which the Qualified Opportunity Zone property of such corporation or partnership is located, the amount of the investment in such stock or partnership interest as of the reporting period, the value of property held by such corporation or partnership as well as leased property, the approximate number of residential units (if any) for real property held, and the approximate average monthly number of full time employees for the 12 month period across a set of ranges.
- With respect to Qualified Opportunity Zone Business Property, funds must report: the NAIC code that applies, the census tract where the property is located, whether it is owned or leased, the aggregate value of the items of property as of the reporting dates, number of residential units if applicable, and number of employees if applicable.

Note: OZ = Opportunity Zone; QOF = Qualified Opportunity Fund; QOZP = Qualified Opportunity Zone Property; QOZB = Qualified Opportunity Zone Business

For disposed investments, this section requires the name and TIN of the taxpayers who disposed of an investment during the year as well as the date of disposal and date of acquisition of the original investment and the amount disposed.

SEC. 6039L. Information On Persons Investing In Qualified Opportunity Funds.

This section requires investors to report critical information on Opportunity Zone investments including funds receiving investments, relevant dates on which investments and dispositions are made, descriptions of Opportunity Zone investments, and measures that will continue to allow IRS to track both the deferral and recognition of gains, the trajectory of OZ investments over time, and compliance more broadly.

This section codifies and expands the information required to be reported on IRS Form 8997. Specifically, it requires individual investors to report their name, TIN, and address as well as the name, TIN of the QOF in which investment was made, description of investment, date of investment, amount of short- and long-term gains for which deferral was made, for dispositions, the description of the investment disposed, the date of disposition, and the amount of any previously deferred short-term and long-term gain included in income as a result of the disposition. It also includes the authority for the Secretary to collect additional information, if necessary.

Sec. 6039M. Information Required from Certain Qualified Opportunity Zone Businesses.

The section requires every applicable QOZB to provide QOFs with information that will enable the QOF to comply with the information reporting requirement in Section 6039K.

Sec. 6726. Failure To Comply With Information Reporting Requirements Relating To Qualified Opportunity Funds.

The section establishes new penalties for funds that fail to comply with their respective reporting requirements of \$500 per day with a \$10,000 cap, unless total assets of the fund for the tax year exceed \$10,000,000, then a \$50,000 cap applies. Reasonable cause exceptions apply. In cases of intentional disregard, penalties for funds increase to \$2,500 per day with a cap of \$50,000 or \$250,000 for large QOFs.

The section also adds new penalties for investors: \$5,000 penalty for failure to comply with their respective reporting requirements with 60 days to correct, in which case a \$500 penalty applies. Reasonable cause exceptions apply. Finally, it heightens penalties for investors who exhibit intentional disregard to \$25,000.

(b) Reporting of Data on Opportunity Zone Tax Incentives

This section requires a comprehensive public report of aggregated information on the following as soon as practicable, and then annually, which would include:

- Total number of funds
- Total assets of such funds

Note: OZ = Opportunity Zone; QOF = Qualified Opportunity Fund; QOZP = Qualified Opportunity Zone Property; QOZB = Qualified Opportunity Zone Business

- Distribution of QOF investments into OZ property across different industries by North American Industry Classification (NAIC) Codes
- Percentage of all tracts that have received QOF investment into OZ property
- Aggregate total amount of QOF investments by census tract
- Distribution of OZ investments in real property vs business equity
- The aggregate amount of residential units and businesses by firm size through employment ranges for QOZ businesses and property that received QOF investment for each census tract

Additionally, this section requires Treasury to provide a comprehensive report in the 6th and 11th years after the date of enactment on the following socioeconomic data points:

- Broader impacts on job creation, poverty reduction, new business starts, and other metrics deemed necessary by the Secretary
- Comparison of the below data points for designated OZs for 5-year period of this study compared against both those same data points for these zones for the 5 years before they were designated and also compared against low-income communities that were eligible to be selected for OZ designation but were not for the same 5 year period of this study on the following factors:
 - Unemployment rate by census tract
 - Number of persons working in the census tract and the percentage of those persons who were not residents of the tract in the preceding year
 - Individual, family, and household poverty rates
 - Median family income
 - Demographic information on tract residents including age, education, income, employment, and race
 - Percentage of income used for rent by census tract
 - Total number of residences in the census tract and the average value of residential property
 - Number of affordable housing units in the tract
 - Number and percentage of residents who were not employed for the preceding year
 - Number of new business starts in the census tract
 - Distribution of employees in the census tract by NAIC codes

Title III—Modification of Rules for Investments in Qualified Opportunity Funds

Sec. 301. Extension of Deferral Period

This section extends the deferral period from December 31, 2026 to December 31, 2028. It also lowers the requirement to receive the additional five percent step-up in basis from holding the investment for seven years to six years.

Sec. 302. Modification Of Definition Of Qualified Opportunity Fund.

Note: OZ = Opportunity Zone; QOF = Qualified Opportunity Fund; QOZP = Qualified Opportunity Zone Property; QOZB = Qualified Opportunity Zone Business

This section would allow QOFs to be organized as a "feeder fund" that may invest in other QOFs, so long as there is only one QOF-to-QOF transaction before the capital is deployed into a qualifying QOZ property or business. A Qualified Feeder Fund is required to be formed as a partnership and invest 95 percent of its assets into a QOF.

Allowing this "fund-of-funds" model will greatly help smaller, regionally-focused, and impact-oriented funds raise capital and overcome scale challenges with institutional investors.

Title IV—State And Community Dynamism Fund

Sec. 401. State And Community Dynamism Fund

This section establishes a \$1 billion State and Community Dynamism Fund to provide the states, territories, and District of Columbia with technical assistance, capacity building, and financing support to drive capital to projects and businesses in underserved communities. The funding would be allocated to states by a formula developed by Treasury based on the proportion of prime age adults not employed in the state compared to the national figure. States would have the authority to suballocate funds to local governments and nonprofits.

The funding would be targeted towards projects that build capacity in high-poverty, high-need, rural, and underbanked communities; increase investment in minority-, women, and veteran-owned businesses; advance workforce development efforts in strategic sectors of the state's economy; and create additional affordable housing.

State and local governments could apply the funding towards a range of uses, including personnel to support coordination, education, and investment activities; community-level capacity building, training, and strategic planning; and outreach, technical assistance, and professional services to underserved businesses and Qualified Opportunity Fund managers.

The funding could also be used to cover predevelopment costs associated with Qualified Opportunity Zone projects as well as help mitigate risk for QOFs deploying capital into high-impact projects in high-need industries such as healthcare, social services, healthy food access, education, and broadband. Other eligible projects include investments into small businesses and affordable housing developments.

The section also requires an annual GAO audit and report from the States to Congress on their use of the funds.

Note: OZ = Opportunity Zone; QOF = Qualified Opportunity Fund; QOZP = Qualified Opportunity Zone Property; QOZB = Qualified Opportunity Zone Business