

# Opportunity Zones

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**Administering Agency:** Internal Revenue Service (IRS) of the U.S. Department of the Treasury (Treasury)

**Year Enacted:** 2017

**Number of Persons/Households Served:**

There is no information regarding the number of persons or households served because neither IRS nor Treasury require this information to be reported

**Population Targeted:** The statute creating Opportunity Zones and subsequent regulations do not target specific populations, such as low-income people. There are no requirements to hire or train low-income zone residents or to pay living wages, create truly affordable housing, or create or preserve small businesses owned by or serving low-income zone residents. Nor are there protections to prevent displacement of low-income people or existing local small businesses as a result of OZ investments.

The IRS states that the purpose of Opportunity Zones (OZs) is to spur economic growth and job creation in low-income communities while providing capital gains tax breaks to investors.

See also: [\*A Critical Explanation of Opportunity Zones\*](#)

## HISTORY

As early as 2007, former Facebook president and Napster founder Sean Parker conceived the notion of dangling the prospect of reducing or avoiding capital gains taxes to corporations and extremely rich individuals entice them to fund investments in disinvested low-income communities. Years later he created the Economic Innovation Group (EIG) to promote his idea, which came to be known as Opportunity Zone capital gains tax breaks. OZs were endorsed by Senators Tim Scott (R-SC) and Corey Booker (D-NJ) and inserted as a very small provision in the “Tax Cuts and Jobs Act of 2017,” the massive,

nearly \$2 trillion tax cut legislation signed into law by President Donald Trump that overall primarily benefits corporations and extremely wealthy individuals. The OZ component of the 2017 tax act was not considered and debated through the normal congressional hearing process.

## PROGRAM SUMMARY

An Opportunity Zone is composed of “low-income” census tracts that have a poverty rate of at least 20% and median family income no greater than 80% of the area median income (AMI). A census tract that is not “low-income” may be designated as part of an OZ if it is contiguous to low-income tracts that make up an OZ and it has a median household income that does not exceed 125% of the median income of the contiguous low-income census tracts that form an OZ. Up to 5% of the census tracts may qualify under this exemption. Some census tracts that were low income based on census data several years ago have since experienced significant demographic changes resulting in them no longer being truly low-income and that are often gentrifying.

Governors, the Mayor of the District of Columbia, and the chief executive officers of the five U.S. territories could nominate up to 25% of their total eligible census tracts, along with up to 5% of that 25% that were contiguous non-low-income census tracts. According to the IRS, Treasury designated 8,764 zones that retain their designation for ten years. Congress later designated each low-income community in Puerto Rico as an OZ.

### What is the Tax Break?

The theory of Opportunity Zones is provide an “incentive” for an investor to reinvest an unrealized capital gain, which is a gain in the value of an investment (such as a stock) that has not been taxed because the investor has not sold it yet. The OZ “program” allows an investor to

defer (delay) until 2027, the capital gains tax that would otherwise be due when the investment is sold, as long as the amount of the gain is invested in a Qualified Opportunity Fund (QOF). (Taxes on the original capital gain is due no later than December 31, 2026.) In addition, if an investor holds the QOF investment for five years, the basis of their original investment is increased by 10% (meaning they will only owe taxes on 90% of the rolled-over capital gain). If the investment was made by December 31, 2019, and an investor holds it in the QOF for seven years, the basis increases by a further 5% (for a total exclusion of 15% of the gain over the seven-year period). The investor must “realize” (sell the investment) by 2027.

Significantly, an investor can exclude from taxable income until the end of 2047, all of any capital gain accrued from the investment in an Opportunity Fund (not the original gain which was deferred until 2027) held for at least ten years. In other words, after settling their original tax bill in 2027, patient investors in QOFs will face no capital gain tax on their OZ investment until the end of 2047. The OZ capital gain tax break is on top of the usual advantages for capital gains, which have a lower tax rate than the tax rate on regular income, plus the ability to defer capital gain tax until an asset is sold.

### **Aside from Investors, Who Benefits?**

As previously noted, neither the statute nor the final regulations require investments to benefit low-income OZ residents by building truly affordable housing in the OZ, employing low-income OZ residents, or providing affordable capital for OZ small businesses or minority-owned or women-owned businesses. Nor are there protections to prevent the displacement of low-income OZ residents or OZ small businesses as a result of new investments in distressed communities.

Because the entire “Tax Cuts and Jobs Act of 2017” was passed using the Senate budget reconciliation process, a provision in the OZ portion of the bill requiring some reporting was removed. Consequently, the statute does not

have data collection and reporting requirements. Due to opposition from developers and potential investors, the final regulations also fail to require data collection and meaningful reporting.

Therefore, anecdotal evidence is all that is available to assess the outcome of the capital gain tax breaks. Anecdotal evidence from the first three years suggests that extremely wealthy individuals and corporate investors are the beneficiaries. Anecdotes point to luxury hotels and apartments, parking lots, storage facilities, luxury student housing in census tracts next to major universities, and mostly projects long in the works or ready to go before the OZ capital gain tax break existed.

### **Early Warnings**

Red flags were waved by numerous sources in 2018.

In February, 2018, the [Brookings Institution](#) wrote:

“The value of the tax subsidy is ultimately dependent on rising property values, rising rents, and higher business profitability. That means a state’s Opportunity Zones could also serve as a subsidy for displacing local residents in favor of higher-income professionals and the businesses that cater to them...With few guardrails that might promote...policies to retain local residents and preserve or expand low- and middle-income housing, it is uncertain whether poor residents will benefit or be kicked out.”

The [Dallas Federal Reserve](#) wrote on October 18, 2018:

“Opportunity Funds could potentially direct capital largely to projects in areas already on the verge of gentrifying—places where high returns are most likely. In that eventuality, investors would get a tax break while neighborhoods would simply continue on the path of gentrification, displacing some of the highest-need households from the area.”

The [Center on Budget and Policy Priorities](#) (CBPP) wrote on January 1, 2019:

“..it [the law] includes no requirements to ensure that local residents benefit from investments receiving the tax break. Thus, this tax break could amount to a “subsidy for gentrification” in many areas instead of, as intended, for providing housing and jobs for low-income communities.”

“This tax break does *not* include rules or tests requiring its direct beneficiaries to make specific investments that actually produce public benefits or requiring that opportunity zone businesses hire workers from, or provide services to, the local community. If anything, its incentives push in the opposite direction: the tax break is worth the most with respect to investments whose value rises the fastest. As a result, investors will likely select investments – such as luxury hotels rather than affordable housing – based mainly on their expected financial return, not their social impact.”

Toward the end of 2019, Brett Theodos, Senior Fellow at the Urban Institute testified before the Subcommittee on Economic Growth, Tax, and Capital Access of the House Committee on Small Business. He stated OZs “lack any mechanism for community input or control,” and “There are no requirements that new apartments be rented to low- or moderate-income residents; no requirements that federally backed investment occur only when fully private-market financing is unavailable...The federal government has not sufficiently narrowed the eligible uses of this incentive to activities that will directly benefit low- and moderate-income residents or contribute to broader economic development in truly disinvested communities.”

### **An OZ Picture Starts to Emerge in 2019**

As 2019 rolled around, numerous media reported on long-planned, high-end projects located in OZs, sometimes after affluent developers lobbied governors to include their project’s area in a tract that either had not been selected or was not eligible for OZ designation.

*The New York Times* highlighted: a luxury hotel and opulent restaurant in New Orleans’ already

trendy Warehouse District; a 46-story luxury apartment tower in a Houston neighborhood already occupied by projects aimed at the affluent; a luxury office tower in Miami’s Design District where commercial real estate prices had nearly tripled in the last decade, and which developers had already planned 12 residential towers and large-scale retail and commercial spaces; a 35-story tower in downtown Portland, OR with a Ritz-Carlton hotel, condominiums, and office space; and, a self-storage center in Connecticut (and another in San Antonio reported by the *San Antonio Express-News*).

*ProPublica* published a series of articles.

In Florida, billionaire Wayne Huizenga Jr. had long planned to build luxury apartment towers, Marina Village, adjacent to the existing Rybovich superyacht marina on the West Palm Beach, FL waterfront. The census tract of the planned Marina Village was not originally picked to be a part of an OZ but was included after lobbying by Mr. Huizenga. Not included were three other low-income and racially diverse tracts identified by city leaders that were attractive areas for growth, rebounding from significant blight, and well positioned for new investment.

In Maryland, years before OZs, Sangamore Development, owned by Under Armor CEO Kevin Plank, started quietly buying waterfront properties in a mostly vacant, isolated area cut off from downtown Baltimore by I-95. The intent was to move Under Armor’s headquarters there and develop the area dubbed Port Covington with offices, a hotel, apartments, and shopping – all geared to millennials. Prior to gaining OZ designation, Port Covington already had \$660 million in tax increment financing, a Brownfields tax credit, and \$233 million from Goldman Sachs. Did it need more tax breaks to be viable?

The Port Covington tract, which includes a gentrified corner, was too wealthy to be an OZ. It couldn’t even meet the test to be included as a contiguous, non-low-income tract. Due to intensive lobbying with the governor and to a mapping error, Port Covington is now in an OZ.

In Michigan, Quicken Loans founder and

Cleveland Cavaliers owner, Dan Gilbert, had spent the past decade buying 100 buildings in downtown Detroit. Three areas of downtown Detroit with Gilbert holdings were selected as OZs, two of which critics assert are significantly wealthier than the surrounding area. One of the tracts sought by Gilbert was not initially included but eventually added after lobbying, even though it did not meet the poverty criteria. These census tracts already included Gilbert-owned office space with high-end tenants including Microsoft, JP Morgan, and Quicken Loans. A boutique hotel sits in another Gilbert property that is now in one of the OZs.

## THE OZ PICTURE COMES INTO FOCUS IN 2020 AND 2021

The Urban Institute’s [“An Early Assessment of Opportunity Zones for Equitable Development Projects”](#) set out to assess how OZs were working as a community development tool for mission-oriented entities that have a purpose of helping people in poverty with quality jobs, affordable housing, and community amenities like grocery stores. The report lists a number of challenges faced by mission-oriented actors: Many mission-oriented actors struggled to access capital from wealthy individuals and corporations with capital gains. In addition, many mission-oriented projects yield below-market returns that most OZ investors appeared unwilling to accept. A further challenge was that mission-driven sponsors want to develop a community asset with a lifetime greater than the ten-year period an OZ investor has to hold an investment, but OZ investors usually do not want to tie up investments that long.

### **Kresge Foundation Model and Trepidations about OZs**

An example of a mission-oriented investor discussed above has been the Kresge Foundation, which announced in March 2019 that it was committed to providing \$22 million in investments to two goal-aligned investment managers, Arctaris and Community Capital Management, which agreed to covenants committing them to develop affordable housing, create living wage jobs, prohibit displacement,

and form community advisory boards.

Unfortunately, as early as June 2019, the Kresge Foundation signed on to a letter from the U.S. Impact Investment Alliance which states, “...this transformative tax break could leave residents and communities vulnerable to displacement. These residents understandably fear losing their voice in defining their economic futures. Meanwhile, there is no guarantee capital will flow to the most distressed neighborhoods, or to the projects that are best for those who work and live there.”

In 2021 Aaron Seybert, managing director of social investments at the Kresge Foundation remarked:

“We have always and continue to want this incentive to succeed, but we continue to have trepidations about that. Those fears have only grown as we hear directly from people in communities who say the incentive is causing more harm than good...OZ doesn’t require measurement, accountability or tracking of any impact beyond dollars in; it rewards appreciation regardless of social impact. If millions go into a community, but they’re invested into liquor stores, storage units, and condominiums that price people out of housing opportunity, are the people who live there any better off? OZ is just the latest example of policymakers and investors doing something *to* low-income communities rather than *with* them.”

Mr. Seybert concluded:

“In short, I trust our community partners who have been investing in low-income communities far longer than OZ has been around. The majority tell me it’s not working for them, and, in some cases, it’s making their work harder. The news-friendly bright spots are a tiny fraction of capital flowing through this incentive. I’m not interested in continuing to evaluate OZ by anecdote when there are likely billions in investments we will never know about. We can no longer put lipstick on the proverbial pig. We need full transparency into OZ, we need some level of local accountability for the capital invested,

and we need better evidence that the tool can deliver against community needs at scale. Without these, I don't think the incentive should continue to exist at all."

**Testimony Before the Oversight Subcommittee of the House Ways and Means Committee, November 16, 2021**

**BRETT THEODOS, SENIOR FELLOW AT THE URBAN INSTITUTE**

"In the years since Opportunity Zones' inception, it has become increasingly clear that their structure is preferenced against operating businesses, against smaller and rural projects, and against the types of mission-aligned projects that could deliver maximum community benefit."

He found that the OZs structure disadvantages high social impact projects in several ways:

- The tax exemption on OZ projects is structured to provide the largest financial benefits to projects that provide the highest returns, rather than reward investors willing to support projects with large social impacts.
- The ten-year time horizon of most OZ investments is not long enough for many beneficial projects, such as affordable housing, health care centers, or schools.
- For investors, the OZ incentive is a shallow subsidy and the permanent exclusion of gains is speculative. However, disinvested rural and urban OZs often require a deeper subsidy than OZs can provide. It is unlikely that OZ financing alone can spur the small business growth or types of development needed to promote sizable job creation or equitable growth.

Mr. Theodos' testimony included a footnote from an April 12, 2021 paper by Patrick Kennedy and Harrison Wheeler, *Neighborhood-Level Investment from U.S. Opportunity Zone Program: Early Evidence*. They found that OZ investments are highly concentrated in a relatively small number of census tracts, 84% of designated OZ tracts in their sample received zero OZ investment. Among tracts designated as OZs, investors favored neighborhoods with higher income, educational

attainment, home values, declining shares of non-white residents, and pre-existing population and income growth.

**DAVID WESSEL, DIRECTOR OF THE HUTCHINS CENTER ON FISCAL AND MONETARY POLICY, SENIOR FELLOW IN ECONOMIC STUDIES, BROOKINGS INSTITUTION**

"Nothing in law or regulation requires OZ investors to put their money into those [OZ] census tracts that really need the money or into projects that will benefit the people who live in the zones. The available evidence and my reporting suggest that the bulk of the money is going to real estate projects that would have been done otherwise or projects that will not do much to improve the lives of the low-income residents of the zones. Proponents and drafters of the Opportunity Zone legislation were so determined to make the tax break attractive to wealthy investors and so allergic to oversight from Washington that they avoided the guardrails and oversight that might have directed more money to places and people most in need of private investment. They also underestimated the cleverness and aggressiveness of the huge industry of accountants, lawyers, wealth advisers and real estate fund managers who find every possible way to exploit the tax code to save their clients' money. I fear that when we finally get all the data, we will learn that Opportunity Zones did more to cut taxes for the wealthy than to improve the lives of people who live in the zones."

## RECOMMENDATIONS FROM EXPERTS

For all of the following, Treasury should take the initiative, and Congress should act if Treasury cannot (due to legal reasons) or will not.

- Treasury should require QOFs to provide basic transaction data: where are OZ funds going and how much is going to each OZ, what types of projects are developed, and who benefits (by various categories).
- An agency such as the Community Development Financial Institution (CDFI) Fund

should have administrative authority over OZs to provide oversight of QOFs and to collect, aggregate, and share data with the public.

- Provide larger OZ capital gain tax breaks for projects in the most economically depressed communities. The current one-size-fits-all approach will tend to direct money to places already attractive to investors.
- Target the size of OZ capital gain tax breaks to investments with the greatest impacts. OZ capital gain tax breaks could be based, for example, on the number of quality jobs created by an OZ investment.
- Limit the type of eligible projects, prohibiting projects such as self-storage facilities, luxury hotels and housing, or upscale shopping districts. And, for real estate investments, which are the bulk of OZ projects, create a limited set of eligible uses. For instance, only allow real estate transactions involving an operating business that is owner-occupied, or commercial and industrial real estate in tracts with high vacancy rates, or housing sold or rented at below-market prices.
- Require a rigorous certification process to qualify as a Qualified Opportunity Fund (QOF). Currently, a QOF does not have to assert that it is helping low-income people or communities. Require QOFs to demonstrate an intention to invest in projects that provide genuine community benefit, and to adhere to disclosure and reporting requirements and community engagement processes.
- Support mission-driven QOFs that are accountable to the community by giving preferential treatment to CDFI-controlled and other mission-driven vehicles.
- Provide better investment support for small businesses.
- Redesignate and remove OZs based on the most current Census data to avoid designating tracts that seemed “low-income” due to out-of-date Census data but had improved demographically and were experiencing

economic gains. Phase out the OZ capital tax gain break in these tracts for any projects not yet initiated. OZ designation should be subject to public comment before becoming final.

- Remove all contiguous tracts, those that did not meet the low-income threshold but were eligible because they bordered low-income tracts.
- Restrict the OZ capital gain tax break to a project that demonstrates, “but for” the additional aid of the OZ capital gain tax break, the project cannot succeed with private market resources alone.

## PAST CONGRESSIONAL EFFORTS

As early as June 2018, Senator Corey Booker (D-NJ), an original champion of OZs, [wrote to Treasury](#) urging stronger regulations to ensure low-income communities benefit from OZs. Senator Booker followed that up on April 7, 2019, sponsoring [S.1344](#), which would strengthen OZ reporting requirements and specifically require Treasury to collect data on QOFs and their impact on low-income communities.

Various bills proposing to modify OZs were introduced by Democrats in 2019: Senator Ron Wyden (D-OR) introduced [S. 2787](#), and Representatives James Clyburn (D-SC) and Henry Johnson (D-GA), introduced [H.R. 5042](#) and [H.R. 4999](#), respectively. Overall, these bills would: establish annual reporting requirements; prohibit investments in private planes, sports stadiums, self-storage facilities, parking facilities, and luxury rental properties; eliminate and terminate OZ designations of contiguous communities that are not low-income; disqualify a census tract that had a median family income greater than 120% of the national median income; disqualify rental property unless 50% or more of the units are both rent-restricted (following the Low Income Housing Tax Credit rules) and occupied by individuals whose income is 50% or less of area median income (AMI); disqualify rental housing unless 20% of the units were occupied by households with income no greater than 30% of AMI or 200% of the poverty line.

Representative Rashida Tlaib (D-MI) introduced [H.R. 5252](#) to eliminate OZs.

In 2021, Representative Michelle Steele (R-CA) introduced [H.R.4608](#), which would create additional OZ designations every ten years, and Representative Jim Hagedorn (R-MN) introduced [H.R. 4147](#), which would create an estimated 950 additional OZs.

Ultimately, no bills modifying OZs passed.

## FUNDING

The Opportunity Zones capital gain tax break is not funded through federal appropriations; it is a “tax expenditure,” resulting in the federal government losing tax revenue. The Joint Committee on Taxation estimates that OZ tax expenditures will total \$8.2 billion between 2020 and 2024.

## FORECAST FOR 2022

On December 20, 2021, nine Democrats on the U.S. House of Representatives’ Ways and Means Subcommittee on Oversight sent a [letter](#) asking Treasury to consider three changes to OZ requirements: implement a rigorous certification process for QPOs, allocate a dedicated agency staff to oversee OZs, and require transaction reporting separate from tax forms. Senator Ron Wyden (D-OR), Chair of the Senate Finance Committee sent [letters](#) to several billionaires on January 13, 2022 demanding information to determine whether they are abusing OZs.

## FOR MORE INFORMATION

*[A Critical Explanation of Opportunity Zones.](#)*

The IRS Opportunity Zones webpage, <https://bit.ly/3GXNEle>.

The Center on Budget and Policy Priorities, <https://bit.ly/3rQKny1>.

The Urban Institute, <https://urbn.is/3rPAY9B>.

The Brookings Institution, <https://brook.gs/3H2sUsO>.

ProPublica, <https://bit.ly/344Ewg6>.