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Opportunity Zones

By Tracey Nichols

HOW TO MAXIMIZE YOUR COMMUNITY'S INVESTMENT POTENTIAL

This article provides information on Qualified Opportunity Zones (OZ) for the economic development professional and provides background on the history behind the tax law and how it can impact local economic development projects. There are several steps explained that can help guide local economic developers in how to market their community's OZ to attract investment that can create jobs, new housing and/or new businesses. While some communities have seen large investments in their OZ areas, many have struggled to attract investment. The author provides a checklist of steps to increase investment potential including the strategic use of incentives, community education and involvement and a list of investment fund resources

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CREATION OF THE QUALIFIED OPPORTUNITY ZONE PROGRAM

The United States is currently in its longest expansion period in history, passing the March 1991 – March 2001 expansion on July 1, 2019. However, the recovery since the last recession ended in June 2009 has been uneven, with half the increase in GDP going to the top 1 percent of income households.

The uneven recovery has been both geographic and income-based, with people struggling throughout the United States in rural and urban communities. Many of these communities have been faced with a negative economic impact such as decline or job loss in a dominant industry. These impacts have resulted in a decline in private investment, and in many cases, population loss and ultimately a decline in the tax base. With these macroeconomic forces left unchecked, communities cannot invest in their infrastructure, which makes it more difficult to attract new private investment and leads to further distress and disinvestment. This cycle has left large parts of the country with long-term unemployment and lack of investment.

The Tax Cut and Jobs Act of 2017, approved on December 22, 2017, included a provision for a new tax treatment designed to bring investment to communities that have so far been left behind during the recovery. This provision created Qualified Opportunity Zones (QOZ) and Qualified Opportunity Funds (QOF) to channel private investment into the zones.

Over 42,000 census tracts nationwide were eligible to be selected as a QOZ, and governors had just a few months to nominate up to 25 percent of their eligible census tracts and up to 5 percent of non-low income contiguous tracts that met certain criteria. Each state used its own strategies to select Qualified Opportunity Zone tracts. This process resulted in about 8,700 rural, urban, and suburban census tracts in the 50 United States and five U.S. territories where investors may use funds for favorable capital gains tax treatment.

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The origin of the bill can be traced to a group of economists who postulated that there was an enormous amount of unrecognized capital gains in the United States. Sean Parker, of Facebook and Napster fame, helped found a think tank called Economic Innovation Group (EIG) to look at the issues facing low income areas and policy solutions to address them. In April 2015, EIG issued a paper titled *Unlocking Private Capital to Facilitate Economic Growth in Distressed Areas*, by Jared Bernstein and Kevin A. Hassett, which discussed the successes and shortcomings of previous programs such as Empowerment Zones and New Markets Tax Credits.

The authors noted that there was over $2.25 trillion in unrecognized capital gains in the United States in 2014, and that most of the previous programs provided no real impetus for investors to exit current investments to participate in one of these previous programs designed to help lower income areas. They noted some success in the New

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This article provides information on Qualified Opportunity Zones (OZ) for the economic development professional and provides background on the history behind the tax law and how it can impact local economic development projects. There are several steps explained that can help guide local economic developers in how to market their community's OZ to attract investment that can create jobs, new housing and/or new businesses. While some communities have seen large investments in their OZ areas, many have struggled to attract investment. The author provides a checklist of steps to increase investment potential including the strategic use of incentives, community education and involvement and a list of investment fund resources.

Congressional leaders on both sides of the aisle proposed to create a tax treatment which would free up the nation's unrealized capital gains for reinvestment into low income census tracts, as part of the Tax Cut and Jobs Act.

Markets Tax Credit Program but criticized the program's overall complexity and cost, and the propensity for real estate investments rather than investments in businesses that could create jobs.

The authors took their message to a number of Congressional leaders. These leaders embraced the idea of freeing up capital gains to invest in low income areas and utilizing intermediaries such as venture capitalists, hedge funds, private equity funds, institutional lenders, and banks through the creation of "funds" that could direct funding from investors into multiple projects.

The trillions of dollars of unrealized gains are in two main areas, the stock market and privately held real estate. Gains in real estate are not realized largely due to a commonly used real estate tax treatment called a "1031 Like-Kind Exchange." This treatment, under Section 1031 of the IRS code, allows a real estate investor to "exchange" their property for another property that has a similar value without recognizing any gain. For example, an investor bought a property worth \$1 million and it is now worth \$1.5 million. The investor would find another real estate investor who also wants this type of tax treatment (usually handled by brokers who set up these "exchanges"), and the investors would "exchange" their properties. They each now have increased the basis in their property without having to pay any capital gain tax.

Congressional leaders on both sides of the aisle proposed to create a tax treatment which would free up the nation's unrealized capital gains for reinvestment into low income census tracts, as part of the Tax Cut and Jobs Act. The outcome discussed in this article is the creation of Qualified Opportunity Zones and Qualified Opportunity Zone Funds to channel these gains into the targeted communities. The bill originally proposed to eliminate the 1031 treatment of real estate. However, lobbyists worked to eliminate this provision and were successful in the final approved bill.

QUALIFIED OPPORTUNITY ZONE MECHANICS

So how exactly does this work? To understand how to attract investment to your community, you need to understand how this tax break works. First, an investor must recognize a capital gain. The gain could be recognized by selling a piece of real estate that has appreciated, or even by selling a stock that an individual has purchased, triggering recognition of a gain. The Tax Cut and Jobs Act allows an individual or partnership to defer that gain for five to seven years if they invest in a Qualified Opportunity Fund (QOF). Once a capital gain is invested in a QOF, the Fund then has 180 days to invest at least 90 percent of the QOF's assets in a Qualified Opportunity Zone Property (QOZP) located in a QOZ. The 90 percent test is applied every six months but does not include subsequent investment made in the prior six months.

There are three eligible categories of investment, including a stock interest in a corporation that qualifies as a Qualified Opportunity Zone Business, a partnership interest in a partnership that qualifies as a Qualified Opportunity Zone Business and/or Qualified Opportunity Zone Business Properties. If the eligible investment is held for at least five years, the tax on the original gain is reduced by 10 percent. If held for at least seven years, the tax on the original gain is reduced by 15 percent.

The most compelling potential perk for investors is that, if the investment is held for at least 10 years, there is a permanent exclusion from taxation of the increased value in the QOZ investment. This means that there will be no capital gain recognized on the increased value of an investor's QOZ investment upon exit. Further, the period for which the investment may appreciate while enjoying this permanent exclusion from taxation extends until December 31, 2047.

The deferral of the tax due on the current gain, however, ends December 31, 2026; this means that, to maximize the reduction in tax on the original gain, investors must place their gain in a fund by December 31, 2019. This could spur increased investment activity in QOZ businesses and properties at the end of 2019. It is important that taxpayers keep these various dates in mind. For instance, the deferred gain must be recognized not later than December 31, 2026, but the tax-free appreciation in value extends until December 31, 2047.

While the basic framework for QOF rules was included in the tax bill, regulations were slow to be released. The first regulations were released in October 2018, nearly a year after the tax bill was approved, and left as many questions as answers provided. Many investors felt there were too many outstanding questions regarding program regulations and left their investments in place, waiting for more clarity. Of particular concern was the fact that most of the regulations released in October 2018 addressed real estate investments, while rules for investments in businesses were not clarified.

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The information that was provided in the initial regulations about QOZ business investments generated many additional questions, and a subsequent hearing held before the IRS was dominated by verbal and written comments about how to invest in businesses in a Qualified Opportunity Zone. A second set of IRS regulations was released in April 2019 and those regulations have helped further clarify the rules to the point where many investors are now seeking investments. A third set of regulations is to be released later in 2019. There has been some discussion of extending the December 31, 2019 deadline to achieve the 15 percent reduction in capital gains tax; however, that would take an act of Congress, which many believe is unlikely at this point.

One of the most important requirements to be considered by investors is that the investment must be either an "original use" or a "substantial improvement" of the Qualified Opportunity Zone Property. "Sin" businesses are not eligible, such as casinos, golf courses, country clubs, massage parlors, tanning salons, race tracks and businesses where the sole purpose is to sell alcohol to be consumed away from the premises. New construction is considered an original use. The second set of regulations added more clarity, indicating buildings that were vacant for at least five years qualify as an original use, as well as partially constructed buildings that were never placed in service (defined as not yet depreciated).

After a QOF places its funds in a Qualified Opportunity Zone Business that acquires, constructs or rehabilitates real property in an Opportunity Zone, the Qualified Opportunity Zone Business has a working capital safe harbor for up to 31 months, as long as it has a schedule for deployment of funds that is reasonable.

In the purchase of an existing building not meeting those criteria, the cost of the improvements paid by the Qualified Opportunity Fund must equal/exceed the tax basis of the building (the cost of the land is not included) to satisfy the substantial improvement requirement. The improvements must be made during a 30-month period. The allocation of the purchase price between land and building will be important in determining whether the building is considered "substantially improved." The latest regulations also clarified that purchasing and holding land for investment purposes is not considered an "active trade or business" and therefore not an eligible QOZ activity.

After a QOF places its funds in a Qualified Opportunity Zone Business that acquires, constructs or rehabilitates real property in an Opportunity Zone, the Qualified Opportunity Zone Business has a working capital safe harbor for up to 31 months, as long as it has a schedule for deployment of funds that is reasonable. The IRS recognized that real estate construction takes some time to complete a project and provided the safe harbor rule because the Qualified Opportunity Zone Business may hold significant amounts of working capital during the construction period. In addition, the most recent regulations further allow reasonable extensions if a project is delayed pending issuance of permits by a government, if the developer can show that an application has been made. Other recent provisions address properties that may straddle the line of a QOZ area and non-QOZ area, allowing a property to be eligible if a majority of the property, as measured by square footage, is in the QOZ.

Significant new rules were released to provide guidance on leased properties. The new regulations indicate that a leased property may qualify even if the lessee and lessor are related. To be eligible, leased property must have been first leased after December 31, 2017, be a market rate lease and, under guidance provided by the IRS, the value of the lease must be incorporated into the 90 percent test at the QOF level or the 70 percent test at the QOZ Business level. And, very important to the real estate community, new construction by a lessee on ground leased land is an original use. This seems to provide an ability for developers who have owned land in a QOZ prior to December 31, 2017 to ground lease it to a related party and construct a new building with a QOF investment, qualifying for the tax benefits of the Qualified Opportunity Zone.

The latest regulations included the long-awaited eligibility regulations for investment in operating businesses. The original regulations indicated a business was eligible when a QOF has a partnership or stock interest in a QOZ Business which derives 50 percent of its gross income from the active conduct of business within a QOZ. This raised many questions about how this test would be applied.

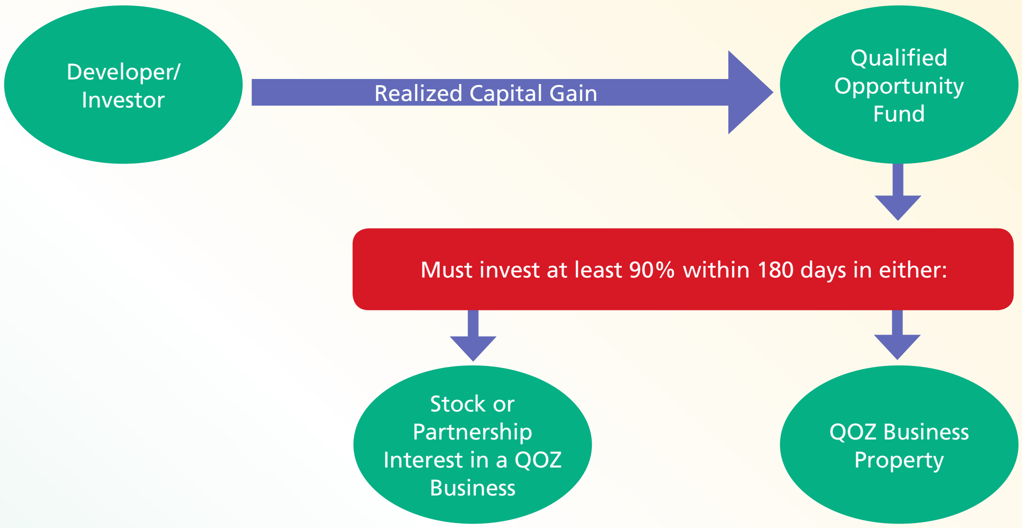
The most recent regulations indicated one of three criteria called "safe harbors" must be met:

- At least 50 percent of work hours for employees or contractors are spent within the QOZ;
- At least half of the company's services, based on hours, are within the QOZ;
- And/or the management and operations are based in an OZ.

An additional safe harbor was provided indicating that liquid assets that qualify as "reasonable" working capital will not be used in calculating the requirement that the QOZ Business's assets include no more than 5 percent of "nonqualified financial property" and may be used to fund the operating costs of a start-up business. Furthermore, the QOZ Business can receive sequential amounts of working capital from equity financing, as long as each infusion of capital meets the requirements. This has opened the door for investments in start-up businesses to be located in QOZs.

Many businesses may be interested in moving to an Opportunity Zone so they may attract new investment. Regulations require that 90 percent of a business's tan-

QUALIFIED OPPORTUNITY ZONE (QOZ) BASICS



Must meet these tests:

- Acquisition: After 12.31.2017 from an "unrelated party"
- Original Use: Commences with Qualified Opportunity Fund (QOF) or the QOF investment substantially improves (within 30 months) in an amount exceeding adjusted basis on an asset by asset basis
- Substantially All: During substantially all of the QOF holding period, substantially all of the business must be in a QOZ.

Other requirements for real estate:

- Income derived must be from an active conduct of business (no NNN leases) in the QOZ
- 31-month safe harbor for businesses that acquire, construct or rehabilitate tangible property (can be extended if a delay caused by government approvals can be documented)
- Property vacant for five years or more qualifies as "Original Use" if it meets other requirements

Other requirements for operating businesses:

- Income must be derived from an active conduct of trade or business, but operating companies may meet one of the three safe harbors:
  - 50% of services provided by employees or contractors (by hours) are in the QOZ
  - 50% of the amount paid for services are provided by employees or contractors in the QOZ
  - Management and operations are in the QOZ
- A substantial portion (40%) of the intangible property used by an operating business must be used in the active conduct of trade or business.
- Working Capital Safe Harbor: Liquid assets qualifying as "reasonable" working capital will not jeopardize QOZ business limit of 5% "non-qualified financial property"

Note: This is just an overview. Investors should seek professional advice before establishing a QOF or making an investment.

gible property must be Qualified Opportunity Zone property, which excludes any property acquired prior to December 31, 2017. Some recently started companies, as well as some longer-term existing companies, whose major assets are intangibles may be able to qualify and receive QOF funding. However, before relocating an existing company, the company and any QOF investor should prepare a plan including existing asset valuation as well as future acquisitions of tangible property to meet eligibility.

The most recent set of regulations also has outlined when and how QOFs can sell or transfer their investments. Generally, the sale of an asset is allowed prior to the lapse of the ten-year period, and proceeds may be reinvested into a QOF within a reasonable period. Such an event would not trigger the inclusion of the originally deferred gain or affect the holding period of the QOF investment. This will not, however, allow the QOF to avoid recognizing gain on the sale if applicable. Furthermore, the IRS has indicated that transfers by reason of an investor's death are generally not treated as recognition events and the heirs will step into the role of the decedent in regard to the various QOZ holding periods. Gifts however, except to a "grantor trust," will be treated as a recognition event as to the donor's deferred gain.

Investors are looking for properties or business investments that have the greatest opportunity for appreciation so they may take best advantage of this tax opportunity. Unlike tax credits, for which the return is fairly immediate, or at least spread across multiple years and with a high degree of certainty, the Opportunity Zone tax treatment has small returns in the first few years, with a maximum of 15 percent of existing capital gain tax deferred, but ultimately owed.

The taxpayer achieves the largest possible benefit by finding the property or business that will have a large amount of appreciation, holding it for at least ten years and hoping that both the appreciation will occur and there will be a ready market to sell the property or business. Some developers and larger funds are seeking to distribute investments across various geographic locations and asset types to diversify their portfolios. As developers, businesses, and investors work to understand the most recent regulations, it is estimated that there may be as much as 20 times more funds that investors seek to invest in QOFs than there are current QOZ eligible projects. The December 31, 2019, deadline by which investors must place their funds, in order to receive the maximum 15 percent reduction in capital gain tax on the original investment, may generate a larger number of projects that are funded by Qualified Opportunity Zone Funds in 2019.

ATTRACTING INVESTMENT

To attract investment, it is best to understand the type of investments that are currently underway. Because the regulations for businesses were not released until spring 2019, many of the investments to date have been in real estate. The first set of regulations indicated a need for the Qualified Opportunity Zone Business to be an active trade or business. This led to many initial projects in the multifamily and mixed-use asset sectors; in both of those sectors, owners are actively involved in leasing, managing, collecting rents, and paying taxes.

Regions which are experiencing population growth and high demand for new multi-family have found that developers are seeking Opportunity Zone locations, especially those areas on the edge of higher income communities and those that have transit connectivity. Communities including Miami, Phoenix, Las Vegas, Dallas, Los Angeles and Oakland as well as other locations on the coasts and in the Southwest, have seen a great deal of Opportunity Zone investment in new construction. Additional regulations that were recently released, and that permit vacant buildings, if they were vacant for at least five years, and partially constructed buildings that were never placed in service, to qualify as “original use” without a “substantial improvement” may generate interest in redeveloping these properties in the near future.

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The second set of regulations included a provision that declared that Triple Net (NNN) leases were not eligible because these leases do not constitute an “active trade or business.” Nationally, attorneys are working with their clients to develop new leases that conform to the “active trade or business” requirement. These provisions will likely include the payment of taxes and other costs by the landlord. This will result in increased rents, to reflect that these costs fall on owners. This could add some confusion to local markets in comparisons of rents for different properties, where Opportunity Zone rents appear to be higher but are not NNN.

For several real estate investment classes, these rules may have a significant positive impact. For example, Logistics and Distribution is a market area that is growing quickly, with high demand for structures with 30-foot-clear and higher ceilings. Companies like Amazon, Walmart, and other retailers, as well as meal preparation companies and other subscription services, are seeking to serve clients quickly, requiring multiple distribution points across the country. Communities with eligible QOZ census tracts that offer good highway access and proximity to areas with appropriate density are seeing new construction of these facilities in strong numbers. Many of the potential lessees are strong credit tenants, helping investors become comfortable with the investment.

Additionally, in some markets, office buildings and mixed-use properties that include both office and multifamily have been funded through Opportunity Zones. Large institutions with capital gains, such as insurance companies, have sought strong projects with experienced developers in markets where office and multi-family rents have been growing. In some cases, these projects have been developed as joint ventures with two or more QOFs, while others have sought QOF investments as equity.

Most commonly, developers have used their own capital gains to invest in their own projects. Many developers have commented that the return expectation for many funds is higher than they may wish to pay. Additionally, many funds with potential interest in OZ projects have sought to reduce owner control of aspects of the project, such as decisions to add debt or refinance and some investors even seek to restrict owner decisions on lease terms. Developers with their own gains to re-deploy may be more likely to invest in their own properties for civic reasons as well as to shore up other investments they may have in the community.

In communities with weaker expectations for appreciation, developers who recognize a gain in these areas may take all or part of these funds to another, stronger market, where they are more assured of a higher return.

For instance, in some cases, developers are placing part of their gains in a QOF in their local market, while placing part of the gain in a different market that may be perceived as having a stronger possibility of appreciation.

Some funds are being created as Social Impact Investment Funds, raising capital from high net worth individuals who may otherwise contribute to donor-directed funds with charitable purposes. These investors may have much lower return expectations, but most likely will desire more social impact. In many cases, community foundations are working to establish such funds and are collaborating with local governments and civic organizations to determine the best projects for the community. They are particularly concerned with potential gentrification and with balancing the desire to create or attract businesses with concern that these developments may cause other local firms to go out of business.

Banks may also have capital gains and wish to take advantage of the tax benefits of the OZ program. Their goal may be to work with developers to invest in QOZ areas that also meet the Community Reinvestment Act (CRA) criteria that their regulatory agencies require. In these developments, you may see a requirement of a certain number or percentage of affordable housing units. Since the bank is meeting their CRA goals, its return expectations could be lower.

Venture capitalists have structured Opportunity Zone Funds and, now that the rules on investments in start-ups and other businesses in QOZs have been established, review panels are seeking companies in which to invest. While many small companies are ready to accept capital and understand the process, some small and emerging businesses which welcome new capital, and expect it is available to them via the OZ program, are unaware of the implications of such an equity investment in their company. For instance, the management of these companies may need assistance with compliance programs, to fit the IRS requirements of the OZ program, and the reporting regimen that outside investors may require.

The projected returns and other business terms for QOF investments have varied greatly. There are websites that list a multitude of Opportunity Zone Funds, but most have information such as the geographic area and asset types that are of interest for the fund. To research rates and terms, a business or developer must contact various funds to learn more details. In many cases, the business or developer needs attorneys or tax professionals to participate in these conversations in order to gain a clear understanding of the terms. Projected rates vary from below five percent to double digit returns; these rates vary because the returns are not guaranteed, so there is a great deal of risk. Lower fund rates may have far more restrictions to minimize risk.

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QOFs also have varied investment specifications and reporting requirements. It can be expected that investors satisfied with lower returns will require more social impact and documentation for the impact, but investors seeking higher returns and, indeed, all investors, will require adequate reporting to ensure their investments are meeting the various ongoing QOZ program eligibility tests.

Investors should be aware of critical elements of an OZ investment. To receive the full benefit of the OZ program, an individual investor must understand he or she needs to leave the investment in place for at least 10 years, but there are many investors who are reluctant to commit their assets for such an extended period of time. Also, investors need to understand that there is always the potential for losses on QOZ investments.

Many investors are being solicited to participate in QOZ Funds with multiple investors, with promises to diversify individual risk, provide project diversification, and provide professional management. These benefits may be appealing, but while a stated goal of the Opportunity Zone Program was to make the program less complex as compared to the New Markets Tax Credit Program, it seems that when multiple investors are involved, the process to invest in an eligible project can be very complicated.

Many multiple member funds are subject to federal rules that permit only "accredited" investors, or those who have a net worth of at least $1 million, excluding a residence, and income exceeding $200,000 in each of the last two years ($300,000 for married couples). Investors in QOFs will also encounter fees that may include initial fees, annual fees and performance fees.

Investors need to have confidence in fund managers, because the investment in low income communities comes with additional risks as to whether market appreciation will occur. These multi-investor funds have taken some time to put together, and the need for a ramp up period for them may explain why the majority of projects to date have been funded by QOFs established by large institutional investors or banks, or by developers who are investing their own capital gains in their own projects.

WHAT CAN ECONOMIC DEVELOPMENT PROFESSIONALS DO?

As an economic development professional seeking to bring investments to your community, there are several things that can be done but that do not require you to become an expert on Qualified Opportunity Zone Funds or to master the myriad technicalities that are beyond the scope of this article.

1. **Know where your zones are.** At a minimum, you should know the location of the census tracts and your community's website should provide that information or at least a link to the Department of Treasury's Community Development Financial Institution's web site that shows Opportunity Zones.
2. **What are the locations with the highest potential for property value appreciation**? At the time of the determination of the boundaries of Opportunity Zones, the census tract data were several years old. This means that, in some communities, the selected census tracts may not have been eligible if today's demographic data were used. Is there an Opportunity Zone tract in your community that has seen good appreciation? Is it well-suited for a particular asset class, such as warehouse & logistics? Multifamily? Office? Industrial?
3. **Do you have a start-up hub?** Does your community already have an area, or type of business, that has attracted a number of start-ups that have grown? Perhaps this is due to a linkage to a university, an accelerator or a large corporation. Is there a building with this type of activity in your Opportunity Zone that has vacant space that could be used to attract a new company? Do you have a venture capital community with available funds?
4. **Gather data.** If you have not already done so, gather information. Brokers will know your market and any effort to market areas of your community will interest them. Venture capitalists, universities, and accelerators will also be interested if your organization seeks ways to help promote their efforts. Ask what they think are the best locations for investment in your QOZs and why. They are probably already looking at these areas.
5. **Determine community involvement.** If you are a county or regional economic development organization (EDO), it is critical to talk to the local cities, towns or villages where your QOZ areas are located. You will need to understand what the local government has prioritized for these areas, and more importantly, what it clearly does not want in specific areas. This is an essential step. For example, if you hope to help a developer make an investment in the form of a market rate project on a city-owned property, but the city is against such a project, your efforts may only cause the developer to become frustrated and move to a different community for this investment.

   If you are a local government economic development staff person, work with city council, planners, and local residents to better understand projects that will be welcomed in an area. Understand what properties your community may own in the QOZ and if your community would consider offering these properties to a developer.

   Fast-growing communities likely will not need to work hard to attract investment. But communities with lower appreciation may need to consider if there are ways to help reduce risk for developers through incentives. Since the QOZ is a long term and risky investment play, your community needs to determine how you can help attract investment.
6. **Educate local elected officials.** Most local and regional economic development tools require support or a vote of elected public officials for approval. There may be a misconception among elected officials and their constituents that somehow QOZ translates to a grant program for businesses and real estate investments in their community, similar to federal tax credit and grant programs. This misconception could lead to opposition for other local economic development tools and incentives, when officials and their constituents believe cash should flow freely into all projects in their area because it is a QOZ, and therefore other assistance is not needed.

   Educating your local public officials about the mechanics, risks, and strengths of the QOZ program should help avoid confusion and misperceptions as

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HOW ECONOMIC DEVELOPMENT ORGANIZATIONS CAN HELP ATTRACT QOZ INVESTMENT

1. Know where your zones are.
2. Determine which locations in your zones have the highest potential for property value appreciation.
3. Gather data to market the best aspects of your zones.
4. Determine the types of projects your community will support.
5. Educate local elected officials on how to attract QOZ investment.
6. Identify potential partners.
7. Prepare information for developers and investors.
8. Meet with local developers and venture capitalists.
9. Meet with your start-up community network to help them understand QOZ investments.

QOZ projects come forward. This is especially important in areas where appreciation has not been strong and developers have used incentives previously to bridge gaps in financing.

7. **Identify potential partners:** Are local foundations assembling social impact funds? Have local or regional banks established a Qualified Opportunity Zone Fund? Many of these organizations have begun to look at how to further the efforts of Opportunity Zones as they align with their mission. An economic development professional who understands how these funds expect to implement their investments can help developers and investors who may be seeking funds for an eligible project to find likely funding sources.
8. **Prepare information for developers and investors.** Assemble the information you have gathered into a useful form for potential investors and developers. Be cautious with demographic data. Much of the available data may be out-of-date for your community and tell a story that is no longer accurate or is not compelling to many potential investors or developers.

   For instance, the QOZs are, or were, all low-income areas. Most developers will not be impressed with data sets that show low income levels or low educational attainment. Brokers can help you understand what may interest buyers. Helpful data sets might include new investments within a certain number of miles of the census tract, rental rates in the new projects, vacancy rates in the projects, and any new, community infrastructure investment in a particular QOZ. Successful development often brings more development; help these potential investors understand you community's successes.

   For start-ups, as well as investors or developers which are new to your community, help them by offering a strong presentation on why someone should invest in your community, with a robust discussion of your strengths. Those not familiar with your community or your Opportunity Zone locations can use your help to understand the potential of such locations in your community, including:

   - venture capital investment history in your community;
   - linkages to resources such as universities and accelerators;
   - for selected fields pertinent to new investment, the number of students at graduate and undergraduate levels at your local institutions;
   - numbers of people who move to your community annually; and
   - lists of other companies in your community in your areas of strength.
9. **Meet with local developers and venture capitalists.** Even if your community has not seen rapid appreciation of assets, it is likely that there are some developers and investors who have invested in your community. These investors are most likely to make civic investments and also may invest to further bolster their existing investments. Meeting these individuals and asking if they have any plans to invest and if there are any barriers to their investment may reveal a way that the local economic development community may help support an investment that can create jobs or provide needed housing or retail.

   Many communities have developed long check lists of requirements for investments in their Opportunity Zones, with a desire to make sure that the low income persons whose benefit was intended are impacted by these investments. While these prerequisites are well intended, it's important that communities recognize that they may need to offer development incentives commensurate with a list of requirements in order to attract an investor to invest in the community's Opportunity Zones rather than another one with no such requirements.

Assemble the information you have gathered into a useful form for potential investors and developers. Be cautious with demographic data. Much of the available data may be out-of-date for your community and tell a story that is no longer accurate or is not compelling to many potential investors or developers.

In evaluating measures a community may use to attract investment, it is important to appreciate some factors that make certain areas less attractive. Many states have a state capital gains tax. States that do not have a capital gains tax have an advantage, since the deferral of current gain and eventual recognition in 2026 has no impact. In addition, if there is no capital gains tax currently, there is more likelihood that there may not be a state capital gains tax when the investor would have otherwise recognized the potential gain after the ten-year holding period.

Certain states mirror the federal treatment of capital gains, so if the gain is deferred and reduced at the federal level, it is treated the same at the state level. In other states, there is a state capital gains tax that is charged regardless of federal tax treatment. States that do not conform to federal Qualified Opportunity Zone tax treatment include California, Mississippi, North Carolina, New Hampshire, and Pennsylvania. Arkansas changed its tax law to conform to the Opportunity Zone tax treatment.

Several states have passed legislation or are in the process of passing legislation to provide additional incentives to attract investment. Some are broad, such as a tax credit for any Qualified Opportunity Zone investment passed in Arkansas and in Ohio. Other states are considering limited support, such as Michigan's R&D credit for companies in the Opportunity Zone or Louisiana's tax credit for manufacturing businesses in the Opportunity Zone. Whether these incentives can help attract invest-

10 OPPORTUNITY ZONE RESOURCES

EDA: Priority for Projects located in Opportunity Zones	https://www.eda.gov/news/press-releases/2019/06/12/opportunity-zones.htm
EIG Opportunity Zone Fact Sheet	https://eig.org/wp-content/uploads/2019/04/Opportunity-Zones-Fact-Sheet.pdf
Enterprise Opportunity 360	https://www.enterprisecommunity.org/opportunity360/opportunity-zone-eligibility-tool
Fundrise Top 10 Opportunity Zones in the US	https://fundrise.com/education/blog-posts/the-top-10-opportunity-zones-in-the-united-states
IRS: Opportunity Zones Frequently Asked Questions	https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions
NCSHA Opportunity Fund Directory	https://www.ncsha.org/wp-content/uploads/NCSHA-"Opportuntity-Zones-Fund-Directory-7.17.19.pdf
Novogradac Opportunity Funds Listing	https://www.novoco.com/resource-centers/opportunity-zone-resource-center/opportunity-funds-listing
Novogradac State QOZ Legislation	https://www.novoco.com/resource-centers/opportunity-zones-resource-center/state-opportunity-zones-legislation
Urban Institute: Did States Maximize their Opportunity Zone Selections?	https://www.urban.org/research/publication/did-states-maximize-their-opportunity-zone-selections
US Treasury CDFI Fund Opportunity Zone Resources	https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx

ment remains to be seen. Many of the proposed state incentives are still working their way through the approval process.

OPPORTUNITY ZONE CONCERNS

Many in Congress are proposing more reporting on Opportunity Zones. The IRS has mentioned the issue in the last two regulatory releases, and in the April release specifically requested comments on this topic. Many non-profit organizations as well as legal and accounting professionals are submitting suggestions, which range from gathering detailed information to limiting information to a bare minimum. Currently, the government reporting is minimal: a Qualified Opportunity Zone Fund merely needs to fill out a single form annually, Form 8996, which indicates a Qualified Opportunity Zone Fund has been established and that the investment into the Qualified Opportunity Zone Business has occurred, showing the 90 percent minimum investment.

Congress and many non-profits believe that far more data is needed, so that it will be easier to evaluate the success of the program. The QOZ program does not expire until 2026, with the ability to sell the asset through 2047 and achieve the increase in basis to eliminate capital gains tax. Some in Congress want to see the impact of this program in the reduction of long term unemployment and low incomes in these areas. There are also concerns about gentrification, with these investments merely relocating low income communities if residents are pushed out due to rising rents. Additionally, the current regulations do not require that QOZ businesses create jobs aimed at the skill level of the individuals who live in the QOZ.

Another concern is that often disreputable or ill-prepared promoters jump into new investment ideas; investors need to conduct due diligence to determine whether a fund manager team and/or project sponsors are well-qualified and trustworthy. For instance, investors should determine if the fund management and/or developer has had any experience in investing in properties in lower income areas. The Opportunity Zone also has a number of eligibility criteria that apply throughout the term of the investment, such as the 90 percent test at the Fund level, but also other tests at the QOZ Business level. It is crucial that capable management is monitoring compliance.

There is potential for public criticism of the OZ program by some who believe investors will benefit more from this program than low income communities will. Since the program was designed to provide an incentive for investors with unrecognized gains to move their investments into operating businesses and real estate in Opportunity Zones, despite the greater risks of such investments, then it should be no surprise that the potential return is great. There is no guarantee of any return, but investors expect a higher return for greater risk.

Some critics of the program have indicated that certain areas that were selected for QOZ designation were not the areas that needed it most. Since only 25 percent of the total eligible census tracts were selected and the data that was used for eligibility was several years old, there are certain to be some areas that may now not have been eligible if the eligibility criteria were based on real time or recent data. But standardized data are only available every five years. Additionally, selection was done at a statewide level, and several states strategically selected eligible tracts to be those most likely to attract investment.

It is important to recognize that Opportunity Zones are in every state and five U.S. territories, and if the incentive provided through the program is great enough, we should see investment in more geographically diverse areas than any predecessor program has been able to reach. The impacts of this program could outweigh those of other programs for low-income communities. Even communities that have not seen great appreciation over the past ten years since the recession should be able to identify projects and civic minded investors to generate meaningful results in Opportunity Zones for low-income residents and workers.

CONCLUSION

There are many tools readily available from a number of reputable organizations that provide assistance in prioritizing and achieving impact in an Opportunity Zone. Most focus on engaging the community, being transparent, and measuring outcomes. These are good guidelines for economic developers, and those who can help bridge the gap between community and investors will likely have good results in their community.

The potential incentives through the program are reduced after December 31, 2019 when, unless Congressional action is taken, the potential reduction in the tax due on current capital gains invested in eligible Qualified Opportunity Funds decreases from 15 percent to 10 percent. The program's incentives will see another reduction in the incentive when the 10 percent decrease in tax due for existing capital gains tax is eliminated on December 31, 2021. However, the deferral of capital gains taxes for gains placed in eligible Qualified Opportunity Funds invested in eligible Qualified Opportunity Zone Businesses will remain in place for investments made up to December 31, 2026. As noted previously, the tax free appreciation element of the incentives continues to apply until December 31, 2047.

It is not too late to get involved to help your community leverage investments. Recent regulations have finally provided enough regulations to move both real estate and operating business investors to act. Economic developers who act quickly will likely be able to help their communities realize the benefits of the Opportunity Zone program.

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