NAR Issue Summaries

Federal Tax / Qualified Opportunity Zones

NAR Committee:

Commercial Federal Policy Committee

What is the fundamental issue?

The Qualified Opportunity Zones ("QOZ") program was enacted in the 2017 Tax Cuts and Jobs Act to encourage economic growth in underserved communities through tax incentives for investors. By offering tax benefits to investors, the program presents opportunities for real estate investment and development in those communities. U.S. states and territories, including Washington, DC, nominated areas (by census tract) to be designated as QOZs in 2018, and the IRS and Treasury Department finalized the designations that year. This temporary program is set to expire on December 31, 2047.

There are several potential tax benefits to investors who invest in a QOZ, if all requirements are met:

- First, capital gains reinvested (within 180 days of the sale of a capital asset to a nonrelated person) into a QOZ are tax-deferred as long as they are held in the program, through 2026.
- If the new investment is held for at least five years, the tax ultimately paid on the reinvested gains is reduced by 10%; if held for at least seven years, that reduction is increased to 15%.
- In addition, gains accrued on the new investment in a QOZ are free of future capital gains tax if they are held for at least ten years.

Investments in O Funds may be gains rolled over from the previous sale of a capital asset (within 180 days) and/or non-capital gains funds, but only reinvested capital gains are eligible for the tax benefits. If both gains and non-gains funds are invested, they are treated as separate investments and will receive different tax treatment.

To qualify for the tax benefits, investments into a QOZ must be made through an "Opportunity Fund" (O Fund), which may be a partnership or corporation organized for the purpose of investing in QOZ property. The requirements for an O Fund are:

- Must hold at least 90% of assets in QOZ property (which can be stock, partnership interests, and/or tangible property used in a trade or business within a QOZ, such as real estate);
- Must certify with the Treasury and IRS, via a self-certification filed with federal tax returns (Form 8996).

Finally, the "QOZ business property" that an O Fund invests in must be "substantially all" in a QOZ, which under the regulations is met if 70% or more of the property is in a QOZ. The statute also requires that after an O Fund acquires QOZ business property that it be either "original use" (new) or "substantially improved," which means investing at least as much on the improvement as was paid for the used asset. "Original use" commences with depreciation, so an unfinished asset purchase by an O Fund in a QOZ can qualify for original use as long as it has not been depreciated yet. In addition, vacant/abandoned property can be considered original use if it has been in that state for at least five years. The regulations state that the basis of the land a business sits on does not need to be included for the substantial improvement requirement, thus reducing the required investment amounts.

500 New Jersey Avenue, NW
Washington, DC 20001
(800) 874-6500
nar.realtor

I am a real estate professional. What does this mean for my business?

The QOZ program presents multiple opportunities for real estate professionals. On the front end, it provides a way for investors to redeploy investments in capital assets without paying the tax on any gains immediately, which may encourage them to sell real estate assets they might otherwise hold on to in order to delay taxes. On the back end, the Opportunity Funds created to invest in the zones will be looking for business property in which to invest, which in many cases will include real property and/or involve development opportunities for real estate.

NAR Policy:

NAR supports tax policies that provide the deferral and/or the exclusion of capital gains taxes on investments that are sold if the proceeds are reinvested into low-income or economically disadvantaged communities or neighborhoods that have been officially designated as eligible to receive such tax-incentivized funds.

Opposition Arguments:

Opponents to the QOZ program argue that it could encourage gentrification of neighborhoods as opposed to creating economic opportunities for current residents. They argue that the perceived lack of "guardrails" from the government as to what is developed (e.g., affordable housing, or requirements that jobs be created) will result in abuse of the program.

Legislative/Regulatory Status/Outlook

The Treasury released the first set of proposed rules for QOZs in October 2018, which outlined several administrative aspects of the program. An IRS public hearing was held in February 2019 focusing on feedback from stakeholders and industry groups on those first proposed rules. A second round of proposed rules was released on April 17, 2019, which provided more in-depth details on the program and clarity on its administration.

Final rules for the program were released at the end of 2019, and they provided some much-needed certainty for many investors who were waiting for them. In October 2019 the IRS announced it had drafted a form to collect information on Opportunity Funds, to help track whether investors in O Funds are complying with the law.

On April 7, 2022, the Opportunity Zones Transparency, Extension and Improvement Act was introduced in both the House of Representatives and the Senate (H.R. 4065/S. 4065). This legislation, which enjoyed bipartisan support, would have restored the reporting requirements from the original Investing in Opportunity Act, which had to be dropped for parliamentary reasons during the debate of the Tax Cuts and Jobs Act of 2017.

500 New Jersey Avenue, NW
Washington, DC 20001
(800) 874-6500
nar.realtor

Additionally, the proposed legislation would have:

- extended the incentive from Dec. 31, 2026, to Dec. 31, 2028,
- removed the OZ designation from certain higher-income census tracts,
- modified the definition of QOF to allow for feeder funds, and
- established a State and Community Dynamism Fund.

This legislation was reintroduced in the U.S. House of Representatives on September 27, 2023 (H.R. 5761).

However, a somewhat-related bill known as the Opportunity Zones Enhancement Act (H.R. 4055) , was introduced in June 2023 by Representative Andy Barr (R-KY). This bill would incentivize taxpaying banks to increase lending in Opportunity Zone communities by offering a tax exemption.

IRS FAQ Page

NAR Opportunity Zone Page

NAR Opportunity Zone Toolkit

Current Legislation/Regulation (bill number or regulation)

Treasury and IRS Final Regulations (December 2019)

H.R. 5761 - Opportunity Zones Transparency, Extension, and Improvement Act

Legislative Contact(s):

Erin Stackley, estackley@nar.realtor, 202-383-1150
Evan Liddiard, eliddiard@nar.realtor, 202-383-1083

Regulatory Contact(s):

Erin Stackley, estackley@nar.realtor, 202-383-1150
Evan Liddiard, eliddiard@nar.realtor, 202-383-1083