

Fact Sheet

Opportunity Zones

Community Developments Fact Sheets are designed to share information about programs and initiatives of bankers and community development practitioners. These fact sheets differ from OCC bulletins and regulations in that they do not reflect agency policy and should not be considered regulatory or supervisory guidance. Some of the information used in the preparation of this fact sheet was obtained from publicly available sources. These sources are considered reliable and current, as of August 2020, but the use of this information does not constitute an endorsement of its accuracy by the OCC.

This *Community Developments Fact Sheet* explains for national banks and federal savings associations (FSA) (collectively, banks) certain aspects of opportunity zone investments and discusses how opportunity zone activities may be used to support a bank's community and economic development strategies.

What Is an Opportunity Zone?

An opportunity zone is an economically distressed area designated by the U.S. Department of the Treasury to attract private investment from qualified opportunity funds (QOF). A QOF is an investment vehicle that is set up as either a partnership or corporation for investing in eligible property in an opportunity zone. Monies invested in QOFs can help spur economic development and create jobs in these distressed areas. There are about 8,700 economically diverse

opportunity zones,¹ covering 12 percent of all census tracts in the United States. Qualified opportunity zones are in all 50 states, the District of Columbia, and five U.S. territories.

Investors that have capital gains and invest new capital in QOFs are eligible to receive tax benefits, including deferral and potential partial forgiveness of their initial gain. Investors may receive possible exemption of gains from their QOF investment, depending on the length of time that the funds are invested in the QOF. To receive the tax benefits, the QOF must comply with a number of requirements, including making timely, qualified investments in opportunity zones.²

Opportunity zones were established in tax legislation enacted in December 2017.³ Requirements and guidance for this tax

¹ Refer to [Opportunity Zones Resources](#) for a list of designated qualified opportunity zones. Also refer to Internal Revenue Bulletin [Notice 2018-48](#).

² For more information on how opportunity zones work, refer to the Treasury Department's Community

Development Financial Institutions Fund's [Opportunity Zones Resources](#).

³ Section 13823 of Pub. L. 115-97.

incentive are available through regulations and other documents published by the Treasury Department and the [Internal Revenue Service](#) (IRS).⁴

The opportunity zone tax incentive is designed to stimulate the flow of private sector capital into long-term equity investments in real estate, infrastructure, operating businesses, and start-ups in designated communities.

The opportunity zone tax incentive is designed to complement existing community development tools and debt financing products and to be flexible enough to meet the diverse needs of a wide range of communities. The White House Opportunity and Revitalization Council was created to target, streamline, and coordinate federal resources for use in opportunity zones and other economically distressed communities.

State and local governments have organized efforts to attract opportunity zone investments that will support local economic development strategies. These efforts include developing community prospectuses;⁵ offering businesses additional incentives such as state tax credits, job

training programs, small business loans, and affordable housing incentives;⁶ and facilitating QOF investments to meet community priorities, such as affordable housing and renewable energy.⁷ Banks have participated in these organizing efforts, contributing important leadership and resources that bring parties together to form constructive, transformational strategies.

The U.S. Impact Investing Alliance, the Beek Center for Social Impact and Innovation at Georgetown University, and the Federal Reserve Bank of New York, after consultation with a wide range of industry leaders, developed an approach to manage and measure the economic and social outcomes of opportunity zone investments. The resulting framework recommends that investors and QOF managers integrate the needs of local communities into the formation and implementation of the QOFs.⁸ Community engagement should be an essential component of a QOF's management strategy.

⁴ For example, refer to [Opportunity Zones Frequently Asked Questions](#).

⁵ For example, refer to [Opportunity Zone Investment Prospectus Guide](#).

⁶ Refer to examples in [Maryland](#) and [Colorado](#).

⁷ Refer to [California Opportunity Zone Partnership](#).

⁸ The [Opportunity Zones Reporting Framework](#) includes five guiding principles:

1. Community engagement: QOF investors should request that fund managers integrate the needs of local communities into the formation and implementation of the funds, reaching low-

income and underinvested communities with attention to diversity.

2. Equity: QOF investments should seek to generate equitable community benefits, leverage other incentives, and aim for responsible exits.
3. Transparency: QOF investors should be transparent and hold themselves accountable, with processes and practices that remain fair and clear.
4. Measurement: QOF investors should voluntarily monitor, measure, and track progress against specific impact objectives, identifying key outcome measures and allowing for continuous improvement.
5. Outcomes: QOF metrics should track real change, with an understanding that both quantitative and qualitative measures are valuable indicators of progress.

How Can Banks Participate in Opportunity Zone Transactions?

Banks can participate in opportunity zone transactions in a number of ways.

Brokering Opportunity Zone Transactions

Opportunity zone transactions can bring investors into economically distressed areas, and those investors may be new to community development finance. The capital that finances a community development project often involves numerous public and private entities. Community-oriented development, such as affordable housing or community facilities, often involves subsidies or concessionary financing. Banks have experience in these types of transactions, knowledge of local projects and businesses, and connections to local partners, which may help bring critical projects to fruition.

Lending in Opportunity Zone Transactions

Opportunity zones may create new lending prospects for banks, including prospects for commercial real estate loans, construction loans, and bridge loans. Although these loans are not eligible for the opportunity zone tax incentives, they can potentially be profitable lending opportunities for banks.

Due to their Community Reinvestment Act (CRA) responsibilities, banks have traditionally been active lenders in economically distressed areas well before the opportunity zone designation. Loans in opportunity zone transactions may be eligible for CRA consideration.

Managing Qualified Opportunity Funds

A bank may be the general partner or managing member of a QOF that manages investments from the bank itself or from third-party investors.

To form a QOF, an eligible corporation or partnership self-certifies by filing Form 8996, Qualified Opportunity Fund, with its federal income tax return.

The QOF plays several important roles in opportunity zone transactions, including communicating with investors, identifying qualifying projects in an opportunity zone, structuring transactions, and complying with all applicable opportunity zone regulations.

Banks with experience in complex tax transactions and community revitalization strategies may see managing a QOF as an extension of existing activities. Banks managing QOFs need to understand and manage the risks inherent in fulfilling these roles. A bank considering whether to undertake the management of a QOF should contact its supervisory office to understand any regulatory issues related to these activities.

Investing in Qualified Opportunity Funds

A bank with a capital gain may choose to invest that gain in a QOF. By investing in a QOF, which then invests in qualified opportunity zone property, an investor can receive up to three tax benefits:⁹

1. **Tax deferral:** Investors can defer tax on any prior capital gains invested in a QOF until the earlier of the date on which the investment in a QOF is sold or

⁹ Refer to [Opportunity Zones Frequently Asked Questions](#).

exchanged, or December 31, 2026.¹⁰ The capital gains must be invested in a QOF within 180 days of realization.

2. **Partial tax forgiveness:** If the QOF investment is held for longer than five years, there is a 10 percent exclusion of the deferred gain, decreasing the investor's tax liability upon sale of the investment or when the deferral expires in 2026. If the investment is held for more than seven years, the exclusion increases to 15 percent.¹¹
3. **Exclusion of further gains:** QOF investors can permanently exclude from taxation any capital gains that accrue after their investment in a QOF, if the investment is held for at least 10 years. After 10 years, the investor is eligible for an increase in the tax basis of the QOF investment equal to its fair market value on the date that the QOF investment is sold or exchanged.¹²

A QOF must hold at least 90 percent of its assets in a qualified opportunity zone property. Those QOF investments can be invested directly into a qualified opportunity zone business property or indirectly by investing in a stock or partnership interest in an opportunity zone business.

A qualified opportunity zone business (QOZB) is a trade or business in which substantially all the tangible property owned by the business is qualified opportunity zone business property. At least 50 percent of the gross income of the QOZB must be derived from the active conduct of a trade or business in qualified opportunity zones.¹³

The QOZB may not operate or lease more than de minimis property to any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.¹⁴

A qualified opportunity zone business property is tangible property used in the trade or business of a QOF or QOZB. The property must have been acquired by purchase from an unrelated party after December 31, 2017. In addition, either the original use of the property originates with the QOF or the QOF substantially rehabilitates the property during a 30-month holding period after acquisition.¹⁵ Additional restrictions, which are discussed

¹⁰ The tax on the original capital gain can be deferred until no later than December 31, 2026. Investors should plan on having sufficient funds to pay the tax if they don't want to liquidate their investment in the QOF at that time.

¹¹ The final date to receive the full tax forgiveness benefit of an opportunity zone investment was December 31, 2019. After this date, the full 15 percent step-up in basis after a seven-year hold expired, as it is no longer possible to achieve a seven-year hold before the end of 2026, when the original deferred gain is recognized. The final date to receive any basis step-up on the original gain is December 31, 2021. After December 31, 2021, the 10 percent step-up in basis after a five-year hold expires, as it

will no longer be possible to achieve a five-year hold before the end of 2026.

¹² No gain is recognized on disposition of the investment, provided the disposition occurs on or before December 31, 2047.

¹³ The IRS regulations also provide three safe harbors that businesses may use to satisfy this test. Refer to 26 CFR 1.400Z2(d)-1(d)(3)(i)(A), (B), (C), or (D).

¹⁴ Refer to 26 CFR 1.1400Z2(d)-1(d)(4).

¹⁵ Additions to basis must exceed an amount equal to the adjusted basis of such property at the beginning of such period. 26 USC 1400z-2(d)(2)(D)(ii).

in the IRS opportunity zone regulations, apply.¹⁶

Public Welfare Investment Authority

National banks, under conditions described in this section of the fact sheet, may make investments in QOFs under the public welfare investment (PWI) authority. The investment is generally permissible if it is “designed primarily to promote the public welfare, including the welfare of low- and moderate-income (LMI) communities or families (such as by providing housing, services, or jobs).”¹⁷

The PWI regulations require an eligible investment to primarily benefit LMI individuals, LMI areas,¹⁸ or other areas targeted by a governmental entity for redevelopment.¹⁹ In addition, an investment would be eligible as a PWI if it would receive consideration as a “qualified investment” under 12 CFR 25.23 of the CRA regulations.²⁰ A PWI must not expose the bank to unlimited liability, and a bank’s aggregate PWIs must not exceed 15 percent of its capital and surplus. A bank’s opportunity zone investment may not automatically qualify as a PWI and may require the OCC’s prior approval, including

if there is uncertainty as to whether the investment meets the regulations’ criteria.

FSA’s may invest in a QOF under several investment authorities, including

- community development-related equity investments in real estate pursuant to section 5(c)(3)(A) of the Home Owners’ Loan Act;
- investments in service corporations for community development pursuant to 12 CFR 5.59; and
- de minimis investments in the aggregate up to 1 percent of the FSA’s total capital or \$250,000 in community development investments of the type permitted for a national bank under 12 CFR 24, pursuant to 12 CFR 160.36.

For more information on the FSA PWI authorities, including permitted activities, consult the FSA section on the OCC’s [Public Welfare Investment Resource Directory](#).

Volcker Rule

Section 13 of the Bank Holding Company Act, also known as the Volcker rule, generally prohibits any banking entity from

statewide median family income for census tracts within non-metropolitan areas, or (b) no more than 80 percent of the greater statewide median family income or the overall metropolitan median family income for census tracts within metropolitan areas. The PWI definitions of low-income and moderate-income follow the same definitions as the CRA. Banks seeking to qualify a QOF investment for PWI should use the definitions at 12 CFR 24.2(f).

¹⁹ A state’s designation of a census tract as being a qualified opportunity zone tract does not necessarily establish that area as being a government-targeted area for redevelopment under the PWI authority.

²⁰ Refer to 12 CFR 24.3.

¹⁶ Refer to section 1400Z of Pub. L. 115-97 and [Final Regulations 1400Z-2](#).

¹⁷ Refer to 12 USC 24(Eleventh) and its implementing regulation, 12 CFR 24. Examples of investments that qualify under the PWI authority are at 12 CFR 24.6.

¹⁸ The PWI LMI eligibility definition is different than the U.S. Internal Revenue Code Section 45D(e) low-income criteria for the purposes of determining whether an area qualifies under the opportunity zone provisions. Under the opportunity zone regulations, for a census tract to be designated a “low-income” qualified opportunity zone tract, it must have a poverty rate of at least 20 percent or a median family income of (a) no more than 80 percent of the

acquiring or retaining an ownership interest in, sponsoring, or having certain relationships with a hedge fund or private equity fund (covered fund). In July 2020, amendments to the Volcker rule clarified that a covered fund does not include an issuer that is a QOF, as defined in 26 USC 1400Z–2(d).²¹

CRA Consideration

Under the CRA regulation in effect for OCC-supervised banks until October 1, 2020, loans, investments, or services in an opportunity zone transaction may be eligible for CRA consideration if they meet the definition of community development.²² Community development includes affordable housing (including multifamily rental housing) for LMI individuals, community services targeted to LMI individuals, and activities that promote economic development by financing small businesses and small farms.

Activities that finance such small businesses and small farms are considered to promote economic development when they, for example, support permanent job creation, retention, or improvement for LMI individuals, in LMI geographies, or in areas targeted for redevelopment by federal, state, local, or tribal governments.

Community development also includes activities that revitalize or stabilize LMI geographies, designated disaster areas, or

distressed or underserved non-metropolitan middle-income geographies.

The CRA rules for OCC-supervised banks change effective October 1, 2020.²³ Under these new rules, a community development loan, community development investment, or community development service that helps meet the credit needs of a bank’s entire community, including LMI communities, is a qualifying activity if it meets the criteria in 12 CFR 25.04.²⁴ These criteria also apply to activities of qualified opportunity funds that benefit LMI-qualified opportunity zones, as defined in 26 USC 1400Z-2(d)(1).²⁵

For More Information

OCC Resources

- [Public Welfare Investments Resource Directory](#)

Other Resources

- [Community Development Financial Institutions Fund’s Opportunity Zones Resources](#)
- [IRS Opportunity Zones Frequently Asked Questions](#)
- [Final CRA Regulation](#)

²¹ Refer to OCC Bulletin 2020-71, “Volcker Rule Covered Funds: Final Rule.”

²² 12 CFR 25.12(g) (national banks) and 12 CFR 195.12(g) (FSAs).

²³ Refer to “Community Reinvestment Act Regulations, Final Rule,” 85 Fed. Reg. No. 109, pp. 34734–34834.

²⁴ The final rule consolidates 12 CFR 25, the OCC’s national bank CRA rule, with 12 CFR 195, the OCC’s federal savings association CRA rule, by applying 12 CFR 25 to savings associations and removing the current 12 CFR 195.

²⁵ Refer to “Community Reinvestment Act Regulations, Final Rule,” 85 Fed. Reg. No. 109, p. 34796. Also see the [CRA Illustrative List](#).