

Proposed Legislation Would Add Rural Opportunity Zones

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In April 2022, opportunity zone (OZ) legislation — [H.R. 7467](#) or the Opportunity Zones Improvement, Transparency and Extension Act — was introduced, but not enacted. Among other items, that legislation included proposals to (1) extend the tax incentive for investing in a qualified opportunity fund (QOF) for two years from December 31, 2026 to December 31, 2028, (2) implement an early sunset for some census tracts that were designated as OZs but were not appropriate low-income areas, (3) implement reporting requirements, and (4) allow QOFs to be organized as “fund of funds,” allowing a QOFs to invest in other QOFs.

In early June 2023, the House introduced legislation — [H.R. 3937](#) or the Small Business Jobs Act (SBJA) — which includes some provisions directed at OZs, while omitting a number of the items suggested in the April 2022 legislation. The only provisions mentioned above that were maintained in the proposed legislation were those related to increased reporting requirements, which remain in a form similar to the 2022 proposed legislation.

The SBJA contains the following provisions that target QOFs:

- Introduces a new Internal Revenue Code Section, 1400Z-3, which covers investments in “rural opportunity zones” (ROZs). The ROZ rules are similar to the QOF rules and follow a similar statutory structure, but notably allow qualifying investments to be made (starting after December 31, 2023) until December 31, 2032 (compare the current December 31, 2026 threshold for general QOF investments). Notably, this change in timing allows timely investments in ROZs to benefit from the five-year and seven-year exclusions of 10% and 5%, respectively, of qualifying capital gain invested in the ROZs. This benefit is no longer available with respect to QOF investments. A ROZ is defined as a census tract located in a rural county (meaning any county if more than 50% of the census blocks that comprise such county are rural blocks) that is in persistent poverty (as determined by the Census Bureau using the same methodology and data as used for purposes of the bureau’s May 2023 report, titled “Persistent Poverty in Counties and Census Tracts”).
- Increased information reporting, requiring QOFs to report, among other items, the following information:
 - Entity classification (corporation or partnership).
 - Value of assets.
 - Information with respect to qualified opportunity zone businesses (QOZBs) owned by the QOF, including among other requirements:

- Entity classification (corporation or partnership).
 - Industry (NAICS code).
 - Number of residential units for any real property owned by the QOZB.
 - Number of full-time employees.
- QOZBs are required to furnish QOFs with the information necessary for the QOF to report the above-mentioned information with respect to the QOZB.
 - These reporting requirements would also apply to ROZs.

A recent Treasury report, “[Use of the Opportunity Zone Tax Incentive: What the Data Tells Us](#),” offers some insight into the scope and nature of QOF investments to date. Though the data and report itself does not speak clearly to whether the OZ tax incentive has been effective in promoting certain intended policy goals, like increasing economic activity within and bringing more, higher paying jobs to low-income areas, it cites several articles that attempt to evaluate this point based on early data. The report largely presents a mass of data collected from tax returns filed with respect to QOFs in tax years 2018-2020.

Highlights from the report are noted below:

- The report cites several papers that evaluate the effectiveness of the OZ tax incentive and generally suggests that it is too early to tell whether the OZ incentive has been effective, noting inclusions data and economic markers within OZ.
- The vast majority (over 93%) of QOFs are structured as partnerships.
- Through 2020, QOFs held assets of approximately \$48 billion.
- Real estate was by far the most common sector of investment for QOFs, with over 60% of property owned by QOFs and QOZBs being real estate assets. The finance and insurance industries followed in a distance second place.
- Though, in general, the significant majority of census tracts identified by the OZ program were urban, a disproportionate percentage of QOF investment was targeted in urban areas.
- Most investors in QOFs are individuals, but on an average, per investor basis, entity investors have invested significantly more in QOFs.
- Data suggests that QOFs that received more investments were generally already better off than QOFs that did not receive investments, with the QOFs receiving investments generally having higher education levels, median household income, and housing value.

The information provided by the report suggest that certain information reporting requirements outlined in the SBJA with respect to QOFs was already readily available to the IRS (e.g., entity classification and asset value), and the SBJA may simply represent a codification of the requirement that this information be reported. The report also contains a significant amount of additional data with respect to QOF investments to date, and perhaps will be considered by legislators when they evaluate the SBJA.

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