

AT A GLANCE:

- Each governor is authorized to designate a certain number of Opportunity Zones into which private investment can flow through Opportunity Funds.
- Opportunity Funds are a new class of investment vehicles authorized to aggregate and deploy private investment into Opportunity Zones.
- U.S. investors are eligible to receive a temporary tax deferral and other tax benefits when they rollover unrealized capital gains into Opportunity Funds for a minimum of five years.
- Opportunity Funds are authorized to invest in Opportunity Zone Property:
 - Stock in a domestic corporation
 - Capital or profits interest in a domestic partnership
 - Tangible property used in a trade or business of the Opportunity Fund that substantially improves the property.
- Governors have 90 days from the date of enactment (December 22, 2017) to submit Opportunity Zone recommendations to Treasury.
- Treasury has not released guidance on the process for certifying Opportunity Funds.
- Enterprise anticipates the Opportunity Zones Program will be fully implemented by Q4 2018 or Q1 2019. Many factors could influence this timeline. Look for additional coverage on [Enterprise's blog](#).

OVERVIEW

Originally introduced in the [Investing in Opportunity Act \(IIOA\)](#), the [Opportunity Zones Program](#) was enacted as part of the 2017 tax reform package ([Tax Cuts and Jobs Act](#)). The program is designed to drive long-term capital to rural and low-income urban communities throughout the nation, and uses tax incentives to encourage private investment in impact funds.

BACKGROUND

In 2015, the [Economic Innovation Group \(EIG\)](#) – a bipartisan public policy firm – developed the Opportunity Zone concept, which was conceived as a systematic approach to helping address the uneven economic recovery and persistent lack of growth that have left too many American communities behind. The concept was introduced in the Investing in Opportunity Act (IIOA) during the 114th Congress, and reintroduced in the 115th Congress by Senators Tim Scott (R-S.C.) and Cory Booker (D-N.J.) and Congressmen Pat Tiberi (R-Ohio) and Ron Kind (D-Wis.), gaining nearly 100 congressional cosponsors in 2017.

This is the first new community development tax incentive program enacted since the Clinton administration, providing an opportunity for mainstream private investors to support businesses and distressed communities. The expectation is that Opportunity Funds will ease the execution of “impact investments” for investors, and tax benefits derived from these investments will incent participation in the Opportunity Zones Program.

DEFINITIONS

Here are high-level definitions of key terms. Each is discussed in further detail below.

Opportunity Zone: A census tract which has been designated as eligible to receive private investments through Opportunity Funds.

Opportunity Fund: Private investment vehicle, certified by the Treasury, to aggregate and deploy capital in Opportunity Zones for eligible uses defined as Opportunity Zone Property.

Opportunity Zone Property: Asset types eligible for investment under the Opportunity Zones Program.

PROGRAM DETAILS

Opportunity Zones Program

The Opportunity Zones Program has been introduced as an [innovative approach](#) to unlocking long-term private investment to support low-income urban and rural communities in every U.S. state and territory.

Investors are eligible to receive certain tax benefits on unrealized capital gains reinvested in Opportunity Zones through pooled Opportunity Funds. The program is designed to minimize cost and risk to the taxpayer. Investors bear the risk on all their originally deferred capital gains, minus a modest reduction for long-term holdings, regardless of whether subsequent investments have increased or decreased in value. Neither tax credits nor public-sector financing is involved.

Opportunity Zones

The program uses low-income community census tracts as the basis for determining areas eligible for an Opportunity Zone designation. [Section 45D(e)].

- Low-income census tracts are places with an individual poverty rate of at least 20 percent and median family income no greater than 80 percent of the area median.
- A census tract that is not a low-income community may be designated as a qualified Opportunity Zone if the tract is contiguous with the low-income community designated as a qualified Opportunity Zone, and the median family income of the tract does not exceed 125 percent of the median family income of the low-income community contiguous with the tract. Up to 5 percent of the population census tracts designated as Opportunity Zones may qualify under this exemption.
- Per state/territory, up to 25 percent of the total number of census tracts that qualify as an Opportunity Zone can be designated as an Opportunity Zone.

Governors will determine which low-income community census tracts qualify as an Opportunity Zone. This approach was intended to help ensure local needs and opportunities are being met as well as to encourage concentration of capital in targeted, geographically contiguous areas in each state or territory.

- Governors have 90 days (Determination Period) from the date of enactment to submit a list of designated census tracts for approval.
 - Treasury must approve or provide feedback within 30 days of the governor's submission (Consideration Period).
 - Both the Determination Period and Consideration Period can be extended for a period of 30 days.
 - Opportunity Zone designations last for a period of 10 years (Designation Period).

Opportunity Funds

Opportunity Funds are a new class of investment vehicles (organized as a corporation or a partnership) that specialize in aggregating private investment and deploying that capital in Opportunity Zones to support Opportunity Zone Property.

- A minimum of 90 percent of Opportunity Fund assets must be invested in Opportunity Zones.
- Opportunity Funds are envisioned as a market solution for investors who lack the information and wherewithal to execute investments in rural and low-income urban communities.
- The statute does not limit the number of funds that can be created, nor does it provide instruction on the nature of investments (i.e., risk/return profile).
- Pooling capital through a fund structure provides an opportunity for a broad array of investors throughout the country to engage in the program.

Opportunity Zones Property

Opportunity Funds invest in Opportunity Zone Property, which are defined as:

- Qualified opportunity zone stock – any stock in a domestic corporation
- Qualified opportunity zone partnership interest – any capital or profits interest in a domestic partnership
- Qualified opportunity zone business property – tangible property used in a trade or business of the qualified opportunity fund that substantially improves the property

Incentives for Activating Passive Holdings

The Opportunity Zones Program provides an incentive for investors to reinvest unrealized capital gains into Opportunity Funds in exchange for a temporary tax deferral and other benefits tied to long-term holdings. With trillions of dollars in unrealized capital gains sitting on the sidelines in stocks and mutual funds, U.S. investors can now roll passive holdings of capital into investments in distressed communities.

No upfront subsidy is provided to investors; all incentives are linked to the duration of the qualified investment. The provision has two main tax incentives to encourage investment:

- Allows for the temporary deferral of inclusion in gross income for capital gains that are reinvested into Opportunity Funds.
 - Investors can roll existing capital gains into Opportunity Funds with no up-front tax bill.
 - If investors hold their Opportunity Fund investments for five years, the basis of their original investment is increased by 10 percent (meaning they will only owe taxes on 90 percent of the rolled-over capital gains). If investors hold for seven years, the basis increases by a further 5 percent.
 - Investors can defer their original tax bill until December 31, 2026 at the latest, or until they sell their Opportunity Fund investments, if earlier.
- Excludes from taxable income capital gains on Opportunity Fund investments held for at least 10 years. In other words, after settling their original tax bill, patient investors in Opportunity Funds will face no capital gains taxes on their Opportunity Zone investments.

STEPS TOWARD IMPLEMENTATION

As explained below, there are currently multiple efforts happening in tandem as the administration and states work to implement the Opportunity Zones Program, including: 1) designating Opportunity Zones, 2) providing guidance on Opportunity Fund certification, and 3) finalizing the law.

Designating Opportunity Zones

Each governor is authorized to designate a certain number of Opportunity Zones into which private investment can flow through Opportunity Funds. Governors have 90 days from the date of enactment (December 22, 2017) to submit a list of designated census tracts for approval, although they can request a 30-day extension. Once approved, these designations will remain in place for 10 years.

Currently, governors are awaiting guidance from Treasury regarding the process for submitting recommended designations. It is anticipated that this guidance will be delivered in the coming weeks (late January/early February 2018).

Providing Guidance on Opportunity Fund Certification

Once the zones are designated, Treasury will turn its focus to providing guidance on Opportunity Fund certification. The statute outlines two requirements regarding structure and intent of these funds: 1) must be organized as a corporation or a partnership and 2) invest a minimum of 90 percent of assets in Opportunity Zones. Given the straightforward nature of statute requirements, it is unclear whether additional qualifications will be considered. It is anticipated that the process for certification will analogue that of a Community Development Entity (CDE). The timeline for the availability of the guidance is not yet known.

Finalizing the Law

In addition to providing guidance on the processes for submitting Opportunity Zone designations and certifying Opportunity Funds, the Treasury must follow formal administrative procedures to finalize the law, which will dictate ongoing administration of the Opportunity Zones Program. The process typically goes as follows:

- Treasury will propose a structure for implementing the new rule, after which it will issue a notice of proposed rule-making and will request public comments on the proposal.
- The comment period typically lasts from 30 to 60 days. Upon reviewing the comments and making any necessary changes to the rule, Treasury will issue a final rule that formalizes the program.

Final Implementation: Q4 2018 - Q1 2019

Given the scope of activities noted above, Enterprise anticipates implementation in Q4 2018 or Q1 2019. A number of factors could influence this timeline, so stay tuned for additional coverage of the implementation of the Opportunity Zones Program on Enterprise's blog.

QUESTIONS

Please contact [Rachel Reilly Carroll](#) if you have any questions.