



October 2020

# OPPORTUNITY ZONES

## Improved Oversight Needed to Evaluate Tax Expenditure Performance

Accessible Version

# GAO Highlights

Highlights of [GAO-21-30](#), a report to congressional requesters

## Why GAO Did This Study

Congress created OZ to spur investments in distressed communities. According to Census Bureau data, about 10 percent of Americans live in the nearly 9,000 Zones. Taxpayers who invest in Qualified Opportunity Funds—that in turn invest in Zones—have the potential to receive significant tax-related benefits on their qualified investments. GAO was asked to review OZ implementation.

This report (1) describes key features of OZ and how it compares to other federal tax expenditures aimed at spurring investment in low-income and distressed areas, and (2) evaluates the executive branch’s ability to effectively evaluate OZ’s performance. GAO compared OZ’s key features with those of three other community development tax expenditures, analyzed executive branch documentation, and interviewed agency officials about plans to collect data and report on performance.

## What GAO Recommends

GAO is identifying two matters for congressional consideration, including that Congress consider providing Treasury with authority and responsibility to collect data and report on OZ’s performance, in collaboration with other agencies. As part of that deliberation, Congress should also consider identifying questions about OZ’s effects that it wants Treasury to address in order to help guide data collection and reporting of performance, including outcomes.

In its comments, Treasury acknowledged the lack of clear guidance and authority to collect OZ data.

View [GAO-21-30](#). For more information, contact Jessica Lucas-Judy at (202) 512-9110 or [lucasjudyj@gao.gov](mailto:lucasjudyj@gao.gov).

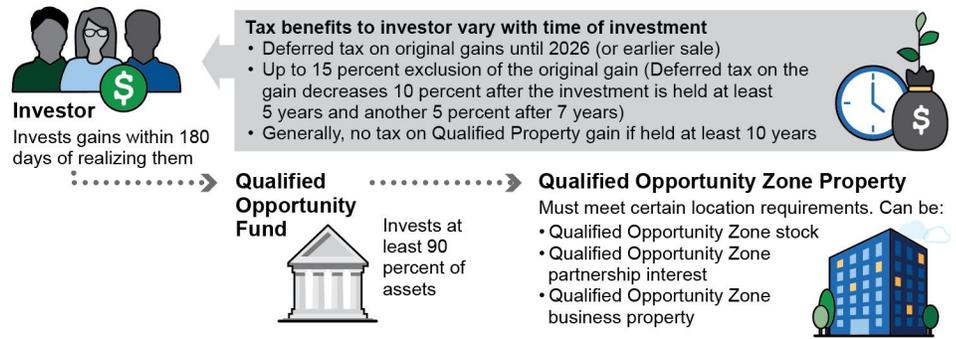
## Opportunity Zones

### Improved Oversight Needed to Evaluate Tax Expenditure Performance

## What GAO Found

Congress created Opportunity Zones (OZ)—a tax expenditure that reduces taxpayers’ liabilities and federal revenues—to spur investment in distressed communities. OZ allows taxpayers to defer taxes on invested gains, and in certain circumstances pay reduced taxes, by investing in distressed communities designated as Qualified Opportunity Zones (Zones) through Qualified Opportunity Funds.

#### Basic Structure of and Tax Benefits from Investments in Opportunity Zones



Source: GAO analysis of Department of Treasury and Internal Revenue Service (IRS) regulations and IRS documentation. | GAO-21-30

Compared to some other community development tax expenditures, OZ generally has fewer limits on the project types that can be financed and fewer controls to limit potential revenue losses. While OZ can generally be used to support investment in any type of tangible asset class within a Zone, some other tax expenditures, such as the Low Income Housing Tax Credit, are targeted at specific project types. OZ is also not subject to limits on the aggregate dollar amount that can be claimed, unlike the New Markets Tax Credit.

Congress did not designate an agency with the responsibility and authority to collect data, evaluate, and report on OZ performance. GAO has previously reported that the Department of the Treasury (Treasury) could be the most appropriate agency to evaluate any tax expenditures that do not have logical connections to program agencies. GAO has also previously reported that achieving complex outcomes can benefit from collaboration among agencies. A member of an interagency council has issued a report estimating the effects of OZ, but the long-term future of this council, including any plans to continue evaluations over the duration of the tax expenditure, is uncertain.

As a result of unclear statutory authority, there are insufficient data available to evaluate OZ performance. The Internal Revenue Service (IRS) administers and collects data explicitly for tax compliance purposes. Some of these data, such as investment amounts, can be used to evaluate outcomes. Without additional data, however, only limited reporting on performance is possible. Additional data collection and reporting on OZ are necessary to evaluate outcomes. It would be beneficial for Congress to indicate what questions it would like such evaluations to address, such as what are OZ’s effects on employment and housing in the Zones.

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### **Abbreviations**

CDFI Fund	Community Development Financial Institutions Fund
Council	White House Opportunity and Revitalization Council
HTC	historic tax credit
HUD	Department of Housing and Urban Development
IRS	Internal Revenue Service
LIHTC	Low-Income Housing Tax Credit
NMTC	New Markets Tax Credit
OZ	Opportunity Zones tax expenditure
Treasury	Department of the Treasury
Zones	Qualified Opportunity Zones

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October 8, 2020

Congressional Requesters:

Conventional access to credit and investment capital for developing small businesses, creating and retaining jobs, and revitalizing neighborhoods is often limited in economically distressed communities or in communities with large low-income populations. To incentivize economic growth and investment in these communities, Congress created the Opportunity Zone tax expenditure (OZ) as part of the law commonly known as the Tax Cuts and Jobs Act.<sup>1</sup> Tax expenditures are special credits, deductions, and other tax provisions that reduce taxpayers' tax liabilities, and as a result, reduce federal tax revenue.<sup>2</sup>

Nearly 9,000 census tracts were designated as Qualified Opportunity Zones (Zones).<sup>3</sup> According to Census Bureau data, approximately 10 percent of the U.S. population resides in these Zones. Taxpayers who invest in the Zones have the potential to receive significant tax-related benefits on their qualified investments. For example, if a taxpayer made a qualifying investment of \$1 million in a self-certified fund called a Qualified Opportunity Fund in 2019, and that investment averaged a 7 percent annual growth rate, the fair market value would be approximately \$2 million after 10 years, \$3.9 million after 20 years, and \$6.6 million when OZ expires in 2047. Through this tax expenditure, such capital gains—the difference between the amount received on a sale or exchange (usually fair market value) and the initial investment amount, or \$5.6 million at the

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<sup>1</sup>For purposes of this report, we use the term "OZ" to refer broadly to the laws, guidance, and activities involved in administering the Opportunity Zones tax expenditure. When appropriate, we distinctly indicate when we are discussing the geographic locations—i.e. census tracts—that are Qualified Opportunity Zones where the benefits of this tax expenditure are granted. Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017).

<sup>2</sup>The Congressional Budget and Impoundment Control Act of 1974 defines tax expenditures as "revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability." Pub. L. No. 93-344, § 3, 88 Stat. 297, 299 (July 12, 1974), *codified at* 2 U.S.C. § 622(3). Treasury's Office of Tax Analysis and the congressional Joint Committee on Taxation each annually compile their own lists of tax expenditures and estimates of their revenue losses.

<sup>3</sup>A census tract is a statistical subdivision of a county, or an equivalent entity delineated under Census Bureau guidelines. Designed to be relatively homogenous with fairly stable boundaries over time, census tracts generally contain from 1,200 to 8,000 people.

expiration date in this example—would be excluded from taxation if the taxpayer held the investment for at least 10 years.

Since 1994, we have recommended greater scrutiny of tax expenditures to help determine how well specific tax expenditures work to achieve their goals, and how their benefits and costs compare to spending programs with similar goals. We currently have an open priority recommendation to the Department of Treasury (Treasury) and the Office of Management and Budget to develop and implement a framework for conducting performance reviews of tax expenditures to ensure policymakers and the public have necessary information to make informed decisions.<sup>4</sup>

Given the magnitude and time horizon of this tax expenditure, you asked us to evaluate its implementation. This report (1) describes key features of OZ and how it compares to other federal tax expenditures aimed at spurring investment in low income and distressed areas, and (2) evaluates the executive branch’s ability to effectively evaluate performance, including outcomes of this tax expenditure.

To describe key features of OZ, we reviewed relevant Tax Cuts and Jobs Act provisions, and tax regulations and other Internal Revenue Service (IRS) documentation. To compare the tax expenditure to others aimed at spurring investment in low-income and distressed areas, we selected three tax credits: the New Markets Tax Credit (NMTC); the Low-Income Housing Credit, which, for purposes of this report we refer to as the Low-Income Housing Tax Credit (LIHTC); and a tax credit for rehabilitation of historic structures (often referred to as the historic tax credit or HTC).<sup>5</sup> To make this selection, we reviewed and adapted our prior work that identified areas of overlap among community development spending

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<sup>4</sup>As of February 2020, when the President’s fiscal year 2021 budget request was released, the Director of the Office of Management and Budget had not developed a framework for reviewing tax expenditure performance. For more information see GAO, *Government Performance and Accountability: Tax Expenditures Represent a Substantial Federal Commitment and Need to be Reexamined*, [GAO-05-690](#) (Washington, D.C.: Sept. 23, 2005). For more information on our priority recommendation letter to Treasury that includes this recommendation and Treasury’s actions to date, see *Priority Open Recommendations: Department of the Treasury*, [GAO-20-549PR](#) (Washington, D.C.: Apr. 23, 2020).

<sup>5</sup>26 U.S.C. § 45D. 26 U.S.C. § 42. 26 U.S.C. § 47.

programs and tax expenditures.<sup>6</sup> We supplemented this with additional research by—and interviews with—subject-matter specialists knowledgeable about these tax expenditures.

To evaluate the executive branch’s ability to effectively evaluate performance, including outcomes of the tax expenditure, we analyzed congressional documentation, our prior work, and agency documentation, and interviewed agency officials and subject-matter specialists. We analyzed the statute and related congressional documents—including congressional reports and a Joint Committee on Taxation summary of the statute—to help determine the intended outcomes of the tax expenditure and identify potential measures of its performance, including outcomes.<sup>7</sup>

To identify the types of data that would be useful to evaluate and report on the performance, including outcomes, of OZ, we analyzed our prior work related to evaluating tax expenditures. We also met with subject matter specialists and analyzed their publications. We selected subject matter specialists based on knowledge from our prior work, such as on NMTC, and referrals from initial interviewees.

To identify plans to collect data, evaluate and report on performance of the tax expenditure, we analyzed executive branch documentation and interviewed agency officials. Specifically, we analyzed IRS’s forms related to OZ—Forms 1099-B, 8949, 8996, and 8997—to understand what information IRS would have from investors and Qualified Opportunity Funds through tax return filings. We also reviewed Treasury’s plans to conduct data analysis and report on the tax expenditure’s outcomes. Additionally, we analyzed documentation from the White House Opportunity and Revitalization Council and interviewed Department of Housing and Urban Development (HUD) officials. We used criteria from

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<sup>6</sup>GAO, *Entrepreneurial Assistance: Opportunities Exist to Improve Programs’ Collaboration, Data-Tracking, and Performance Management*, [GAO-12-819](#) (Washington, D.C.: Aug. 23, 2012) and *Community Development: Limited Information on the Use and Effectiveness of Tax Expenditures Could Be Mitigated through Congressional Attention*, [GAO-12-262](#) (Washington, D.C.: Feb. 29, 2012).

<sup>7</sup>See H. R. Conf. Rep. No. 115-466 (2017). Joint Committee on Taxation, *General Explanation of Public Law 115-97, JCS-1-18* (Washington, D.C.: Dec. 20, 2018).

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our guide for evaluating tax expenditures to examine plans for collecting data to evaluate and report on the tax expenditure's performance.<sup>8</sup>

We also identified criteria from our prior work on key practices to enhance and sustain interagency collaboration and mechanisms to facilitate coordination. We applied the criteria to assess agencies' collaborative efforts on OZ data collection and performance evaluation.<sup>9</sup>

We conducted this performance audit from December 2019 to October 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

The geographic areas designated as Zones were selected from a pool that included about 32,000 eligible census tracts classified as low-income communities and about 10,000 census tracts that both are contiguous to a low-income community and meet certain income requirements.<sup>10</sup> In each state, the total number of tracts that a governor could nominate as Zones was set at up to 25 percent of the total number of low-income tracts in the state.<sup>11</sup> Further, no more than 5 percent of a state's nominated tracts could be contiguous non-low-income community tracts.<sup>12</sup> For example, if a state contained a total of 400 low-income community

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<sup>8</sup>GAO, *Tax Expenditures: Background and Evaluation Criteria and Questions*, [GAO-13-167SP](#) (Washington, D.C.: Nov. 29, 2012).

<sup>9</sup>GAO, *Managing for Results: Practices for Effective Agency Strategic Reviews*, [GAO-15-602](#) (Washington, D.C.: July 29, 2015); and *Managing for Results: Key Considerations for Implementing Interagency Collaborative Mechanisms*, [GAO-12-1022](#) (Washington, D.C.: Sept. 27, 2012).

<sup>10</sup>26 U.S.C. §§ 1400Z-1(b), (e).

<sup>11</sup>26 U.S.C. § 1400Z-1(d)(1). We use the term governor in this report to refer to the chief executive officer in a state, U.S. possession, or the District of Columbia. Governors from states with fewer than 100 total eligible tracts could nominate a total of 25 tracts. See 26 U.S.C. § 1400Z-1(d)(2); IRS, Revenue Procedure 2018-16, *Rev. Proc. 2018-16*, Internal Revenue Bulletin No. 2018-9 (Feb. 26, 2018).

<sup>12</sup>26 U.S.C. § 1400Z-1(e)(2).

tracts, the governor could nominate up to 100 Zones (25 percent), and only 5 tracts (5 percent) of those 100 nominated tracts could be contiguous non-low-income community tracts.

Low-income communities generally are (1) tracts in which the poverty rate is at least 20 percent; (2) tracts in which the median family income does not exceed 80 percent of statewide median family income if located outside a metropolitan area; or (3) tracts in which the median family income does not exceed 80 percent of the statewide median family income or the metropolitan area median family income, whichever is higher.<sup>13</sup> For census tracts contiguous to nominated low-income community tracts to be eligible for designation as a Zone, they had to have median family income not exceeding 125 percent of the median family income of the contiguous, designated low-income community tract.<sup>14</sup> As shown in figure 1, IRS published guidance in February 2018 for governors to follow in nominating census tracts for designation, which would then be reviewed, certified, and designated as Zones by Treasury.<sup>15</sup>

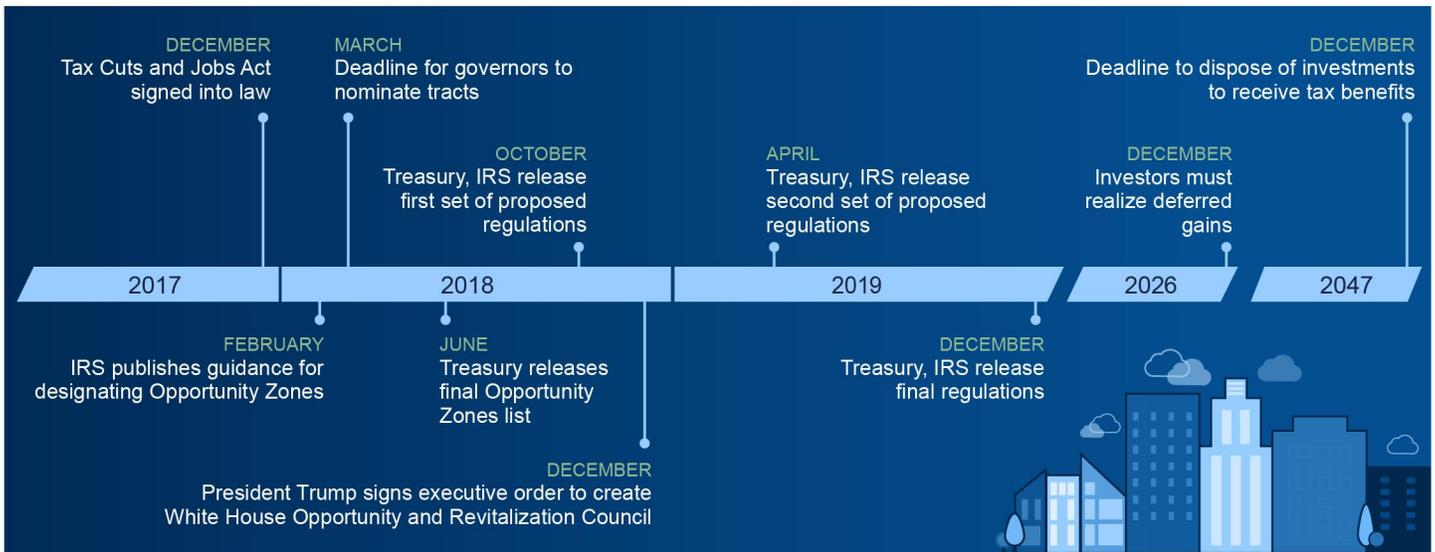
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<sup>13</sup>26 U.S.C. §§ 1400Z-1(c)(1), 45D(e)(1). In addition, tracts could meet the definition of low-income communities by meeting certain requirements relating to low population or high migration. 26 U.S.C. §§ 1400Z-1(c)(1), 45D(e)(4), (5).

<sup>14</sup>26 U.S.C. § 1400Z-1(e)(1).

<sup>15</sup>IRS, Rev. Proc. 2018-16, *Rev. Proc. 2018-16*, Internal Revenue Bulletin No. 2018-9, (Feb. 26, 2018).

Figure 1: Selected Milestones for the Opportunity Zones Tax Expenditure



Source: GAO analysis of Department of the Treasury (Treasury) and Internal Revenue Service (IRS) regulations, Pub. L. No. 115-97, and E.O. 13853. | GAO-21-30

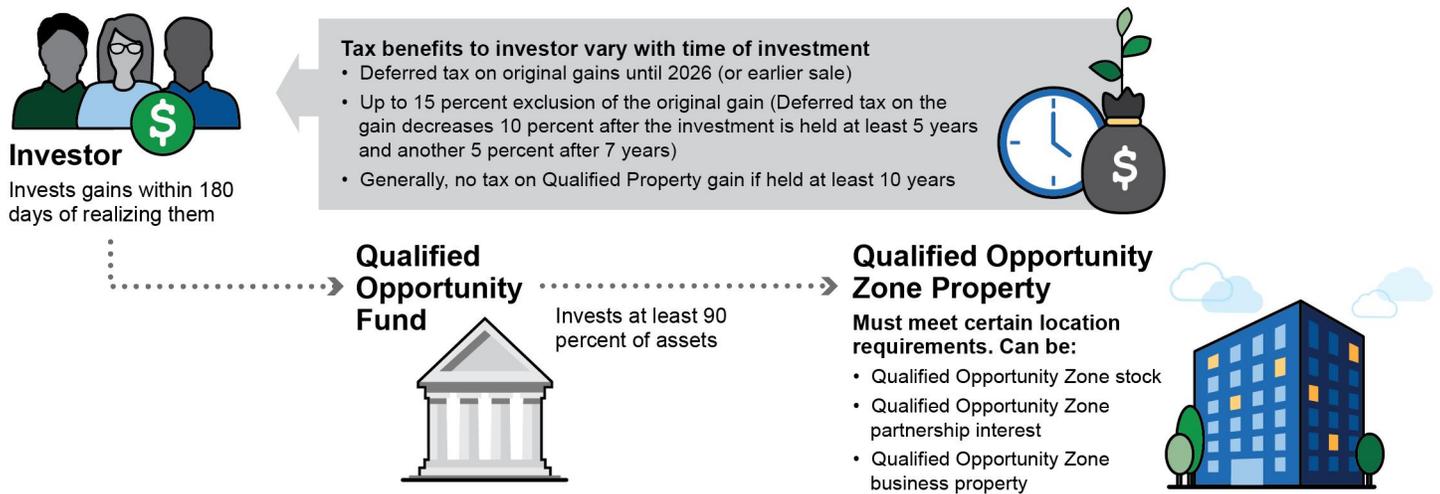
Treasury reviewed the governors' nominations and made designations, releasing the list of approximately 9,000 Zones in June 2018.<sup>16</sup>

The financial benefits to taxpayers can vary with the length of time they maintain investments in Qualified Opportunity Funds. When taxpayers sell assets such as stocks, bonds, or property, they generally pay tax on any capital gains. As shown in figure 2, investing in Zones allows taxpayers to defer the inclusion of these gains in taxable income until as late as December 31, 2026—and under certain circumstances to pay reduced taxes on those gains. In addition, taxpayers generally would not pay taxes on any gain in the original investment if held at least 10 years. To receive these tax benefits, taxpayers must first invest the amount of their gains in a Qualified Opportunity Fund within 180 days of realizing the gain. The funds then in turn invest in property located within the Zones.

<sup>16</sup>Pursuant to statute, all of Puerto Rico's census tracts that met the definition of a low-income community were deemed to be certified and designated as Zones. 26 U.S.C. § 1400Z-1(b)(3). In addition, Puerto Rico nominated another 26 contiguous non-LIC tracts that were certified and designated as Zones, for a total of 863 Zones. For the official lists of designated Zones, see IRS, Notice 2018-48, *Designated Qualified Opportunity Zones under Internal Revenue Code § 1400Z-2*, Internal Revenue Bulletin No. 2018-28, (July 9, 2018); and Notice 2019-42, *Amplification of Notice 2018-48 to Include Additional Puerto Rico Designated Qualified Opportunity Zones*, Internal Revenue Bulletin No. 2019-29, (July 15, 2019).

The funds must invest 90 percent of their assets in qualified property, which can be done directly through owning or leasing property or indirectly through investing in a qualified business, or be subject to a penalty.<sup>17</sup>

Figure 2: Basic Structure of and Tax Benefits from Investments in Opportunity Zones



Source: GAO analysis of Department of Treasury and Internal Revenue Service (IRS) regulations and IRS documentation. | GAO-21-30

Taxpayers can defer taxes on the original gains that were invested in a fund until the earlier of December 31, 2026 or when taxpayers dispose (in whole or in part) of those investments.<sup>18</sup>

OZ is one of many tools the federal government uses to promote community development in economically distressed areas. To help support these efforts, President Trump signed an Executive Order establishing a White House Opportunity and Revitalization Council (Council) in December 2018.<sup>19</sup> Chaired by the HUD Secretary or the

<sup>17</sup>26 U.S.C. § 1400Z-2(f). IRS granted automatic relief from this requirement for 6-month periods ending between April 2020 and December 2020 due to the Coronavirus Disease 2019. See IRS, Notice 2020-39, *Relief for Qualified Opportunity Funds and Investors Affected by Ongoing Coronavirus Disease 2019 Pandemic*, Internal Revenue Bulletin No. 2020-26 (June 22, 2020).

<sup>18</sup>See 26 U.S.C. § 1400Z-2(a), (b).

<sup>19</sup>Exec. Order No. 13853: *Establishing the White House Opportunity and Revitalization Council*. 83 Fed. Reg. 65071 (Dec. 12, 2018).

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Secretary's designee, the Council includes representatives from 17 executive branch agencies, including Treasury.

The Executive Order directed the Council to evaluate how agencies could better promote federal community development assistance to distressed areas (including Zones), and make it easier for applicants from those areas to apply for and receive that assistance. For example, under the leadership of the Department of Commerce—a member of the Council—the Census Bureau co-hosted a challenge for technology companies and others to create digital tools to encourage investment in Zones, and the Economic Development Administration designated Zones as an investment priority for certain grants. According to Council documentation, it has taken actions (for example, modifying selection criteria for certain grants to consider or give priority to projects in Zones) on 303 grants or programs to encourage investment in Zones. The Council also recommended a selection of practices they identified that could potentially increase economic growth in those areas.<sup>20</sup> The Council was tasked with evaluating how the effectiveness of investments in economically distressed areas, including OZ, could be measured. One member agency of the Council—the Council of Economic Advisers—issued a report on OZ's impact in August 2020.<sup>21</sup> This report, in part, provides early estimates of OZ investment activities and economic effects.

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## Opportunity Zones Tax Expenditure Has Few Limits on Types of Projects and Potential Costs

OZ shares some features with three other community development tax expenditures—the New Markets Tax Credit (NMTC), the Low-Income Housing Tax Credit (LIHTC), and the historic preservation tax credit

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<sup>20</sup>White House Opportunity and Revitalization Council, *Opportunity Zones Best Practices Report to the President* (May 2020).

<sup>21</sup>Council of Economic Advisers, *The Impact of Opportunity Zones: An Initial Assessment* (August 2020).

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(HTC).<sup>22</sup> Compared to these other three tax expenditures, OZ generally has fewer limits on the types of projects that can be financed, and fewer fiscal controls to limit potential revenue losses.<sup>23</sup>

OZ is similar to NMTC in that both tax expenditures are intended to spur a wide variety of eligible investment activities in specific geographic areas.<sup>24</sup> The statutory criteria to identify low-income census tracts eligible to be designated as Zones are the same as for NMTC. Other than prohibitions on investing in certain types of so-called “sin” businesses, OZ can be used to support investment in any type of tangible asset class located within a Zone.<sup>25</sup> LIHTC and HTC, by contrast, are not targeted to geographic areas but rather target specific types of projects, specifically the development of affordable rental housing and the rehabilitation of historic structures.

**Limitations.** For some tax expenditures, restrictions on taxpayers’ eligibility or caps on the aggregate dollar amount that all taxpayers can

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<sup>22</sup>Until December 31, 2017, two historic tax credits were available for rehabilitating structures: a 20 percent credit for certified historic structures, and a 10 percent credit for structures built before 1936. The Tax Cuts and Jobs Act eliminated the 10 percent credit. In the Internal Revenue Code, the 20 percent credit is called “Rehabilitation Credit” but for simplicity, we use the term historic tax credit (HTC).

<sup>23</sup>We have issued several reports on LIHTC and NMTC since Congress created these tax expenditures in 1986 and 2000, respectively. See GAO, *Low-Income Housing Tax Credit: Improved Data and Oversight Would Strengthen Cost Assessment and Fraud Risk Management*, [GAO-18-637](#) (Washington, D.C.: Sept. 18, 2018); and *New Markets Tax Credit: Better Controls and Data Are Needed to Ensure Effectiveness*, [GAO-14-500](#) (Washington, D.C.: July 10, 2014).

<sup>24</sup>Beginning in 1993 and in subsequent legislation in 1997, 1999, and 2000, Congress established the Empowerment Zone, Enterprise Community, and Renewal Community programs to reduce unemployment and generate economic growth in selected census tracts. In our reviews of these programs, we found that oversight of the programs and data on their effects was limited. GAO, *Revitalization Programs: Empowerment Zones, Enterprise Communities, and Renewal Communities*, [GAO-10-464R](#) (Washington, D.C.: Mar. 12, 2010).

<sup>25</sup>Treasury’s final regulations prohibit a business from being eligible for OZ benefits if it leases more than a de minimis amount of its property to a “sin” business, but also provide that de minimis amounts of gross income (i.e., less than 5 percent of gross income) attributable to a sin business will not cause the business to fail to be a qualified business. 26 C.F.R. § 1.1400Z2(d)-1(d)(4); 85 Fed. Reg. 1866, 1929-1930 (Jan. 13, 2020). As defined in the IRC, such businesses include operating a country club, golf course, massage parlor, hot tub facility, suntan facility, racetrack or other gambling facility, or liquor store. 26 U.S.C. § 144(c)(6)(B). NMTC may also not be used to fund the same list of businesses.

claim is set by statute, but OZ is not subject to volume caps or allocation limits.<sup>26</sup> Together with the other three community development tax expenditures, OZ represents a large commitment of federal resources (through foregone revenues).<sup>27</sup> When OZ was enacted, no limits were placed on (1) the total amount that can be deferred as a result of investing in Qualified Opportunity Funds, (2) how many taxpayers can claim the benefits, or (3) how much federal revenue is reduced by these claims.<sup>28</sup> IRS officials told us that, due to various factors, as of July 2020 they do not know the amount of deferred capital gains invested thus far in Qualified Opportunity Funds.<sup>29</sup>

By contrast, there are some statutory limits on the dollar amounts of NMTC and LIHTC that can be allocated annually. For NMTC, the total dollar amount of NMTC authority that Treasury can allocate annually to certified organizations is set by Congress.<sup>30</sup> For LIHTC, state housing finance agencies receive an annual allocation dollar amount based on each state's population, and then award the credits to owners of qualified

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<sup>26</sup>As we reported in our guide to evaluating tax expenditures, setting limits on revenue losses requires establishing processes for allocating the tax benefits, which can add administrative complexity and costs for both the government and taxpayers. See [GAO-13-167SP](#).

<sup>27</sup>Treasury estimates the revenue losses for OZ to be \$3.6 billion in fiscal year 2020. For NMTC, LIHTC, and HTC, Treasury estimates their respective revenue losses to be \$1.3 billion, \$9.1 billion, and \$730 million, respectively. Department of the Treasury, Office of Tax Analysis, *Tax Expenditures*, Feb. 26, 2020, accessed March 5, 2020 <https://home.treasury.gov/policy-issues/tax-policy/tax-expenditures>.

<sup>28</sup>Although a limited amount of the deferred gains may never be taxed (for example, because the tax on the deferred gains decreases after 5 years and decreases further after 7 years), the majority of those gains will be included in income not later than December 31, 2026.

<sup>29</sup>IRS officials told us that they are unable to report the total amount of deferred capital gains invested in funds at this time because some data are currently not being transcribed from the IRS forms which taxpayers use to claim OZ benefits. IRS officials also told us that disruptions in IRS operations due to Coronavirus Disease 2019 have delayed processing of some tax returns that potentially contain more data on taxpayers' OZ investments.

<sup>30</sup>The Further Consolidated Appropriations Act, 2020 set the maximum amount of available NMTC authority for 2020 at \$5 billion and extended the NMTC expiration date to Dec. 31, 2020. Pub. L. 116-94, div. Q, tit. I, § 141, 133 Stat. 2534, 3234 (Dec. 20, 2019).

low-income housing projects.<sup>31</sup> For HTC, there is no volume cap or allocation limit, but potential total revenue losses are somewhat limited by the number of eligible properties whose rehabilitation costs can be subsidized by HTC. Certified historic buildings are either listed individually in the National Register of Historic Places or certified by the Department of the Interior's National Park Service as contributing to the significance of a historic district.

**Administration.** Only IRS currently administers OZ, whereas for some community development tax expenditures, administration is shared between IRS and another federal agency that provides key oversight and administrative support.<sup>32</sup>

For NMTC, Treasury's Community Development Financial Institutions (CDFI) Fund allocates the tax credits to certified organizations called Community Development Entities, which then offer the tax credits to investors in exchange for making equity investments in the entities. With the proceeds of these equity investments, the entities then make loans to or investments in businesses located in low-income communities. The CDFI Fund also collects project data from the Community Development Entities and periodically performs program compliance site visits.<sup>33</sup> For HTC, the National Park Service, with the assistance of state historic preservation offices, approves rehabilitation applications, and confirms that completed rehabilitation projects meet certain standards.<sup>34</sup>

In the case of LIHTC, no other federal agency has an administrative role, but IRS relies in part on state entities to administer and oversee the tax

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<sup>31</sup>The Consolidated Appropriations Act, 2018 temporarily increased the amount of LIHTC allocation authority available. Pub. L. No. 115-141, div. T, § 102, 32 Stat. 348, 1157 (Mar. 23, 2018). In 2020, the total tax credit allocation authority for each state is approximately equal to \$2.80 per person, with small population states receiving a minimum allocation of \$3.2 million.

<sup>32</sup>GAO, *Low-Income Housing Tax Credit: Joint IRS-HUD Administration Could Help Address Weaknesses in Oversight*, [GAO-15-330](#) (Washington, D.C.: July 15, 2015).

<sup>33</sup>The 2000 law that created NMTC required that the Treasury Secretary or the Secretary's delegate issue guidance for how the Community Development Entities would apply for, and be allocated, the credits. Pub. L. No. 106-554, § 121, 114 Stat. 2763, 2763A-610 (2000). At the same time, the law appropriated funds to the CDFI Fund to administer NMTC. Pub. L. No. 106-554, 114 Stat. 2763, 2763A-213 (2000).

<sup>34</sup>The Internal Revenue Code states that the Secretary of the Interior is to certify historic structures as well as the rehabilitation of those structures. See 26 U.S.C § 47.

credit. Specifically, state housing finance agencies award credits to developers or owners of qualified low-income housing projects based on each state's qualified allocation plan, which generally establishes a state's funding priorities and selection criteria. These state agencies also monitor LIHTC-financed properties for compliance with program requirements. We found in 2015, however, that IRS oversight of state housing finance agencies had been minimal and, due to significant reductions in its budget, IRS lacked the resources and expertise to oversee the credit.<sup>35</sup> We also found that HUD's experience in administering federal affordable housing programs and working with state housing finance agencies could benefit IRS. We recommended that Congress should consider designating HUD as a joint administrator of LIHTC. As of August 2020, no legislative action has been identified.

Similar to NMTC and LIHTC, the design of OZ results in other entities—besides the taxpayer claiming the benefits—reporting some data, which IRS can use to determine compliance. A corporation or partnership that is a Qualified Opportunity Fund self-certifies initially and annually thereafter by filing IRS Form 8996, Qualified Opportunity Fund. In addition, the funds use the Form 8996 to report that they meet the 90 percent asset test or to calculate a penalty if it fails to meet that test. In order for funds to accurately and completely fill out the Form 8996, Treasury officials told us that they anticipate funds will perform due diligence and monitoring to ensure compliance with IRS rules throughout the life of the investment.

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## Without a Designated Agency for Oversight of OZ, Data Collection and Reporting on Performance Is Limited

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### Authority to Collect Data to Evaluate OZ Performance Is Unclear

OZ is a potentially costly tax expenditure with few limits on types of projects, but as it is currently being managed, there is limited data collection and reporting on its performance, including outcomes. According to our guide on evaluating tax expenditures, a key question for policymakers to consider is which agency or agencies should manage

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<sup>35</sup>[GAO-15-330](#).

evaluations.<sup>36</sup> For tax expenditures without logical connections to program agencies, Treasury may be the most appropriate agency to conduct evaluations. The Tax Cuts and Jobs Act did not direct any federal agencies—either within or outside of Treasury—to provide this oversight role for OZ. Congress did not specify the creation of a program office or designate an agency within Treasury to serve in this role.

Treasury officials said they would need appropriations and specific direction from Congress to establish a program office to collect OZ data that could then be used to evaluate and report on the tax expenditure's performance. For example, Treasury officials told us that they do not have the legal authority to redirect the CDFI Fund's appropriations to have the CDFI Fund collect OZ data, similar to the types of NMTC data it collects.<sup>37</sup>

Tax expenditures like OZ are part of the Internal Revenue Code and therefore administered by IRS. However, through our prior work evaluating tax expenditures, we have found that IRS's administration of the tax code does not typically extend to evaluations of performance, including outcomes.<sup>38</sup> IRS's mission is to help taxpayers understand and meet their tax responsibilities and to enforce the Internal Revenue Code.

IRS officials told us that the agency's role is to administer the tax code and ensure taxpayer compliance, while striving to effectively administer tax law changes in a way that minimizes complexity, burden on taxpayers, and the cost of administering the tax code. Thus, the agency only collects information needed for this purpose or otherwise required by law. As a result, they are not planning to collect any additional information beyond these purposes that could be used to evaluate OZ performance, including outcomes.<sup>39</sup>

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<sup>36</sup>[GAO-13-167SP](#).

<sup>37</sup>CDFI Fund was involved in the Zones designation process, but did so under an interagency agreement with IRS that used IRS appropriations.

<sup>38</sup>[GAO-13-167SP](#) and GAO, *Empowerment Zone and Enterprise Community Program: Improvements Occurred in Communities, but the Effect of the Program Is Unclear*, [GAO-06-727](#) (Washington, D.C.: Sept. 22, 2006).

<sup>39</sup>IRS cited the Paperwork Reduction Act of 1995 as a reason for not collecting additional information. 44 U.S.C. § 3501 et seq. The Office of Management and Budget reviews IRS forms and data collection and approves of them if it determines the collection of information is necessary for the proper performance of the functions of the agency. 44 U.S.C. § 3508.

Treasury's Office of Tax Policy has the authority to perform evaluations of tax expenditures, and we have previously recommended that Treasury and the Office of Management and Budget develop and implement a framework for conducting performance reviews of tax expenditures.<sup>40</sup> Within this office, the Office of Tax Analysis is responsible for tax expenditure estimates included in the President's budget request. Treasury officials told us that while they may analyze some tax expenditures on an ad hoc basis, they do not routinely or systemically analyze all tax expenditures.<sup>41</sup>

For some tax expenditures, agencies share administration and oversight with IRS and provide subject matter expertise in line with the other agencies' missions.<sup>42</sup> For example, IRS administers the tax compliance aspects of NMTC and Treasury's CDFI Fund administers the program aspects. This aligns with the Fund's mission to expand economic opportunity for underserved people and communities.

Because there are few restrictions on the types of investments OZ allows, many agencies could have relevant expertise. For example, a Qualified Opportunity Fund could choose to invest in a healthcare clinic, an internet provider, or an urban farm, each of which could align with the mission areas of different federal agencies.

When outcomes are complex and involve multiple organizations, it is important to establish how existing collaboration mechanisms can facilitate joint data collection, analysis, and reporting, or if new networks should be established. In some cases, there may be an existing interagency group, such as a task force, that has been formed to achieve an outcome.<sup>43</sup> Our prior work has shown agencies that participated in various planning and decision-making forums together—such as

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<sup>40</sup>See [GAO-05-690](#).

<sup>41</sup>We have recommended that Treasury take steps towards evaluating the performance and effectiveness of tax expenditures. See [GAO-20-549PR](#).

<sup>42</sup>We have previously reported that shared administration of community development tax expenditures helps IRS leverage other agencies' subject-matter expertise as well as focus on its core mission of enforcing taxpayer compliance. See [GAO-15-330](#).

<sup>43</sup>GAO, *Managing for Results: Practices for Effective Agency Strategic Reviews*, [GAO-15-602](#) (Washington, D.C.: July 29, 2015).

interagency councils or planning bodies—reported that such interactions contributed to achieving their goals.<sup>44</sup>

For OZ, the White House Opportunity and Revitalization Council was established with 17 member agencies. Part of the Council’s mission is to work across agencies to evaluate what data, metrics, and methodologies could be used to measure the effectiveness of public and private investments in urban and economically distressed communities, including Zones. However, the Council may not be able to perform this mission for the duration of the tax expenditure. The Executive Order establishing the Council states that unless extended by the President, the Council will terminate on January 21, 2021, whereas OZ continues until 2047. Uncertainty around the duration of the Council introduces risks that consistent and longstanding oversight and evaluation of OZ performance will not be established and maintained.

### Due to Unclear Authority, Limited Data Are Available to Evaluate OZ Performance

As a result of unclear statutory authority, there are insufficient data available to evaluate OZ performance, including outcomes. Data collected by the IRS for purposes of administering OZ can be useful in evaluating performance—particularly outcomes—but their usefulness and usability is constrained because of IRS data availability, taxpayer privacy protections, and limited collection of data specific to the economic and other societal effects of OZ investments.

As shown in table 1, IRS is collecting data related to the tax expenditure on four forms, including two forms—Forms 8996 and 8997—created specifically for OZ.

**Table 1: Opportunity Zones-Related IRS Forms**

Form number	Title	Purpose	Selected data
1099-B	Proceeds from Broker and Barter Exchange Transactions	Funds report when investors dispose of interests in Funds.	Fund’s and investor’s identities, property description, date the investor acquired and sold interest in a Fund and associated proceeds, and federal and state tax withheld.

<sup>44</sup>GAO-15-602; and GAO, *Managing for Results: Key Considerations for Implementing Interagency Collaborative Mechanisms*, GAO-12-1022 (Washington, D.C.: Sept. 27, 2012).

**Appendix I: GAO Contact and Staff Acknowledgments**

8949	Sales and Other Dispositions of Capital Assets	Investors report capital gains deferred by investing in a Fund and the inclusion of a previously deferred gain from the disposition of a Fund investment, in whole or in part.	Fund's identity, and date and amount invested.
8996	Qualified Opportunity Fund	Funds certify that they are a Qualified Opportunity Fund, and meet the 90 percent investment standard; and, if not, calculate an associated penalty.	Fund type (corporation or partnership), qualifying property totals, asset totals, business identity and location of investments, and any penalty calculations.
8997	Initial and Annual Statement of Qualified Opportunity Fund Investments	Investors report ongoing investments, new investments, dispositions of Fund interests, and the corresponding gains deferred.	Description of and data on new, ongoing, and disposed investments, including date acquired and disposed, and the corresponding gains deferred.

Source: GAO analysis of Internal Revenue Service (IRS) documentation. | GAO-21-30

Based on our analysis, Treasury and other agencies could use data from these forms in efforts to evaluate OZ outcomes. These data include the number of Qualified Opportunity Fund investments and amounts, amounts of short-term and long-term gains invested and the dates of those investments, census tract locations of investments, and descriptions of investments and dates sold.

However, according to agency documentation, IRS is not capturing some of the information from these forms in a format that would be useful for performance evaluations of OZ. For example, some data fields that Treasury officials told us they plan to use for public reporting about OZ will not be made available for analysis by IRS for tax years 2019 or 2020. Further, Treasury officials said that complete tax data are generally not available until 18 months after the end of the tax year.<sup>45</sup> According to IRS officials, disruptions in IRS operations due to Coronavirus Disease 2019 could cause further delays. Some of the data from the relevant OZ forms is not captured in an easily accessible format, which makes it difficult to use for data analytics.<sup>46</sup> It is unknown when or if these data will be converted into a more accessible format that could be used in an analysis of OZ performance.

<sup>45</sup>Treasury officials told us that investors and Funds may use non-calendar taxable years.

<sup>46</sup>We previously reported that IRS was unable to capture all return information in an accessible format for certain Tax Cuts and Jobs Act provisions and does not have agency-wide plans to retroactively convert these data into a more accessible format. For more information, see GAO, *Tax Cuts and Jobs Act: Considerable Progress Made Implementing Business Provisions, but IRS Faces Administrative and Compliance Challenges*, [GAO-20-103](#) (Washington, D.C.: Feb. 25, 2020).

Treasury's ability to report on OZ outcomes using taxpayer data could also be constrained by taxpayer privacy safeguards. As we have previously reported, even when IRS collects taxpayer data that could be useful for evaluating tax expenditures, Treasury might be unable to report those taxpayer data publicly—even in aggregation—or share those data with other agencies.<sup>47</sup> For example, Treasury officials noted that a low number of funds investing in a Zone might make it difficult to report data by Zone without potentially disclosing protected taxpayer information.

Other types of data that could be useful in evaluating the economic and societal effects of OZ investments—such as the number of employees at qualified OZ businesses—are not collected, either by IRS or by other agencies. By contrast, data to evaluate the economic and social outcomes of other community development tax expenditures are collected by some agencies—other than IRS.<sup>48</sup> For example, the CDFI Fund collects data from Community Development Entities on NMTC-funded projects and businesses, including performance measures such as: the numbers of jobs by type; numbers of rental and for-sale housing units; and the capacity of educational, child care, and health care facilities. Similarly, the National Park Service collects data on HTC projects through the application process, and then publishes reports, including an annual economic impact report.<sup>49</sup>

Officials from Treasury and the White House Opportunity and Revitalization Council told us that they plan to report on the effects of OZ, but it is unclear how they will overcome the data limitations we have identified. Treasury's plans include reporting annual statistics on funds' investments aggregated by state, and perhaps by smaller geographic regions (to the extent taxpayer privacy can be protected). Treasury may also plan to report data on the share of Zones receiving qualified investments, comparisons of investments in rural and urban census tracts, and the number and dollar amounts of funds by entity type and by industry. The Council of Economic Advisers—a member agency of the

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<sup>47</sup>See [GAO-15-330](#).

<sup>48</sup>We previously found that no federal agency monitors or assesses LIHTC development costs, which are key to evaluating the efficiency and effectiveness of the tax expenditure. We suggested that Congress consider designating an agency to regularly collect and maintain specified cost-related data from credit allocating agencies, and periodically assess and report on LIHTC project development costs. As of August 2020, Congress has not taken action to address our matter for consideration. See [GAO-18-637](#).

<sup>49</sup>For more information about the National Park Service reports on the HTC, see [GAO-15-330](#).

White House Opportunity and Revitalization Council—also issued a report in August 2020 estimating the effects of OZ, based in part on Treasury estimates derived from preliminary tax data. The report acknowledges that more studies will be needed in coming years to determine the economic effects of OZ.

Treasury's and the White House Opportunity and Revitalization Council's reporting relies in part on IRS data. It is unclear how Treasury and the Council plan to overcome the limitations on available OZ taxpayer data that we identified above. Treasury officials told us that they will use data from the Census Bureau's American Community Survey for some analysis.<sup>50</sup> The Council's measurement plan suggested the possibility of using the same census data for future analysis. The American Community Survey does contain some economic data that could be useful in evaluating OZ performance; however, without data on where Qualified Opportunity Funds are investing and what they are investing in, the ability to use this census data to assess the performance of OZ will be limited.

Congress is considering several measures to collect data on OZ. As of September 2020, we identified at least five bills introduced in the 116th Congress that would specify types of data to be collected about Qualified Opportunity Funds, and investments those funds made in businesses and properties.<sup>51</sup> These bills address several categories of data not currently being collected that could help answer key questions related to the performance of OZ, such as the type of business and number of employees, and the square footage of real property and number (if any) of residential units.

Subject-matter specialists we interviewed recommended that sufficient data be collected and reported to evaluate the performance, including outcomes, of OZ. Based on our analysis of their published reports and comment letters to IRS, as well as our interviews, we identified the following questions that could be useful to address in evaluating the performance of OZ:

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<sup>50</sup>The American Community Survey is an ongoing survey administered by the Census Bureau of around 3.5 million households across the United States. The survey collects data on the economic, social, housing, and demographic characteristics of communities at various geographic levels, including metropolitan areas, states, and counties.

<sup>51</sup>S. 2994, S. 2787, S. 1344, H.R. 5011, and H.R. 2593.

- How have Zones' characteristics changed, for example in regards to poverty, income, unemployment, education levels, race, affordable housing, and displacement?
- What are the characteristics of businesses in Zones, such as location, business type, number of employees, finances, and residential units (if applicable)?
- What are the characteristics of Qualified Opportunity Funds, particularly in regards to the dollar amount of assets held and types of investments?

According to our guide for evaluating tax expenditures, even if a tax expenditure succeeds in achieving its intended purpose, broader questions can be asked about effects beyond that purpose.<sup>52</sup>

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## Conclusions

Without data collection and reporting on OZ performance, policymakers have limited information to (1) determine if the tax expenditure is achieving its intended purpose, (2) evaluate performance, and (3) compare it to other tax expenditures intended to achieve similar purposes. Given the potential revenue losses associated with OZ and the relatively few limits on its use, oversight and reporting of performance—particularly outcomes—are critical. IRS is administering the tax expenditure and collecting data explicitly to ensure compliance. Some of these data could be useful to evaluate OZ performance. However, these data alone are not sufficient.

Without additional oversight, data collection and analysis, and reporting, policymakers and others will be limited in their ability to answer questions related to the performance of OZ in improving the economic well-being of people living in or served by these communities. Although IRS (within the Department of the Treasury) administers the tax code, the Tax Cuts and Jobs Act did not assign any agency the responsibility to collect data and report on OZ performance.

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<sup>52</sup>[GAO-13-167SP](#).

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## Matters for Congressional Consideration

We are making the following two matters for congressional consideration:

Congress should consider providing Treasury with the authority and responsibility to collect data and report on the performance of the Opportunity Zones tax expenditure, in collaboration with other agencies. (Matter for Consideration 1)

As part of the deliberation, Congress should also consider identifying questions about the performance of the Opportunity Zones tax expenditure that it wants Treasury, in collaboration with other agencies, to address in order to help guide data collection and reporting of performance, including outcomes. (Matter for Consideration 2)

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## Agency Comments and Our Evaluation

We provided a draft of this report to the Treasury, IRS, the CDFI Fund, and HUD for review and comment. IRS and Treasury, including the CDFI Fund, provided technical comments, which we incorporated as appropriate. IRS and Treasury's technical comments also included substantive points that are summarized below. HUD did not provide any comments on our draft report.

IRS' comments, provided in an email from the Enterprise Audit Management Office, noted that the agency does not have a position on the reporting requirements in the legislation we referenced in our report. IRS officials said the agency reviews proposed legislation from an administrability perspective, including any effects on taxpayer forms and instructions, information technology programming, employee training, Internal Revenue Manual revisions, and internal and external communications.

Treasury's comments, provided in an email from the Deputy Assistant General Counsel, Litigation, Oversight, and Financial Stability, acknowledged the lack of clear guidance on performance measures and authority to collect OZ data. This is consistent with our findings that clear authority for Treasury to collect OZ data and guidance on the types of questions Congress would like answered would benefit OZ performance evaluation.

Treasury also said that it may not be practical to report on some categories of data that proposed legislation described in our report would require, such as the finances of businesses receiving Qualified Opportunity Fund investments. However, Treasury did acknowledge that some other categories of data required by some proposals could help researchers gain insight into OZ's performance.

We did not assess the feasibility of data collection in any of the proposed legislation. Rather, our intent was to summarize the types of data that could inform any future congressional efforts in this area and be useful for evaluating OZ performance.

Treasury's comments also suggested that additional funding may be needed to carry out any additional evaluative responsibilities. We do not agree or disagree with this position. However, evaluating the potential costs for Treasury to implement any evaluations required by Congress was not in the scope of our work, in part, because we are unable to predict the actions Congress might take to establish any additional requirements.

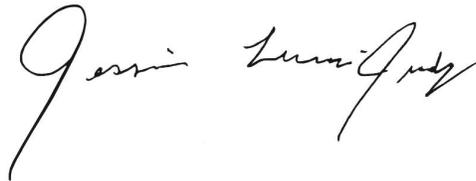
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**Appendix I: GAO Contact and Staff  
Acknowledgments**

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We are sending copies of this report to the appropriate congressional committees, the Secretary of the Treasury, the Secretary of the Department of Housing and Urban Development, the Commissioner of Internal Revenue, the Director of the Community Development and Financial Institutions Fund, and other interested parties. In addition, the report will be available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512- 9110 or [lucasjudyj@gao.gov](mailto:lucasjudyj@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs are on the last page of this report. GAO staff making key contributions to this report are listed in the appendix.

A handwritten signature in black ink that reads "Jessica Lucas-Judy". The signature is written in a cursive, flowing style.

Jessica Lucas-Judy  
Director, Tax Issues  
Strategic Issues

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**Appendix I: GAO Contact and Staff  
Acknowledgments**

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*List of Requesters*

The Honorable Charles E. Grassley  
Chairman  
The Honorable Ron Wyden  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable Richard E. Neal  
Chairman  
The Honorable Kevin Brady  
Republican Leader  
Committee on Ways and Means  
House of Representatives

The Honorable Cory Booker  
United States Senate

The Honorable Tim Scott  
United States Senate

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# Appendix I: GAO Contact and Staff Acknowledgments

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## GAO Contact

Jessica Lucas-Judy at (202) 512-9110 or [LucasJudyJ@gao.gov](mailto:LucasJudyJ@gao.gov).

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## Staff Acknowledgments

In addition to the contact named above, Brian James (Assistant Director), Dawn Bidne, Tara Carter, Jacqueline Chapin, Nina Crocker, Anar Jessani, Mark Kehoe, Benjamin Licht, Michael O'Neill, Daniel Mahoney, Cory Marzullo, Edward Nannenhorn, Catherine Paxton, Nadine Raidbard, Marylynn Sergent, Rachel Stoiko, Courtney Tepera, Monasha Thompson, Peter Verchinski, and Alicia White made key contributions to this report.

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