

Opportunity Zones

The Nuts & Bolts



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Purpose of Opportunity Zones

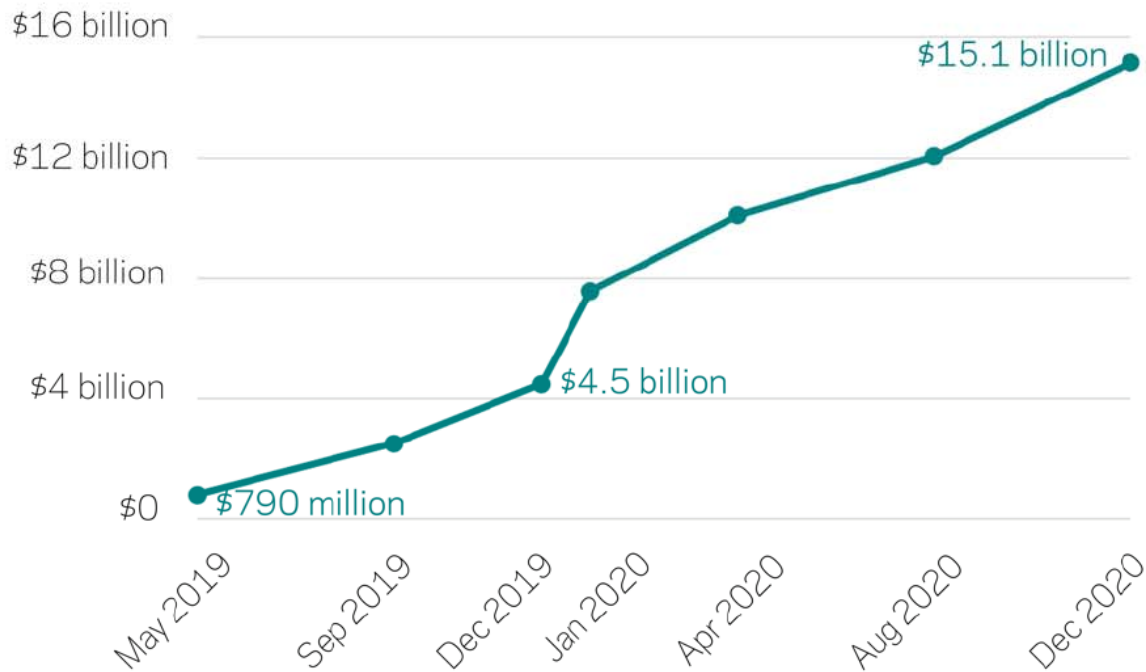
Section 13823 of the Tax Cuts and Jobs Act, P.L. 115-97, 131 Stat. 2054, 2184 (2017), amended the Title 26 of the United States Code to add sections 1400Z-1 and 1400Z-2.

“Sections 1400Z-1 and 1400Z-2 *seek to encourage economic growth and investment in designated distressed communities* (qualified opportunity zones) by providing Federal income tax benefits to taxpayers who invest new capital in businesses located within qualified opportunity zones through a QOF.” 84 F.R. 18652 (May 1, 2019).



Market development has been accelerating rapidly

OZ equity reported raised on Novogradac's survey of select Opportunity Fund managers



According to the **Council of Economic Advisers**, OZs had moved **\$75 billion** by the end of 2019, **70 percent** of which was new, induced investment that would not have happened without the incentive.

Source: [Novogradac & Company](#)

EIG's OZ Activity Map tracks the market's diversification

EIG Opportunity Zones Activity Map

Introduction

All Activities Map

Investments Map

Funds Map

Initiatives Map

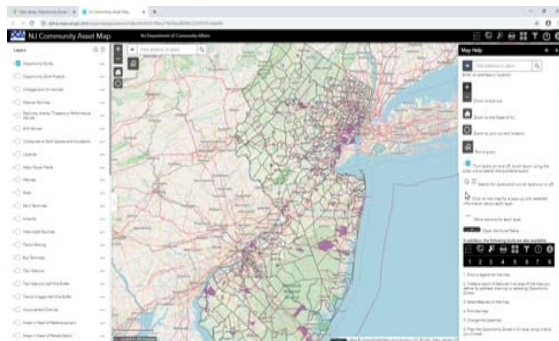
How to Use the Map

Deal Profiles

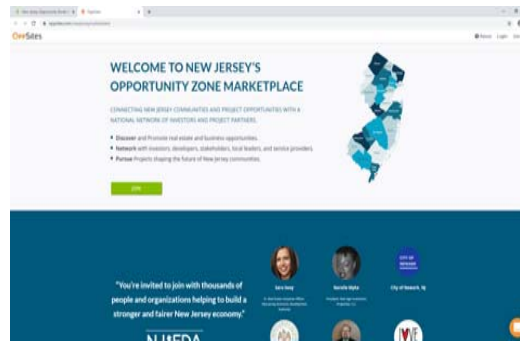
More Info



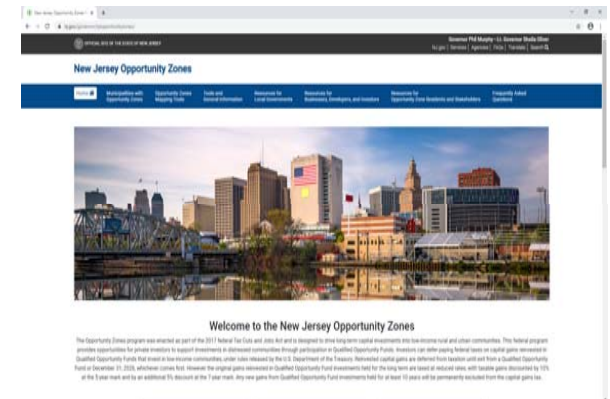
Mapping Tools



Opportunity Zone Market Place



<https://www.nj.gov/governor/njopportunityzones/>



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So how do OZs work?

Qualifying capital must be invested through **qualified intermediaries** into **qualifying activities** in **qualified census tracts**.

- **Qualifying capital:** Recently realized capital gains reinvested as equity
- **Qualified intermediaries:** Registered Opportunity Funds
- **Qualifying activities:** Building or substantially improving structures; new shares of a qualifying business
- **Qualified census tracts:** 7,826 census tracts in the 50 states plus DC; over 8,600 including the territories

If all these criteria are met and a number of standards maintained, investors enjoy generous reductions in their future capital gains taxes.

Tax Benefits for Capital Gains invested in a QOF within 180 days from the date of sale or exchange:

- Deferral of the capital gain until December 31, 2026 or until the investment is sold or exchanged whichever comes first. 26 U.S.C. sec. 1400Z-2(a)(2).
- Investments held for at least 5 years, the basis of the investment is increased by 10% of the amount of the gain deferred, unless it is held for at least 7 years, then the basis of the investment is increased by 15%, in lieu of 10%, for the amount of gain deferred. 26 U.S.C. sec. 1400Z-2(b)(2)(B).
- Investments held for at least 10 years, the basis of the property shall be equal to the fair market value of such investment on the date that the investment is sold or exchanged. 26 U.S.C. sec. 1400Z-2(c). Proposed deadline for sale or exchange is Dec. 31, 2047. 83 F.R. 54283 (Oct. 29, 2018).



QOZ Business is:



A trade or business in which “substantially all” of the tangible property owned or leased by the taxpayer is QOZ Business Property which : (1) at least 50% of total gross income is derived from active conduct of the business; (2) a “substantial portion” of the intangible property is used in the active conduct of the business; and (3) less than 5% of the average aggregate unadjusted bases of the property is attributable to nonqualified financial property. 26 U.S.C. sec. 1400Z-2(d)(3).



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QOF “means any investment vehicle which is organized as a corporation or a partnership for the purpose of investing in qualified opportunity zone property (other than the qualified opportunity fund) that holds at least 90 percent of its assets in qualified opportunity zone property held in the fund as measured on the last day of the first 6-month period of the taxable year of the fund and on the last day of the taxable year of the fund.” 26 U.S.C. 1400Z-2(d)(1).



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QOZ Property can be: (1) QOZ stock; (2) QOZ partnership interest; or (3) QOZ Business Property. 26 U.S.C. sec. 1400Z-2(d)(2)(A).

- QOZ stock is any stock in a domestic corporation that is: (1) acquired by QOF after Dec. 31, 2017; (2) the corporation was a QOZ Business at the time of stock issuance; and (3) during “substantially all” of the QOF holding period for such stock, such corporation qualified as a QOZ Business. 26 U.S.C. sec. 1400Z-2(d)(2)(B)(i).
- QOZ partnership means any capital or profits in a domestic partnership that is: (1) acquired by the QOF after Dec. 31, 2017 from the partnership solely in exchange for cash; (2) at the time such interest was acquired the partnership was a QOZ Business; and (3) during “substantially all” of the QOF holding period, such partnership qualified as a QOZ Business. 26 U.S.C. sec. 1400Z-2(d)(2)(C).



- QOZ Business Property means: (1) acquired by the QOF after Dec. 31, 2017; (2) the “original use” of such property in the QOZ commences with the QOF; or the QOF “substantially improves” the property; and (3) during “substantially all” of the QOF holding period for such property, “substantially all” of the use of such property was in a QOZ. 26 U.S.C. sec. 1400Z-2(d)(2)(D)(i).

“Original Use” is not defined by the statute. *Can potentially use the regulatory Vacant Property test to meet this*

“Substantially Improves” means “during any 30-month period beginning after the date of acquisition of such property, additions to the basis with respect to such property in the hands of the QOF exceed and amount equal to the adjusted basis of such property at the beginning of such 30-month period in the hands of the QOF.” 26 U.S.C. 1400Z-2(d)(2)(D)(ii).



Acme Superfund Site

- Example: A property remediation firm purchases a Superfund site property in a QOZ, where a former factory was once located, to remediate the land and use the property for affordable housing. This property could qualify as QOZ property under *original use or substantial improvement*.



- Significant Improvement test which means that improvements, *including any assessment and remediation*, must roughly equal the purchase price within a 30-month timeline.



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- *Commencement of original use of vacant property.* For purposes of this paragraph (b)(3), if real property, including land and buildings, has been vacant for an uninterrupted period of at least one calendar year beginning on a date prior to the date on which the qualified opportunity zone in which the property is located is listed as a designated qualified opportunity zone in a QOZ designation notice and the property has remained vacant through the date on which the property was purchased by the eligible entity,



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- or if the property has been vacant for an uninterrupted three calendar year period beginning on a date after the date of publication of the QOZ designation notice that lists as designated the qualified opportunity zone in which the property is located and the property has remained vacant through the date on which the property was purchased by the eligible entity,



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- original use in the qualified opportunity zone commences on the date after that period when any person first so uses or places the property in service in the qualified opportunity zone. Such property must satisfy the definition of vacancy under paragraph (b)(3)(iii) of this section.



- *Vacancy.* Solely for purposes of meeting the requirements of section 1400Z-2, real property, including land and buildings, is considered to be in a state of vacancy if the property is significantly unused. A building or land will be considered significantly unused if more than 80 percent of the building or land, as measured by the square footage of useable space, is not currently being used.



Local Governments & Original Use

- According to the OZ regulations, a purchaser of real property from a local government who held the property as the result of an involuntary transfer (including through abandonment, bankruptcy, foreclosure, or receivership) may treat all property composing the real property (including the land and structures thereon) as satisfying the “original use” requirement

