Center for
Real Estate
Finance Research

8th Annual NYU Stern Center for Real Estate Research Spring Symposium: "Impact Investing in Opportunity Zones: Real Estate and Beyond"

Primer for NYU students and other conference attendees

By Scholar-in-Residence Gary Friedland and Professor Jeanne Calderon, conference co-chairs

April 25, 2019

Table of Contents

Cover Page_ 1
I Conference agenda for April 30, 2019 3
II Introduction 3
III What is a Qualified Opportunity Zone? 4
IV Where are the Qualified Opportunity Zones? 5
V Tax benefits of Qualified Opportunity Fund investment 7
VI Qualified Opportunity Fund requirements 9
VII Impact reporting 14

8th Annual NYU Stern Center for Real Estate Research Spring Symposium:
"Impact Investing in Opportunity Zones: Real Estate and Beyond"
Primer for NYU students and other conference attendees

By Scholar-in-Residence Gary Friedland and Professor Jeanne Calderon, conference co-chairs

I Conference agenda for April 30, 2019

Opening Remarks: Professor Calderon's opening remarks will discuss the genesis of the Opportunity Zone Program and the Program's goals.

Panel 1/Opportunity Zone Basics and Market Trends: The panelists will provide an overview of the Opportunity Zone law. Recent trends in fund offerings and a real estate market update will be presented. The panelists will also analyze the just released second round of proposed regulations and assess the likely impact on investors, fund managers and communities.

Panel 2/Leading Opportunity Funds: Three leading Qualified Opportunity Fund sponsors with a long track record of developing successful real estate projects in areas that now qualify as Opportunity Zones will discuss their firm's projects – both those developed before the law went into effect, as well as their current projects located in Opportunity Zones. The speakers will also discuss the challenges facing Fund sponsors.

Panel 3/Impact Investing and Reporting: The panelists will discuss the goals of the Program and the opportunities that are expected to be delivered to the local communities and their residents. The speakers will consider how to incentivize investment in those projects that will provide the greatest benefits to underserved areas, and how to measure whether the projects, in fact, meet their promises.

Panel 4/Roles of Family Offices in the Opportunity Space: The panelists will explore the many roles that Family Offices might play in the Opportunity Zone space. They will discuss why Opportunity Zone investing or developing may or may not be attractive to Family Offices.

Our audience will be composed of a diverse group, ranging from current NYU students to experts in the field.

The following Primer is geared to familiarize students and others with the basics of this new Program prior to the conference, including the second round of proposed regulations.

II Introduction

The initial attention surrounding the Tax Cuts and Jobs Act of 2017 ("TCJA") focused on the favorable tax changes for real estate and corporations. However, buried in the tax law are the Opportunity Zone provisions, a new powerful community development tool designed to stimulate economic advancement through private investment in underserved communities throughout America.

The original House bill for the 2017 tax legislation did not contain Opportunity Zone provisions. However, the subsequently introduced Senate bill included Opportunity Zone provisions based on a stand-alone bill that had been sponsored earlier in the year by Senators Scott (R-SC) and Booker (D-NJ), the "Investing in Opportunity Act". A version of that bill became the template for the Opportunity Zone sections of the TCJA.

Tax incentives were designed to stimulate long-term equity capital investment in economically distressed communities that have been largely unable to attract conventional capital. Congress recognized that these areas did not benefit from the recovery after the Financial Crisis.

The tax benefits incentivize investment by allowing temporary deferral of capital gains, reduction in the tax liability on a portion of those gains, and permanent exclusion from tax on the gain from the long-term investment in an Opportunity Zone through the use of a Qualified Opportunity Fund ("QOF").

Thus, tax-driven legislation was crafted to meet socio-economic policy goals. This market-driven program allows private investors to select the types of projects and specific Opportunity Zone locations with minimal governmental involvement, in contrast to other community development programs, such as New Market Tax Credits and Low-Income Housing Tax Credits.

However, the Opportunity Zone provisions of the Internal Revenue Code contain only a skeletal framework with gaps to be filled in by guidance from the IRS and the Treasury Department. In October 2018, the first round of proposed regulations was issued, largely addressing issues facing real estate investment in the Zones.

On April 17, 2019, the eagerly awaited second round of proposed regulations was issued. As expected, these regulations address many of the open issues that were inhibiting Opportunity Zone investments in operating businesses and also provides clarity to the formation, operation and wind-down of QOFs. Even though the regulations were issued in proposed form, taxpayers may generally rely on the proposed regulations now, with a few exceptions. (For ease of reference, this Primer sometimes refers to the proposed regulations as "the regulations".)

Undoubtedly, the Program will provide a valuable opportunity for investors and developers. The real challenge is whether these investments will create the intended opportunities for the local communities and their residents. Presumably, Congress will consider making this temporary program a permanent one only if it delivers community opportunities with a meaningful impact.

III What is a Qualified Opportunity Zone?

in 2018, pursuant to the law's directive, the governors of all states and U.S. territories, as well as the mayor of Washington D.C., designated 25 percent of their "low-income community" census tracts as Qualified Opportunity Zones ("QOZ" or "Zone"), which were then certified by the Treasury Department. A complete list of all QOZs and maps can be found on the Opportunity Zone Resources page of the U.S. Department of Treasury's CDFI Fund. One can

enter online any property address in the U.S., and with one click of a mouse determine whether the property is located in a QOZ.

The eligible census tracts were required to meet thresholds based on economic data for the period from 2011 to 2015 (5-year average). This already outdated economic data, in some cases, does not reflect the current economic conditions, particularly for those neighborhoods that have experienced revitalization throughout this decade.

The qualified status of the QOZ tract will remain in effect until the end of 2028 even if the economic condition of the tract changes dramatically with the injection of the QOF capital. As time passes, the economic criteria will become even less reflective of then-current economic conditions. Hopefully, over time this will benefit the most underserved Zones. Presumably, as economic development continues in Zones in areas already in the path of development, Zone investors will seek opportunities in areas that they may have initially rejected. Perhaps investors will be buoyed by local economic conditions which by then should be substantially improved compared to the 5-year average as of 2015.

IV Where are the Qualified Opportunity Zones?

The 8,764 QOZs are located in all 50 states, the District of Columbia, Puerto Rico and other U.S. territories, and represent more than 11% of all census tracts in the U.S.

Almost 38% of the nation's QOZs are concentrated in four states and Puerto Rico.

State or Territory	QOZs	Percentage of Toal QOZs in US
California	879	10%
Puerto Rico	863	10%
Texas	628	7%
New York	514	6%
Florida	427	5%
Total top 5 locations	3311	38%
Total QOFs Nationwide	8764	100%

Below is a breakdown of the 514 QOZs in New York State. 306, or 60% of them, are located in New York City. 41% of the QOZs in NYC are located in Brooklyn. Although not required by the TCJA, the distribution of QOZs in the five boroughs is roughly equivalent to the distribution of low-income communities in those boroughs.

NYS and NYC QOZ Distribution		
NY Statewide:	Number	% of Total NYS
NYC	306	60%
Non-NYC	208	40%
Total NYS	514	100%

NYC Borough:	Number	% of Total NYC
Manhattan	35	11%
Brooklyn	125	41%
Queens	63	21%
Bronx	75	25%
Staten Island	8	3%
Total NYC	306	100%

17 of the QOZs in New York State, or slightly more than 3%, are located in tracts that have lower poverty rates or higher median income levels than required to qualify as a low-income community eligible to be a designated QOZ. Each of these tracts qualifies because it is contiguous to a QOZ, as permitted by the tax law. Some states designated the maximum number of contiguous tracts (5%), and others did not designate any.

Some QOZs are located in the most underserved parts of the nation. Others are located in areas already in the path of development. For example, in addition to Amazon's abandoned location in Long Island City, prime QOZ locations in NYC include parts of Brooklyn Heights, Hell's Kitchen just north of Hudson Yards, Williamsburg, Fort Greene (the Brooklyn Navy Yard), Greenpoint and Gowanus. Other high profile QOZ locations outside of NYC include parts of Berkeley and Oakland, California; the coastal community of Long Branch, New Jersey; as well as downtown Portland, Oregon including its Pearl District.

Presumably, each governor was inclined to designate Zones in the most underserved part of his or her state. However, some governors balanced that by selecting a mix including areas which have projects that would have been built without the Opportunity Zone tax benefits and thus most likely to attract QOF capital to the state. It is anticipated that these "primary" areas will attract a disproportionate share of the initial capital flow.

Since the Program generally requires that the QOF's property be substantially improved and the tax incentives provide a limited timeframe to build up the property's value, investors and developers will favor "shovel ready" projects, rather than those that require a lengthy government entitlement process. For those properties that are not yet entitled, local governments in underserved areas that have not yet experienced development might be more willing to accelerate the entitlement process for, and grant concessions to, real estate projects or operating businesses that propose to be located in the Zone. Arguably, the opportunity for economic growth is even greater in these areas because property values have not yet

appreciated. The question is how many investors will be inclined to take risks in those underserved areas, especially in the early years of the Program.

V Tax benefits of Qualified Opportunity Fund investment

To be eligible for the tax benefits, a taxpayer must sell an asset to an unrelated person in a transaction that generates a capital gain, and within 180 days, invest in a QOF an amount equal to the amount of the gain desired to be deferred. Three significant federal income tax benefits are available to the investor:

1. **Temporary deferral of the capital gain from the original asset sale until the earlier of December 31, 2026 or the disposition of the equity interest in the QOF;**
2. **Reduction of the deferred gain subject to tax, if, by December 31, 2026, the QOF investment is retained for the requisite time period: a 10% reduction if retained for at least 5 years, and an additional 5% reduction (total of 15%) if retained for at least 7 years; and**
3. **Permanent exclusion of any capital gain from the sale of the equity interest in the QOF if that investment is retained for at least 10 years.**

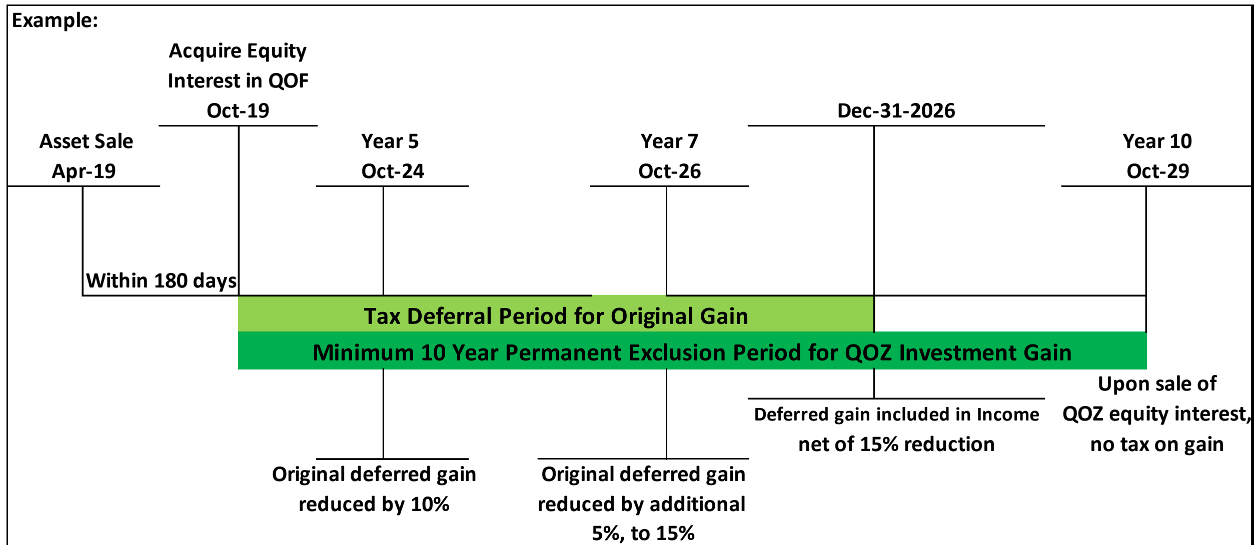
Thus, the Program offers tax benefits for both the original capital gain and the subsequent QOZ investment. The first two benefits apply to the deferred gain from the original sale of the asset and the third applies to the appreciation in the equity interest in the QOZ.

The investor's initial tax basis in the QOF is $0. The tax reduction and permanent exclusion are achieved by a series of increases to the investor's basis based on the relevant period that the QOZ investment is held. The 10-year minimum hold permanent exclusion is accomplished by the investor electing to step up the basis of the equity interest to fair market value upon sale.

For example, in 2019, Dianne sells $1,000 worth of Facebook stock with a tax basis of $890. She invests $100 of the $110 realized capital gain in a QOF that invests the funds in property located in a Zone, and she retains the QOF investment for 10 years. She will be able to defer the recognition of the original gain of $100 until the end of 2026. Furthermore, the capital gain subject to tax will be reduced by $15, to $85. Upon the sale of the QOF investment in 2029, the capital gain on the appreciation will permanently escape tax.

The permanent exclusion of gain from appreciation on the QOZ investment is potentially the most significant savings. The enhancement of the tax benefits for the longer investment periods will incentivize patient capital to foster long-term economic development in the QOZ. However, in contrast, the current income generated throughout the holding period (for example, rental income from real estate) will be subject to income tax.

This diagram illustrates the key dates and tax benefits that would apply during the QOF investment period to an investor who sells a capital asset in April 2019 and invests an amount equal to or less than the gain in a QOF within the 180-day period ending in October 2019.



Here are the key dates for any QOF investor to avoid missing an opportunity:

Deadlines	Consequences
12/31/2019	Last day to invest in QOF to qualify for the maximum potential tax benefits. However, the only tax savings that would expire is the additional 5% gain reduction available for the 7 year hold of the QOZ investment. This savings would be only slightly more than 1% (that is, 5% reduction x 23.8%), based on the current federal income tax rate on long-term capital gains. Note: this does not consider the non-tax benefit of the deferral based on the time value of money.
12/31/2021	Last day to invest in QOF to qualify for 10% reduction in original gain subject to tax
6/29/2027	Last day to invest in QOF to qualify for tax deferral or 10 year permanent tax exclusion
12/31/2028	Last day QOZ designations remain in effect
12/31/2047	Last day to dispose of QOZ investment and still qualify for "10 year" permanent exclusion

Partners in a partnership that realizes a capital gain may have a longer period than 180 days to decide to make a QOF investment. If a partnership realizes capital gain but does not make a QOF deferral election, the partners may elect to start the 180-day period as late as on the last day of the partnership's taxable year. For example, if a calendar year-end partnership realized a gain on January 17, 2018 and did not elect to defer the gain, any or all of the individual partners can elect to defer their allocable share of the gain by investing in a QOF by June 29, 2019. Given the significant amount of real estate owned by entities taxed as a partnership, it would not be surprising if a surge of QOF investment activity occurs towards the end of June of each year.

The deferral applies to any capital gain, short term or long term. The deferral does not change the gain's holding period. Thus, deferred gain that is short-term when originally realized will

continue to be short term when recognized in 2026. Also, the deferred gain will be recognized in 2026 at the tax rates then in effect for short-term or long- term capital gains, rather than the rates in effect for the year of the original sale.

The permanent exclusion of gain applies only to the sale or redemption of the investor's equity interest in the QOF, rather than to the sale of the QOZ property or assets owned by the QOF (or a lower-tier entity). However, the second round of regulations provides one solution for the QOF to fund the investor's exit by selling its assets or property without triggering a tax to the investor. If the QOF is a partnership and sells any of its QOZ property or assets, such as its equity interest in the lower-tier subsidiary, after the investor's 10 year holding period is met, the capital gain on the sale is excluded from tax and does not pass through to the investor if the investor elects to exclude that gain from taxation. However, apparently any ordinary income or certain types of depreciation recapture from the sale of the assets would be taxed to the investors.

IRC Section 1031 "Like-Kind Exchanges," as amended by the TJCA, now limits deferral of gain to the sale of real estate. In contrast, the Opportunity Zone provisions allow the taxpayer to invest capital gain derived from the sale of any asset, including, for example, the sale of stock, a business, artwork as well as real estate. Furthermore, the deferral is available without observing the required formalities and limitations applicable to 1031 qualification, such as retaining a Qualified Intermediary, meeting a timeline for identifying the replacement property, and reinvesting the entire sale proceeds (rather than investing only all or a portion of the gain) in a like-kind or qualified use real property.

QOFs should attract a wide range of investors, including high net worth individuals, family offices, venture capital firms and even foreign investors with U.S. holdings. The source of some investors' capital might be a single, large liquidity event, such as the sale of a business, stock or real estate that generated a capital gain. Other investors will be able to "harvest" and generate capital gains as desired, for example, by the sale of a portion of their large stock holdings.

In addition to the federal income tax benefits, investors may be entitled to similar benefits under state income tax law if the state has adopted legislation to conform with the federal QOZ rules. For example, in New York State, investors who meet the federal QOZ requirements are able to defer and exclude capital gains for New York State income tax purposes. Moreover, many state and local governments are offering other incentives for projects and businesses in QOZs.

VI Qualified Opportunity Fund requirements

To qualify for the tax benefits, the taxpayer must acquire an equity interest in a QOF. Although an investor is not limited in the amount to be invested, if the amount invested exceeds the investor's eligible capital gain, the investment is treated as two separate investments. The excess amount does not qualify for the QOF tax benefits.

Furthermore, the second round of regulations clarifies that the taxpayer must make the qualifying investment in the QOF in exchange for cash or other property, but not for services. For example, if a taxpayer receives a profits interest in a QOF or its subsidiary in exchange for services rendered, then that portion does not qualify for the QOF tax benefits. Thus, it appears that if a developer in exchange for services rendered receives an equity interest that includes a promote (an additional share of the QOF's residual profits after the investors achieve a preferred return on their investment), the promote portion would not qualify for the QOF tax benefits.

The QOF can make investments across all asset classes, in almost any type of business, including real estate and operating businesses, such as renewable energy, urban agriculture, food markets, charter schools and business incubators.

QOF entities may be formed as a limited liability, a partnership or a corporation, and may elect REIT status for federal income tax purposes. However, a QOF may not be formed as a single member limited liability company. No application or approval process is required by IRS. The QOF must self-certify by filing IRS Form 8996 with its tax return for each year the entity intends to operate as a QOF.

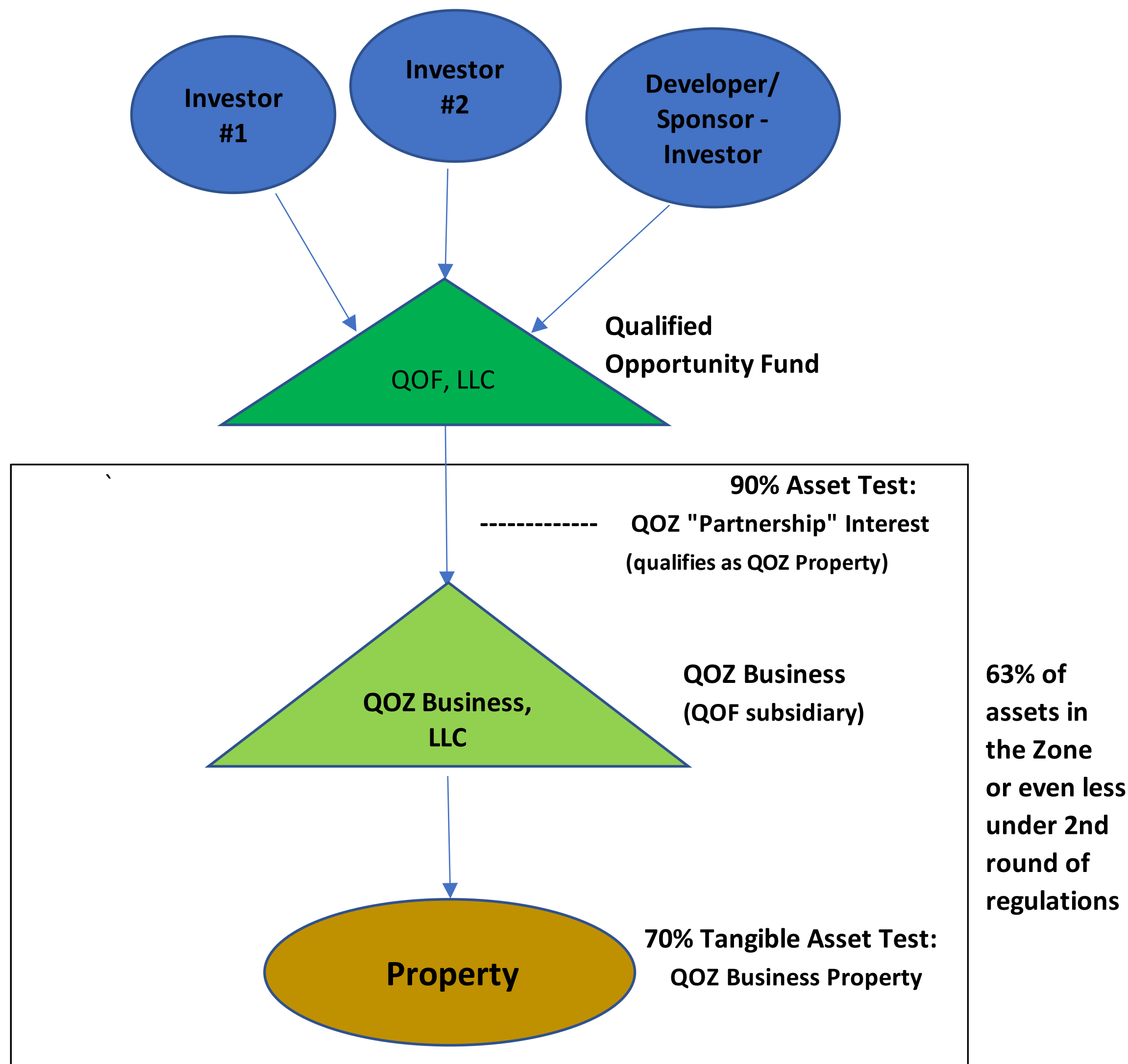
Flexible investment structures are available under the QOF rules. For example, the structure might be as simple as a developer-investor forming an LLC as a QOF with merely one other investor to own and operate a single real estate project. Alternatively, the QOF may be structured like a private equity fund with multiple investors and owning, directly or indirectly, multiple assets, including a blind real-estate pool.

Consistent with the purpose of the Opportunity Zone provisions to increase business activity and economic investment in Zones, the QOF must hold at least 90 percent of its assets in QOF Property. A QOF can meet this requirement under two different investment structures: (1) a direct investment in QOZ Business Property or (2) an indirect, two-tier investment in a QOZ Business through a lower-tier entity.

To qualify as QOZ Business Property, tangible property (including real estate) may be acquired (1) by purchase from an unrelated taxpayer (generally 20% common ownership) after December 31, 2017 and used in a trade or business in a Zone or (b) by lease entered into after December 31, 2017.

This section of the Primer focuses on the indirect, two-tier structure because it is expected that this will be the more common structure due to several advantages it offers. Under the indirect two-tier structure, the QOF owns an equity interest in a subsidiary entity (a QOZ Business) which owns or leases QOZ Business Property. Thus, the QOF indirectly through the subsidiary owns the QOZ Business Property. The QOF must acquire the equity interests in the subsidiary after 2017, solely in exchange for cash.

Below is an example of a diagram of an Indirect, Two-Tier Investment structure.



The indirect structure allows as little as 70 percent of the real estate or other tangible property to be owned by the QOZ Business to be located in a Zone. The investment structure diagram above illustrates how this requirement may be effectively reduced to 63 percent by combining the 90 percent asset requirement with the 70 percent tangible property requirement. The second round of regulations allows this percentage to be further reduced.

In contrast, under the direct structure, the QOZ must hold 90 percent of its assets in tangible property in the Zone. Under either structure, generally a semi-annual test is applied to determine compliance with the 90 percent test based on the QOF's average asset composition. If the tests are not met, penalties may be imposed by IRS.

The indirect structure provides more flexibility to a QOF that expects to hold idle cash for an extended period before deploying it to a property investment. The amount of cash or cash equivalents to be held by a QOF directly is 10 percentage of its assets. However, the regulations provide a working capital safe harbor that allows a QOF Business (the subsidiary) to hold the cash or cash equivalents for a period generally not to exceed 31 months. This safe harbor is available to a QOZ Business that acquires, constructs or rehabilitates real estate or other tangible property or that develops a trade or business. The second round of regulations extends this period if the delay is due to waiting for a government action so long as the application is completed during the 31-month period. This extension will be helpful to real estate development projects that encounter a lengthy rezoning or land use approval process.

To achieve economic activity within a Zone, the Code requires that either the original use of the property in the Zone must commence with the QOF or the QOF must substantially improve the property. Under the first round of regulations, a property is deemed to be substantially improved only if, during any 30-month period beginning after the date of acquisition of the qualifying property, additions to basis of the property exceeds the adjusted basis of the property (generally the purchase price) at the beginning of such period. Essentially, the QOF must make improvements costing at least $1 more than double the purchase price of the property.

The Revenue Ruling that accompanied the first round of regulations provides a liberal interpretation of the substantial improvement requirement as applied to the purchase by a QOF of a building on land wholly located within a Zone. In that case, the requirement applies only to the adjusted basis of the building. Thus, the cost of the land is excluded to determine if the property is substantially improved. This is a favorable interpretation for owners of buildings in Zones with high land values, such as gentrified areas. Note that the substantial improvement requirement focuses on the amount of costs expended during the 30-month period, even if all improvements are not completed within the period.

The second round of regulations clarifies how the original use and substantial improvement requirement applies to raw land. Land does not need to be substantially improved. The requirement that the original use of tangible property must commence with a QOF does not apply to land, whether improved or unimproved. However, land must be used in a trade or business, and will not qualify if held for investment.

These regulations also provide that if a QOF or QOZ Business purchases a building that has been vacant for at least five years, the purchased building will meet the original use test. Thus, the QOF or QOZ Business will not be required to make any improvements to the building. However, as a practical matter, a building that has been vacant for such an extended period is likely to require a substantial amount of improvements to be suitable for occupancy and to attract tenants.

Furthermore, the regulations clarify that the original use of tangible property begins when any person first places the property in service for depreciation or amortization purposes in a Zone. Thus, if a QOF or QOF Business purchases a partially completed building and completes the construction and places it in service, the building will meet the original use test because it has never been depreciated, even if the amount of the improvements made by the QOF or QOF Business is relatively minimal.

The first round of regulations requires that at least 50 percent of the business' gross income be derived from the active conduct of a trade or business in a Zone. This requirement posed an obstacle for many operating businesses that might seek to locate in a Zone with the potential for many customers or clients outside of the Zone. The second round of regulations provides three independent safe harbors that should enable most businesses to meet this standard: (1) at least 50 percent of the services performed, based on hours, by its employees and independent contractors must be performed within a Zone; (2) at least 50 percent of the amount paid to employees and independent contractors are for services within a Zone; or (3) the tangible property located in a Zone and the management or operational functions performed in the Zone are each necessary to generate at least 50 percent of the gross income of the business. In addition, a fact and circumstances test may be met.

The second round of regulations also provides that the ownership and operation, including leasing, of real property used in a trade or business qualifies as the active conduct of a trade or business. However, a triple net leased real property owned by a QOF or its subsidiary does not qualify. Perhaps owners will structure their leases to meet the trade or business requirement. Furthermore, leased property generally does not need to meet the original use or substantial improvement requirements.

The second round of regulations emphasized that the QOF tax incentives are tied to the longevity of an investor's investment in a QOF, not to the QOF's investment in a particular business or asset, such as real estate or an operating business. Thus, the regulations clarify that a sale of assets by a QOF prior to the investor's 10-year holding period (an "interim sale") is achieved does not impact in any way an investor's holding perioding in the QOF investment or trigger the inclusion of any deferred gain, so long as the investor retains its QOF investment.

However, the regulations leave open the issue of whether the QOF or its investors (in the case of a QOF pass through entity, such as a partnership) would recognize immediate gain on the interim sale of the asset because Treasury and IRS were unable to find any legal authority to exempt the realized gain from being recognized. The regulations request commenters to submit legal authority that might justify nonrecognition. The regulations also allow the QOF 12 months from the date of the sale to reinvest the proceeds into another qualifying investment.

The regulations raise the possibility of "cashing out" some of the partner's original QOF investment tax-free and without adversely affecting the QOF tax benefits. Partnerships owning appreciated real estate often seek to refinance the existing mortgage for a greater amount than the outstanding mortgage debt to return to the partners a portion of their invested capital (sometimes known as a "cash-out refinance"). Debt-financed distributions are not taxable

unless the distribution exceeds the partner's outside basis in his partnership interest. Since the regulations acknowledge that each partner's basis is increased by his share of the partnership's mortgage liability, the distribution should generally be tax-free.

The regulations list examples of "inclusion events" that would trigger the early recognition of the deferred gain. The regulations provide that an actual distribution of cash by a partnership to a partner is an inclusion event "only to the extent that" the cash exceeds the partner's basis in the QOF investment. Thus, a debt-financed distribution would not seem to trigger the deferred gain or adversely affect the investor's holding period in most QOFs formed as partnerships or limited liability companies given that each investor's basis will be increased by its allocable share of the mortgage liability. These distributions might be used by an investor to fund tax payments due on the deferred gain in 2027, as well as a means to recover some of the QOF investment prior to the expiration of the partner's holding period for the permanent exclusion.

The listed inclusion events clarified an issue that is particularly important for older individuals contemplating making a QOF investment. Upon the death of a QOF investor, the investment may pass to heirs or those who take under the investor's will, without affecting the investment's holding period or triggering the deferred gain. In contrast, a lifetime gift of a QOF equity interest will trigger the gain.

Most QOF investment structures – direct one tier or indirect two tier - will be funded with a mix of debt and equity capital. Where feasible, most structures will seek to maximize the percentage of the equity capital provided by a QOF (rather than from other equity investors who are not entitled to the QOZ tax benefits) to maximize the amount of gain allocated to the QOF and its investors to allow the investors to take full advantage of the 10-year permanent exclusion.

The relative mix of debt and equity capital will not affect the amount of QOF investors' gain eligible for the permanent exclusion. In the case of an indirect structure for a real estate project, a mortgage loan could be provided to the lower-tier entity that will own the project, whereas the mortgage loan could be provided directly to the QOF in a one-tier structure.

VII Impact reporting

Most investors' interest in the Program will be sparked by the potential tax benefits. Investors, including mission investors, will also focus on the opportunity to make a meaningful social impact. The burning question is how to measure that impact.

The Senate version of the TCJA contained a requirement for the Treasury Department to collect data and annually report to Congress on the assessment of QOF investments at the national and state level based on the Booker Scott bill. Unfortunately, this provision was removed from the bill that became the TCJA.

Public interest groups, mission investors and political leaders have urged Treasury Department and the IRS to include in the regulations reasonable reporting requirements including Fund and transaction-level information. Although the second round of regulations do not include reporting requirements, investors and communities should be cautiously optimistic.

On April 16, 2019, the White House Opportunity and Revitalization Council published its implementation plan on administrative reforms and initiatives to target, streamline, coordinate and optimize federal resources in economically distressed communities, including Opportunity Zones. U.S. Department of Housing and Urban Development (HUD) Secretary Ben Carson chairs the Council, which has identified more than 160 federal programs where Opportunity Zones could be targeted. HUD announced that the Council will develop an opportunityzones.gov website and will conduct listening tour sessions in Zones and other distressed communities. It remains to be seen whether the Council will meet its stated goals or even provide any meaningful benefits to underserved communities.

More importantly, concurrently with the release of the regulations, IRS and Treasury published a Request for Information (RFI) to seek detailed public comment on methodologies for assessing the amount and type of investment that flows into individual Zones and to help evaluate the success of the Program on increasing economic activities into Zones. Treasury expects that the IRS Form 8996 (used to certify that an entity is a QOF and to annually report whether the QOF meets the investments standards) will be revised effective in 2019 to require that each QOF reports the amount invested in Opportunity Zones. Furthermore, the RFI states that the purpose of the information collection and tracking is to measure the effectiveness of the Opportunity Zone Program and achieving its stated goals.

The RFI requests comments on 7 specific questions:

1. What data would be useful for tracking the effectiveness of providing tax incentives for Opportunity Zone investment to bring economic development and job creation to distressed communities?
2. In addition to Form 8996 revisions, what other information could be collected on a tax form that would be helpful in measuring the effectiveness of the Opportunity Zone incentive?
3. What data would be useful for measuring how much would have been invested in qualified zones in the absence of the Opportunity Zone incentives?
4. What data would be useful for ensuring that the Opportunity Zone investment remains an attractive option for investors?
5. What are the costs and benefits of various methods of information collection? Who should perform the data collection?
6. What considerations should government officials take into account when considering data to analyze the effectiveness of Opportunity Zone incentives to promote economic development to distressed areas? Over what time period should this analysis occur?
7. How do you view the role of the federal government, and tribal, state, and local governments in the ongoing maintenance and administration of Opportunity Zones?

Although this initiative represents a positive first step, many questions remain unanswered. For example, will detailed fund and transaction level information be required to be provided

by each QOF? Will the collected data be made publicly available, or will the data and analysis be provided by IRS and Treasury solely to Congress? Will the collected data with respect to an individual QOF be made publicly available, or at least available to investors in that QOF? Will the collected data for each QOZ be made available to the public, or at least to the community leaders and local government? How long will it take to collect, assess and analyze the information? How often will the assembled and assessed information be made available to the public? By the time Treasury disseminates the information, will it be too late to affect or influence decisions by investors, fund managers and communities?

In the meantime, those investors who value social impacts and seek to assess whether their investment is delivering its commitments to the investors and local communities will select QOFs that provide transparency throughout the QOF investment period.