



BIPARTISAN POLICY CENTER

September 10, 2018

The Honorable David J. Kautter  
Acting Commissioner of the Internal Revenue Service  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

Dear Mr. Kautter:

We write regarding the implementation of the Opportunity Zones Program, created by the Tax Cuts and Jobs Act of 2017. The program has the potential to incentivize the investment of billions of dollars in underserved communities in the United States. To do this, the act authorized the creation of Qualified Opportunity Funds (QOF). If investors rollover realized capital gains into such funds, the act provides for the deferral and reduction of capital gains taxes owed. By statute, a fund must invest 90 percent of its assets in qualified property and businesses in Opportunity Zones.

Investors and potential fund managers are eager to begin making investments that could bring economic growth to these areas. However, many are hesitant to move forward without clear guidance on a variety of matters regarding the tax treatment of their investments and the implementation of QOFs. We understand that, in the coming weeks, IRS plans to issue guidance to that end. For the program to be a success, this guidance must be specific enough that investors can feel confident that they fully understand the opportunities and risks associated with their investments in a QOF.

We request the IRS issue Opportunity Zone guidance that addresses specific questions, described in Attachment A. Broadly, these questions relate to three areas:

- **Definition of Qualified Investments:** The Tax Cuts and Jobs Act clearly states that Qualified Opportunity Fund assets must be invested in qualifying Opportunity Zone property and businesses. However, specific aspects of what constitutes qualified investments remain uncertain, preventing investors from identifying the full range of investments that QOFs will be able to make.
- **Qualified Opportunity Fund Implementation:** The details of how QOFs are to be established, certified, and overseen, are critical in determining the financial opportunities and risks associated with establishing and participating in a QOF. A lack of clear guidance could inhibit investors from establishing QOFs and therefore the amount of investments made in Opportunity Zones.

- **Opportunity Zone Oversight:** Once QOFs are established, they must be operated for a long period of time to fully obtain the program's promised tax benefits. Understanding in advance the administrative, oversight, and regulatory requirements of operating a QOF is critical for organizations deciding whether to establish or invest in a QOF.

We are excited about the potential of this program to bring more businesses and jobs to struggling communities left far behind in the economic recovery. Given the structure of this policy, the initial implementation and investments in Opportunity Zones will be key to the program's long-term success. The provision of timely, clear, and thorough guidance is necessary for the successful implementation of this first phase of investment. We look forward to formal action by the IRS to address these questions.

Sincerely,

Bipartisan Policy Center  
BPC Action  
The Birmingham Group  
IFF  
National Association of Home Builders  
National Development Council  
National Housing Conference  
Rural Community Assistance Partnership  
Siebert Cisneros Shank & Co.  
U.S. Chamber of Commerce

## Appendix A: Request for Specific Guidance

1. According to the Tax Cuts and Jobs Act of 2017 (the Act), the target property must be significantly improved by the QOF. Define *significantly improved*.
2. How are QOFs certified? Does the sponsor of the vehicle bear the risk that the QOF meets eligible criteria?
3. Will taxpayers be required to file the applicable tax forms each year in which the investment is held or only upon acquisition and disposition of the investment? Will the QOFs be required to deliver quarterly reports to investors?
4. Can an individual/family office set up their own QOF or does their need to be an arms-length sponsor for an investment?
5. The Act appears to include a 10-year holding period for capital gains relief on Opportunity Zone investments. However, the program is scheduled to expire on 2026. The IRS should clarify the holding period.
6. Can an Opportunity Zone investment be in a business and, if so, does it need to be an equity investment, or can the investment be anywhere along the capital stack?
7. Will a QOF/Opportunity Zone investment have regular IRS filing requirements to verify its status as an "Opportunity Zone?"
8. Is there a safe harbor available to ensure that the sale of municipal bonds for infrastructure development in conjunction with an Opportunity Zone designation does not trigger a taxable event?