



March 12, 2021

Office of Associate Chief Counsel (Income Tax and Accounting)
Attention: Erika C. Reigle and Kyle C. Griffin
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

CC:PA:LPD:PR
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE Recommendations for Census Tracts Designated in 2018 as Qualified Opportunity Zones

Dear Ms. Reigle and Mr. Griffin:

On behalf of the members of the Opportunity Zones Working Group, we submit the following recommendations regarding the treatment of previously designated qualified opportunity zones (QOZ) following changes to census tract boundaries and tract numbers as a result of the 2020 Census. We believe that our recommendations will help to promote continued investment into QOZs by giving stakeholders comfort that existing investments will not be affected by modifications made to census tract boundaries and that planned investments that are located in expanded QOZ census tracts as a result of boundary changes from the 2020 Census will qualify.

The members of the Opportunity Zones Working Group are participants in the community development finance community, including investors, lenders, for-profit and nonprofit developers, community development financial institutions, community development entities, and other related professionals who work together to suggest consensus solutions technical Opportunity Zone program issues and provide recommendations to make the Opportunity Zone program more efficient in delivering benefits to low-income communities (LIC).

We have organized our comments by first discussing the background of the QOZ designation process and reviewing changes to existing census tracts, and then outlining our recommendation for the treatment of originally designated QOZs. Our comments reflect the work of our member organizations participating in numerous conference calls and reviewing drafts before submittal to you. We would be happy to meet with you to discuss our comments in further detail.



RE Recommendations for Census Tracts Designated in 2018 as Qualified Opportunity Zones

Background of QOZ Designation Process

Under Internal Revenue Code (IRC) section 1400Z-1, the chief executive officer of each of the States and U.S. Territories nominated census tracts that met the definition of an LIC as defined in IRC 45D(e) to be QOZs. During 2018, the chief executive officer of each State and U.S. Territory was required to submit their nominations to the Treasury Department, which then certified the nominations and designated the census tracts as QOZs. Under IRC section 1400Z-1(f), a designation as a QOZ shall remain in effect for the period beginning on the date of the designation and ending at the close of the 10th calendar year beginning on or after such date of designation. The QOZs were certified by the Treasury Department during 2018, so QOZ designations will currently expire on December 31, 2028.

2020 Census Tract Modifications and the Effect on QOZs

Census tracts are redefined each decade through the U.S. Census Bureau's Participant Statistical Areas Program (PSAP). The PSAP provides designated participants the opportunity to review and suggest changes to the boundaries and names for statistical geographic areas, based on U.S. Census Bureau criteria and guidelines. Modifications can include census tract merges, splits, boundary changes or combinations of these changes. Upon completion of the 2020 Census, the Geography Division of the U.S. Census Bureau published a Census Tract Relationship File to assist data users in determining the relationships between the current census and the previous census. The updated 2020 statistical areas have now been made available for public use.

According to guidance published by the U.S. Census Bureau, the ideal standard census tract has a population of 4,000 residents. The PSAP utilizes local committees to review census tracts for potential adjustments. Census tracts with over 8,000 residents can be split into two or more tracts. When a census tract is split, the old census tract number is no longer used, and each of the new tracts is given a new census tract number with an additional two-digit extension. Census tracts with fewer than 1,200 residents may be merged with an adjacent tract located within the same county. Combined tracts are issued a new census tract number.

As discussed, under the statute, designated QOZs remain in effect for a period of 10 years until December 31, 2028. Neither the statute nor the regulations address to what extent changes to the boundaries, size, or tract number of census tracts affect existing and planned investments. This omission will likely lead to uneven responses by different taxpayers. Following is a summary of census tract boundary changes to existing QOZs as a result of the 2020 Census. As of the writing of this letter, Census Tract Relationship File data has been released that for all 50 states, the District of Columbia, and Puerto Rico and includes 8,688 of the originally designated 8,764 QOZs.

Of the 8,688 OZ census tracts:

- 1,332 (15.3%) were split into two or more tracts
- 3,769 (43.4%) tracts had no change in their geographic area
- 1,815 (20.9%) tracts increased in geographic size
- 1,772 (20.4%) tracts decreased in geographic size

Ms. Reigle and Mr. Griffin
Internal Revenue Service
March 12, 2021

RE Recommendations for Census Tracts Designated in 2018 as Qualified Opportunity Zones

Recommendations

We request IRS to issue clear guidance in the form of a notice or revenue ruling that addresses the extent to which modifications to census tract boundaries as a result of the 2020 Census affect QOZs. We believe it is in the best interests of taxpayers and the government to formally acknowledge and support taxpayers' reliance on the rules that existed at the time of investment, particularly those of IRC section 1400Z-1(f) whereby QOZs remain qualified for 10 years after designation. Accordingly, we recommend the following rules and respectively request that IRS act quickly as delaying the guidance is likely to impede investment given the sheer number of QOZ boundaries (56%) that have been affected:

- For QOZs that have been split into two or more census tracts, each newly-created census tract shall be deemed designated a QOZ.
- For QOZs that increased in geographic size, the QOZ designation shall apply to the entire census tract, including the expanded area.
- For QOZs that decreased in geographic size, the QOZ designation shall apply to the geographic area in effect at the time of the original designation of the census tract as a QOZ.

We greatly appreciate the opportunity to submit these recommendations in order to support the establishment of the Opportunity Zones program. We believe that our recommendations, if pursued and adopted, will facilitate continued investment in QOZs. Thank you in advance for your consideration.

Please do not hesitate to contact us if you have any questions regarding our comments or if we can be of further assistance.

Yours very truly,
Novogradac and Company LLP



By
John S. Sciarretti, Partner

CC: Julie Hanlon-Bolton, ITA, IRS