



May 11, 2021

Mark Mazur  
Acting Assistant Secretary (Tax Policy)  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Charles P. Rettig  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

**Re: Impact of Changes in Qualified Opportunity Zone Census Tracts**

Dear Acting Assistant Secretary Mazur and Commissioner Rettig:

We write to request that the Department of the Treasury (Treasury) and the Internal Revenue Service (the Service) issue guidance in response to changes in census tract boundaries as a result of the 2020 Census. The census tract changes have impacted numerous census tracts that were designated as qualified opportunity zones (QOZs) under section 1400Z-1. We recommend that Treasury and the Service issue immediate guidance clarifying that existing and new investments in previously designated QOZ tracts will continue to qualify under section 1400Z-2 and the regulations thereunder, notwithstanding that (i) all or part of the project or business no longer falls within the revised 2020 census tract boundary, or (ii) the revised 2020 census tract number has changed.

Modifications to the census tracts as a result of the 2020 Census include census tract mergers, splits, and boundary changes, or combinations of these. Based on the census tract boundary data released to date:

- 43.4% of the designated QOZ tracts experienced no change.
- 15.3% of the designated QOZ tracts split into two or more tracts.
- 20.4% of the designated QOZ tracts decreased in geographic size.

- 20.9% of the designated QOZ tracts increased in geographic size.<sup>1</sup>

Changes to census tract boundaries can result in a renumbering of the tract. For example, combined census tracts are typically issued a new census tract number. In addition, when a census tract is split, the split parts usually retain the basic number but receive different suffixes. However, small changes to individual census tract boundaries usually do not result in census tract numbering changes. Thus, the census tract numbers listed in the Notices 2018-48 and 2019-42 designating the OZ tracts may no longer be accurate.

Qualified Opportunity Funds, investors, and community partners have expressed uncertainty as to whether investments in QOZ tracts that have changed will qualify for the QOZ tax benefits. This uncertainty is affecting market activity at a time when QOZ investments are just beginning to recover from the effects of the COVID-19 pandemic. Community leaders and high-impact investors in designated low-income communities have relayed to us that, in the absence of guidance, they will need to place their current investment plans on hold until they are able to determine the extent of the census tract boundary changes and if the tax benefit is impacted. For example, investments into a residential housing development in Birmingham that plans to offer 100 percent of units at 80 percent of Area Median Income (AMI), and the revitalization of a blighted building into one of the city's greenest developments would remain in doubt until it is clear they remain in eligible tracts. Additionally, for rural communities, it is particularly difficult to assess if and how census tracts have changed.

As a result of this uncertainty, we believe the following guidance is urgently needed.

*First*, we recommend that Treasury and the Service issue guidance clarifying that, for designated QOZ tracts that have decreased in geographic size, an existing or new investment in the portion of the QOZ tract that no longer falls within the geographic boundaries of the census tract continues to qualify under section 1400Z-2 and the regulations thereunder for the duration of the QOZ tax benefit.

*Second*, we recommend that Treasury and the Service issue guidance clarifying that a change in the census tract number for designated QOZ tracts (whether the addition of a new suffix in the case of split tracts or an entirely new number in the case of combined

---

<sup>1</sup> Source: Novogradac, New Census Tract Data Raises Questions for OZ Stakeholders (Mar. 2, 2021), available at <https://www.novoco.com/notes-from-novogradac/new-census-tract-data-raises-questions-oz-stakeholders>.



tracts) has no effect on qualification, as long as the investment is made in a tract that was originally designated as a QOZ tract.

We believe that these recommendations are consistent with section 1400Z-1(f), which provides that the QOZ designation remain in effect for 10 years, and Treas. Reg. §1.1400z2(c)-1(c), which permits the election for investments held for at least 10 years through December 31, 2047, notwithstanding the designation of the QOZ ceases to be in effect. In addition, we believe that the above guidance could be issued in the form of FAQs. However, the FAQs should ultimately be followed by an update to Notices 2018-48 and 2019-42 to reflect the updated census tract numbers.

In the event that Treasury and the Service issue future guidance that would change (either increase or decrease) the geographic boundaries of the designated QOZ tracts, we recommend adoption of a grandfather or transition rule so as not to upset investor expectations. We understand that changing the geographic boundaries of the QOZ tracts may raise additional questions, including possible guardrails to protect the purposes of the QOZ rules, and would be happy to provide recommendations.

We would be pleased to answer any questions you have regarding these comments.

Sincerely,

John W. Lettieri  
President and Chief Executive Officer  
Economic Innovation Group

cc: William M. Paul, Acting Chief Counsel, Internal Revenue Service  
Thomas West, Deputy Assistant Secretary (Business Tax), Department of the Treasury  
Krishna P. Vallabhaneni, Tax Legislative Counsel, Department of the Treasury