

26 CFR 601.601: Rules and regulations.
(Also Part 1, §§ 45D, 1400Z-1, 1400Z-2.)

Rev. Proc. 2018-16

SECTION 1. PURPOSE

This revenue procedure provides guidance to the Chief Executive Officers of any State, any possession of the United States, and the District of Columbia regarding the procedure for designating population census tracts as Qualified Opportunity Zones for purposes of §§ 1400Z–1 and 1400Z–2 of the Internal Revenue Code (Code).

SECTION 2. BACKGROUND

.01 Enactment. Section 13823 of “An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018,” P.L. 115–97, which was enacted on December 22, 2017, amended the Code by adding §§ 1400Z–1 and 1400Z–2 to the Code.

.02 Tax incentives. Section 1400Z–2 of the Code allows the temporary deferral of inclusion in gross income for certain realized gains to the extent that corresponding amounts are timely invested in a qualified opportunity fund. Investments in a qualified opportunity fund may also be eligible for additional tax benefits.

.03 Qualified Opportunity Fund. Section 1400Z-2(d)(1) of the Code provides that a qualified opportunity fund is an investment vehicle that is organized as a partnership or a corporation for the purpose of investing in Qualified Opportunity Zone property.

.04 Designations, in general. Section 1400Z-1 of the Code allows the Chief Executive Officer (CEO) of each State to nominate a limited number of population census tracts to be designated as Qualified Opportunity Zones (QOZs). For purposes of §§ 1400Z-1 and 1400Z-2 and this revenue procedure, the term “State” means any State, any possession of the United States, and the District of Columbia. See §§ 1400Z-1(c)(3) and 7701(a)(10) of the Code. Under § 1400Z-1(c)(1), a population census tract is eligible for designation as a QOZ if it satisfies the definition of “low-income community” (LIC) in § 45D(e) of the Code.

.05 Tracts Contiguous with LICs. In addition, under § 1400Z-1(e) of the Code, a tract that is not an LIC is eligible for designation if both of the following conditions are met:

- (1) The non-LIC tract is contiguous with an LIC that is designated as a QOZ (the contiguous LIC QOZ need not be in the same State.); and
- (2) The median family income of the non-LIC tract does not exceed 125 percent of the median family income of that contiguous LIC QOZ.

.06 Determination Period and Extension. Pursuant to § 1400Z-1(b)(1)(A) and (c)(2)(B) of the Code, the CEO of the State in which a tract is located may nominate the tract to be a QOZ, and any such nomination must be made no later than March 21, 2018. Under § 1400Z-1(b)(2), however, the State CEO may request, and receive, a 30-day extension of this deadline.

.07 Consideration Period and Extension. In general, not later than the end of a 30-day period beginning on the date that the Secretary of the Treasury (Secretary) receives notice of a nomination, the Secretary may certify the nomination and designate the nominated tract as a QOZ. Under § 1400Z-1(b)(2) of the Code, however, the State CEO may request, and receive, a 30-day extension of the Secretary's deadline.

.08 Qualified Opportunity Zone. Section 1400Z-1 of the Code defines a QOZ as any population census tract (either a nominated LIC or a nominated non-LIC, contiguous census tract) that is designated as a QOZ.

.09 Number of Designations.

(1) In general, § 1400Z-1(d)(1) of the Code provides that the number of population census tracts in a State that may be designated as QOZs may not exceed 25 percent of the number of population census tracts in the State that are LICs. If the number of LICs in a State is not evenly divisible by 4, the 25 percent limitation is determined by rounding the fractional quotient up to the next whole number. For example, if a State contains 197 LICs, the maximum number of designations is 50, even though 25 percent of 197 is 49.25.

(2) Section 1400Z-1(d)(2) of the Code further provides that, notwithstanding the 25 percent limitation, if a State contains fewer than 100 LICs, then a total of 25 tracts may be designated.

(3) Section 1400Z-1(e)(2) of the Code provides that not more than 5 percent of the tracts designated in a State may be non-LIC, contiguous tracts designated under § 1400Z-1(e)(1). Thus, designations under § 1400Z-1(d)(1) and (d)(2) may include a limited number of non-LIC contiguous tracts. If the number of designated QOZs in a

State is not evenly divisible by 20, the 5 percent limitation is determined by rounding the fractional quotient up to the next whole number. For example, suppose that State B has 80 LICs. Under § 1400Z-1(d)(2), State B is allowed to nominate 25 tracts for QOZ designation because State B has fewer than 100 LICs. If State B nominates all 25 of the QOZs allowed, then of the 25 nominated tracts, only 2 (5 percent of 25 or 1.25, rounded up to 2) nominated tracts may be non-LIC contiguous tracts. But if State B nominated only 18 LICs, then it could nominate only 1 (5 percent of 19 or 0.95, rounded up to 1) additional non-LIC contiguous tract.

SECTION 3. IDENTITY OF LICs AND OF THE CONTIGUOUS TRACTS THAT ARE ALSO ELIGIBLE FOR DESIGNATION AS QOZs

.01 Based on the 2011-2015 American Community Survey (ACS) 5-Year data from the Census Bureau, a public, on-line resource (Information Resource) identifies over 41,000 population census tracts that are eligible for designation as a QOZ:

(1) 31,680 population census tracts that are LICs eligible for designation as QOZs; and

(2) 9,453 non-LIC population census tracts that are eligible for designation if a particular LIC contiguous to the non-LIC tract is designated as a QOZ.

.02 This Information Resource includes detailed mapping, which makes it possible to see the exact location of every tract and to view a variety of demographic information for each eligible tract.

.03 In the case of each tract described in section 3.01(2) of this revenue procedure, the Information Resource includes one or more LIC tracts on whose designation as a QOZ the non-LIC tract's eligibility depends.

.04 The Information Resource can be accessed at

<https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx>.

.05 In the fall of 2017, the Census Bureau released the 2012–2016 ACS 5-Year data. Because of the March 21, 2018, deadline for State CEOs to nominate tracts for designation as QOZs, the maximum aggregate number of designations in a State is determined on the basis of the 2011–2015 ACS, as reflected in the Information Resource described above.

.06 In addition, the Information Resource is a “safe harbor.” That is, if the Information Resource identifies a census tract as being either an eligible LIC or an eligible non-LIC contiguous tract, a State CEO’s nomination of that tract will not fail to be certified on the grounds that the tract is no longer eligible under more recent census data.

.07 On the other hand, in many cases, if a tract is eligible under the most recent available ACS 5-Year data, the tract is eligible to be nominated for designation. If the Information Resource, however, does not identify the tract as eligible, the nomination must be accompanied by an analysis demonstrating that eligibility, including appropriate supporting data from that ACS.

SECTION 4. SCOPE

This revenue procedure applies to the CEO of any State that desires to nominate for designation as QOZs population census tracts that are either LICs that qualify under § 1400Z–1(c)(1) of the Code or non-LIC contiguous tracts that qualify under § 1400Z-1(e)(1) of the Code.

SECTION 5. PROCEDURE

.01 A Nomination Tool, which can be accessed online, has been developed for the benefit of State CEOs that are making nominations of census tracts for designation as QOZs.

.02 Further information on the nomination process under § 1400Z-1 of the Code, including how to access the on-line Nomination Tool and how to request an extension of the determination period, will be sent individually to all State CEOs.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective on February 8, 2018.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Erika Reigle of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure contact Erika Reigle at (202) 317-7006 (not a toll free call). For further information regarding the Information Resource, contact the CDFI Fund Help Desk at (202) 653-0421 (not a toll-free call).