Opportunity Zones Raise $75B, White House Report Says

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The opportunity zone program enacted in the 2017 tax overhaul raised $75 billion in new capital by the end of 2019, the White House Council of Economic Advisers said in a report released Monday.

The opportunity zone program, which provides investors with tax breaks in return for investing in low-income areas, may lift 1 million people out of poverty and could be revenue-neutral, the report said. Much of the new capital invested in the funds wouldn't have gone into opportunity zones without the tax incentive, the report said.

Through 2019, every dollar raised by a qualified opportunity fund lowers federal revenue 15 cents, the report said. With indirect effects, the council estimates the opportunity zone incentive could be revenue-neutral, with growth in low-income communities offsetting forgone revenues from capital gains taxes, the report said.

"Thus, the CEA projects that the capital already raised by qualified opportunity funds could lift 1 million people out of poverty and into self-sufficiency, decreasing poverty in OZs by 11%," the report said.

Opportunity zones permit investors to reinvest capital gains within a 180-day period into designated impoverished areas in return for tax benefits that grow the longer funds are invested in qualified opportunity funds up until Dec 31, 2026.

The U.S. Department of the Treasury deemed nearly 8,800 low-income census tracts to be opportunity zones after state governors submitted nominations, and those communities have an average poverty rate more than double all others, the report said. The mere designation as an opportunity zone has boosted housing values 1.1% in those areas, according to the report.

Practitioners offered mixed reactions to the report. Jessica Millett of Duval & Stachenfeld LLP, who said she's a believer in opportunity zones and their impact, said the report seems focused on responding to criticism of the opportunity zone program.

"We know that the White House pays attention to the press," she said. "I'm not saying that I think anything that they said in there was wrong, but I think it certainly has to be viewed in the context of the authorship."

Marc Schultz of Snell & Wilmer LLP told Law360 he was left with questions after reading the report. For one, he said the $75 billion investment figure in the report "seems high."

"It's a high number — I'm not sure it's 75," he said. "If it's a true number, I'm glad to hear that, because I do so much in this particular space."

Schultz also noted the report doesn't detail where the money is actually being invested.

"They don't drill down into the individual opportunity zones," he said. "A lot of people want to know where the investments are being made."

For example, there's interest in knowing whether investments are occurring in urban or rural areas, or in more or less distressed opportunity zones, Schultz said.

Sen. Ron Wyden, D-Ore., the ranking member of the Senate Finance Committee, told Law360 in a statement in response to the report that it's not surprising investors sought to quickly shield capital gains from tax by putting them into opportunity funds. He criticized the report, noting it doesn't include any data on business starts, jobs or incomes.

"Anyone who continues to believe this program is going to lift millions of people out of poverty, and not just serve as windfall for wealthy investors, is engaged in magical thinking," he said.

In November, Wyden joined Sen. Cory Booker, D-N.J., House Ways and Means Committee Chairman Richard Neal, D-Mass., and the late Rep. John Lewis, D-Ga., in asking the Government Accountability Office to produce a study on the opportunity zone program, including its effectiveness compared with other federal incentives. A spokesman for the GAO told Law360 that the report should be complete and issued publicly around early October.

The White House report came on the heels of the Urban Institute saying in a report released in June that the broad applicability of tax incentives under the program has resulted in more investments in real estate than in small businesses in opportunity zones since the enactment of the 2017 Tax Cuts and Jobs Act. The report also said lawmakers should consider whether the incentives need changing to spur investment in businesses and mission-related projects, like permanent rental housing for the homeless.

Chris Edwards, director of tax policy studies at the Cato Institute, criticized the opportunity zone program, telling Law360 much of the program's benefits go to "landowners lucky enough to own the land in the politically favored areas when the law was passed, not the tenants who live within the zones."

"I don't doubt that O Zones would have led to some additional investment into the politically chosen areas," he said. "O Zones are in the opposite spirit as the rest of the TCJA, which generally tried to simplify the code and reduce overall rates."