U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

Special Attention of:
All CPD Division Directors
HUD Field Offices
HUD Regional Offices
All CDBG Grantees
All HOME Participating Jurisdictions
All HTF Grantees
All ESG Recipients
All HOPWA - Grantees

NOTICE: CPD-20-06

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Cross Reference: 24 CFR Part

Subject: Guidance on Using HUD's Community Planning and Development Program (CPD) Funds in Opportunity Zones

I. Purpose

The purpose of this Notice is to encourage all CPD grantees under the Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME), Housing Trust Fund (HTF), and Housing Opportunities for Persons With AIDS (HOPWA) programs to consider using their allocations to support projects and activities in designated Opportunity Zones (OZs). The flexibility of CPD programs allows allocations to be used for a range of activities that can support and complement OZs. This Notice provides general guidance on the types of projects and activities that grantees may consider in conjunction with OZs. By no means does this Notice provide an exhaustive list of eligible activities; it instead is meant to provide a general overview for how grantees can begin to consider leveraging CPD funds in OZs.

The contents of this document, except when based on statutory or regulatory authority or law, do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

II. Notes Regarding Applicability

This Notice uses the term "grantee" generically, to also include HOME participating jurisdictions and ESG recipients, except where the term appears in discussions explicitly limited to one of the other covered funding programs. Provisions of this Notice covering the Entitlement CDBG program also apply to insular area grantees and CDBG nonentitlement county grantees in Hawaii, as the Entitlement CDBG program regulations also apply to their CDBG funds.

III. Background

Created by Section 13823 of Tax Cuts and Jobs Act in 2017 (P.L. 115-97), and codified in sections 1400Z-1 and 1400Z-2 of the Internal Revenue Code, OZs are designed to stimulate private investment in designated, low-income census tracts nationwide. Since the passage of the law, OZs have been designated in all 50 states, the District of Columbia, Puerto Rico, and in insular areas.

In general, population census tracts were eligible for designation as OZs if they satisfied the definition of a "low-income community" (LIC) per § 45D(e) of the Internal Revenue Code and were nominated by the governor of the state in which they were located. The number of population census tracts in a state that received the OZ designation was limited to 25 percent of the total number of tracts in the State that met the LIC definition, or to no more than 25 LIC population census tracts for states with fewer than 100 LIC census tracts.

The term "low-income community" means any population census tract where:

a) the poverty rate for such tract is at least 20 percent, or
b) in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or
c) in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income.

For grantees who are familiar with the New Market Tax Credits (NMTC) program, this definition of "low-income community" is the same one that is used to qualify for NMTC benefits. It is worth noting; however, that some non-LIC tracts were also eligible for OZ designation if certain additional criteria were met (see I.R.C. 1400Z-1(e)).

Qualified Opportunity Funds (QOFs) are a financing vehicle used to make equity investments in OZs. The preferential tax treatment given to QOFs incentivizes individuals and companies to invest proceeds from realized capital gains in real estate projects or in businesses located in OZ communities. It does so by enabling them to temporarily defer and reduce their tax liability on investments in privately- or publicly-managed QOFs. QOFs must invest funds in real estate projects or businesses located in OZs. Investors that hold their investments in QOFs for at least 10 years receive full tax exemption on the profits received from these investments. Investors must pay the deferred taxes on the original capital gains the earlier of when the investment is sold or exchanged or after December 31, 2026.

IV. CDBG and Section 108

The Community Development Block Grant (CDBG) program, and its loan guarantee component, Section 108, are flexible programs that provide communities with resources to address a wide range of unique community development needs. CDBG and Section 108 require funded activities to principally benefit low- and moderate-income (LMI) persons, aid in the prevention or elimination of slums or blight, or address an urgent need that threatens the health and welfare of the community.

While not always the case, the high-poverty designation requirement for OZs means there is a strong likelihood that eligible activities within an OZ will meet CDBG/Section 108's LMI criteria, most commonly in connection with job creation/retention. Therefore, funding eligible activities with CDBG/Section 108 in OZs usually aligns with the requirement that 70% of CDBG and Section 108 funds be used for activities that benefit LMI persons.

Under certain conditions, CDBG/Section 108 funds may be provided to private for-profit entities to acquire and/or rehabilitate properties for residential purposes. This activity represents a significant portion of the types of multifamily real estate projects taking place using QOF financing. Moreover, under CDBG/Section 108 private for-profit entities may also acquire and/or rehabilitate real property for commercial and industrial uses when appropriate for an economic development project, which aligns with operating business investments leveraging OZ financing.

Additionally, the OZ requirement to substantially improve acquired property may offer grantees the chance to fund eligible activities involving qualified OZ businesses while also meeting the national objective criteria for elimination of slums and blight.

It is important to note that the OZ incentive does not mandate that projects benefit existing residents or LMI individuals. CDBG/ Section 108 funding may be used to ensure there is a community benefit to OZ projects. Furthermore, CDBG funding can be used to create job training programs and other public service activities that develop human capital in OZs.

CPD encourages grantees to explore whether designated OZ census tracts would also qualify as Neighborhood Revitalization Strategy Areas (NRSAs) under CPD Notice 16-16 when considering strategies to facilitate the use of CDBG/Section 108 funds in Opportunity Zones. Compliance with certain CDBG/Section 108 requirements can be streamlined through the designation of NRSAs that may provide additional flexibility for grantees and their partners to more easily and quickly leverage CDBG/Section 108 funds in OZs.

V. HOME

The HOME program is the largest federal block grant program that provides funding dedicated exclusively to preserving and increasing the availability of affordable housing for low-and very low-income families. HOME defines low-income families as families with incomes at or below 80% of the area median income (AMI), and very low-income families are defined as families with incomes at or below 50% AMI.

HUD encourages participating jurisdictions to commit HOME funds to eligible affordable housing projects in OZs to ensure that low- and very low-income families benefit from the private investment generated as a result of the OZ incentive, and that current low-income residents are not displaced as a result of such investment. HOME can be used to fund acquisition and/or rehabilitation and new construction of homebuyer or rental development projects to increase the supply of affordable housing. In addition, HOME funds may be provided directly to low-income households as homebuyer assistance to support long-term affordable housing opportunities. To aid households in maintaining existing occupancy within the OZ, HOME can be used to provide tenant-based rental assistance in neighborhoods that experience rising housing costs as a result of greater capital investment in the area. Likewise, HOME may be provided directly to homeowners to fund rehabilitation and stabilize households in naturally occurring affordable housing.

VI. HTF

HTF is an affordable housing production program that is funded through annual assessments on the government-sponsored enterprises, Fannie Mae and Freddie Mac. HTF funds are provided as grants to states, which: 1) must use at least 80% of the grant to increase and preserve the supply of rental housing; and 2) may use no more than 10% of the grant to increase homeownership. All HTF-assisted units must be occupied by extremely low-income and very low-income households, including homeless families. HUD defines extremely low-income households as households with incomes at or below 30% of AMI or households with incomes at or below the poverty line.

HTF funds may be used for the production or preservation of affordable housing through acquisition and/or rehabilitation, reconstruction, or new construction of rental housing projects and by paying for operating costs of HTF-assisted rental housing. HTF may also be invested for the new construction, rehabilitation, and/or acquisition of housing for homeownership, including such forms as down payment assistance, closing cost assistance, and assistance for interest rate buy-downs. HTF may pair well with OZ investments in housing because the majority of HTF funds are expected to be invested in affordable units in mixed-income rental projects. One of HUD's primary goals is to ensure housing remains affordable within OZs. By utilizing HTF, grantees can help ensure that rental projects include units that will remain affordable for very low- and extremely low-income families for at least 30 years after project completion, as required under 24 CFR 93.302(d).

VII. HOPWA

The Housing Opportunities for Persons With AIDS (HOPWA) program was established to provide housing assistance and related supportive services for LMI persons living with HIV/AIDS and their families. HOPWA funds may be used for a wide range of housing, social services, program planning, and development costs. These include, but are not limited to, the acquisition; rehabilitation; or new construction of housing units; costs for facility operations; and rental assistance.

By providing HOPWA-funded assistance in OZ multifamily rental projects, grantees can help maintain affordable housing while also ensuring clients receive the supportive services necessary for housing stability. Specifically, project or tenant-based rental assistance and the leasing or master leasing of units could be attractive for OZ investors and developers because they help demonstrate market demand to support the project, provide sustainable income streams and help bolster occupancy rates for the property which further drives pricing and demand.

VIII. EDA CEDS

In January 2020, the U.S. Economic Development Administration (EDA) updated its Comprehensive Economic Development Strategy (CEDS) Content Guidelines to help communities across the country maximize their ability to attract investment to OZs. These new recommendations outline how communities can further promote the economic attractiveness of their region by emphasizing OZs as key investment-ready locations.

The creation of the CEDS involves an economic development planning process that serves as a tool to engage community leaders, leverage the involvement of the private sector, and establish a strategic blueprint for regional collaboration. The CEDS provides the capacity-building foundation for public private partnerships that creates the environment for regional economic prosperity.

OZ investment is not guaranteed simply because a community is or includes a designated OZ. Communities need to have a strong community and economic development plan that can send a signal to the private sector that the area has established a clear vision for the future, identified its important assets and challenges, and engaged key stakeholders to effectively position itself for investment from QOFs. The inherently regional focus of the CEDS provides a unique platform to capture and promote the advantages of OZ communities within a distinct economic region by highlighting and emphasizing the linkages among the key regional assets. The CEDS may also help add a regional or intermediate component to existing economic development strategies, which are often either highly localized or conducted broadly at a statewide level.

HUD and EDA believe that a better alignment of the CEDS and the Consolidated Plan (Con Plan) will allow grantees receiving funds from both agencies to optimize the investment of Federal, state and local resources for sustainable, innovative economic and community development projects. Grantees are encouraged to coordinate the development of their Con Plan process with their CEDS to align these separate plans to maximize the community's ability to attract and support OZ investment and achieve sustainable community revitalization goals.

For further information

Grantees with questions concerning this Notice should direct their inquiries to their local HUD Field Office Community Planning and Development Division. Field Offices should direct their questions to the following Headquarters program offices as applicable:

Office of Block Grant Assistance at (202) 708-1577 for the Entitlement CDBG program or (202) 708-1322 for the State CDBG program
Financial Management Division at (202) 402-4563
Office of Affordable Housing Programs at (202) 708-2684
Office of Special Needs Assistance Programs at (202) 708-4300
Office of HIV/AIDS Housing at (202) 708-1934 or at hopwa@hud.gov