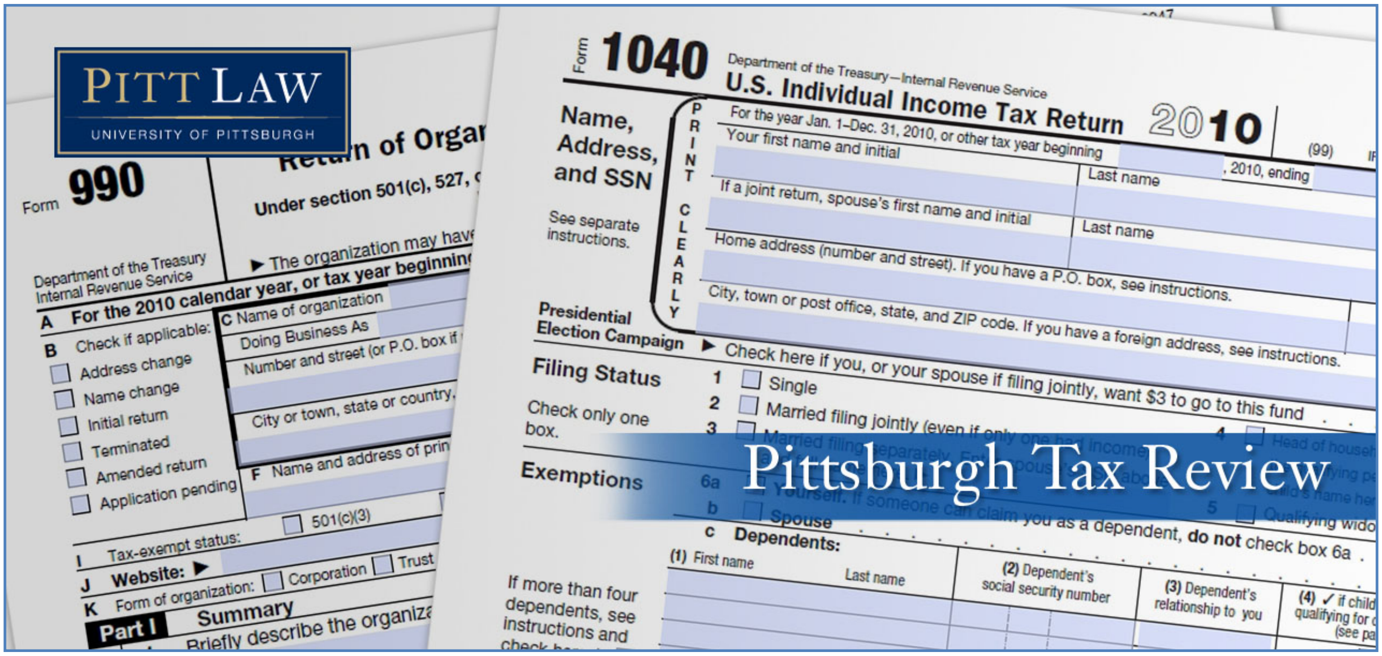

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OPPORTUNITY ZONES AND RACE

Tracy A. Kaye & Andrew J. Greenlee

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OPPORTUNITY ZONES AND RACE

Tracy A. Kaye[*] *& Andrew J. Greenlee*[**]

The Opportunity Zone (OZ) tax incentive has become one of the most controversial provisions enacted in the Tax Cuts and Jobs Act of 2017 (TCJA). The OZ tool is the latest place-based tax incentive to encourage investments in distressed communities. Specifically, the law provides for favorable tax treatment of capital gains that are reinvested into Qualified Opportunity Funds (QOFs) as well as potential elimination of the capital gains taxes on the QOF investment within designated census tracts.[1]

Using demographic data from the 2011–2015 American Community Survey, the Treasury Department defined census tracts as eligible for designation as an OZ based on being either a Low-Income Community (LIC) or a Non-LIC Contiguous location.[2] The TCJA definition resulted in a total of 42,164 census tracts meeting the eligibility criteria for OZ designation—around 57% of all census tracts. Of these, 8,764 census tracts (20.7%) were

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[1] I.R.C. § 1400Z-2(a), (c).

[2] The definition of low-income community follows that of the New Markets Tax Credit—a census tract with a poverty rate of 20% or greater and with a median family income of up to 80% of the area median. *Id.* § 45D(e). The legislation also allowed for up to 5% of census tracts which did not meet the LIC criteria, but which are contiguous to a LIC tract to be designated so long as the median family income of that contiguous tract does not exceed 125% of the median family income of the bordering designated LIC tract. There are 230 such contiguous tracts among the 8,762 designated Opportunity Zones. Brett Theodos et al., *Did States Maximize Their Opportunity Zone Selections? Analysis of the Opportunity Zone Designations*, URB. INST., https://www.urban.org/sites/default/files/publication/98445/did_states_maximize_their_opportunity_zone_selections_7.pdf (last updated July 2018).

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designated as OZs, reflecting an impacted population of 34,799,298—10.6% of the U.S. population.[3]

Although intended to encourage private investment in high-poverty or low- to moderate-income neighborhoods in designated Opportunity Zones, news articles report that the OZ tax incentive drives billions of investment profits into projects such as luxury apartments, hotels, student housing, and storage facilities.[4] Others criticize that OZ funding flows into projects already underway[5] or into "neighborhoods already widely considered 'up-and-coming,'"[6] making the program "a tax break for wealthy developers masquerading as a benefit for the poor."[7]

The preliminary 2019 data suggest that market forces have driven investment capital to 16% of the 8,764 designated Opportunity Zones already experiencing capital investment at the expense of the remaining 84% of zones

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[3] Throughout this Essay, we analyze demographic data for the 8,762 census tracts that were initially designated. Two additional tracts in Puerto Rico were subsequently designated as Opportunity Zones; however, we limit our analysis to the initial list.

[4] *See, e.g.*, Jesse Drucker & Eric Lipton, *How a Trump Tax Break to Help Poor Communities Became a Windfall for the Rich*, N.Y. TIMES (Sept. 27, 2020), https://www.nytimes.com/2019/08/31/business/tax-opportunity-zones.html [https://perma.cc/ZH6K-RT5V] (noting that OZ investors minimize risk by investing in high-end assets with little benefit going to the community); *see also* Mark A. Pinsky & Keith Mestrich, *Opportunity Zones Are All Sizzle, Fizzle and the Abuse of Good Intentions*, MARKETWATCH: OPINION (Nov. 22, 2019, 4:20 PM), https://www.marketwatch.com/story/opportunity-zones-are-all-sizzle-fizzle-and-the-abuse-of-good-intentions-2019-10-08; Justin Elliott et al., *A Trump Tax Break to Help the Poor Went to a Rich GOP Donor's Superyacht Marina*, PROPUBLICA (Nov. 14, 2019, 5:00 AM), https://www.propublica.org/article/superyacht-marina-west-palm-beach-opportunity-zone-trump-tax-break-to-help-the-poor-went-to-a-rich-gop-donor (revealing how a major donor's appeal to Florida Governor Rick Scott resulted in an OZ designation that included a marina owned by this donor).

[5] Alex Nitkin, *How a $2B Redevelopment Site in Chicago Landed in a Federal Opportunity Zone*, THE REAL DEAL: REAL EST. NEWS (May 1, 2019, 9:00 AM), https://therealdeal.com/chicago/2019/05/01/how-a-2b-redevelopment-site-in-chicago-landed-in-an-opportunity-zone-a-trd-investigation/.

[6] Kelsi M. Borland, *Many Opportunity Zones Are Already Gentrified*, GLOBEST (Feb. 14, 2019, 4:00 AM), https://www.globest.com/2019/02/14/many-opportunity-zones-are-already-gentrified/; Michelle D. Layser, *Subsidizing Gentrification: A Spatial Analysis of Place-Based Tax Incentives*, 12 U.C. IRVINE L. REV. 163, 166 (2021) (citing Jacob Adelman, *Philly's 'Opportunity Zone' Tracts Are Some of the City's Poorest, and Among Its Biggest Gentrifiers, Fed Finds*, PHILA. INQUIRER (Nov. 15, 2019, 6:00 AM), https://www.inquirer.com/real-estate/commercial/opportunity-zones-philadelphia-federal-reserve-gentrification-poverty-development-20191115.html (gentrifying census tracts had a 19% chance of receiving Opportunity Zone designation)).

[7] Keith Larson, *The Obscure Reason Banks Will Finally Embrace Opportunity Zones*, THE REAL DEAL (Jan. 13, 2020, 11:05 AM), https://therealdeal.com/new-york/2020/01/13/the-obscure-reason-banks-will-finally-embrace-opportunity-zones/.

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that received no investment.[8] Furthermore, most OZ investment is concentrated in tracts where population, educational attainment, incomes, and home values are increasing while the proportion of elderly and nonwhite residents is declining.[9]

For a program designed to incentivize capital investment in low-income communities, the OZ tax incentive must be reformed to ensure that the types and locations of the projects are conducive to improving local economic conditions. The last date to invest 2026 capital gains is June 28, 2027;[10] this incentive must not be renewed without reforms.

Unlike other federal economic development programs, such as the Low-Income Housing Tax Credit, OZ investors have few restrictions regarding investment projects. This flexibility for OZ investors comes at the expense of oversight. This lack of oversight is only ameliorated when OZ projects layer funds from other federal, state, or local programs in their capital stack.[11] The lack of community benefit guidelines and reporting requirements in the initial legislation and subsequent regulations allows for investments that fail to address the wide disparities in access to economic opportunity.

Given that the largest tax benefit comes from investing in property most likely to garner future appreciation, OZ investment gravitates toward commercial real estate investments in the least risky neighborhoods and rewards those who avoid risk or get lucky.[12] The possibility of community

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[8] Patrick Kennedy & Harrison Wheeler, *Neighborhood-Level Investment from the U.S. Opportunity Zone Program: Early Evidence* 3 (2021), https://ssrn.com/abstract=4024514 (observing $18.9 billion of aggregate OZ investments from electronic filers of IRS Form 8996 in tax year 2019 that comprised 75% of the investment for that year).

[9] *Id.*

[10] *See* Jimmy Atkinson, *Key Dates & Deadlines for Opportunity Zone Investing*, OPPORTUNITYDB (Nov. 27, 2019), https://opportunitydb.com/2019/11/key-dates-deadlines-for-opportunity-zone-investing/.

[11] *See, e.g.*, Tracy A. Kaye, *Ogden Commons Case Study: A Comparative Look at the Low-Income Housing Tax Credit and Opportunity Zone Tax Incentive Programs*, 48 FORDHAM URB. L.J. 1067, 1082 (2021) (describing the Ogden Commons project, a mixed-use development in Chicago's North Lawndale neighborhood). Because of other programs' requirements, the Ogden Common project had to conduct responsive community needs assessments and surveys, which—for a program aimed at addressing distressed areas—should have been required for OZ projects from the start. *Id.*

[12] Michelle D. Layser, *Nonprofit Participation in Place-Based Tax Incentive Transactions*, 48 FORDHAM URB. L.J. 1131, 1148 (2021) ("[I]t is worth noting that a successful project that generates post-

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benefit must not be left to chance; rather, it must be an intentional part of the OZ tax incentive tool, especially given the magnitude of the taxpayer revenue foregone and the incidence of the tax benefit on the wealthy. It is not appropriate for tax expenditures to fund investments that do not benefit the residents of Opportunity Zones.

This Essay analyzes the OZ tax incentive through the critical tax lens to determine this incentive's impact on historically disempowered groups, in particular people of color. This aligns with President Joseph Biden's executive order urging the federal government to "pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved."[13] The Joint Committee on Taxation estimates that approximately $5.6 billion of revenue will be foregone annually over fiscal years 2022–2026 on account of these special provisions, making it imperative to perform such an analysis.[14] As Dorothy Brown noted in *Race and Tax: Colorblind No More*, Senator Sherrod Brown (D-Ohio) acknowledged in a June 2020 hearing: "Congress writes the tax laws. If there are ways that our current tax code exacerbates racial inequity, then it's our job to fix it."[15]

Thus, we first analyzed whose taxes are reduced because of the OZ tax incentive and expected to find that the tax incentive disproportionately benefits white taxpayers. Economists Patrick Kennedy and Harrison Wheeler have identified "a large sample of OZ investors and estimate their average 2019 household income to be greater than $1 million," which is informative about the distributional incidence of the tax subsidy.[16] Note that the "top 5

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investment gains, compounded over ten years, could provide taxpayers with tax-free returns that eclipse the tax savings associated with the initial deferral. Taxpayers who anticipate significant profits from an investment may find this third benefit particularly attractive. . . . As a result, the Opportunity Zones law provides the strongest incentive package to taxpayers who plan to pursue highly profitable projects.").

[13] Exec. Order No. 13,985, 86 Fed. Reg. 7009 (Jan. 25, 2021).

[14] JOINT COMM. ON TAX'N, JCX 22-22, ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2022–2026, at 39 (2022); *see also* Harrison Wheeler, *Locally Optimal Place-Based Policy: Early Evidence from Opportunity Zones* 1 (2021) ("[A] cost significantly larger than previous and existing national place-based policies.").

[15] Dorothy Brown, *Race and Tax: Colorblind No More*, JOTWELL (Feb. 25, 2021), https://tax.jotwell.com/race-and-tax-colorblind-no-more/ (reviewing Jeremy Bearer-Friend, *Should the IRS Know Your Race? The Challenge of Colorblind Tax Data*, 73 TAX L. REV. 1 (2019)).

[16] *See* Kennedy & Wheeler, *supra* note 8, at 4.

percent of the income distribution is composed of 88 percent White families, 5 percent Hispanic families, 2 percent Black families, and 5 percent families of other races."[17] Furthermore, the Tax Policy Center estimates that the top 1% of taxpayers by income, who are disproportionately white, received over 62% of total benefits from the preferential treatment of qualified dividends and capital gains in 2019.[18] Keep in mind that one cannot take advantage of the OZ incentive without capital gains.

Julie Bennett and YiLi Chien examined stock market participation across Black and White households using the 2018 Survey of Income and Program Participation.[19] Their data revealed "24% of White households report owning stock or mutual funds, while less than 8% of Black households do."[20] Interestingly, "the gap remains large for each group and even appears to widen for higher-income brackets, indicating that household income level does not account entirely for the differences in participation rates."[21] The study further notes that, after "equaliz[ing] the income distribution and keep[ing] the Black household participation rate the same for each income group, the total Black household stock market participation rate rises from 8% to approximately 11.4%, which remains substantially below the White household participation rate of 24%."[22] Furthermore, a 2020 report from the Federal Reserve notes that "the typical White family has $50,600 in equities they could tap into in an emergency, compared to just $14,400 for the typical Black family and $14,900 for the typical Hispanic family,"[23] meaning fewer

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[17] Julie-Anne Cronin et al., *Tax Expenditures by Race and Hispanic Ethnicity: An Application of the U.S. Treasury Department's Race and Hispanic Ethnicity Imputation* 31 (Off. of Tax Analysis, U.S. Dep't of Treasury, Working Paper No. 122, 2023), https://home.treasury.gov/system/files/131/WP-122.pdf.

[18] *See* DANIEL BERGER & ERIC TODER, DISTRIBUTIONAL EFFECTS OF INDIVIDUAL INCOME TAX EXPENDITURES AFTER THE 2017 TAX CUTS AND JOBS ACT 1, 7 (2019).

[19] Julie Bennett & YiLi Chien, *The Large Gap in Stock Market Participation Between Black and White Households*, ECON. SYNOPSES (Mar. 28, 2022), https://doi.org/10.20955/es.2022.7.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] Neil Bhutta et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, FED. RSRV.: FEDS NOTES (Sept. 28, 2020), https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-

people of color hold assets with higher average returns such as retirement accounts and stocks. All this data buttresses the previous findings of Beverly Moran and William Whitford as well as Dorothy Brown that the Black/White wealth gap is large and that Black families tend to hold assets that are not tax-favored.[24]

In keeping with President Biden's executive order, the Department of the Treasury's Office of Tax Analysis (OTA) is researching "questions of racial equity in the U.S. individual income tax system."[25] In a report released in January 2023, Julie-Anne Cronin, Portia DeFilippes, and Robin Fisher used OTA's new race and Hispanic ethnicity imputation methodology[26] "to analyze how the benefits of eight of the largest individual income tax expenditures vary by" race and Hispanic ethnicity.[27] Preferential rates for certain capital gains and qualified dividends are the second highest tax expenditure, with tax revenue foregone of $146 billion.[28] The Treasury Department's report found that "White families are 67 percent of all families but receive . . . 92 percent of the benefits of preferential rates for certain capital gains and qualified dividends."[29] White families have higher benefit rates across a range of income levels, and among the highest-income families,

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20200928.html; *see also* Jenna Ross, *The Racial Wealth Gap in America: Asset Types Held by Race*, VISUAL CAPITALIST (June 12, 2020), https://www.visualcapitalist.com/racial-wealth-gap/.

[24] *See generally* Beverly I. Moran, & William Whitford, *A Black Critique of the Internal Revenue Code*, 1996 WIS. L. REV. 751, 770; *see also* DOROTHY A. BROWN, THE WHITENESS OF WEALTH: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS—AND HOW WE CAN FIX IT (2022); SIGNE-MARY MCKERNAN ET AL., LESS THAN EQUAL: RACIAL DISPARITIES IN WEALTH ACCUMULATION (2013) (reporting that the racial wealth gap is triple the size of the racial income gap).

[25] Cronin et al., *supra* note 17, at 3.

[26] *Id.* at 5.

[27] *Id.* at 1, 19. Tax expenditures are defined as "revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability." *Id.* at 19.

[28] *Id.* at 24 ("The baseline tax system generally would tax all income under the regular tax rate schedule. It would not allow preferentially low tax rates to apply to certain types or sources of income. For individuals, tax rates on regular income vary from 10% to 37% in 2023."); *see also id.* ("In contrast, under current law, certain capital gains on assets held for more than one year and qualified dividends are taxed at a preferentially low rate that is no higher than 20% (plus the 3.8% surtax).").

[29] *Id.* at 28. Note that benefits from the preferential rates increase with income because the capital gains rates vary from 0% to 20% depending on the taxpayer's income. *Id.* at 37.

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white families have higher average benefits compared to Hispanic and Black families.[30]

We then analyzed the potential beneficiaries of the Qualified Opportunity Fund investment. For example, we examined the coincidence of designated OZ census tracts with historic residential security maps to question the extent to which Opportunity Zones are focusing capital in those spaces that have been historically disinvested in as a matter of federal policy. As part of our analysis, we also analyzed the demographic differences between eligible and designated Opportunity Zone census tracts using American Community Survey data.

Early assessments of the OZ tax incentive find that there are too many designated census tracts resulting in needless competition between zones. Furthermore, the OZ tax incentive predominately works only for real estate and only in urban areas.[31] Wheeler finds that "while the program as implemented had large effects on [the equilibrium behavior of developers and] city-wide new development, optimally chosen OZs would have nearly doubled the investment response."[32] Our analysis questions whether more specific targeting beyond that provided in the TCJA legislation might help to focus on a smaller subset of places with greater need. Policy-wise, there are many ways this could be accomplished—for instance, through more selective criteria for family poverty or neighborhood poverty. Another strategy might be to examine disinvestment over time to focus on those neighborhoods with a protracted history of a lack of capital investment.

For the purposes of our examination, we question whether neighborhoods that experienced a historical systematic lack of access to capital under the residential security grading process (i.e., redlining) might

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[30] *Id.* at 37 ("With regard to horizontal equity, within deciles and across most of the income distribution, the share of White families benefitting from preferential tax rates on capital gains and dividends is greater than the share of Hispanic or Black families receiving the benefit. In the 5th decile (middle of the income distribution), we estimate that 8 percent of White families benefit whereas less than 1 percent of Hispanic families and 3 percent of Black families benefit.").

[31] *See* Kennedy & Wheeler, *supra* note 8, at 11–13, 18.

[32] Wheeler, *supra* note 14, at 2.

be the basis for further targeting of OZ capital.[33] Redlining is the discriminatory practice of systematically denying financial services, such as mortgages and insurance loans, to residents of certain areas, based on race or ethnicity.[34] Redlining disregards an individual's qualifications and creditworthiness, refusing such services solely based on the residency of those individuals in minority neighborhoods that were also often deemed "hazardous" or "dangerous" by lenders.[35] Numerous social science studies document the association between historically redlined neighborhoods and a range of issues, including disparities in access to capital,[36] food access,[37] health inequity,[38] reduced greenspace,[39] and fatal encounters with law enforcement.[40]

For these reasons, among others, the U.S. Department of Justice (DOJ) announced its "Combatting Redlining Initiative" on October 22, 2021.[41] Led

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[33] We also question how historical patterns of redlining relate to contemporary patterns of income, poverty, and racial composition.

[34] *See* Diego Mendez-Carbajo, *Neighborhood Redlining, Racial Segregation, and Homeownership*, PAGE ONE ECON. (Sept. 2021), https://research.stlouisfed.org/publications/page1-econ/2021/09/01/neighborhood-redlining-racial-segregation-and-homeownership. *See generally* Ana Hernández Kent et al., *Examining Racial Wealth Inequality*, PAGE ONE ECON. (Mar. 2022), https://research.stlouisfed.org/publications/page1-econ/2022/03/01/examining-racial-wealth-inequality.

[35] *Redlining*, CORNELL L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/redlining (last updated Apr. 2022); *see also* Emmanuel Martinez & Lauren Kirchner, *The Secret Bias Hidden in Mortgage-Approval Algorithms*, THE MARKUP (Aug. 25, 2021, 6:50 AM), https://themarkup.org/denied/2021/08/25/the-secret-bias-hidden-in-mortgage-approval-algorithms.

[36] Kevin A. Park & Roberto G. Quercia, *Who Lends Beyond the Red Line? The Community Reinvestment Act and the Legacy of Redlining*, 30 HOUS. POL'Y DEBATE 4, 4 (2020).

[37] *See generally* Yasamin Shaker et al., *Redlining, Racism and Food Access in US Urban Cores*, 40 AGRIC. HUM. VALUES 101 (2022).

[38] *See generally* Carolyn B. Swope et al., *The Relationship of Historical Redlining with Present-Day Neighborhood Environmental and Health Outcomes: A Scoping Review and Conceptual Model*, 99 J. URB. HEALTH 959 (2022).

[39] *See generally* Anthony Nardone et al., *Redlines and Greenspace: The Relationship Between Historical Redlining and 2010 Greenspace Across the United States*, 129 ENV'T HEALTH PERSP. 1 (2021).

[40] *See generally* Jeffrey Mitchell & Guilherme Kenji Chihaya, *Tract Level Associations Between Historical Residential Redlining and Contemporary Fatal Encounters with Police*, 302 SOC. SCI. & MED. 1, 2 (2022).

[41] Press Release, U.S. Dep't of Just., Justice Department Announces New Initiative to Combat Redlining (Oct. 22, 2021), https://www.justice.gov/opa/pr/justice-department-announces-new-initiative-combat-redlining.

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by the DOJ's Housing and Civil Enforcement Section and U.S. Attorneys' offices nationwide, the initiative addresses fair lending concerns in "the DOJ's most aggressive and coordinated effort to address redlining."[42] The DOJ has since made significant headway, announcing six redlining cases and settlements totaling nearly $85 million in relief for communities of color that have been victims of lending discrimination across the country, including a $31 million settlement with City National Bank, the largest redlining settlement in department history, and agreements with Trident Mortgage Company for $20.4 million and Lakeland Bank for $13.4 million.[43] While these settlements provide millions to increase credit opportunities for residents of communities of color across the country, including in Houston, Memphis, Philadelphia, Newark, Los Angeles, and Columbus,[44] the settlements further demonstrate the widespread effort needed to truly address socioeconomic disparities at a local level.

While recent scholarship has underscored that the residential security rating process was only one factor informing FHA decision-making and practice regarding where to extend (or insure) capital,[45] generations after their discontinuation and despite the proliferation of federal fair housing and banking laws including the Community Revitalization Act, there remain substantial disparities between historically redlined neighborhoods and those that were not. There are also substantial disparities in the demographics of individuals who live in these neighborhoods.[46]

We therefore overlay those OZ-eligible or -designated census tracts (based upon 2010-vintage tract boundaries defined by the U.S. Census Bureau) with those tracts for which historic residential security grades are

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[42] *Id.*

[43] Press Release, U.S. Dep't of Just., Justice Department Hosts Forum in Newark, New Jersey to Highlight Nationwide Effort to Combat Modern-Day Redlining (Apr. 19, 2023), https://www.justice.gov/opa/pr/justice-department-hosts-forum-newark-new-jersey-highlight-nationwide-effort-combat-modern.

[44] *See id.*; *see also* U.S. DEP'T. OF JUST., COMBATTING REDLINING INITIATIVE, https://www.justice.gov/media/1288086/dl?inline.

[45] Price Fishback et al., *New Evidence on Redlining by Federal Housing Programs in the 1930s*, J. URB. ECON. (2022), https://doi-org.pitt.idm.oclc.org/10.1016/j.jue.2022.103462.

[46] Daniel Aaronson et al., *The Long-run Effects of the 1930s HOLC "Redlining" Maps on Place-based Measures of Economic Opportunity and Socioeconomic Success*, REG'L SCI. & URB. ECON. (2021), https://doi-org.pitt.idm.oclc.org/10.1016/j.regsciurbeco.2020.103622.

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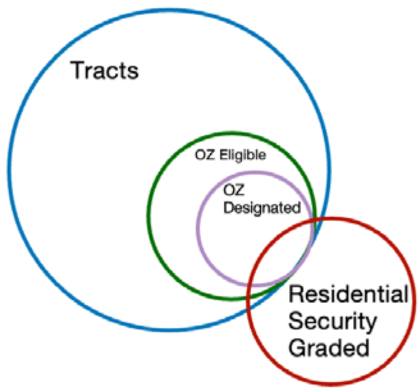
available (Figure 1). By comparing OZ-eligible and -designated tracts based upon their residential security grade, we question whether the OZ program targeting might focus even more on incentivizing investment in low-income communities and addressing the historic, systematic denial of capital access that certain neighborhoods faced.

Figure 1: Conceptual Model of OZ and Residential Security Overlap



Using a digital database of historical residential security maps, we overlaid historical residential security maps onto the census tracts (based upon 2010-vintage tract boundaries defined by the U.S. Census Bureau) which are the basis for OZ determination.[47] We also include demographic data from the 2018 five-year ACS to examine tract characteristics at the time OZs were designated. In Table 1, we provide demographic information for two subsets of census tracts. Subset 1 compares the subset of census tracts that were eligible for designation as Opportunity Zones. We were able to identify a total of 42,164 census tracts that were eligible for designation, of which 8,762 (20.7%) were ultimately designated as an Opportunity Zone. We also compared a second subset for which historical residential security grades were available and for which tracts were either eligible or designated as Opportunity Zones. We were able to identify a total of 11,389 census tracts for which historical residential security ratings could be associated. Of the 42,164 OZ-eligible census tracts, 8,566 (20%) had residential security

[47] *Mapping Inequality*, UNIV. RICH., https://dsl.richmond.edu/panorama/redlining (last visited June 14, 2023).

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grades. Of the 8,762 OZ-designated census tracts that we analyzed, 1,968 (22.4% of designated tracts) were graded and OZ designated (Table 1).

Table 1: Tract Count and Population

Geography	**Count**	**Percentage of All Tracts (%)**	**Population**	**Percentage of All Population (%)**
Subset 1: OZ-Eligible Tracts	42,164	57.0%	175,708,484	53.8%
OZ Designated	8,762	11.8%	34,799,298	10.6%
Not OZ Designated	33,402	45.2%	140,909,186	43.2%
Subset 2: Residential Security Graded Tracts	11,389	15.4%	41,012,328	12.6%
Graded + OZ Eligible	8,566	11.5%	30,159,960	9.2%
Graded + OZ Designated	1,968	2.6%	6,671,097	2.0%
All Tracts	**73,874**	**100%**	**326,289,971**	**100%**

While our analysis focuses on all fifty states, Washington D.C., and Puerto Rico, we provide an illustrative example of the process of identifying and overlapping OZ and residential security maps for four cities—Chicago, Detroit, Los Angeles, and New York (Figure 2). We begin by isolating all census tracts that fall within the city limits (Figure 2 Panel A). We then identify which of those tracts are eligible for or were designated as an OZ (Figure 2 Panel B). Separately, we identify those tracts for which historical residential security grades are available (Figure 2 Panel C). Under the residential security grading system, Grade A and B tracts were considered most suitable for lending, while grades C, D, and E were considered risky. Finally, we identify those tracts that are eligible for or were designated as an

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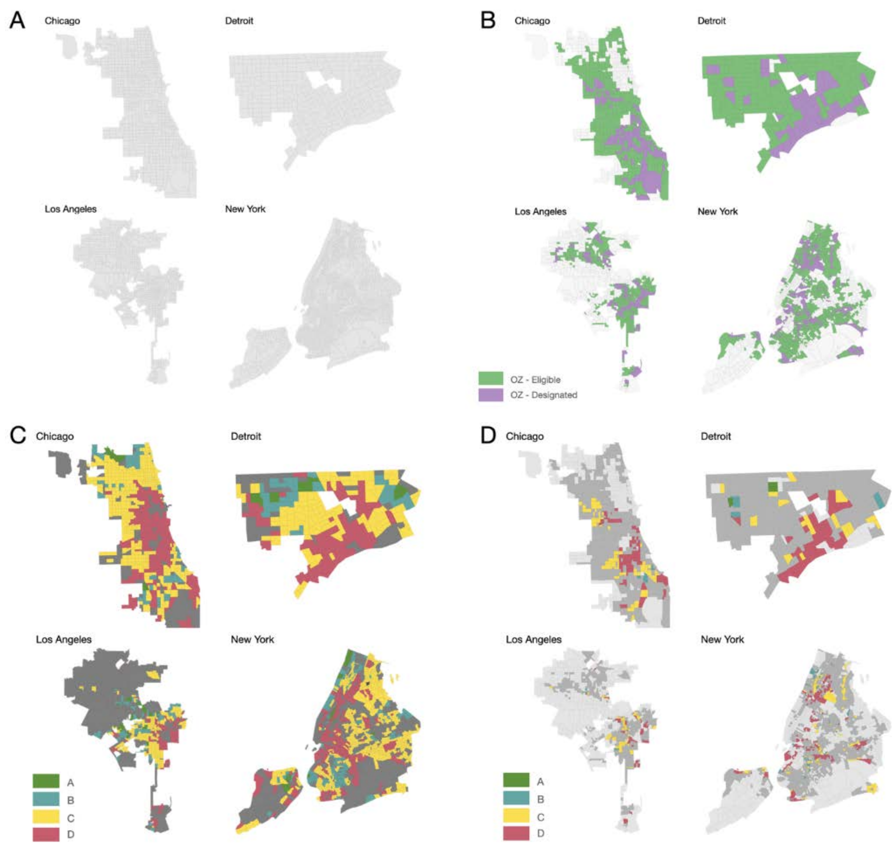
OZ and for which a Residential Security grade is available (Figure 2 Panel D).[48]

Figure 2: Examples of Analytical Process



When compared to the national average, OZ-eligible tracts have a higher share of both Black and nonwhite population. Likewise, tracts with residential security grades have higher shares of both Black and nonwhite populations. Tracts with less favorable residential security grades on average have higher proportions of Black and nonwhite residents. Of the 6.6 million

[48] While residential security Grade E is present within our data, we exclude it from our maps because no tracts in these locations received that grade.

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individuals who live in tracts which had both a residential security grade and that are designated as an OZ, 86% live in a tract with a historic residential security grade of C or D—areas where capital (and federal mortgage insurance) was historically restricted or denied outright (Table 2).

Table 2: Demographic Attributes of Residential Security and OZ Tracts

Geography	**Population**	**Black Population (%)**	**Nonwhite Population (%)**
OZ-Eligible Tracts	175,708,484	17%	49%
OZ Designated	34,799,298	21%	60%
Not OZ Designated	140,909,186	16%	46%
RS Graded Tracts	41,012,328	22%	59%
Grade A	2,477,348	14%	32%
Grade B	8,972,191	20%	50%
Grade C	18,774,116	22%	61%
Grade D	10,754,943	28%	70%
Grade E	33,740	39%	86%
RS Graded + OZ Designated	6,661,097	38%	77%
Grade A	88,130	29%	52%
Grade B	800,200	29%	61%
Grade C	2,802,862	25%	68%
Grade D	2,968,055	31%	75%
Grade E	1,850	56%	68%
All Census Tracts	**326,289,971**	**12%**	**40%**

We next look at whether targeting those locations with C or D residential security grades would help to further select locations in need of OZ targeting. For this, we perform two types of comparisons—one that examines all tracts in the nation, and the other that focuses on tracts within cities where residential security grade information is available (Table 3).[49] We examine income and poverty rates (due to their direct relationship to OZ designation criteria) as well as the proportion of nonwhite population. As should be expected, looking at the differences between eligible (i.e., designated and not designated) places and ineligible places, on average, eligible places have substantially lower income, higher poverty rates, and a substantially higher share of the nonwhite population. Likewise, looking at the subset of places that were eligible for OZ designation, on average, those designated have lower income, a higher poverty rate, and a higher share of nonwhite population when compared to the non-designated places.

Looking next at the comparison between graded and ungraded places, those neighborhoods with C or D ratings that were also designated as Opportunity Zones on average have the lowest income, highest poverty rates, and highest share of nonwhite population compared to ungraded and non-designated places.

Taken together, these demographics indicate that overlaying historic denial of access to capital in the form of residential security grades would reduce the total number of OZs and would focus on a subset of places with lower income and higher poverty. The focus on these places would also potentially bring capital investments into areas with greater shares of nonwhite residents.

[49] Residential security maps were produced through a collaborative, highly localized process—only some of these maps were archived and digitized as part of the Mapping Inequality project (frequently used for policy analysis and research purposes as an authoritative source of available information on spatial dimensions of residential security grades). Performing our comparison at the national level alone would be misleading because the available residential security information does not cover the entirety of the country. To address this potential bias, we also perform the comparison for the subset of places (local governments) which have at least some census tracts that overlayed with residential security maps. By looking at these graded places, we can get a less biased picture of how different OZ designations are.

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Table 3: Selected Tract Demographics

			Graded	Ungraded	Difference
Income	Nation				
		Designated	$34,478	$47,387	$-2,909
		Not Designated	$45,898	$49,224	$-3,326
		Ineligible	$97,262	$86,802	$10,460
	Graded Places				
		Designated	$34,416	$37,111	$-2,695
		Not Designated	$45,759	$47,901	$-2,141
		Ineligible	$96,670	$90,116	$6,554
Poverty Rate (%)	Nation				
		Designated	33.2%	28.5%	4.7%
		Not Designated	24.5%	18.6%	5.9%
		Ineligible	7.8%	7.3%	0.5%
	Graded Places				
		Designated	33.3%	31.2%	2.1%
		Not Designated	24.6%	21.7%	2.8%
		Ineligible	7.9%	7.6%	0.4%
Nonwhite Population (%)	Nation				
		Designated	76.2%	56.1%	20.0%
		Not Designated	65.7%	40.3%	25.4%
		Ineligible	32.7%	25.8%	7%
	Graded Places				
		Designated	76.2%	72.1%	4.1%
		Not Designated	65.7%	63.8%	1.9%
		Ineligible	32.7%	36.9%	-4.3%

Due to the racialized nature of the benefits provided, our recommendation for the reform of the Opportunity Zone incentive emphasizes that the law should explicitly ensure that investments are made in neighborhoods previously harmed by racial inequities in federal programs. Given the specific and targeted disinvestment in redlined Black communities, there should be a preference for investment in these communities. There is much benefit to be derived from reframing the OZ tool as a tool for redlined-neighborhood revitalization to atone for the federal government's racialized history of disinvestment in Black communities. Specifically, we recommend limiting the zones to those specific census tracts that overlap with formerly redlined communities. This recommendation focuses on benefiting the communities that have not recovered from the previous governmental intervention rooted in animus.

We believe that the best result would be to repeal OZs and start over.[50] However, as this incentive enjoys bipartisan support and has spawned a new industry like § 1031,[51] we focus on the reforms that are necessary to continue the program and target investments where they are needed the most. The lack of an upfront federal, state, or local government review process is facilitating abuse of this tax expenditure.[52] Opportunity Fund managers must integrate the needs of local communities into the formation and implementation of the funds, reaching low-income and underinvested communities with attention to diversity.[53] Reframing OZs as a tool for redlined-neighborhood revitalization will strengthen this mission.

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[50] Brandon M. Weiss, *Opportunity Zones, 1031 Exchanges, and Universal Housing Vouchers*, 110 CALIF. L. REV. 179, 220 (2022) (recommending that the amount spent on this tax expenditure be used on an expansion of the Section 8 Housing Choice Voucher program).

[51] I.R.C. § 1031.

[52] *See* Michael Snidal & Sandra Newman, *Missed Opportunity: The West Baltimore Opportunity Zones Story* 3 (Feb. 19, 2021), https://perma.cc/DX5L-XWAP (observing that the "policy's flexible guidelines also raise concerns about whether and how the OZ will spur capital investment in distressed neighborhoods"); Weiss, *supra* note 50, at 204 (comparing the OZ tax incentive to the § 1031 real estate exchange gain recognition deferral provision: "first and foremost, they are simply tax shelters").

[53] U.S. IMPACT INVESTING ALL., PRIORITIZING AND ACHIEVING IMPACT IN OPPORTUNITY ZONES 2 (2019), https://static1.squarespace.com/static/5c5484d70b77bd4a9a0e8c34/t/5d1144358bc6b10001a5af3f/1561412661497/Opportunity+Zones+Reporting+Framework+-+June+2019.pdf.

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