

# Recent Measures in the District of Columbia Negatively Impact Opportunity Zone Investment Returns

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The District of Columbia is implementing certain new regulations and has also enacted new legislation that will likely result in a reduction in expected investment returns and create overly burdensome government oversight that could discourage Opportunity Zone investments in the District. Opportunity Zones are an economic development tool that incentivize investors to develop real estate in distressed and low-income areas across the country through Qualified Opportunity Funds (QOFs) and temporarily defer the payment of taxes on eligible gains. Capital gains from the sale of assets (whether tangible or intangible) that are deposited into a QOF will not be taxed until 2026, or when the investment is sold.

As a part of its 2021 fiscal year budget, the District is adding a layer of regulations covering local Opportunity Zone tax incentives (with no impact on the federal tax treatment). Under the new regulations, for investors to realize the tax benefits afforded by investing in Opportunity Zones in the District of Columbia, the QOFs must be registered with the District. While the QOF is not required to be based in the District, it must invest in a project in one of the District's 25 designated Opportunity Zones that either: (i) has been granted another economic development incentive by the District; (ii) is an Office of the Deputy Mayor for Planning and Economic Development-awarded project; (iii) has received a letter of support from the Advisory Neighborhood Commission; or (iv) has scored at least a 75% on the Urban Institute Opportunity Zone Community Impact Assessment Tool, which may be found [here](#).

Additionally, on August 19, 2020, Mayor Muriel Bowser signed into law the Budget Support Emergency Act of 2020, which, among other things, amends the definition of "taxable income" for unincorporated businesses to include "gain from the sale or other disposition of any assets, including tangible assets and intangible assets, including real property and interests in real property, in the District, even when such a sale or other disposition results in the termination of an unincorporated business." Investments in Opportunity Zones have traditionally been through unincorporated pass-through entities (i.e., partnerships and limited liability companies) and the result of the new law is that gains recognized by unincorporated businesses from federal Opportunity Zone investments will be subject to taxation in the District beginning January 1, 2021. Such gains are excluded for federal income tax purposes and the District had previously followed federal guidelines and provided the same tax benefits that shielded QOF investors from the District's capital gains tax.