

---

**WEBINAR:**

New Markets Tax Credits and  
Opportunity Zones as financing  
options for tribes



---

## INTRODUCTION

# About Baker Tilly



Our 3,600 specialized professionals guide clients through an ever changing business world

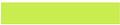


We have grown to become one of the 15 largest accounting and advisory firms in the US



Member of Baker Tilly International, a worldwide network of independent accounting and business advisory firms in 145 territories, with 34,700 professionals





## A WORLD OF RESOURCES

# About Baker Tilly Capital

Baker Tilly Capital is a boutique investment bank specializing in merger and acquisition (M&A), capital sourcing, project finance and corporate finance advisory services. Baker Tilly Capital is a registered broker-dealer, member FINRA and SIPC.

### **Comprehensive credits and incentives solutions**

Our team of 90 professionals has experience in municipal, state, federal and international incentives programs and negotiations. Our value of closed transactions is in excess of \$10 billion.

### **We can help you navigate your options, including:**

- [New Markets Tax Credits \(NMTC\)](#)
- State and local credits and incentives
- Job creation and retention credits
- Tax Increment Financing (TIF)
- Property Assessed Clean Energy (PACE)
- Historic Tax Credits
- [Opportunity Zones](#)

**TRIBAL PRACTICE**

# About Baker Tilly

## Risk and compliance

- External financial audit
- Internal audit advisory
- Single audit
- Cybersecurity
- Gaming compliance
- Regulatory compliance
- Employee benefit plan audit
- 8(a) contract compliance



## Strategy and operations

- Long-term financial planning
- Economic development advisory
- Productivity and cost reduction
- Capital planning
- Tribal utility formation
- Grant writing and advisory
- Business process reviews
- Outsourced accounting and bookkeeping



## Government contracts advisory

- Service Contract and Davis-Bacon Act
- Standard Form 1408 accounting system assessments
- Provisional billing and forward pricing rate development
- Incurred cost proposal preparation and review
- Indirect cost rate structuring
- GSA Federal Supply Schedule Contracts
- Contractor business systems



## Project development

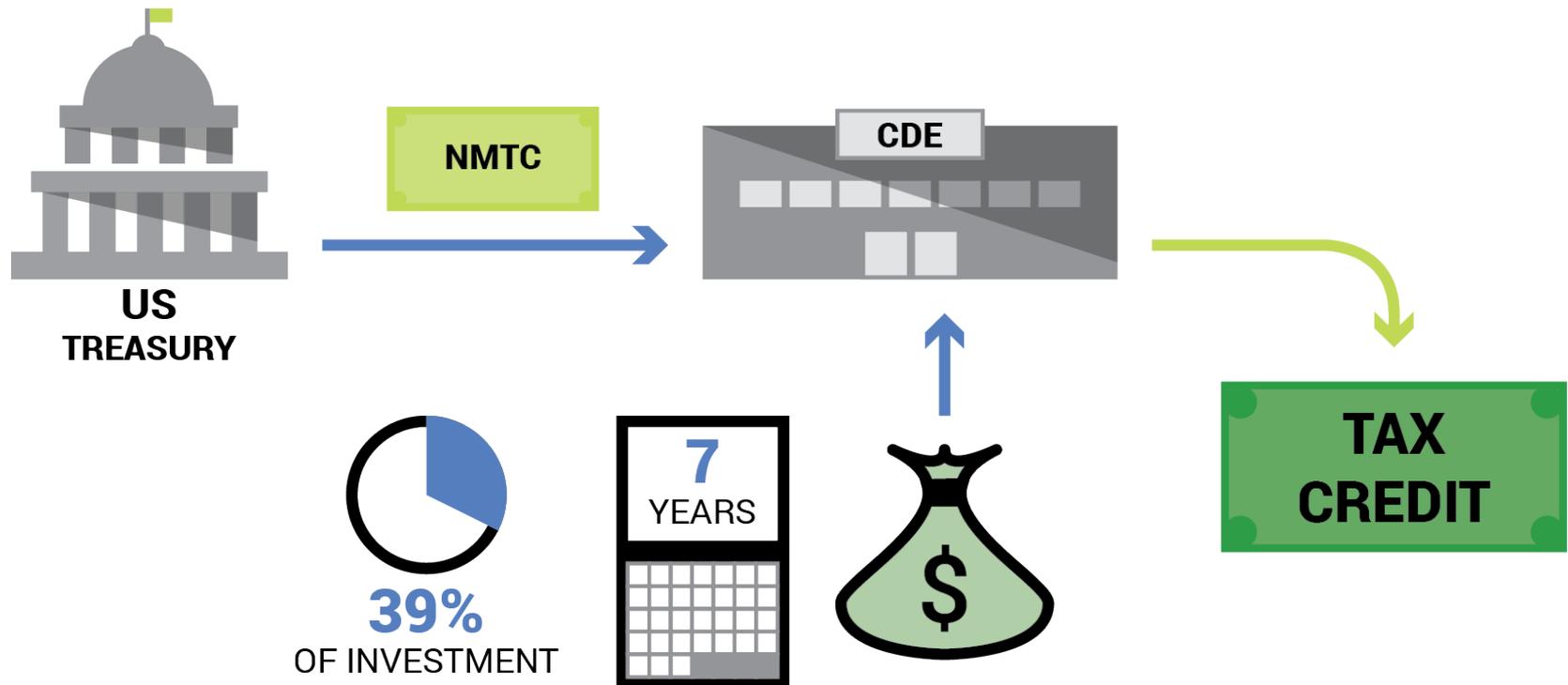
- Comprehensive project finance
- Incentives advisory
- New Markets Tax Credits
- Low Income Housing Tax Credits
- Energy and infrastructure advisory
- Public private partnership facilitation
- Transaction advisory services
- EB-5 financing
- Opportunity Zones



## New Markets Tax Credits (NMTC): Overview and value to you



**NEW MARKETS TAX CREDITS**  
Program overview



## UNDERSTANDING THE CDE

The CDE: those that are awarded credit to allocate to your project

### Who are these guys?

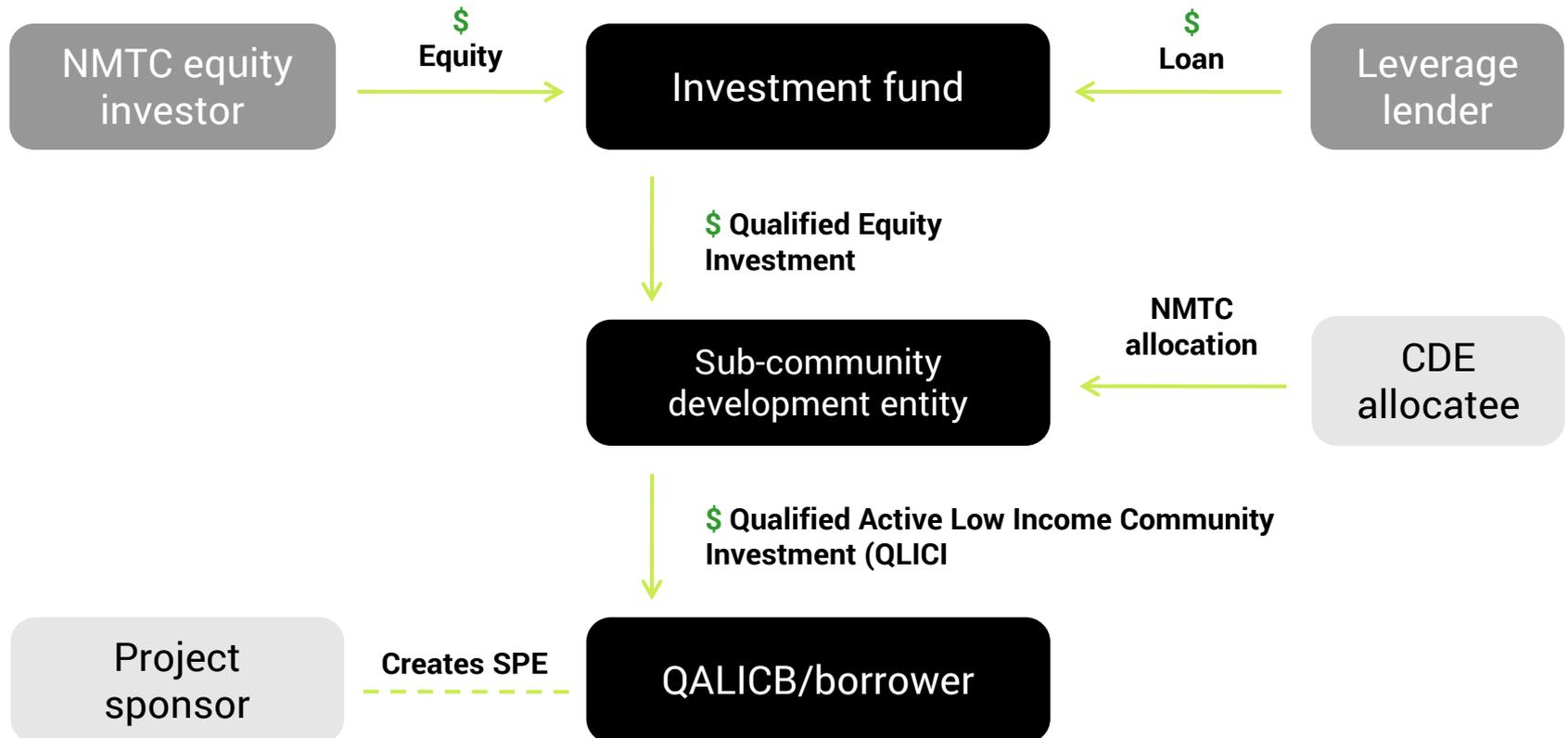
- A division of state or local government (e.g. the state of Wisconsin)
- A subsidiary of a financial institution (e.g. Wells Fargo)
- A not-for-profit community development organization (e.g. Local initiatives support corporation)
- A privately held organization (e.g. Baker Tilly – Valued Advisor Fund)

### What are they looking for?

- Each have a intended purpose/goal when deciding which projects to allocate NMTC
- Some have regional geographic focus and some have national focus
- Since this is a very competitive, limited resource and not an entitlement program (like many other grants, credits and incentives), they “call the shots”

**NEW MARKETS TAX CREDITS**

# Transaction diagram



**THE MATH (ESTIMATED)**

## How it works

NMTC allocation	\$10,000,000
NMTC rate	39%
Tax credits	<u>\$3,900,000</u>
Investor monetization	\$3,100,000
Less estimated closing costs and fees	\$900,000
<b>Net NMTC cash to the project</b>	<b>\$2,200,000</b>

**Important: an allocation does not equal cash**

---

# What makes a good project candidate?

# 1

Located in a “highly distressed” census tract

Any of the following:

- Poverty > 30 percent
- Median income < 60 percent statewide
- Unemployment > 1.5 times national average
- Non-metropolitan county
- Two of any secondary criteria

# 2

Community impact

- Tangible community benefit – measured by quality job creation, providing unmet goods and services to low income communities, environmentally sustainable construction, etc.
- Part of an existing plan for economic revitalization
- “But for” test – NMTC fills a real funding gap that would otherwise not happen

# 3

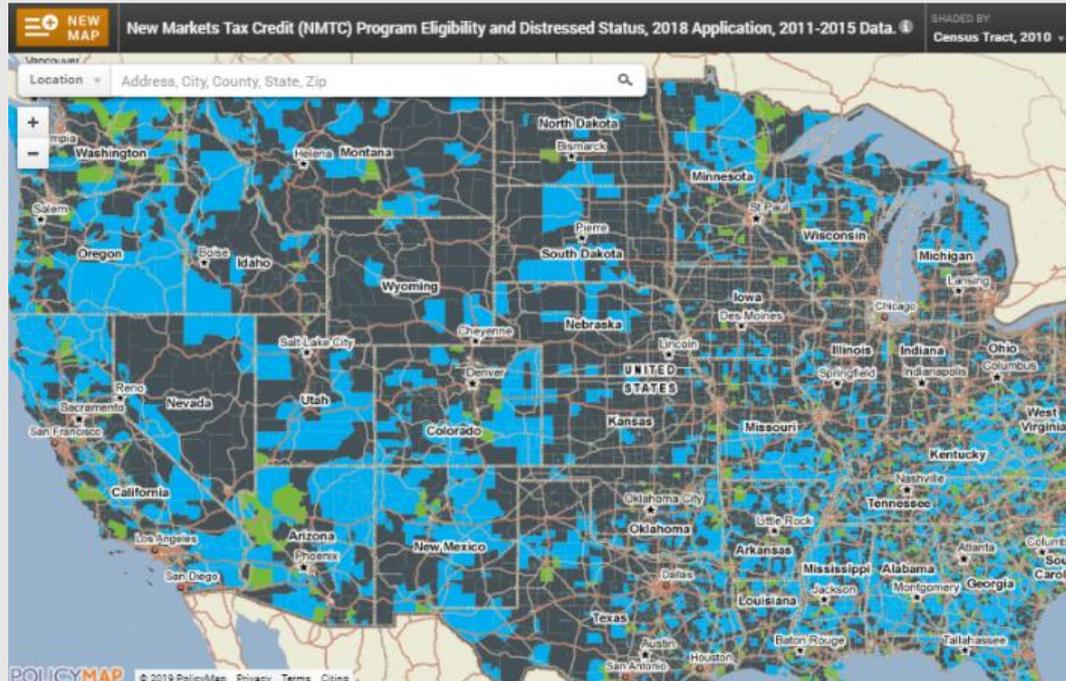
Ready to go

Other sources of funding are committed and approvals all in place

---

## IS MY PROJECT ELIGIBLE?

# NMTC mapping tool



### NMTC Status

- Insufficient Data
- Eligible - NMTC, severe distress
- Eligible - NMTC, distressed
- Eligible - Other incentives

Source: CDFI Fund and PolicyMap

Find eligible areas at [go.bakertilly.com/nmtc-lihtc-mapping-tool](http://go.bakertilly.com/nmtc-lihtc-mapping-tool)

## Program benefits

### **Economic benefits to recipient**

- Additional capital to fund projects, including: new facilities, expansions or equipment
- Low cost of capital
- Below-market interest rates
- Flexible loan terms
- NMTC benefit does not typically need to be repaid

### **Community benefits**

- Create additional economic development for the local community
- Attract and retain skilled workforce
- Bring new goods or services to underserved communities
- Capital investment to underserved low-income communities



Enhance economy



Create jobs



Improve low-income communities

## Program obstacles

- Seven year forbearance agreement (the compliance period)
- No principal amortization for length of NMTC investment
- In the event of a default, required to re-lend funds to another QALICB for the duration of the compliance period



- Must be compliant for seven years with QALICB requirements
- Guarantee on QALICB status often required
- Additional reporting requirements

**PROGRAM BENEFITS**

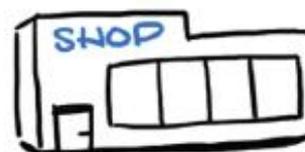
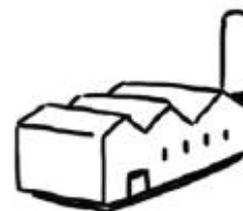
“Is it worth going through the process and its challenges if I can fund over 20 percent of my project with low cost capital?”



**EXAMPLES**

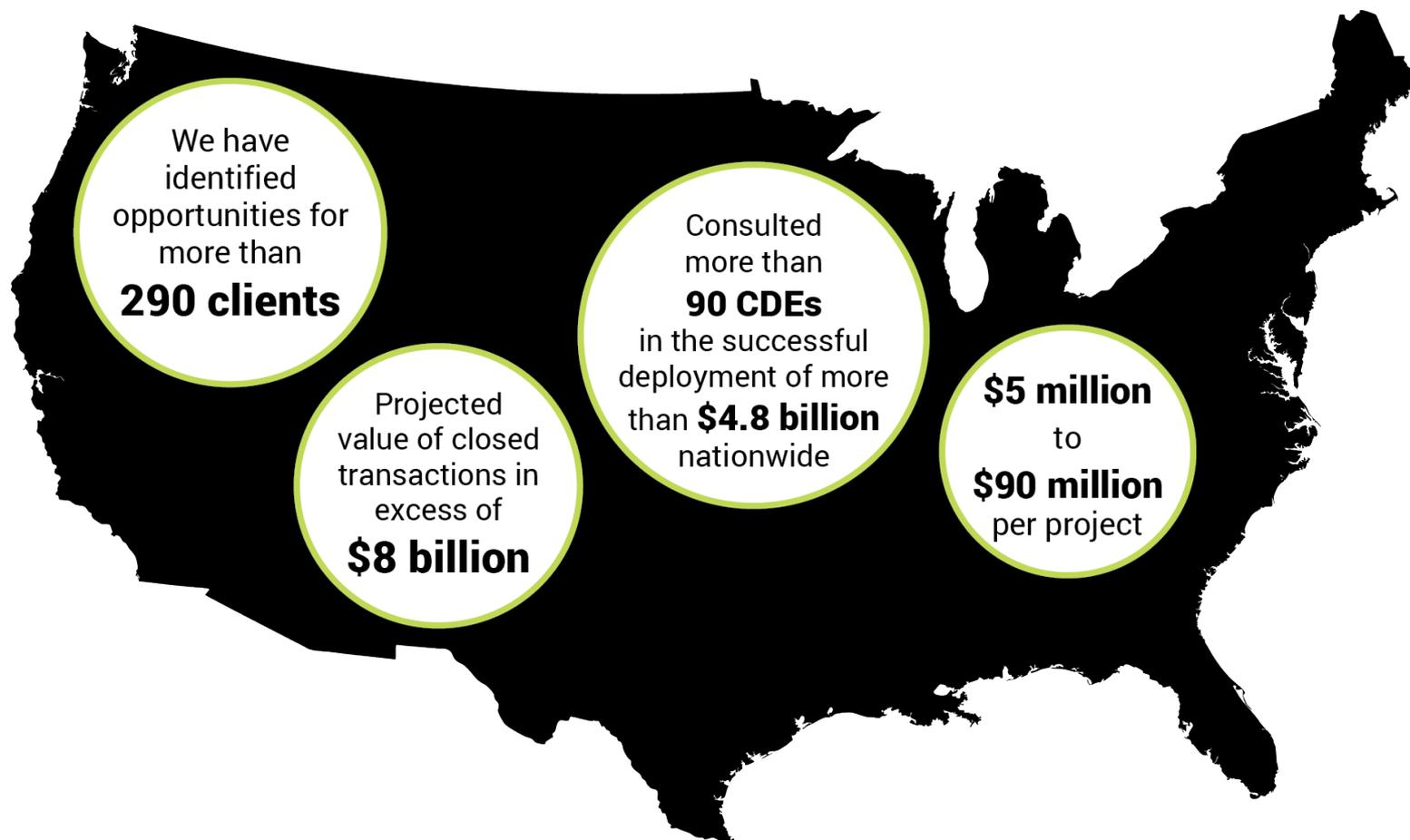
Good NMTC projects (assuming in NMTC eligible location)

- Rural community centers
- Rural healthcare clinics
- Manufacturing businesses
- Rural schools
- Infrastructure projects (energy, telecom, water/wastewater) which directly benefit low income communities



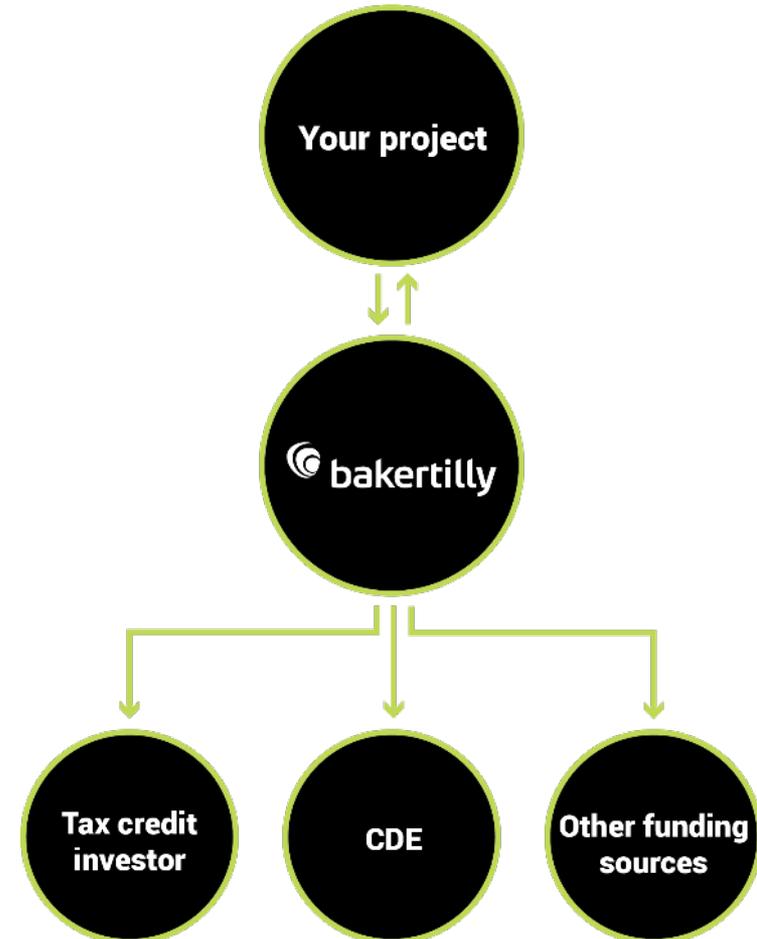
**ABOUT BAKER TILLY**

# NMTC experience



## Services for borrowers

- Determine NMTC eligibility
- Design transaction structure
- Analyze community impact
- Prepare executive summary for CDEs
- Identify CDEs
- Obtain term sheets and negotiate terms
- Discuss MTC structure implications
- Source the NMTC investor
- Prepare financial model
- Assist with closing



*Working with CDEs, investors, and other funding sources on your behalf*

**UPDATE**

## Status of NMTC program

- Survived tax reform!
- Program extended for five years at \$3.5 billion/year in Dec. 2015
- \$3.5 billion in awards announced in the second quarter of 2019
  - 10 of the 73 allocates that received allocation in the last round are minority or Native owned/controlled and received allocation totaling \$365 million
- One remaining round currently approved for \$3.5 billion
- Applications next round expected late 3<sup>rd</sup>/early 4<sup>th</sup> quarter this year with awards anticipated to be announced in spring of 2020
- Extension of the NMTC program are high on the industry's radar for the near and extended term



**NATIONAL ECONOMIC IMPACT**

## Status of NMTC program

- \$57.5 billion in NMTC allocation awarded to date with \$52.3 billion utilized to fund projects as of August 2019
- NMTC allocation that has not been utilized is largely committed to projects
- Since 2003, the NMTC program has created or retained nearly 750,000 jobs
- It has supported construction:
  - 51MM/SF of manufacturing space
  - 89MM/SF of office space
  - 65MM/SF of retail

## Opportunity zones (OZ): program overview



OVERVIEW

## Opportunity zones

### **What are opportunity zones (OZ) and where are they?**

- An OZ is a population census that meets the definition of a “low-income” community as that term is defined in the Internal Revenue Code in the context of the NMTC
  - Eligible areas are based on low-income census tracts and tracts contiguous to these low-income census tracts
- There are now more than 8,700 certified qualified opportunity zones (QOZs) in all 50 states, D.C., Puerto Rico and the Virgin Islands
  - 11 percent of the country is designated as an OZ
  - Designated land includes various land in Indian Country
  - Currently, more than 50 percent of tribal census tracts are eligible for Opportunity Zone designation [per industry media reports]

## IS MY PROJECT IN A QUALIFIED OPPORTUNITY ZONE?

# Opportunity zones mapping tool



Find eligible areas at [bakertilly.com/opportunityzones](https://bakertilly.com/opportunityzones)

**OPPORTUNITY ZONES**

What are the tax incentives for investment in a QOZ?





## Three potential tax benefits

1. A **deferral** of the tax on the original gain until the earlier (a) the date of the taxpayer sells or exchanges its investment in the QOF, or (b) December 31, 2026.
2. A **reduction** of the tax on the original gain: (a) 10 percent discount if the QOF investment is held for five years by Dec. 31, 2026 or the date of disposition, if earlier; (b) an additional 5 percent discount (15 percent total) if held for seven years by December 31, 2026.
3. **No taxable gains** on the QOF investment if held for 10 or more years

In effect, appreciation on the investment, but not the original deferred gain, is eliminated permanently. Depreciation losses are a permanent benefit with a 10-year hold with the investor sale of the QOF interest.



## OPPORTUNITY ZONES

# What gain qualifies for tax benefits?

Participation in the OZ program begins with investing capital gain into an Opportunity Fund.

- It includes long- and short-term capital gain, collectables gain, net section 1231 gains, capital gain dividend distributions, but gains that would generate ordinary income are ineligible
- The capital gain must originate from a sale or exchange with an unrelated party within the previous 180 days
- Investing other money alongside capital gain is permissible, but **only the capital gain portion of the investment qualifies for the tax benefits**
- When recognized, the deferred gain includes the same attributes in the year of inclusion that it would have had if tax on the gain had not been deferred

  
**OPPORTUNITY ZONES**

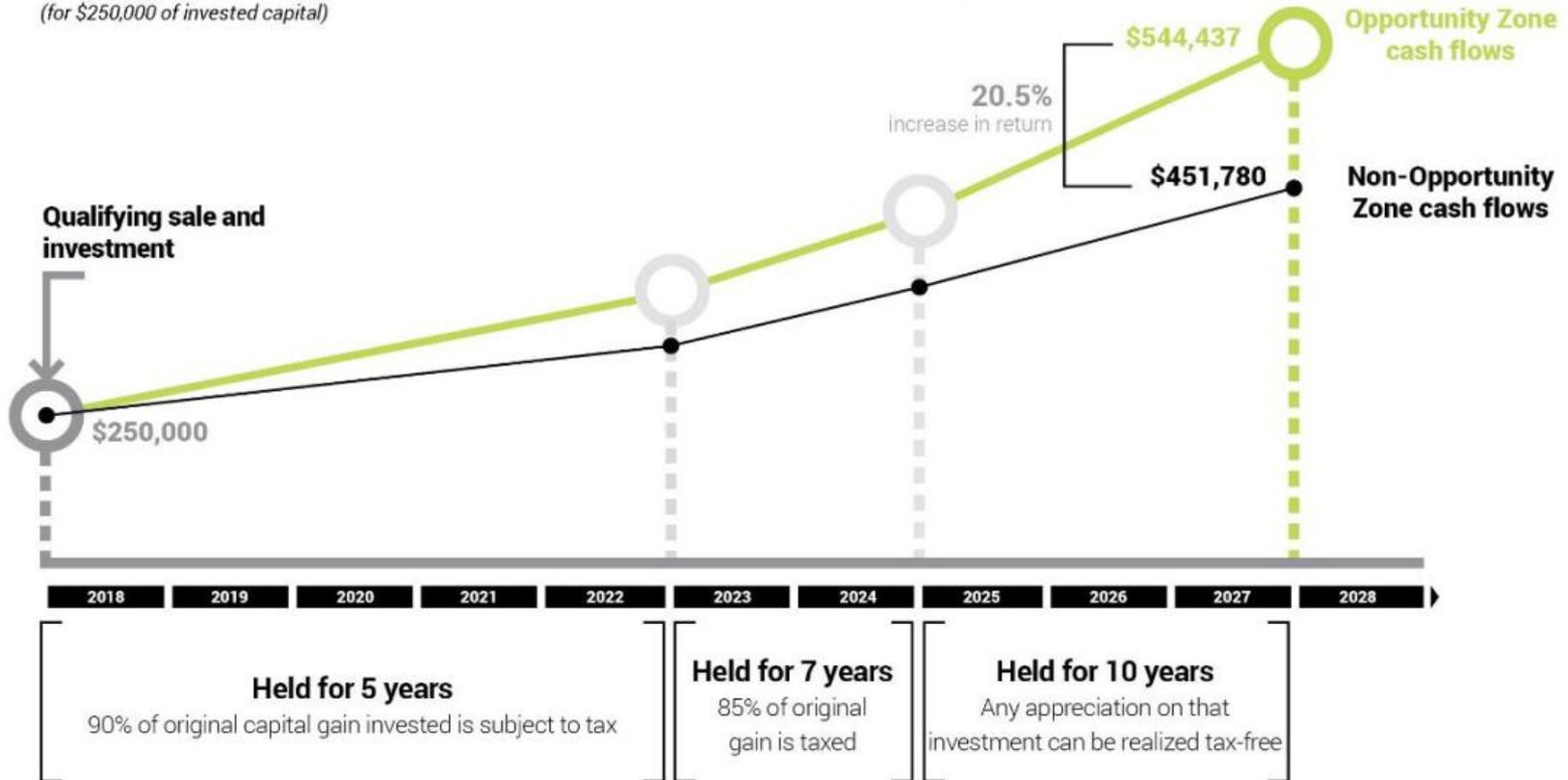
## How long is the designation?

- The designation of a census tract as a QOZ remains in effect until December 31, 2028
- Qualified gain must be invested in a QOZ before 12/31/2026 for the OZ benefits
- Recent regulations clarified that if an investment is made, and during the holding period of the investment the QOZ designation expires, the investor will obtain tax-free appreciation on a sale of their investment until a hard date of 2047

# Benefits of the OZ

## Opportunity Zones investment over 5-, 7- and 10-year horizon

(for \$250,000 of invested capital)



*\*\*This model assumes a 23.80% federal tax rate and state tax rate of 5.36%. This model is for illustration purposes only, and contains certain financial assumptions as to the possible future results that are inherently uncertain and subjective. We make no representation or warranty as to the attainability of those assumptions or whether future results will occur as illustrated.*

## OPPORTUNITY ZONES

# What investment types does the OZ program favor?

- **Commercial real estate:** Works well since the program is focused on long-term investment and real estate is not going to grow out of compliance like an operating business potentially could.
- **New business startup in an OZ after Dec. 31, 2017:** Application to a start-up business is significantly easier following recent Treasury guidance. Qualification for OZ benefits is not limited to businesses that only generate revenue from sales within the OZ.
- **Expanding an existing business into an OZ:** This investment type is also contemplated, but if the business outside of the OZ is a substantial part of your business, may have to set up a regarded entity to run operations inside the OZ and also for every year thereafter to ensure compliance; 70/30 rule for qualified Opportunity Zone business affords some leeway.
- **Small business already in an OZ with large expansion:** If already in an OZ at Dec. 31, none of the assets would be Qualified Opportunity Zone Business Property; would have to meet “substantial improvement” requirement for new expansion. Challenge for this business model as there is currently a requirement that each asset must be substantially improved, no aggregate test.



## OPPORTUNITY ZONES

### What type of investment qualifies?

Qualified opportunity zone business property means:

- Tangible property used in a trade or business
- Rental real estate is a qualifying trade or business
- Property acquired by purchase after Dec. 31, 2017
- The original use of such property **in the QOZ** commences with the qualified opportunity fund or the opportunity fund substantially improves the property
- Where the opportunity fund owns the property directly, substantially all of the use (70%) of such property occurs within a qualified OZ

## OPPORTUNITY ZONES

### Original use or substantial improvement

The original use of the opportunity zone property must commence with the fund or there must be “substantial improvement” to the property.



- The opportunity fund has a 30-month window to improve the property, such that the basis of the property increases by an amount that exceeds the amount of the adjusted basis at the beginning of the 30-month period
- The basis of the land is excluded from the underlying calculation
- For example, an opportunity fund acquires a building for \$10 million, \$4 million attributable to the land and \$6 million attributable to the improvement; at the end of 30-month period, improvements of \$6 million + \$1 must be made

A photograph of a classical building entrance with a black text box overlaid. The text box contains the following text:

Guidance from Treasury released on April 17, 2019 significantly improves the ability of various asset types to avail themselves of opportunity zone benefits.



## **OPPORTUNITY ZONES**

The April 2019 guidance incorporated the three recommendations of NAFOA OZ resource network

IRS recently provided guidance regarding opportunity zone fund certification:

- Clarified leases of land and buildings
- Clarified tribal governments are eligible entities for creating QOF corporations or partnerships
- Acknowledged the importance of tribal consultation with IRS and Treasury on gathering input directly from tribal governments to help ensure a successful program



## OPPORTUNITY ZONES

# Fund certification

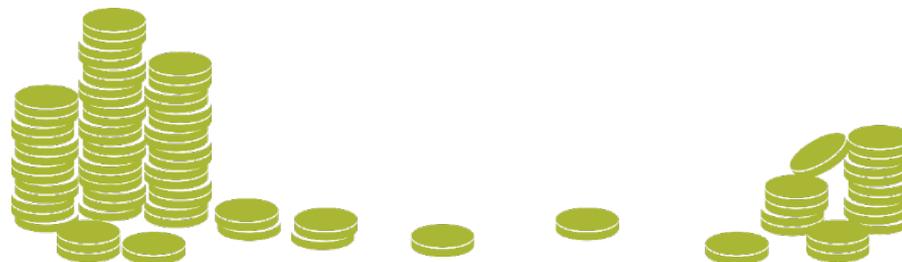
IRS recently provided guidance regarding opportunity zone fund certification:

- To establish an opportunity fund, the IRS states that there is no formal approval or action required by the IRS
- **An eligible taxpayer “self-certifies” the investment**
- An informational form (Form 8996) is completed and attached to the taxpayer’s timely filed federal income tax return for the year in which the investment is made and annually thereafter
- This process appears to be very informal with no official IRS consent required for the opportunity fund investment

**NEW GUIDANCE**

## Questions remain

- Will “substantial improvement” only be considered on an asset-by-asset basis, or will the IRS move toward an aggregate approach?
- Will the tax consequences continue to differ for an investor exit based on the sale of QOF equity versus a sale of the underlying QOZ property?
- What are the implications on the use of Section 1202 Small Business Stock?
- What will be the ongoing QOF reporting requirement for an OZ investment (bills pending in Congress)?
- The IRS specifically exempted from taxpayer reliance the provision concerning the exclusion of gain on sales of underlying QOF assets being excludable from 10-year investor’s income. How might this impact QOF structures going forward?





**CONTACT INFORMATION**

## Questions

**Joel Laubenstein**

*Principal, Tribal services leader*

+1 (512) 975 7282

Joel.Laubenstein@bakertilly.com

**Michael Perrine**

*Managing Director*

+1 (512) 975 7285

Michael.Perrine@bakertilly.com

[bakertilly.com/nmtc](https://bakertilly.com/nmtc)

[bakertilly.com/opportunity-zones](https://bakertilly.com/opportunity-zones)



## WEBINAR:

# New Markets Tax Credits and Opportunity Zones as financing options for tribes



This information should not be construed as a recommendation, an offer of services, or an offer to sell, or solicitation of an offer to buy a particular security or investment strategy. The reader should not rely on this information other than as authorized by a written agreement with Baker Tilly Capital, LLC. The commentaries provided are opinions of Baker Tilly Capital, LLC and are for informational purposes only. While the information is deemed reliable, Baker Tilly Capital, LLC cannot guarantee its accuracy, completeness, or suitability for any purpose and makes no warranties with regard to the results to be obtained from its use, or whether any expressed course of events will actually occur. Securities involve risk and possible loss of principal. Past performance does not guarantee future results. No compensation has been paid to person providing a testimonial. Any testimonial is not representative of the experiences of other clients and is not indicative of future performance or success.

Securities, when offered, and transaction advisory services are offered through Baker Tilly Capital, LLC, Member FINRA and SIPC; Office of Supervisory Jurisdiction located at Ten Terrace Court, Madison, WI 53718; phone 800 362 7301. Baker Tilly Capital, LLC is a wholly-owned subsidiary of Baker Tilly Virchow Krause, LLP, an accounting firm. Baker Tilly Virchow Krause, LLP trading as Baker Tilly is a member of the global network of Baker Tilly International Ltd., the members of which are separate and independent legal entities.

© 2019 Baker Tilly Virchow Krause, LLP

