



# OPPORTUNITY ZONES

## An Ethical Evaluation Using the IRAC Method

### Abstract

Using the IRAC method, a framework for ethical analysis, this paper examines Opportunity Zones (OZ), a newly created Federal government tax credit program enacted under the Trump administration and promoted under former HUD Secretary Carson. This paper identifies the ethical dilemma at the core of the program and examines it against the view of a teleological deontological ethicist.

The paper also scrutinizes the program against the virtue-based, intuition-based, justice and fairness, and altruism perspectives and provides alternative approaches through the eyes of these theories.

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## I. Nature of the Dilemma:

The Tax Cuts and Jobs Act of 2017 (TCJA) included a tax incentive provision allowing states to designate “low-income communities” as Opportunity Zones (OZ). Companies who invest in these areas are eligible for significant tax breaks (H.R. 1, 2017). Supporters of this provision state OZ tax benefits will “spur economic development and create jobs” (LISC, 2016). However, while these tax breaks are said to already have produced a significant amount of capital gains for investors, there is minimal proof that these investments are directly benefiting low-income residents in these neighborhoods (Druker, J & Lipton, E., 2019). Due to the OZ provision’s lack of social benefit requirements, there is no guarantee investments will address the needs of distressed communities. The Opportunity Zone **ethical dilemma** resides in whether the outcomes of OZs are to benefit the residents of low-income communities or instead was designed for investors to profit off of distressed communities.

## II. Issue

How can legislators and community stakeholders within OZs ensure investments provide meaningful social benefits to the low-income residents that helped qualify the area for this designation?

## III. The Rule

The **teleological** theory centers its ethical determination on the consequence of an action, rather than its motive, and considers it to be the most just if the outcome benefits the greatest number of people. Therefore, from this standpoint, regardless of stated intentions of OZs, the provision has a greater potential for unethical practices, as there are no mechanisms in place to guarantee investments in these areas will benefit low-income residents, excluding significant sections of the community.

On the other hand, the **deontological** ethicist believes the consequence of an action takes a backseat to the original intention of the actor. Since legislators and proponents claim the OZ intention is to spur economic growth for struggling communities, through the deontological lens, this tax incentive was birthed from a moral principle. However, this theory also states ethical actions, despite its seemingly pure intention, can never use another human being as a means to an end. When applying this aspect of deontological theory, we must question the overall motive of this provision, as it uses low-income residents to qualify an area as an OZ, yet doesn’t set requirements for investors to benefit these residents directly.

If we apply the **virtue-based** viewpoint to TCJA’s OZ provision, legislators seemingly value private investment in order to spur economic growth. However, due to not including specific requirements for social benefit, a virtue-based ethicist may question legislators’ dedication to equitable investments. Additionally, the provision lacks requirements for what type of projects investments should be funneled to, therefore the **intuition-based** ethicist would be inclined to investigate the potential impact OZs will have on the area’s communities. For example, the intuition-based ethicist would question whether projects sufficiently address an area’s unemployment and affordable housing concerns.

A **justice and fairness** examination would uncover the OZ provision lacks a control mechanism to ensure investments are fair and would benefit all socio-economic classes within an

area; not just investors. The OZ provision also lacks a sense of moral **altruism**, as, it can be assumed, legislators shied away from including a social benefit requirements as it could weaken private investment interest in these tax incentives.

#### IV. **Application**

Teleological approach: Stakeholders and investors must work earnestly and strategically to ensure all current and future investments have a meaningful social impact.

Deontological approach: Legislators should have included a clause within TCJA to ensure balanced outcomes of OZ investments; this would have made their intention explicit.

Intuitive approach: Legislators should have expected a need to provide statutory requirements on how investments in OZs must be made or to release the OZ rule with sufficient guidance for communities with OZ investments.

Virtue- based approach: Community leaders, investors, and other stakeholders must now work to guarantee investments will benefit all of the community and not at the cost of any segment of the population. A clause added to TCJA would have also guaranteed this.

Justice/ Fairness approach: Legislators should amend the bill to include clear rules to ensure OZ investments are just, fair, and equitable. Another option would be to provide guidance to OZs on how to create projects that are equitable.

Altruistic approach: If legislators were working from an altruistic approach, they would have added safeguards in TCJA to protect communities against gentrification or other possible inequitable outcomes.

#### V. **Conclusion**

Since the OZs are already in operation, Federal and local governments and agencies must lead the charge in establishing expected social outcomes of OZ and to design incentives localities can create in order for these tax incentives to benefit all residents.

The public policy process requires dedicated advocates in order to lobby stakeholders to ensure programs have just outcomes for all residents, especially when a policy is heavily influence by partisan policies. Recognizing this, the case highlights the importance of open and transparent communication between all levels of government and the public. If transparency and communication are harnessed, localities and residents can help steer policy implementation in a way that can include all residents, where possible.

## References

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