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New Bipartisan Legislation Would Extend Qualified Opportunity Zone Tax Breaks by Two Years; Offers Opportunity to Redraw Maps

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Last week, Senators Booker and Scott and Representatives Kind and Kelly, introduced new bipartisan legislation that would make numerous tweaks to the Qualified Opportunity Zones tax breaks and offer a limited opportunity to make new areas eligible for the tax benefits.

The Opportunity Zones tax incentives were established to drive capital to under-deserved and historically overlooked communities across the country by offering investors with capital gains the ability to defer those gains to the end of 2026 if they invested in impoverished areas. When the program was established, 8700 census tracts were designated for development, with the intention of driving investment into those areas. The original designation process was met with criticism, however, on grounds that decisions were made by politically connected individuals and that some of the areas chosen were not truly deserving.

The new legislation would accomplish the following:

1. **Strip eligibility from more affluent neighborhoods and allow for more zones in brownfields**.

While the vast majority of census tracts initially designated as Opportunity Zones are in poor areas, a small number of non-low-income communities were also designated, drawing criticism to the program. The legislation would sunset the Opportunity Zone designations for any tract with a median family income at or above 130 percent of the national average, and offer the states the flexibility to designate additional zones to replace the sunsetted tracts. Brownfields would be eligible for the designation, as long as they are adjacent to current opportunity zones.

2. **Reinstate and expand reporting requirements.**

The proposed legislation would provide for long-requested data reporting requirements, adding transparency to the program and offering more insight into the impact of the tax incentives. The data requirements originally introduced in 2017 as part of the original bill were stripped out for procedural reasons. Reinstating these requirements would help measure the benefits of opportunity zones more closely and ensure the program is operating as intended.

3. **Extend tax deferral benefits for two years**.

The legislation would extend the tax benefits of the program for two years, presumably encouraging new investment, and allowing investors who initially sat on the sidelines due to a lack of guidance from the Treasury to take full advantage of the program. Currently, investors receive a 10% basis step-up after five years, then an additional 5% after seven years. The proposal would lower the holding period to get an additional 5% to six years. In addition, the bill would extend the capital gains tax deferral deadline by two years, allowing investors to defer taxes on capital gains invested in Opportunity Zones until the end of 2028.

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Some of the other proposed changes include allowing Qualified Opportunity Funds (QOFs) to be organized as a "fund of funds" that may invest in other QOFs and providing operating support and technical assistance to high-poverty and underserved communities through a State and Community Dynamism Fund.

QOFs had raised more than $24 billion to invest in the zones as of the end of 2021, spurring investment into projects like affordable housing, commercial space and new businesses in low-income places that historically would not be on the radar screen for real estate investment. It is anticipated that the most recent proposal, if passed, would revive investor interest in the program, expanding it even further while at the same time curbing its abuses and adding transparency.

About the author:

Bozena M. Diaz is a partner in Cullen & Dykman's Tax Department in New York. She is well-known for her expertise in the area of Qualified Opportunity Zones, and is a frequent speaker on the topic. For additional information on the information in this Tax Alert or to learn more about Qualified Opportunity Zones, please contact her at 212.510.2227 or via email at BDiaz@cullenllp.com.

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- Bozena M. Diaz