LEGAL UPDATES

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Opportunity Zone Update: The Opportunity Zones Transparency, Extension and Improvement Act

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On April 7, 2022 the Opportunity Zones Transparency, Extension and Improvement Act (the Bill) was introduced. The Bill is a bipartisan, bicameral bill that would extend opportunity zone tax benefits, add additional reporting requirements, sunset certain non-impoverished Opportunity Zones and more. Below is a summary of certain provisions in the Bill as well as links to the official one-page summary of the Bill and a more comprehensive section-by-section review.

Reporting requirements

In an attempt to gather more data that can be used to evaluate whether the Opportunity Zone regime is making progress toward its policy goals, the Bill would increase the amount of information an opportunity fund is required to report. Such additional information includes: (i) a breakdown of each investment held by an opportunity fund by North American Industry Classification System code, (ii) the census tract where the relevant property is held, (iii) the number of residential units of real property held and (iv) the approximate average number of full-time employees. In addition, the Treasury Department would be tasked with making a public report on opportunity funds “as soon as practicable after enactment” and would be required to update this report annually. Additionally, in the 6th and 11th years after enactment of the Bill, the Treasury would be required to issue a report on socioeconomic measures such as job creation, poverty reduction and new business starts in opportunity zones.

Early sunset for non-impoverished opportunity zones

The Bill would disqualify some currently designated tracts and allow states to add new, additional tracts as opportunity zones. Opportunity zones with a median family income over 130% of the national median family income would be disqualified unless they also have a poverty rate of at least 30% (after excluding college students). The disqualified census tracts would lose their status as opportunity zones 30 days after the date the Treasury Secretary publishes a final list of disqualified tracts. The Treasury would be required to publish an initial list within a year of enactment of the Bill and a final list no more than 105 days after the publication of the initial list. The Bill would allow opportunity funds (or qualified opportunity zone businesses (QOZB) that were sufficiently invested in a disqualified zone prior to the disqualification to carry on as if the disqualification had not happened. To qualify for this grandfather, the opportunity fund or QOZB would need to show that (i) it filed a registration statement under the Securities Act of 1933 or prepared a comparable offering memorandum that shows intent to invest in the relevant census tract before the date of enactment of the Bill, (ii) to have spent or be in a binding agreement to spend at least $250,000 in the relevant tract before the initial disqualification tract list is published or (iii) to convince the Treasury that the designation of a tract as an opportunity zone was relied upon and a loss was suffered due to the disqualification. Grandfathered opportunity funds or QOZBs would not be able to take advantage of opportunity zone tax benefits with respect to new projects.

Fund-of-funds allowed

In an effort to support smaller communities and projects, the Bill would allow a qualified opportunity fund-of-funds structure where an opportunity fund would be allowed to invest into other opportunity funds.

Extension of opportunity zone benefit

The opportunity zone program would be extended by two years, meaning that the period in which gains can be invested into an opportunity fund and deferred would be extended from December 31, 2026 to December 31, 2028. Additionally, the holding period requirement to receive a 5% step up in basis from holding an opportunity zone investment would be changed from seven to six years.

Establishment of $1 billion state and community dynamism fund

The Bill would set aside $1 billion for states to allocate in support of public and private investment, existing small business and community economic development programs.

Key takeaways

If the Bill is enacted as currently drafted, opportunity fund managers will need to start keeping track of the new information that will be required to be reported, as well as be aware of, and have contingency plans for, the possibility that the opportunity zones in which their funds are invested may be subject to early sunset. Additionally, opportunity fund managers and investors in opportunity funds should be aware of the potential for increasing the diversification of such funds through the use of a fund-of funds structure and of the potential for the deadline for making investments in such funds being extended by two years.

Contact us

For further information on the Bill, review the one-page summary and section-by-section review. If you have questions or would like additional information regarding the Opportunity Zones Transparency, Extension and Improvement Act, please contact Doug Jones or your Husch Blackwell attorney.