Looking Behind the Curtain on Opportunity Zones: 
*Risks to OZ Stakeholders from Implementation Issues and Potential Reporting and Anti-abuse Rulemaking*

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Perspectives from the market

• What is happening in the market?
  • Friends and family QOFs
  • One off syndicated QOFs
  • Programs and platforms

• What deals are getting done?
  • Most of the deals getting done at this point have been deals that would have been done without OZ benefits
  • The majority of the deals getting done have been multi-family housing for a variety of reasons, but not generally “low income” housing
  • OZ benefits have led to higher profits for developers, higher promotes for sponsors and higher returns for investors (i.e., the value of the tax benefits are being shared among market participants)
Perspectives from the market (cont.)

• How do market participants perceive the “opportunity zone” aspect of the opportunity zone rules?
  • While some investors (such as “Rise of the Rest”) view the social impact aspects of the opportunity zone rules as a driver for their activity and an important aspect of participating in the program,
  • Most market participants view the social impact as a potential positive aspect of their investment activity, but are largely indifferent from an investment thesis perspective

• What does that mean from the perspective of reporting and data collection?
  • Ultimately, market participants will undoubtedly (attempt to) comply with whatever regulatory or statutory conditions are imposed on them,
  • But will largely view reporting and data collection at best as an administrative burden
  • Moreover, the participants will likely only be equipped to provide fairly limited information relating to the investment, but will likely not be equipped to provide data regarding the impact of their investments
Scott-Booker Bills on Reporting and Timing

WHAT DOES THE TIMING BILL DO?

- The OZ clock is ticking. 2019 is the last possible year to maximize on this 15% capital gains tax. A 10% reduction in capital gains tax is still achievable for investments made by 2021. But the 15% savings will only apply to investors who:
  - Take capital gains from the sale of a previous investment,
  - Reinvest those capital gains, within 180 days of the previous sale during calendar year 2019, and
  - Hold that new investment for a minimum seven years, or until Dec. 31, 2026, whichever comes first.
- The bill will adjust the requirement from 2019 to 2020.

WHAT DOES THE REPORTING BILL DO?

- Requires Treasury to collect information on investments held by opportunity funds which shall include:
  - The number of Funds and the amount of assets held in qualified Opportunity Funds.
  - The composition of qualified opportunity fund investments by asset class.
  - The percentage of Opportunity Zones that have received Opportunity Fund investments.
  - Metrics on the investments in Opportunity Zones such as job creation, poverty reduction, new business starts, and other metrics deemed necessary by Treasury.
• Directs Treasury to collect information on investments made in Opportunity Zones such as:
  • The total amount of investment and the date on which the investment was made.
  • The type and location of investment.
    • i.e. existing business, new business, or real property.
  • The type of activity being supported by such investment.
    • i.e. single-family or multifamily properties, commercial, or economic sector of the business.
  • The total number of employees at the time of the investment made.
  • The total square footage and number of units. (For Residential and Commercial Real Estate)
• Requires Opportunity Funds to submit the above information in a report to Treasury.
• Treasury shall submit a report to Congress, 5 years after the enactment of this legislation, on Opportunity Zones and annually from there on out.
  • The information will be available for public consumption.
When the Tax Cuts and Jobs Act, which included the Investing in Opportunity Act, was passed using the reconciliation tool, procedural rules stripped language that would require Treasury to submit a report to Congress on Opportunity Zones.

In the original text, the Secretary of the Treasury was supposed to submit a report 5 years after enactment on Opportunity Zones that included:
- An assessment of investments held by funds, nationally and at the state level.
- The number and amount of assets in Opportunity Funds
- The composition of fund investments by asset class
- The percentage of opportunity zones that have received fund investments
- The impacts and outcomes of the investment in opportunity zones which include job creation, poverty reduction, new business starts, and metrics as determined by the Secretary.
**OPPORTUNITY ZONE program FLOW CHART**

**Investor**
- Tax benefit
- Risk

**Treasury**
- Certification
- Compliance
- Impact Data

**OZ Fund**
- Impact Data
- Risk

**Real Estate Developer**
- Impact Data
- $\text{Real Estate Project}$
- $\text{Entrepreneur}$

**Entrepreneur**
- Impact Data
- $\text{Business}$

**Real Estate Project**
- Impact Data
- $\text{Real Estate Project}$

**Business**
- Impact Data

**Local Community Residents**
- Positive Impact *
  - Jobs
  - Affordable Housing
  - Goods & Services
  - Increased tax base
  - Human capital development
  - Entrepreneurship

**Negative Impact *
  - Gentrification
  - Dislocation
  - Increased income inequality
  - Harm to existing businesses
  - Racial Exclusion
  - Wasted taxpayer subsidy

**Praise**
- Positive Impact *

**Uproar**
- Negative Impact *

**Media and Political Backlash**
- Local Policy Makers
- MOC
- Community Advocate
- Media