

Opportunity Zone Legislative Update Effective June 1, 2021

PROFESSIONALS

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PRACTICE AREAS

Opportunity Zones

The IRS has been busy releasing updates regarding the Opportunity Zone program (OZ), and the HCVT OZ Team wants to keep you informed on all the latest OZ news.

Most importantly, the Biden Administration is continuing to support the program. This comes as no surprise, considering the architects of the 2018 program came out of the Obama Administration. We do anticipate a few OZ program refinements this year, but no major overhaul. The legislative program updates we anticipate are summarized below, in Exhibit A. For the most part, these changes will be beneficial to investors.

Perhaps the most talked about topic in the tax world is President Biden's proposal to increase the rates for long-term capital gains. If passed, the maximum rate could rise from 23.8% to 43.4% for taxpayers with over one million dollars of taxable income. There are doubts that Congress will increase the rate to that level, but any rate change may or may not survive until 2026, when the OZ deferred gains are generally reportable (based on the next administration). The risk of the rate increase for 2020 and 2021 deferred gains should be considered when deciding to defer, and we will be glad to discuss the long-term impact. Short-term gains should be used first as OZ funding sources, as this will maximize the tax deferral and minimize the tax rate differential in 2026. The OZ program would arguably be more beneficial for post-2020 gains that may be subject to Biden's higher rates since the deferral is more valuable. The 2026 recognition rate could still be lower. For gains incurred before any rate increase, the benefits of the OZ program are still apparent and impressive.

In addition to the legislative summary in Exhibit A, the IRS has recently come out with a few other changes and clarifications:

First, the 2020 national census changed approximately 60% of OZ census tracts. It was initially unclear whether the original 2018 OZ tracts would still control eligibility, but it is decided that those initial boundaries will oversee the program for its duration. The OZ qualifying census tracts can still be adjusted through Congressional action; however, it is unlikely for the original 2018 census tract projects to be ineligible in the future.

Second, the IRS has proposed clarifications to the Working Capital Safe Harbor provisions. Due to COVID, taxpayers would be able to alter their business plan and Working Capital Safe Harbor up to 120 days after the COVID emergency declaration has been lifted (it is still active as of May 2021). This is due to the potential 24-month extension to the regular 31-month cash deployment period for amounts funded into the QOZBs by June 29, 2021, provided by [IRS Notice 2021-10](#). These proposed regulations are expected to become law, but there is still plenty of time to modify your OZ business plans, if necessary. HCVT suggests dropping the majority of your QOF into your QOZBs by June 29, 2021, obtaining the potential 24-month extension.

Lastly, the IRS just announced that the Working Capital Safe Harbor extension from 31 to 55 months is not automatic. To receive this extension, taxpayers are required (upon audit) to provide evidence as to why their projects were delayed.

Through this legislative change, billions of dollars have continued to flow into impactful OZ projects nationwide. We are here to serve as your primary OZ resource and are happy to provide additional guidance and suggestions in the coming weeks. Please do not hesitate to reach out to our team with any questions.

[Click here](#) to listen to a recent Motley Fool podcast with Blake Christian.

To receive real-time OZ updates, we recommend bookmarking the [HCVT Tax Alerts](#) page and following [Blake Christian on LinkedIn](#).

Exhibit A