

Alert | Opportunity Zone Funds



December 2019

Qualified Opportunity Zones – Final Treasury Regulations Released

On Dec. 19, the United States Department of the Treasury released **final regulations related to investment in Qualified Opportunity Zones and Qualified Opportunity Funds** (544 pages). These highly anticipated regulations and **related guidance** provide critical information to investors, Qualified Opportunity Funds (QOFs), and project sponsors/operators involved in real estate, venture capital, operating businesses, and project finance in Qualified Opportunity Zones (QOZs). Many provisions of two rounds of prior proposed regulations were finalized or amended, and new provisions and guidance offer further clarity in areas critical for investor evaluation.

Greenberg Traurig has broad experience working with clients in QOF fund formation and investor utilization of QOZ benefits, along with sponsor, developer, and operator project qualification under this emerging tax incentive program for economic revitalization.

The final regulations include the following:

- Investor special elections permitting exclusion of gain from both sales of assets or interests in QOZ businesses (QOZBs) when investment in a QOF is longer than 10 years;
- Clarification that distributions to a QOF investor exceeding the basis for the investor's QOF interest are inclusion events for the investor, and further explanation and examples of the treatment of debt-financed distributions;

- Allowing the separate investment of gains from each Section 1231 sale or exchange (without year-end netting being required). Also establishing new 180-day investment periods for eligible gains from a Section 1231 disposition (with 2019 investors still being able to use 12/31/19 as a permitted investment date);
- Clarification that leasehold improvements are qualifying QOF property;
- Allowing QOFs to be merged into a single QOF partnership in certain circumstances;
- Expansion of the previous 31-month working capital safe harbor provision (potentially up to 62 months);
- “Original Use” clarification for vacant property;
- Substantial improvement test permitting limited instances of aggregation;
- Clarification that gain from interim sales of assets when an investment in a QOF is held fewer than 10 years must be recognized by investors;
- “Active” trade or business requirement guidance for triple net leases;
- Clarification that (i) transfers by gift or in a divorce **are** inclusion events and (ii) transfers upon death **are not** inclusion events (related rules are adopted for beneficiaries and estates);
- Elaboration on treatment of mixed funds having carried interest and rollover contributions by the carried interest recipient;
- Further clarification of treatment of leased property and improvements thereon (related and unrelated party lease treatment);
- Application of 90% investment test by QOFs into QOZB Property and finalizing the rule that funds raised by QOF in the prior six months are disregarded; and
- Clarification that each installment sale payment is treated as an eligible gain in the year when received (regardless of when the underlying sale occurred).

Stay tuned for our detailed analysis and webinars describing the impact of these new regulations.

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