

Alert | Tax/Opportunity Zone Funds



April 2022

Bipartisan Proposed Legislation Released for Qualified Opportunity Zone Investments

This GT Alert covers the following:

- Bipartisan group of senators and representatives introduces legislation to **extend the QOZ regime by two years.**
- The Act would bring back two previously expired QOZ benefits on deferred gains.
- Under certain conditions, U.S. partnerships could be used as QOF feeder funds.
- Reporting requirements would be expanded.
- Certain existing QOZs would be disqualified from being QOZs and replaced with new QOZs.

In a bipartisan effort to pass new legislation to extend and provide for increased reporting under the Qualified Opportunity Zone (QOZ) Program, on April 7, 2022, members of Congress introduced the *Opportunity Zones Transparency, Extension, and Improvement Act* (the Act). Sens. Cory Booker (D-NJ), Tim Scott (R-SC), Mark Warner (D-VA), Chris Van Hollen (D-MD), and Todd Young (R-IN) introduced Senate bill S.4065, and Reps. Ron Kind (D-WI-03), Mike Kelly (R-PA-16), Terri Sewell (D-AL-07), Dan Kildee (D-MI-05), and Jackie Walorski (R-IN-02) introduced House bill HR 7467.

If the Act is enacted as proposed, it would include the following new measures:

- (1) For amounts invested in either new or preexisting qualified opportunity funds (QOFs) (including investments in QOF feeder funds – see below), the deferral period of tax on capital gains invested in such QOFs would be extended to Dec. 31, 2028 (under current law, the tax is deferred until Dec. 31, 2026). **In effect, this extends the QOZ regime by two years.**
 - a. If passed, this measure would also **bring back two previously expired QOZ benefits:**
 - i. New and preexisting investments made in QOFs by Dec. 31, 2023, and held until Dec. 31, 2028, **would qualify for the 10% discount** on the deferred gain amount that becomes taxable on Dec. 31, 2028. (This is the same discount that applies under current law for investments in QOFs held for at least five years prior to the date of taxation of the deferred capital gains.); and
 - ii. New and preexisting investments made in QOFs by Dec. 31, 2022, and held until Dec. 31, 2028, would qualify for an **additional 5% discount** (i.e., a 15% aggregate discount when combined with the benefit described immediately above) on the deferred gain amount that becomes taxable on Dec. 31, 2028. (This is the same discount that applies under current law for investments in QOFs held for at least seven years prior to the date of taxation of the deferred capital gains, except that the proposed bill would reduce the holding period required for obtaining such additional 5% discount from seven years to six years.)
- (2) Effective from the date of enactment of the Act, taxpayers would be allowed to form (and invest eligible capital gains in) U.S. partnerships that can elect (if they meet certain conditions) to be **QOF feeder funds**, which may invest in other QOFs. (Under current law, QOFs are not allowed to invest in other QOFs.)
- (3) Starting in taxable years beginning after enactment of the Act, the **reporting requirements that apply with respect to QOFs would significantly expand**. This change would include reporting of additional information about the investors in the QOFs and the qualified opportunity zone businesses (QOZBs) in which such QOFs invest. The proposed Act would apply new penalties for failure to report such information. The Department of the Treasury would also publish an annual report on national QOZ activity that includes aggregated data on such factors as the number of QOFs, total assets held by QOFs, and the distribution of QOZ investments.
- (4) Certain existing **QOZs would be removed** (disqualified) from being QOZs and would be replaced with new QOZs. This change would include grandfathering rules (subject to certain requirements and conditions) for preexisting investments in QOZs that are disqualified by the new law. In particular, this change would impact tracts that have a median family income of 130% of the national median family income or greater. Operating QOZBs that conduct their businesses over multiple QOZ locations (i.e., employees working in QOZs, services delivered to customers accessing remote tangible servers located in QOZs, etc.) may wish to consider reviewing the status of each QOZ in which such businesses operate to determine whether such QOZs are on the disqualification list, and if so, whether their particular facts satisfy the grandfathering rules for qualified pre-existing investments.

The proposed Act is subject to legislative discussion and review. Any final version of this proposed legislation may differ slightly or materially from the current proposal.

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