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Opportunity Zones Update: Key Dates and Benefits

Join us for this on demand webinar as we explore the potential benefits of investing in qualified opportunity funds (QOF). CLA professionals can help you understand when a QOF investment can be considered, the tax benefits of investing in QOFs, and some of the critical items to consider when making a QOF investment decision. We'll also discuss possible alternative strategies for deferring federal capital gains tax liability.

Find additional resources on our event page: <https://www.claconnect.com/events/2022/opportunity-zones-update-key-dates-and-benefits>

Here is a transcription of this session:

Lucas Whelan:

Hi. Thank you everyone for joining our opportunity zone webinar today. We apologize if there was some miscommunication on timing, but we're happy that you all are here with us today. So the title of today's webinar is June 30th and Other Key Dates. So in addition to this information, there's other information that we're going to cover and present to you today.

Lucas Whelan:

So we're going to give you an overview of how CLA has been involved in the OZ Program on many different sides and we'll give you some stats to go along with that. Give you a refresh on some of the high level details of the program. An update on some of the legislative developments around the program. And then finally, an overview of some of the different investment opportunities that are available through CliftonLarsonAllen Wealth Advisory.

Lucas Whelan:

So we have a nice mix of CLA folks on the call today across different service lines. So we should be able to cover a nice wide variety of information today and be able to answer any questions during the webinar or after the webinar that should come up. So with that, we'll dive in and start with some introductions.

Lucas Whelan:

So my name is Lucas Whelan. I'm a senior associate on our capital markets team here at CLA. Been with CLA for a little over two years and I focus exclusively on raising and structuring equity investments for our clients in their real estate projects. A significant amount of that has been focused on opportunity zone projects. And then Tony Hallada is also on the call. He's a managing principal in our capital markets group, and I'll pass it over to him for an introduction.

Tony Hallada:

Great, thanks Lucas. Good to be with everyone today. Tony Hallada. As Lucas mentioned, I'm a managing principal here at CLA. Joined the firm in 2001, so I've been with the firm for 21 years, to lead the wealth management practice. I have 32 years of experience in the capital markets and wealth



management industry. The last four years, since this legislation's been passed, I've been focused on this and taken a leadership position at our firm, helping our clients, helping the marketplace with opportunity zone investments. And we look forward to spending more time today, educating all of you and talking about the opportunities in this space.

Lucas Whelan:

Yeah. Then we also have on the call, Jack Rybicki who is managing principal at CLA as well. I'll let him give an introduction.

Jack Rybicki:

Thanks Lucas. Yeah, my name's Jack Rybicki. Used to run the firm's real estate practice, which is where my initial involvement with opportunity zones arose. Since then, I've been working with Tony, Lucas and the capital markets team, as well as our wealth advisory platform on deploying opportunity zone solutions throughout our client base, whether it's funds in need of raising dollars, individuals looking for investment opportunities, and so seeing this from both sides. With that, I'll turn it over to Brian Duren for an introduction as well.

Brian Duren:

Hello everybody. My name is Brian Duren and I'm very happy to be part of this webinar with my capital markets colleagues. I've spent my 15 year career at CLA working with individuals and businesses in our real estate practice. I work with clients anywhere from sponsors of private equity real estate funds, developers, and real estate operators to individual investors.

Brian Duren:

And over the course of the last four years, since the Opportunity Zone Program was introduced, I've invested time from my career into the program and understanding the space. And I currently lead the firm's practice for the specialty tax incentive service. So work very closely with the capital markets group and our wealth advisory group on strategies and structures for opportunity zone investments.

Lucas Whelan:

Very good. Thanks guys. So this slide is going to discuss all the different ways that CLA operates within the Opportunity Zone Program and provides different services. So we have a number of different service lines that are each unique and operate within the program in a number of different ways. We like to think that we have a 360 degree view of the program. We operate on the side of both creating gains, deploying gains and then structuring services for these investments. And then also the accounting, tax and administrative services that go along with the funds and projects that are in this space.

Lucas Whelan:

We have an M and A advisory and investment banking practice. They're really focused on sell-side advisory services for clients of CLA. So helping them sell what are typically family owned businesses. In many cases, along with this comes a large capital gain, which then flows into the next space, which is capital markets and wealth advisory. So on these two platforms, we have the ability to help these clients deploy capital gains into opportunity zone projects and funds.



Lucas Whelan:

So on our capital markets platform, we focus exclusively on raising equity capital for our clients' real estate projects. 75% or more of the projects and funds that we've worked on have been focused on opportunity zones. This is a platform where we are engaged by the client who is the developer or the operator, and we go out to market to help them raise the capital.

Lucas Whelan:

So we're raising capital from groups that qualify as institutional. So that's defined as 50 million in net worth and the ability to conduct due diligence. So on this platform, we're primarily raising capital from some ultra high net worth individuals, single family offices and real estate private equity funds.

Lucas Whelan:

The next is our traditional wealth advisory platform, which has more traditional wealth management services. And a big portion of that, on the investment side, is our private investment platform that allows our clients to invest into different private fund offerings across a number of different asset classes. But the majority of investments and the biggest chunk have been into real estate focused, real estate private equity funds.

Lucas Whelan:

We've had a significant focus on opportunity zones on this platform as well, and we'll go through some stats later on in the presentation. And then we also do a lot of work in the accounting, tax, fund administration, and other services that go along with the Opportunity Zone Program.

Lucas Whelan:

So moving on to the next slide, I'm going to let Tony give a brief overview of some of the different dollar values that we've generated and deployed through both our capital markets platform and wealth advisory platform.

Tony Hallada:

Yeah. Great, thanks Lucas. And before I get into that, maybe I'll just share and set the table a little bit about why we decided as a firm to get into op zone and what we saw as the opportunity to help our clients. When the legislation and some of the regs came out in detail in 2019, our real estate tax practice really dug into the legislation, became experts and worked with us in our real estate capital marks group to understand the regs.

Tony Hallada:

And when we looked at it, we thought, "Wow, this is going to be really big. These are pretty incredible benefits to taxpayers and investors, as well as developers." And so when we looked at that, we looked at it and compared it to 1031. 1031 has been one of the huge advantages of the tax code for many years. We thought this rhymed with 1031, and we thought this could be really big.


Tony Hallada:

The concern we had with op zone of getting any traction, it was very complicated, and we felt it was going to take a firm like ours. They had the deep tax expertise, the real estate expertise to go out and



really educate the marketplace on opportunity zone, how it works, and educate investors, educate developers, fund managers, and anybody that was interested in an opportunity zone.

Tony Hallada:

And that's what we did. We went on the road and we spoke at conferences. There was somebody on the  almost every week from our firm, speaking at conferences, educating and putting on webinars, et cetera. Today, op zone has now become fairly mainstream and understood by a lot of people, but it took a tremendous amount of work.

Tony Hallada:

Looking back, though, we've decided to be a leader on the investment side and how we've done that is two ways. On the capital market side, we've done it where we go out, raise capital, as Lucas said, on direct real estate projects with institutions, family offices, and ultra high net worth individuals that meet that 50 million of criteria. We've invested over \$400 million into those opportunity zone deals on the capital market side.

Tony Hallada:

And then our wealth management side is where we have individual investors who want to invest into opportunity zones, where they have a gain on a stock sale or a business sale. And that's where we use funds and some other investments that are geared towards the retail investor on our wealth management side. And we've done over 350 million of investments for clients on that side of the house.

Tony Hallada:

So we've been involved in a lot of transactions, probably as much as any organization in the country, and we believe that we're going to continue to have traction and interest in op zones. We're going to talk a little bit about some potential benefits and enhancements to the legislation that could help this continue to have a lot of support by investors across the country.

Tony Hallada:

I'll turn over to Brian to cover the rest of the things that we've done in the marketplace as well, to help support the developers and fund operators in the marketplace.

Brian Duren:

Thanks Tony. And I think that's a good segue with how we approach client service in a seamless manner. And as a professional services firm, focusing on traditional tax and assurance advisory services, we also have a very significant footprint in the outsourcing practice within our business. And covering in that scope is a very significantly growing practice for fund administration and related investor services.

Brian Duren:

And so we've quickly learned that with the Opportunity Zone Program, we have the inherent ability with a firm like ours, to pair multiple service offerings together to our opportunity zone stakeholders to really enhance the value of their investment, and particularly for the sponsors, the services that they're able to provide or be provided in terms of raising the capital, managing the capital, and also managing the annual compliance associated with the Opportunity Zone Program.



Brian Duren:

This next slide shows CLA's footprint in the Opportunity Zone Program. The map shows our approximately 130 offices across 35 states around the country. And we have very strong coverage with the Opportunity Zone Program in all of our offices. And again, it's a testament to how we service our clients in a seamless manner.

Brian Duren:

And when we assess our client base, our clients have contributed, which includes the figures that Tony just mentioned from our private investment platform, a total cumulative amount in excess of a billion dollars in capital gains. And to put that in perspective, there's other public data that indicates the total investment across opportunity zones around the country is estimated close to somewhere in the 80 or 90 billion. So it's very significant across the country and CLA as a service provider that touches multiple service lines and multiple client types across industries has grown a sizable footprint in this space.

Brian Duren:

We have over half of our offices with clients that have participated in the Opportunity Zone Program. And we also have sponsors and real estate developers, business owners that have raised and deployed capital of over 1.3 billion across 80 different census tracts around the United States.

Brian Duren:

As a reminder, there's over 8,000 census tracts that were designated as qualified opportunity zones. And most statistics will tell that they're fairly concentrated around some of the major geographic marketplaces around the US, but we've seen at least 80 census tracts receive significant amount of investments across our client base.

Lucas Whelan:

Thanks Brian. So going off that, we'd like to just give a brief overview of the Op Zone Program just as a refresher. And we'll be sharing these slides after, so if anybody wants to dig in further, they're more than welcome to review this slide further.

Lucas Whelan:

So the current benefits that are still available for the Op Zone Program, we like to think of are defer and pay zero. So investing in an op zone project today allows you to defer the capital gains that you would've to pay on that investment until December 31st, 2026, payable in 2027.

Lucas Whelan:

Then the next is pay zero. So you pay no capital gains on the appreciation of a project or a fund if held for more than 10 years. So we still view this as a significant opportunity for investors to take advantage of. And as Tony mentioned, we're going to discuss some of the recent legislative proposals that could even benefit these positives even more down the road.

Lucas Whelan:

So this is a nice example that shows an op zone investment versus a taxable, just traditional real estate investment. So there's a number of assumptions that have been made in this example, but the main



takeaway that we like to show is the total tax benefit from an OZ investment on a million dollar investment can be estimated to be upwards of \$290,000.

Lucas Whelan:

And in this example, it's only looking at not paying capital gains on the appreciation of the project, and then when you sell in year 10. So a tax free exit. That's really the biggest piece that is being taken into account in this example. There's other examples or other items and benefits that aren't taken into account for this example, that Brian is going to give you a brief overview on.

Brian Duren:

Thanks Lucas. So first as Lucas said, this model focuses on the exit and it's very important to remember that with opportunity zone structures, there's the ability to take regular and even accelerated depreciation on the tangible assets acquired during the 10 year period. And so the depreciation, if utilized in accelerated depreciation strategies, cost segregation strategies, similar to a normal real estate or business deal, they can still be used to offset current taxable income.

Brian Duren:

The key benefit though, with opportunity zone is that at the exit, when the election is made to step up the investment to fair market value, that eliminates all of the depreciation recapture that's been deducted along the way. So essentially taxpayers are able to take current deductions for depreciation of an asset and turn that into a permanent difference.

Brian Duren:

That very much enhances the gain exclusion on the 10 year mark, because they no longer have to pay depreciation recapture, like they would in a normal, non opportunity zone investment. So the actual tax benefits of that depreciation exclusion are going to increase the benefits associated with this illustration here, even greater.

Lucas Whelan:

So some of the key dates and eligibility, these are really items that we see as very important to investors making investments in the Opportunity Zone Program. One of the things that we always recommend is that anybody looking to make an opportunity zone investment definitely consults their tax professional, to get guidance around the eligibility and timing. You don't want to make an ineligible investment, and then you wouldn't qualify for the benefits. So obviously CLA can do this and can help analyze these different scenarios.

Lucas Whelan:

So a few of the eligibility pieces that we always bring up is first, the investment has to be considered a capital gain. That can come from the sale of real estate or the sale of appreciated stock, the sale of a business, a lot of different types of capital gains qualify. And then also qualifying section 1231 gains also qualify.

Lucas Whelan:



So then looking at timeout dates, we say that the typical guidance to think is you have about 180 days following the sale or the closing date of your transaction. Now where there's a lot of nuance around that is depending upon how that asset is held, whether it's held directly, direct ownership by the owner and then sold directly into the market. That could then be your recognition date, which is that closing date. If it's owned by a pass-through entity and the gain will flow down to the investor through a K-1, there's different dates to keep in mind.

Lucas Whelan:

And in Brian's work on the op zone consulting side, this is an area that he frequently gets questions on. He'll give you a little bit of information on some of the frequently asked questions and misconceptions that he gets on timeout dates.

Brian Duren:

Thanks Lucas. This is probably a very good place to land for a moment because as we approach the midpoint of the year being June 30th, understanding this 180 day period with respect to gains that are flowing through on a pass-through entity K-1 is very important.

Brian Duren:

So there's generally three options for choosing your eligible gain recognition date. Using the closing date is when you are able to look through that pass-through layer and use the date that the pass-through entity recognized that gain. The second option is to use December 31st, which is the common year end date for a calendar year end pass-through entity. But it's important to clarify that it's the year end date of the entity. So if there's a fiscal year pass through-entity K-1 that year end date is the beginning of the 180 day period, if this option is chosen. And then similarly for the third option, March 15th, which is the original due date before extensions of a calendar year pass-through entity taxpayer.

Brian Duren:

So utilizing those last two dates, choosing the end of the year or March 15th gives taxpayers that are reporting gains from those K-1s, either June 28th, which is 180 days beginning December 31st, or September 10th, which is 180 days beginning March 15th, those two different windows during which they can make an investment into a qualified opportunity fund.

Brian Duren:

It's important to choose a date and then use that respective window for all of the gains that you are anticipating to invest. And so, as we approach the midpoint of the year, June 28th becomes an important day for investors. But also, if they're unable to select a QOF investment during that time, and they have a gain that arose from a calendar year K-1, they can choose March 15th as their date, which would extend that time out to September 10th.

Brian Duren:

The important thing to remember though is like I said, you have to choose one specific period for all of the gains. And so if a taxpayer has made an investment before March 15th and after December 31st, they're really locked into choosing that 180 day period that ends June 28th, because if they chose March 15th, the period from December 31st to March 14th would be a blackout date in terms of ineligible periods for making an investment.



Brian Duren:

So it becomes very important to plan around the 180 day recognition window so that you know when you're making the investment, it's going to be made during that eligible period, and as a result, the contribution would be qualified.

Jack Rybicki:

Brian, if I could maybe just throw in a couple questions at you here.

Brian Duren:

Absolutely.

Jack Rybicki:

So one would be what would be the impact of a stub period tax return? So if you had a sale of an asset and then a distribution and an entity terminated its tax year before 1231.

Brian Duren:

Yeah, very good question. And so that would constitute a short year tax filing. And so that short stub period year end would be something before December 31st. So that year end becomes the year end date for choosing this second option. So instead of December 31st, that's going to be whenever that stub period end date is. So that's either the first day of that 180 day period, or you can choose two and a half months as the original extended due date, which again is going to be before March 15th.

Brian Duren:

So really understanding first, the year end date of the K-1 that's reporting the gain, and then which option you're choosing, either the year end date or the original due date becomes important. But yes, Jack, that will slide these timeframes forward by the respective number of months.

Jack Rybicki:

Thanks for that, Brian. And one other question that I know we get a lot when we are consulting with our clients has to do with, well, okay, if I make that investment today in 2026, I've got to come up with the tax liability. I know when we're working with the developers and most developers now have a plan to deal with this. Could you just share with the audience, generally speaking, how funds are going to help the investors address that tax liability that comes due in connection with that 2026 filing timeline?

Brian Duren:

Yeah, that's a very important question. It's one that we are getting frequently as we get closer and closer to 2026. I'll answer that question in two parts. The first part is that one of the key benefits of making an opportunity zone investment is that because you can defer paying the tax, you're able to increase the principal amount of your initial investment. So you're not saving the tax burden and earmarking that for 2026, you're taking that additional tax and investing it into the qualified opportunity fund.

Brian Duren:



As a result, you have a higher share of that investment on an invested capital basis, but then it also allows you to utilize funds from the opportunity zone investment that will be received as distributions over the course of time to come up with a new cash flow to service the tax liability that will be due in 2027.

Brian Duren:

And for a lot of our, predominantly all of our ground up developments, they are building into their model, a refinance transaction on or about that 2026 or 2027 timeframe or the stabilization of the project, whichever happens earlier. Now they're doing that for a number of reasons.

Brian Duren:

One is because these funds are typically using lower leverage than other non opportunity zone deals. And that's because of the attraction of the equity, that's seeking this investment. But it's also because with the lower leverage point, they're able to project that they can extract some of the value upon a refinance at a later date.

Brian Duren:

And so that timing of the refinance not only returns some of the capital to the investors so that they can service the tax liability that comes due in 2027, but it also enhances the returns on that project, because if we're contributing more capital up front, because we're investing the deferred tax and then receiving return of capital at some point in the future, midway through the 10 year holding period, it's enhancing that return. As a result then, the investor does not have to go back to the well or to other sources to service the tax liability. They're instead using the cash flow from the project itself to help fund that liability.

Tony Hallada:

Hey Brian, Tony here. There's some barriers that we've consistently seen whenever we're speaking to investors. If they have concerns, there's three primary concerns that we've heard from investors, if there's been some kind of a hurdle for them in considering investing into an op zone.

Tony Hallada:

One of them is could the government ever take this benefit away from me? Do you want to cover that and share an opinion on that? Because that's been one of the questions and you can talk maybe what the history has been of the government with retroactive policy.

Brian Duren:

Yeah, I think that's a great question and an obvious hurdle that people sometimes ask. But with policies like this, especially with the opportunity zone being very much bipartisan, we believe that there's very little to no chance of any retroactive revocations of investments that have already been made.

Brian Duren:



One of the things we'll talk about coming up in the proposed legislation is possibly sun-setting certain opportunity zone census tracts from receiving further investment. But even in this proposed legislation, existing investments that have been made should be grandfathered into any existing benefits that were made under the current law.

Brian Duren:

So I think that's an important thing to realize and understand is that if investments are made under the existing set of rules those investments will be protected until the policy ... And if policy changes, they'll still be protected as the policy unwinds.

Brian Duren:

As it currently is established, this policy is set to expire at the end of 2026. And so that just prohibits future investment, but the incentives are still able to be held for longer term. So as far as a retroactive revocation, we don't see that as something that should happen with this policy.

Tony Hallada:

Great. Thanks Brian. And I'll maybe just touch on the other two barriers that we've heard from investors. One has been investors saying that I just don't want to have my money tied up for 10 years to get these tax benefits. And the thing we try to communicate to those clients is a typical investment, whether you go into a fund or a direct investment, most of these projects, they're ground up development and once built and stabilized, upon stabilization, the plan of the developer is to do a refinancing of the property at that time.

Tony Hallada:

So that would be say in year three or year four. Once the property's built and stabilized, they would have the opportunity to do a refinancing. And then at that time, what they would do is take out a new mortgage on the property, extract some of the equity out, anywhere from 20 to maybe 60% of the equity that was paid in and distribute that back to investors.

Tony Hallada:

And the way the legislation reads is you can do that pending you've been in the investment for a 24 month period. So, Brian, I don't know if there's anything else technically you wanted to cover on that ability to refinance out some of your equity.

Tony Hallada:

And then the other thing that really has helped from a cash flow perspective that shortens up the life is the cash flow from the investments. So a lot of these investments are going to pay maybe a 5, 6, 7% annualized distribution that is going to be, a majority of it, sheltered from taxation. So most of that income is going to be protected from taxation, both state and federal, because of the depreciation. That shortens the duration of the investment as well.

Tony Hallada:

But Brian, did you want to maybe just cover quickly that two year window and the ability for people to refinance and take capital back that shortens their average life of the investment?

Brian Duren:

Yeah, I think that's a great point as well, because if we're thinking about the purpose of opportunity zones being to make longer term investments, that definitely does not mean you have to let the capital sit for that full 10 years. So using traditional market rate return of capital opportunities is definitely on the table.

Brian Duren:

The two year or 24 month period is something that definitely needs to be a strong consideration as investors are anticipating when they would receive that return of capital. The downside of failing that two year test could potentially invalidate the deferral election and the original investment, which would essentially turn it into a taxable investment.

Brian Duren:

So we absolutely want to make sure that we're advising our clients, investors are seeking the appropriate counsel from tax advisors and from the fund sponsors that they are squarely looking at this two year lockout period so that they can avoid those issues with receiving return of capital before that timeframe. It's very important.

Tony Hallada:

That's great. Thanks Brian. And then the last barrier that we've heard from investors that these opportunity zones are bad areas and I don't want to invest in them. Well, when you look at this, this was all based on 2010 census tract data. A lot of cities have changed dramatically. There's been a lot of transformation of these areas and there's areas that are interesting that end up in op zones because there's not a lot of people with a lot of income in those areas.

Tony Hallada:

For example, a lot of university campuses, there's opportunity zones there. All the land around the Mall of America here in the Twin Cities, that's the largest tourist attraction in the United States, that's all an opportunity zone. So there actually are some very, very good sites. We think approximately 35 to 40% are very developable and actually have good economics and opportunity in them. And those are the areas that we have been focusing on along with our developers, are those areas that have opportunity and have seen significant lift since the 2010 census tract data was taken.

Lucas Whelan:

Thanks Tony. So I think now we can move on to discuss what's been the biggest headline in the op zone space over the last few months, which has been the newly proposed legislation. So this was called the Opportunity Zones Transparency Extension and Improvement Act, which was introduced on April 7th by Senators Cory Booker and Tim Scott, and US Representatives Ron Kind and Mike Kelly. It's a bipartisan bill looking to reform and extend the Opportunity Zone Program.

Lucas Whelan:

So there were a few major changes that they focused on with this, which were to extend the incentive for two years to continue to facilitate continued investment in the program. Second is create pathways for smaller dollar impact investments. Third is early sunset of OZ census tracts that are not deemed to be impoverished and we'll go through some of the data later on as to how that will be determined.



Lucas Whelan:

And then reinstate and expand reporting requirements for opportunity zone projects. This is one thing that we've heard of a lot, is people wanting to see what the true benefit of these projects are. And then finally provide operation support and technical assistance to high poverty and underserved communities through a state and community dynamism fund.

Lucas Whelan:

So I'm going to let Brian here discuss what these proposed changes really look like, and then what it means for investors and developers.

Brian Duren:

Thanks Lucas. So the extend portion of this act is clearly giving the program two years more of a lifespan. It was originally set to expire on December 31st, 2026. That date is proposed to be moved out to December 31st, 2028.

Brian Duren:

Acknowledging that, two things, it took treasury almost two full years after the enactment of the TCGA to issue final regulations. There were two rounds of proposed regulations. The final regulations were first published in December of 2019, so almost two full years. And then immediately following that, we had two years of pandemic, which caused delays in deploying capital into opportunity zones.

Brian Duren:

So I think Congress is clearly trying to extend the life cycle for opportunity zones, where there has been strong demand shown, but maybe it's to get that additional two years out to compensate for some of the issues that have been experienced over the last few years.

Brian Duren:

So the extension of the two years does a number of things. It extends the deferral period from 2026 to 2028. So an investment made now would get the full length of the deferral period when the gain is recognized. But it would also bring back into play, two permanent incentives that are no longer available under the current law, and those are the 10 and 15% holding period or step up in basis requirements upon the achievement of certain holding periods.

Brian Duren:

Existing law required either a five or a seven year holding period to achieve either a 10 or 15% respectively step up in basis when the deferred gain is recognized. So what that means is essentially if there was a million dollars that was invested and deferred under the original law and that was held for seven years before 2026, there would be up to a 15% discount when that gain is recognized. Essentially then 850,000 would be the recognized gain.

Brian Duren:



With the legislation proposing to extend the date out to 2028, there is also a reduction in the seven year hold period to six years. So if we think about that mathematically, 2022 to 2028 will give a six year holding period. So if this legislation is enacted and it's effective for tax year '22, we will be able to now achieve six year holding periods and five year holding periods in order to achieve the full benefits of the 10 and 15% step up in basis.

Brian Duren:

The next important proposal is to create, or to allow for certain entities to be organized as fund of funds or feeder funds. And this we believe will greatly allow for more capital to be aggregated, pooled, and ultimately invested into opportunities on projects.

Brian Duren:

The barrier right now is that the pathway for structuring an opportunity zone entity holding company is very, very narrow. A qualified opportunity fund must invest in qualified opportunity zone property, which includes a lower tier operating business known as a qualified opportunity zone business.

Brian Duren:

These new feeder funds or qualified feeder funds as they're called, would allow a QOF to invest in another QOF, which creates another potential tier to the ownership structure. But given some of the complexities with a very narrow organizational structure set up under the present law, this could create greater ability for certain types of taxpayers, predominantly smaller taxpayers with smaller investment sizes to aggregate investments and participate in projects that would otherwise probably have a harder time getting funded. So we see that as a good opportunity to allow for more participants in the program.

Brian Duren:

These considerations are more for opportunity zone sponsors, the first one on the change in the opportunity zone census tracts. Since, as Tony acknowledged, the data that was used in order to construct the zone lines was from 2010, obviously when we had 2020 census data available, those zones may have looked very different.

Brian Duren:

The treasury department failed, or not failed, but declined to update the opportunity zone tract designations for purposes of the existing code and regulation. But this proposed legislation would mandate that certain zones, which are those that have designated 130% above the national average for media and family income be sunset and they would disallow further investment into those zones.

Brian Duren:

As we said earlier, there's going to be some sort of grandfather provisions or safe harbors for investments that have already been made and, or projects that have already been started with the entitlement and design process where capital has been raised and partially deployed. But essentially what this means is there will be fewer, or there will be some opportunities on census tracts taken away.

Brian Duren:



On the other side, though, there are going to be some pathways to allow for new census tracts to be added. So it will result in a shifting or a rebalancing of the available zones that are available for investment, but it would be really more the aspect of using more up to date data in order to identify the zones with the greatest need.

Brian Duren:

The reporting requirements that are looking to be reinstated, these were part of a previous bill called the IMPACT Act, which did not get passed. It was pulled from the TCGA at the last minute, but this will be brought back in its entirety, which will increase the reporting and the transparency requirements for qualified opportunity funds, qualified opportunities zone businesses and QOZ investors.

Brian Duren:

And so if we think about what this would do, it would allow treasury to have more data, non-financial, non-tax data on opportunity zone investments, particularly the businesses in which they're investing in, the amount of property that's being created, the amount of jobs that are being created, different industries that are being developed, all for the purpose of measuring the benefits of the program as they were originally intended by the law.

Brian Duren:

So importantly to note though, this has been put on the table many times before, so this is not really a shock to the opportunity zone community, and it's probably to be expected that some form of this will end up in the final legislation.

Brian Duren:

The last point here is really just creating more localized agencies to assist with grant writing and other municipal incentives to allow for further incentives to be created for these funds to get off the ground, incentives on the pre-development process and the startup process meeting certain requirements. But we see that just as another way that this program can be supplemented with state and local incentives.

Lucas Whelan:

Thanks for that overview, Brian. As you continue to be so tied into this space, is there any information or news that you've seen out there about how soon this new legislation could go into effect or potentially when could it be passed or pushed through?

Brian Duren:

Well, that's the interesting question. We find ourselves in an election year. And so that means that there's typically not a lot of action on bills being passed during an election year. But it is possible given the strong bipartisan support that this bill has had from its inception, as well as more congressional leaders signing onto the bill, it's even possible that if there's a change in control in one or both houses of Congress, there could be legislation passed in the lame-duck session towards the end of the year.

Brian Duren:



But typically during these midterm election years, we don't see a lot of this type of activity being pushed through very rapidly. But I think we can look at the strong bipartisan support and think that and conclude that there is momentum behind this particular bill, as well as what we're hearing from state and local advocacy leaders that are supportive of this bill and some of the things that it offers to enhance the program. So we feel optimism about its eventual passage, but if it's going to look in the same format as this proposal, that remains to be seen.

Jack Rybicki:

Hey Brian, I did want to bring up, there was a question about the \$1 billion that has been earmarked as a predevelopment funding. I think the reference there was to the state and community dynamism fund and how that would work. I just wanted to let everybody know, we have not dug into that provision of the proposed legislation yet, because we do expect that there will be changes in how that would be administered and who that would be made available to.

Jack Rybicki:

The thought on that provision though, is that what we are seeing in a lot of these projects is that they still don't make economic sense for investors to come into. And the thought is that if cities or territories are able to come alongside a developer with pride, with some incentives, think about like tax and incremental financing districts, historic tax credits, this would be yet another tool that a city could use to stimulate development in a particular economic area that they're trying to bring to the table. It would add another piece to the capital stack for a developer.

Jack Rybicki:

We do expect that as it's currently written that would be administered through either a state or a territory or municipality as those funds would be allocated out. But again, not knowing what the final legislation is going to be there, we haven't spent a ton of time really getting into how we can take advantage of that from a developer perspective.

Brian Duren:

That's a good point, Jack. I think one other thing to add on to that comment is that in its current history, there has not been a very high barrier of entry to establishing an opportunity zone fund or business. So the only rules right now as they presently stand are the self-certification that's made with the tax returns.

Brian Duren:

And so this would appear to, since it's being delegated down into the state and local level and that those agencies would be directed towards funding specific kinds of businesses, it would appear that there would be some sort of more robust, upfront interaction with the project owner and sponsor before they get those funds to either apply or develop a business plan, be more collaborative with those local leaders, which that's not happening right now outside of the normal underwriting process that goes into the permitting and the entitlement phases. But this would appear that it would require some more collaboration with local leaders on the front end to obtain some of this incentive finance.

Jack Rybicki:



Thanks for that clarification.

Lucas Whelan:

All right. Well, thanks for that great overview, Brian of those proposed changes. We're excited to see if they all can get passed. We think it could definitely be a positive for this program. So the final slide that we're going to cover today is just looking at the different opportunity zone investment opportunities through CLA. And so we're going to have Jack discuss this as he has a unique view of both the wealth advisory and the CLA capital markets platform as he serves on the investment committee and the approval committee on both platforms.

Jack Rybicki:

Great. Thank you, Lucas. Lucas did a great job explaining earlier the difference between these two different vehicles that we have within CLA. Again, our CLA capital markets group is really looking at bringing LP equity from institutional sources of capital into deal flow. And that's where we're working on behalf of our developer clients or fund clients that are putting together OZ funds in particular.

Jack Rybicki:

Now I'll contrast that with our CLA wealth advisory platform, where there we provide wealth advisory services to clients on a fiduciary basis through our RIA platform. Obviously as part of a diversified portfolio strategy, we do recommend an allocation into real estate if appropriate for the investor's objectives. And obviously opportunity zones are a very tax efficient way to get exposure to real estate investments.

Jack Rybicki:

And so that wealth advisory platform, we actually work with either funds or individual projects. We do more due diligence on those, so we are comfortable representing those projects to our clients in a fiduciary environment. And so those are really the two different avenues that we're driving capital into OZ projects now, one as a client from an investor perspective, and then other on the capital market side, where we are representing a developer to the marketplace. So hopefully that clarifies those two different avenues, Lucas.

Lucas Whelan:

Yeah. Thanks for that overview, Jack. And we're all available via email or a phone call, if anybody has any specific questions about the different platforms or about any of the material that we covered today.

Lucas Whelan:

So that was really it and we appreciate you all joining us today for this update on the Opportunity Zone Program. And we look forward to continuing to be involved in the program across multiple different service lines within CLA. Thanks, everyone.

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