From: Ferrante, Frank
Sent: Friday, December 28, 2018 10:17 AM
To: [senators' aides' email addresses]
Subject: Qualified Opportunity Fund Certification Process--Jt Committee on Taxation Statement

Hello [senators' aides' first names],

Hoping you both are having an enjoyable Christmas season.

On December 20, the Joint Committee on Taxation issued its explanation (the "Blue Book") of the 2017 Tax Act. With respect to the certification process for Qualified Opportunity Funds, the Blue Book (p. 317) states,

"The provision intends that the certification process for a qualified opportunity fund will be carried out in a manner similar to the process for allocating the new markets tax credit. The Secretary is granted the authority to administer this process."

Currently, a Qualified Opportunity Fund can self-certify by the simple filing of an IRS Form 8996. The sentence caught my attention because the NMTC was referenced as an analogous method for carrying out the OZ Fund certification. The NMTC allocation process is a very detailed approval process. The concern is that consideration is being given to some very burdensome process that could also impact 2018 investments.

Based on statements that were included in the Senate Finance Committee Report, the Blue Book language can be read as solely authorizing a method of gathering investment information and not the introduction of a pre-approval process. However, it should be noted that the existing IRS guidance is written with the primary emphasis being the use of Fund dollars towards real estate development, rather than investments in start-up companies and ventures where intangibles (e.g., software or biomedical development) would be the source of revenue. Real estate development would provide only a narrow band of reporting.

The Senate Committee Report that was issued during December 2017 reads,

"The Secretary or the Secretary's delegate is required to report annually to Congress on the opportunity zone incentives beginning 5 years after the date of enactment. The report is to include an assessment of investments held by the qualified opportunity fund nationally and at the State level. To the extent the information is available, the report is to include the number of qualified opportunity funds, the amount of assets held in qualified opportunity funds, the composition of qualified opportunity fund investments by asset class, and the percentage of qualified opportunity zone census tracts designated under the provision that have received qualified opportunity fund investments. The report is also to include an assessment of the impacts and outcomes of the investments in those areas on economic indicators including job creation, poverty reduction and new business starts, and other metrics as determined by the Secretary."

Also, in connection with President Trump's Executive Order signed by President Trump earlier this month, the NY Times reported the following,

"An administration official who spoke on the condition of anonymity said Tuesday that the coming regulations would include a provision that analysts at the Brookings Institution, the Center for American Progress and elsewhere have pushed for reporting requirements for investments in the zones, which would allow economists to evaluate whether the program was having an impact."

The focus on reporting provides an opportunity to introduce favorable rules that, like real estate development, would broaden the use of qualified opportunity fund dollars. Senator Portman has been helpful in his Treasury discussions to assure that the required 50% of the OZ sales revenue associated with QOZ business property does not need to be from within the designated communities, and that having licensing or other income come from beyond the designated community is permitted as long as the source of the revenue is from the investment within the designated community. The reporting information that is being considered would be a wonderful avenue to expand the type of investments that can be made within opportunity zones to include start-up operations and R&D operations that could have a very useful impact to such communities.

In your discussions with Senators Brown and Portman on the topic of Opportunity Zones, it would be helpful to (1) watch for reporting requirements that might be onerous and (2) use any reporting procedures as an avenue to expand the manner that qualified opportunity zones dollars can be invested.

If useful, I'll be glad to provide more detail with respect to current limitations that impact the use of qualified opportunity fund dollars towards start-up tech companies. Thanks for the efforts made by Senators Brown and Portman to help the State of Ohio.

Frank

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