MONDAY | MAY 4, 2020

Tim Scott Leads Colleagues in Asking Treasury to Provide Relief for Opportunity Zones in the Wake of COVID-19

Zones will help lead recovery in low-income communities

WASHINGTON – The 2008 financial crisis showed the entire country that low-income communities are often the first hit and last to recover during times of economic instability. Fortunately, as the United States begins to reopen this year following the first wave of the COVID-19 pandemic, there is a new tool to help the most economically distressed communities: Opportunity Zones.

U.S. Senator Tim Scott (R-SC) is leading Senate colleagues in asking the U.S. Department of Treasury and the Internal Revenue Service (IRS) to modify certain rules of the road for businesses and investors in Opportunity Zones to ensure the strongest possible path forward in the COVID-19 economic recovery. The Senators made 10 specific requests, detailed below, regarding the significant impacts that the COVID-19 pandemic will have on Opportunity Zone businesses, as well as the community organizations, entrepreneurs and developers working to use this incentive to foster positive change in our nation's most distressed zip codes.

"As we work to recover from the economic effects of COVID-19, we cannot allow the patterns that emerged following the 2008 financial crisis to occur again," **Scott said.** "The Opportunity Zones initiative has proven to be a powerful tool, and with these necessary adjustments, it will be a leader in helping our most vulnerable communities get back on their feet. Every American deserves the opportunity to succeed, a reality made even more imperative following COVID-19."

Scott was joined by Senators Todd Young (R-IN), Pat Roberts (R-KS), Bill Cassidy (R-LA), James Lankford (R-OK), Steve Daines (R-MT), Ben Sasse (R-NE), Marsha Blackburn (R-TN), and Martha McSally (R-AZ), and a PDF of the letter can be found here. A detailed explanation of the requests is below.

Opportunity Zones were created by language Senator Scott included in the 2017 tax reform package, and offer investors a deferment of capital gains taxes in exchange for long-term investments in low-income communities across the country. National estimates show around $67 billion has been pledged towards investments in Opportunity Zones, with $10 billion in equity already raised.

10 Requests Made By Scott and Colleagues Explained:

1. The relief recently provided that gives certain taxpayers more time to invest private capital into needy communities should be extended to all taxpayers throughout the end of the year. Specifically, the 180-day investment period for a taxpayer's sale or exchange of capital gain

property to be contributed to a Qualified Opportunity Fund (QOF) should be extended by three months for all 180-day investment periods with respect to capital gains for which the 180-day period would end on or after March 13, 2020 and on or before December 31, 2020.

2. Qualified Opportunity Funds should not be liable for the effects of this unprecedented pandemic. Accordingly, COVID-19 should qualify under the reasonable cause exception for funds during this time. Treasury should ensure this applies automatically for 90-percent investment standard tests taking place between March 13, 2020 and July 15, 2020. For failures after July 15^{th} and throughout the rest of 2020, where a fund can sufficiently demonstrate that the failure is a result of the effects of the COVID-19 pandemic, reasonable cause should be established and the penalties should not apply.

3. Treasury should make clear that the relief available in the regulations for Qualified Opportunity Businesses when disaster strikes is available in the wake of this pandemic. Specifically, Treasury should clarify that the 24-month extension of the working capital safe harbor available to Qualified Opportunity Zone Businesses located within a federally declared disaster automatically applies to all Qualified Opportunity Businesses nationwide under the President's Stafford Act Emergency Declaration for the COVID-19 pandemic. This period should begin on March 13, 2020 and extend until the earlier of the end of the Emergency Declaration or the period requested by the taxpayer and available under the regulations. This extension should also apply to the maximum 62-month period for working capital safe harbors, for a total of 86 months, where appropriate.

4. Similarly, Treasury should also make clear that the relief available in the regulations for Qualified Opportunity Funds when disaster strikes is available in the wake of this pandemic. Specifically, Treasury should clarify that the 12-month extension available to Qualified Opportunity Funds to reinvest proceeds from the sale, disposition, or return of capital from Qualified Opportunity Zone property when reinvestment plans are delayed due to a federally declared disaster automatically applies to all Qualified Opportunity Funds nationwide under the President's Stafford Act Emergency Declaration for the COVID-19 pandemic. This period should begin on March 13, 2020 and extend for the maximum 12-month period thereafter.

5. During the national emergency, taxpayers should be given more time to redistribute and invest capital into our low-income communities. Redemptions of investment capital in excess of an entity's basis in a fund due to the effects of COVID-19 should automatically be considered an inclusion event. This treatment should be provided throughout the duration of the President's Stafford Act Emergency Declaration for the COVID-19 pandemic, beginning on March 13, 2020.

6. Provide a 12-month extension to the 30-month substantial improvement period allotted for Qualified Opportunity Zone property that is undergoing or expected to begin or complete its substantial improvement period during 2020.

    - Due to the COVID-19 emergency, Opportunity Zone businesses are facing difficulty carrying out construction and obtaining supplies and labor needed to improve property within the substantial improvement 30-month period. Providing an extension here would help alleviate the burden of these obstacles that are a direct result of the pandemic.

7. Ensure that Opportunity Zone businesses following best practices in the wake of the pandemic are not wrongfully punished for doing so. Treasury should clarify that businesses utilizing the regulatory safe harbor that accounts for the location in which services are performed for the purpose of satisfying the requirement that 50-percent of the business' gross income be derived from their active business conduct in the Qualified Opportunity Zone are not penalized for employees who may be teleworking outside of their normal working locations within an Opportunity Zone because of the COVID-19 pandemic.

    - Due to the COVID-19 pandemic and various shelter-in-place orders, employees and independent contractors may be forced to telework from their homes, which may be located outside of the Opportunity Zone. Employers should not be wrongfully punished for taking the necessary steps to ensure the health and safety of their workers and their communities during this time.

8. Similarly, Opportunity Zone businesses should also not be penalized for using intangible property while working remotely during the COVID-19 pandemic. Treasury should take action to provide relief to the requirement that a substantial portion, (defined as 40-percent), of a Qualified Opportunity Zone Business' intangible property be used in its active conduct within an Opportunity Zone. Specifically, the use of such intangible property outside of its normal utilization location should be considered to have been used within a Qualified Opportunity Zone, if such use takes place during the period in which the President's Emergency Declaration under the Stafford Act for COVID-19 is in effect.

    - Likewise, where a Qualified Opportunity Zone Business can sufficiently demonstrate that its failure to meet the 70% tangible property test in 2020 is due to delays caused by the COVID-19 pandemic, Treasury and the Internal Revenue Service should give such entities additional consideration when deliberating whether a reasonable cause exception applies.

9. Treasury should take into account the toll this pandemic is taking on our nation's businesses by providing Qualified Opportunity Funds with an additional cure period equal to 6 months for a non-compliant trade or business if the trade or business can demonstrate that its loss of qualification was caused or facilitated by the COVID-19 pandemic.

10. Requests that any guidance provided include strong anti-abuse language and require those taking advantage of the timelines to substantiate the need for beneficial treatment where appropriate and without creating undue or unnecessary burdens.

###