Congress has work to do in legislation that revisits Opportunity Zones | Opinion

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Opportunity Zones have many benefits, but what they are lacking is proper transparency and accountability. It seems that Congress has gotten the message as it is considering several pending modifications via the Opportunity Zones Transparency, Extension, and Improvement Act, but these changes do not go far enough.

In 2016, during the Obama administration, Cory Booker and Tim Scott proposed the original, bipartisan Investing in Opportunity Act. Although it was not approved during the Obama administration, the act, with modifications, was swept up into the 2017 Tax Cuts and Jobs Act.

Unfortunately, the 2019 Opportunity Zones ramp-up crashed headlong into the COVID-19 shutdowns, but the ramp-up progressed swiftly last year. Because of the tremendous success of the program, Congress is proposing amendments via the Opportunity Zones Transparency, Extension, and Improvement Act (H.R. 5761). It is not particularly long, as legislation goes, but it does propose a few very substantive changes to the program.

One of the proposed changes, and the easiest to describe, is that the program would be extended for two years. So, instead of paying your taxes on Dec. 31, 2026, capital gains investors would have until the end of 2028. Originally, within certain time periods (that have now passed), investors were eligible for up to a 15 percent step-up in basis when paying taxes. H.R. 5761, as now written, would bring back one 10 percent step-up in basis.

The most meaningful benefit of the previous program – no taxes on the gains created during the hold period of 10 to 30 years – remains in place. This means not only that existing investors don't have to pay their taxes until the end of 2028 but also that additional Qualified Opportunity Funds (QOFs) will be created until the end of 2028.

A minor but meaningful change is the proposal to allow QOFs to invest in other QOFs. Presently, if a husband-and-wife fund desires to invest with a large fund, the small QOF must invest in the subsidiary Qualified Opportunity Zone Business Entity (QOZB). The biggest problem with this existing structure is that for those funds that are sold as securities offerings, it requires an entirely new securities offering at the QOZB level, which many sponsors are reluctant to allow.

A proposed State and Community Dynamism Fund would allow flexible grants to help states direct private and public capital to underserved businesses and communities. Yet another proposal in this bill would vastly expand reporting and accountability requirements to allow for better compliance and to track long-term outcomes for these same communities.

Finally, probably the most substantial change is creating an early sunset for certain Qualified Opportunity Zones that no longer represent impoverished areas. While most of the QOZs designated throughout the United States are in impoverished areas, some are not because of the old census data used for their original designations. The perfect example is Portland's Pearl District.

The proposal in the bill would terminate the qualification of tracts with a median family income at or above 130 percent of national median family income and allow states to then disqualify other zones. Moreover, because the program has been successful, some of the zones that were originally impoverished are not any longer – and can thus be redesignated to create room for other needy areas. The proposal would allow states to replace any disqualified tracts with others. Thankfully, the proposal does allow for strong grandfathering provisions for projects that have already begun in tracts that are being disqualified.

Of course, all of this is meaningless unless H.R. 5761 passes. So, the big question is: Will the bill pass? Or when will the bill pass? I believe that most people can agree that the substance of the bill is good, but because it is a tax bill, it must be packaged with a larger tax bill that can only gain traction in Washington. While it might be possible for the Senate and House to pass any tax bill prior to the 2024 election, I am not optimistic. More work remains to be done to craft the perfect bill, as the case for these economic zones could not be more apparent.

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