Taking the Opportunity: NMTC and Opportunity Zones
July 24, 2018
Audience Q and A

We had a university designated as an Opportunity Zone. How can a university take advantage of this designation?

Oftentimes universities own a great deal of land in need of development, either for school facilities, dormitories or retail facilities to serve their student populations. A university could either itself set up an Opportunity Fund to attract capital to invest in its facilities, or else source potential projects to a third-party Opportunity Fund.

In census tracts that are both opportunity zones and tracts eligible for NMTCs, can Opportunity Funds be used in conjunction with qualified equity investments under the NMTC program so the investor can take advantage of the OZ deferred taxes and the 39% tax credits from the NMTC investments if the equity investment qualifies for both programs?

There is nothing in the Opportunity Zone authorizing statute, nor in the NMTC statute or regulations, that would bar an investor from taking advantage of both tax incentives for the same investment, provided the project and investment otherwise meet the requirements of both programs. However, the IRS has not yet developed regulations covering eligible Opportunity Zone investments, so investors may be hesitant to make these more complex transactions until the regulations are promulgated.

Could a regional EDO operate as a CDE and manage an Opportunity Fund? and work through LISC, for instance, to access the credits?

To first clarify: An organization must be certified as a CDE to apply for allocations of NMTCs. There is no requirement that an organization be certified as a CDE to form an Opportunity Fund. In either case, a regional EDO can certainly form either a CDE (most are in fact for-profit affiliates of financial institutions, CDFIS, small business investment funds, real estate development companies or municipal finance entities) or an Opportunity Fund. Establishing the entities are relatively straightforward. Applying for NMTCs and successfully deploying them can be a challenge for entities not yet steeped in the program intricacies, so partnering with an established CDE with an allocation (and yes, LISC would welcome such partnership opportunity) would be an excellent way to get access to NMTC investments while simultaneously gaining a knowledge base in the program. Similarly, tapping into the investors (e.g., high net worth individuals) seeking to invest in Opportunity Funds may also prove to be a challenge, so LISC and many other organizations intend to offer services to help match investors with locally based Opportunity Funds; a role that is similar to the role syndicators play in the Low-Income Housing Tax Credit program.

Is there any indication that the Administration intends to allow the NMTC program authorization expire and be replaced with the OZ program?

There is no indication that this is the case now. The NMTC Program is currently authorized through 2019, and thus far, the Administration has been silent on its intentions with respect to extending the program.

It seems for rural areas with one O-Zone, it might be better to connect to intermediaries. What are your thoughts on this?

Yes – Unless there happens to be a solid base of developers serving that rural community and investors interested in making investments. If not, then it might make sense to connect with intermediaries setting up Opportunity Funds.

Can you give quick summary or prepare summary document (one-pager) for steps to take advantage of the Opportunity Zone program? For example, form fund, etc., or can you summarize again before you end the call?

Click **here** to access LISC's summary.

How do you expect the new tax laws to impact tax credit programs? Based on comments from historic tax credit syndicators, they are saying the value of tax credit programs have fallen.

The Tax Cut and Jobs Act of 2017 generally had a detrimental effect on the value of tax credits. For instance, even though the Low-Income Housing Tax Credit was not modified in the Act, the credits became less valuable to investors as a result of the corporate tax rate being reduced from 35% to 21%. Thus, investors aren't paying as much for the credits, and less equity is available at the project level than otherwise would have been under a higher corporate rate.

When is additional guidance expected from Treasury?

The IRS has published a Q and A document and intends to make updates to this document on a rolling basis. However, it has not publicly stated when it will be publishing its regulations or releasing its forms. It is likely that forms may be available for review in the fall, but the regulations may not be coming out until much later in the year.

Are there any examples of New Market Tax Credits being used for a non-profit entity or do you have ideas of how Opportunity Zone investment could be invested into a non-profit entity?

Yes. NMTCs are frequently used to finance the real estate owned or operated by non-profit entities, including charter schools, healthcare centers, daycare centers, workforce development centers and social service facilities. However, unlike the NMTC Program (where CDEs are permitted to invest debt in the projects), Opportunity Funds may only invest equity into their qualifying businesses or real estate projects. So, a non-profit would need to set up a for-profit affiliate (e.g., a single asset real estate holding company) to receive the equity investment from the Opportunity Fund and find a way to structure a return that will be suitable to the investor in the Opportunity Fund.

Have any Opportunity Funds been created so far?

Possibly. The IRS stated in its Q and A document that institutions can set up Funds now and will then be required to identify the entity as an Opportunity Fund when it submits in 2018 taxes. So, while there may be a few funds that have been established, there is no way to systematically identify who they are, where they are operating, etc.

If this is only a ten year, what is the incentive to go into this in 2022?

There are three incentives for rolling over capital gains into an Opportunity Funds: 1) the ability to defer, until December of 2026, capital gains taxes owed from redeeming those investments; 2) the ability to reduce that tax bill by up to 15% (provided the investments are held in the Opportunity Fund for at least 7 years); and 3) forgiveness of taxes on any gains from the investment in the Opportunity Fund (provided that the investment is held for at least 10 years). So yes – investors that make investments in Opportunity Funds in 2022 and beyond will not be able to take advantage of the second incentive above (reducing their initial tax bills). But they may still defer paying those taxes until December of 2026, and to the extent they keep the investment in the Opportunity Fund for at least ten years, they will not owe any taxes on capital gains realized by the Opportunity Fund.