

## Qualified Opportunity Funds

**As a result of the COVID-19 pandemic, the President has issued an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act giving rise to the following changes regarding Qualified Opportunity Funds (QOFs):**

### 180-Day Investment Requirement for QOF Investors and QOFs

In order to defer gain, an investor would have to make an investment in a QOF within 180 days. If that 180th day to invest in a QOF would have fallen on or after April 1, 2020 and before December 31, 2020, the taxpayer now has until December 31, 2020 to invest that gain into a QOF.

The 180th day for some of these taxpayers was already postponed through July 15, 2020, under Notice 2020-23. The taxpayer will still have to make a valid deferral election and file Form 8849 and Form 8997 timely with their federal income tax return in the year that the gain would be recognized.

### 90-Percent Investment Standard for QOFs

In order for a fund to qualify as a QOF, 90% of the fund's assets must be in qualified property during its semi-annual testing. The most recent changes state that if a QOF fails to hold less than the 90% of its assets in Qualified Opportunity Zone Property on any semi-annual testing dates from April 1, 2020 through December 31, 2020 is due to reasonable cause under section 1400Z-2(f)(3), such failure does not prevent qualification of an entity as a QOF or an investment in a QOF from being a qualifying investment. As such, the QOF will not be liable for the statutory penalty under section 1400Z-2(f) due to such a failure during this period.

### 30-Month Substantial Improvement Period for QOFs and Qualified Opportunity Zone

Previously, a QOF was required to make substantial improvements to the property within 30 months from the acquisition date of the property. For the period beginning April 1, 2020 and ending December 31, 2020, the substantial improvements will be tested on December 31, 2020.

### Working Capital Safe Harbor for Qualified Opportunity Zone Businesses (QOZB)

Previously, a QOZB was generally restricted to holding no more than 5% of its total assets in the form of cash and other various nonqualified financial assets. A working capital safe harbor allowed for a QOZB to hold cash pursuant to a written plan for up to 31 months, as long as the working capital is disbursed to acquire or build QOZB property within the time period according to the written plan.

Notice 2020-39 extends the working capital safe harbor period for up to 24 months, allowing a QOZB to have up to 55 months in total to expend the working capital assets of the QOZB, as long as the QOZB meets the requirements of Section 1.1400Z2(d)-1(d)(3)(v). This extension applies to all working capital plans in place before December 31, 2020.

The same requirements for safe harbor apply with the change for 55 months. A QOF is allowed to have multiple, overlapping or sequential applications for the working capital safe harbor.

### 12-Month Reinvestment Period for QOFs

Previously, if a QOF sold or disposed of its interest in a QOZB or received a return of capital with respect to the interest, the QOF must reinvest the proceeds in another QOZB within 12 months from receiving the proceeds to be treated as qualified opportunity zone property, as long as the funds are held continuously in cash or cash equivalents.

If the QOF's plan is to reinvest the capital in a federally declared disaster area, the QOF could be eligible for an additional 12 months to reinvest the capital. The only requirement is that the QOF reinvest the capital in a manner originally intended prior to the disaster.