



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.  
Washington, DC 20548

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January 27, 2020

The Honorable Chuck Grassley  
Chairman  
The Honorable Ron Wyden  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable Richard Neal  
Chairman  
The Honorable Kevin Brady  
Ranking Member  
Committee on Ways and Means  
House of Representatives

Subject: *Department of the Treasury, Internal Revenue Service: Investing in Qualified Opportunity Funds*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury, Internal Revenue Service (IRS) entitled “Investing in Qualified Opportunity Funds” (RIN: 1545-BP04). We received the rule on January 3, 2020. It was published in the *Federal Register* as a final regulation on January 13, 2020. 85 Fed. Reg. 1866. The effective date of the rule is March 13, 2020.

The final rule governs the extent to which taxpayers may elect the federal income tax benefits provided by section 1400Z-2 of the Internal Revenue Code with respect to certain equity interests in a qualified opportunity fund (QOF). The rule provides additional guidance for taxpayers eligible to elect to temporarily defer the inclusion in gross income of certain gains if corresponding amounts are invested in certain equity interests in QOFs, as well as guidance on the ability of such taxpayers to exclude from gross income additional gain recognized after holding those equity interests for at least 10 years. The rule also addresses various requirements that must be met for an entity to qualify as a QOF, including requirements that must be met for an entity to qualify as a qualified opportunity zone business. The rule affects entities that self-certify as QOFs

and eligible taxpayers that make investments, whether qualifying or non-qualifying, in such entities.

Enclosed is our assessment of IRS's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Martin V. Franks  
Chief, Publications and Regulations Branch  
Department of the Treasury

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE  
ENTITLED  
“INVESTING IN QUALIFIED OPPORTUNITY FUNDS”  
(RIN: 1545-BP04)

(i) Cost-benefit analysis

The Department of the Treasury (Treasury), Internal Revenue Service (IRS), state that this final rule provides a uniform signal to all taxpayers on the ability to exclude gains for investment held at least 10 years in a qualified opportunity fund (QOF). As stated in the rule, Treasury and IRS determined this ability to exclude gains for investment held at least 10 years in a QOF is integral to the purpose of creating qualified opportunity zones, and therefore this rule should encourage greater investment, and a more efficient distribution of investment, in QOFs than in the absence of the final regulations. Treasury and IRS also state that the relative costs and benefits of the various alternatives are difficult to measure and compare. Treasury and IRS expect this rule to likely produce the lowest compliance and administrative costs among the alternatives and any associated economic inefficiencies to be small.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

Treasury and IRS certified that this final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

Treasury and IRS determined that this rule does not include any federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of the \$154 million threshold (\$100 million, adjusted for inflation).

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On October 29, 2018, Treasury and IRS published a proposed rule. 83 Fed. Reg. 54279. Treasury and IRS received 180 comments on this proposed rule. They also held a public hearing on this proposed rule on February 14, 2019. On May 1, 2019, Treasury and IRS published a second proposed rule. 84 Fed. Reg. 18652. Treasury and IRS received 127 comments on the second proposed rule. They also held a public hearing on this second proposed rule on July 9, 2019. Treasury and IRS addressed comments in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

IRS identified several provisions of this final rule that contain collection of information requirements under the Act. For example, the collection of information in section 1.1400Z2(b)-1(h)(2) requires indirect owners of a QOF partnership that sell or otherwise dispose of all or a portion of their indirect interest in the QOF partnership in a transaction that is an inclusion event to notify the QOF owner so it can recognize an appropriate amount of deferred gain. This collection of information will not be conducted using a new or existing IRS form, but on a form the partnership uses to inform its partners of this transaction, the requirements related to it, and the amount of eligible gain invested in a QOF. IRS estimates the annual reporting burden will be 8,500 hours. According to IRS, the remaining information collection requirements have been approved under Office of Management and Budget (OMB) Control Number 1545-0123 and will be reflected in its submission to OMB for Form 1065, “U.S. Return of Partnership Income”; Form 1120, “U.S. Corporation Income Tax Return”; Form 851, “Affiliations Schedule”; and Form 8996.

Statutory authorization for the rule

Treasury and IRS promulgated this final rule under the authority of sections 7805, 1400Z-2(e)(4), and 1400Z2 of title 26, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

According to IRS, this final rule has been designated as subject to review under the Order pursuant to an April 11, 2018, Memorandum of Agreement between Treasury and OMB regarding review of tax regulations. The Office of Information and Regulatory Affairs within OMB has designated these regulations as economically significant under the Memorandum of Agreement. Accordingly, IRS stated that OMB reviewed these regulations.

Executive Order No. 13,132 (Federalism)

IRS determined that this final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law.