# Bond Case Briefs

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## COVID-19 Relief for New Markets Tax Credit Program and Opportunity Zone Program: Butler Snow

**Five-Year Extension of New Markets Tax Credit Program**

As we have all seen, the COVID-19 pandemic has created economic suffering for each and every one of our communities. However, for those severely distressed, low-income communities which were already struggling to entice new capital investment, the setback is even more severe. That said, the government has made efforts to support those areas most in need through a set of tax provisions attached to the Consolidated Appropriations Act of 2021 (Act). The Act, signed into law on December 27, 2020, includes a five-year, $25 billion extension of the New Markets Tax Credit (NMTC) program, which is the largest extension in the program's history. Prior to this extension, the NMTC program was set to expire on December 31, 2020, after 20 years of success stories and strong bi-partisan support. Under the Act, the NMTC program will expire on December 31, 2025*.

The Act's extension and enhancement of the NMTC program are a welcome response to the immediate economic crisis brought on by the pandemic. The additional $25 billion in credit allocation over the next five years will deliver vital resources to low-income and rural communities, supporting and growing businesses, creating jobs and increasing economic opportunity at a time when our underserved communities need it the most. According to the NMTC Coalition, the projected impact includes an estimated 255 new or improved healthcare facilities; 690 new manufacturing businesses; 275 mixed-use projects; and 775 investments in community facilities, including non-profits, Boys and Girls Clubs, and daycare centers. It is also expected that such significant backing to the NMTC program will generate nearly 600,000 jobs.

The NMTC program is designed to encourage capital investment in low-income areas that have traditionally had inadequate access to capital. Established by Congress in 2000, the NMTC program permits institutional investors to receive a credit against federal income taxes for making equity investments in financial intermediaries known as Community Development Entities (CDEs). For every $1 invested into a CDE, a 39% tax credit is generated over a seven-year period. CDEs that receive NMTC allocation authority use the capital raised to make investments in, or loans to, businesses located in low-income and marginalized communities. The resulting subsidy to a project generated from the monetized NMTCs can amount to as much as 20% – 25% of the total project costs.

The NMTC program has proven to be an effective means of rebuilding economically distressed communities by targeting projects that support job creation, drive economic growth or provide essential services. The five-year extension will only further the economic development impact of the NMTC program and help sustain and rebuild those communities devastated by the effects of COVID-19. Any developers that are considering constructing a new project or rehabilitating an existing project in a low-income area should consider pursuing NMTCs given the significant amount of allocation that will become available over the next five years.

*Last week, members of Congress introduced House and Senate versions of the New Markets Tax

Credit Extension Act of 2021 (H.R. 1321/S. 456). If passed, the legislation would make the NMTC program permanent at $5 billion in credit allocation a year.

**COVID-19 Relief Extension for Opportunity Zones**

The ongoing pandemic has impacted all facets of the economy, including Opportunity Zones (OZs). The resulting uncertainty weighs on investors, qualified opportunity funds (QOFs) and qualified opportunity zone businesses (QOZBs) alike. Thankfully, the Internal Revenue Service recently issued guidance providing additional relief for QOZBs, QOFs and investors due to the COVID-19 pandemic. Notice 2021-10 generally extends the relief already in effect pursuant to Notice 2020-39, which expired on December 31, 2020. Details of the relief provisions included in Notice 2021-10 are outlined below.

- *180-day investment requirement for QOF investors* – 180-day deadline postponed to March 31, 2021 for any taxpayer whose last day of their 180-day window to invest capital gains in a QOF falls on or after April 1, 2020, and before March 31, 2021.
- *30-month substantial improvement period for QOFs* – Allows a QOF to disregard the period between April 1, 2020 and March 31, 2021 when calculating the 30-month period.
- *90% investment standard for QOFs* – A QOF's failure to satisfy the 90% investment standard is considered reasonable if the last day of its first six-month period of a taxable year or last day of a taxable year falls between April 1, 2020 and June 30, 2021, and the QOF meets other requirements.
- *Working capital safe harbor for QOZBs* – Any QOZB holding working capital assets intended to be covered by the working capital safe harbor before June 30, 2021 will receive up to an additional 24 months.
- *12-month reinvestment period for QOFs* – If a QOF's 12-month reinvestment period includes June 30, 2020, then the QOF will receive up to an additional 12 months to reinvest.

The OZ program, established by the Tax Cuts and Jobs Act of 2017, is a community development program aimed at stimulating economic development and job creation by providing tax incentives for long-term investments in low-income communities across the United States. There are three main tax incentives used to encourage investment in OZs: (i) deferral of taxes on capital gains if such capital gains, or portion thereof, are reinvested in a QOF; (ii) elimination of taxes on a portion of capital gains if such capital gains remain invested in a QOF for a specified period of time; and (iii) elimination of taxes on post-acquisition appreciation with respect to investments in QOFs held for at least 10 years. OZ investors who may have initially been intimidated by the timelines for deployment and development of an active trade or business may now wish to reconsider given the additional time made available by this relief.

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by Anna Watson

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