DISASTER RECOVERY BOND FINANCING

CONSIDERATIONS FOR CONGRESS

National Association of Bond Lawyers

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DISASTER RECOVERY BOND FINANCING

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OVERVIEW

A major disaster—whether a flood, earthquake, hurricane, wildfire or terrorist attack—leaves any community in disarray: families are left homeless, businesses are saddled with crippling casualty losses, first responders are stretched to or past the limits of their ability to impactfully respond, and public infrastructure is damaged and destroyed. The economic impacts of these major disasters can be profound. For example, in addition to the physical damage caused in New York City on September 11, 2001, the terrorist attacks are estimated to have caused economic losses of up to $123 billion.[1] In the 10 months immediately following Hurricane Katrina, researchers estimated the loss of over 95,000 jobs and $2.9 billion in lost wages for New Orleans residents alone, with 76% of the lost wages attributable to the private sector.[2] And the effects of the widespread and severe 2008 floods across the Midwest just on the city of Cedar Rapids, Iowa, are estimated to have caused a $447 million reduction in GDP.[3] More recently, in the immediate aftermath of Hurricane Harvey, overall economic loss estimates initially ranged between $70 and $190 billion.[4,5]

[1] Carter, Shan and Amanda Cox, "One 9/11 Tally: $3.3 Trillion," New York Times (published 9/8/2011, available at http://www.nytimes.com/interactive/2011/09/08/us/sept-11-reckoning/cost-graphic.html, last visited August 7, 2018).
[2] Dolfman, Michael L. et al., "The Effects of Hurricane Katrina on the New Orleans Economy," pg. 7, Monthly Labor Review (June 2007, available at https://www.bls.gov/opub/mlr/2007/06/art1full.pdf (last visited August 7, 2018)).
[3] Robinson, Dennis P., "Regional Impacts of the 2008 Cedar Rapids Flood", p. 9 (published May 17, 2010, available at http://www.cedar-rapids.org/Public%20Works/Flood%20Control%20System/Cedar%20Rapids%20RED%20 Report,%205-17-10.pdf (last visited August 7, 2018).
[4] Holmes, Frank. "We Looked Into the Effects of Hurricane Harvey and Here's What We Found," Forbes.com Sept. 5 2017 (available at https://www.forbes.com/sites/greatspeculations/2017/09/05/we-looked-into-the-effects-of-hurricane-harvey-and-heres-what-we-found/#673956cb76f1, last accessed August 7, 2018).
[5] The economic impacts are not limited to the disaster area: actual fuel shortages or fears thereof can cause spikes nationwide. After both 9/11 and Hurricane Katrina, gas prices increased across the nation. See Gasoline Prices Skyrocket in Some Parts of the Country, CNN (September 12, 2001, 8:10 AM), http://www.cnn.com/2001/US/09/12/gas.prices/, last accessed August 7, 2018, and Kent Bernhard Jr., Pump Prices Jump Across U.S. after Katrina, NBC NEWS (September 1, 2005, 8:54 AM), http://www.nbcnews.com/id/9146363/ns/business-local_business/t/pump-prices-jump-across-us-after-katrina/#.VWeMC010zbg, last accessed August 7, 2018.

In every community, however, local businesses generally rely on local workers, local workers rely on available housing and utilities, and local governments rely on tax and other revenues from local businesses, property owners and rate payers to fund the basic services—clean water, police and fire protection, schools, etc.—necessary to keep businesses and residents in place. During and immediately after the disaster, law enforcement agencies and other first responders often need additional personnel and resources in order to provide basic services to the community. [6] Damage to infrastructure, interruptions in communications systems,[7] damaged and destroyed equipment,[8] and widespread debris[9] add to the challenges for law enforcement.

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[6] After Hurricane Katrina, an increased demand for law enforcement when local enforcement agencies were struggling with a reduced "operating capacity due to destroyed equipment and facilities" led to the highway patrol, state police, and other investigative agencies providing assistance, but with only modest effects. Michael R. Smith & Jeff Rojek, Law Enforcement Lessons Learned from Hurricane Katrina, 24 REV. OF POL'Y. RES. 596 (2007).

[7] Because of communication breakdowns after the 9/11 attacks, "rescuers were forced to make rapid-fire, life-and-death decisions based on poor communications, contributing to the World Trade Center death toll." Joel Roberts, Communication Breakdown on 9/11, CBS NEWS (May 18, 2004, 8:59 PM), http://www.cbsnews.com/news/communication-breakdown-on-9-11/, last accessed on August 7, 2018. Further, a bipartisan commission on the 9/11 attacks concluded that many firefighters lost their lives because of the breakdown in communication between the fire department and the police department. Communication breakdowns also created obstacles in search and rescue efforts following Hurricane Katrina. Smith & Rojek, Law Enforcement at 4.

[8] The attacks of 9/11 caused $600 million in vehicle and equipment damages for the New York City Police and Fire Departments. FEMA provided approximately $643 million as aid to the New York City Police and Fire Departments to pay benefits and wages to emergency workers and to replace vehicles and equipment damaged by the disaster. See U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-03-926, DISASTER ASSISTANCE: INFORMATION OF FEMA'S POST 9/11 PUBLIC ASSISTANCE TO THE NEW YORK CITY AREA, 18 (2003), available at http://www.gao.gov/assets/240/239484.pdf, last accessed August 7, 2018.

[9] For example, as a result of fallen trees and debris, and no with means to remove the debris, "a one- and-a-half-hour trip from Hattiesburg, Mississippi, to the coast took Mississippi Highway Patrol officials nine hours on the afternoon after Hurricane Katrina struck." Smith & Jeff Rojek, Law Enforcement at 3. After 9/11, over $700 million was spent "removing, screening, and disposing of 1.6 million tons of debris." U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-03-926, supra note 8. Post-Katrina debris removal in Biloxi, Mississippi cost $70 million for the disposal of three million cubic yards of debris, and the project took over 18 months to complete. Vincent Creel, From City of Biloxi: Answers to Five-Year Questions, GULFCOASTNEWS.COM (Aug. 28, 2010), http://www.gulfcoastnews.com/gcnarchive/2010/gcnnewsbiloxikatrinarecovery5years082810.htm, last accessed August 7, 2018.

Disasters also frequently leave environmental and health concerns in their wake that can impact the ability of families to rebuild their homes.[10]

Despite containing a useful guide for designating disaster areas, the federal aid which follows such a designation, provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("Stafford Act")[11] and other sources, may not be immediately available for local governments to use to address emergency issues.

Against this backdrop of extraordinary expenses and the need for immediate action, local governments must address a host of issues that stress all phases of the relationships among businesses, residents, and government. These issues frequently not only fall far afield from the budget categories typically considered by local governments, but demand rapid resource deployment to mitigate immediate negative and ongoing economic impacts. As Congress has recognized on multiple occasions,[12] even where local governments have a "rainy day fund" to pay a portion of these costs, the resources available to local governments to address other challenges may not be sufficient to manage disaster emergencies, and in the case of a major disaster, these funds are unlikely to provide sufficient cash flow to cover costs until other aid can arrive.

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[10] A post-Katrina report on environmental and related health concerns noted issues related to power, natural gas, food safety, drinking water, wastewater, solid waste removal, and chemical contaminants. See ENVIRONMENTAL HEALTH NEEDS AND HABITABILITY ASSESSMENT, https://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=P1005YTG.TXT.

[11] 42 U.S.C. § 5121, et seq. The Stafford Act establishes two different levels of federal response: an "emergency" and the declaration of a "disaster" by the President. A disaster declaration opens the door to a wide variety of forms of assistance by the federal government. The declaration of a disaster is "based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary." Section 401 of the Stafford Act describes the conditions necessary for intervention by the President. Declaration of a disaster by the President could be the result of any "major disaster," which encompasses all natural catastrophes, including hurricanes, floods, tornadoes, winter storms, and wildfires.

[12] See Exhibit A for illustrative legislation providing additional resources for disaster relief.

Although Congress has historically adopted individual assistance packages for disaster-stricken areas,[13] state and local governments need Congress to proactively support American communities through permanent, comprehensive disaster recovery legislation to address the immediate effects of a disaster and to rebuild these communities and their economies more quickly.

Congress's legislative responses to previous disasters implicitly acknowledge that, while traditional disaster recovery resources (including those available under the Stafford Act) and capital financing strategies are excellent tools for the state and local governments that generally lead the recovery efforts, such federal aid or private capital frequently may arrive too late or at too great a cost to mitigate the worst impacts of a major disaster on local communities. Permanent, comprehensive disaster-recovery legislation would enable state and local governments to more quickly and efficiently:

- Stabilize local communities and accelerate repopulation;
- Promote investments of private capital in disaster-stricken areas; and
- Leverage existing federal resources for enhanced job creation.

The National Association of Bond Lawyers ("NABL") respectfully submits this summary of policy ideas for consideration as a first step to creating comprehensive, permanent disaster recovery legislation to address these issues. These suggestions are based on legislation previously adopted by Congress in response to 9/11, Hurricane Katrina, and the 2008 Midwest floods; a summary chart comparing the provisions of those legislative efforts is included as Appendix A for reference.

[13] See Exhibit A for a comparison and description of three instances in which Congress provided local governments with tools to help address disaster recovery efforts.

NABL would be happy to assist the Congress of the United States, the United States Department of Treasury ("Treasury") and the Internal Revenue Service in considering the burdens and benefits of specific legislative proposals to address permanent disaster recovery legislation.

If NABL may provide further assistance, please contact Jessica Giroux, Director of Governmental Affairs in our Washington, DC, office at (202) 503-3290 or jgiroux@nabl.org.

I. Stabilizing Local Communities and Accelerating Repopulation

Immediately after a major disaster, local communities need the ability to fund basic and emergency services necessary to stabilize the community, to begin the process of rebuilding infrastructure in the community, and to get families back into homes. In short, these communities need available cash.

Existing law limits local governments' ability both to prepare for these situations and to react to increased spending needs after a disaster. Currently, local governments cannot easily finance reserves to prepare for potential disasters and are limited in which expenditures can be financed, regardless of how common those expenditures may be in disaster recovery efforts.[14] With a broad array of needs and an anticipation of assistance that will be directed toward specific purposes, local governments may be forced to delay critical projects while awaiting funding determinations from federal, state or outside agencies. In addition, existing housing resources are often too limited to enable families to return and rebuild their homes.

Comprehensive disaster-relief legislation should address these issues by doing the following:

1. To address working capital needs, revise Treasury regulations to permit local governments to expressly recognize a reasonable "disaster recovery" working capital reserve at levels sufficient to meet the needs created by a disaster—and in excess of 5% of the

[14] Because the procedure for addressing disasters is also impacted by state laws, this paper does not address potential incentives for local governments to coordinate their efforts, nor does it address specific interactions with existing requirements under the Stafford Act. Some of the policy suggestions contained here, however, would necessarily require consideration of applicable requirements for reimbursement under existing guidelines for federal assistance under the Stafford Act and other federal programs.

previous year's working capital expenditures[15] —which could be financed or maintained without resulting in tax-exempt bond proceeds being deemed not to be spent.

2. To address financing costs of extraordinary, non-recurring expenditures such as casualty losses, permit Treasury to draft regulations allowing tax-exempt financing to provide for costs incurred in connection with direct losses resulting from a disaster.[16]

3. To provide broader recovery funding for local projects, expressly recognize that proceeds of tax-exempt bonds are spent once allocated to a recovery-related project and permit reimbursements of recovery-related costs paid with proceeds of tax-exempt bonds to be reallocated to other expenditures related to the post-disaster recovery, regardless of the initial allocation of disaster bond proceeds. In many cases, reimbursement by FEMA (or other federal or state programs) is speculative and may not be realized for months or even years following the original expenditures. In cases in which the expenditure is originally paid with the proceeds of tax-exempt bonds, the accounting ramifications that result can be overly burdensome, or even exacerbated by staff turnover or communication challenges among local, state, and federal officials. Congress can eliminate this burden by expressly permitting reimbursement funding to be used for other recovery-related expenditures without jeopardizing the tax-exempt status of the original bonds.

[15] See Treas. Reg. § 1.148-6(d)(3)(iii).

[16] Regulations may require any self-insurance or similar reserves already set aside to be exhausted before proceeds may be allocated to the losses. Possible amendments to existing regulations may include broadening the category of expenditures described in Treasury Regulation § 1.148-6(d)(3)(ii)(B) to expressly permit not only direct casualty losses, but other extraordinary costs or increased operating costs that arise from a disaster. Additional extraordinary costs may include overtime pay, expenses to relocate staff and equipment, and additional expenditures related to deploying resources to support the recovery, as well as permitting the financing of such expenditures without fully exhausting self-insurance or similar reserves.

4. Ease private activity restrictions on governmental bonds during a designated period to permit local governments to offer low-cost space to federal agencies and private and not-for-profit recovery organizations that provide critical recovery services.

5. To encourage rebuilding and development through home building in disaster areas, authorize local governments to issue qualified mortgage bonds without eligibility restrictions such as income and purchase price limitations and first-time homebuyer requirements.[17]

6. Increase the eligible area median income thresholds related to multifamily housing developments and allow affordable housing bonds to qualify as tax-exempt if 20% of the units are held for households earning up to 60% of area median income or if 40% of the units are held for households earning up to 70 or 80% of area median income (often described as "workforce housing").

7. Grant additional low-income housing tax credit authority to each State and allow States to convert unused carryforward volume cap from previous years to additional low-income housing tax credit authority, insuring that each State has the ability to maximize that which it has been granted to allow homes to be built or rebuilt.

8. Allow states to "carry forward" unallocated low-income housing tax credits from year to year to further support rebuilding and development of affordable housing in disaster-stricken areas.

9. Permit state and local governments impacted by a disaster the flexibility to restructure bond indebtedness by allowing them to advance refund outstanding tax-exempt

[17] GO Zone Mortgage Revenue Bonds provided needed assistance to a number of people affected by Hurricane Katrina. However, even with the raised income limits, a number of residents were not able to take advantage of the relief Congress granted.

bonds (regardless of whether such bonds were previously advance refunded prior to passage of tax reform legislation in 2017).

10. Assist distressed communities in providing for ongoing operating costs and debt repayment, through principal forgiveness (e.g., ARRA clean-drinking water programs), authority to borrow on a tax-exempt basis for capitalized interest on non-enterprise projects, and interest subsidies (e.g., Build America Bonds).

11. Provide express authority to issue long-term tax-exempt indebtedness to finance short-term assets (such as police cars, emergency vehicles, operating expenses and extraordinary expenditures directly related to the disaster) to strengthen debt service coverage ratios and maximize cash flow relief to local governments.

II. Promoting Investments of Private Capital in Disaster-Stricken Areas

The proposals described above are useful, but communities still need the capital markets to invest private capital in disaster-stricken areas to help fund the recovery efforts. Thus, providing state and local governments the ability to react to a disaster solves just half the problem; comprehensive disaster-relief legislation should also promote private investment in distressed communities.

Disaster-stricken areas pose special challenges because the communities looking to the capital markets are coming off an event most politely described as a "potential credit negative." Disaster-related damages may result in significant decreases in government fund balances, property losses, and reductions in property values (reducing the property tax base), distressing the community's financial position and perceived credit-worthiness. Disaster-recovery legislation can address these issues both by helping local governments improve their balance sheets and by providing incentives to investors, all with the goals of allowing communities recovering from a disaster to develop balance sheet strength and access to low-cost capital.

Some ideas to address "potential credit negative" impacts are described below:

1. Provide Community Reinvestment Act Credit for banks that lend to communities engaged in disaster-recovery efforts.

2. Allow exceptions to the prohibitions on federal guarantees of tax-exempt bonds to permit disaster-stricken areas to leverage aid under the Stafford Act, other federal aid, and Federal Home Loan Bank ("FHLB") credit support through a standby letter of credit (or other credit enhancement) in support of a letter of credit (or other credit enhancement) issued by a member bank.[18]

3. Increase the limit on the amount of obligations that may be designated as "bank qualified" under Section 265 from $10,000,000 to a higher limit, such as $30,000,000 for issuers in disaster-stricken areas for a designated period of time.

4. Revise the "bank qualified" provisions so that (i) any issuer, not just a qualified small issuer, may designate up to a stated amount of bank-qualified bonds in disaster-stricken areas for a designated period of time, and (ii) bonds issued by a conduit issuer on behalf of a local government are not aggregated with other bonds issued by that conduit issuer.

5. Permit local governments to specifically pledge FEMA reimbursement funds as security for the payment of bonds.

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[18] FHLB enhancement could also be limited to a maximum period, similar to exceptions temporarily allowed under the Housing Assistance Tax Act of 2008. See I.R.C. § 149(b)(3)(A)(iv)..

6. Encourage a regional approach to recovery by easing current restrictions on pool programs, including "blind pools," to permit communities to share credit risks and the benefits of recovery.

7. Authorize states with disaster-stricken areas to issue tax credit bonds (such as the Gulf Tax Credit Bonds) and to lend proceeds of such bonds to local communities in said disaster-stricken areas within the state to fund local recovery-related projects and/or refinance state and local obligations outstanding at the time of the disaster declaration.

III. Leveraging Federal Resources for Enhanced Job Creation

For disaster-recovery legislation to be truly comprehensive, it must not only assist local governments in stabilizing day-to-day life after the disaster, help residents return and rebuild their homes, and incentivize private capital to invest, but it also should provide opportunities for business owners to redevelop and make available the jobs necessary to maintain the community over the long term. To be truly successful, these opportunities should both assist in restoring damaged property and encourage private innovation to help communities prosper at the same time as they recover. In addition, disaster-recovery legislation should acknowledge and support the various local economic drivers in different parts of the country. Specific disaster-recovery authorization in favor of the recovery of private employers can also allow local governments to effectively prioritize projects to expedite rebuilding the local economy.

To advance these goals, comprehensive disaster-recovery legislation should:

1. Build on prior disaster-recovery legislation by permitting broad types of private enterprise to access tax-exempt financing in disaster-recovery areas: hotels, office buildings, retail stores, medical clinics and other healthcare facilities, public utility property, warehouses, and manufacturing plant buildings.

2. Provide specific legislative provisions to define allowable redevelopment projects and additional capital projects to revitalize and develop the disaster area post-recovery.[19]

3. Provide for broader allowances on use of tax-exempt financing for rehabilitation, as limitations are likely to discourage smaller businesses with more limited replacement costs from rebuilding.

4. Allow equipment and movable fixtures to qualify as eligible project expenditures so long as these assets are not located outside of, or removed from, the disaster area.

5. Permit borrowers of tax-exempt exempt facility and qualified 501(c)(3) bonds relief from standing restrictions on refunding and advance refunding their outstanding obligations, so long as the proceeds of those obligations were used primarily in the disaster area.

6. Permit replacement of livestock as a qualified project cost in areas where livestock may be a significant asset in the local economy.

7. Ease public-private partnership restrictions to enable alternative sources of private funds to flow more easily into the disaster area.

8. Eliminate limitations to recapture eligible expenditures prior to an issuer's adoption of an official intent resolution and enable businesses facing significant challenges post-disaster to immediately make significant expenditures without the requirement of an "official intent declaration." While expenditures would still have to be qualified project costs under exempt facility bond provisions and be allocated under reimbursement allocation provisions, businesses would be able to react more quickly in the aftermath of a disaster.

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[19] The Heartland Disaster Tax Relief Act, and subsequent notices from the I.R.S., provided a very broad definition for replacement projects; however, much uncertainty surrounded the interpretation of the Heartland Disaster Tax Relief Act. As a result, governmental entities issued few Midwest Disaster Area Bonds prior to receipt of Internal Revenue Service Notice 2010-10, which provided, among other things, guidance on replacements projects.

9. Authorize accelerated depreciation for assets financed under the provisions of the disaster-recovery legislation to enhance compatibility with private sector financing models.

10. Provide other significant tax incentives to support private business, such as 5-year net operating loss carry-forward, recognition of an entire disaster area as a "low income community" for new markets tax credits purposes and allocation of additional new markets tax credits for use therein, designation of disaster areas as "qualified opportunity zones" under the recently enacted Investing in Opportunity Act (26 USC §§ 14002-1 & 14002-2), special incentives for employers, and expensing of demolition and cleanup charges.

11. Use a formula to provide a maximum private activity bond volume cap with no restriction on years of carryforward for disaster-recovery areas to help local governments more effectively designate disaster-recovery private activity bond volume cap to allow for the prioritization of projects post-disaster.

12. Incentivize states to encourage disaster preparedness and economic recovery efforts through local resources, such as:

a. establishing local credit enhancement programs;

b. establishing a long-term revolving loan fund to finance businesses in disaster-stricken areas for reconstruction, rehabilitation, and development of eligible projects at low or below-market interest rates, or with principal forgiveness if the business meets certain job creation and capital investment requirements; and

c. providing ad valorem tax exemptions and sales or use tax exemptions on project purchases along with other state tax incentives.

IV. Conclusion

In order to expedite economic recovery and retain jobs in disaster-stricken areas, Congress should consider enacting standing legislation to help local governments partner with capital markets stakeholders and with private businesses to stabilize their communities and their economies. This can be accomplished by giving those governments the tools to move quickly, permitting them the flexibility to address sudden, extraordinary demands for capital. With these tools, local governments can help Americans rebuild their homes, restart their businesses, and get back to work improving their communities.

APPENDIX A

SUMMARY OF PRIOR DISASTER RECOVERY LEGISLATION[1]

	Job Creation and Work Assistance Act of 2002[2]	*Gulf Opportunity Zone Act of 2005*[3]	*Heartland Disaster Tax Relief Act of 2008*[4]	
EXEMPT FACILITY AND QUALIFIED MORTGAGE BONDS				
Bonds Authorized	Liberty Bonds	Qualified Gulf Opportunity ("GO") Zone Bonds	Qualified Midwestern Disaster Area Bonds	Qualified Hurricane Ike Disaster Area Bonds
Eligible Issue Dates	3/9/02 – 1/1/14	12/21/05 – 1/1/12	10/3/08 – 1/1/13	10/3/08 – 1/1/13
Eligible Issuers	State of NY and any political subdivision	Alabama, Louisiana, Mississippi	Any state in which a Midwestern disaster area is located	Any state in which a Hurricane Ike disaster area is located (Texas, Louisiana)
Annual Issuance Limits	No	No	No	No
Maximum Aggregate Issuance Limits	$8 billion	$2,500 per state resident based on 2004 U.S. Census data: • Alabama: $2.1 billion; • Louisiana: $7.9 billion; • Mississippi: $4.9 billion	$1,000 per Midwestern state resident based on most recent U.S. Census data before *earliest* applicable disaster date for Midwestern disaster areas within the state	$2,000 per State per resident of specified counties in Texas and Louisiana based on most recent census estimate before 9/13/08
Approving Authority	$4 billion by Governor of New York; $4 billion by Mayor of City of New York	• Alabama: Governor • Louisiana: State Bond Commission; and • Mississippi: Governor.	Governor of relevant state, but on the basis of providing assistance to areas in the order in which such assistance is most needed	Governor of relevant state, but on the basis of providing assistance to areas in the order in which such assistance is most needed
Eligible Uses of Proceeds	95% or more of net proceeds used for "qualified project costs"	• 95% or more of net proceeds used for "qualified project costs", or • Meets the requirements of a qualified mortgage issue, except as otherwise provided	• 95% or more of net proceeds used for "qualified project costs", or • Meets the requirements of a qualified mortgage issue, except as otherwise provided	• 95% or more of net proceeds used for "qualified project costs", or • Meets the requirements of a qualified mortgage issue, except as otherwise provided
"Qualified Project	• Costs of the	• Costs of any	• Costs of any	• Costs of any

[1] The Consolidated Appropriations Act, 2018, P.L. 115-141, which was signed into law on March 23, 2018, repealed I.R.C. §§ 1400L and 1400N. As a guide to the reader, however, the relevant portions of the Internal Revenue Code are referenced here as they read prior to repeal.
[2] Pub. L. 107-147, § 301(a), 116 Stat. 33 (previously codified at I.R.C. § 1400(L) (2002)).
[3] P.L. 109-135, Tit. I, § 101(a), 119 Stat. 2579 (previously codified at I.R.C. § 1400(N) (2005)).
[4] Pub. L. No. 110-343, §§ 702, 704, 122 Stat. 3765 (modifying prior § I.R.C. 1400(N) (2008)).

	Job Creation and Work Assistance Act of 2002[2]	*Gulf Opportunity Zone Act of 2005*[3]	*Heartland Disaster Tax Relief Act of 2008*[4]	
Costs"	acquisition, construction, reconstruction, and renovation of nonresidential real property and residential rental property (including fixed tenant improvements associated with such property) located in the "New York Liberty Zone"[5] • Costs of public utility property located in the New York Liberty Zone; and • Costs of the acquisition, construction, reconstruction, and renovation nonresidential rental property (including fixed tenant improvements associated with such property) located outside the New York Liberty Zone but within the City of New York, if such property was part of a project which consisted of at least one hundred thousand (100,000) square feet of usable office or other commercial space located in a single building or multiple adjacent buildings	qualified residential rental project in the GO Zone; • Costs of the acquisition, construction, reconstruction and or renovation of non-residential real property (including buildings and their structural components and fixed improvements); or • Costs of public utility property.	qualified residential rental project in the Midwestern disaster area; • Costs of the acquisition, construction, reconstruction and or renovation of non-residential real property (including buildings and their structural components and fixed improvements); or • Costs of public utility property.	qualified residential rental project in the Midwestern disaster area; • Costs of the acquisition, construction, reconstruction and or renovation of non-residential real property (including buildings and their structural components and fixed improvements); or • Costs of public utility property.
Special Rules relating to issues to finance "qualified project costs"	• Not more than $2 billion could be issued for projects outside of NY Liberty Zone; • Not more than $1.6 billion for residential rental property; • Not more than	• Qualified residential rental projects satisfy §142(d)(1) tests with 20% of units at 60% AMI or 40% at 70% AMI • Eligible for 2-year spending exception from rebate	• Qualified residential rental projects satisfy §142(d)(1) tests with 20% of units at 60% AMI or 40% at 70% AMI • Eligible for 2-year spending exception from rebate	• Qualified residential rental projects satisfy §142(d)(1) tests with 20% of units at 60% AMI or 40% at 70% AMI • Eligible for 2-year spending exception from rebate

[5] The "New York Liberty Zone" is defined under Section § 1400L(h) of the Code to include the "area located on or south of Canal Street, East Broadway (east of its intersection with Canal Street), or Grand Street (east of its intersection with East Broadway) in the Borough of Manhattan in the City of New York, New York."

	Job Creation and Work Assistance Act of 2002[2]	*Gulf Opportunity Zone Act of 2005*[3]	*Heartland Disaster Tax Relief Act of 2008*[4]	
	$800 million for facilities used for retail sales of tangible property and functionally related and subordinate property.		• For projects involving a private business use, the person using the property either suffered a loss in a trade or business attributable to the designated disaster, or is a person designated in the disaster area as a person carrying on a trade or business replacing a trade or business with respect to which another person suffered a loss, and, in the case of public utility property, the project involves repair or reconstruction of public utility property damaged by the disaster	• For projects involving a private business use, the person using the property either suffered a loss in a trade or business attributable to the designated disaster, or is a person designated in the disaster area as a person carrying on a trade or business replacing a trade or business with respect to which another person suffered a loss, and, in the case of public utility property, the project involves repair or reconstruction of public utility property damaged by the disaster
Qualified Mortgage Issue Requirements	N/A	• Only applicable to owner-occupied residences in the GO Zone, but such residences are treated as a targeted area residence • All financing (without exception) must be provided to mortgagors with a family income not more than 115% of AMI • "Qualified home improvement loans" up to $150,000 • Except as allowed under IRC §143, any use of repaid principal of an issue may not be used to provide financing • For purposes of Section 143, expenditures for the repair or reconstruction of a residence of at least 25% of mortgagor's adjusted basis in the property (determined	• 95% of the proceeds of the issue must be used for mortgagors who suffered damages to their principal residences attributable to the disaster • Only applicable to owner-occupied residences in the Midwestern disaster area, but such residences are treated as a targeted area residence • All financing (without exception) must be provided to mortgagors with a family income not more than 115% of AMI • "Qualified home improvement loans" up to $150,000 • Except as allowed under IRC §143, any use of repaid principal of an issue may not be used to provide financing • For purposes of	• 95% of the proceeds of the issue must be used for mortgagors who suffered damages to their principal residences attributable to the disaster • Only applicable to owner-occupied residences in the Midwestern disaster area, but such residences are treated as a targeted area residence • All financing (without exception) must be provided to mortgagors with a family income not more than 115% of AMI • "Qualified home improvement loans" up to $150,000 • Except as allowed under IRC §143, any use of repaid principal of an issue may not be used to provide financing • For purposes of

	Job Creation and Work Assistance Act of 2002[2]	*Gulf Opportunity Zone Act of 2005*[3]	*Heartland Disaster Tax Relief Act of 2008*[4]	
		at the later of completion or acquisition of the residence) are treated as "qualified rehabilitation"	Section 143, expenditures for the repair or reconstruction of a residence of at least 25% of mortgagor's adjusted basis in the property (determined at the later of completion or acquisition of the residence) are treated as "qualified rehabilitation"	Section 143, expenditures for the repair or reconstruction of a residence of at least 25% of mortgagor's adjusted basis in the property (determined at the later of completion or acquisition of the residence) are treated as "qualified rehabilitation"
Limits on Existing Property	Improvements must have been made to the property in an amount not less than fifty percent (50%) of the purchase price.	Improvements must have been made to the property in an amount not less than fifty percent (50%) of the purchase price.	Improvements must have been made to the property in an amount not less than fifty percent (50%) of the purchase price.	Improvements must have been made to the property in an amount not less than fifty percent (50%) of the purchase price.
Movable Fixtures or Equipment eligible?	No.	No.	No.	No.
Subject to TEFRA requirements under 147(f)[6]	Yes.	Yes	Yes	Yes
Subject to limits on useful lives of assets financed under 147(b)	Yes.	Yes	Yes	Yes
25% limit on proceeds used to acquire land under 147(c)(1)(A)	Yes.	Yes	Yes	Yes
Interest subject to AMT	No.	No.	No.	No.
Subject to use restrictions	Yes, under 147(e)[7].	Yes, under I.R.C. § 144(c)(6)(B).[8]	Yes, under I.R.C. § 144(c)(6)(B).	Yes, under I.R.C. § 144(c)(6)(B).
ADVANCE REFUNDING BONDS				
Authorizing Statute	I.R.C. § 1400L(e)	I.R.C. § 1400N(b)	N/A	N/A
Provides For	One additional advance refunding of	One additional advance refunding of		

[6] Code Section 147(f) provides that public approval must be obtained with respect to the issuance of a private activity bond for such bond to be a qualified private activity bond. The public approval must be obtained from (i) a governmental unit that issued such bond or on behalf of which such bond was issued and (ii) each governmental unit with jurisdiction over the area in which any facility financed by such bond is located. *See* I.R.C. § 147(f)(2).

[7] This restriction includes any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

[8] This restriction includes any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

	Job Creation and Work Assistance Act of 2002[2]	*Gulf Opportunity Zone Act of 2005*[3]	*Heartland Disaster Tax Relief Act of 2008*[4]	
	bonds not otherwise eligible for advance refunding	bonds not otherwise eligible for advance refunding		
Date requirements	3/9/02 – 1/1/06	12/21/05 – 1/1/11		
Eligibility	Only bonds outstanding on 9/11/01 that were state or local bonds which were: • A general obligation of the City of New York; • A state or local bond other than a private activity bond issued by the NY Municipal Water Finance Authority, the Metropolitan Transportation Authority of the State of New York, or the Municipal Assistance Corporation; or • A qualified 501(c)(3) bond which is a qualified hospital bond[9] issued by or on behalf of the State of New York or New York City.	Only bonds outstanding on 8/28/05 and issued by the States of Alabama, Louisiana or Mississippi (or their political subdivisions) are eligible; must be designated by Governor		
Aggregate limits	Maximum face amount of bonds so designated cannot exceed: • $4.5 billion – Governor of New York; • $4.5 billion – Mayor of New York City	Maximum face amount of bonds so designated cannot exceed: • $4.5 billion – Louisiana; • $2.25 billion – Mississippi; and • $1.125 billion - Alabama		
Other requirements	Advance refunding is the only other outstanding bond with respect to the refunded bond, and the bonds meet all the arbitrage and rebate requirements of I.R.C. §148	Advance refunding is the only other outstanding bond with respect to the refunded bond, and the bonds meet all the arbitrage and rebate requirements of I.R.C. §148		
Use of Proceeds Requirement		Issues which provide property described in		

[9] *See* I.R.C. § 145(c).

	Job Creation and Work Assistance Act of 2002[2]	*Gulf Opportunity Zone Act of 2005*[3]	*Heartland Disaster Tax Relief Act of 2008*[4]	
		I.R.C. §144(c)(6)(B) are not eligible		
TAX CREDIT BONDS				
Authorizing Statute	N/A	I.R.C. §1400N(l)	I.R.C. §1400N(l)[10]	N/A
Eligible Issue Dates		1/1/06-12/31/06	1/1/09-12/31/09	
Eligible Issuers		Alabama, Louisiana, Mississippi	Any State in which a Midwestern Disaster Area is located or any instrumentality of the State	
Aggregate limits		• Louisiana - $200,000,000 • Mississippi - $100,000,000 • Alabama - $50,000,000	• States with population of at least 2,000,000 - $100,000,000 • States with a population between 1 and 2 million - $50,000,000	
Maturity limits		2 years	2 years	
Uses of proceeds		95% of proceeds of the issue must be used to pay (or loaned to a political subdivision to pay) principal, interest or premiums on qualified bonds of State or political subdivision of state	95% of proceeds of the issue must be used to pay (or loaned to a political subdivision to pay) principal, interest or premiums on qualified bonds of State or political subdivision of state	
Other requirements		• Must be a general obligation in registered form (within the meaning of IRC § 149(a)) • Must repay bonds outstanding on 8/28/05 • May not repay private activity bonds • May not be used for advance refundings • Must satisfy the arbitrage requirements of I.R.C. §148 • May not pay off any bonds which provided property described in I.R.C. § 144(c)(6)(B).	• Must be a general obligation in registered form (within the meaning of IRC § 149(a)) • Must repay bonds outstanding on the earliest applicable disaster date for Midwestern disaster areas in the State • May not repay private activity bonds • May not be used for advance refundings • Must satisfy the arbitrage requirements of I.R.C. §148 • May not pay off any bonds which provided	

[10] Pub. L. No. 110-343, § 702(d)(7).

	Job Creation and Work Assistance Act of 2002[2]	*Gulf Opportunity Zone Act of 2005*[3]	*Heartland Disaster Tax Relief Act of 2008*[4]	
			property described in I.R.C. § 144(c)(6)(B).	
State matching requirement		Bond issuer must pledge and pay an amount equal to the face amount of the bond issue to repay the prior bonds	Bond issuer must pledge and pay an amount equal to the face amount of the bond issue to repay the prior bonds	
Credit Provided		Federal tax credit to holder based on the credit rate determined by the Secretary for the date the bonds were sold	Federal tax credit to holder based on the credit rate determined by the Secretary for the date the bonds were sold	
Rate provisions		Credit rate is the rate estimated to permit the issuance of such bonds with a specified maturity or redemption date without discount and without interest cost to the issuer	Credit rate is the rate estimated to permit the issuance of such bonds with a specified maturity or redemption date without discount and without interest cost to the issuer	
Credit Allowance		Taxpayer may recognize one-quarter of annual credit on the 15th of March, June, September and December, and on the maturity date of the bonds	Taxpayer may recognize one-quarter of annual credit on the 15th of March, June, September and December, and on the maturity date of the bonds	

APPENDIX B

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