

HURRICANE SANDY RECOVERY ACT

Hurricane Sandy brought waves of destruction to the lives, property and businesses of people living in the Tri-State area of New York, New Jersey and Connecticut, as well as to other States in the Mid-Atlantic region. These States are reeling from massive devastation, the total cost of which will not become clear until the affected areas recover from the shock of this event and make the necessary assessments, now underway.

Attached to this summary document is a proposal for federal bonding authority and other federal benefits that will enable individuals, families and businesses in areas affected by Hurricane Sandy (the “Reconstruction Zone”) to rebuild and replace their homes and business real estate and related facilities that have been damaged or destroyed. The proposal is derived primarily from Congress’ past experience with providing incentives to rebuild from natural and other disasters, including the Gulf Opportunity Zone Act of 2005 (“GO Zone Act”). However, the amount of assistance required now cannot be readily compared to what was authorized in response to Hurricane Katrina, given the geographic scope of the devastation, the major business and commercial centers here involved (e.g., New York City, Atlantic City), the high density of affected populations, and the range and variation of the buildings and structures damaged or lost (from high-rise office and residential buildings and all manner of service and retail establishments to single family homes and residential rental facilities).

The highlights of the proposal are as follows:

- Recovery Zone Bonding Authority: Authorization for New Jersey and Connecticut, and for the State and/or the City of New York and other affected States to issue private activity bonds for (i) the rehabilitation and construction of nonresidential buildings and qualified residential rental projects (including fixed improvements and a limited amount of related moveable property and working capital associated therewith) located in the Reconstruction Zone and (ii) qualified mortgage financing with respect to residences in the Reconstruction Zone.
 - The bonds would be subject to a special State by State cap and would not be subject to the State unified private activity bond cap.
 - Financed nonresidential projects and residential rental projects would be limited to those approved by the Governors of the States (or the Governor of the State of New York and the Mayor of The City of New York, in the case of nonresidential projects and residential rental projects located in New York City).
 - Otherwise applicable private activity bond restrictions would be modified by the proposal (e.g., the low income targeting requirement for residential rental projects and the first time homebuyer requirement for qualified mortgage financing).
 - Interest on the bonds would not be subject to the alternative minimum tax .
 - Financial institutions that purchase the bonds could deduct their cost of carrying an amount of the bonds not in excess of 2% of the adjusted basis of their assets.

- Tax-Exempt Advanced Refunding: For governmental and qualified 501(c)(3) bonds outstanding on the date of Hurricane Sandy and not otherwise permitted another tax-exempt advance refunding, one additional tax-exempt advance refunding would be allowed to be issued by or on behalf of the States and their political subdivisions. In addition, exempt facility private activity bonds which cannot be advance refunded under tax law restrictions and which were issued by such issuers for governmentally-owned airports, docks and wharves located within the Reconstruction Zone would be permitted one tax-exempt advance refunding.
- Low Income Housing: An increase in the housing credit dollar amount for low income housing located in the Reconstruction Zone.
- Bonus Depreciation: 50% bonus depreciation for Reconstruction Zone business property placed in service by a date certain after Hurricane Sandy.
- Expensing: An increase in expensing under Code Section 179 of business property placed in service by a date certain after Hurricane Sandy and an allowance for expensing environmental remediation costs paid or incurred after October 29, 2012 with respect to real property located in the Reconstruction Zone.
- Rehabilitation Credit: An increase in the rehabilitation credit for expenditures paid or incurred after October 29, 2012 with respect to qualified buildings and historic structures located in the Reconstruction Zone.
- Public Utility Special Treatment: Special treatment for public utility property disaster losses located in the Reconstruction Zone.
- Additional Financing Provisions: Additional provisions to provide relief to state and local budgets.

Sincerely,

Council of Development Finance Agencies
Bond Dealers of America
National Association of Bond Lawyers
National Development Council
Clean Energy Group

External Memorandum

TO: COUNCIL OF DEVELOPMENT FINANCE AGENCIES

FROM: WINSTON & STRAWN LLP

DATE: NOVEMBER 12, 2012

RE: HURRICANE SANDY RECOVERY ACT

In the aftermath of Hurricane Sandy, the residents of New York, New Jersey and Connecticut, as well as the residents of other States in the Mid-Atlantic region, are in dire need of federal assistance to enable them to recover and rebuild their homes and businesses. There is ample precedent for Congress to take action. After the devastation of Hurricane Katrina in 2005, Congress responded with the Gulf Opportunity Zone Act of 2005 (the “**GO Zone Act**”) in order to provide Alabama, Louisiana and Mississippi federal assistance to aid such states in recovery and promote economic development. Given the massive destruction caused by Hurricane Sandy, similar legislation is needed from Congress for the benefit of the States affected by Hurricane Sandy.

Using the GO Zone Act as a guide, legislation relating to Hurricane Sandy (the “**Hurricane Sandy Act**”) should be enacted as soon as possible and should provide the following:

- Authorize the issuance of tax-exempt private activity bonds to (i) provide residential mortgage financing in the Hurricane Sandy reconstruction zone (“**Reconstruction Zone**”) and (ii) to finance the construction and rehabilitation of residential and nonresidential property located in the Reconstruction Zone, which would include specific counties in those states affected by Hurricane Sandy. Qualified project costs eligible for bond financing would include those for the acquisition, construction, reconstruction, and renovation of nonresidential real property (including fixed improvements thereto and certain moveable equipment associated therewith) and public utility property located in the Reconstruction Zone, and the cost of qualified residential rental projects (with modified low income targeting requirements) located in the Reconstruction Zone.

As under the GO Zone Act, special rules for qualified mortgage bonds and qualified veterans bonds would apply, including allowing up to \$150,000 of proceeds for use to finance a home improvement mortgage, providing that the mortgagor need not be a first time home buyer and permitting the mortgagor’s income limit to be up to 140% of area median income.

Consistent with IRS guidance respecting bonds issued under the GO Zone Act, provide that Hurricane Sandy recovery bonds are deemed to have met the official intent requirement for reimbursement from bond proceeds of any original expenditure paid on or after October 29, 2012 (the day Hurricane Sandy made landfall).

Again consistent with IRS respecting bonds issued under the GO Zone Act, provide that bonds issued to current refund Hurricane Sandy recovery bonds, subject to certain limitations, are entitled to the same favorable treatment as the original bonds.

- Bonds for Hurricane Sandy recovery would only be issued for nonresidential projects and residential rental projects in the affected States if approved by the respective Governors of such States or any duly designated officer, and in the case of New York City, if approved by the Governor and/or the Mayor of The City of New York, or any duly designated officer.

As with the GO Zone Act, bond proceeds could not be used to provide funding for country clubs, casinos, hot tub facilities, suntan facilities, liquor stores, massage parlors, golf courses, and race tracks. In addition, such proceeds could not be used to finance movable fixtures and equipment, subject to a limited exception as described at the end of this memorandum.

As with the GO Zone Act, the amount of Hurricane Sandy recovery bonds issued with respect to each State also could not exceed a certain dollar amount for that State. The cap for each State could be determined by a formula based on the portion of a State's population located in the Reconstruction Zone.

- As with bonds issued under the GO Zone Act, provide that interest on Hurricane Sandy recovery bonds (and bonds issued to current refund such bonds) is not an item of tax preference for purposes of the federal alternative minimum tax.
- In order to increase the demand for Hurricane Sandy recovery bonds, provide (similar to a provision of the American Recovery and Reinvestment Act of 2009) that financial institution purchasers of such bonds may deduct the interest cost of carrying an amount of such bonds not exceeding 2% of the purchaser's assets.
- As under the GO Zone Act, permit one additional tax-exempt advance refunding of bonds issued by the three States affected by Hurricane Sandy, or any political subdivision thereof, that were outstanding on October 29, 2012 (the date Hurricane Sandy made landfall) and could not be advance refunded under the Internal Revenue Code restrictions in effect on or after that date. The Hurricane Sandy Act should also permit one tax-exempt advance refunding of certain exempt facility bonds for airports, docks, or wharves that were outstanding on October 29, 2012 and that were issued by the States affected by Hurricane Sandy, or any political subdivision thereof, notwithstanding the general prohibition on the advance refunding of such bonds. Like advance refundings authorized by the GO Zone Act, the amounts of such bonds

would be capped on a State by State basis and the Governors of the affected States (or their duly designated officers), and in the case of New York City, the Governor of New York and/or the Mayor of The City of New York (or their duly designated officers), would be required to designate such bonds with respect to the refunded facilities located in the respective jurisdictions.

- Provide an increase in the housing credit dollar amount for low-income housing purposes in the Reconstruction Zone.

Under the GO Zone Act for low-income housing credit purposes, in the case of calendar years 2006, 2007, and 2008, the state housing credit ceiling of each state located in the Hurricane Katrina disaster area was increased.

- 50% bonus depreciation allowance for Reconstruction Zone business property that is placed in service as of a date certain after October 29, 2012 and exempts such depreciation allowances from the alternative minimum tax.

Under the GO Zone Act qualified property was property that satisfied four requirements. First, it had to be one of the following six types of property: (i) property to which the general Modified Accelerated Cost Recovery System (“MACRS”) rules apply and that has a recovery period of 20 years or less, (ii) computer software not covered by §197 to which the general MACRS rules apply, (iii) water utility property to which the general MACRS rules apply, (iv) qualified leasehold improvement property to which the general MACRS rules apply, (v) nonresidential real property, or (vi) residential rental property. Second, substantially all of the use of the property had to be in the Hurricane Katrina disaster area and had to be in the active conduct of a trade or business by the taxpayer in such area. Third, the original use of the property in the Hurricane Katrina disaster area had to begin with the taxpayer on or after August 28, 2005 (the date Hurricane Katrina landed on shore). Fourth, the property needed to be acquired by the taxpayer by purchase on or after August 28, 2005. Qualified property did not include property that was depreciated under the alternative depreciation system, tax-exempt bond-financed property, or qualified revitalization buildings.

- Increase in expensing under §179 Internal Revenue Code

The GO Zone Act increased the maximum amount deductible under §179 (the "overall limitation") by the lesser of \$100,000 or the cost of qualified §179 property placed in service during the taxable year. In addition to the \$100,000 maximum cost of any §179 property that could be deducted under then existing law, a taxpayer could elect to deduct a maximum \$100,000 additional amount of the taxpayer's cost of qualified §179 GO Zone property, resulting in a maximum deductible amount of \$200,000 of qualified §179 GO Zone property.

- Permit expensing for certain demolition and clean-up costs

The GO Zone Act allowed a taxpayer to elect to treat 50% of any qualified GO Zone clean-up costs as an expense deductible for the taxable year in which it was paid or incurred. For this purpose, the Act defined qualified GO Zone clean-up costs as any amount paid or incurred during the period beginning on August 28, 2005 and ending on December 31, 2007, for debris removal from, or demolition of structures on, real property located in the Hurricane Katrina disaster area.

- Permit extension of expensing for environmental remediation costs

The GO Zone Act also allowed taxpayers to expense qualified environmental remediation expenditures paid or incurred on or after August 28, 2005, but before 2008, in connection with qualified contaminated sites in the Hurricane Katrina disaster area, including sites at which petroleum products had been released or disposed of.

- Increase in rehabilitation credit

The GO Zone Act provided an increase in the rehabilitation credit for expenditures incurred in the Hurricane Katrina disaster area. The Act provided that in the case of qualified rehabilitation expenditures (as defined in §47(c)) paid or incurred during the period beginning on August 28, 2005, and ending on December 31, 2008, with respect to any qualified rehabilitated building or certified historic structure located in the Hurricane Katrina disaster area, the 10% rehabilitation credit was increased to 13% and the 20% rehabilitation credit was increased to 26%.

- Special treatment of public utility property disaster losses

The GO Zone Act provided an election for taxpayers who incurred casualty losses attributable to Hurricane Katrina for eligible public utility property located in the Hurricane Katrina disaster area. Under the election, such casualty losses could be taken into account in the fifth taxable year, rather than in the first taxable year, immediately preceding the taxable year in which the loss occurred. Eligible public utility property included property used predominantly in the trade or business of the furnishing or sale of electrical energy, water, or sewage disposal services; gas or steam through a local distribution system; telephone services, or other communication services if furnished or sold by the Communications Satellite Corporation for purposes authorized by the Communications Satellite Act of 1962; or transportation of gas or steam by pipeline.

The foregoing bullet points are primarily derived from or summarize one or more of the sections of the GO Zone Act. A summary of the GO Zone Act is attached to this memo.

Hurricane Sandy has occurred in the context of a nascent recovery from the deepest recession since the Great Depression. Therefore, measures in addition to those in the GO Zone Act or otherwise identified above should be considered to assure that the effects of Hurricane

Sandy do not reverse the present forward momentum of the economy and the slowly improving budgets of State and local governments.

- Flexibility for tax-exempt working capital financings

Permit State and local governments in the Recovery Zone to issue tax-exempt obligations on a short-term or long-term basis (e.g., up to thirty years) for governmental working capital requirements, without regard to the deficit sizing limits imposed under current law, in order to provide access to funds for crucial operating cash flow and to replenish “rainy day” reserves.

For Hurricane Sandy recovery bonds that are private activity bonds, permit the eligible costs of nonresidential projects to include working capital in an amount up to 5% of the cost of the project, to assist businesses in the replacing lost inventory and other working capital items.

For Hurricane Sandy recovery bonds that are private activity bonds, permit the eligible costs of nonresidential projects to include the cost of acquiring or rehabilitating moveable equipment and fixtures in an amount up to 25% of the cost of the project, provided the equipment was used in the Recovery Zone by the beneficiary of the financing prior to Hurricane Sandy or replaces such equipment.

- Debt Service relief

Permit State and local governments in the Recovery Zone to extend repayment schedules for tax-exempt debt, including in the case of refundings, without regard to the safe harbor provisions of current law that generally require the weighted average maturity of governmental tax-exempt bond borrowings to not exceed 120% of the useful lives of the financed facilities.

Given the devastation caused by Hurricane Sandy, the affected States need all available resources at their disposal to foster reconstruction. Federal legislation can play a vital role in that rebuilding effort, just as it has done in the past for Alabama, Louisiana and Mississippi after Hurricane Katrina.