THE BOND BUYER

# How Munis Could Play a Role in Disaster Legislation

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WASHINGTON - Congress should consider legislation to facilitate bond funding in the wake of major disasters, such as broadening the types of private enterprises that can access tax-exempt financing and allowing certain advance refunding issuances, the National Association of Bond Lawyers urged in a paper released Wednesday.

The paper, “Disaster Recovery Bond Financing: Considerations for Congress” is the product of a working group chaired by John England of Butler Snow’s Jackson, Miss. office.

Based on legislation previously adopted by Congress in response to 9/11, Hurricane Katrina, and flooding in the Midwest, the recommendations lay out what NABL suggests are the most important components of comprehensive, permanent disaster recovery legislation.

“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 and other sources, may not be immediately be available for local governments to use to address emergency issues,” NABL said in the paper.

This isn’t the first push to tap the muni market for more sustainable disaster-relief funding. Last year, for example, the Council of Development Finance Agencies threw its support behind a proposal to permanently authorize as much as $20 billion of federally tax-exempt bonds for disaster rebuilding.

NABL also made recommendations for legislative and regulatory changes in September 2005 after states and localities were devastated by Hurricane Katrina.

“This paper is intended to provide Congress with a blueprint for permanent disaster relief financing mechanisms that our experience shows would benefit state and local governments in the aftermath of a major disaster,” said NABL President Sandy MacLennan, a partner at Squire Patton Boggs in Tampa, Fla. “The concept of a permanent structure for these provisions will expedite the recovery process.”

New legislation should revise the tax law to allow local governments to establish and maintain a disaster recovery working capital reserve in excess of 5% of the previous year’s working capital expenditures without resulting in tax-exempt bond proceeds being deemed not to have been spent, NABL said. A new law should also permit Treasury to draft regulations allowing tax-exempt financing to provide for costs incurred in connection with direct losses resulting from a disaster, NABL suggested, such as overtime pay and expenses to relocate staff and equipment.

Legislation should “expressly recognize that proceeds of tax-exempt bonds are spent once allocated to a recovery-related project,” NABL said, “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.”

The group recommended putting the tool of advance refundings back into the hands of disaster-affected issuers, regardless of whether such bonds were previously advance refunded prior to the passage of the 2017 tax reform legislation that ended advance refundings.

Other suggestions include easing private activity bond restrictions and granting additional low-income housing tax credit authority to each state and allowing states to convert unused carryforward of their volume cap from previous years to additional low-income housing tax credit authority.

NABL’s paper also makes suggestions on how new legislation could support the credit of disaster-stricken issuers. For example, Congress could raise the bank-qualified bond cap to $30 million from $10 million for disaster-affected issuers for some amount of time, it recommended. Congress could also permit local governments to specifically pledge Federal Emergency Management Administration (FEMA) reimbursement funds as security for the payment of bonds, and authorize states to issue tax credit bonds and lend the proceeds to disaster-affected localities.

The paper concludes its recommendations with suggestions on how legislation could create jobs to promote a sustainable recovery from a disaster. This could be accomplished through broadening the types of entities that could benefit from tax-exempt financing, including hotels, office buildings, retail stores, medical clinics and other healthcare facilities, public utility property, warehouses, and manufacturing plant buildings, NABL said.

Congress could also ease public-private partnership restrictions, and use a formula to provide a maximum private activity bond volume cap with no restrictions on years of carryforward, NABL said.

NABL said it would be happy to assist Congress, Treasury, and the Internal Revenue Service in considering specific legislative proposals.