MEMORANDUM

To: The Honorable Donald J. Trump, President of the United States
United States Senate Committee on Finance
United States House of Representatives Committee on Ways & Means

From: Toby Rittner, President & CEO
Council of Development Finance Agencies
100 E. Broad Street, Suite 1200
Columbus, OH 43215
trittner@cdfa.net

Re: Disaster Recovery Bonds

In the aftermath of Hurricanes Harvey and Irma, the residents of Texas, Florida, the U.S. Virgin Islands, and Puerto Rico 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 Hurricanes Harvey and Irma, and the likelihood that similarly disastrous weather phenomena occur in the future, legislation is needed from Congress for the benefit of the states and territories affected by the hurricanes, and to prepare for future disasters.

Using the GO Zone Act as a guide, legislation relating to Hurricanes Harvey, Irma, and future disastrous phenomena should be enacted as soon as possible and provide the following:

- Create a permanent category of tax-exempt private activity bonds, separate from federal volume cap restrictions, which could be issued by the affected states and territories in the event of a natural disaster. The bonds, to be tentatively known as "Disaster Recovery Bonds," would become available to the affected areas upon the declaration of a state of emergency by the President. We recommend a maximum federal allocation of $20 billion.
- Authorize the issuance of Disaster Recovery Bonds to finance in the disaster reconstruction zone ("Reconstruction Zone") (i) the acquisition, construction, reconstruction or renovation of non-residential real property (land, buildings, and fixtures – no equipment); (ii) the construction and rehabilitation of multi-family rental property for low and moderate income individuals, and (iii) the repair or reconstruction of damaged public utilities facilities and transportation infrastructure.
- Disaster Recovery Bonds would only be issued for the aforementioned purposes in the affected states if approved by the respective governors of such states or any duly designated officer.
    i. 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.
    ii. As with the GO Zone Act, the amount of disaster 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 Disaster 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 Disaster Recovery Bonds, provide 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 affected states, or any political subdivision thereof, that were outstanding the date the disaster occurred (in the case of hurricanes, the date the hurricane made landfall) and could not be advance refunded under the Internal Revenue Code restrictions in effect on or after that date. The Disaster Recovery Act should also permit one tax-exempt advance refunding of certain exempt facility bonds for airports, docks, or wharves that were outstanding on the date the disaster occurred and that were issued by the states affected by the disaster, 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 be state basis and the governors of the affected states (or their duly designated officers), would be required to designate such bonds with respect to the refunded facilities located in the respective jurisdictions.

The devastation wrought by Hurricanes Harvey and Irma have led CDFA to consider a more permanent solution to disaster recovery efforts. Measures in addition to those in the GO Zone Act or otherwise identified above should be considered to assure that future disasters, both natural and man-made, do not undermine the advance of improving state and local government budgets.

- 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 Disaster 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 replacing lost inventory and other working capital items.

  For Disaster 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 the disaster 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 borrowing to no exceed 120% of the useful lives of the financed facilities.

Given the devastation caused by Hurricanes Harvey and Irma, as well as the likelihood that similarly destructive events occur in the future, 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.