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September 7, 2005

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Re: Hurricane Katrina Relief and Rebuilding – Municipal
Market Needs¹

Dear Sirs:

Hurricane Katrina had an enormous impact on individual lives and property throughout the affected area. The costs of this disaster, to individuals, businesses, government and the environment, are still unknown and will last for years. Extraordinary efforts are being undertaken just to save lives at this stage and these efforts must take priority now. In order for the affected areas to begin to recover, however, they will need substantial help reestablishing the normal aspects of government and community that we all take for granted. The federal government will be providing substantial and unprecedented assistance to this effort. The

¹ It is the policy of the National Association of Bond Lawyers to encourage its members who have specialized knowledge of issues to participate in Association projects in order to benefit from that specialized knowledge. However, in order to maintain the integrity of the projects, members are expected to disclose when they represent clients who may have an interest in the subject matter of the projects. Members of the Task Force who prepared this report have clients that include affected states and political subdivisions, and non-profit and private enterprises in railroad, airline, electric utility, banking, investment banking, and healthcare that may be benefited by the proposals put forth. Although certain NABL members who participated in the drafting of this letter have clients who would be affected by issues raised in this letter, no member (or firm of such member) has been engaged by a client to make this submission or to influence the development or outcome of this submission.

municipal bond market will likely be an essential part of the Hurricane Katrina relief and rebuilding effort as well. Municipal bonds have historically been the primary means used by state and local governments to finance roads, ports, flood control, hospitals, schools, jails, housing and safe water and waste water treatment facilities. They will continue to be critically important as the affected governments struggle to raise the funds necessary to repair and replace the infrastructure destroyed by Hurricane Katrina and related collateral damage and recovery efforts. While the damage done by the Hurricane cannot be reliably estimated at this time, the destruction to essential governmental facilities alone is likely to run into the tens of billions of dollars.

Reconstructing this infrastructure is essential to protect lives and preserve not only the local economies of the devastated areas, but also to protect the national economy. The Port of New Orleans, for example, serves as the transportation gateway to a large portion of the Midwest for the movement of bulk commodities, both agricultural products for export and raw materials for manufacturing.

While significant federal and private resources will be used to rebuild this area, those resources may be limited. Implementation of the suggestions set out in the enclosed memorandum will permit the affected governments to access the municipal market to provide a portion of the reconstruction costs, and will enable the federal government to devote its resources to those things that are beyond the ability of local governments, such as large scale rescue and evacuation projects and direct aid to individuals whose lives have been devastated by Hurricane Katrina.

The capital markets legislation is the most pressing priority, and is intended to provide (1) advances from Treasury for those affected municipal issuers that have need for immediate funds to ensure timely payment of currently outstanding debt and (2) credit enhancement from the federal government for future bond issues. A copy of the proposed capital markets legislation is attached as Exhibit A-1 to Appendix A.

In order for the municipal bond market to efficiently fulfill this function, certain rules that apply to tax-exempt bonds should be temporarily suspended or waived. Although we recognize that a wide range of tax provisions and federal grant programs related to areas such as public housing, multi-family and single family housing, economic development, historic preservation, low-income housing and new market tax credits must be addressed, we have chosen at this time to only focus on certain specific areas directly related to municipal finance. However, as this tragedy continues to unfold, we may prepare additional letters or memoranda offering our assistance with these issues, if we believe it would be helpful to you. We also recognize that the most urgent priority is the preservation and protection of individual lives. We do not intend any of our efforts to impede those most urgent matters.

For convenience, the attached memorandum is divided into appendices. In Appendix A, we address those issues related to the preservation of the integrity of the municipal market in recognition of the financial stress that many state and local governments will be under as a result of the effects of Hurricane Katrina. In Appendix B, we address federal tax requirements that we

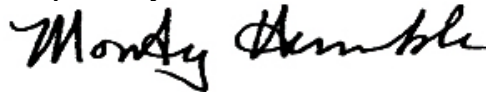
believe that the Executive Branch has the power to waive or modify. In Appendix C, we address those tax changes that will require Congressional action.

The States of Louisiana, Mississippi, Alabama and Florida suffered the most direct effect of Hurricane Katrina. However, a number of other states, including particularly contiguous states, will be substantially affected by the flow of evacuees from the damaged areas. For that reason, unless otherwise indicated, we are recommending that the items proposed be applied to the states most impacted by Hurricane Katrina, whether or not they suffered physical damage. For purposes of our recommendations, "Disaster Area" refers to the states directly impacted by Hurricane Katrina and the terms "impacted area" or "affected area" refer to both Disaster Area and other locations impacted by the Hurricane and its aftermath, as appropriate.

We also acknowledge that our recommendations are not based on an analysis of specific financial problems facing the affected areas, nor have we made any judgments regarding the effects of these recommendations on the fiscal condition of the affected entities or the federal government. These recommendations are offered simply as ameliorative measures that may assist the affected governmental and other entities in coping with the unprecedented effects of this natural disaster. We recognize that many different financial, economic and political concerns must be considered in the implementation of any relief plan.

A summary of our comments and recommendations is detailed in the attached memorandum. We understand that certain of these recommendations may require greater explanation and analysis; accordingly, we invite you to contact Monty Humble, President, NABL at 214-220-7746 or Walter St. Onge, President-Elect of NABL at 617-239-0389 for additional information. We recognize that time is of the essence in addressing this crisis, and we stand ready to meet and work with you on your schedule to the extent that you feel that our participation could be of assistance to you.

Respectfully submitted,



Monty G. Humble
President

Enclosure

cc: Mr. Stephen J. Watson
Ms. Catherine E. Livingston

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NATIONAL ASSOCIATION OF BOND LAWYERS

APPENDIX A

CAPITAL MARKETS

Capital markets issues related to municipal bonds can be divided into those that arise from bond issues that are already outstanding, and those that should be addressed in order to permit the municipal bond market to supply the maximum possible amount of capital to finance rebuilding of critical infrastructure at the lowest possible cost. However, the handling of currently outstanding bond issues will likely have a long lasting impact on investors' willingness to invest in new bond issues. For this reason, responsible handling of currently outstanding bonds is a predicate for assuring that the market will accept new bond issues to finance infrastructure.

We acknowledge that we do not have sufficient, specific information at this time to gauge to what extent issuers and borrowers in the affected areas will suffer significant, long-term financial impacts. However, it is likely that there will at least be short-term disruptions that will need to be addressed.

Our proposal for capital markets legislation is attached as Exhibit A-1.

Immediate Needs.

Risk perception. It is important to conduct an accurate census of affected issuers in order to determine the scope of the impact on the municipal market and to identify any potential systemic risks to the municipal market, whether arising from issuer or borrower defaults, credit enhancer losses, intermediary payment advances, investor concentration or other factors. Additionally, lack of information creates uncertainty, and uncertainty equates to greater risk. The sooner accurate information can be made available to the markets, the better. Of course, the ability of the affected entities to provide this information has been severely affected. Guidance to the markets as to the likely impacts, from the appropriate governmental agencies best able to make such assessments at this point, would be helpful. A public announcement of a commitment of credit support from the federal government would also serve to allay concerns.

Short-Term Relief. A number of issuers may face immediate problems with debt service payments that come due in the period from September 1 through October 1. Some of these issuers will not only be faced with substantial financial issues arising from impairment of revenues, uninsured damage to facilities, or increased demand for services, but also may have lost access to their offices, records or employees. Preventing defaults by these issuers will be an important step in maintaining investor willingness to supply new funds for the reconstruction effort that will be required. For issuers in the direct path of Hurricane Katrina with payments due between September 1 and September 15, we recognize that it may not be possible for payments to be timely made, and that special relief may be appropriate for such issuers.

Credit Lines. For issuers that have experienced significant financial losses, or lack access to funds or records, it may be necessary to have access to emergency credit lines to provide for payments that become due in the intermediate term until other arrangements can be made by the

affected states. Relief should include provisions that pre-empt state law limitations on incurrence of debt by political subdivisions. It may be necessary for the credit line to be made available to a state or a general-purpose government unit to be administered for the benefit of smaller units of government, but with the state or general-purpose unit of government required to take necessary steps to assure the repayment of the borrowings. We have prepared and attached as Exhibit A-1 legislative language modeled on previous federal legislation enacted to aid financially distressed governmental entities that could be used to implement this suggestion.

Longer Term Issues.

Two major themes for the longer term will be access to capital and flexibility in deployment of that capital.

The creditworthiness of many of the affected governmental units has been severely impacted. As of today, for example, New Orleans has virtually no residents, no revenues from its water, waste water or sanitation systems, no sales, hotel occupancy, gambling or other transaction tax revenues, and a substantially diminished ad valorem tax base for its property taxes. It seems likely that any debt issue by many of the affected governmental units along the Gulf Coast will more closely resemble a bond issue by a land development district to provide financing for a new subdivision than a traditional bond issue for an existing, thriving American city. Rebuilding all of the affected communities at an affordable cost will likely require some form of credit support to reduce the risk premium that would otherwise be imposed. Private capital may not be willing to supply, or sufficient to supply, the necessary credit support. Therefore, explicit federal guarantees of municipal credits will likely be required.

A second consideration is the enormous scope of the rebuilding project. A substantial amount of the critical infrastructure related to transportation has traditionally been financed by public private partnerships, including port facilities, pipelines, airports or rail facilities. Steps should be considered to facilitate the participation of private companies in the rebuilding of these facilities so that the credit of private companies with operations outside the affected areas can be used to supplement the credit capacity of local governments.

Exhibit A-1

Hurricane Katrina Indebtedness Guarantee and Financing Act

Section 1. Definitions.

“Eligible State” means any of Alabama, Florida, Louisiana or Mississippi.

“Eligible Political Subdivision” means any political subdivision (any division of any State or local governmental unit which is a municipal corporation or has been delegated the right to exercise part of the sovereign power of the unit) located in a county or parish designated pursuant to Federal Emergency Management Agency disaster declarations numbered DR-1602 to DR-1605, inclusive, as eligible for “individual assistance” or “public assistance”.

“Secretary” means the Secretary of the Treasury.

Section 2. Indebtedness Guarantee.

(a) Upon the written request of an Eligible Political Subdivision or an Eligible State made on or prior to ****[December 31, 2007]****, the Secretary shall guarantee the payment, in whole or in part, of indebtedness issued by such political subdivision or state during the period between the effective date of this act and ****[December 31, 2007]****.

(b) ****[The Secretary shall assess and collect from the issuer, on an annual basis in arrears, a guarantee fee computed daily at a rate of one-half of one per centum per annum on the outstanding principal amount of indebtedness guaranteed hereunder. All funds received by the Secretary in payment of such fees shall be paid into the general fund of the Treasury.]****

(c) Section 149(b) of the Internal Revenue Code shall not apply to any indebtedness guaranteed pursuant to this section.

Section 3. Conditions of Eligibility for Guarantee. The Secretary shall make guarantees only if the following conditions are satisfied:

(a) the Eligible State or Eligible Political Subdivision certifies in the written request for the guarantee that it is unable to borrow money in the public credit markets or elsewhere on reasonable terms and conditions without the guarantee;

(b) the Secretary determines that there is a reasonable prospect of repayment by the issuer in accordance with the terms and conditions of the indebtedness guaranteed; and

(c) the indebtedness guaranteed does not have a term longer than ****[ten years]****.

Section 4. Advances.

(a) Upon the written request of an Eligible State, the Secretary shall make an advance of funds from time to time for use by the Eligible State to pay principal and interest when due on outstanding indebtedness of an Eligible Political Subdivision. Any such advance shall be administered by, and constitute a contractual obligation of, the Eligible State.

(b) Any such advance shall be made by the Secretary only if the following conditions are satisfied:

(1) the Eligible Political Subdivision certifies that without the advance it would be unable to pay principal or interest on outstanding indebtedness as a result of financial hardship, lost records, displaced personnel, or other event or circumstance resulting directly or indirectly from Hurricane Katrina;

(2) the Eligible Political Subdivision certifies that it is unable to obtain the necessary funds in the public credit markets or elsewhere on reasonable terms and conditions; and

(3) the Secretary determines that there is a reasonable prospect of repayment by the Eligible State.

(c) Any advance shall be required to be repaid within ****[ten]**** years. All funds received by the Secretary in repayment of advances shall be paid into the general fund of the Treasury.

(d) Each advance shall bear interest at an annual rate equal to the rate determined by the Secretary at the time that the Secretary makes such advance taking into consideration the prevailing yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturity of such advance, ****[plus 1/8 of 1%]****.

(e) Any advance shall constitute a valid contractual obligation of the Eligible State to repay the Treasury, and of the Eligible Political Subdivision to repay the Eligible State administering the advance, notwithstanding any state constitutional or statutory provisions regarding the incurrence of debt.

Section 5. Limitations on Authority. The authority of the Secretary to extend guarantees or make advances under this title shall not at any time exceed \$_____ in the aggregate principal amount outstanding.

Section 6. Remedies.

(a) The Secretary shall take such action as may be appropriate to enforce any right accruing to the United States or any officer or agency thereof as a result of the issuance of guarantees or the making of advances under this title. Any sums recovered pursuant to this section shall be paid into the general fund of the Treasury.

(b) The Secretary shall be entitled to recover from the borrower, or any other person liable therefor, the amount of any payment made pursuant to any guarantee agreement entered into under this title, and upon making any such payment, the Secretary shall be subrogated to all the rights of the recipient thereof.

(c) Notwithstanding any other provision of law to the contrary, in the event a payment due from an Eligible Political Subdivision or an Eligible State under a guarantee agreement entered into or an advance made under this title is not made in full when due, the Secretary may not withhold any amount from any grant, entitlement, loan or other payment to the applicable Eligible Political Subdivision or Eligible State by the Federal Government for application toward reimbursement of Treasury.

(d) The remedies prescribed in this title shall be cumulative and not in limitation of or substitution for any other remedies available to the Secretary or the United States.

Section 7. Severability. If any provision of this title is held to be invalid, or the application of such provision to any person or circumstance, is held to be invalid by a court of competent jurisdiction, the remainder of this title, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

Section 8. Termination. The authority of the Secretary to make guarantees under this title terminates on ****[December 31, 2007]****. Such termination does not affect the carrying out of any contract, guarantee, or other obligation entered into pursuant to this title, or the taking of any action necessary to preserve or protect the interests of the United States arising hereunder, except that no commitment to guarantee the payment of principal or interest under this title shall be effective after such date. The authority of the Secretary to make advances under this title terminates on ****[December 31, 2006]****.

Section 9. Authorization. There are authorized to be appropriated, and to remain available without fiscal year limitation, such sums as may be necessary to carry out this title.

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APPENDIX B

ADMINISTRATIVE CHANGES – FEDERAL TAX

General Governmental Operations/Infrastructure/Education

The following proposals seek to address the basic cash needs and monumental task of repairing public infrastructure. State and local governments will experience an interruption and decrease in their revenues, which will impact the ability to pay debt service on previously issued bonds, result in shortfalls in cash available to run immediate governmental operations and may generate a need to restructure outstanding and future debt to accommodate changes in the amount and timing of revenues. State and local governments need to be able to bring in expertise of a private management company to operate a local sewer system damaged by a hurricane or to provide bond-financed space to physicians in a medical office building in order to bring back staff to operate governmental and university hospitals. Projects that were under construction at the time of the hurricane will require an extended construction period, and future projects may encounter unexpected delays because of hurricane damage. Records of the issuer, including those relating to expenditure and investment of bond proceeds, may be lost or recovery may take an extended period of time. With these types of problems in mind, we would offer for your consideration the following administrative proposals. For purposes of our recommendations, “Disaster Area” refers to the states directly impacted by Hurricane Katrina and the terms “impacted area” or “affected area” refer to both Disaster Area and other locations impacted by the Hurricane and its aftermath, as appropriate.

1. Extend all deadlines associated with arbitrage rebate to the Treasury and waive all related penalties. This has been done in the context of jurisdictions needing relief from other disasters and similar relief would be appropriate here.
2. Permit jurisdictions in the Disaster Area to borrow on both a short-term and long-term basis (e.g., thirty years) for working capital needs, without regard to the deficit sizing limits of section 1.148-6, to provide for crucial operating cashflows, and to build up necessary reserves. Provide for required repayment only after both a grace period (e.g., five to eight years, assuming cash flow has recovered) and the build-up of adequate operating reserves (based on expected future expenditures, not past history) in addition to the elimination of continuing deficits, without regard to the restrictions of section 1.148-1(c)(4).
3. Allow state and local governments to push debt service out, including in the case of refundings, beyond the replacement proceeds safe harbor under section 1.148-1(c)(4) that looks to the weighted average maturity not exceeding 120% of the financed facilities. The state or local government should be able to structure repayment based upon expectations as to the ability to repay the debt tied to revenue projections and recovery periods.
4. Amend section 1.141-2(d)(3)(ii) (Definitions relating to deliberate action that cause private activity bonds) to permit state and local governments and 501(c)(3) organizations to turn over certain operations to private companies which may be able to more efficiently

marshal employees and resources than would be the case with devastated governments or nonprofits. This amendment could be accomplished by adding a safe harbor (and example) of actions that are not treated as deliberate action that goes beyond the current safe harbor for actions that would be treated as involuntary or compulsory conversion under section 1033 of the Code.

Proposed language:

“(C) It is the result of private use necessary to bring governmental services on line as a result of disruption caused in a Disaster Area.”

5. Along the same lines of marshalling the forces of the private sector, amend section 1.141-3(d)(3) (Definitions of Exception for Certain Arrangements) to allow a governmental unit or 501(c)(3) organization an expanded short-term exception for a lease or service or management contract or other arrangement with a private business. This approach would be more efficient than also trying to modify Rev. Proc. 97-13 safe harbors for management contracts.

Proposed language:

“(iii) Arrangements for temporary use of financed property located in a Disaster Area. Use by a nongovernmental person pursuant to an arrangement, other than an arrangement resulting in ownership of financed property by a nongovernmental person, is not private business use if –

(a) the term of use under the arrangement, including all renewal options, is not longer than 5 years;

(b) the arrangement is a negotiated arm’s length arrangement, and compensation under the arrangement is fair market value; and

(c) the property is not financed for a principal purpose of providing that property for use by that nongovernmental person.

6. Amend section 1.141-3(d)(6) (Definition of Qualified Improvements) to except out any private business use treatment in the case of structural repairs to a governmentally owned building (such as roof replacement, HVAC replacements, etc.) regardless of whether the building was placed in service less than a year before the improvements or whether more than 15% of the building is used for private business use.

Proposed language:

“(v) In the case of a governmentally owned improvement located in a Disaster Area, the requirements of (i) and (iv) shall not apply for this purpose.”

7. For governmentally-owned utilities that may be able to assist a Disaster Area in bringing electricity on line, amend section 1.141-7(f)(3)(i) governing output contracts for governmental water, gas and electric systems to enlarge the exception relating to the sale of output to private utilities serving Disaster Areas. The current short-term output contract rule should be extended from 3 years to 5 years in cases of the Disaster Area to permit full recovery.

Proposed language:

“The term of the contract, including all renewal options, is not longer than 3 years (or in the case of a contract for services to a Disaster Area, 5 years);”

8. Extend temporary period (section 1.148-2) for construction projects for outstanding bonds to 5 years upon certification of architect or engineer, even though those certifications were not made at the date of issuance of the bonds.

9. Permit issuers to have reserve funds in amounts in excess of the reasonably required reserve fund limits of section 1.148-2 (including the ability to borrow such amounts) if the issuer receives a certification from the underwriter that the increased reserve amount is required for the market to purchase the bonds.

10. Modify section 1.148-7 to allow for unspent proceeds at the end of any six-month benchmark, expanding the current provision of section 1.148-7(b)(4) for *de minimis* amounts at the final 6-month period. The issuer should be able to use this exception so long as all proceeds qualifying for the spending exception are spent within 2 years of the applicable final period in the case of the 18-month and 2-year spending exceptions.

11. Modify section 1.148-6(d)(3)(ii)(A) to permit interest for up to the later of 2 years after the project is placed in service and to increase the permitted working capital amount to 10% working capital associated with a capital project. The period of time in which a project can expect to generate sufficient revenues may be slower than normal in the Disaster Area and a longer funded interest period may be financially prudent or required by the market and/or credit enhancers.

12. Treat the amount of insurance in the case of self-insured programs as “reasonable coverage” for purposes of permitting borrowing for extraordinary circumstances in section 1.148-6(d)(3)(ii)(B). State and local governments will need to borrow immediately without having to meet the administrative hurdle of establishing that the amount was reasonable in light of extraordinary disasters.

13. Provide relief from the change in use regulations of section 1.141-12(a) in cases where unspent proceeds that are on hand may need to be devoted to another purpose or where the project is otherwise not going to be completed. Proceeds should be able to be spent on working capital without adversely affecting the tax-exempt status of the bonds.

14. Expand section 149 of the Code, administratively, to permit letters of credit from other federal government agencies or instrumentalities, such as the Federal Home Loan Bank Board, for tax-exempt financed governmental and commercial projects in Disaster Areas.

15. Modify section 1.150-2 to permit the reimbursement of expenditures made no more than 180 days prior to the declaration of intent to provide relief for state and local governments and 501(c)(3) organizations. Officials of state and local governments will have an extraordinary number of issues to deal with and should be given more leeway in declaring intent to reimburse as they work through these various issues.

16. Clarify that if an issuer within a Disaster Area has already issued qualified tax-exempt obligations under section 265(b) with the reasonable expectation that it will be within the \$10 million limit, a subsequent issue will not affect the status of the previously issued bonds.

Educational Facilities

Although financing public schools would generally fall under the recommendations above for general governmental programs and infrastructure, the following are proposals related to other statutory provisions in the bond area impacting educational facilities.

17. The definition of qualified purpose under section 1397E of the Code should be expanded to include more substantial rehabilitation and replacement of school facilities. Under the expanded definition, rehabilitation and renovation would include the total replacement of school facilities damaged or destroyed in a Disaster Area and the construction or acquisition of temporary school facilities for public schools providing education for displaced students from a Disaster Area. Thus, the school district would not need to meet the type of definition of rehabilitation contained in section 47 of the Code, which depends upon the extent to which walls, etc. remain standing. The expanded definition of rehabilitation should apply in cases where the rebuilt school is at another location because the local school district determines that it is not feasible or too costly to rebuild on the original site. Damage or destruction of a school financed with the proceeds of a QZAB should not trigger the need for remedial action for property that is no longer able to meet the definition of a qualified zone academy because of damage or destruction to the property, and the redeployment of teachers and students of the specialized academy program.

18. Treat any carryover QZAB allocation that will expire in December 2005 as expiring in December 2006.

19. Revise and expand definition of “construction” for the small issuer rebate exception for public school capital expenditures to permit working capital expenditures related to the capital project which may exceed more than 5% of the bond proceeds.

20. Provide guidance under section 144(b)(3) for student loan bonds that would continue to treat loans as being made in the state of the issuer with respect to students who will not be residents of the states in the Disaster Area because families have had to move or will not be attending college in the Disaster Area state because the schools are closed and students are being accommodated at other schools that may be outside of the state. The proposed language should treat a student who qualified at the time the loan was made as a resident of the state or enrolled at an educational institution located in the State for as long as the student is displaced or the college is closed.

Hospitals and other 501(c)(3) Organizations

Many of the cash flow, debt restructuring and private use issues will be the same for hospitals and other nonprofit organizations providing very basic services to residents of the Disaster Areas. We would advocate that changes similar to those listed under General Governmental Operations/Infrastructure also be made available to 501(c)(3) entities. The following additional proposals might also be appropriate:

21. For purposes of taking advantage of the repeal of the \$150 million limit on nonhospital bonds, colleges, continuing care facilities, nursing homes, museums and cultural institutions and other 501(c)(3) organizations should be permitted to use more than 5% of the proceeds on working capital and costs of issuance, so long as the additional working capital is used in connection with the capital facilities.

22. Provide relief under section 150(b) change in use penalties if the 501(c)(3) organization finds that the private business use necessary to operate the facility exceeds the permitted limits.

Housing Provisions

The following provisions deal both with mortgage revenue bonds under section 143 of the Code for single family residences, and with residential rental facilities qualifying under section 142(d) of the Code (including those issued as qualified 501(c)(3) bonds). Replacement housing will be a vital need if the state and local governments are to be able to meet the needs of their citizens and bring back the revenues necessary for general governmental operations.

23. Revise the section 142(d) residential rental requirements for residential rental facilities to have the same relief for low-income tenants as that being extended to low-income housing tax credit projects. The relief should treat displaced persons placed in units previously occupied by low-income tenants as qualified tenants, regardless of whether the property is in the Disaster Area. Because the records of the tenants and existing projects are likely to be destroyed, those projects in the Disaster Area should be permitted to rely conclusively on Form 8703 filings as establishing compliance with the low-income set aside rules in the case of any audit.

24. Permit extensions for filing of Form 8703 for an automatic period of 6 months, with provision for additional extensions if the owner can demonstrate difficulty in reconstructing records.

25. Permit an extension of the 24-month period for substantial rehabilitation expenditures under section 147(d) where appropriate due to circumstances not within the control of the owner. This will be necessary for projects that were already underway at the time of the disaster, but could also be warranted with respect to facilities acquired in the future where unexpected difficulties due to the general condition of the area may require additional work. It is recommended that the time period be extended by 2 years for projects in the Disaster Area.

26. Amend section 6a.103A-2(b)(5) of the single family bonds regulations to treat a Disaster Area as an area of chronic economic distress without the necessity of the lengthy administrative process defined in the regulations.

Proposed language:

“(vii) The term “area of chronic economic distress” shall include a Disaster Area without regard to the provisions (i)-(vi) above.”

Economic Development Facilities

27. Amend section 1.103-10(b)(2)(iv) of the small issue bond regulations (section 144(a)) relating to the calculation of the \$10 million capital expenditures limitation. Subpart (e) would be the main provision to be amended, as it provides for the exclusion of capital expenditures required by or arising out of circumstances which could not reasonably be foreseen on the date of issue. However, it limits the additional amount to \$1 million, a figure arrived at in 1971. Subpart (c) excludes an expenditure if it is made to replace property damaged by storm or other casualty to the extent these expenditures do not exceed in dollar amount the fair market value (determined immediately before the casualty) of the property replaced.

The proposed amendments are as follows:

At the end of (c) add, “In the case of property destroyed in a Disaster Area, the entire expenditure amount is excluded without the requirement of establishing fair market value immediately before the casualty.”

At the end of (e) add, “With respect to expenditures incurred with respect to property in a Disaster Area, the aggregate dollar amount taken into account under this subdivision (e) with respect to any issue may not exceed \$5 million.”

Add a new subdivision (f) which states, “A capital expenditure is an excluded expenditure if it is made for property moved into a Disaster Area to replace property damaged or destroyed by fire, storm, or other casualty.”

28. Amend the volume cap regulations to permit reallocation of carryforward allocation to other issuers and other categories of projects. The relief should also treat any expiring carryforward as being allocated in a timely manner if it is allocated to a project in the Disaster Area by December 31 of the second year after it would otherwise have expired.

NATIONAL ASSOCIATION OF BOND LAWYERS

APPENDIX C

LEGISLATIVE CHANGES – FEDERAL TAX

The following recommendations would require legislative action by Congress. We believe that the recovery from the effects of Hurricane Katrina would be greatly assisted by the creation of a new category of tax-exempt bond, analogous to the “qualified New York Liberty Bond” program of Section § 1400L(d) of the Code. We suggest that Congress provide that such bonds be subject to their own volume cap limitation (recognizing that multiple jurisdictions will likely be involved and the cap will need to be allocated) and that the permissible use of proceeds be broad, including for both capital and working capital expenditures, with respect to the regions determined by Congress to have been sufficiently impacted by Hurricane Katrina and its aftermath. We believe that this type of provision will assist impacted jurisdictions with recovery in a flexible manner. In addition, we believe there are other, more narrow, legislative possibilities which could assist in the recovery, as described below.

Additional, more limited, legislative changes would include the following:

1. Revise the definition of “Qualified Rehabilitation Loan” to include substantial rehabilitation of property located in a Disaster Area and increasing the amount substantially above the current \$15,000 limit. Following the floods in the upper Midwest in 1997, Section 143(k)(11) was added to waive the 3-year prior ownership time period prohibition and treated the area as a targeted area for purchase price and income limits. This provision could be updated, again statutorily, to address bonds issued after December 31, 2004 and before January 1, 2008 (or longer period).

2. Enact legislation to allow proceeds of Section 143 qualified mortgage bonds to be loaned to private homebuilders, mobile homebuilders and builders of temporary housing structures to provide housing in Disaster Areas, so long as the benefit of the tax-exempt rate is transferred from the homebuilder to the homeowner in the sale price.

3. Amend Section 149(b) of the Code to waive, permanently or temporarily, federal guarantee limits on bonds issued for projects or operations within the Disaster Area.

4. Expand QZABs to cover new construction of schools in addition to costs currently permitted under the statute in a Disaster Area, regardless of whether the school would be in a designated Empowerment Zone or have met the 35% free or reduced lunch requirement. The allocation to those states should be increased and the definition of qualified holders should be deleted to provide the greatest number of market participants for these bonds.

5. Amend Section 149(d) to allow for additional opportunities to advance refund outstanding tax-exempt obligations for issuers in affected areas, similar to the relief given New York City in the Liberty Bond provisions.

6. Amend Section 265(b) to treat bonds issued in the next 5 years for projects in the Disaster Area as qualified tax-exempt obligation bonds.

