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Meeting Addresses Hurricane Recovery Legislation

By Michael J. Novogradac, CPA

Expressing incredulity at the number of blue roof tarps that remained, reflecting hurricane damage to a great number of homes and businesses in the Miami, Fla. area, participants at a special meeting to discuss recently passed hurricane recovery legislation explored the new law passed to help the Gulf Coast recover and discussed its potential to help rebuild those areas devastated by hurricanes Katrina, Wilma and Rita. The special meeting was held on January 11 in conjunction with Novogradac & Company LLP's 12th Annual Affordable Housing Developers Conference.

The impetus for the meeting was the signing into law of H.R. 4440 and the potential the legislation has for the affordable housing community to help rebuild the Gulf Coast areas. Both houses approved the legislation on December 16 and President George W. Bush signed the bill on December 21, 2005.

The package of tax incentives to aid recovery in the Gulf Coast region creates Gulf Opportunity Zones (GO Zones) and increases low-income housing tax credit (LIHTC) allocating authority for 2006, 2007 and 2008 in the amount of the lesser of the aggregate housing credit dollar amount allocated to buildings in the GO Zone or $18 times the portion of the state's population (under the most recent census) in the GO Zone. In addition, Florida and Texas will each receive a one-time additional allocation of $3.5 million for 2006.

H.R. 4440 also provides that properties in the GO Zones that are placed in service in 2006, 2007 and 2008 will be treated as difficult development areas (DDAs) and the nationwide 20 percent cap will not apply. The DDA designation is available for allocations made from January 1, 2006 through December 31, 2008 and the property must be placed in service during 2006, 2007 or 2008.

The designation of a DDA will provide a 30 percent increase in eligible basis — a definite incentive for developers to assist in the rebuilding of the storm-devastated areas.

Additionally, properties placed in service in a nonmetropolitan area in the Gulf GO Zone in the above mentioned three years are eligible to substitute national nonmetropolitan median gross income for area median gross income.

H.R. 4440 applies to three GO Zones: the Gulf GO Zone being any portion of the Hurricane Katrina disaster area in 31 Louisiana counties, 49 Mississippi counties and 11 Alabama counties; the Rita GO Zone, being the portion of the Hurricane Rita disaster area in 23 Louisiana counties and 22 Texas counties; and the Wilma GO Zone, being the portion of the Hurricane Wilma disaster area in 13 Florida counties, including Miami-Dade where the meeting was held.

The legislation also established Gulf Opportunity Zone Bonds (GO Bonds), which may be issued by Alabama, Louisiana and Mississippi. The maximum aggregate amount is $2,500 per person in the GO Zone. That translates, based on 2004 U.S. Census estimates, to approximately $2.1 billion for Alabama; $7.9 billion for Louisiana and $4.8 billion for Mississippi. These bonds are not subject to the private activity bond cap, which according to those attending the meeting, likely prohibits the combining of GO Zone bonds and the 4 percent housing credit. Also, 95 percent or more of the net proceeds of the bonds are to be used for qualified project costs or the cost of any qualified residential rental project in the GO Zone.

Other provision of the GO bonds include income limit increases from 20/50 and 40/60 to 20/60 and 40/70; a restriction on the acquisition of existing property is applied using a minimum requirement of 50 percent of the

(continued on page two)

Meeting Addresses Hurricane

(continued from page one)

cost of acquiring the building being devoted to rehabilitation; the arbitrage rebate is modified to treat GO Bonds as construction issue; and interest on GO Bonds is not a preference item for alternative minimum tax purposes.

Finally, the legislation provides for a 50 percent bonus first-year depreciation for eligible GO Zone properties and for increased expensing for GO Zone property.

Articles in the March *LIHTC Monthly Report* and *Housing Bond Report* will address some of the technical aspects of the provisions of H.R. 4440. For additional information, please also see the article on page one.

H.R. 4440 will provide much needed benefits to the hard-hit areas of the Gulf Coast. H.R. 4440 also presents significant challenges, such as which areas will be allocated the credits and bonds, what numbers will be used for population figures and how lenders and investors underwrite future rents given the hurricane-caused fluidity of the rental population in these areas.