

Use of LIHTC in Relief Legislation Demonstrates the Program's Value

By Michael J. Novogradac, CPA

In a very surprising turn of events in late September, the Senate added extenders and disaster relief legislation to the proposed \$700 billion mortgage backed securities bailout package. The Senate and House then passed the Emergency Economic Stabilization Act of 2008 and the President signed it.

Included in H.R. 1424 is additional low-income housing tax credit (LIHTC) authority for disaster relief in 10 Midwestern states, as well as areas in Texas and Louisiana that were affected by Hurricane Ike. The bill provides the Midwestern Disaster Area an additional \$8 per capita in low-income housing tax credits for 2008, 2009 and 2010. Certain areas in Texas and Louisiana will receive an additional \$16 per capita in low-income housing tax credits for 2008, 2009 and 2010.

This action and similar disaster relief efforts over the last three years demonstrates the value that lawmakers place on the LIHTC program.

Disaster Tax Relief History

H.R. 1424, originally introduced as S. 3322 in March 2007, provides authority for the federal government to purchase and insure certain types of troubled assets for the purposes of providing stability to and preventing disruption in the economy and financial system and protecting taxpayers, to amend the Internal Revenue Code of 1986 to provide incentives for energy production and conservation, to extend certain expiring provisions, to provide individual income tax relief, and for other purposes.

The LIHTC provisions are part of H.R. 1424, which passed the Senate on September 30, 2008. The Senate added previously-passed tax extender provisions in order to increase bicameral support for the Act, which the House approved on October 3. The House approved the amended bill by a vote of 263 to 170

and the President quickly signed the bill the same day.

How the disaster areas proposals became part of H.R. 1424 began late last June when the Midwestern Disaster Tax Relief Act was introduced in the Senate. The bill, an amendment to H.R. 3221, was modeled after tax legislation that Congress passed to help victims of hurricanes Rita, Wilma and Katrina in 2005.

"Federal tax relief has proven to be very helpful to disaster recovery efforts in recent years," Grassley said in July. "Lawmakers acted quickly for victims along the Gulf Coast [and] in 2005 a major individual tax relief package was by the President within three weeks of the Katrina disaster...this year, we're seeking the same consideration for Midwestern disaster victims." In 2005, while Grassley was chairman of the tax-writing committee in the Senate, a major individual tax relief package was signed into law within three weeks of the Katrina disaster. A few months later, Congress followed up with an infrastructure and business relief tax package. This year, Grassley kept the pressure on congressional leaders all summer to take similar action for natural disaster victims in Iowa and throughout the Midwest.

"This tax relief will go along way toward helping families, businesses and non-profits recover and rebuild after the disaster," said Sen. Tom Harkin, D-Iowa.

The Senate, on September 23 by a vote of 93-2 adopted a \$150 billion package of disaster relief measure and tax extenders that allowed states in the Midwestern Disaster Area to allocate an additional \$8 per capita in LIHTCs in 2008-2010. The proposal was a substitute to H.R. 6049, a version of tax extenders that had been approved by the House earlier.

(continued on page 2)

Use of LIHTC in Relief Legislation

(continued from page 1)

On October 1, the Senate by a vote of 74-25 co-opted H.R. 3997 and approved H.R. 1424 with an amendment that rewrote the entire bill, passing the Emergency Economic Stabilization Act of 2008. The Senate version of the bill carried the full text of H.R. 6049, the Renewable Energy and Job Creation Act of 2008, as amended, and on October 3, the House voted 263-171 to approve H.R. 1424, which included the extenders and disaster relief.

About the Relief Provisions

The bill's disaster relief proposals benefit taxpayers located in all counties in Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska and Wisconsin that are presidentially declared (FEMA) major disaster areas and determined to warrant individual assistance, individual and public assistance, or public only assistance due to flooding, tornadoes, or severe storms. A map of the counties included the Midwestern Disaster Area, as well as the Texas and Louisiana counties and parishes are located on pages 3-4. A list of the counties is available online at www.taxcredithousing.com. The proposals are applicable to floods, severe storms and tornadoes that are declared by FEMA on or after May 20, 2008

and before August 1, 2008.

Midwestern Relief Provisions

H.R. 1424 allows states to allocate volumes of additional housing credit amounts in years 2008, 2009, 2010 of \$8 per person in the Midwestern disaster area determined by population data issued before the earliest applicable disaster date for the Midwestern disaster areas within each state. The total estimated revenue loss of this proposal and the proposal for representations regarding income eligibility is \$2.203 billion over 10 years.

The bill also provides Iowa, Arkansas, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri and Wisconsin the authority to issue a special class of qualified private activity bonds, called Midwestern disaster area bonds, outside of the state volume caps. The maximum aggregate bond authority with respect to any state cannot exceed \$1,000 times the portion of the state population that is located in a Midwestern disaster area. Bond proceeds can be used to pay for acquisition, construction, and renovation of nonresidential real property, qualified low-income residential rental housing, and public utility

(continued on page 3)

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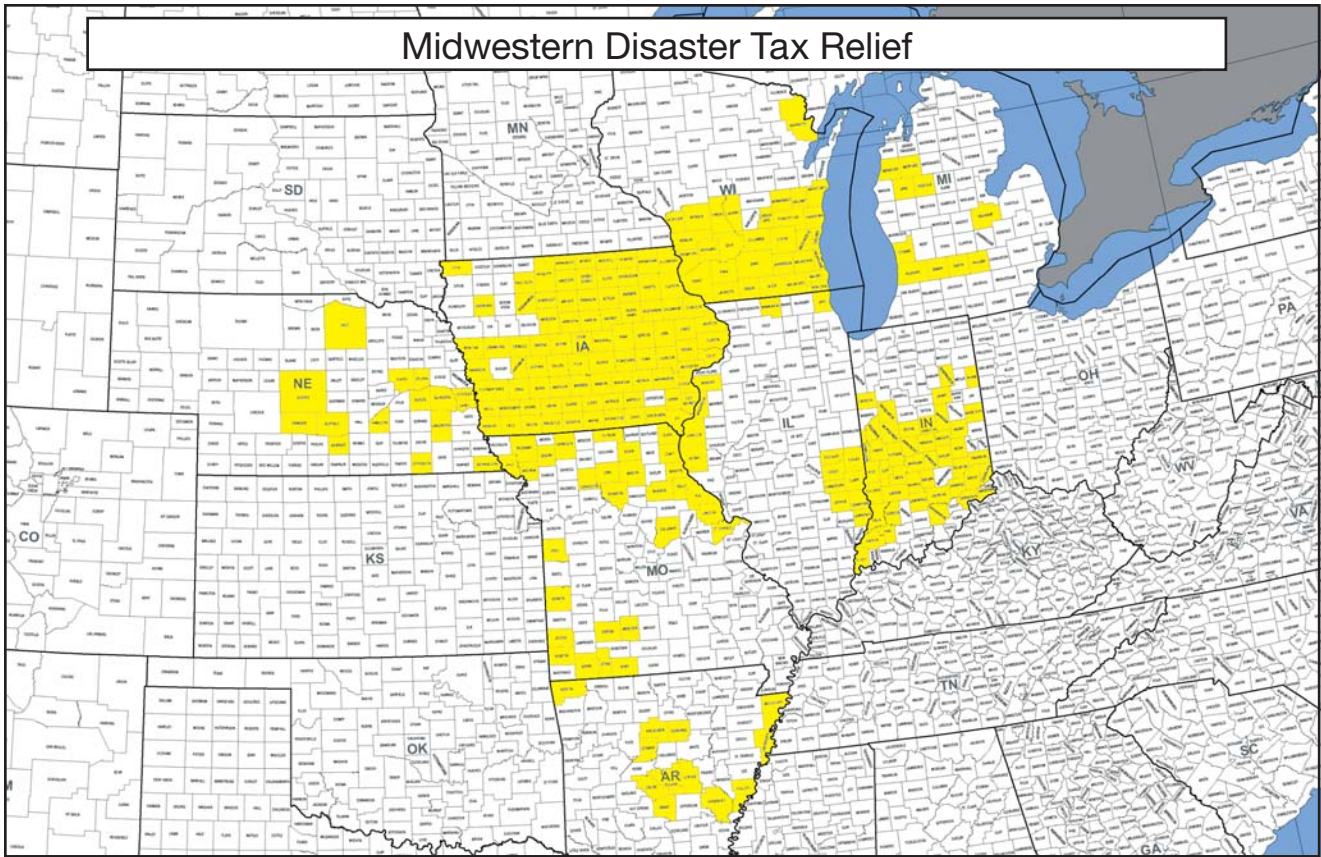
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Use of LIHTC in Relief Legislation

(continued from page 2)



property located in the Midwestern disaster area.

The current low-income housing targeting rules are relaxed so that more bond proceeds can be used to rebuild housing in the Midwestern disaster area. Interest payments on the bonds are not subject to the AMT. The authority to issue Midwestern disaster area bonds expires after December 31, 2010. The total estimated revenue loss of this proposal and the proposal for mortgage revenue bonds is \$1.320 billion over 10 years.

For those areas affected by Hurricane Ike, the proposal allows Texas and Louisiana to allocate volumes of additional housing credit amounts in years 2008, 2009, 2010 of \$16 per person based on the populations of Brazoria, Chambers, Galveston, Jefferson and Orange counties in Texas and Calcasieu and Cameron parishes in Louisiana. The total estimated revenue loss of this proposal is included in the tax-exempt bonds proposal.

H.R. 1424 provides Texas and Louisiana the authority to is-

sue a special class of qualified private activity bonds outside of the state volume caps. The maximum aggregate bond authority with respect to any state cannot exceed \$2,000 times the portion of the population of Brazoria, Chambers, Galveston, Jefferson and Orange counties in Texas and Calcasieu and Cameron parishes in Louisiana. Bond proceeds can be used to pay for acquisition, construction, and renovation of nonresidential real property, qualified low-income residential rental housing, and public utility property (e.g., gas, water, electric and telecommunication lines) located in the Hurricane Ike disaster area.

The current low-income housing targeting rules are relaxed so that more bond proceeds can be used to rebuild housing in the Hurricane Ike disaster area. Interest payments on the bonds are not subject to the AMT. The authority to issue the bonds expires after December 31, 2010. The total estimated revenue loss of this proposal and the low-income housing proposal is \$638 million over 10 years.

The affordable housing industry owes much of the recent

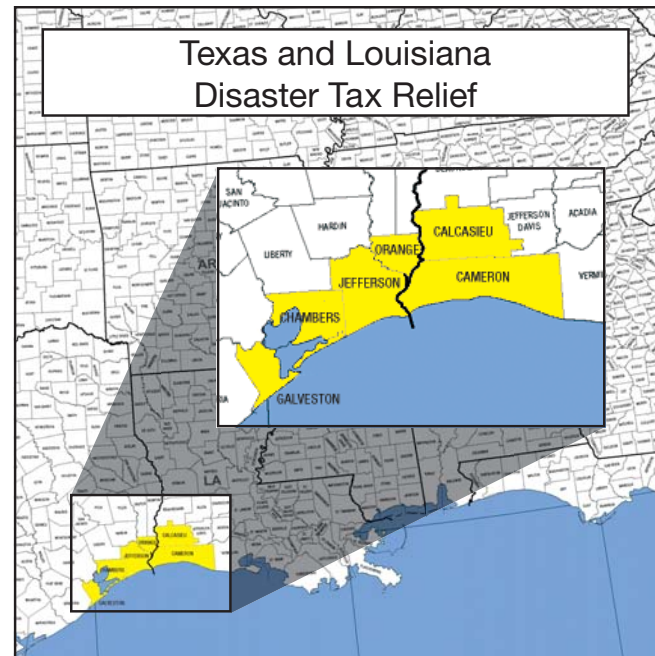
(continued on page 4)

Use of LIHTC in Relief Legislation

(continued from page 3)

legislation affecting the LIHTC program and LIHTC tax-exempt bond to the growing support of our elected leaders. Their leadership in proposing and sponsoring the many pieces of legislation that would bring general relief to disaster ravaged areas and in particular to LIHTC housing, underscore in our opinion the growing awareness and support for multifamily rental housing. Leading the industry in efforts to bring the needs and accomplishments of the industry to the attention of the nations leaders, the Affordable Housing Tax Credit Coalition and other industry organizations have worked hand-in-hand with senators Maria Cantwell, John Ensign, Max Baucus, Charles Grassley, Olympia Snowe, Charles Schumer, John Sununu, Barbara Boxer, Ben Cardin, Gordon Smith and Jay Rockefeller and Reps. Charles Rangel, Barney Frank, Nancy Pelosi, Jim McCrery and Dave Camp to mitigate the plight of low-income families whose needs in the aftermath of natural disasters intensify their already strained circumstances.

As Sen. Cardin put it so aptly in a discussion with Sen. Christopher Dodd, "We are being reminded, in the most painful way, that not all Americans can afford or want to



own a home. Therefore, it's imperative that we maintain and add to the stock of affordable rental housing in this country during these difficult times. The LIHTC is the mechanism for doing that." ❖

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