

200 KAR 15:010. Formula for allocation of private activity bonds.

RELATES TO: KRS 103.200(1)(k), (l), (m), (n), (2), 103.2101, 103.282, 103.286, 26 U.S.C. 146, Pub.L. 111-5

STATUTORY AUTHORITY: KRS 103.286(3), 26 U.S.C. 146

NECESSITY, FUNCTION, AND CONFORMITY: KRS 103.286(3) requires the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations to provide for the allocation of the state ceiling for the issuance of private activity bonds. This administrative regulation establishes the formula for that allocation. This administrative regulation also establishes the Commonwealth's role in the allocation of volume cap received as a result of the American Recovery and Reinvestment Act of 2009, Pub.L. 111-5.

Section 1. Definitions.

- (1) "Affected bonds" means "private activity bonds" as defined by 26 U.S.C. sec. 146, excluding any obligations not subject to the state ceiling under the Code.
- (2) "Allocation" means the amount of volume cap that was approved by the Kentucky Private Activity Bond Allocation Committee for a local issuer or state issuer.
- (3) "ARRA" means the American Recovery and Reinvestment Act of 2009, Pub.L. 111-5.
- (4) "Available volume cap" means the amount of unallocated volume cap remaining at the close of business on June 30.
- (5) "Bonds" is defined by KRS 103.200(2).
- (6) "Committee" means the Kentucky Private Activity Bond Allocation Committee.
- (7) "Eligible volume cap applicants" means issuers and local issuers who file a notice of intent to issue bonds relating to volume cap.
- (8) "Energy efficiency project" means a project meeting the requirements of KRS 103.282.
- (9) "Energy efficiency project reserve" means the percentage of the state ceiling that shall be reserved for an energy efficiency project through June 30.
- (10) "Issued" means delivered and paid for.
- (11) "Issuer" means the public or authorized governmental body which issues the bonds.
- (12) "Local issuer" means a public or authorized governmental body which issues bonds on behalf of a local project.
- (13) "Local issuer pool" means the portion of the state ceiling from which allocations for local projects are made to issuers of affected bonds issued on behalf or for the benefit of an entity which is not a state agency.
- (14) "Local project" means a project, other than a project for creation or financing of residential single family or multifamily affordable housing which are included under the "state projects", for which bonds are issued on behalf or for the benefit of an entity which is not a state agency.
- (15) "Lottery" means any process of random selection utilized to allocate available volume cap and which is conducted:
 - (a) By staff at a public meeting of the Committee; and
 - (b) In accordance with Section 4 of this administrative regulation.
- (16) "Staff" means the Office of Financial Management of the Finance and Administration Cabinet.
- (17) "State ceiling" means the cap imposed by 26 U.S.C. 146 on private activity bonds issued within the Commonwealth of Kentucky.
- (18) "State project" means a project, including creation or financing of residential single family or multifamily affordable housing projects and student loans, for which bonds are issued by, on behalf, or for the benefit of a state agency.
- (19) "Year" means calendar year.

Section 2. Evaluation of Local Projects. Local projects seeking allocation from the state ceiling shall be allocated according to rankings based on the following factors:

- (1) Creation of new jobs, as well as preservation of existing jobs, by the project;
- (2) Average hourly wage and benefits of new employees proposed for the project;
- (3) Capital investment in Kentucky being made as a result of the project;
- (4) Unemployment rate in the county of the project;
- (5) Any state economic development incentives awarded to the company; and
- (6) Previous state ceiling allocated to the benefited borrower within the last ten (10) years.

Section 3. Evaluation of Energy Efficiency Projects. Energy efficiency projects seeking allocation from the state ceiling under the Energy Efficiency Project Reserve shall be allocated according to rankings based on the following factors:

- (1) Annual energy savings associated with the project;
- (2) Capital investment in Kentucky being made as a result of the project;
- (3) Unemployment rate in the county of the project;
- (4) Any state economic development incentives awarded to the company; and
- (5) Previous state ceiling allocated to the benefited borrower within the last ten (10) years.

Section 4. Allocation of Available Volume Cap.

- (1) Allocations from the available volume cap shall be made to eligible volume cap applicants as follows:
 - (a) First, a lottery shall be conducted to determine the order of disbursement to local projects which did not receive an allocation from the local issuer pool;
 - (b) Second, to the extent there is remaining available volume cap, a lottery shall be conducted to determine the order of disbursement to local projects which received an allocation from the local issuer pool, whether the allocation was issued or not; and
 - (c) Finally, any remaining available volume cap shall be allocated by the committee to one (1) or more state issuers for use during the year or as carry forward.
- (2) The committee shall choose a reasonable method of random selection for the lottery process.

Section 5. Committee Meetings. The committee shall meet as necessary to allocate the state ceiling. Special meetings may be held on the call of the committee chairman.

Section 6. An issuer shall obtain a confirmation authorizing the issuance of affected bonds by filing with the committee a written notice of intent to issue bonds, using the "Notice of Intent" form. The committee shall issue a confirmation, using the "Confirmation of Allocation of State Ceiling" form, allocating to the issuer a portion of the state ceiling. Affected bonds shall not be issued by any issuer prior to receiving confirmation by the committee of an allocation under the state ceiling. Confirmations shall be dated and numbered in the order issued.

Section 7. Notice of Issuance for Local Projects and Energy Efficiency Projects. A confirmation shall expire ninety (90) calendar days from the date of allocation by the committee, or December 15, whichever is earlier. The issuer shall deliver to the committee a notice that the affected bonds have been issued, using the "Notice of Issuance" form. The notice of issuance may be sent by any means, but the committee shall receive it by the close of business on the 90th day after the confirmation. If the notice period ends on a Saturday, Sunday, or other day upon which state offices are closed for business, the notice period shall be extended to the next business day.

Section 8. Notice of Issuance for State Projects. The issuer shall deliver to the committee a notice of issuance. The notice of issuance may be sent by any means, but the committee

shall receive it by the close of business on or before December 15. If the notice period ends on a Saturday, Sunday, or other day upon which state offices are closed for business, the notice period shall be extended to the next business day.

Section 9. Issuance of Bonds in Lesser Amounts than Confirmation. A confirmation of affected bonds shall be effective if the issued amount of the bonds is not less than eighty-five (85) percent of the original confirmation. The issuer shall notify the committee if the bonds issued are within the eighty-five (85) percent requirement and the unused part of the allocation shall revert to the local issuer pool, or if this reversion occurs after June 30 of any year, the amount shall become available volume cap.

Section 10. Carry Forward Allocations.

(1) In any year, the committee shall allocate any remaining state ceiling as carry forward allocations if the aggregate amount of affected bonds issued during the year is less than the state ceiling on December 15th. An issuer shall, in order to receive a carry forward allocation, file with the committee by December 15th:

(a) A notice of intent; and

(b) A carry forward election of unused private activity bond volume cap, using U.S. Treasury Department Form 8328.

(2) The carry forward of any unallocated portion of the state ceiling may be for any purpose authorized by 26 U.S.C. sec. 146(f).

(3) The committee shall issue a confirmation of the notice and election to carry forward, using the "Confirmation of Carry Forward Allocation of State Ceiling" form.

(4) The committee may, but shall not be required to, allocate a carry forward notice or election filed after December 15th.

Section 11. The committee shall not confirm a notice of intent after the aggregate amount of bond confirmations, including carry forwards, have reached the state ceiling for that year.

Section 12. Form and Manner.

(1) The committee and issuer shall use the notice and confirmation forms incorporated by reference in Section 15 of this administrative regulation.

(2) An issuer of a local project or energy efficiency project shall not:

(a) File a notice of intent unless the issuance will be made within the ninety (90) day confirmation period established in Section 7 of this administrative regulation; or

(b) Seek an allocation of the state ceiling in excess of the amount necessary to finance all costs of a local project.

(3) An issuer of a state project shall not:

(a) File a notice of intent unless the issuance will be made by December 15; or

(b) Seek allocation of the state ceiling in excess of the amount necessary to finance all costs of a state project.

Section 13. Delegation of Functions. The committee shall review and allocate all requests for state ceiling. The committee shall not delegate authority to make allocations of the state ceiling to staff except if there are surplus or carry forward allocations. Any delegation of authority and the limit of that authority shall be recorded verbatim in the minutes of the committee meeting at which the delegation is made.

Section 14. Volume Cap Allocations under ARRA.

(1) If federal regulations allocate volume cap directly to the Commonwealth or allow for transfer or waiver of any direct volume cap allocation to a local government back to the Commonwealth, the committee shall:

(a) Accept any notice of waiver of volume cap as authorized by the local governing body on behalf of the Commonwealth;

(b) Accept applications of eligible volume cap recipients consistent with federal regulation; and

(c) Rank each application and allocate volume cap based upon:

1. Any federally mandated standards and objectives; and
2. Expected value to the Commonwealth.

(2) Notice of Issuance. The issuer shall deliver to the committee a notice that the affected bonds have been issued within the time constraints established in the applicable federal regulation, if any.

Section 15. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Notice of Intent" application, December 2014;
- (b) "Confirmation of Allocation of State Ceiling", March 1998;
- (c) "Confirmation of Carry-forward Allocation of State Ceiling", March 1998;
- (d) "Notice of Issuance", March 1998; and
- (e) "U.S. Treasury Department Form 8328".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Financial Management, 76 Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(15 Ky.R. 2125; eff. 5-11-1989; Am. 22 Ky.R. 101; 715; eff. 9-28-1995; 1334; eff. 2-20-1996; 23 Ky.R. 462; 1927; eff. 10-24-1996; 25 Ky.R. 400; eff. 10-22-1998; 31 Ky.R. 610; 1053; eff. 1-4-2005; 32 Ky.R. 1460; 1904; eff. 6-2-2006; 36 Ky.R. 836; 1435; eff. 2-5-2010; 41 Ky.R. 1852; 2068; eff. 5-1-2015; Crt eff. 4-9-2019.)