

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)

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 additional federal volume cap ~~received as a result of the American Recovery and Reinvestment Act of 2009, Pub.L. 111-5~~.

Section 1. Definitions.

- (1) "Additional federal volume cap" means federal volume cap allocated above the annual state allocation provided by 26 U.S.C. sec. 146(d).
- (2) "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.
- (3) ~~[(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. Additional Federal 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) The "Notice of Intent" form specified by the Office of Financial Management and posted on its Web site;
- (b) The "Confirmation of Allocation of State Ceiling" form specified by the Office of Financial Management and posted on its Web site;
- (c) The "Confirmation of Allocation of Carry-Forward Allocation of State Ceiling" form specified by the Office of Financial Management and posted on its Web site;
- (d) The "Notice of Issuance" form specified by the Office of Financial Management and posted on its Web site; and
- ~~[(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, 200 Mero Street, 5th Floor~~[76 Capitol Annex]~~, Frankfort, Kentucky 40622~~[40601]~~, Monday through Friday, 8 a.m. to 4:30 p.m. and online at the Office of Financial Management's Web site at <https://finance.ky.gov/office-of-the-controller/office-of-financial-management/Pages/default.aspx>.

HOLLY M. JOHNSON, Secretary

APPROVED BY AGENCY: August 14, 2024

FILED WITH LRC: August 15, 2024 at 8:30 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, October 23, 2024, at 10:00 a.m. Eastern time, at the Kentucky Finance and Administration Cabinet, Room C117, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be

accepted until 11:59 p.m. on Thursday, October 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Laura Sharp, Administrative Specialist III, Office of General Counsel, 200 Mero Street, 5th Floor, Frankfort, Kentucky 40622; phone (502) 564-6660, fax (502) 564-9875, email laura.sharp@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Laura Sharp

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the formula for allocation of the state ceiling for the issuance of private activity bonds.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary for the evaluation of the allocation of private activity bonds to local projects, energy efficiency projects, and state level projects as well as applicable allocation, notice, and administrative standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This regulation describes criteria for efficient allocation of resources within the parameters established by federal tax law and the authorizing statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation assists in the equitable allocation of private activity bonds among project participants across the state.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This amendment contains primarily technical and grammatical updates. It also seeks to simplify the process for updating incorporated reference material, which changes frequently.

(b) The necessity of the amendment to this administrative regulation:

Technical and grammatical changes are needed to maintain clarity, and the other changes are necessary to keep the regulation in line with current economic trends.

(c) How the amendment conforms to the content of the authorizing statutes:

The amendment is compliant with KRS 103.286(3) and 26 U.S.C. 146.

(d) How the amendment will assist in the effective administration of the statutes:

This amendment seeks to update technical and grammatical points as well as to simplify process of providing notice of up-to-date incorporated materials.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

The Commonwealth traditionally has two (2) state issuers, The Kentucky Housing Corporation and the Kentucky Higher Education Student Loan Corporation, as well as a multitude of projects on the local level.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

No impact is expected from the implementation of this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

No costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Not applicable.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

No additional cost.

(b) On a continuing basis:

No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

No additional funding is necessary for implementation of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No additional funding is necessary for implementation of this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

No fees are established or increased.

(9) TIERING: Is tiering applied?

There is no tiering because it is not applicable.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

The applicable federal statute is the Tax Reform Act of 1986, 26 U.S.C. Sec 146. Kentucky Statutes include KRS 103.200, 103.2101 and 103.286

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

None should be directly affected. This regulation only affects the Finance and Administration Cabinet.

(a) Estimate the following for the first year:

Expenditures:\$0

Revenues:\$0

Cost Savings:\$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

No subsequent year impacts on expenditures, revenues, or cost savings are expected.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

None should be directly affected. This regulation only affects the Finance and Administration Cabinet.

(a) Estimate the following for the first year:

Expenditures:\$0

Revenues:\$0

Cost Savings:\$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

No subsequent year impacts on expenditures, revenues, or cost savings are expected.

(4) Identify additional regulated entities not listed in questions (2) or (3):

None should be directly affected. This regulation only affects the Finance and Administration Cabinet.

(a) Estimate the following for the first year:

Expenditures:\$0

Revenues:\$0

Cost Savings:\$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

No subsequent year impacts on expenditures, revenues, or cost savings are expected.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

None.

(b) Methodology and resources used to determine the fiscal impact:

The regulation is being amended to bring it into alignment with current Office of Financial Management practice.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

No major economic impact is expected.

(b) The methodology and resources used to reach this conclusion:

The regulation is being amended to bring it into alignment with current Office of Financial Management practice.