

1 FINANCE AND ADMINISTRATION CABINET

2 Office of the Secretary

3 (Amendment)

4 200 KAR 15:010. Formula for allocation of private activity bonds.

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

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

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

15 Section 1. Definitions.

16 (1) "Additional Federal volume cap" means Federal volume cap allocated above the
17 annual State allocation provided by 26 U.S.C sec. 146(d).

18 (2)[(1)] "Affected bonds" means "private activity bonds" as defined by 26 U.S.C. sec.
19 146, excluding any obligations not subject to the state ceiling under the Code.

20 (3)[(2)] "Allocation" means the amount of volume cap that was approved by the
21 Kentucky Private Activity Bond Allocation Committee for a local issuer or state issuer.

1 ~~[(3) "ARRA" means the American Recovery and Reinvestment Act of 2009, Pub.L. 111-~~

2 ~~5.]~~

3 (4) "Available volume cap" means the amount of unallocated volume cap remaining at
4 the close of business on June 30.

5 (5) "Bonds" is defined by KRS 103.200(2).

6 (6) "Committee" means the Kentucky Private Activity Bond Allocation Committee.

7 (7) "Eligible volume cap applicants" means issuers and local issuers who file a notice of
8 intent to issue bonds relating to volume cap.

9 (8) "Energy efficiency project" means a project meeting the requirements of KRS
10 103.282.

11 (9) "Energy efficiency project reserve" means the percentage of the state ceiling that shall
12 be reserved for an energy efficiency project through June 30.

13 (10) "Issued" means delivered and paid for.

14 (11) "Issuer" means the public or authorized governmental body which issues the bonds.

15 (12) "Local issuer" means a public or authorized governmental body which issues bonds
16 on behalf of a local project.

17 (13) "Local issuer pool" means the portion of the state ceiling from which allocations for
18 local projects are made to issuers of affected bonds issued on behalf or for the benefit of an entity
19 which is not a state agency.

20 (14) "Local project" means a project, other than a project for creation or financing of
21 residential single family or multifamily affordable housing which are included under the "state
22 projects", for which bonds are issued on behalf or for the benefit of an entity which is not a state
23 agency.

1 (15) "Lottery" means any process of random selection utilized to allocate available
2 volume cap and which is conducted:

- 3 (a) By staff at a public meeting of the Committee; and
- 4 (b) In accordance with Section 4 of this administrative regulation.

5 (16) "Staff" means the Office of Financial Management of the Finance and
6 Administration Cabinet.

7 (17) "State ceiling" means the cap imposed by 26 U.S.C. 146 on private activity bonds
8 issued within the Commonwealth of Kentucky.

9 (18) "State project" means a project, including creation or financing of residential single
10 family or multifamily affordable housing projects and student loans, for which bonds are issued
11 by, on behalf, or for the benefit of a state agency.

12 (19) "Year" means calendar year.

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

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

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

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

10 Section 4. Allocation of Available Volume Cap.

11 (1) Allocations from the available volume cap shall be made to eligible volume cap
12 applicants as follows:

13 (a) First, a lottery shall be conducted to determine the order of disbursement to local
14 projects which did not receive an allocation from the local issuer pool;

15 (b) Second, to the extent there is remaining available volume cap, a lottery shall be
16 conducted to determine the order of disbursement to local projects which received an allocation
17 from the local issuer pool, whether the allocation was issued or not; and

18 (c) Finally, any remaining available volume cap shall be allocated by the committee to
19 one (1) or more state issuers for use during the year or as carry forward.

20 (2) The committee shall choose a reasonable method of random selection for the lottery
21 process.

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

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

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

15 Section 8. Notice of Issuance for State Projects. The issuer shall deliver to the committee
16 a notice of issuance. The notice of issuance may be sent by any means, but the committee shall
17 receive it by the close of business on or before December 15. If the notice period ends on a
18 Saturday, Sunday, or other day upon which state offices are closed for business, the notice period
19 shall be extended to the next business day.

20 Section 9. Issuance of Bonds in Lesser Amounts than Confirmation. A confirmation of
21 affected bonds shall be effective if the issued amount of the bonds is not less than eighty-five
22 (85) percent of the original confirmation. The issuer shall notify the committee if the bonds
23 issued are within the eighty-five (85) percent requirement and the unused part of the allocation

1 shall revert to the local issuer pool, or if this reversion occurs after June 30 of any year, the
2 amount shall become available volume cap.

3 Section 10. Carry Forward Allocations.

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

8 (a) A notice of intent; and

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

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

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

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

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

19 Section 12. Form and Manner.

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

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

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

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

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

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

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

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

14 Section 14. Additional Federal Volume Cap Allocations [~~under ARRA~~].

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

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

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

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

23 1. Any federally mandated standards and objectives; and

1 2. Expected value to the Commonwealth.

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

5 Section 15. Incorporation by Reference.

6 (1) The following material is incorporated by reference:

7 (a) The "Notice of Intent" form specified by the Office of Financial Management and
8 posted on its Web site;

9 (b) The "Confirmation of Allocation of State Ceiling" form specified by the Office of
10 Financial Management and posted on its Web site;

11 (c) The "Confirmation of Allocation of Carry-Forward Allocation of State Ceiling" form
12 specified by the Office of Financial Management and posted on its Web site;

13 (d) The "Notice of Issuance" form specified by the Office of Financial Management and
14 posted on its Web site; and

15 ~~{(a) "Notice of Intent" application, December 2014;~~

16 ~~(b) "Confirmation of Allocation of State Ceiling", March 1998;~~

17 ~~(c) "Confirmation of Carry-forward Allocation of State Ceiling", March 1998;~~

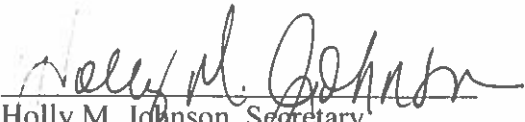
18 ~~(d) "Notice of Issuance", March 1998; and]~~

19 (e) "U.S. Treasury Department Form 8328".

20 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
21 law, at the Office of Financial Management, 200 Mero Street, 5th Floor~~[76 Capitol Annex],~~
22 Frankfort, Kentucky 40622~~[40601]~~, Monday through Friday, 8 a.m. to 4:30 p.m. and online at

- 1 the Office of Financial Management's Web site at [https://finance.ky.gov/office-of-the-](https://finance.ky.gov/office-of-the-controller/office-of-financial-management/Pages/default.aspx)
- 2 [controller/office-of-financial-management/Pages/default.aspx](https://finance.ky.gov/office-of-the-controller/office-of-financial-management/Pages/default.aspx).

APPROVED:



Holly M. Johnson, Secretary
Finance and Administration Cabinet



Date

PUBLIC HEARING AND PUBLIC 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

200 KAR 15:010

Contact Person: Laura Sharp, Administrative Specialist III, Office of General Counsel, 200 Mero Street, 5th Floor, Frankfort, Kentucky 40622

Phone: (502) 564-6660

Email: laura.sharp@ky.gov

(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 assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: No impact is expected from the implementation of this administrative regulation.

(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: None.

(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 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? (Explain why tiering was or was not used.) There is no tiering because it is not applicable.

FISCAL IMPACT STATEMENT

200 KAR 15:010

Contact Person: Laura Sharp, Administrative Specialist III, Office of General Counsel, 200 Mero Street, 5th Floor, Frankfort, Kentucky 40622

Phone: (502) 564-6660

Email: laura.sharp@ky.gov

(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.

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

1. The “Notice of Intent” is a 7-page application for all state and local entities that seek to apply for the allocation of volume cap necessary to issue tax exempt bonds for private activity purposes. Any entity seeking volume cap allocation from the Commonwealth to issue private activity bonds must use the “Notice of Intent” application to apply with the Kentucky Private Activity Bond Allocation Committee.

2. The “Confirmation of Allocation of State Ceiling” is a 1-page document to be issued by the Kentucky Private Activity Bond Allocation Committee after receiving and approving a “Notice of Intent” filed by state and local entities seeking to apply for the allocation of volume cap necessary to issue tax exempt bonds for private activity purposes. The “Confirmation of Allocation of State Ceiling” will indicate the amount of the state ceiling to be allocated to the requester and from which issuer pool it is being allocated.

3. The “Confirmation of Allocation of Carry-Forward Allocation of State Ceiling” is a 1-page document to be issued by the Kentucky Private Activity Bond Allocation Committee after receiving and approving a notice of intent and carry forward election by an issuer. The “Confirmation of Allocation of Carry-Forward Allocation of State Ceiling” will indicate the amount of the carry-forward state ceiling to be allocated to the requester and from which issuer pool it is being allocated.

4. The “Notice of Issuance” is a 1-page document to be delivered by the issuer to the Kentucky Private Activity Bond Allocation Committee once the affected bonds have been issued.

5. “U.S. Treasury Department Form 8328” is a 2-page document to be delivered by the issuer to the Kentucky Private Activity Bond Allocation Committee in order to receive a carry forward allocation.

SUMMARY OF CHANGES TO MATERIAL INCORPORATED BY REFERENCE

No substantive changes have been made to the materials incorporated by reference themselves. The proposed amendments to the incorporation by reference section of the regulation are meant to allow the Office of Financial Management to make non-substantive formatting, technical, and other updates to its forms without the need to amend 200 KAR 15:010 each time it needs to do so.