

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2009-02

**CONTINUING A SYSTEM FOR ALLOCATING VOLUME CAP IN THE STATE
CONSISTENT WITH THE PROVISIONS OF TITLE 50, CHAPTER 28, IDAHO CODE,
AND THE U.S. INTERNAL REVENUE CODE OF 1986**

WHEREAS, Section 146 of the U.S. Internal Revenue Code of 1986 (the "Code") subjects certain private activity and non-private activity bonds to volume limitations or "volume cap" (the "Volume Cap"); and

WHEREAS, as required by Section 146(e) of the Code, the Idaho Legislature did adopt the provisions of Title 50, Chapter 28, Idaho Code, (the "State Law") to provide a permanent allocation formula for Volume Cap in the state; and

WHEREAS, Section 50-2804 Idaho Code, authorizes and directs the Governor of the State of Idaho to provide for the implementation and administration of the allocation formula established under Section 50-2803, Idaho Code, by executive order and the Governor did issue his Executive Order No. 2004-10 providing therefore; and

WHEREAS, in order to renew the provisions contained in said Executive Order No. 2004-10, to amend the allocation formula in order to meet the requirements of said amendments to the State Law and to continue to provide for the implementation and administration of the formula for allocation of the Volume Cap among the state and its issuing authorities under the State Law, it is necessary and desirable to issue this Executive Order;

NOW, THEREFORE, I, C.L. "BUTCH" OTTER, Governor of the State of Idaho, by the power vested in me by the Constitution and laws of the State of Idaho, do hereby order and proclaim:

Section 1: As used in this Executive Order:

- (1) "Allocation Dollars" means the dollar amount of the Volume Cap expressed in terms of dollars. Each allotment dollar equals one dollar of Volume Cap that may be allocated under this Executive Order and the State law.
- (2) "Bonds" means any obligations for which an allocation of the Volume Cap is required by the Code and the State Law including, without limitation, mortgage credit certificates described in Section 25 of the Code. With respect to any allocation of Allotment Dollars for the purpose of issuing certificates, certificates will be deemed "issued" when the mortgage credit certificate program for which the allocation is made is implemented.
- (3) "Code" means the Internal Revenue Code of 1954, as amended by the Reform Act of 1986 and renamed the Internal Code of 1986, and any related regulations.
- (4) "Department" means the Department of Commerce of the State.
- (5) "Director" means the director of the Department or such other official or officials of the Department as the director shall designate to carry out the duties of the director set forth in this Executive Order.
- (6) "Form 8038" means Department of the Treasury tax form 8038 (OMB NO. 1545-0720) or any other federal tax form or other method of reporting required by the Department of the Treasury under Section 149(e) of the Code.
- (7) "Issuing Authority" means:

- (a) any county, city or port district;
 - (b) any public corporation created pursuant to Section 50-2703 of the Idaho Code, or other entity acting on behalf of one or more counties, cities, or both;
 - (c) the State; or
 - (d) any other entity authorized to issue Bonds in the State.
- (8) “Priority Set Aside” means one of the priority set asides established under Section 4(1) hereof.
- (9) “Program” means the program to be financed in whole or in part with the proceeds of the sale of Bonds or to be implemented through the issuance of mortgage credit certificates under Section 25 of the Code.
- (10) “Project” means the facility to be financed in whole or in part with the proceeds of sale of Bonds.
- (11) “Qualifying Carryforward Project or Program” means a Project or Program qualifying for carryforward under Section 146(f) of the Code.
- (12) “State” means the state of Idaho, any of its agencies, instrumentalities, institutions and divisions authorized to issue Bonds under State law.
- (13) “State Law” means Title 50, Chapter 28, Idaho Code, as amended.
- (14) “Volume Cap” means the volume cap for the State as computed under Section 146 of the Code.
- (15) “Year” means each calendar year beginning January 1.

Section 2. The Volume Cap for each Year is allocated to Issuing Authorities in accordance with the procedures set forth in this Executive Order. An allocation of the Volume Cap may be obtained by submitting an application to the Director in accordance with Section 3 or Section 5, as appropriate. The Director shall evidence a grant of an allocation of the Volume Cap by issuing a certificate of allocation in accordance with Section 4 or Section 5, as appropriate.

Section 3.

- (1) Any Issuing Authority proposing to issue Bonds shall, prior to the issuance of such Bonds, submit an application to the Director which contains the following information and attachments:
- (a) the name of the Issuing Authority;
 - (b) the mailing address of the Issuing Authority;
 - (c) the tax identification number of the Issuing Authority;
 - (d) the name, title and office telephone number of the official of the Issuing Authority to whom notices should be sent and from whom information can be obtained;
 - (e) the principal amount of Bonds proposed to be issued for which an application for an allocation of the Volume Cap is requested;
 - (f) the nature, the purpose and the specific location of the Project or the type of Program;

- (g) *the initial owner or user of the Project or Program, if other than the Issuing Authority;*
 - (h) *a copy of a valid and fully executed resolution or similar official action of the Issuing Authority evidencing its intention to issue Bonds for the Project or Program;*
 - (i) *with respect to Bonds, the anticipated date on which the Bonds are expected to be sold and the anticipated date on which the closing or final transaction with respect to the issuance and sale of the Bonds is expected to occur and, with respect to mortgage credit certificates under Section 25 of the Code, the anticipated date on which such mortgage credit certificates are expected to be issued;*
 - (j) *the name, address, and telephone number of all parties to the transaction;*
 - (k) *the applicable provisions of the Code under which the Bonds are expected to be issued;*
 - (l) *such information as the applicant may wish to submit in order to demonstrate the need for, and economic impact of, its Program or Project in the State, together with any information which demonstrates how its Program or Project will effectively utilize and efficiently distribute resources throughout the State; and*
 - (m) *any other information or attachments reasonably required by the Director.*
- (2) *The Director shall:*
- (a) *establish the form of application for requests for allocations of the Volume Cap, which form shall contain the information required by Section 3(1); and*
 - (b) *make such forms available to the public upon request.*
- (3) *The Director shall be under no obligation to process any application that is incomplete. Any application submitted by an Issuing Authority that the Director does not process shall be returned by the Director on or before the fifteenth day after receipt thereof with a brief explanation as to why the application was not processed.*

Section 4.

- (1) *Allocations of Volume Cap shall be made each Year according to the following Priority Set Asides:*
- (a) *qualified small issue manufacturing projects under Section 144(a) of the Code, in an amount between 7% and 13% of the total Allocation Dollars available for the Year as determined by the Director;*
 - (b) *single family housing financing through the Idaho Housing and Finance Association under Section 143 of the Code, in an amount between 55% and 80% of the total Allocation Dollars available for the Year as determined by the Director;*
 - (c) *multifamily housing, as qualified residential rental projects under Section 142(a)(7) of the Code, in an amount between 0% and 8% of the total Allocation Dollars available for the Year as determined by the Director;*
 - (d) *student loan programs through the Education Funding Association of Idaho under Section 144(b) of the Code, in an amount between 0% and 15% of the total Allocation Dollars available for the Year as determined by the Director;*

(e) *beginning farmer financings, arranged by the Idaho Department of Agriculture under Section 144(a) of the Code, in an amount between 0% and 2% of the total Allocation Dollars available for the Year as determined by the Director;*

(f) *exempt facilities under Section 142(a) of the Code, other than qualified residential rental projects, in an amount between 0% and 32% of the total Allocation Dollars available for the Year as determined by the Director.*

(g) *Any qualified uses for Volume Cap not identified above are eligible for allocations in accordance with Section 4(4) below.*

(h) *Not later than January 31st of each year, subject to the provisions of Section 4(9) hereof, the Director shall determine the amount of Allocation Dollars within each Priority Set Aside, based on the need for, and economic impact of, the Program or Project to be financed under each application and how such expected Program or Project will effectively utilize and efficiently distribute resources throughout the State.*

(i) *The above Priority Set Asides shall be in effect through August 31 of each Year. Thereafter, allocations shall be made in accordance with Section 4(4) and (5) below. All other potential uses of Volume Cap under the Code, other than those listed in the Priority Set Asides above, may also be allocated on or after September 1 of each Year upon application to the Director as provided in Section 4(4) and (5) below.*

(2) *Except as otherwise provided in this Executive Order, on or before the fifteenth day after receipt by the Director of an application for an allocation of the Volume Cap, the Director shall, if the application is in satisfactory order, and if the Director determines that the application demonstrates the need for, and economic impact of, the particular Program or Project in the State and how the Program or Project will effectively utilize and efficiently distribute resources throughout the State, the Director will make the requested allocation in the amount so requested, if available under the applicable Priority Set Aside in Section 4(1) above, and certify to the Issuing Authority applying for the allocation that an allocation has been made, the amount of such allocation. Certificates of allocation evidencing the granting of an allocation by the Director in accordance with the preceding sentence, shall be issued by the Director in the chronological order in which completed applications are received within the applicable Priority Set Aside in Section 4(1) above. No Issuing Authority issuing Bonds or Certificates is entitled to any allocation of the Volume Cap with respect to such Bonds or Certificates unless it has first received the aforementioned certificate of allocation from the Director evidencing the granting of an allocation for such Bonds or Certificates.*

(3) *Every allocation of the Volume Cap granted under this Executive Order by the Director for which Bonds or Certificates have not been issued with respect to such allocation, except those grants made pursuant to Section 5, shall remain effective until, and including, the earlier of*

(a) *a date to be determined by the Director but not to exceed 180 days after the date on which such allocation was made or any date until December 27 as determined by the Director if the Program is being allocated Volume Cap under a Priority Set Aside which sets aside Allocation Dollars for a specific Issuing Authority [Sections 4(1)(b), 4(1)(d) and 4(1)(e) above] and such Issuing Authority has a Program for Bond issuance to be carried out throughout the Year,*

(b) *12:00 o'clock midnight on December 27 of the Year in which such allocation was made, or*

(c) *the date upon which the Director receives a written notification from any such Issuing Authority pursuant to Section 7(2). Any allocation for which Bonds or Certificates are issued on or prior to the applicable date specified in this subsection shall be irrevocably allocated to such Bonds or Certificates.*

(4) *On and after September 1 of each Year allocations of Volume Cap shall be made to applicants submitting applications by such date for Project(s) or Program(s) that best demonstrate effective utilization, need, economic impact and efficient distribution of resources throughout the State. The Director and the Department may elect not to allocate Volume Cap if an application does not demonstrate a need for, and economic impact of, the particular Program or Project in the State and how the Program or Project will effectively utilize and efficiently distribute resources throughout the State. If qualified applications have not been received by the Department for all remaining Allocation Dollars by September 1 of such Year, then the Department shall continue to receive additional applications until the first of each succeeding month and make allocations on the same basis until all Allocation Dollars have been allocated.*

(5) *Until and including December 27 of each Year, any allocation of Allocation Dollars made in such Year, except allocations made pursuant to Section 5, for which Bonds or Certificates are not issued on or prior to the applicable date specified in Section 4(3) shall be available for reallocation to applying Issuing Authorities. On December 28 of each Year, any allocation of Allocation Dollars made in such Year for which Bonds or Certificates are not issued on or prior to the applicable date specified in Section 4(3) and any Allocation Dollars for such Year or any Allocation Dollars not allocated under Section 4(4) above shall become available for reallocation only for Qualifying Carryforward Projects or Programs. In either case, such reallocations shall be made in the same manner as for allocations of Allocation Dollars on and after September 1 as provided in Section 4(4) above.*

(6) *No application submitted by an Issuing Authority to the Director pursuant to this section shall be processed if the amount of allocation of the Volume Cap requested in such application is in excess of the amount of Volume Cap remaining available for allocation. Any application not processed for the reason stated in this subsection may be resubmitted to the Director, with or without a change in the amount of allocation requested. Any application resubmitted to the Director pursuant to this subsection shall be treated as a new application. Should an allocation not be granted for the reasons stated in this subsection, the Director shall continue to process other applications in the chronological order in which received, granting allocations pursuant to the provisions of this Executive Order.*

(7) *The expiration date of an allocation of Volume Cap under this Executive Order may be extended upon prior written approval of the Director, provided there are no pending applications for Volume Cap within the same Priority Set Aside, or if there are other such applications pending, that the application for the allocation being extended best demonstrates the need for, and economic impact of, the Program or Project in the State and how the Program or Project will effectively utilize and efficiently distribute resources throughout the State, and provided further that all other provisions of this Executive Order are complied with.*

(8) *In the event that the Director is uncertain whether an application meets the requirements set forth in 4(2) or 4(4) above, he may defer action on such application until he has received another application(s) and then determine which application best meets such criteria.*

(9) *In the case of an application filed prior to the date when the Director makes an allocation under 4(1)(h) above for an allocation from a Priority Set Aside which provides for a minimum percent of Allocation Dollars and sets forth a specific Issuing Authority to receive the Priority Set Aside [specifically, Priority Set Asides 4(1)(b), 4(1)(d) and 4(1)(e)], the Director may, and, at the request of the Issuing Authority, shall, make an allocation of that Year's Allocation Dollars in an amount not to exceed the minimum percentage stated for the Priority Set Aside prior to the date the Director has set for determination of allocations under 4(1)(h) but in no event later than 15 days after the date such application is filed.*

Section 5.

(1) *Issuing Authorities with Qualifying Carryforward Projects or Programs may apply for an*

allocation of Allotment Dollars for such Qualifying Carryforward Projects or Programs by submitting an application to the Director which shall contain:

- (a) the carryforward purpose for the Bonds under Section 146(f) of the Code;*
- (b) any other information required by Section 146(f) of the Code;*
- (c) a certification signed by both an official of the Issuing Authority responsible for the supervision of the issuance of the Bonds and, if applicable, a representative of the person or entity constructing, acquiring, or rehabilitating the Project or administering the Program, stating that the Issuing Authority and, if applicable, such person or entity, will proceed with diligence to ensure the issuance of the Bonds within the carryforward period provided by Section 146(f) of the Code;*
- (d) a preliminary opinion from bond counsel that the Project or Program qualifies for carryforward under Section 146(f) of the Code, if applicable;*
- (e) if applying for an allocation of Allotment Dollars for the purpose of issuing mortgage credit certificates under Section 25 of the Code, the amount of qualified mortgage bonds defined in Section 143 of the Code which the Issuing Authority elects not to issue under the Code; and*
- (f) such other information and attachments as are set forth in Section 3(1).*

(2) No application submitted by an Issuing Authority to the Director pursuant to this section shall be processed if at the time such application is considered the amount of allocation of the Volume Cap requested in such application is in excess of the amount of the Volume Cap remaining available for allocation. Any application not processed for the reason stated in this subsection may be resubmitted to the Director, with or without a change in the amount of allocation requested. Any application resubmitted to the Director pursuant to this subsection shall be treated as a new application. Should an allocation not be granted for the reasons stated in this subsection, the Director shall continue to process other applications in accordance with the provisions of Section 4(4), granting allocations pursuant to the provisions of this Executive Order.

(3) Allocations of the Volume Cap for Qualifying Carryforward Projects or Programs shall be granted by the Director in the amount requested by the applying Issuing Authority, if available, on or after December 1, but no later than December 31, of the Year in which an application in satisfactory order is submitted to the Director for an allocation of the Volume Cap for a Qualifying Carryforward Project or Program in accordance with the provisions of Section 4(5). The Director shall issue certificates of allocation evidencing the granting of an allocation within the time period specified in the preceding sentence to each Issuing Authority which applied to the Director and which received an allocation of the Volume Cap for a Qualifying Carryforward Project or Program of such Issuing Authority, such certificates of allocation to be similar to the certificates of allocation described in Section 4, stating the amount of Allotment Dollars which have been allocated to such Issuing Authority, specifying the Qualifying Carryforward Project or Program for which the allocation has been made and specifying the expiration date of the allocation, as provided by Section 146(f) of the Code.

Section 6. *No application submitted to the Director may be amended without the consent of the Director; provided, however, that no such consent shall be required for an Issuing Authority to submit a new application in order to replace a previously submitted application if such new application is submitted before an allocation is made on the basis of the original application; provided further, that the consent of the Director shall not be required for an Issuing Authority to withdraw a previously submitted application. For purposes of receiving an allocation of the Volume Cap, any application that has been amended shall be treated as though such application was submitted on the date that the amendment was made, rather than on the date of the original submission of such application.*

Section 7.

(1) *After the effective date of this Executive Order, any Issuing Authority issuing Bonds without a certificate or allocation of the Director issued pursuant to Section 4 or Section 5, as appropriate, evidencing the granting of an allocation for such Bonds or Certificates, or any Issuing Authority issuing Bonds or Certificates after the expiration of an allocation under Section 4 or Section 5, as appropriate, is not entitled to any allocation of the Volume Cap for such Bonds or Certificates, and any Issuing Authority issuing Bonds or Certificates in excess of the allocation set forth in the certificate of allocation is not entitled to any allocation of the Volume Cap for such excess.*

(2) *Each Issuing Authority shall:*

(a) *advise the Director on or before the earlier of the sixtieth day after the issuance of any Bonds or Certificates or December 27 of each Year, of the principal amount of Bonds or Certificates issued under the allocation set forth in each certificate of allocation issued by the Director evidencing the granting of an allocation for such Bonds or Certificates by delivering to the Director a copy of the Form 8038 which was delivered to the Internal Revenue Service in connection with such Bonds or Certificates, or, if no such form was required to be delivered to the Internal Revenue Service, a completed copy of a Form 8038 prepared for the Director with respect to such Bonds or Certificates; or*

(b) *if all or a stated portion of such Bonds or Certificates will not be issued, shall advise the Director in writing, on or before the earlier of:*

(i) *the fifteenth day after the earlier of:*

(A) *the final decision not to issue all or a stated portion of such Bonds or Certificates; or*

(B) *the expiration of the allocation; or*

(ii) *December 27 of the Year in which the allocation for such Bonds or Certificates was made.*

(3) *Each Issuing Authority shall cooperate with the Director in furnishing any information the Director reasonably requires. If an Issuing Authority obtains an allocation of a portion of the Volume Cap for a particular Project or Program from the Director as provided in Section 4 or Section 5, as appropriate, but does not issue its Bonds or Certificates within the prescribed time limit, or issues a lesser amount of Bonds or Certificates within the prescribed time limit, such Issuing Authority may again submit an application with respect to the proposed Bonds or Certificates or portion of such Bonds or Certificates not issued for such Project or Program as provided in Section 4 or Section 5, as appropriate. Such application shall be treated as a new application.*

Section 8. *In addition to the duties otherwise specifically set forth in this Executive Order, the Director shall:*

(1) *determine the amount of Allotment Dollars available on December 28 of each Year for allocation for Qualifying Carryforward Projects or Programs and allocate the Allotment Dollars available for Qualifying Carryforward Projects or Programs as provided in this Executive Order;*

(2) *maintain a record of all applications filed by Issuing Authorities under Section 3 and Section 5 and all certificates of allocation issued under Section 4 and Section 5;*

(3) *maintain a record of all Bonds or Certificates issued by Issuing Authorities during each Year;*

(4) *maintain a record of all information filed by Issuing Authorities under this Executive Order;*

- (5) make available upon reasonable request a certified copy of all or any part of the records maintained by the Department under this Executive Order or a summary thereof including information regarding the Volume Cap for each Year and any amounts available or at any time remaining available, for allocation under this Executive Order;
- (6) the Director shall serve as the State official designated under State law to make any certifications required to be made under the Code including, without limitation, the certification required by Section 149(e)(2)(F) of the Code; and
- (7) promulgate reasonable rules not inconsistent with this Executive Order deemed necessary or expedient to allocate the Volume Cap hereunder.

Section 9. If any provision of this Executive Order shall be held to be, or shall, in fact, be invalid, inoperative or unconstitutional, the defect of the provision shall not affect any other provision of this Executive Order or render it invalid, inoperative, or unenforceable. To the extent this Executive Order shall be held or shall, in fact, be invalid inoperative, or unconstitutional, all allocations of the Volume Cap previously made under this Executive Order shall be treated as allocations made by the Governor of the State in accordance with provisions of the State Law.

Section 10. This Executive Order replaces Executive Order No 2004-10 which is hereby repealed, provided that such replacement shall not affect any allocations in the State made prior to the effective date hereof pursuant to any other Executive Orders or laws of the State.

Section 11. The State pledges and agrees with the owners of any Bonds or Certificates to which an allocation of the Volume Cap has been granted under this Executive Order that the State will not retroactively alter the allocation of the Volume Cap to such Bonds or Certificates.

Section 12. No action taken pursuant to this Executive Order shall be deemed to create an obligation, debt or liability of the State or be deemed to constitute an approval of any obligation issued or to be issued hereunder.

Section 13. The purpose of this Executive Order is to maximize the benefits of financing and development through the use of Bonds and Certificates providing a system for the implementation and administration of the formula specified in the State Law for allocating the Volume Cap within the meaning of Section 146 of the Code.

Section 14. This Executive Order shall be effective immediately and shall continue in effect until such time as it may be repealed or superseded by operation of State or Federal law. Notwithstanding the foregoing, allocations for Qualifying Carry forward Projects or Programs pursuant to Section 5 hereof shall remain effective for the term of such allocation provided for in Section 146(f) of the Code.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho in Boise on this 27th day of January in the year of our Lord two thousand and nine and of the Independence of the United States of America the two hundred thirty-third and of the Statehood of Idaho the one hundred nineteenth.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho in Boise on this 27th day of January in the year of our Lord two thousand and nine and of the Independence of the United States of America the two hundred thirty-third and of the Statehood of Idaho the one hundred nineteenth.

C.L. "BUTCH" OTTER
GOVERNOR

BEN YSURSA
SECRETARY OF STATE