

**THE OFFICE OF THE GOVERNOR**

**EXECUTIVE DEPARTMENT  
STATE OF IDAHO  
BOISE**

**EXECUTIVE ORDER NO. 2012-09**

**ALLOCATING VOLUME CAP FOR QUALIFIED ENERGY CONSERVATION BONDS IN IDAHO  
CONSISTENT WITH THE PROVISIONS OF THE U.S. INTERNAL REVENUE CODE, AS AMENDED**

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WHEREAS, Sections 54D and 54A of the Internal Revenue Code of 1986, as amended by the Tax Extenders and Alternate Minimum Tax Relief Act of 2008 and by the American Recovery and Reinvestment Act of 2009 (the "Code"), permit States and large local governments to issue Qualified Energy Conservation Bonds ("QECBs"). The Code also provides that the State shall initially allocate volume cap for QECBs to the Large Local Governments as outlined below.

WHEREAS, the Code, as amended, provides a formula for allocations of such Volume Cap, and in order to facilitate the implementation and administration of the formula for allocation of the Volume Cap throughout the State and its issuing authorities, 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.

- (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.
- (2) "Bonds" means the Qualified Energy Conservation Bonds for which an allocation of the Volume Cap is required by the Code.
- (3) "Code" means the Internal Revenue Code as 1986, as amended, including amendment by the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 and the American Recovery and Reinvestment Act of 2009, and any related regulations including without limitation the Notice, all as may be amended or supplemented.
- (4) "Department" means the State of Idaho Department of Commerce.
- (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 similar federal tax form or other method of reporting required by the Department of the Treasury under Section 149(e) of the Code.
- (7) "Initial Allocation" means one of the initial allocations established under Section 4(1) hereof.
- (8) "Issuing Authority" means any of the following, which must have the authority under State law to issue the Bonds:
  - (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 Idaho Housing and Finance Association;
  - (d) The State; or
  - (e) Any other entity authorized to issue Bonds in the State.
- (9) "Large Local Government" means any municipality or county in the State that has a population of 100,000 or more and any Indian Tribal government in the State.
- (10) "Large Local Government Initial Allocation" means that amounts set forth in Section 12 hereof for certain Counties and for the City of Boise for Large Local Governments.

- (11) "Notice" means IRS Notice 2009-29, as amended, revised or supplemented.
- (12) "Program" means the program to be financed in whole or in part with the proceeds of the sale of Bonds.
- (13) "Project" means the facility to be financed in whole or in part with the proceeds of sale of Bonds.
- (14) "Qualified Energy Conservation Bonds" means any bond that meets the requirement of Sections 54A and 54D of the Code, as amended.
- (15) "State" means the State of Idaho, any of its agencies, instrumentalities, institutions and divisions authorized to issue Bonds under State law.
- (16) "State Allocation" means the amount of allocation to the State for subsequent allocation by the State as set forth in Section 12 hereof.
- (17) "Subsequent State Allocation" means an allocation of Volume Cap by the Department acting for the State of all or a portion of Initial Allocations returned or deemed returned to the State under this Executive Order consistent with the Code and Notice by a Large Local Government.
- (18) "Ultimate Beneficiary" means the ultimate beneficiary of the Volume Cap as provided in the Code and Notice.
- (19) "Volume Cap" means the volume cap for Qualified Energy Conservation Bonds for the State as computed in Section 54D(e) of the Code, the Notice and related regulations.

Section 2.

The Volume Cap is allocated in accordance with the procedures set forth in this Executive Order to the State and to Large Local Governments. An Initial Allocation of the Volume Cap, which has been reallocated and returned to the State in accordance with the Code and/or Notice, may be obtained by submitting an application to the Director in accordance with Section 3, as appropriate.

The Director shall evidence a grant of an allocation of the Volume Cap by issuing a certificate of such allocation in accordance with Section 4, as appropriate. The Department may seek and obtain reallocation of Initial Allocations from Large Local Governments that delegate their own allocations under the Code and Notice to the Department to make Subsequent State Allocations hereunder. Such reallocations may include conditions regarding the Subsequent State Allocations.

All allocations by the State and by Large Local Governments must be made such that not less than 70 percent of the allocation to the State or to each Large Local Government will be used for Bonds which are not private activity bonds as provided in the Code and the Notice. Bonds issued to finance capital expenditures to implement "green community programs" shall not be treated as private activity bonds for this purpose.

Section 3.

- (1) In the event an Initial Allocation is waived or returned to the State in accordance with the Code and/or Notice and for any State Allocation, any Issuing Authority or Ultimate Beneficiary 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 or Ultimate Beneficiary;
  - (b) The mailing address of the Issuing Authority or Ultimate Beneficiary;
  - (c) The tax identification number of the Issuing Authority or Ultimate Beneficiary;
  - (d) The name, title and office telephone number of the official of the Issuing Authority or Ultimate Beneficiary 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, if other than the Issuing Authority or Ultimate Beneficiary;
  - (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;

- (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;*
  - (j) *The name, address, and telephone number of all parties to the transaction;*
  - (k) *That the Bonds are expected to be issued under the Code and Notice;*
  - (l) *That the Project or Program is located in a Recovery Zone and that the Project will be accomplished in accordance with the Code and Notice;*
  - (m) *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*
  - (n) *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 or Ultimate Beneficiary 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 are hereby initially made to the State and Large Local Governments in the amounts as set forth section 12 below, which are the amounts determined by the Internal Revenue Service consistent with the Code and the Notice (collectively, the "Initial Allocations") to be further allocated by said entities as provided in the Code and Notice. Such Initial Allocation shall be permanent unless such Initial Allocation is reallocated or deemed reallocated to the State by the Large Local Government as provided herein and permitted in the Code and Notice:*
- (a) *In accordance with the Code and Notice, the State's national allocation of Volume Cap Allocation Dollars is hereby allocated to Large Local Governments and the State, as Initial Allocations as provided in section 12 hereto;*
  - (b) *The above Initial Allocations shall be in effect until the same are reallocated or deemed reallocated to the State Department of Commerce in accordance with the Code and Notice. Thereafter, Subsequent State Allocations shall be made based first on need, economic impact and efficient distribution of resources as determined by the Department and within that determination, and then in the chronological order in which they are received as provided in Section 3, subject to any conditions which may be set forth in a waiver by the applicable county or municipality of an Initial Allocation; and*
  - (c) *Initial Allocations may be reallocated or deemed reallocated to the State Department of Commerce on or after July 1, 2013 if the Initial Allocation has not been used and is needed for an eligible Project or eligible Program in another area of the State, including a state wide Program. Prior to such reallocation, the State Department of Commerce shall obtain an opinion of counsel that the reallocation is not prohibited under the Code and the Notice, and then shall notify the jurisdiction holding the Initial Allocation and such jurisdiction shall have 30 days to demonstrate that the allocation is needed in the jurisdiction for an eligible Project or Program.*
- (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 under Section 3 above, the Director shall, if the application is in satisfactory order, the Director will make the requested allocation in the amount so requested, 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, first based on a determination of need, economic impact and efficient use of resources as determined by the Department, and then in the chronological order in which completed applications are received subject to any conditions which may be set forth in the waiver of Initial Allocation executed by the applicable county or municipality.*

- (3) *Every allocation of the Volume Cap by application under Section 3 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*
  - (b) *The date upon which the Director receives a written notification from any such Issuing Authority pursuant to Section 6(2). Any allocation for which Bonds are issued on or prior to the applicable date specified in this subsection shall be irrevocably allocated to such Bonds.*
- (4) *No application submitted by an Issuing Authority or Ultimate Beneficiary 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 may continue to process other applications in the first based on need, economic impact and efficient use of resources as determined by the Department and then in chronological order in which received, granting allocations pursuant to the provisions of this Executive Order.*
- (5) *The expiration date of an allocation of Volume Cap under this Executive Order may be extended upon prior written approval of the Director.*
- (6) *In the event that the Director is uncertain whether an application meets the requirements set forth in this Executive Order or the Code and/or Notice above, he may defer action on such application until he has received another application(s) and then determine which application best meets such criteria.*

Section 5.

*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 or Ultimate Beneficiary 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 or Ultimate Beneficiary 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 6.

- (1) *After the effective date of this Executive Order, any Issuing Authority issuing Bonds under a State Allocation or a Subsequent State Allocation without a certificate or allocation of the Director required to be applied for pursuant to Section 3, or any Issuing Authority issuing Bonds under a State Allocation or to any State Allocation or Subsequent State Allocation after the expiration of an allocation under Section 4, as appropriate, is not entitled to any Subsequent State Allocation of the Volume Cap for such Bonds, and any Issuing Authority issuing Bonds in excess of the State Allocation or a Subsequent State Allocation set forth in the certificate of allocation is not entitled to any State Allocation or a Subsequent State Allocation of the Volume Cap for such excess.*
- (2) *Each Issuing Authority shall:*

- (a) Advise the Director on or before the earlier of the fifteenth day after the issuance of any Bonds or the fifteenth day after December 31 of each calendar year hereafter during which Volume Cap has been allocated, of the principal amount of Bonds issued under the State Allocation or a Subsequent State Allocation set forth in each certificate of allocation issued by the Director evidencing the granting of an allocation for such Bonds 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, 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
- (b) If all or a stated portion of such Bonds 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 (B) the expiration of the State Allocation or a Subsequent State Allocation.
- (3) Each Issuing Authority and Ultimate Beneficiary shall cooperate with the Director in furnishing any information the Director reasonably requires. If an Issuing Authority or Ultimate Beneficiary obtains a State Allocation or a Subsequent State Allocation of a portion of the Volume Cap for a particular Project or Program from the Director under Section 3, but does not issue its Bonds within the prescribed time limit, or issues a lesser amount of Bonds within the prescribed time limit, such Issuing Authority or Ultimate Beneficiary may again submit an application with respect to the proposed Bonds or portion of such Bonds not issued for such Project or Program as provided in Section 3, as appropriate. Such application shall be treated as a new application.

Section 7.

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

- (1) Maintain a record of all applications filed by Issuing Authorities or Ultimate Beneficiaries under Section 3 and all certificates of allocation issued;
- (2) Maintain a record of all Bonds issued by Issuing Authorities;
- (3) Maintain a record of all information filed by Issuing Authorities or Ultimate Beneficiaries under this Executive Order;
- (4) 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 allocated and any amounts available or at any time remaining available, for allocation under this Executive Order;
- (5) The Director shall serve as the State official designated under State law to make any allocation including without limitation any State Allocation or Subsequent State Allocations or certifications required to be made under the Code; and
- (6) Promulgate reasonable rules not inconsistent with this Executive Order deemed necessary or expedient to allocate the Volume Cap hereunder.

Section 8.

*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 this Executive Order.*

Section 9.

*The State pledges and agrees with the owners of any Bonds 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.*

Section 10.

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 11.

The purpose of this Executive Order is to maximize the benefits of financing and development through the use of Bonds providing a system for the implementation and administration of the formula provided under the Code for allocating the Volume Cap.

Section 12.

Volume Cap Initial Allocation Amounts:

| Area                      | Qualified Energy Conservation Bond<br>(Initial Allocation) |
|---------------------------|--|
| Boise City                | \$2,007,742  |
| Ada County                | \$1,960,316  |
| Bonneville County         | \$1,043,394  |
| Canyon County             | \$1,912,889  |
| Kootenai County           | \$1,391,192  |
| Coeur d'Alene Reservation | \$69,054   |
| Duck Valley Reservation   | 11,541   |
| Fort Hall Reservation     | 55,458   |
| Kootenai Reservation      | 981  |
| Nez Perce Reservation     | 179,147  |
| Sub Total                 | \$8,631,714  |
| State Allocation          | \$7,177,286  |
| Total                     | \$15,809,000   |



*IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this 19th day of November in the year of our Lord two thousand and twelve and of the Independence of the United States of America the two hundred thirty-seventh and of the Statehood of Idaho the one hundred twenty-third.*

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C.L. "BUTCH" OTTER  
GOVERNOR

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BEN YSURSA  
SECRETARY OF STATE