

Michigan Qualified Energy Conservation Bond Re-allocation Process

Section 1. Title

These procedures shall be known and may be cited as the "Michigan Qualified Energy Conservation Bond Re-allocation Process".

Section 2. Definitions.

As used in these procedures, the term:

- (1) "Allocation Designee" shall mean those local governments receiving allocations.
- (2) "Amount" means, when used with respect to bonds, notices of re-allocation, or portions of the volume cap, an amount measured in terms of United States dollars.
- (3) "Application" means the application and amendments thereto for a notice of re-allocation required to be filed by an issuer with the Department pursuant to this process.
- (4) "Bonds" means any bonds, notes, or other obligations issued pursuant to 26 USC Section 54A, 26 USC Section 54D, and Treasury Notice 2009-29 under the Process.
- (5) "Borrower" means any person or persons whose private business use, within the meaning of Section 141 of the Federal Code, would cause any bonds to constitute private activity bonds within the meaning of Section 141 of the Code. If there is more than one such person with respect to any issue of bonds, then the term "borrower" shall mean and include each and every such person known at the time that the issuer files an application.
- (6) "Business day" means a day on which DeLEG is open for business. The term "business day" shall not include any Saturday, Sunday, or legal holiday officially observed by the state.
- (7) "Code" means the Internal Revenue Code of 1986, as amended from time to time.
- (8) "Confirmation of issuance" means the issuer's confirmation, in writing, that the bonds authorized by a notice of re-allocation have been issued, in such form as the DeLEG Director may promulgate from time to time.
- (9) "Department" means the Michigan Department of Energy, Labor and Economic Growth (DeLEG).
- (10) "Director" means the Director of the Michigan Department of Energy, Labor and Economic Growth.

- (11) "Expiration date" means the final date on which bonds covered by a notice of re-allocation may be issued and by which date confirmation of issuance must be filed with DeLEG.
- (12) "Filing date" means the final date for filing an application as specified in this article.
- (13) "Issued" means, with respect to any issue of bonds, that such bonds have been delivered and paid for in full or deemed "issued" under the Code. Payment in full may be made, in whole or in part, by a binding, enforceable agreement to make payment in the future.
- (14) "Issuer" means the political subdivision, governmental unit, authority, or other entity which issues any bonds.
- (15) "Legal counsel" means an attorney or firm of attorneys duly authorized to practice law in the State of Michigan and admitted to practice before the highest court in the State of Michigan.
- (16) "Notice" means United States Department of the Treasury Notice 2009-29.
- (17) "Notice of re-allocation" means the notice given by DeLEG re-allocating to an issuer a specified amount from the state's allocation under 26 USC Section 54A, 26 USC Section 54D and Treasury Notice 2009-29 for a specific issue of bonds.
- (18) "Person" means any individual, corporation, limited or general partnership, association, trust, or other entity of any nature whatsoever which is a legal person.
- (19) "Project" means the facility or activity, as described in an application, proposed to be financed, in whole or in part, by an issue of bonds.
- (20) "Process" means the Qualified Energy Conservation Bond Re-allocation Process.
- (21) "Qualified application" means a completed application for a notice of re-allocation.
- (22) "Re-allocation Designee" shall mean those issuers receiving a re-allocation of issuance authority.
- (23) "State" means the State of Michigan.
- (24) "Volume cap" means the bond volume limitation imposed by 26 USC Section 54A, 26 USC Section 54D and Treasury Notice 2009-29.

Sections 3. Background.

The American Recovery and Reinvestment Act of 2009 expanded the national volume cap for Qualified Energy Conservation Bonds. Treasury Notice 2009-29 provides guidance on the Qualified Energy Conservation Bonds. The Notice limits the issuance of Qualified Energy Conservation Bonds in the State to a specified amount. The Notice also describes the process by which counties and large municipalities (with populations greater than 100,000) would receive a direct allocation of issuing authority. Such counties or large municipalities may waive any portion of a volume cap allocation. The Notice provides that upon any such waiver, the State shall be authorized to re-allocate the waived volume cap in any reasonable manner as it shall determine in good faith within its discretion.

Section 4. Powers of the Department.

Once approved by DeLEG and in accordance with the approval of the Michigan Finance Authority (MFA), DeLEG shall administer, operate, and manage the process and DeLEG shall make such determinations and decisions, require the use of such forms, establish procedures, and otherwise administer, operate, and manage the process in such respects as may be, in DeLEG's determination, to be reasonably necessary. Actions taken by DeLEG shall not constitute an opinion of DeLEG on any legal matters, including, but not limited to, the federal or state tax treatment of any bonds.

Section 5. Application for notice of re-allocation; receipt of application; issue of notice; confirmation of bond issue; certificates under Federal Code.

(1) Applications for notices of re-allocation shall be filed, received, and acted on by the DeLEG as set forth in this Section.

(2) Applications shall be filed on such forms as the Director shall require. Each application shall be accompanied by the following:

(A) A Certificate from the Issuer certifying that the Issuer has a project eligible for financing by Qualified Energy Conservation Bonds.

(B) Any additional items specified elsewhere in these procedures; and

(C) Any other information as required by DeLEG.

(6) All applications shall be in even amounts of \$1,000.00.

(7) If more than one person is a borrower with respect to any issue of bonds, any one of such persons may, and all such persons shall not be required to, execute any application, letter, or writing which these procedures require to be executed by the borrower.

(8) DeLEG shall stamp or otherwise designate the date on which it receives each completed application. The date stamped or otherwise designated for any application received after the close of business on a business day will be the next business day. For this purpose, the close of business shall be the time officially designated for the close of DeLEG's business day. The application shall not be considered completed and shall not be stamped and accepted for filing unless and until each of the items required under this section has been received by DeLEG. Receipt shall be deemed to occur only on a business day.

(9) DeLEG shall make recommendations for re-allocation to the MFA. A notice of reallocation made to a Re-allocation Designee shall constitute the only means by which any of the Qualified Energy Conservation Bonds volume cap shall be reallocated by the state to a specific issuer for a specific issue of bonds.

(10) The notice of re-allocation shall be in writing, shall be given to the issuer at the address specified in the application, shall specify the amount of bonds which may be issued, and **shall specify the expiration date**. The notice of re-allocation shall be in a format as determined by the DeLEG Director. A notice of re-allocation may not be revoked although it shall expire in accordance with the terms of the notice unless extended in accordance with these Procedures. All notices of re-allocation shall be given for amounts of the state ceiling specified in even amounts of \$1,000.00.

(11) When bonds covered by a notice of re-allocation have been issued, confirmation of issuance shall be filed with DeLEG immediately and must be filed on or before the expiration date. Unless otherwise determined by the Director, the expiration date for any notice of reallocation shall never be later than the second to last business day of a calendar year. To the extent necessary to accomplish this, DeLEG shall shorten the time period otherwise allowed to lapse before an expiration date. If bonds are not issued and confirmation of issuance is not filed with DeLEG on or before the expiration date, the notice of re-allocation shall cease to be effective. The confirmation of issuance shall be deemed to have been filed with DeLEG on the earliest of:

- (a) The date it is actually delivered to DeLEG;
- (b) If mailed by the United States mail, certified return receipt requested, the date of the postmark;
- (c) If sent to DeLEG by a non-governmental courier or delivery service, the date delivered to that service; or
- (d) If sent by facsimile machine or email, the date received by DeLEG.

(12) Notwithstanding any provisions of this process to the contrary, DeLEG shall not be required to accept any application for notice of re-allocation filed with DeLEG after December 31, 2010.

(13) DeLEG may, at the written request of an issuer, increase the amount of a notice of reallocation by an amount not to exceed 10 percent of the amount of the original application. DeLEG shall not, however, have any obligation to provide such an increase, and no issuer shall have any right to such an increase.

(14) The opinions of legal counsel and the commitment from a lender, financial institution, underwriter, investment banker, or other purchaser which are required to accompany applications shall be dated no more than 30 days prior to the date on which the application is filed. Such opinions, commitments, and any other items required to accompany an application shall be in substantially the form or forms required by DeLEG.

(15) Notices of re-allocation and other notices and written communications from DeLEG shall be deemed to have been given when duly deposited in the United States mail, first class with all postage prepaid. Notices of re-allocation may, at the request of the borrower, be picked up by hand or delivered by courier or other delivery service, at the expense of the borrower. Notices and other written communications to and filings with DeLEG shall be given or made either by actual delivery to the Director in Lansing, Michigan, directed to the attention of the bond re-allocation manager, or by depositing the same in the United States mail, first class with all postage prepaid, addressed to the office of the Director in Lansing, Michigan, and directed to the attention of the bond re-allocation manager. Such notices and other written communications shall be deemed received only upon actual receipt by DeLEG.

(16) The DeLEG Director is designated, for any purpose required under the Code, as a state official who may certify that bonds meet the requirements of the Qualified Energy Conservation Bond volume cap, in such form as DeLEG may specify or as may be required pursuant to the Code and any other applicable United States Department of the Treasury regulations promulgated pursuant to the Code.

Section 6. Expiration Date

The expiration date for a notice of re-allocation shall be the first business day which occurs on or after the one hundredth day after the date on which the notice of re-allocation is given. DeLEG may, for good cause shown by the issuer in a written statement submitted to DeLEG prior to such expiration date, extend the expiration date for one, but only one, additional period which shall expire, at DeLEG's discretion, on any date not later than 30 days after the original expiration date. DeLEG shall not, however, have any obligation to provide such an extension; and no issuer shall have any right to such an extension.

Section 7. Waiver of Local Allocation

A local government may waive its allocation to the State at any time. **Allocation designees are required to file a notice of intent with DeLEG no later than August 20, 2010 with respect to their intent to utilize all or a portion of their allocation or to return all or a portion of their allocation to the State.**

Section 8. Policy Guidelines (see scoring criteria listed separately)

- (1) Special consideration shall be given to projects that would promote or expand economic opportunities, with particular attention given to areas of economic distress, regional cooperation, Green Community Projects as defined within the Green Communities Challenge, and local energy needs.
- (2) Special consideration shall be given to those projects that meet critical energy needs and/or statewide energy conservation goals by providing a model or demonstration project replicable in other areas of Michigan.
- (3) Special consideration shall be given to projects which DeLEG has determined will enhance the public good and general welfare of the state as a whole.
- (4) Special consideration shall be given to those projects that demonstrate feasibility and readiness.