

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

Department of Community Development
(agency name)

Administrative Order No. 87 -14

(1) I, [blank], director of the Department of Community Development

do promulgate and adopt at the Ninth and Columbia Building, Olympia, Washington (place)

the annexed rules relating to: Bond Cap Allocation

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. [blank] filed with the code reviser on [blank]. These rules shall take effect:
[ ] thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).
[ ] at a later date, such date being [blank].

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, John Swannack, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is:

Issuers in Washington State cannot issue private activity bonds until the Department of Community Development adopts rules to allocate the state's bond cap.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04.026 that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" fill in statement (a), (b), or (c) as appropriate:

[ ] (a) This rule is promulgated pursuant to RCW Chapter 297, Laws of 1987 and is intended to administratively implement that statute.

[ ] (b) This rule is promulgated pursuant to RCW [blank] which directs that the [blank] (agency) has authority to implement the provisions of [blank] (name of act or RCW citation)

[ ] (c) This rule is promulgated under the general rule-making authority of the [blank] (agency)

as authorized in RCW [blank]

(4) The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

(5) This order, after being first recorded in the order register of this agency, is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

APPROVED AND ADOPTED August 5 19 87

STATE OF WASHINGTON FILED

By [Signature]

AUG 5 1987

Acting Deputy Director Title

CODE REVISER'S OFFICE WSR 87-16-098

## Chapter 365-135 WAC

## BOND CAP ALLOCATION

## WAC

365-135-010	Purpose.
365-135-020	Definitions.
365-135-030	Initial allocations.
365-135-040	Procedure for obtaining an allocation, extension, or carryforward.
365-135-050	Fees.
365-135-060	Criteria for small issue (industrial revenue) bonds.

NEW SECTION

WAC 365-135-010 PURPOSE. The federal Tax Reform Act of 1986 imposes an annual ceiling on each state limiting the dollar volume of certain private activity bonds that can be issued. To allocate this ceiling among eligible issuers in Washington state, chapter 297, Laws of 1987 has been enacted. In accordance with the statute, the department of community development will allocate the state's private activity bond ceiling and establish by rule a fee schedule. The department will carry out such functions through the bond cap allocation program (BCAP).

NEW SECTION

WAC 365-135-020 DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly provides otherwise.

Allocation assessment: The fee which is comprised of both the issuer's filing fee and approval fee and is assessed by the department upon an issuer, based upon the following formula:  $1/40$  of one percent (.00025) of the approved allocation amount or five hundred dollars, whichever is greater.

Approval fee: The amount of an issuer's allocation assessment less the filing fee.

Department: The Washington state department of community development.

Filing fee: A fee which is payable to the department in the amount of three hundred dollars and is due from the issuer upon filing an allocation request.

Reallocation: The assignment of an unused portion of the state ceiling from one bond use category to another or the provision of a certificate of approval to any issuer for an allocation amount which previously had been returned to the department.

Statute: Chapter 297, Laws of 1987.

NEW SECTION

WAC 365-135-030 INITIAL ALLOCATIONS. Initial allocations shall be made in accordance with provisions of the statute. In addition, until September 1 of each calendar year, at least twenty-five percent of the initial allocation for the small issue bond use category shall

be reserved for the community economic revitalization board's umbrella bond program, except that this amount may be reduced if the board indicates that a reduced amount is appropriate.

#### NEW SECTION

WAC 365-135-040 PROCEDURE FOR OBTAINING AN ALLOCATION, EXTENSION, OR CARRYFORWARD. No issuer may receive an allocation of the state ceiling without a certificate of approval from the department.

Issuers may apply for a certificate of approval by submitting a completed allocation request form to the department and paying a three hundred dollar filing fee. An allocation request form will be available from the department.

The department will respond to any such completed request in accordance with the statute. Each issuer that receives a certificate of approval for allocation will be concurrently notified of an approval fee due. The issuer must either confirm its intention to use its allocation by paying the approval fee in accordance with WAC 365-135-050 (3) (b) or lose the allocation approval. If an issuer does not issue private activity bonds in the amount and by the date for which it has received a certificate of approval, the unused amount shall revert to the department for reallocation, unless an extension or carryforward is granted.

An issuer may apply for an extension or carryforward of its allocation by submitting its request to the department and supplying any additional information required by the department. The department will promptly notify the issuer if any fees are due and respond to the request for extension or allocation in a timely manner.

#### NEW SECTION

WAC 365-135-050 FEES. A fee schedule is hereby established, which will consist of:

- (1) A filing fee, due at the time a request is filed with the department of community development; and
- (2) An approval fee, due after the department approves an allocation amount for an issuer; and
- (3) In certain cases, an extension or carryforward fee.

If an issuer's allocation request is denied, only the filing fee is due. The filing fee and the approval fee together comprise the issuer's allocation assessment, the total amount of which is based on the following formula:

1/40 of one percent (.00025) of the approved allocation amount or five hundred dollars, whichever is greater.

Annually, the department will determine if an adjustment of the fees is warranted by reviewing the account of BCAP revenues and expenses for the preceding fiscal year and by considering BCAP budget projections for the following fiscal year.

Payment of the fees will occur as indicated by the schedule below.

(a) Filing. Upon filing an allocation request, the issuer must submit a nonrefundable filing fee of three hundred dollars, which will count as part of the total allocation assessment if an allocation of the state ceiling is granted. The issuer may also elect to pay in advance any additional amount toward the balance of its anticipated allocation assessment.

(b) Approval. Any request that receives allocation approval will be concurrently notified of the approval fee amount due. The approval fee represents the unpaid balance of the allocation assessment. Within fifteen business days from the date the department of community development grants an allocation approval, the issuer must submit the approval fee or lose the allocation approval, except that any amount of the approval fee greater than one thousand dollars may be payable within ten business days from the date the bond sale is closed or at such date as agreed upon by both the department and the issuer.

(c) Extensions and carryforwards. The department may assess an additional filing fee, not to exceed two hundred fifty dollars, upon any request for extension or carryforward. However, if the BCAP administrator determines that an issuer's allocation assessment includes a sufficient amount to pay for the additional administrative expenses associated with granting or denying such a request, the additional fee shall be waived.

(d) Refunds. If a requesting issuer pays any fee greater than the amount assessed by the department, that amount shall be refunded by the department.

NEW SECTION

WAC 365-135-060 CRITERIA FOR SMALL ISSUE (INDUSTRIAL REVENUE) BONDS. In addition to the statute, the following guidelines will be used as criteria for evaluating small issue requests:

(1) Until June 1 of each year, a minimum percentage of the ceiling available for small issues will be set aside for issuers in those locations which BCAP designates by certain geographic and distress indicators, as follows:

<u>Designation</u>	<u>Allocation set-aside</u>
East/distressed	15% or greater
West/distressed	15% or greater
East/nondistressed	10% or greater

(2) In evaluating the number of employment opportunities a project would offer in relationship to the dollars which would be allocated from the ceiling, priority will be given to those projects, relative to their appropriate designation, which do not exceed the following ratios for dollars allocated per job:

<u>Designation</u>	<u>\$ (in thousands) per job offered</u>
East/distressed	\$292.2/job
East/nondistressed	121.6/job
West/distressed	246.2/job
West/nondistressed	206.6/job
State-wide	216.8/job

(3) If the department finds that a particular project does not meet the guidelines in this section, but is nonetheless in the best interest of the state, the department may approve the request. Factors that may lead to such a finding include the following:

(a) The level of unemployment in a particular community within a county, to the extent that figures are available from the Washington state employment security department; and

(b) The number of secondary or spin-off jobs expected to be generated by the project.

(4) If demand for allocation exceeds the amount available, priority will be given to counties designated as distressed, using unemployment figures from the employment security department.

(5) The department will review these guidelines at least annually.