

Georgia Qualified Energy Conservation Bond Re-allocation Process

Section 1. Title

These procedures shall be known and may be cited as the "Georgia 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 sub-allocations pursuant to GSFIC resolution.
- (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 Authority pursuant to this process.
- (4) "Authority" means the Georgia Environmental Facilities Authority.
- (5) "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.
- (6) "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.
- (7) "Business day" means a day on which the Authority is open for business. The term "business day" shall not include any Saturday, Sunday, or legal holiday officially observed by the state.
- (8) "Code" means the Internal Revenue Code of 1986, as amended from time to time.
- (9) "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 Executive Director may promulgate from time to time.
- (10) "Executive Director" means the Executive Director of the Georgia Environmental Facilities Authority.

- (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 the Authority.
- (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 Georgia and admitted to practice before the highest court in the State of Georgia.
- (16) "Notice" means United States Department of the Treasury Notice 2009-29.
- (17) "Notice of re-allocation" means the notice given by the Authority 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 pursuant to GSFIC resolution.
- (23) "State" means the State of Georgia.
- (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. A county or large municipality 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 in its discretion.

Section 4. Powers of the Authority.

Once approved by the Georgia Financing and Investment Commission ("GSFIC") and in accordance with the approval of GSFIC, the Authority shall administer, operate, and manage the process and the Authority shall make such determinations and decisions, require the use of such forms, establish such procedures, and otherwise administer, operate, and manage the process in such respects as may be, in the Authority's determination, to be reasonably necessary. Actions taken by the Authority shall not constitute an opinion of the Authority 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.

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

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

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

(2) A written opinion of Legal counsel, addressed to the Authority, to the effect that the issuer is authorized under the laws of the state to issue bonds for projects of the same type and nature as the project which is the subject of the application. This opinion shall cite by constitutional or statutory reference, including a reference to the session laws of the General Assembly in the case of a constitutional reference, the provision of the Constitution or law of the state which authorizes the bonds for the project;

- (3) A written opinion of legal counsel, addressed to the Authority, to the effect that the bonds which are covered by the application will qualify, based upon the information available at that time to such legal counsel, as Qualified Energy Conservation Bonds when issued; and
- (4) With respect to Qualified Energy Conservation Bonds, a written letter of intent from a lender, financial institution, underwriter, investment banker, or other purchaser, addressed to the Authority, to purchase the bonds upon delivery by the Issuer. In the discretion of the Executive Director, this requirement may be waived in the event an officer of the Issuer certifies, in writing, that the bonds subject to the application will be issued on a competitive bid basis;
- (5) Any additional items specified elsewhere in these procedures; and
- (6) Any other information as reasonably required by the Authority.
- (c) All applications shall be in even amounts of \$1,000.00.
- (d) 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.
- (e) The Authority 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 the Authority'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 the Authority. Receipt shall be deemed to occur only on a business day.
- (f) The Authority shall make recommendations for re-allocation to GSFIC. A notice of re-allocation pursuant to GSFIC resolution made to a Re-allocation Designee shall constitute the only means by which any of the Qualified Energy Conservation Bonds volume cap shall be re-allocated by the state to a specific issuer for a specific issue of bonds.
- (g) 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 such form as the Executive Director shall determine. 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.

(h) When bonds covered by a notice of re-allocation have been issued, confirmation of issuance shall be filed with the Authority immediately and must be filed on or before the expiration date. Unless otherwise determined by the Executive Director, the expiration date for any notice of re-allocation shall never be later than the second to last business day of a calendar year. To the extent necessary to accomplish this, the Authority 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 the Authority 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 the Authority on the earliest of:

(1) The date it is actually delivered to the Authority;

(2) If mailed by the United States mail, certified return receipt requested, the date of the postmark;

(3) If sent to the Authority by a nongovernmental courier or delivery service, the date delivered to that service; or

(4) If sent by facsimile machine or email, the date received by the Authority.

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

(j) The Authority may, at the written request of an issuer, increase the amount of a notice of re-allocation by an amount not to exceed 10 percent of the amount of the original application. The Authority shall not, however, have any obligation to provide such an increase, and no issuer shall have any right to such an increase.

(k) 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, such commitment, and any other items required to accompany an application shall be in substantially the form or forms required by the Authority.

(l) Notices of re-allocation and other notices and written communications from the Authority 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 the Authority shall be given or made either by actual delivery to the Executive Director in Atlanta, Georgia, 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 Executive Director in Atlanta, Georgia, 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 the Authority.

(m) The Executive Director of the Authority 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 the Authority 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.

The Authority may, for good cause shown by the issuer in a written statement submitted to the Authority prior to such expiration date, extend the expiration date for one, but only one, additional period which shall expire, at the Authority's discretion, on any date not later than 30 days after the original expiration date. The Authority 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 the Authority no later than November 2, 2009 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

(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, and local energy needs.

(2) Special consideration shall be given to those projects that meet critical energy needs and/or statewide energy conservation goals.

(3) Special consideration shall be given to projects which the Authority 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.

(5) Special considerations shall be given to re-allocations requests for Qualified Energy Conservation Bond eligible projects that evidence a letter of support from a state agency whose duties include economic development, community development, energy or environmental activities.