

## Part III - Administrative, Procedural, and Miscellaneous

### Qualified School Construction Bond Allocations for 2009

Notice 2009-35

#### **SECTION 1. PURPOSE**

This Notice sets forth the maximum face amount of qualified school construction bonds (“QSCBs”) allocated by the Department of the Treasury (Treasury) to each State and large local educational agency for 2009 under § 54F(d) of the Internal Revenue Code (Code). For this purpose, § 54A(e)(3) provides that the term “State” includes the District of Columbia and any possession of the United States. This Notice also provides interim guidance for QSCBs.

#### **SECTION 2. BACKGROUND**

##### **.01 INTRODUCTION**

Section 1521(a) of Title I of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (“Act”) added new § 54F to the Code, setting forth program provisions for QSCBs. The Act amended § 54A(d)(1) to provide that the term “qualified tax credit bond” means, in part, a qualified school construction bond that is part of an issue that meets the requirements of §§ 54A(d)(2), (3), (4), (5), and (6) regarding expenditures of

bond proceeds, information reporting, arbitrage, maturity limitations, and prohibitions against financial conflicts of interest, respectively. The Act also amended § 54A(d)(2) to provide that, for purposes of § 54A(d)(2)(C), the term “qualified purpose” for a QSCB means a purpose specified in § 54F(a)(1) described below.

The Act added § 54F(c) to provide a national bond limitation authorization for QSCBs of \$11 billion for 2009 and \$11 billion for 2010 (each, a “calendar year volume cap” and together “volume cap”). Section 54F(c)(3) provides that except for carryforwards provided for in § 54F(e), there is no calendar year volume cap for calendar years after 2010.

#### .02 QUALIFIED SCHOOL CONSTRUCTION BONDS UNDER § 54F

Section 54F(a) defines a “qualified school construction bond” to mean any bond issued as part of an issue if –

- (1) 100 percent of the available project proceeds of such issue are to be used for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue,
- (2) the bond is issued by a State or local government within the jurisdiction of which such school is located, and
- (3) the issuer designates such bond for purposes of this section.

Section 54F(b) provides that the maximum aggregate face amount of bonds issued during any calendar year that may be designated under § 54F(a)

by any issuer shall not exceed the portion of the calendar year volume cap allocated to such issuer for the calendar year under § 54F(d).

Section 54F(d)(1) provides that, except as provided in § 54F(d)(2)(C), the calendar year volume cap shall be allocated by the Treasury among the States in proportion to the respective amounts each State is eligible to receive under § 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) (the “Education Act”) for the most recent fiscal year ending before the calendar year. Section 54F(d)(1) further provides that the calendar year volume cap amount allocated to each State is to be further allocated by the State to the issuers within the State.

Section 54F(d)(2)(A) provides that 40 percent of the calendar year volume cap for any calendar year is to be allocated under § 54F(d)(2)(B) by the Treasury among local educational agencies that are large local agencies for the calendar year. Section 54F(d)(2)(B) provides that 40 percent of the calendar year volume cap is to be allocated among large local educational agencies in proportion to the respective amounts each such agency received under § 1124 of the Education Act for the most recent fiscal year ending before the calendar year.

Section 54F(d)(2)(C) provides that the allocation of calendar year volume cap to any State under § 54F(d)(1) is reduced by the aggregate amount of allocations under § 54F(d)(2) to large local educational agencies within the State.

Section 54F(d)(2)(D) provides the amount of calendar year volume cap allocated to a large local educational agency for any calendar year may be reallocated by such agency to the State in which such agency is located for the

calendar year. Section 54F(d)(2)(D) further provides that any amount reallocated to a State by a large local educational agency may be further allocated by the State to issuers within the State.

Section 54F(d)(2)(E) defines a large local educational agency as any local educational agency if such agency is: (1) among the one hundred local educational agencies with the largest number of children aged 5 through 17 from families living below the poverty level, as determined by the Treasury using the most recent data available from the Department of Commerce that are satisfactory to the Treasury; or (2) one of not more than twenty-five additional local educational agencies that the Secretary of Education determines (based on the most recent data available satisfactory to the Treasury) are in particular need of assistance, based on a low level of resources for school construction, a high level of enrollment growth, or such other factors as the Treasury deems appropriate.

Section 54F(d)(3) provides that the amount allocated under § 54F(d)(1) to any United States possession other than Puerto Rico is an amount that would have been allocated to such possession if all allocations under § 54F(d)(1) were made on the basis of respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). Section 54F(d)(3) further provides that in making the other allocations, the amount to be allocated under § 54F(d)(1) to the States is reduced by the aggregate amount allocated under § 54F(d)(3) to the United States possessions.

Section 54F(d)(4) provides for additional calendar year volume cap amounts of \$200 million for calendar year 2009 and \$200 million for calendar year 2010 (each an “Indian tribal government calendar year volume cap” and together the “Indian tribal government volume cap”) to be allocated by the Secretary of Interior for purposes of the construction, rehabilitation, and repair of schools funded by the Bureau of Indian Affairs. This \$ 200 million Indian tribal government calendar year volume cap allocated to the Indian tribal governments does not reduce the \$11 billion calendar year volume cap allocated to the States and the large local educational agencies. Section 54F(d)(4) further provides that, for amounts of Indian tribal government volume cap allocated, Indian tribal governments (as defined in § 7701(a)(40)) are to be treated as qualified issuers.

Section 54F(e) provides that if for any calendar year, the amount of calendar year volume cap allocated under § 54(d) to any State or the amount of Indian tribal government calendar year volume cap allocated to an Indian tribal government exceeds the amount of QSCBs issued during the calendar year pursuant to such allocation, the amount of such excess shall to be carried over to the following calendar year and shall increase the calendar year volume cap or the Indian tribal government calendar year volume cap allocation for the following calendar year for the State or Indian tribal government.

### **SECTION 3. INTERIM GUIDANCE AND RELIANCE**

#### **.01 GENERALLY**

Pending the promulgation and effective date of future administrative or regulatory guidance, taxpayers may rely on the interim guidance provided in this Notice.

#### .02 CREDIT RATE

For QSCBs issued under §§ 54A and 54F, the maximum maturity and the credit rate are determined as of the date that there is a binding, written contract for the sale or exchange of the bond. The applicable maximum maturity, the discount rate for determining the maturity, and QSCB credit rate are published for that date by the Bureau of Public Debt on its Internet site for State and Local Government Series securities at: <https://www.treasurydirect.gov>. For further information regarding the methodology and procedures that the Treasury uses to determine these credit rates, see Notice 2009-15, 2009-6 I.R.B. 449 (February 9, 2009).

#### .03 SINKING FUND YIELD

Section 54A(d)(4)(C) provides that an issue shall not be treated as failing to meet the requirements of § 148 by reason of any fund that is expected to be used to repay the issue if: (i) the fund is funded at a rate not more rapid than equal annual installments; (ii) the fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue; and (iii) the yield on such fund is not greater than the discount rate determined under § 54A(d)(5)(B) (the “permitted sinking fund yield”).

The permitted sinking fund yield is determined under § 54A(d)(5)(B) by using a rate equal to 110 percent of the long-term adjusted federal rate (“AFR”),

compounded semiannually, for the month in which the bond is sold. The IRS publishes the long-term adjusted AFR, compounded semiannually, each month in a revenue ruling published in the Internal Revenue Bulletin. The Bureau of Public Debt publishes the permitted sinking fund yield for each month on its Internet site for State and Local Government Series securities at:

<https://www.treasurydirect.gov>.

#### .04 INFORMATION REPORTING

Section 54A(d)(3) requires issuers of QSCBs to submit information reporting returns to the IRS similar to those required to be submitted under § 149(e) for tax-exempt State or local governmental bonds. These information reporting returns are required to be submitted at the same time and in the same manner as those under § 149(e) on such forms as shall be prescribed by the IRS for such purpose. Pending further guidance from the IRS regarding the applicable forms to be used for such information reporting for QSCBs, in the case of an issue of QSCBs, the issuer must submit to the IRS an information return on Form 8038, at the same time and in the same manner as required under § 149(e), with modifications as described below. Issuers of QSCBs should complete Part II of Form 8038 by checking Line 20c (Other), writing “QSCBs” in the space provided for the bond description, and entering the issue price of the QSCBs in the Issue Price column on Line 20c. For purposes of this Notice, the term “issue” has the meaning used for tax-exempt bond purposes in § 1.150-1(c) of the Income Tax Regulations.

#### .05 CERTAIN ELIGIBLE EXPENDITURES FOR EQUIPMENT

For purposes of the § 54F(a)(1) requirement that all available proceeds of QSCBs be spent on construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue, eligible expenditures include, among other things, expenditures for costs of acquisition of equipment to be used in such portion or portions of the public school facility that is being constructed, rehabilitated, or repaired with the proceeds of QSCBs.

#### .06 ELIGIBLE ISSUERS

Eligible issuers of QSCBs include States, political subdivisions as defined for purposes of § 103, large local educational agencies that are State or local governmental entities, and entities empowered to issue bonds on behalf of any such entity under rules similar to those for determining whether a bond issued on behalf of a State or political subdivision constitutes an obligation of that State or political subdivision for purposes of § 103 and § 1.103-1(b), Income Tax Regs. Further, eligible issuers include otherwise-eligible issuers in conduit financing issues (as defined in § 1.150-1(b), Income Tax Regs.) An eligible issuer may issue QSCBs based on a volume cap allocation received by the eligible issuer itself or by a conduit borrower or other ultimate beneficiary of the issue of QSCBs. In all events, the eligible costs of public school facilities financed with the proceeds of an issue of QSCBs under § 54F(a)(1) must relate to public school facilities that are located within both the jurisdiction of the issuer of the QSCBs and the jurisdiction of the authorized entity that allocates volume cap to the issue of QSCBs for the financing of those public school facilities. Authorized

entities that may allocate volume cap consist of those entities that receive volume cap allocations under § 54F(d). Thus, for example, a large local educational agency that has received a volume cap allocation under § 54F(d)(2) either may issue QSCBs with respect to that volume cap itself or it may be a beneficiary of proceeds of an issue issued by another eligible issuer with respect to that volume cap, provided that, in either event, the public school facilities to be financed with the proceeds of the issue of QSCBs are located within both the jurisdiction of the issuer of the QSCBs and the jurisdiction of the large educational agency that allocated volume cap to the issue of QSCBs for the financing of those public school facilities.

#### **SECTION 4. 2009 ALLOCATIONS OF NATIONAL BOND VOLUME CAP FOR QSCBs**

The 2009 national bond volume cap for QSCBs is \$11 billion. This amount is allocated among the States and large local educational agencies as set forth in this Notice. The 2009 allocations to 100 large local educational agencies reflects the determination by the Secretary of Education to decline to select 25 additional large local educational agencies under § 54F(d)(2)(E)(ii) for such year. The first chart below allocates \$6.6 billion of the \$11 billion 2009 calendar year volume cap for QSCBs to States to be further allocated to the issuers within such State. The second chart below allocates \$4.4 billion of the \$11 billion 2009 calendar year volume cap for QSCBs to large local educational agencies.

#### **2009 Allocations to States of Volume Cap for Qualified School Construction Bonds**

(Net of Allocations to Large Local Educational Agencies)

<b>State/Territory</b>	<b>Total Allocation by State/Territory</b>
Alabama	118,776,000
Alaska	29,784,000
Arizona	186,292,000
Arkansas	113,443,000
California	773,525,000
Colorado	87,147,000
Connecticut	105,092,000
Delaware	29,784,000
District of Columbia	0
Florida	106,806,000
Georgia	201,062,000
Hawaii	0
Idaho	37,665,000
Illinois	244,435,000
Indiana	177,861,000
Iowa	64,252,000
Kansas	79,589,000
Kentucky	135,132,000
Louisiana	131,622,000
Maine	42,074,000
Maryland	50,354,000
Massachusetts	144,783,000
Michigan	296,860,000
Minnesota	75,850,000
Mississippi	132,443,000
Missouri	141,441,000
Montana	31,623,000
Nebraska	32,343,000
Nevada	6,767,000
New Hampshire	29,784,000
New Jersey	223,279,000
New Mexico	64,602,000
New York	192,049,000
North Carolina	187,167,000
North Dakota	25,740,000
Ohio	267,112,000
Oklahoma	87,018,000
Oregon	112,886,000
Pennsylvania	315,737,000

Rhode Island	22,062,000
South Carolina	131,364,000
South Dakota	29,784,000
Tennessee	121,738,000
Texas	538,585,000
Utah	50,962,000
Vermont	24,845,000
Virginia	191,077,000
Washington	164,111,000
West Virginia	78,219,000
Wisconsin	98,589,000
Wyoming	24,080,000
American Samoa	10,748,000
Guam	10,980,000
Northern Marianas	10,703,000
Puerto Rico	0
Virgin Islands	9,974,000
Total	6,600,000,000

**2009 Allocations to Large Local Educational Agencies of Volume Cap for  
Qualified School Construction Bonds**

<b>State</b>	<b>Large Local Educational Agency</b>	<b>Allocation</b>
Alabama	Birmingham City School District	15,683,000
Alabama	Mobile County School District	23,135,000
Alabama	Montgomery County School District	11,421,000
Arizona	Mesa Unified District	16,111,000
Arizona	Tucson Unified District	21,375,000
California	Bakersfield City Elementary	15,720,000
California	Compton Unified	18,559,000
California	Fresno Unified	41,398,000
California	Long Beach Unified	37,905,000
California	Los Angeles Unified	318,816,000
California	Oakland Unified	26,326,000
California	Sacramento City Unified	21,251,000
California	San Bernardino City Unified	27,790,000
California	San Diego City Unified	38,877,000
California	Santa Ana Unified	19,269,000
California	Stockton City Unified	16,055,000
Colorado	Denver County 1	24,022,000
District of Columbia	District of Columbia Public Schools	33,936,000

Florida	Broward County School District	49,913,000
Florida	Dade County School District	104,855,000
Florida	Duval County School District	27,220,000
Florida	Hillsborough County School District	40,633,000
Florida	Lee County School District	12,701,000
Florida	Orange County School District	35,824,000
Florida	Palm Beach County School District	33,643,000
Florida	Pasco County School District	11,028,000
Florida	Pinellas County School District	24,352,000
Florida	Polk County School District	20,543,000
Florida	Volusia County School District	11,941,000
Georgia	Atlanta City School District	37,934,000
Georgia	Clayton County School District	13,793,000
Georgia	Cobb County School District	12,732,000
Georgia	De Kalb County School District	27,832,000
Georgia	Fulton County School District	17,720,000
Georgia	Gwinnett County School District	18,985,000
Georgia	Richmond County School District	16,163,000
Hawaii	Hawaii	32,058,000
Illinois	City of Chicago School District 299	254,250,000
Indiana	Indianapolis Public Schools	31,181,000
Kentucky	Jefferson County School District	27,483,000
Louisiana	Caddo Parish School Board	17,359,000
Louisiana	East Baton Rouge Parish School Board	21,433,000
Louisiana	Jefferson Parish School Board	21,646,000
Louisiana	Orleans Parish School Board	39,607,000
Maryland	Baltimore City Public School System	58,096,000
Maryland	Baltimore County Public Schools	19,424,000
Maryland	Prince George's County Public Schools	25,102,000
Massachusetts	Boston	37,567,000
Massachusetts	Springfield	17,864,000
Michigan	Detroit City School District	123,272,000
Minnesota	Minneapolis	21,739,000
Minnesota	St. Paul	16,119,000
Mississippi	Jackson Public School District	15,255,000
Missouri	Kansas City School District	17,880,000
Missouri	St Louis City	28,163,000
Nebraska	Omaha Public Schools	17,378,000
Nevada	Clark County School District	51,414,000
New Jersey	Newark City	27,258,000
New Mexico	Albuquerque Public Schools	21,968,000
New York	Buffalo City School District	34,374,000
New York	New York City	699,872,000
New York	Rochester City School District	29,535,000
North Carolina	Charlotte-Mecklenburg Schools	25,962,000

North Carolina	Cumberland County Schools	15,948,000
North Carolina	Forsyth County Schools	12,244,000
North Carolina	Guilford County Schools	17,147,000
North Carolina	Wake County Schools	17,304,000
Ohio	Akron City School District	15,062,000
Ohio	Cincinnati City School District	25,632,000
Ohio	Cleveland Municipal School District	53,145,000
Ohio	Columbus City School District	36,372,000
Ohio	Toledo City School District	21,460,000
Oklahoma	Oklahoma City	17,844,000
Oklahoma	Tulsa	14,327,000
Pennsylvania	Philadelphia City School District	146,897,000
Puerto Rico	Puerto Rico	376,055,000
Rhode Island	Providence School District	22,338,000
South Carolina	Charleston County School District	13,517,000
South Carolina	Greenville County School District	15,060,000
Tennessee	Memphis City School District	41,736,000
Tennessee	Nashville-Davidson County School District	21,132,000
Texas	Aldine Independent School District	18,810,000
Texas	Alief Independent School District	16,297,000
Texas	Arlington Independent School District	12,805,000
Texas	Austin Independent School District	24,440,000
Texas	Brownsville Independent School District	25,612,000
Texas	Dallas Independent School District	73,741,000
Texas	Edinburg Consolidated Independent School District	13,810,000
Texas	El Paso Independent School District	29,067,000
Texas	Fort Worth Independent School District	31,602,000
Texas	Garland Independent School District	10,186,000
Texas	Houston Independent School District	94,303,000
Texas	La Joya Independent School District	13,392,000
Texas	Laredo Independent School District	13,639,000
Texas	Northside Independent School District	13,299,000
Texas	Pasadena Independent School District	14,445,000
Texas	Pharr-San Juan-Alamo Independent School District	13,302,000
Texas	San Antonio Independent School District	30,385,000
Texas	Ysleta Independent School District	16,807,000
Wisconsin	Milwaukee	72,118,000
Total		4,400,000,000

## **SECTION 5. EFFECTIVE DATE OF 2009 ALLOCATIONS OF NATIONAL BOND VOLUME CAP**

The allocations of the national bond volume cap for QSCBs in Section 4 are effective for QSCBs issued, pursuant to an allocation of 2009 calendar year volume cap, after February 17, 2009, and before January 1, 2010.

## **SECTION 6. ALLOCATION OF THE INDIAN TRIBAL GOVERNMENT VOLUME CAP**

The Department of the Interior is exclusively responsible for making the allocations of the Indian tribal government volume cap and inquiries about the process and timing for those allocations of volume cap should be directed to John Rever, Director, Office of Management Support Services, Bureau of Indian Affairs, at (703) 390-6314 or [John.rever@bia.gov](mailto:John.rever@bia.gov).

## **SECTION 7. DRAFTING INFORMATION**

The principal author of this notice is Aviva M. Roth of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice contact Aviva M. Roth on (202) 622-3980 (not a toll-free call.)