



FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
COMMISSIONER ADAM H. PUTNAM

MEMORANDUM

DATE: April 23, 2015
TO: Florida Large Local Governments
FROM: Kelley Smith Burk, Acting Director, Office of Energy *KS 4/23/15*
RE: Qualified Energy Efficiency Conservation Bonds (QECB)
Formula Allocations to Large Local Jurisdiction

Introduction

Qualified Energy Conservation Bonds (QECBs) were first authorized by Congress in October 2008. At that time, Congress allowed a maximum of \$800 million in QECB volume cap nationwide. In the February 2009 American Recovery and Reinvestment Act (ARRA), Congress increased the volume cap to \$3.2 billion.

QECBs may be issued by state, local and tribal governments to finance qualified energy conservation projects. At least 70 percent of your formula allocation must be used toward public projects. A Maximum of 30 percent of your formula allocation may be issued to finance private activities (see Internal Revenue Service Notice 2009-29).

Qualified projects are defined broadly (26 United States Code Section 54D). Examples of qualified projects include energy efficiency capital expenditures in public buildings, green communities, renewable energy production, various research and development, efficiency/energy reduction measures for mass transit, and energy efficiency education campaigns. Note that a "green community program" (Eligible Project Type I.b. below) would not be considered a private activity project. Examples of such a program include loan programs to finance residential and commercial building energy efficiency retrofits and renewable energy systems.

QECBs were originally structured as tax credit bonds. However, the March 2010 HIRE Act (H.R. 2847 (Sec. 301)) changed QECBs from tax credit bonds to direct subsidy bonds similar to Build America Bonds (BABs), making them more appealing to potential investors. The QECB issuer pays the investor a taxable coupon and receives a rebate from the U.S. Treasury.

Section 317.816, Florida Statute authorizes the Florida Department of Agriculture and Consumer Service Office of Energy (FDACS OOE) to establish an allocation program for Florida's QECB allocation as provided in 26 United States Code Section 54D. FDACS OOE does not approve or monitor projects developed from the use of the allocations. QECB use is subject to audit by the Internal Revenue Service and the United States Treasury.

Eligible Project Types (as referenced from 26 U.S. Code Section 54D)

- I. Capital Expenditures incurred for the purposes of

- a. Reducing energy consumption in publicly-owned buildings by at least 20%
- b. Implementing green community programs (including loans, grants, or other repayment mechanisms)
- c. Rural development involving the production of electricity from renewable energy resources
- d. Any qualified facility [as determined under section 45(d) of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 without regard to paragraphs 8 and 10 thereof and without regard to any placed in service date]
- e. Demonstration projects designed to promote the commercialization of
 - i. Green building technology
 - ii. Conversion of agricultural waste to fuel
 - iii. Advanced battery manufacturing technologies
 - iv. Technologies to reduce peak use of electricity
 - v. Technologies for the capture and sequestration of carbon dioxide produced from making electricity
- f. Mass commuting and related facilities that reduce energy consumption and pollution

- II. Research facilities, research grants and supporting research in
 - a. Development of cellulosic ethanol or other non-fossil fuels
 - b. Capture and sequestration of carbon dioxide produced by fossil fuels
 - c. Increasing the efficiency of existing technologies for producing non-fossil fuels
 - d. Automobile battery technology or other fossil-fuel reduction technology in transportation
 - e. Technologies to reduce energy use in buildings

- III. Public education campaigns to promote energy efficiency

Formula Allocations and Reallocation

Each state is required to allocate a portion of their bond cap to any Large Local Government (LLG) with a population of 100,000 or more based on the LLG's percentage of total state population (see Internal Revenue Service Notice 09-29). The IRS provided notice to Florida of the overall state QECB allocation in Notice 2009-29, which outlined the allocations to states based on their 2008 populations. Florida's allocation is \$190,146,000. Florida, in turn, is directed to allocate a portion of the State's overall allocation to LLG's based on their proportionate 2008 population. For example, if a Florida municipality represents 10% of the State's 2008 population, it receives 10% of the State's bond cap allocation. This formula is illustrated in the *Large Local Government Allocation* spreadsheet, which provides respective LLG populations, the corresponding LLG percentage of the overall State population, and the corresponding LLG QECB allocation derived using the LLG population relative to the state population.

LLGs may issue QECBs themselves or may designate another unit of government, either State or local, to issue bonds from their formula allocation, providing the project financed is fully within the jurisdiction of the LLG. For example, a county may choose to support a city's project by allowing the city to issue from the county's allocation, assuming the city's project falls completely within the county's jurisdiction.

In these and similar situations, the LLG (e.g. the county in the above example) will be responsible for providing FDACS OOE with documentation of how they intend to use their formula allocation or allow another issuer within their jurisdiction to use it. Please note that there is no statutory deadline to issue QECB at this date; however, Congressional action may be taken to enact such a deadline.

The remainder of the total state QECB capacity (\$12,598,934) is retained by the State. If an LLG is not able to or chooses not to use its formula allocation or to offer it to another issuer within its jurisdiction, its authority may be reallocated to the State for use in the State QECB program (see Internal Revenue Service Notice 09-29). Such authority may then be sub-allocated by FDACS OOE. The State QECB program is currently under development.

FDACS OOE Oversight

In order to communicate the intent to use formula allocations, FDACS OOE requests that LLGs have an official with decision making authority sign the *Notice of Intent* form and submit it to FDACS OOE no later than to October 31, 2015. If an LLG is reallocating the formula allocation back to the State, a resolution of the governing body must accompany the *Notice of Intent* document. The purpose of the *Notice of Intent* document is to allow FDACS OOE to determine what amount of the formula allocations will be used by LLGs and what amounts will revert back to the State for use in the State's QECB program.

In addition, if an LLG intends to issue QECB from its formula allocation, FDACS OOE requests that the LLG submit a *Project Information* document at least two weeks prior to their QECB issuance. The primary purpose of the *Project Information* document is to ensure that the 70/30 public-private use limitation requirement is being followed. It will also be used by FDACS OOE to record the types of projects selected at the local level.

Both the *Notice of Intent* document and the *Project Information* document are included in this allocation notification packet and are also available for download on the FDACS OOE website at: <http://www.freshfromflorida.com/Divisions-Offices/Energy>.

Comments or Questions

For questions or more information, please contact Tony Morgan at (850) 617-7470.