

# **Bond Cap Allocation Program: Biennial Report on State Cap for Private Activity Bonds**

A Report to the Legislature

February 2000



**WASHINGTON STATE  
COMMUNITY, TRADE AND  
ECONOMIC DEVELOPMENT**

*Building Foundations for the Future*

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**Bond Cap Allocation Program:  
Biennial Report on  
State Cap for  
Private Activity Bonds**

A Report to the Legislature from  
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February 2000  
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## INTRODUCTION

The purpose of this report is to provide a summary of activities for the Washington State Bond Cap Allocation Program (BCAP) as administered by the Department of Community, Trade and Economic Development (CTED). Such a report is due each biennium to the Washington State Legislature, as outlined in Chapter 39.86 RCW.

In accordance with the federal Tax Reform Act of 1986 and Washington State law, BCAP allocates tax-exempt bond issuance authority from the yearly State Bond Cap for Washington State. The Cap is expressed as a dollar amount limit and pertains to the issuance of private activity bonds. Private activity bonds (PABs) are state or local government bonds that are issued for projects or programs that have a certain level of non-governmental participation. Allocations are approved for eligible projects or programs statewide, with eligibility determination based on compliance with federal and state guidelines and criteria associated with the type of bond use. The six categories of bond use under the State Cap are Exempt Facility, Small Issue (also called Industrial Development Bonds or IDBs and Industrial Revenue Bonds or IRBs), Housing, Student Loans, Public Utility Districts (PUD), and Remainder. See Appendix 1 for more information about these categories.

The first section of this report, Bond Cap Allocation Program: An Overview, provides the program purpose, including definitions of Cap and private activity; a recounting of the primary impacts on the historical development of the program, with special emphasis on the federal Tax Reform Act of 1986; elaboration on the roles played by the Legislature, CTED, and other Washington State agencies; and an outline of the allocation process, as implemented by CTED.

The next three sections of the report deal directly with BCAP activity for 1998, 1999, and January 2000.

The following section summarizes activities that have taken place since the last biennial report. This section is titled What's Happened to BCAP? The section entitled What's Ahead for BCAP? addresses issues concerning the program in the next year or two.

The last section is comprised of seven appendices that provide details on the program and its processes.

# BOND CAP ALLOCATION PROGRAM: AN OVERVIEW

## PROGRAM PURPOSE

Debt financing for projects which combine public and private resources are subject to special federal tax rules. Among these is a limit or Cap on the amount of certain types of municipal bonds that can be issued in each state. In Washington, the Bond Cap Allocation Program allocates this Cap among eligible applicants.

The State Bond Cap, as created by Congress, is the maximum level of tax-exempt private activity municipal bonds that can be issued in the state for a given year. By current definition from the federal Tax Reform Act of 1986, the total Cap for each state is equal to \$50 per capita. The Tax Reform Act of 1986 defines private activity bonds as those used to fund projects or programs that contain more than ten percent private participation, although other special rules or definitions may be applied on a case-by-case basis. For more details on private activity classification and the Cap, see Appendices 2 and 3.

The overall purpose of BCAP is to provide opportunities for lower-cost financing by authorizing the issuance of bonds which otherwise would be taxable, for those projects or programs that contain a substantial amount of private activity and yet provide significant benefits to the public.

## PROGRAM BACKGROUND

### Federal Groundwork

The major impetus for establishment of the Bond Cap Allocation Program was the passage of the federal Tax Reform Act of 1986. The Act delivered sweeping changes in the conditions of state and municipal bond allocation. As part of an overall effort to balance the federal budget, the Tax Reform Act of 1986 put certain restrictions on most types of municipal bonds. These restrictions resulted in a dramatic reduction in the issuance of private activity bonds.

Private activity bonds are generally taxable unless they are issued from an allocation of the state's reserve authority. This authority is limited to a certain dollar amount volume for any given year and is called the State Cap (or State Ceiling). Three primary concerns of potential issuers were significantly altered by the Tax Reform Act of 1986:

- Criteria for private activity classification were expanded to include a larger portion of municipal debt. As a result, more bond types are subject to volume limits on tax-exempt issuances and other restrictions.
- Criteria for determining the eligibility of private activity projects or programs for State Cap allocations were tightened and more restrictions were placed on the use of the bond proceeds. In other words, while Congress expanded the number of bond types classified as private activity, they imposed restrictions that reduced the number of private activity projects and programs qualifying for tax-exempt bond issuance authority under the State Bond Cap.
- More restrictive dollar limits were set on the available volume of the State Cap.

The Tax Reform Act of 1986 was the culmination of struggles at the federal level to control the growth of municipal bonds issuance. This growth, which more than quadrupled between 1974 and 1984, was perceived as staggering and concerned federal observers on three levels:

1. The tax-exempt status of municipal bonds kept millions of dollars annually out of the federal treasury.
2. Loopholes for the wealthy were already creating strong pressure for tax reform.
3. The burgeoning use of certain types of tax-exempt bonds, particularly those that financed development of private industry, concerned some public policy analysts.

Although the Tax Reform Act of 1986 laid the foundation for establishing the current Bond Cap allocation process, it was the Deficit Reduction Act of 1984 that established the first state-by-state ceiling on bond volume for private activity bonds. The 1984 Act was the first significant attempt to allay the concerns mentioned above, and caused the Governor of Washington State to set up an interim procedure for allocating the Cap within bond use categories that included industrial development, certain governmental activities, and student loans. The procedure provided further that the Department of Commerce and Economic Development would administer allocations.

In April 1985, the Washington State Legislature replaced the executive order with Chapter 39.86 RCW. For the first time, a volume limit was placed on each of the bond use categories and allocation criteria for general consideration were set forth. In addition, the law provided that qualified allocations within each category would be appropriated on a first-come, first-served basis, and allowed reallocations among categories after June 1 of each year. Administering the allocations was the responsibility of the Community Economic Revitalization Board (CERB) through the Department of Commerce and Economic Development.

The Tax Reform Act of 1986 replaced the 1984 Act as the directional force for PAB controls at the federal level, and increased the restrictions placed on such controls, as earlier described. The rate used to determine Cap volume declined from \$150 per capita to the current rate of \$50 per capita; the percentage of private activity needed to classify a bond as a PAB was decreased from 25 percent to 10 percent. In addition, the categories of bond use requiring Cap allocations were expanded to include Exempt Facility, Small Issue (IRBs), Qualified Student Loans, Qualified Mortgage Revenue, and Qualified Redevelopment. The federal Tax Reform Act of 1986 allowed each state's governing body to devise its own means of allocating the State Cap among various PAB issuers. In Washington, Chapter 39.86 RCW outlines the state's Bond Cap allocation process and delegated administrative responsibility to the Department of Community Development, which merged with the Department of Trade and Economic Development in March of 1994 to become CTED.

## Program Development at the State Level

Working within the guidelines set by Congress, the Washington State Legislature passed legislation to realign the category definitions and assign Cap allocation proportions to each bond use category. Chapter 39.86 RCW designated allocation proportions for each year from 1987 to 1989 and then for the period of 1990 and thereafter. However, the law also allows for the redistribution of initial Cap allocations from categories where carryforward allocations exist from the previous year. Further, the law provides that on September 1 any unauthorized allocations, or portions thereof, may be redistributed from their original categories to categories where demand is anticipated to be higher for the remainder of the year. For a more detailed look at program guidelines, see Appendices 4, 5, and 6.

## The Bond Cap Allocation Process

The Department of Community, Trade and Economic Development's BCAP distributes the Cap into the issuance categories in accordance with the pre-established percentages. Issuers can then request allocations for specific projects or programs within a specific category. Based on evaluative criteria, the BCAP administrator recommends approval or denial of these requests to the CTED Director. If the Director approves an allocation, he or she signs a Certificate of Approval authorizing bond issuance under the State Bond Cap for all or part of the amount requested. Once an allocation has been authorized, the BCAP staff track the allocations. The tracking process allows staff to:

1. Track the ongoing issuance demand for the current year in relation to remaining Bond Cap allocation available and the needs of the statewide economy.
2. Ensure that all issuances are carried out in an appropriate and timely manner.
3. Accumulate and use information relating to the public benefits of tax-exempt PAB financing.
4. Audit the BCAP on an ongoing basis to maximize program effectiveness.
5. Maintain open channels of communication between the program staff and clients, potential clients, the Legislature, and other parties expressing interest in the program.

See Appendix 7 for a flow chart of the Bond Cap allocation process.

Beginning September 1 of each year, the BCAP staff may redistribute unauthorized allocation amounts from their original categories to other categories where greater need exists.

At the end of the year, the BCAP staff reassesses the distribution of allocations with respect to the unauthorized amount remaining, unapproved allocation requests pending, and current and projected demand in each of the bond use categories. Based on the year-end assessments, the BCAP administrator determines what allocation amounts warrant carryforward into the upcoming calendar year and for what projects and/or programs those amounts will be dedicated for carryforward. The BCAP administrator then makes recommendations to the Director of CTED. The subsequent process parallels that mentioned above, including the tracking of approved carryforward allocations over the three-year period during which they must be used. See Appendix 4.

Throughout the allocation process, the BCAP staff work closely with clients, potential clients, and when applicable, with other state agencies. State law provides the opportunity for the Employment Security Department (ESD) to be involved in the Bond Cap allocation process.

Working with ESD, CTED has developed policy guidelines that have the impact of strong recommendations to issuers of IDBs from Bond Cap authority. As part of an effort to provide employment opportunities to low-income persons, ESD enters into an employment agreement with potential issuers of BCAP authorized IDBs. The agreement is sent directly to the BCAP staff from the issuer as part of the allocation request process. If the Bond Cap allocation is approved for a project requiring IDB financing, ESD staff will submit to the corresponding business a list of persons with low-to moderate-incomes that should be considered for employment.

In addition, any allocation from the Small Issue category is examined in relation to certain guidelines conceived at the policy level by the Community Economic Revitalization Board (CERB) and CTED. The guidelines were established by CTED through the Washington Administrative Code (WAC). Bond Cap staff procedurally implement the guidelines by incorporating them into the Small Issue allocation approval process. Although Small Issue allocation requests are typically evaluated in relation to these guidelines, CTED can give special considerations to projects that do not fit the general guidelines, but are deemed to be in the best interest of the state.

As a result of the collaborative efforts of CTED and CERB, WAC 365-135-060 provides guidelines for the amount of IDB allocations that can be approved for projects within geographic designations of Washington State. The WAC includes a recommended maximum cost/job created ratio for each of the geographic designations. The four geographic designations are East/Distressed, East/Non-Distressed, West/Distressed, and West/Non-Distressed. Each classification encompasses a certain range of Washington cities, subject to periodic alignments. Prior to June 1 of each year, not more than 60 percent of the Small Issue authority can be allocated to West/Non-Distressed projects, with certain percentages of the yearly Small Issue allocations being reserved for each of the three other designations. In addition, 25 percent of the Small Issue category is reserved until September 1 for the CERB Umbrella Bond Program, which is designed for the issuance of tax-exempt bonds by a pool of issuers. Under RCW 39.84.090, CTED is also responsible for determining whether or not each IDB project in the State Bond Cap allocation process can be classified as industrial development for bond issuance purposes.

## Bond Cap Allocation Program: The End Result

The efforts at the federal, state, program, and process levels to develop a program for authorizing and tracking tax-exempt private activity bond issuance has resulted in a program that provides the following:

- 1) priority allocations among community projects statewide;
- 2) an allocation reserve for contingencies;
- 3) administrative costs paid by user fees; and
- 4) the overall flexibility needed to react to moderate changes in issuance demand and to Washington State's ongoing needs.

## **1998 and 1999 STATE BOND CAP FOR PRIVATE ACTIVITY BONDS**

Table 1 and Table 2 list the six bond use categories and show how the 1998 and 1999 State Caps were distributed. In addition, the tables illustrate the general process order of Cap activity that led to the final Cap distributions presented at the bottom. A total of \$38,562,275 was left unused at the end of 1998. This was allocated as carryforward to the Washington State Housing Finance Commission for their Multifamily and Single Family programs. A total of \$51,461,796 was left unused at the end of 1999, and this was also allocated as carryforward to the Commission's Multifamily and Single Family programs.

As can be seen in the tables, the PUD, Housing and Student Loan categories issued more than what was in their Initial Allocations. This is possible due to unused allocation in the other categories. After September 1, any unused allocation is pooled and can be used by any qualified project from any category.

**TABLE 2  
PRIVATE ACTIVITY BOND USE IN 1998**

	SMALL ISSUES	PUDS	HOUSING	EXEMPT FACILITIES	STUDENT LOANS	REMAINDER	TOTAL
1998 Initial Allocation (IA)	\$70,129,525	\$28,051,810	\$ 70,129,525	\$ 56,103,620	\$42,077,715	\$ 14,025,905	\$280,518,100
1998 IA Reallocated to Remainder	\$ -0-	\$ -0-	<\$14,782,156>	\$ -0-	-0-	\$ 14,782,156	\$ -0-
Revised 1998 IA	\$70,129,525	\$28,051,810	\$ 55,347,369	\$ 56,103,620	\$42,077,715	\$ 28,808,061	\$280,518,100
Issued from 1998 CAP	\$64,785,869	\$28,050,000	\$ 89,119,956	\$ -0-	\$60,000,000	N/A	\$241,955,825
Carryforward Authorized	\$ -0-	\$ -0-	\$ 38,562,275	\$ -0-	\$ -0-	N/A	\$ 38,562,275
Final 1998 Cap Allocated (Includes issued and carryforward)	\$64,785,869	\$28,050,000	\$127,682,231	\$ -0-	\$60,000,000	N/A	\$280,518,100
Carryforward Available in 1998			\$ 32,453,176				\$ 32,453,176
Prior Carryforward Used in 1998			\$ 27,210,998				\$ 27,210,998
Prior Carryforward Remaining for 1999			\$ 5,242,178				\$ 5,242,178
TOTAL AMOUNT ISSUED IN 1998 (from 1998 and prior Cap)	\$64,785,869	\$28,050,000	\$116,330,954	\$ -0-	\$60,000,000	N/A	\$269,166,823

**TABLE 2**

## PRIVATE ACTIVITY BOND USE IN 1999

	SMALL ISSUES	PUDS	HOUSING	EXEMPT FACILITIES	STUDENT LOANS	REMAINDER	TOTAL
1999 Initial Allocation (IA)	\$71,115,787	\$28,446,315	\$ 71,115,787	\$ 56,892,630	\$42,669,473	\$ 14,223,158	\$284,463,150
1999 IA Reallocated to Remainder	\$ -0-	\$ -0-	<\$38,562,275>	\$ -0-	\$ -0-	\$ 38,562,275	\$ -0-
Revised 1999 IA	\$71,115,787	\$28,446,315	\$ 32,553,512	\$ 56,892,630	\$42,669,473	\$ 52,785,433	\$284,463,150
Issued from 1999 CAP	\$28,100,000	\$32,145,000	\$121,906,354	\$ 50,850,000	\$ -0-	N/A	\$233,001,354
Carryforward Authorized	\$ -0-	\$ -0-	\$ 51,461,796	\$ -0-	\$ -0-	N/A	\$ 51,461,796
Final 1999 Cap Allocated (Includes issued and carryforward)	\$28,100,000	\$32,145,000	\$173,368,150	\$ 50,850,000	\$ -0-	N/A	\$284,463,150
Carryforward Available in 1999			\$ 43,804,453				\$ 43,804,453
Prior Carryforward Used in 1999			\$ 29,712,565				\$ 29,712,565
Prior Carryforward Remaining for 2000			\$ 14,091,888				\$ 14,091,888
TOTAL AMOUNT ISSUED IN 1999 (from 1999 and prior Cap)	\$28,100,000	\$32,145,000	\$151,618,919	\$ 50,850,000	\$ -0-	N/A	\$262,713,919

## 2000 STATE BOND CAP FOR PRIVATE ACTIVITY BONDS

The 2000 Washington State Bond Cap was set at \$287,818,050. As of January 27, 2000, \$175,528,897 or 60.99 percent of the total Cap had been allocated. See Table 3. Of this amount, \$64,751,814 was authorized for Housing projects or programs, \$60,917,083 was authorized for Exempt Facility projects, \$45,360,000 was authorized for the Student Loan program, and \$4,500,000 for a Small Issue project.

The following two tables present the 2000 Bond Cap activity as of January 27, 2000, from two different perspectives. Table 3 lists the allocation requests received by BCAP staff. Table 4 displays, in sequential form by bond-use category, the impact of approved requests on the Cap amounts remaining in 2000 for allocation, reallocation among categories, and possible carryforward.

**TABLE 3 - 2000 BOND CAP ALLOCATION REQUESTS  
THROUGH JANUARY 20, 2000**

<u>ISSUER NAME</u>	<u>PROJECT OR PROGRAM</u>	<u>CATEGORY</u>	<u>AMOUNT REQUESTED</u>	<u>ACTION TAKEN</u>	<u>AMOUNT AUTHORIZED</u>
Student Loan Fin Assoc	Student Loan Program	Student Loans	\$ 63,000,000	Approved	\$ 45,360,000
King Co Econ Ent Corp	Cedar Grove Composting	Exempt Facility	\$ 2,500,000	Approved	\$ 2,500,000
Vancouver Housing Auth	Hazel Dell Asst Living	Housing	\$ 4,000,000	Approved	\$ 4,000,000
Port of Chehalis	Boise Cascade Corp	Exempt Facility	\$ 35,000,000	Approved	\$ 17,269,083
Seattle Housing Auth	Third & Pine Building	Housing	\$ 4,000,000	Approved	\$ 4,000,000
Seattle Housing Auth	Delridge Mutual Housing LP	Housing	\$ 2,000,000	Approved	\$ 2,000,000
Seattle Housing Auth	Stewart Court	Housing	\$ 4,800,000	Approved	\$ 4,800,000
Seattle Chinatown Intl Dist	Village Square II	Housing	\$ 5,000,000	Approved	\$ 5,000,000
King Co Housing Auth	Overlake Park & Ride	Housing	\$ 28,000,000	Approved	\$ 28,000,000
Pierce Co Housing Auth	Hidden Hills Apts	Housing	\$ 8,650,000	Approved	\$ 8,600,000
City of Cashmere	Tree Top Inc	Exempt Facility	\$ 4,500,000	Approved	\$ 4,500,000
Capital Hill Housing Imp	El Nor Apts	Housing	\$ 2,250,000	Approved	\$ 2,250,000
WA St Housing Fin Comm	Multifamily Program	Housing	\$ 25,884,157	Approved	\$ 6,101,814
Port of Centralia	Centralia Steam Plant	Exempt Facility	\$ 50,900,000	Approved	\$ 36,648,000
Yakima Co Dev Corp	Valley Processing Inc	Small Issue	\$ 4,500,000	Approved	\$ 4,500,000
		<b>Totals</b>	<b>\$244,934,157</b>		<b>\$175,528,897</b>

**TABLE 4  
PRIVATE ACTIVITY BOND USE IN 2000  
AS OF JANUARY 27, 2000**

	SMALL ISSUES	PUD	HOUSING	EXEMPT FACILITIES	STUDENT LOANS	REMAINDER	TOTAL
2000 Initial Allocation (IA)	\$71,954,512	\$28,781,805	\$71,954,512	\$57,563,610	\$43,172,708	\$14,390,903	\$287,818,050
Amount Received From Remainder	\$ -0-	\$ -0-	\$44,259,098	\$19,378,918	\$ 2,187,292	<\$65,825,307>	\$ -0-
2000 IA Reallocated to Remainder	\$ -0-	\$ -0-	<\$51,461,796>	\$ -0-	\$ -0-	\$51,461,796	\$ -0-
Revised 2000 IA	\$71,954,512	\$28,781,805	\$64,751,814	\$76,942,527	\$45,360,000	\$ 27,392	\$287,818,050
Amount Authorized	\$ 4,500,000	\$ -0-	\$64,751,814	\$60,917,083	\$45,360,000	\$ -0-	\$175,528,897
Amount Reverted to Cap	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Available for Allocation or Carryforward	\$67,454,512	\$28,781,805	\$ -0-	\$16,025,444	\$ -0-	\$ 27,392	\$112,289,153

## **WHAT'S HAPPENED TO BOND CAP?**

In 1992, the Bond Cap Advisory Group was established to provide input and advice to staff regarding the allocation of the Bond Cap. The Group's primary purpose is to discuss issues that affect the Bond Cap and to assist in making the Bond Cap an effective tool in meeting the state's economic development and public service challenges.

Members of the Group include representatives from CTED, Office of the Attorney General, Association of Washington Cities, Washington State Association of Counties, Foster Pepper & Shefelman PLLC<sup>1</sup>, State Treasurer's Office, Office of Financial Management, Washington Public Ports Association, Preston Gates & Ellis LLP<sup>2</sup>, Chelan County PUD No.1, Douglas County PUD No.1, Grant County PUD No. 2, Student Loan Finance Association, Washington Economic Development Finance Authority, Washington State Housing Finance Commission, Port of Port Angeles, Economic Development Board for Tacoma-Pierce County, Bellingham/Whatcom County Housing Authority, and King County Housing Authority.

As a result of discussions with the Advisory Group, the Bond Cap's Washington Administrative Codes were amended in June 1993, December 1996 and December 1999.

At the federal level, legislation was enacted in 1998 that raises the per capita amount from \$50 to \$75, increasing the amount \$5 a year from 2003 through 2007. In 1999, legislation was introduced to move the schedule up to start in 2000, first as part of a tax bill and then as part of a minimum wage bill, both of which were vetoed by the President.

In 1998 and 1999, bills were introduced in the state legislature to change the percentages of the Initial Allocations. The 1998 bill would have given half of any increases to the Housing category. The 1999 bill would have combined the Small Issue and Exempt Facility categories into one category and reduced the combined Initial Allocation by 10 percent and add 10 percent to Housing's Initial Allocation. Both bills failed to pass.

## **WHAT'S AHEAD FOR BCAP?**

At the federal level, it is likely that legislation will be introduced to start the \$5 a year increase in 2001. Congress has also discussed raising the Small Issue limit from \$10 million to \$20 million per project.

At the State level, discussions will be held by the Advisory Group, legislative staff, and CTED in the interim to determine if legislative changes should be pursued in 2001.

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<sup>1</sup> PLLC: Professional Limited Liability Corporation

<sup>2</sup> LLP: Limited Liability Partnership

# APPENDICES

## APPENDIX 1: SUMMARY OF BOND CATEGORIES

The Washington State Cap is divided among six bond use categories, as follows:

### 1. **Housing**

The Housing category includes mortgage revenue bonds, mortgage credit certificates, and Exempt Facility bonds for qualified residential rental projects. Under the tax code, 95 percent of mortgage revenue bond allocations must be used to finance residences for first-time homebuyers. Further limitations include tightening of income restrictions for homeowners, as well as tightening allowable cost standards for a residence based on the average for the area in which it is located.

### 2. **Student Loans**

The Student Loans category is reserved for bonds issued to purchase loans for students who are either enrolled in schools within the state of Washington or are legal residents of Washington State.

### 3. **Exempt Facility**

While most traditional local government projects can continue to use tax-exempt bonds without an allocation from the State Cap, some cannot. The Exempt Facility category is reserved for those local government projects that have been classified, for federal purposes, as having a level of private activity that makes them subject to the State Cap. Facilities eligible for tax exemption under the State Cap (i.e., Exempt Facilities) are limited to the following:

- Mass commuting
- Local furnishing of electricity or gas
- Furnishing water
- Hazardous waste disposal
- Sewage treatment
- Solid waste disposal
- Local district heating and cooling

Under the Tax Reform Act of 1986, multifamily rental projects are also defined as Exempt Facilities. However, for classification purposes under Washington State law, such projects receive bond issuance authority from within the Housing category of the Bond Cap. See #1 above.

### 4. **Public Utility Districts (PUD)**

The PUD category is reserved only for certain Public Utility Districts described in Section 1317(25) of the Tax Reform Act of 1986. These are: Chelan County PUD No.1, Douglas County PUD No.1, and of Grant County PUD No.2. Under the code, these three districts are allowed an aggregate lifetime amount of \$750 million.

### 5. **Small Issue** (Industrial Revenue Bonds/Industrial Development Bonds)

The Small Issue category is reserved for industrial development projects. Under the tax code, only bonds for manufacturing or processing are currently eligible for allocation under the Small Issue category. A single allocation request from within this category may not exceed \$10 million.

6. **Remainder**

The Remainder category is a miscellaneous category that can be allocated to projects eligible under any of the five other bond use categories throughout the year. This category receives five percent of the Initial Allocation, with the remaining 95 percent of the total Cap being distributed among the other five categories.

## APPENDIX 2: PRIVATE ACTIVITY CLASSIFICATION

Two tests, the Private Business Use Test and the Private Security or Payment Test, determine a project's classification under the PAB category. Both of these tests must be satisfied before a bond is classified as a PAB.

### Private Business Use Test

A bond passes the Private Business Use Test when:

- a) more than ten percent of bond proceeds (or the facilities financed with bond proceeds) are used for a private business either directly or indirectly; and
- b) such use is in some way different from use as a member of the general public.

### Private Security or Payment Test

A bond passes the Private Security Test when:

Payment of the principal of or interest on more than ten percent of the proceeds of the bonds is directly or indirectly secured by property used or to be used for a private business use, or by payments in respect of that property, or is to be derived from payments (whether or not to the issuer) in respect of property used for a private business use. Such property or payment of a private entity does not include general tax revenues or any other form of existing or anticipated revenues derived from general public obligation.

It is important to note that under the tax code, private means any entity other than local or state governments. Thus, private business use includes use by nonprofit organizations and federal agencies.

### APPENDIX 3: STATE CAP CALCULATION

The BCAP staff is responsible for calculating and updating the State Cap. Based on current federal tax provisions, the State Cap since 1988 is calculated as follows: \$50 X statewide population = State Cap. Figures for statewide population are taken from the most recent census report of the previous year. BCAP staff will update State Cap volume promptly upon the availability of new population data, as obtained from the Bureau of the Census.

The following table compares the total State Cap levels for each year from 1987 through 2000, with the corresponding total Washington State population. In 1987, the Cap was calculated using \$75 instead of \$50, as directed by the federal Tax Reform Act of 1986.

<u>Allocation Year</u>	<u>Washington State Population</u>	<u>State Cap (Population x \$50)</u>
1987	4,444,333	\$333,325,000 (at \$75 per capita)
1988	4,538,000	\$226,900,000
1989	4,619,000	\$230,950,000
1990	4,660,700	\$233,035,000
1991	4,761,000	\$238,050,000
1992	5,018,000	\$250,900,000
1993	5,136,000	\$256,800,000
1994	5,255,000	\$262,750,000
1995	5,343,000	\$267,150,000
1996 <sup>3</sup>	5,343,000	\$267,150,000
1997	5,532,939	\$276,646,950
1998	5,610,362	\$280,518,100
1999	5,689,263	\$284,818,050
2000	5,756,361	\$287,818,050

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<sup>3</sup> Due to the shutdown of the federal government in December of 1995, the Census Bureau was on furlough and new population figures were unavailable. According to the Tax Code, the figure from December of 1994 had to be used.

## APPENDIX 4: YEARLY ALLOCATION

### Allocation Proportions by Category

At the beginning of each year, the State Cap is divided among the six categories on a percentage basis. The percentage and/or amount of the State Cap for any given year is that category's Initial Allocation.

According to Chapter 39.86 RCW, Initial Allocations (percentages) for each of the six categories are as follows:

<u>CATEGORY</u>	<u>% of Cap 1987</u>	<u>% of Cap 1988-Present</u>
Housing	5%	25%
Student Loans	10%	15%
Exempt Facility	40%	20%
PUD	10%	10%
Small Issue	30%	25%
Remainder	5%	5%

### Modification of Initial Allocation

Initial Allocations are set at the above percentages, but can be amended in accordance with an issuer's carryforward amount from the previous year or under certain conditions (see Appendix 5).

#### Carryforward

When an allocation is awarded and not used before December 31 of the allocation year, a potential issuer from within the Housing, Student Loan, or Exempt Facilities categories may request that the approved allocation be carried forward into the following year. This is termed a carryforward allocation. If the carryforward is authorized, the issuer will have three calendar years from the year of authorization in which to issue bonds derived from that authority and must use that authority to issue bonds for the project or program specified in the original Certificate of Approval.

When CTED grants a carryforward to an issuer, the amount of that carryforward may be deducted from the issuing category's initial allocation for the following year.

All reductions in initial allocations will be placed in the Remainder category, where it may later be reallocated to any of the bond use categories, as needed.

## **APPENDIX 5: MODIFYING ALLOCATIONS**

According to Chapter 39.86 RCW, the allocation amount in a category in any given year may be modified by CTED in the following ways:

1. The Remainder category, or a portion thereof, can be allocated by BCAP at any point during the year to one or more issuers within any bond use category. Such an allocation is subject to approval by the CTED Director or Deputy Director.
2. When federal or state law mandates that a bond use category becomes ineligible for allocation under the State Cap, the BCAP administrator shall divide the amount of that category's initial allocation between the remaining bond use categories in keeping with Chapter 39.86 RCW criteria. See Appendix 6.
3. Beginning September 1 of each year, the BCAP administrator may allocate or reallocate any unused portion of an initial allocation to any other bond use category in keeping with Chapter 39.86 RCW and WAC 365-135 criteria.
4. As described in Appendix 4, initial allocations can be modified in categories where carryforward amounts exist from the previous year.

## APPENDIX 6: CRITERIA FOR ALLOCATIONS

Allocations from the State Bond Cap are given only to issuers within one of the designated bond use categories and then only after the CTED Director, or Deputy Director, signs a corresponding Certificate of Approval.

In reviewing requests for allocations, BCAP staff will consider certain criteria, based on Chapters 39.86 RCW and 365-135 WAC. The criteria found in Chapter 39.86 RCW includes:

1. Consideration of existing state priorities.
2. The need of issuers to issue PABs within a bond use category.
3. The amount of state and/or category ceiling available.
4. The public benefit and purpose to be satisfied, resulting from the project or program, including economic development, educational opportunity, and public health, safety, or welfare.
5. The cost or availability of any alternative methods of financing the project or program.
6. The certainty of using the allocation which is being requested.

### **Specific criteria for each category are as follows.**

#### Housing:

Criteria which comply with Chapter 43.180.200 RCW.

#### Student Loans:

Criteria which comply with the applicable provisions of Title 28B RCW and rules adopted by the Higher Education Coordinating Board or the applicable state agency dealing with student financial aid.

#### Exempt Facilities:

1. State issuance needs.
2. The order in which allocation requests are received.
3. The proportionate number of persons benefiting from the project, in relation to the size of the community.
4. The unique timing and issuance needs of large-scale projects subject to allocations in more than one year.

PUD:

The unique timing needs for bonds issued over a multi-year period.

Small Issue (industrial development):

1. The number of employment opportunities the project or program is likely to create or retain in relation to the amount of allocation requested.
2. The level of unemployment existing in the geographic area likely to be affected by the project.
3. The project's or program's commitment to providing employment opportunities to low-income persons in cooperation with ESD.
4. The geographic distribution of projects.
5. The number of persons who will benefit from the project.
6. The order in which allocation requests are received.
7. When applicable, the project's or program's compliance with the requirements of the Community Economic Revitalization Board's Umbrella Bond Program.

**The criteria found in Chapter 365-135 WAC includes:**

Exempt Facilities:

1. In addition to the state statute, the following guidelines will be used as criteria for evaluating Exempt Facility requests:
  - a. Until September 1 of each year, any one Exempt Facility project may not receive more than 30 percent of the initial allocation amount available in the Exempt Facility category.
  - b. 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.
  - c. The number of direct jobs and secondary or spin-off jobs expected to be generated by the project.
  - d. The degree to which the project proposes to provide jobs for lower-income persons from the community.
  - e. The number of jobs created in proportion to the amount of the Bond Cap Allocation.

- f. The proportionate number of persons in relationship to the size of the community who will benefit from the project.
  - g. The degree to which the project provides an economic boost to an economically distressed community (based on the three-year unemployment figures from Employment Security).
  - h. The degree to which the project retains or expands the local tax base.
  - i. The degree to which the project reduces environmental pollution.
  - j. The degree to which the project diverts solid waste from disposal and manufactures it into value-added products.
  - k. The degree to which the project produces energy at a lower cost than alternative or existing energy sources.
  - l. The environmental benefit of the project to the particular community, the county or the state.
  - m. The availability of Bond Cap from the Exempt Facility Category.
  - n. The recognition and accommodation of the unique timing and issuance needs of large-scale projects that may require allocations in more than one year.
  - o. Projects that result in publicly owned facilities over privately owned facilities.
2. Exempt Facility applications will not be considered for allocation until:
    - a. The Department receives:
      - i. A list of all permits required to complete the project and the date each permit application was submitted to and/or granted by the appropriate authority.
      - ii. A copy of any environmental impact statements; and
    - b. Significant progress is demonstrated in securing project financing.
  3. The criteria in this section and other applicable criteria otherwise established in rule and statute shall not be considered as ranked in any particular order but shall be weighed and balanced for each application and among applications in making allocation decisions.
  4. After September 1 of each year, the department may approve an allocation amount prior to the issuer completing all of the criteria listed above.

5. Exempt Facility projects may receive an allocation in order to convert taxable financing to tax-exempt financing, but only in January or September of any year. The request for conversion will be compared against other requests for conversion and current Exempt Facility applications. Projects that use the Washington Economic Development Finance Authority to complete their financing will have priority over projects in obtaining future allocations to convert to tax-exempt financing. Conversion is only allowed within the federal guidelines of one year after the project comes on-line or two calendar years after the Washington Economic Development Finance Authority financing is approved, whichever comes first.
6. Exempt Facility projects up to \$50,000,000 may receive an allocation for up to one hundred percent of the total project cost. Projects from \$50,000,001 to \$75,000,000 may receive an allocation for up to 90 percent of the total project cost. Projects from \$75,000,001 to \$100,000,000 may receive an allocation for up to 80 percent of the total project cost. Projects over \$100,000,000 may receive an allocation for up to 70 percent of the total project cost. A project may obtain additional allocation above these percentages after September 1 of the last year of eligibility only if the total demand for Cap is lower than the amount available.

Small Issue:

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 jobs created or retained 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	\$192.2/job
East/Nondistressed	\$121.6/job
West/Distressed	\$146.6/job
West/Nondistressed	\$106.6/job
Statewide	\$116.8/job

3. The program will consider the number and type of jobs that will be created or retained. Projects that create new jobs will, in general, have priority over others. Projects that involve relocation from one part of Washington to another will, in general, have a lower priority than those that create net new jobs, unless the relocation was caused through displacement for other job creating or economic development activity.

4. Projects that involve the creation of semiskilled and skilled jobs as well as unskilled jobs, or that will provide special training and promotion opportunities to employees, will have priority over those that do not. Projects that will be located in enterprise communities, neighborhood empowerment zones, or distressed areas will be accorded priority over other projects.
5. Priority will be given to projects that result in publicly owned facilities over privately owned facilities.
6. 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.
7. If demand for allocation exceeds the amount available, priority will be given to counties designated as distressed, using unemployment figures for the Employment Security Department.

## APPENDIX 7: FLOW CHART OF BOND CAP ALLOCATION PROCESS

