

## **Chapter 122-4 Restricted Bonds**

### **122-4-01 Definitions and application.**

(A) Definitions as used in this chapter:

(1) "Act" means section 146 of the Internal Revenue Code and any other provisions of the federal laws applicable thereto, as amended from time to time and as applicable, setting forth provisions for a state ceiling on the aggregate volume of restricted bonds that may be issued in any year in the state.

(2) "Amount," with reference to restricted bonds, means the amount taken into consideration for purposes of the state ceiling.

(3) "Bond counsel" means the attorney or firm of attorneys of nationally recognized standing in the field of law relating to the exemption from federal income taxation on state or local bonds who has rendered, or is expected to render at the time of the issuance of bonds, an opinion as to the tax-exempt status of the interest on the bonds.

(4) "Bonds" means bonds, bond anticipation notes, notes, and any other obligations and other arrangements, including certain lease and installment purchase obligations, which are subject to the state ceiling under the act.

(5) "Carryforward bonds" means restricted bonds for which a carryforward of allocation of the state ceiling for a given year may be made for issuance of such bonds in any subsequent year during which such bonds may be issued under the act, and includes mortgage credit certificates to be issued in lieu of qualified mortgage bonds under section 25 of the Internal Revenue Code.

(6) "Confirmation" means a written confirmation by the director of the allocation and assignment of a portion of the state ceiling to an issue of restricted bonds or to that amount of an issue that constitutes restricted bonds.

(7) "Director" means the director of the Ohio department of development, and also includes such other officers or employees of the Ohio department of development, as may act for or in place of the director under this chapter pursuant to rule [122-4-07](#) of the Administrative Code.

(8) "Effective confirmations" means those confirmations, or the amounts thereof, which have not expired or lost effectiveness by reason of (a) the director not having received good payment of the applicable fees at the time required (subject to paragraph (D)(6) of rule [122-4-06](#) of the Administrative Code), (b) failure to issue bonds or file notice of issuance within the required period, or (c) the failure to issue bonds in adequate amount, as applicable.

(9) "Enterprise zone facility" means an enterprise zone facility as defined in section 1394 of the Internal Revenue Code.

(10) "Eligible project" means a project that was not placed in service two years prior to the date of issuance of the related bonds. For purposes of this definition, "placed in service" means the date on which, based on all the facts and circumstances, a facility has reached a degree of completion which would permit its operation at substantially its design level and the facility is, in fact, in operation at such level.

(11) "Escrowed bonds" means bonds the terms of which require: (a) ninety-five per cent or more of the proceeds of such bonds are escrowed until the occurrence of a specified event or events,

and (b) if the specified event or events fail to occur, the escrowed proceeds are to be used to pay the principal of, and interest or premium on, the bonds.

(12) "Exempt facility bonds" means restricted bonds, except restricted bonds issued for multi-family rental housing projects or enterprise zone facilities, qualified small issue bonds, student loan bonds or mortgage revenue bonds, that are exempt facility bonds as defined in section 142 of the Internal Revenue Code.

(13) "File" or "filing" means, with regard to the filing of a notice of intent, a notice of renewal, a notice of issuance, or a notice of escrow release with the director, the receipt of such notice in the office of the director.

(14) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1 et seq., as amended from time to time, and includes any laws of the United States providing for application of that code and the applicable regulations or rulings thereunder, including temporary and proposed regulations.

(15) "Issuance" or "issued" means, with respect to restricted bonds, the delivery of the bonds to the original purchaser in exchange for the agreed payment and deemed to be issued for purposes of section 150 of the Internal Revenue Code, or, in the cases of lease and installment purchases and other arrangements which are subject to the state ceiling under section 146 of the Internal Revenue Code, the execution and delivery of the agreement committing the payment of interest which is sought to be exempted from federal income taxation; and with respect to mortgage credit certificates, the actual issuance of such certificate to the single family home mortgagor pursuant to section 25 of the Internal Revenue Code.

(16) "Issuer" or "issuing authority" means the public body or other authorized body which has authority to issue restricted bonds.

(17) "Multi-family rental housing project" means a multi-family rental housing project that is a qualified residential project within the meaning of section 142(a)(7) and (d) of the Internal Revenue Code.

(18) "Notice of escrow release" means a written notice, in form prescribed by the director, properly completed and signed by an authorized officer or representative of the issuer or by bond counsel, stating that the conditions for breaking escrow have been satisfied, proceeds of the escrowed bonds have been released to be used for the purpose of the bonds, and proceeds of the bonds will not be used to pay principal of the bonds except to provide a reasonably required reserve for the bonds that meets the requirements of section 148(d) of the Internal Revenue Code.

(19) "Notice of intent" means a written notice, in form prescribed by the director, properly completed and signed by an authorized officer or representative of the issuer, stating the intention of the issuer to issue particular restricted bonds and requesting an allocation from a particular set-aside of the state ceiling.

(20) "Notice of issuance" means a written notice, in form prescribed by the director, properly completed and signed by an authorized officer or representative of the issuer or by bond counsel, stating that particular restricted bonds have been issued.

(21) "Notice of renewal" means a written notice, in form prescribed by the director, properly completed and signed by an authorized officer or representative of the issuer, or by bond counsel

that requests an extension of a confirmation for the issuance of bonds pursuant to paragraph (C) of rule [122-4-03](#) of the Administrative Code.

(22) "Prior rules" means, collectively, rules 122-4-01 to 122-4-09 of the Administrative Code effective January 26, 1992, emergency rules 122-4-01 to [122-4-08](#) of the Administrative Code effective January 9, 1998, emergency rules 122-4-01 to [122-4-08](#) of the Administrative Code effective April 15, 1998, rules 122-4-01 to [122-4-08](#) of the Administrative Code effective July 9, 1998, rules 122-4-01 to [122-4-08](#) of the Administrative Code effective March 22, 1999, rule [122-4-02](#) of the Administrative Code effective December 24, 1999, rules 122-4-01, [122-4-02](#), and [122-4-06](#) of the Administrative Code effective April 9, 2001, rules 122-4-01 to [122-4-03](#) of the Administrative Code effective December 27, 2001, rules 122-4-01 and 122-4-02 effective December 31, 2002, and rules [122-4-02](#), [122-4-03](#), [122-4-05](#) and 122-4-06 effective December 12, 2006.

(23) "Qualified small issue bonds" means restricted bonds that are qualified small issue bonds as defined in section 144(a) of the Internal Revenue Code.

(24) "Restricted bonds" means those bonds, including part of an issue of bonds, that are chargeable or may be elected to be charged against the state ceiling under the Internal Revenue Code, including qualified mortgage bonds in lieu of which mortgage credit certificates are or are to be issued, and excludes any bonds or parts of issues of bonds which for any reason, including transitional rules or savings clauses, are excepted, exempted, or excluded in any way from the state ceiling under the act.

(25) "Select committee" means the joint select committee on volume cap created under section [133.021](#) of the Revised Code.

(26) "State" means the state of Ohio.

(27) "State ceiling" means the limit of the aggregate amount for the applicable year of restricted bonds (exclusive of carryforward and refunding bonds) that may be issued by all issuers within the state, as prescribed by the act.

(28) "Student loan bonds" means restricted bonds that are qualified student loan bonds as defined in section 144(b) of the Internal Revenue Code.

(29) "Year" or a numerical reference to a year means the applicable calendar year.

(B) Time. In determining the last day for undertaking an act under this chapter, section [1.14](#) of the Revised Code is applicable, except as otherwise stated in this chapter. References in this chapter to time of day are to the time in the eastern time zone as then in effect in the state.

(C) Applicability. This chapter applies to all confirmations issued under this chapter. Effective confirmations issued under the prior rules remain fully effective for the duration stated in such confirmations, are charged against the applicable set-asides under this chapter, and the time periods pertinent to such confirmations shall be applied as if such confirmations were at the same status under rule [122-4-03](#) of the Administrative Code of the prior rules. All carryforwards of state ceilings for years ending before January 1, 2008 continue to be effective to the extent and for so long as permitted under the act, and are not adversely affected by this chapter. All set-asides under the prior rules are terminated on the effective date of this rule, except to the extent continued under this chapter, provided that all such set-asides are preserved for bonds previously issued and confirmations remaining effective on the effective date of this rule.

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### **122-4-02 Allocations of state ceiling to restricted bonds.**

(A) Set-asides. The state ceiling is initially allocated as follows:

(1)

(a) For any year during which the Ohio housing finance agency may issue qualified mortgage bonds under section 143 of the Internal Revenue Code pursuant to that code and laws of the state in effect on the first day of such section, the lesser of three hundred million dollars or forty percent of the state ceiling is allocated to the Ohio housing finance agency for the issuance of bonds to provide additional moneys for acquisition of mortgage loans for single family residential housing under Chapter 175. of the Revised Code or for mortgage credit certificates to be issued in lieu of such bonds under section 25 of the Internal Revenue Code. The allocation to the Ohio housing finance agency for such single family residential housing for any year shall be reduced by the amount of the state ceiling for the previous year allocated to that agency for such single family residential housing pursuant to a carryforward confirmation under rule [122-4-05](#) of the Administrative Code (but there will be no such reduction by reason of a carryforward of any amount carried forward pursuant to paragraph (A)(1)(b) of this rule). The Ohio housing finance agency may, by writing signed by its chairman or executive director and delivered to the director, release, at one or more times, an amount of the allocation made by this paragraph, which amount shall be added to the allocation made to the director pursuant to paragraph (A)(6) of this rule.

(b) At the end of any year, the remaining portion, determined as set forth in the next following sentence, of the state ceiling set-aside by paragraph (A)(1)(a) of this rule which was not released as provided in paragraph (A)(1)(a) of this rule and was not otherwise used by the Ohio housing finance agency housing finance agency in that year shall be available to the Ohio housing finance agency for its single family housing program through a carryforward election under section 146(f) of the Internal Revenue Code upon filing with the director of a notice of intent for carryforward prior to five p.m. on the thirty-first day of December of that year pursuant to which the director shall issue a confirmation if and to the extent that, under the federal laws in effect at the time of issuing such confirmation, the Ohio housing finance agency may effectively use that portion of the state ceiling thereafter. For this purpose, the remaining portion of the set-aside not otherwise used during that year is the unreleased portion of that set-aside for which bonds were not issued or an election to convert was not made on or before the thirty-first day of December of such year (for which purpose section [1.14](#) of the Revised Code shall not apply). Any amount of such remaining set-aside for the year which the Ohio housing finance agency does not include in a notice of intent for carryforward filed with the director prior to five p.m. on the thirty-first day of December in the year in which the set-aside allocation was made (or which, although included in such a notice of intent for carryforward, may not effectively be used by the Ohio housing finance agency housing finance agency after December thirty-first of that year) is reallocated to the director for purposes of any other carryforwards under rule [122-4-05](#) of the Administrative Code.

(2) The lesser of one hundred twenty million dollars or fifteen percent of the state ceiling is allocated for the issuance of restricted bonds to provide multi-family rental housing projects that

at all times during the qualified project period fifty percent or more of the residential units will be rent-restricted and occupied by individuals whose income is sixty percent or less of the area median gross income. For purposes of this paragraph, "qualified project period," "income of individuals" and "area median gross income" shall have the meaning ascribed to such terms in section 142 of the Internal Revenue Code, and "rent-restricted," and "occupied by" shall have the meaning ascribed to such terms in section 42 of the Internal Revenue Code.

(3) The lesser of one hundred million dollars or ten percent of the state ceiling is allocated for the issuance of restricted bonds for the issuance of qualified small issue bonds.

(4) The lesser of one hundred twenty million dollars or ten percent of the state ceiling is allocated for the issuance of student loan bonds.

(5) The lesser of one hundred million dollars or ten percent of the state ceiling is allocated for the issuance of exempt facility bonds.

(6) The amount of the state ceiling remaining after the allocations provided in paragraphs (A)(1) to (A)(5) of this rule is allocated to the director for the purpose of issuing confirmations for restricted bonds for any purpose or for the purpose of carryforwards under rule [122-4-05](#) of the Administrative Code. The director's issuance of confirmations for the issuance of restricted bonds pursuant to this paragraph shall be based upon the relative needs for the issuance of the types of restricted bonds and the interests of the state, taking into account the factors set forth in section [133.021](#) of the Revised Code, and may be based on notices of intent or requests for volume cap received at any time suitable to the director. The director's confirmations for the issuance of restricted bonds pursuant to this paragraph are not subject to review.

(B) Reallocations. Amounts of the allocations made in paragraphs (A)(2) to (A)(6) of this rule may be transferred, and any amounts transferred to such allocations under this chapter may be retransferred, by the director, upon guidance from the select committee, from one category to any other category of allocation. Any transfer made under this paragraph shall: be evidenced by written order of the director, be based on the relative needs for allocations among the categories of allocations, giving consideration to the factors set forth in section [133.021](#) of the Revised Code, and be made with the objective of maximizing utilization of the state ceiling. Such transfers are not subject to review.

(C) Reallocation upon year-end termination of set-asides and allocation. At eleven fifty-nine p.m. on December thirty-first of each year, the amounts of all set-asides and allocations of the current year state ceiling under paragraphs (A)(2), (A)(3), (A)(4) and (A)(5) of this rule that have not been used under effective confirmations by the issuance of bonds (for which purpose section [1.14](#) of the Revised Code is not applicable) ), and the filing of a notice of issuance on or before , January fifteenth of the next succeeding year, are reallocated to the director for the purpose of carryforwards under rule [122-4-05](#) of the Administrative Code.

(D) Confirmations necessary. Notwithstanding any of the foregoing provisions of this rule, restricted bonds shall have an allocation of the state ceiling only by the obtaining and maintaining of a confirmation pursuant to this chapter, provided that with respect to a confirmation from the set-asides of state ceiling provided in paragraphs (A)(1) and (A)(6) of this rule, there shall be no time limit (other than the issuance and filing dates referred to in or pursuant to paragraph (E) or (F) of rule [122-4-03](#) of the Administrative Code) for the issuance of the bonds pursuant to such confirmation or for the filing of a notice of issuance thereof in order to continue the effectiveness of a confirmation for such bonds, and paragraph (B) of rule [122-4-03](#) of the Administrative Code is not applicable to those bonds.(Any confirmation of on a notice of intent filed by the Ohio housing finance agency pertaining to bonds which allocate state ceiling other than from the set-aside under paragraph (A)(1) of this rule shall be subject to all of the

provisions of paragraphs (A) and (B) of rule [122-4-03](#) of the Administrative Code.) Confirmations will be issued only pursuant to a notice of intent received by the director before the issuance of the bonds (or before the election to issue mortgage credit certificates in lieu of bonds, other than an election made against an amount previously carried forward for bonds), and no confirmation will be issued solely upon a notice of issuance or after issuance of the bonds or after an election to issue mortgage credit certificates is filed with the internal revenue service.

(E) The amount of the set-aside provided in paragraphs (A)(2), (A)(3), and (A)(5) of this rule shall be further allocated to all issuers, whether at the state, district or local level, for the purpose of that set-aside pursuant to a selection, as follows:

(1) Notices of intent for the set-aside provided in paragraphs (A)(2), (A)(3) and (A)(5) of this rule for eligible projects shall be reviewed by the director and evaluated against project criteria established by the director for multi-family rental housing projects, qualified small issue projects, and exempt facility projects, respectively. The project criteria shall reflect those factors which, in the judgment of the director, are characteristic of eligible projects that serve the best interests of the state and enhance the economic welfare of the people of the state. Following receipt of a notice of intent, the director may request such additional information regarding such notice of intent as the director determines necessary or useful to evaluate the notice of intent against the applicable project criteria.

(2) Notices of intent for the set-aside provided in paragraphs (A)(2), (A)(3) and (A)(5) of this rule shall be filed with the director not later than the first business day of February, May, and July each year to be considered for confirmations to be issued by the director in February, May and July of such year, respectively. The amount of the set-aside provided in paragraphs (A)(2), (A)(3) and (A)(5) of this rule shall be available for allocation as follows: up to thirty per cent for confirmations to be issued in February; up to thirty per cent for confirmations to be issued in May; and up to forty per cent for confirmations to be issued in July.

(3) Confirmations for the set-asides of state ceiling provided in paragraphs (A)(2), (A)(3) and (A)(5) of this rule will be issued by the director on or before the last business day February, May, and July each year in respect of notices of intent filed with the director as provided in paragraph (E)(2) of this rule. If the aggregate amount of requests for allocation of state ceiling from a particular set-aside provided in paragraph (A)(2), (A)(3) or (A)(5) of this rule is less than the amount of state ceiling then available for allocation from such set-aside, the director shall issue confirmations in respect of all such notices of intent filed with the director for allocations of state ceiling as requested. If the aggregate amount of requests for allocation of state ceiling from a particular set-aside provided in paragraph (A)(2), (A)(3) or (A)(5) of this rule is more than the amount of the state ceiling then available for allocation from such set-aside, the director shall evaluate each eligible project for which an allocation of state ceiling has been requested based on the applicable project criteria and issue confirmations according to the director's ranking of such eligible projects up to the amount of state ceiling then available for allocation from the particular set-aside. If the aggregate amount of confirmations issued by the director in February of any year for the set-aside provided in paragraphs (A)(2), (A)(3) and (A)(5) of this rule is less than thirty per cent of the set-aside provided in paragraphs (A)(2), (A)(3) and (A)(5) of this rule, respectively, the difference between the aggregate amount of confirmations issued in February for each such set-aside and thirty per cent of the set-aside amounts provided in paragraphs (A)(2), (A)(3) and (A)(5) of this rule shall be added automatically to the allocation made to the director pursuant to paragraph (A)(6) of this rule. If the aggregate amount of confirmations issued by the director in May of any year for the set-aside provided in paragraphs (A)(2), (A)(3) and (A)(5) of this rule is less than thirty per cent of the set-aside provided in paragraphs (A)(2), (A)(3) and (A)(5) of this rule, respectively, the difference between the aggregate amount of confirmations issued in May for each such set-aside and thirty per cent of the set-aside amounts provided paragraphs (A)(2), (A)(3) and (A)(5) of this rule shall be added automatically to the allocation made to the director pursuant to paragraph (A)(6) of this rule. If the aggregate

amount of confirmations issued by the director in July of any year for the set-aside provided in paragraphs (A)(2), (A)(3) and (A)(5) of this rule is less than forty per cent of the set-aside provided in paragraphs (A)(2), (A)(3) and (A)(5) of this rule, respectively, the difference between the aggregate amount of confirmations issued in July and forty per cent of the set-aside amounts provided in paragraphs (A)(2), (A)(3) and (A)(5) of this rule shall be added automatically to the allocation made to the director pursuant to paragraph (A)(6) of this rule.

(4) Any notice of intent for the set-aside provided in paragraphs (A)(2), (A)(3) and (A)(5) of this rule for which a confirmation is not issued by the director shall be held by the director for consideration in the next subsequent round of allocations for the set-aside provided in paragraphs (A)(2), (A)(3) and (A)(5) of this rule, respectively, if the director receives a written request for reconsideration no later than the fifteenth day of March for a notice of intent considered by the director for confirmations issued in February or by the fifteenth day of June for a notice of intent considered by the director for confirmations issued in May.

(5) To the extent that the amount of any confirmation provided pursuant to paragraph (E) of this rule, in whole or in part, expires or otherwise ceases to be effective, the amount of such confirmation shall be added automatically at the time the confirmation expires or otherwise ceases to be effective to the allocation made to the director pursuant to paragraph (A)(6) of this rule.

(F) Confirmations for student loan bonds. The amount of the set-aside provided in paragraph (A)(4) of this rule shall be allocated to all state issuers on a first come, first served basis pursuant to, and in the order and amounts of, the filing of notices of intent in the applicable year pertinent to that set-aside.

(G) Limitations on confirmations.

(1) The maximum confirmation the director may issue for a notice of intent filed pursuant to paragraphs (A)(3) and (A)(5) of this rule is the lesser of twenty-five million dollars or the maximum amount permitted by applicable federal law for a qualified small issue bond or exempt facility bond.

(2) The director shall not issue a confirmation for a notice of intent filed pursuant to paragraph (A)(2) of this rule for any project that is part of, or otherwise related to, a project for which a previous confirmation has been issued for a notice of intent filed pursuant to paragraph (E) of this rule in the same year.

(3) All confirmations issued for the set-asides of state ceiling provided in paragraphs (A)(1), (A)(2), (A)(3), (A)(4), (A)(5) and (A)(6) of this rule will expire on December thirty-first of that calendar year, subject, however, to the issuance of carryforward confirmations as set forth in rule [122-4-05](#) of the Administrative Code.

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**[122-4-03 Obtaining confirmations in advance - notice of intent; notice of issuance.](#)**



(A) Confirmation required. An allocation of a portion of the set-asides described in paragraph (A)(1), (A)(2), (A)(3), (A)(4), (A)(5), or (A)(6), as applicable, of rule [122-4-02](#) of the Administrative Code may be obtained only prior to the issuance of such bonds and only by filing with the director a notice of intent and the issuance by the director of a confirmation as provided in this rule.

(B) Confirmation effective for one hundred twenty days. A confirmation issued for an allocation from the set-asides described in paragraph (A)(2), (A)(3), (A)(4) or (A)(5) of rule [122-4-02](#) of the Administrative Code will cease to be effective unless: (1) the applicable bonds have been issued and a notice of issuance has been filed with the director within one hundred twenty days after the date of such confirmation, or (2) an extension of the confirmation has been obtained pursuant to paragraph (C) of this rule.

(C) Sixty-day extension of confirmation.

(1) A confirmation issued for an allocation from the set-aside described in paragraph (A)(2) (A)(3), (A)(4), or (A)(5) of rule [122-4-02](#) of the Administrative Code may be extended once for sixty additional days if a request for the extension, accompanied by the fee required by paragraph (D)(4) of rule [122-4-06](#) of the Administrative Code, is filed with the director prior to the date of the expiration of the one hundred twenty day confirmation period provided in paragraph (B) of this rule. A confirmation so extended will cease to be effective unless the applicable bonds have been issued and a notice of issuance has been filed with the director within one hundred eighty days after the date of the original confirmation.

(D) Issuance of bonds in lesser amounts than confirmation - eighty-five per cent requirement. A confirmation shall be effective as to bonds issued in lesser amounts for all or part of the applicable project, provided that the amount issued within the period of effectiveness of the confirmation is not less than eighty-five per cent of the amount set forth in the confirmation. A confirmation shall not be effective for bonds issued in an amount less than eighty-five per cent of the amount of the confirmation, provided that this paragraph shall not impair the effect of a confirmation if it is demonstrated to the satisfaction of the director that there is good cause for the decrease in the amount of the bonds issued and that the decrease was not the result of exaggerating costs or demand in connection with the notice of intent. The satisfaction of the director may be evidenced by a notation of a waiver of this paragraph made by the director on the receipt and certification of the notice of issuance. This paragraph shall not apply to bonds issued pursuant to a confirmation from the set-aside under paragraph (A)(1) or (A)(6) of rule [122-4-02](#) of the Administrative Code (except to the extent that this paragraph (D) is made applicable by the director to a confirmation from the set-aside under paragraph (A)(6) of rule [122-4-02](#) of the Administrative Code) or to mortgage credit certificates provided for in section 25 of the Internal Revenue Code.

(E) Single family housing bonds and mortgage credit certificates. Notwithstanding the provisions of paragraphs (B) to (D) of this rule to the contrary:

(1) With respect to bonds given a confirmation from the set-aside described in paragraph (A)(1) of rule [122-4-02](#) of the Administrative Code, the confirmation will remain effective if the bonds are issued within the year in which the confirmation is issued in any amount not to exceed the confirmation amount and a notice of issuance is filed with the director before five p.m. of the twenty-first day of January of the following year.

(2) With respect to mortgage credit certificates, for information purposes a notice of issuance (or, in lieu thereof, copy of the applicable form filed with the internal revenue service) of the mortgage credit certificates actually issued to home mortgagors shall be filed with the director for the period, and not later than the date upon which, such information must be filed with the



internal revenue service, and if not required to be filed with the internal revenue service shall be filed with the director for each calendar quarter by the fifteenth day of the second month following the calendar quarter in which the mortgage credit certificates were issued to home mortgagors. This paragraph applies to mortgage credit certificates whether issued pursuant to a confirmation for bonds, but in lieu of which (subject to paragraph (E)(4) of this rule) mortgage credit certificates are to be issued pursuant to an election under the code, or issued pursuant to a confirmation directly for mortgage credit certificates (if such confirmation is from an allocation made under paragraph (A)(1) of rule [122-4-02](#) of the Administrative Code).

(3) Except for mortgage credit certificates issued pursuant to an election made to issue such certificates in lieu of bonds for which bonds a carryforward election had been made in a previous year, an allocation may be made for mortgage credit certificates only by the prior filing of a notice of intent and the issuance of a confirmation, which will not expire or terminate except as provided in paragraph (E)(5) of this rule, and no election to issue mortgage credit certificates shall be filed with the internal revenue service until such confirmation is issued.

(4) In the event that a confirmation of allocation to bonds to be issued to provide funds to acquire mortgages for single family housing is made and the issuer chooses in a subsequent year to elect to convert all or a portion of such confirmed amount to mortgage credit certificates under the Internal Revenue Code, the issuer must first file with the director a new notice of intent for the mortgage credit certificates, together with a certified copy of the resolution of the issuer and any filings to be made with the internal revenue service by which the amount of the bonds is to be converted to mortgage credit certificates, and must obtain a new confirmation whereupon the prior confirmation, or appropriate portion of it, is terminated.

(5) In the event that a confirmation of allocation to mortgage credit certificates has been made, and the issuer chooses to reconvert all or a portion of those mortgage credit certificates to bonds pursuant to section 25 of the Internal Revenue Code, the issuer must first file with the director a new notice of intent for the bonds, together with a certified copy of the resolution of the issuer and any relevant filing to be made with the internal revenue service by which such mortgage credit certificates are to be reconverted to bonds, and must obtain a new confirmation, whereupon the prior confirmation, or appropriate portion of it, is terminated.

(F) Director's allocations. Notwithstanding the provisions of paragraphs (B) to (E) of this rule to the contrary, with respect to bonds given a confirmation from the set-aside provided in paragraph (A)(6) of rule [122-4-02](#) of the Administrative Code, the director may provide in the confirmation any period of time that the confirmation will remain effective if the bonds are issued in any amount of the confirmation amount determined by the director, and a notice of issuance is filed with the director before five p.m. of the last day of the period of time provided. If the director does not provide in the confirmation a specific period of time that the confirmation will remain effective, the confirmation will remain effective if the bonds are issued by December thirty-first of that calendar year and a notice of issuance is filed with the director before five p.m. of the second Monday in January of the next subsequent year.

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#### **[122-4-04 Priorities where bonds have no effective confirmation.](#)**

In the event that the aggregate amount of all effective confirmations issued by the director under this chapter (including confirmations of carryforward amounts made after the years in which the allocation was first available) does not exhaust the state ceiling for that year, notwithstanding any other provision of this chapter, the balance of the state ceiling for that year in excess of such aggregate amount is allocated, to the extent permitted by the Internal Revenue Code and except as otherwise provided by an act of the general assembly, to all other restricted bonds issued within the state during the year at issue in the order and amounts of their issuance, notwithstanding that no effective confirmation exists with respect to such bonds. There is no assurance that there will be any such balance, and the select committee and director need not make provision for any such balance.

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#### **[122-4-05 Confirmation of state ceiling allocation for issuance of bonds in subsequent years - carryforwards.](#)**

(A) Notice of intent for carryforward. A notice of intent may be filed by an issuer with the director before five p.m. on the second Thursday of December of the year in which the allocation was first eligible with respect to carryforward bonds which (i) are expected to be issued in subsequent years, (ii) are eligible for the election permitted in the Internal Revenue Code to carry forward an unused portion of that year's state ceiling in which the notice of intent is filed with the director, and (iii) may be issued after said year as obligations, the interest on which is excluded from gross income pursuant to section 103 of the Internal Revenue Code.

(1) Such notice of intent must be accompanied by such items as the director may require and by a written statement or statements signed by an officer of the issuer or by an officer of the benefited enterprise setting forth, as pertinent:

(a) The reasons why bond issuance is deferred beyond the end of the year for which it was first available.

(b) Evidence of the need for the amount of allocation sought (setting forth, among other things, the amount of carryforward from any prior year which will be available for use in the next following year, and as to the Ohio housing finance agency, setting forth the amount of bond proceeds and the amount of mortgage credit certificates not yet committed to specific mortgages).

(c) The conditions that must be met prior to the sale of the bonds.

(d) Information indicating that such conditions will be met.

(e) The respective times at which such conditions are expected to be met.

(f) The expected manner of sale of the bonds and the expected nature of the original purchaser (e.g., investment banker, financial institution).

(g) Evidence of interest of such category of purchasers in the purchase of the bonds or past experience of the issuer or benefited enterprise indicating such interest.

(h) The expected date or dates of issuance of the bonds or mortgage credit certificates.

(2) A notice of intent for carryforward must also be accompanied by three signed counterparts of "IRS Form 8328" (or such other form as may be prescribed by the internal revenue service for the purpose) completed in all respects except that all dollar amounts (other than line two of part II -- the amount of restricted bonds issued by the issuer during the year) shall be left blank for completion by the director pursuant to confirmation given, whereupon the director will mail such form to the Internal Revenue Service on or before February fifteenth of the next subsequent year (or otherwise as directed or permitted under section 146(f) of the internal revenue code).

(3) A notice of intent for carryforward must also be accompanied by a fee in an amount equal to the lesser of three quarters of one per cent of the amount requested in the notice of intent or five hundred thousand dollars, plus a one thousand dollar filing fee. The amount of the fee equal to the lesser of three-quarters of one per cent of the amount requested in the notice of intent or five hundred thousand will be refunded within thirty days after the determination that a carryforward confirmation will not be issued for the notice of intent. If a carryforward confirmation is issued for only a portion of the amount requested in a notice of intent, the borrower of the proceeds of the related bonds may elect within ten days after the carryforward confirmation is issued either to (a) decline to accept the confirmation and the amount of the fee paid equal to the lesser of three-quarters of one per cent of the amount requested in the notice of intent or five hundred thousand will be refunded within thirty days after a written election is filed with the director, or (b) accept the carryforward confirmation and an amount equal to the difference between (x) the lesser of three-quarters of one per cent of the amount requested in the notice of intent or five hundred thousand, whichever was paid, and (y) the lesser of three-quarters of one per cent of the amount for which the carryforward confirmation is issued or five hundred thousand, will be refunded after a written election is filed with the director. The amount of the fee retained by the director pursuant to clause (b) of the preceding sentence will be refunded within thirty days after one or more notices of issuance for the carryforward confirmation are received by the director evidencing use of the carryforward confirmation. The amount of the fee equal to one thousand dollars will not be refunded under any circumstance.

(4) A notice of intent for carryforward filed after the second Thursday of December as provided in paragraph (A) of this rule may not, be considered.

(5) With respect to a notice of intent by the Ohio housing finance agency for carryforward referred to in paragraph (A)(1)(b) of rule [122-4-02](#) of the Administrative Code, the time for filing is governed by that paragraph. Paragraphs (A)(1), (A)(3) and (B)(1) of this rule do not apply to the carryforwards referred to in paragraph (A)(1)(b) of rule [122-4-02](#) of the Administrative Code.

(B) Confirmations for carryforward bonds.

(1) All properly completed (including required accompanying items) notices of intent for carryforward which are received by the director prior to five p.m. on the second Thursday of December as provided in paragraph (A) of this rule will be considered, without regard to the order of filing of such notices of intent, for the allocation of the balance of the state ceiling for that year. Confirmations will be made upon some or all of those notices of intent, and for all or a portion of the amount stated in the notice of intent, which would, in the judgment of the director,

upon guidance from the select committee, best serve the interests of the state, taking into account the factors stated in section [133.021](#) of the Revised Code and the following considerations:

(a) The degree of probability that the restricted bonds will, in fact, be issued within the period of carryforward under the Internal Revenue Code and that the full amount of the spendable proceeds of the bonds will be used for the intended purposes.

(b) The degree to which the utilization of the bond proceeds will contribute to increasing employment in the state and, particularly, in counties of the state having the highest levels of unemployment.

(c) The degree to which the use of the proceeds of the bonds will preserve jobs within the state, and, particularly, in those counties of the state having the highest levels of unemployment.

(d) The contribution to an enhancement of the economic welfare of the people of the state, generally, and to the development of targeted industries and priority investment areas of the state, in particular.

(e) The impact of use of the proceeds of the bonds on the largest number of people in the state.

(f) The contribution of the use of the proceeds of the bonds to energy-related policies and initiatives of the state.

(g) The duration of the aforesaid positive benefits resulting from the use of the proceeds of the bonds.

(h) The care exercised by the issuer in the selection of projects intended to be financed by the issuer and the degree of supervision by a public body to assure that the beneficial results intended will occur.

(2) Rule [122-4-03](#) of the Administrative Code does not apply to carryforward confirmations. Issuers with a confirmation of a carryforward amount shall not be required to issue the bonds or mortgage credit certificates at any time in advance of the date of termination of the effectiveness of the carryforward or termination of the authority to issue tax-exempt bonds or mortgage credit certificates for the carryforward purpose under the Internal Revenue Code, as applicable, unless and to the extent provided in an order by the director, and shall, for purposes of information, file a notice of issuance with the director on or prior to the fifteenth day of the second calendar month next following the calendar quarter during which such bonds are issued. A notice of issuance or, in lieu thereof, the applicable IRS form of mortgage credit certificates, shall be filed as provided in paragraph (E) of rule [122-4-03](#) of the Administrative Code.

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**[122-4-06 Administrative.](#)**

(A) Evidence of filing. The director shall stamp on all notices of intent and notices of issuance the date of receipt by the director's office and such stamped date shall be conclusive evidence of the date such notices are received by the director's office.

(B) Record of confirmations. The director shall maintain continuous and cumulative records of the amounts of restricted bonds as to which confirmations have been given and notices of issuance received under this chapter. Confirmations under this chapter shall be dated and numbered by the director.

(C) Form and manner. Notices of intent, confirmations, notices of issuance, receipts, questionnaires, and certifications shall be made and given in the form and manner prescribed by the director, which shall be devised so as to discourage notices of intent which are premature or excessive. Notices of intent shall be accompanied by such additional items and information as the director may from time to time require by instructions or otherwise. The director may from time to time alter the forms and change the requirements for accompanying material or vary them for different types of bonds as he deems appropriate in the circumstances. Confirmations may be issued of shorter duration than provided in rule [122-4-03](#) of the Administrative Code if, and during such periods as is advisable, in the judgment of the director upon guidance from the select committee, confirmation of a shorter duration would in order to enhance maximum utilization of the state ceiling. The director may do all other things necessary or desirable to carry out the purposes of this chapter and of section [133.021](#) of the Revised Code, including such alterations of the system provided under this chapter as may be necessary to conform the system to any requirements under the Internal Revenue Code in order to constitute an effective alternative formula of the state for allocating and assigning the state ceiling. The director may provide for the issuance of receipts and for certifications regarding the aggregate amounts of effective confirmations on restricted bonds and any other certifications as may be appropriate under the Internal Revenue Code. The director shall interpret this chapter in such manner as to effectuate the purposes of section [133.021](#) of the Revised Code. Because of the need for certainty at all times in all matters of allocations made of the state ceiling to particular issues of bonds, all determinations by the director under this chapter (including the issuance, deferral or denial of confirmations) shall be final and are not subject to appeal. None of the determinations by the director under this chapter involves an adjudication order within the meaning of section [119.06](#) of the Revised Code.

(D) Fees.

(1) A notice of intent filed for an allocation from the set-asides described in paragraphs (A)(2), (A)(3), (A)(4) and (A)(5) of rule [122-4-02](#) of the Administrative Code will not be deemed to be filed until and unless a fee in an amount equal to the lesser of three-quarters of one per cent of the amount requested in the notice of intent or one hundred fifty thousand dollars, plus one thousand dollars is received by the director with respect to that notice of intent. The amount of the fee equal to the lesser of three-quarters of one percent of the amount requested in the notice of intent or one hundred fifty thousand dollars will be refunded within thirty days after the earlier of (a) the determination that a confirmation will not be issued pursuant to paragraph (E)(3) of rule [122-4-02](#) of the Administrative Code for the notice of intent and provided that no request for reconsideration is submitted as provided in paragraph (E)(4) of rule [122-4-02](#) of the Administrative Code, or (b) (i) a notice of issuance for an effective confirmation is received by the director or (ii) in connection with an issuance of escrow bonds, a notice of escrow release is received by the director. If a request for reconsideration of a notice of intent is submitted to the director as provided in paragraph (E)(4) of rule [122-4-02](#) of the Administrative Code, the amount of the fee equal to the lesser of three-quarters of one percent of the amount requested in the notice of intent or one hundred fifty thousand dollars will be refunded within thirty days after the earlier of (a) the determination that a confirmation will not be issued pursuant to paragraph (E)(3) following reconsideration of the notice of intent in subsequent round of allocations for the set-aside provided in paragraphs (A)(2), (A) (3) and (A)(5) of rule [122-4-02](#) of the

Administrative Code, or (b) (i) a notice of issuance for an effective confirmation is received by the director or(ii) in connection with an issuance of escrow bonds, a notice of escrow release is received by the director. The amount of the fee equal to one thousand dollars will not be refunded under any circumstances.

(2) A notice of intent filed for an allocation from the set-asides described in paragraph (A)(6) of rule [122-4-02](#) of the Administrative Code will not be deemed to be filed until and unless a fee in a amount equal to the lesser of three-quarters of one per cent of the amount requested in the notice of intent or one hundred fifty thousand dollars, plus a filing fee not to exceed one thousand dollars is received by the director with respect to that notice of intent. The amount of the fee equal to the lesser of three-quarters of one per cent of the amount requested in the notice of intent or one hundred fifty thousand dollars will be refunded within thirty days after the earlier of (a) the determination that a confirmation will not be issued pursuant to paragraph (A)(6) of rule [122-4-02](#) of the Administrative Code for the notice of intent, or (b) (i) a notice of issuance for an effective confirmation received by the director or(ii) in connection with an issuance of escrow bonds, a notice of escrow release is received by the director. The amount of fee equal to one thousand dollars will not be refunded under any circumstance.

(3) If a confirmation is issued pursuant to paragraphs (D) or (E)(14) of rule [122-4-02](#) of the Administrative Code for only a portion of the amount requested in a notice of intent, the borrower of the proceeds of the related bonds may elect within ten days after the confirmation is issued to:

(a) Decline to accept the confirmation and the amount of the fee equal to the lesser of three-quarters of one per cent of the amount requested in the notice of intent or one hundred fifty thousand dollars will be refunded within thirty days after a written election is filed with the director, or

(b) Accept the confirmation and an amount equal to the difference between (x) the lesser of three- quarters of one percent of the amount requested in the notice of intent or one hundred fifty thousand dollars, whichever was paid, and (y) the lesser of three quarters of one per cent of the amount for which the confirmation is issued or one hundred fifty thousand dollars, will be refunded after a written election is filed with the director. If the confirmation is accepted pursuant to this paragraph, the fees related to that confirmation will be governed by paragraphs (D)(1) to (D)(2) of this rule.

(c) The amount of the fee equal to one thousand dollars required by paragraphs (D)(1) and (D)(2) of this rule will not be refunded regardless of the borrowers' election under paragraph (D)(3)(a) or (D)(3)(b) of this rule.

(4) A request for an extension of a confirmation pursuant to paragraph (C) of rule [122-4-03](#) of the Administrative Code will not be deemed filed until and unless an additional fee in an amount equal to the lesser of three-quarters of one per cent of the amount requested in the original confirmation or one hundred fifty thousand dollars is received by the director. The fee required by this paragraph will be refunded within thirty days after a notice of issuance of an effective confirmation is received.

(5) Except as provided in paragraphs (D)(1) to (D)(4) of this rule, fees received by the director in connection with allocations from the set-asides described in paragraphs (A)(2), (A)(3), (A)(4) (A)(5) and (A)(6) of rule [122-4-02](#) of the Administrative Code will not be refunded.

(6) Fees required by paragraphs (D)(1), (D)(2), and (D)(4) of this rule, or by paragraph (A)(3) of rule [122-4-05](#) of the Administrative Code may be paid in the form of a check, draft, money order, or the like, payable to "Ohio Treasurer" followed by the name of the individual then holding

the office of Ohio treasurer. If such payment is not good, the filing with respect to which the fee pertains will be deemed not to be made and any the confirmation issued pursuant to the notice of intent will be void unless the director otherwise determines in writing upon receiving good payment of the fee. Fees refunded pursuant to this rule shall be only for the amount of the fee required. No interest, investment earnings or investment loss shall be attributable to such fees.

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### **122-4-07 Delegation of functions.**

Except as provided in this rule, each and any of the powers and duties, including the making, signing and issuance of confirmations, acknowledgements, receipts, and consents, accepting or refunding of fees, assignments and certifications, devolved upon the director of development under this chapter may be performed by the assistant director of development or such other officers and employees of the department of development as may be designated in writing by the director or such assistant director. Any such designations under prior rules for the purpose, and any such designation under this chapter, shall continue to be effective for purposes of this chapter unless and until it was or is terminated or superseded in writing, notwithstanding any succession in the office of director or assistant director. Except as provided in this rule, any reference in this chapter to the director includes the assistant director or such other designated officers or employees. Notwithstanding the foregoing, only the director (or the assistant director during the absence or disability of the director or when the position of director is vacant) may make transfers among set-aside categories.

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### **122-4-08 Effectiveness and reliance.**

The rules in this chapter, and confirmations issued pursuant to or confirmed by those rules, may be relied upon by issuers of restricted bonds, the beneficiaries of the proceeds from and the owners of such bonds, and other participants in the issuance of such bonds, with respect to all restricted bonds issued during the period from and including October 10, 1991 to and including the date of expiration of the confirmation for such bonds notwithstanding the prior expiration or amendment of any rule under this chapter. Subject to the foregoing provisions of this rule, the rules in this chapter may be amended at any time. If and to the extent it is necessary to allocate the state ceiling to the state and assign it to issuers in order to achieve the results intended by this chapter, the state ceiling is and shall be deemed to be so allocated and assigned by rules [122-4-02](#) to 122-4-08 of the Administrative Code. If any clause, provision or application of any rule in this chapter is determined to be invalid or inconsistent with the act, such determination shall not affect the remainder of such rule or other application of the rule, or other rules of this chapter, which shall be applied as if the invalid or inconsistent portion or application or references to the invalid or inconsistent portion did not exist.



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