

Private Activity Bond Guide

January 2025



What are Private Activity Bonds?

Private Activity Bonds are a type of tax-exempt bond issued by state or local government entities to finance projects that are owned and operated by private interest. These bonds are often used to fund activities that serve a public purpose, such as private hospitals, airports, affordable housing and manufacturing facilities.

Public Corporations

Private Activity Bonds are issued by public corporations also known as local industrial development corporations. In accordance with [Title 50, Chapter 27](#) of Idaho Code, cities and counties are empowered to create and dissolve public corporations. Public corporations may also be created by the Idaho Legislature. State public corporations capable of issuing PABs include the [Idaho Housing and Finance Association](#) and the [Idaho Health Facilities Authority](#).

Although issued by public corporations, Private Activity Bonds (PABs) are not considered guaranteed debt. Investors, rather than the public corporation or government entity that created them, bear all default risk. Because PABs are not supported by tax revenues, they do not require a bond election. Public corporations are not obligated to approve PAB projects and have the ability to negotiate with developers to ensure that a project aligns with community values and regulations. Businesses and developers are accountable for all legal and other expenses related to issuing the bond. A list of the public corporations known to Idaho Commerce may be found on page 9 of this guide.

Benefits of Private Activity Bond Financing

For the investor, a PAB is like a municipal bond. In most cases, interest earned on a PAB is exempt from Federal and Idaho income taxesⁱ.

For the borrower the benefits may include the following:

- Lower borrowing costs.
- Flexible and longer repayment periods.
- Financing for projects too large for a single lender or investor to take on.
- A way to leverage other incentives like the Federal 4% Low Income Housing Tax Credit.

Private Activity Bonds (PABs) are frequently utilized in conjunction with other tax and business incentives, although this is not always the case. It is important to understand that projects funded by PABs may still be subject to local, state, and federal taxes. Municipalities and counties that have the authority to issue PABs possess an additional

ⁱ. There maybe some circumstances where PAB interest income maybe taxed. Please consult a tax expert before investing.

mechanism for influencing the outcomes of a project, beyond the scope of traditional planning and zoning regulations.

Drawbacks of Private Activity Bond Financing

Private Activity Bonds are required to adhere to strict compliance regulations established by the Internal Revenue Service (IRS). These bonds are primarily for capital expenditures and cannot be utilized for inventory, payroll, or research and development expenses. Projects with capital requirements exceeding \$5,000,000 may find PAB financing advantageous. However, for projects requiring less than \$5,000,000, the legal and administrative expenses associated with pursuing PABs likely outweigh the financial benefits.

Qualified Activities

Qualified Activities (QAs) are categorized into two groups: activities that are subject to volume cap and must follow the State of Idaho's application procedures, and activities that are exempt from Idaho's volume cap and do not require approval.

Qualified Activities Subject to Volume Cap

- Mass Commuting Facilities
- **Water Facilities**
- Private Solid Waste Facilities
- **Low Income Rental Housing**
- Power Generating Facilities
- Redevelopment Bonds
- Hazardous Waste Facilities
- High Speed Rail
- **Single Family Mortgage**
- **Small Issue (Industrial Revenue Bonds)**
- Agricultural (First Time Farmer Loans)

Note: items highlighted in **red** are those that have a recent history of accessing Idaho's PAB volume cap.

Qualified Activities Exempt from Volume Cap

- Airports
- Docks & Wharves
- Government Solid Waste Facilities
- Government Owned Highspeed Railⁱⁱⁱ
- Educational Facilities
- Green Building Projects
- Veterans Mortgage Bonds
- Hydro Electric Facilitiesⁱⁱ
- 501(c) 3 Bonds

The Infrastructure and Jobs Act of 2021 established two new categories of Qualified Activities. Under this provision, 75% of the Private Activity Bond amount is exempt from

ⁱⁱ Only bonds financing environmental retrofits to hydroelectric facilities are excused from volume cap. All other hydro projects are treated as power generating facilities subject to cap.

ⁱⁱⁱ Government ownership presumes the facility will be operated by a private entity. Government owned and operated facilities are covered by traditional municipal bonding.

the volume cap, with the remaining 25% counting towards a state's volume cap allocation. Qualified Activities in this category include broadband projects targeting underserved areas identified by the Federal Communications Commission, as well as carbon capture projects.

In addition to the categories mentioned above, there is a distinct category designated for highways and surface freight transfer facilities. These projects are subject to a national volume cap that is managed by the Federal Department of Transportation.

Public vs Private Activities

Private Activity Bond projects often involve a combination of public and private sector elements, creating a need for clear distinctions. To address this issue, the Internal Revenue Service (IRS) utilizes a four-pronged test to determine a project's eligibility.

- 1) Is the project classified as an IRS "Qualified Activity"?
- 2) Will the project be managed by a private entity (either for-profit or non-profit)?
- 3) Will the assets used to secure the debt be privately owned by a for-profit or non-profit organization?
- 4) Will the debt be repaid using private funds?

Funds that may be provided by local government in the form of fees and rents are considered private funds for the purposes of the private versus public funding assessment.

Small Issue Private Activity (Industrial Revenue) Bonds

Small Issue Private Activity Bonds (PABs), also known as Industrial Revenue Bonds, are tailored for the development, equipping, and upgrading of manufacturing facilities. The term "Small Issue" is utilized by the IRS to denote that these bonds are limited in size, with a maximum tax-exempt bond issue of \$10 million and a total bond package not surpassing \$20 million. The IRS sets forth criteria for determining a manufacturing facility through a series of tests.

- The facility must be of character subject to depreciation.
- The facility must produce tangible personal property.
- There must be a substantial transformation of inputs or raw materials.
- Manual or machine labor must be expended. Natural or accelerated growth, such as what one may see in factory farm, does not meet this test.
- Something new must be created that has a distinctive name, character, or use.

The IRS also places limits on how the funds generated by Small Issue PABs are spent^{iv}:

- 70% must be spent on core manufacturing assets. This will typically be for equipment and floor space containing the production line.
- 20% of the proceeds may be spent on ancillary assets (storage areas, offices, shipping and receiving areas, etc.)
- 5% may be spent on the administrative, legal and placement costs associated with setting up the bond.

Commercial buildings, mixed-use developments, and facilities focused on intellectual property development do not meet the IRS criteria for manufacturing, and therefore, are not eligible for Small Issue PAB funding. However, alternative financing options such as equity investments and bank loans can be utilized in conjunction with private activity bonds.

Exempt Facilities

The IRS classifies all eligible activities, excluding Small Issue, as “Exempt Facilities”. These projects are designated as “Exempt” due to the absence of restrictions on the bond or project size, contingent upon the availability of volume cap.

Volume Cap

Each year, the IRS establishes a volume cap that limits the issuance of new Private Activity Bonds (PABs) within a calendar year. In 2025, the volume cap for states with small populations, like Idaho, is set at \$388,780,000. Any unused portion of the cap can be carried forward for up to three years. States also have the flexibility to reserve a percentage or dollar amount of the volume cap for designated projects and qualified activities.

In Idaho, the allocation of volume cap is determined by executive order and can be modified through new executive orders at any time. The latest executive order governing Private Activity Bonds (PABs) is Executive Order 2024-12. The set asides for 2025 under this order are as follows:

Private Activity Bond Allocation 2025			
Category	Range	Low	High
Small Issue	0%-13%	\$0	\$50,541,400
Single Family	45%-80%	\$174,851,000	\$311,024,000
Multifamily	15%-45%	\$58,317,000	\$174,851,000
Exempt Facilities	0%-32%	\$0	\$124,384,000

^{iv} [IRC § 144\(a\) – Qualified Small Issue Bonds](#)

Idaho's 2024 Volume Cap Awards

In 2024 Idaho issued the entirety of its volume cap for the following projects...

Recipient	Amount	Project
Idaho Housing and Finance Association	\$263,230,000	Single family housing mortgages
Idaho Housing and Finance Association	\$24,000,000	Low-income rental housing
Idaho Housing and Finance Association	\$70,000,000	Micron Expansion – Wastewater Treatment
Mini Cassia Development Authority	\$21,000,000	Suntado Dairy – Wastewater Treatment
Total	\$378,230,000	

Creating a Private Activity Bond Team

The first step in applying for PAB funding is to assemble a team of experts who can help prepare the required documentation and ensure that the project complies with state and federal regulations. It is essential to have key team members who possess expertise in the relevant areas.

1. **Bond Counsel**— Bond Counsels provide legal advice and guidance and ensure compliance with all applicable laws and regulations. These professionals specialize in public finance law and are responsible for preparing the necessary legal documents, such as bond resolutions and offering statements, as well as reviewing the issuer's financing strategies to maximize efficiency and minimize risk. They also work closely with underwriters, financial advisors, and other key stakeholders throughout the issuance process to facilitate successful transactions. A list of bond counsels known to Commerce at the time of publication may be found on page 8 of this guide.
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2. **Bond Underwriter**— A bond underwriter helps companies, governments and nonprofits raise capital through issuing bonds. As a specialized professional, the bond underwriter assesses the creditworthiness of the issuer, structures the terms of the bond issuance, prices securities, and ultimately sells them to investors. With a deep understanding of market conditions and risk factors, underwriters determine interest rates, maturities, and other key features to attract investors while meeting the issuer's financing needs. Additionally, they must comply with regulatory requirements and ensure that all disclosure documents accurately represent the risks associated with the bonds being offered. Through their expertise in financial analysis and relationship-building skills, bond underwriters facilitate successful bond offerings that benefit both issuers seeking capital and investors looking for fixed-income investment opportunities.

See page 8 of this guide for a list of banks and other financial institutions with a history of facilitating PAB and municipal bond projects in Idaho.

3. **Governmental Issuer/Public Corporation**— This entity will be an industrial development corporation, also known as a public corporation, established by a city or county. Once in place, the industrial development corporation has the legal authority to apply for volume cap and issue Private Activity Bonds (PABs). Prior to issuing each PAB, the public corporation must formally approve it by issuing an "Inducement Resolution". The public corporation plays a crucial role in coordinating the activities of all parties involved in the process.

It is important to note that the responsibility for repaying the bonds rests solely with the borrower. Neither the public corporation nor the government entity that created it assumes any liability for repayment, or any other misconduct committed by the borrower. This ensures that the financial risks associated with the bonds are borne solely by the borrower, providing a level of protection for the public corporation and the government entity.

A list of public corporations known to Idaho Commerce at the time of publication may be found on page 9 of this guide.

Application Process

1. **Preliminary Discussions** - A borrower discusses the preliminary project proposal with bond counsel and the public corporation or with city or county officials where a public corporation does not exist.
2. **Application Submittal** - If the project is feasible and deemed eligible by bond counsel, an application is submitted to the public corporation.
3. **Preliminary Project Evaluation** - The public corporation reviews the application with assistance from staff, financial institutions, and bond counsel. Project evaluation often will include a credit review conducted by an investment banker or lender.
4. **Substantive Negotiations Begin** - If the project is eligible, negotiations begin between the company/developer, public corporation, bond counsel and the bond purchaser. Once all parties agree to the project scope, size of the bond, and terms for repayment, then the issue will be ready for formal review and approval.
5. **"Inducement Resolution"** – Once the basic terms and conditions are agreed upon, the bond counsel will assist the public corporation in preparing an "inducement resolution". This resolution will outline the public corporation's conditional intent to issue revenue bonds in a specific amount for a designated company and purpose. The approval date of this inducement resolution by the public corporation is crucial for the borrowing company, as only project expenses incurred within 60 days of that date are eligible for reimbursement from the bond proceeds. Therefore, it is advisable to aim for an early approval of the

inducement resolution to ensure that the costs associated with initiating and planning the project can be covered by the bond proceeds.

6. **Planning Jurisdiction Approval** - Project approval of the planning jurisdiction, if different from the creating municipality, must be secured.
7. **Final “Bond Issuing Resolution”** - Negotiations may continue until the final bond issuing resolution is approved. This final resolution approves the documents setting forth the terms and conditions of the bond sale, and it is approved by the creating municipality using a resolution or ordinance.
8. **Requesting a PAB Volume Cap Allocation from the Department of Commerce** -Executive Order 2024-12 outlines the process for applying for Private Activity Bond (PAB) volume cap. The application period for PAB volume cap will begin on January 1, 2025, and close at 11:59 PM Mountain Time on February 15th. Any unused volume cap after the initial allocation will be available for application during a second period ending at 11:59 PM on August 31st. Any remaining volume cap after the second deadline may be requested on a first-come, first-served basis. Applicants are required to adhere to the application format specified on page 10 and the inducement resolution.
9. **Bond Counsel Opinion and Issuance of Bonds** - After receiving the bond counsel's opinion on the tax-exempt status of the project, the sale is finalized, and the bonds are acquired. Subsequent reports are submitted to both the Internal Revenue Service and the Idaho Department of Finance. The process for bond payment may differ based on whether it is a public or private bond placement.
10. **Other Documentation and Procedures Involved** – The bond counsel may be called upon to file additional documentation with local, state, and federal authorities and other financial entities.

KNOWN IDAHO BOND COUNSELS^v

MSBT Law
Ms. Stephanie J. Bonney
7699 W. Riverside Drive
Boise, Idaho 83702
208-331-1800

Skinner, Fawcett
Mr. Richard A. Skinner
250 Bobwhite Ct #240,
Boise, ID 83706
208-345-2663

Hawley Troxell
Mr. Nicholas G. Miller
Wells Fargo Center, Suite 1000
877 West Main Street
Post Office Box 1617
Boise, Idaho 83701
208-344-6000

BOND PLACEMENT SERVICES^{vi}

Mr. Eric Heringer
Investment Banker
Piper Sandler
101 South Capitol Boulevard
Boise, Idaho 83702
208-344-8577

US Bank
Government Banking Center
Post Office Box 8247
Boise, Idaho 83733
503-275-5506

Caitlin Meussner
Vice President
Public Finance Investment Banking
KeyBank Capital Markets
Seattle, WA 98101
Office: 303-518-5782

GE Capital
6510 Millrock Drive, Ste. 200
Holladay, UT 84121
801-733-3058
Fax: 888-867-0031

Shaun Kelley, V.P.
Zion's Bank
800 West Main Street
Boise, ID 83702
208-501-7533
Office: 208-501-7575

Cammeron Arial, President, CEO
Clearwater Financial
PO Box 505
Eagle ID 83615

^v These are Idaho based legal firms with experience in private activity and/or municipal bonding known at the time of publication. This list shall not be considered as an endorsement of any firms over those not appearing in this publication. The contact information is subject to change.

^{vi} These are bond placement entities with experience in private activity and/or municipal bonding in Idaho, known at the time of publication. This list shall not be considered as an endorsement of any firms over those not appearing in this publication. Contact information is subject to change.

STATE OF IDAHO CHARTERED PUBLIC CORPORATIONS

The cities and counties listed below have formed chartered public corporations for the purpose of issuing private activity bonds. Projects financed by PABs can be completed more quickly in these cities and counties because they have completed the necessary groundwork of forming a public corporation. Each of these corporations may issue any number of bonds as long as they do not exceed \$20 million (\$10 million tax-exempt/\$10 million taxable) per project each and \$40 million per beneficiary per year.

Legislation passed in 2007 permits the financing of economic development projects through the issuance of revenue bonds by the Idaho Housing and Finance Association.

Potential PAB users can still pursue PAB projects in places without public corporations. In those cases, the Idaho Department of Commerce will be glad to assist city or county officials in forming a public corporation to expedite the PAB financing process. Businesses attempting to use PAB financing in cities or counties without public corporations should contact local elected officials and inform them of the Idaho Department of Commerce's offer to help them charter a public corporation.

Because public corporations are not centrally registered, the list below may be incomplete. Check with the city and/or county government office to confirm the existence or absence of a public corporation. Also note that many of these entities were created during the 1980s and may be dormant.

CITIES

Boise
Caldwell
Eagle
Fruitland
Garden City
Idaho Falls
Lewiston (Port of Lewiston)
Meridian
Nampa
Shelley
Twin Falls
Mountain Home

COUNTIES

Ada	Kootenai
Bannock	Lincoln
Benewah	Madison
Bingham	Minidoka
Bonneville	Nez Perce
Bonner	Oneida
Camas	Payette
Canyon	Power
Cassia	Shoshone
Custer	Twin Falls
Gooding	Washington
Jerome	

For questions or to submit a Private Activity Bond request, please contact:

[Jerry Miller](#)

Idaho Department of Commerce
700 West State Street
Boise, Idaho 83702
(208) 287-0780

IDAHO DEPARTMENT OF COMMERCE
Request for Allocation of Private Activity Bond Authority

Date: _____

To: Idaho Department of Commerce
700 West State Street
Post Office Box 83720
Boise, Idaho 83720-0093

In accordance with Executive Order No. 2024-12 of the Governor of the State of Idaho, dated December 12, 2024 the Issuing Authority indicated below hereby requests an allocation from the state ceiling of Private Activity Bonds and as evidence of compliance with said Executive Order, hereby files with the Idaho Department of Commerce the attached Bond Inducement Resolution (or similar binding commitment), and the following information:

Issuing Authority Name: _____
Identification number _____ Phone: _____
Executive Officer Title: _____
Address: _____
City, State, Zip: _____
Bond Counsel Name: _____
Name of firm: _____
Address: _____
City, State, Zip: _____
Phone number: _____
Name of project: _____
Location: _____
Description of use: _____
Name of project owner/user: _____
Par amount of obligations (allocation requested): _____
Date of purchase agreement: _____
Purchaser(s): _____
Name of bond issue: _____
Anticipated closing date: _____
Anticipated date for issuing certificates: _____
Applicable Provision of Internal Revenue Code: _____
Request allocation be carried forward to: _____
Evidence of need, economic impact and distribution
of resources throughout the State: _____

(please attach a separate sheet of paper if needed)

Signed: _____

Name: _____

Title: _____

NOTES

Addendum A – Broadband Projects

I on behalf of (Insert Public Corporation Name Here) certify the following.

- 1) This project solely serves census block groups in which more than 50% of residential households lack fixed, terrestrial broadband service delivering 25 megabits per second downstream and at least 3 megabits per second of upstream speeds.
- 2) This project will result in internet access to residential and commercial locations at speeds not less than 100 megabits per second of downstream and 20 megabits per second of upstream speeds.
- 3) 90% of the locations served by this project are locations where before the project a broadband service provider either did not offer service or failed to offer service at the minimum speeds described in item 1.
- 4) All broadband providers serving the census blocks included in the project have been notified of the project scope. (Attach a list of census blocks to be served, the notified service providers, and a copy of the notice).

Signed: _____

Name: _____

Title: _____

Addendum B –Carbon Capture Projects

I on behalf of (Insert Public Corporation Name Here) certify the following.

- 1) This project utilizes direct air capture or other equipment that results in the capture, treatment, purification, transportation or on-site storage of carbon dioxide produced by an industrial or energy generating facility Or..

Utilizes equipment that is functionally related or subordinate to a process that converts a solid or liquid product from coal, petroleum residue, biomass or other materials that are recovered for their energy or feedstock value into synthesis gas composed primarily of carbon dioxide and hydrogen for direct use of subsequent chemical or physical conversion.

- 2) This project is not an industrial carbon dioxide or geological gasification facility, or any separation unit does not qualify as gasification equipment or is not a necessary component of an oxy-fuel combustion process.
- 3) The facility resulting from this project will have a capture and storage efficiency equal to or greater than 65% or that the percentage of costs of the eligible components identified in item #1 is equal to or less than capture and storage efficiency percentage.

Signed:_____

Name:_____

Title:_____

Private Activity Bonds – Frequently Asked Questions

Q1: What are Private Activity Bonds (PABs)?

A1: Private Activity Bonds are a type of tax-exempt bond issued by state or local government entities to finance projects that are owned and operated by private entities. These bonds are often used to fund activities that serve a public purpose, such as private hospitals, airports, affordable housing and manufacturing facilities.

Q2: How do Private Activity Bonds differ from general obligation bonds?

A2: General obligation bonds are secured by the full faith and credit of the issuing government and are typically used to finance public projects for the benefit of the general population. In contrast, Private Activity Bonds primarily benefit private entities, and the repayment is often based on the revenue generated by the financed projects rather than government tax revenues.

Q3: What types of projects can be financed with Private Activity Bonds?

A3: PABs can be used to finance a variety of projects, including but not limited to:

- Affordable housing
 - Airports and seaports
 - Education facilities
 - Healthcare facilities
 - Waste disposal and recycling projects
 - Certain energy projects and facilities
 - Manufacturing Facilities
-

Q4: What are the potential tax benefits of Private Activity Bonds?

A4: The interest earned on Private Activity Bonds is typically exempt from federal income tax, and in some cases, state and local taxes as well. This tax-exempt status can result in lower borrowing costs for issuers and potentially higher returns for investors than taxable bonds.

Q5: Who can issue Private Activity Bonds?

A5: Private Activity Bonds can be issued by qualified state or local governmental entities. These bonds must meet certain federal tax compliance requirements to maintain their tax-exempt status.

Q6: Are there any limitations on the amount and use of Private Activity Bonds?

Private Activity Bonds – Frequently Asked Questions

A6: Yes, there are limits. The total amount of PABs that can be issued by a jurisdiction within a calendar year is capped by federal law. Additionally, the proceeds of these bonds must be used for qualified purposes as defined by the Internal Revenue Code.

Q7: What is the role of the IRS regarding Private Activity Bonds?

A7: The Internal Revenue Service (IRS) provides guidelines and regulations governing the issuance and use of Private Activity Bonds. They ensure compliance with federal tax laws, which helps maintain the tax-exempt status of the bond interest.

Q8: Who qualifies as a private activity for these types of bonds?

A8: Entities that can qualify for financing through Private Activity Bonds include non-profit organizations, private businesses, and certain types of for-profit companies, if the project meets the public benefit criteria specified in the federal law.

Q9: Can individuals invest in Private Activity Bonds?

A9: Yes, individuals, as well as institutional investors, can invest in Private Activity Bonds. However, investors should be aware of the bond's tax-exempt status and the associated risks before investing.

Q10: What are the risks associated with Private Activity Bonds?

A10: Risks may include credit risk (the possibility that the borrower will default), interest rate risk (bond prices decline as interest rates rise), and specific project risks (issues related to the actual use and management of the financed project). Investors should conduct thorough due diligence before investing.



Executive Department
State of Idaho

State Capitol
Boise

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER No. 2024 – 12

**CONTINUING A SYSTEM FOR ALLOCATING VOLUME CAP IN THE STATE
CONSISTENT WITH PROVISIONS OF TITLE 50, CHAPTER 28, IDAHO CODE,
AND THE U.S. INTERNAL REVENUE CODE OF 1986**

WHEREAS, Section 146 of the U.S. Internal Revenue Code of 1986 ("Code") subjects certain private activity and non-private activity bonds to volume limitations or "volume cap" ("Volume Cap"); and

WHEREAS, as required by Section 146 of the Code, the Idaho Legislature did adopt the provisions of Title 50, Chapter 28, Idaho Code ("State Law"), to provide a permanent allocation formula for Volume Cap in the State; and

WHEREAS, Section 50-2804, Idaho Code, authorizes and directs the Governor of the State of Idaho to provide for the implementation and administration of the allocation formula established under Section 50-2803, Idaho Code, by executive order, and the Governor did issue Executive Order No. 2018-05 providing therefore; and

WHEREAS, in order to renew the provisions contained in said Executive Order No. 2018-05, to amend the allocation formula in order to meet the requirements of said amendments to the State Law and to continue to provide for the implementation and administration of the formula for allocation of the Volume Cap among the state and its issuing authorities under the State Law, it is necessary and desirable to issue this Executive Order;

NOW THEREFORE, I, BRAD LITTLE, Governor of the State of Idaho, by virtue of the authority vested in me under the Constitution and laws of the State of Idaho do hereby order the following:

Section 1: As used in this Executive Order:

1. "Allocation Dollars" means the dollar amount of the Volume Cap expressed in terms of dollars. Each allotment dollar equals one dollar of Volume Cap that may be allocated under this Executive Order and the State Law;
2. "Bonds" means any obligations for which an allocation of the Volume Cap is required by the Code and the State Law including, without limitation, mortgage credit certificates described in Section 25 of the Code. With respect to any allocation of Allotment Dollars for the purpose of issuing certificates, certificates will be deemed "issued" when the mortgage credit certificate program for which the allocation is made is implemented;
3. "Code" means the Internal Revenue Code of 1954, as amended by the Reform Act of 1986 and renamed the Internal Code of 1986, and any related regulations;
4. "Department" means the Department of Commerce of the State.
5. "Director" means the director of the Department or such other official or officials of the Department as the director shall designate to carry out the duties of the director set forth in this Executive Order.
6. "Form 8038" means U.S. Department of the Treasury tax form 8038 (OMB NO. 1545- 0720) or any other federal tax form or other method of reporting required by the Department of the Treasury under Section 149(e) of the Code.
7. "Issuing Authority" means
 - a. any county, city or port district;
 - b. any public corporation created pursuant to Section 50-2703 of the Idaho Code, or other entity acting on behalf of one or more counties, cities, or both;
 - c. the State; or
 - d. any other entity authorized to issue Bonds in the State.
8. "Priority Set Aside" means one of the priority set asides established under Section 4(1) hereof.
9. "Program" means the program to be financed in whole or in part with the proceeds of the sale of Bonds or to be implemented through the issuance of mortgage credit certificates under Section 25 of the Code.
10. "Project" means the facility to be financed in whole or in part with the proceeds of sale of Bonds.
11. "Qualifying Carryforward Project or Program" means a Project or Program qualifying for carryforward under Section 146(f) of the Code.
12. "State" means the State of Idaho, any of its agencies, instrumentalities, institutions and divisions authorized to

issue Bonds under State law.

13. "State Law" means Title 50, Chapter 28, Idaho Code, as amended.
14. "Volume Cap" means the volume cap for the State as computed under Section 146 of the Code.
15. "Year" means each calendar year beginning January 1.

Section 2: The Volume Cap for each Year is allocated to Issuing Authorities in accordance with the procedures set forth in this Executive Order. An allocation of the Volume Cap may be obtained by submitting an application to the Director in accordance with Section 3 or Section 5, as appropriate. The Director shall evidence a grant of an allocation of the Volume Cap by issuing a certificate of allocation in accordance with Section 4 or Section 5, as appropriate.

Section 3:

1. Any Issuing Authority proposing to issue Bonds shall, prior to the issuance of such Bonds, submit an application to the Director which contains the following information and attachments:
 - a. The name of the issuing authority;
 - b. the mailing address of the issuing authority;
 - c. the tax identification number of the issuing authority;
 - d. the name, title and office telephone number of the official of the issuing authority to whom notices should be sent and from whom information can be obtained;
 - e. the principal amount of Bonds proposed to be issued for which an application for an allocation of the Volume Cap is requested;
 - f. the nature, the purpose and the specific location of the project or the type of program;
 - g. the initial owner or user of the project or program, if other than the issuing authority;
 - h. a copy of a valid and fully executed resolution or similar official action of the issuing authority evidencing its intention to issue bonds for the project or program;
 - i. with respect to bonds, the anticipated date(s) on which the Bonds are expected to be sold and the anticipated date(s) on which the closing or final transaction with respect to the issuance and sale of the Bonds is expected to occur and, with respect to mortgage credit certificates under Section 25 of the Code, the anticipated date(s) on which such mortgage credit certificates are expected to be issued;
 - j. the name, address, and telephone number of all parties to the transaction;
 - k. the applicable provisions of the Code under which the Bonds are expected to be issued;
 - l. such information as the applicant may wish to submit in order to demonstrate the need for, and economic impact of, its program or project in the State, together with any information which demonstrates how its program or project will effectively utilize and efficiently distribute resources throughout the State; and
 - m. any other information or attachments reasonably required by the Director.
2. The Director shall:
 - a. establish the form of application for requests for allocations of the Volume Cap, which form shall contain the information required by Section 3(1); and
 - b. make such forms available to the public upon request.
3. The Director shall be under no obligation to process any application that is incomplete. Any application submitted by an issuing authority that the Director does not process shall be returned by the Director on or before the fifteenth (15th) business day after receipt thereof with a brief explanation as to why the application was not processed.

Section 4:

1. Each Year the Director shall set aside Volume Cap for allocation to Issuing Authorities according to the following priority set asides:
 - a. qualified small-issue manufacturing projects under Section 144(a) of the Code, in an amount between 0% and 13% of the total allocation dollars available for the Year as determined by the Director;
 - b. single-family housing financing through the Idaho Housing and Finance Association under Section 143 of the Code, in an amount between 45% and 80% of the total allocation dollars available for the Year as determined by the Director;
 - c. multifamily housing, as qualified residential rental projects or programs under Section 142(a)(7) of the Code, in an amount between 15% and 45% of the total allocation dollars available for the Year as determined by the Director;
 - d. exempt facilities under Section 142(a) of the Code, other than qualified residential rental projects, in an amount between 0% and 32% of the total allocation dollars available for the year as determined by the Director;
 - e. any qualified uses for Volume Cap not identified above are eligible for allocations in accordance with Section 4(4) below;
 - f. not later than January 31 of each Year, subject to the provisions of Section 4(9) hereof, the Director shall determine the amount of allocation dollars within each priority set aside, based on the need for and economic impact of the program or project to be financed under each application and how such expected program or project will effectively utilize and efficiently distribute resources throughout the State; and
 - g. the above priority set asides shall be in effect through August 31 of each Year. Thereafter, allocations shall be made in accordance with Section 4(4) and (5) below. All other potential uses of Volume Cap under the Code, other than those listed in the priority set asides above, may also be allocated on or after September 1 of each Year upon application to the Director as provided in Section 4(4) and (5) below.
2. The initial deadline for the submission of applications to the Director for an allocation of the Volume Cap shall be February 15 of each Year, and the secondary deadline for the submission of applications to the

Director for an allocation of the Volume Cap shall be August 31 of each Year. Except as otherwise provided in this Executive Order, on or before the fifteenth (15th) business day after the initial and secondary deadlines for submission, and if the Director determines that the application demonstrates the need for and economic impact of, the particular program or project in the State and will effectively utilize and efficiently distribute resources throughout the State, the Director shall make an allocation in the amount determined by the Director, if available under the applicable priority set aside in Section 4(1) above, and certify to the issuing authority applying for the allocation that an allocation has been made, the amount of such allocation. Certificates of allocation evidencing the granting of an allocation by the Director in accordance with the preceding sentence, shall be issued by the Director in the order of priority determined by the Director and within the applicable priority set aside in Section 4(1) above. No Issuing Authority issuing bonds or certificates is entitled to any allocation of the Volume Cap with respect to such bonds or certificates unless it has first received the aforementioned certificate of allocation from the Director evidencing the granting of an allocation for such bonds or certificates.

3. Every allocation of the Volume Cap granted under this Executive Order by the Director for which bonds or certificates have not been issued with respect to such allocation, except those grants made pursuant to Section 5, shall remain effective until, and including, the earlier of:
 - a. a date to be determined by the Director but not to exceed 180 calendar days after the date on which such allocation was made or any date until December 15 as determined by the Director if the program is being allocated Volume Cap under a priority set aside which sets aside allocation dollars for a specific Issuing Authority under Sections 4(1)(b) and 4(1)(c) above and such Issuing Authority has a Program for Bond issuance to be carried out throughout the Year;
 - b. 12:00 o'clock midnight on December 15 of the Year in which such allocation was made; or
 - c. the date upon which the Director receives a written notification from any such Issuing Authority pursuant to Section 7(2). Any allocation for which bonds or certificates are issued on or prior to the applicable date specified in this subsection shall be irrevocably allocated to such bonds or certificates.
4. On and after September 1 of each Year, allocations of Volume Cap shall be made to applicants submitting applications by such date for project(s) or Program(s) that best demonstrate effective utilization, need, economic impact and efficient distribution of resources throughout the State. The Director and the Department may elect not to allocate Volume Cap if an application does not demonstrate a need for and economic impact of the particular Program or project in the State and how the Program or project will effectively utilize and efficiently distribute resources throughout the State. If qualified applications have not been received by the Department for all remaining allocation dollars by September 1 of such Year, then the Department shall continue to receive additional applications until the first of each succeeding month and make allocations on the same basis until all allocation dollars have been allocated.
5. Until and including December 15 of each Year, any allocation of allocation dollars made in such year, except allocations made pursuant to Section 5, for which bonds or certificates are not issued on or prior to the applicable date specified in Section 4(3) shall be available for reallocation to applying Issuing Authorities. On December 28 of each Year, any allocation of allocation dollars made in such Year for which bonds or certificates are not issued on or prior to the applicable date specified in Section 4(3) and any allocation dollars for such year or any allocation dollars not allocated under Section 4(4) above shall become available for reallocation only for qualifying carryforward projects or Programs. In either case, such reallocations shall be made in the same manner as for allocations of allocation dollars as provided in Section 4(4) above.
6. No application submitted by an Issuing Authority to the Director pursuant to this section shall be processed if the amount of allocation of the Volume Cap requested in such application is in excess of the amount of Volume Cap remaining available for allocation. Any application not processed for the reason stated in this subsection may be resubmitted to the Director, with or without a change in the amount of allocation requested. Any application resubmitted to the Director pursuant to this subsection shall be treated as a new application. Should an allocation not be granted for the reasons stated in this subsection, the Director shall continue to process other applications in the chronological order in which received, granting allocations pursuant to the provisions of this Executive Order.
7. The expiration date of an allocation of Volume Cap under this Executive Order may be extended upon prior written approval of the Director, provided there are no pending applications for Volume Cap within the same priority set aside, or if there are other such applications pending, that the application for the allocation being extended best demonstrates the need for and economic impact of the Program or project in the State and how the Program or project will effectively utilize and efficiently distribute resources throughout the State, and provided further that all other provisions of this Executive Order are complied with.
8. In the event that the Director is uncertain whether an application meets the requirements set forth in 4(2) or 4(4) above, the Director may defer action on such application until the Director has received another application(s) and then determine which application best meets such criteria.
9. In the case of an application filed prior to the date when the Director makes an allocation under 4(1)(f) above for an allocation from a Priority Set Aside which provides for a minimum percent of allocation dollars and sets forth a specific Issuing authority to receive the Priority Set Aside [specifically, Priority Set Asides 4(1)(b), 4(1)(c) and 4(1)(d)], the Director may, at the request of the Issuing Authority, make an allocation of that Year's allocation dollars in an amount not to exceed the minimum percentage stated for the Priority Set Aside prior to the date the Director has set for determination of allocations under 4(1)(f) but in no event later than fifteen (15) business days after the date such application is filed.

Section 5:

1. Issuing authorities with Qualifying Carryforward Projects or Programs may apply for an allocation of allotment dollars for such Qualifying Carryforward Projects or Programs by submitting an application to the Director which shall contain:

- a. the carryforward purpose for the Bonds under Section 146(f) of the Code;
- b. any other information required by Section 146(f) of the Code;
- c. a certification signed by both an official of the Issuing Authority responsible for the supervision of the issuance of the Bonds and, if applicable, a representative of the person or entity constructing, acquiring, or rehabilitating the project or administering the Program, stating that the Issuing Authority and, if applicable, such person or entity, will proceed with diligence to ensure the issuance of the Bonds within the carryforward period provided by Section 146(f) of the Code;
- d. a preliminary opinion from the bond counsel that the project or program qualifies for carryforward under Section 146(f) of the Code, if applicable;
- e. if applying for an allocation of allotment dollars for the purpose of issuing mortgage credit certificates under Section 25 of the Code, the amount of qualified mortgage bonds defined in Section 143 of the Code which the Issuing Authority elects not to issue under the Code; and
- f. other such information and attachments as are set forth in Section 3(1).

2. No application submitted by an issuing authority to the Director pursuant to this section shall be processed if at the time such application is considered the amount of allocation of the Volume Cap requested in such application is in excess of the amount of the Volume Cap remaining available for allocation. Any application not processed for the reason stated in this subsection may be resubmitted to the Director, with or without a change in the amount of allocation requested. Any application resubmitted to the Director pursuant to this subsection shall be treated as a new application. Should an allocation not be granted for the reasons stated in this subsection, the Director shall continue to process other applications in accordance with the provisions of Section 4(4), granting allocations pursuant to the provisions of this Executive Order.

3. Allocations of the Volume Cap for Qualifying Carryforward Projects or Programs shall be granted by the Director in the amount requested by the applying Issuing Authority, if available, on or after December 1, but no later than December 31, of the Year in which an application in satisfactory order is submitted to the Director for an allocation of the Volume Cap for a Qualifying Carryforward Project or Program in accordance with the provisions of Section 4(5). The Director shall issue certificates of allocation evidencing the granting of an allocation within the time period specified in the preceding sentence to each issuing authority which applied to the Director and which received an allocation of the Volume Cap for a Qualifying Carryforward Project or Program of such Issuing Authority, such certificates of allocation to be similar to the certificates of allocation described in Section 4, stating the amount of allotment dollars which have been allocated to such Issuing Authority, specifying the Qualifying Carryforward Project or Program for which the allocation has been made and specifying the expiration date of the allocation, as provided by Section 146(f) of the Code.

Section 6: No application submitted to the Director may be amended without the consent of the Director; provided, however, that no such consent shall be required for an Issuing Authority to submit a new application in order to replace a previously submitted application if such new application is submitted before an allocation is made on the basis of the original application; provided further, that the consent of the Director shall not be required for an Issuing Authority to withdraw a previously submitted application. For purposes of receiving an allocation of the Volume Cap, any application that has been amended shall be treated as though such application was submitted on the date that the amendment was made, rather than on the date of the original submission of such application.

Section 7:

1. After the effective date of this Executive Order, any Issuing Authority issuing Bonds without a certificate or allocation of the Director issued pursuant to Section 4 or Section 5, as appropriate, evidencing the granting of an allocation for such Bonds or certificates, or any Issuing authority issuing Bonds or certificates after the expiration of an allocation under Section 4 or Section 5, as appropriate, is not entitled to any allocation of the Volume Cap for such Bonds or certificates, and any Issuing Authority issuing Bonds or certificates in excess of the allocation set forth in the certificate of allocation is not entitled to any allocation of the Volume Cap for such excess.
2. Each Issuing Authority shall:
 - a. advise the Director on or before the earlier of the sixtieth (60th) calendar day after the issuance of any Bonds or certificates or December 27 of each Year, of the principal amount of Bonds or certificates issued under the allocation set forth in each certificate of allocation issued by the Director evidencing the granting of an allocation for such Bonds or certificates by delivering to the Director a copy of the Form 8038 which was delivered to the Internal Revenue Service in connection with such Bonds or certificates, or, if no such form was required to be delivered to the Internal Revenue Service, a completed copy of a Form 8038 prepared for the Director with respect to such Bonds or certificates; or
 - b. if all or a stated portion of such Bonds or certificates will not be issued, shall advise the Director in writing, on or before the earlier of
 - i. the fifteenth (15th) business day after the earlier of
 - A. the final decision not to issue or a stated portion of such Bonds or certificates, or
 - B. the expiration of the allocation, or
 - ii. December 15 of the year in which the allocation of such Bonds or certificates was made.
3. Each Issuing Authority shall cooperate with the Director in furnishing any information the Director reasonably requires. If an Issuing Authority obtains an allocation of a portion of the Volume Cap for a particular project or Program from the Director as provided in Section 4 or Section 5, as appropriate, but does not issue its Bonds or certificates within the prescribed time limit, or issues a lesser amount of Bonds or certificates within the prescribed time limit, such Issuing Authority may again submit an application with respect to the proposed Bonds or certificates or portion of such Bonds or certificates not issued for such project or Program as

provided in Section 4 or Section 5, as appropriate. Such application shall be treated as a new application.

Section 8: In addition to the duties otherwise specifically set forth in this Executive Order, the Director shall:

1. determine the amount of allotment dollars available on December 28 of each Year for allocation for Qualifying Carryforward Projects or Programs and allocate the allotment dollars available for Qualifying Carry-forward Projects or Programs as provided in this Executive Order;
2. maintain a record of all applications filed by Issuing Authorities under Section 3 and Section 5 and all certificates of allocation issued under Section 4 and Section 5 and may accept information from Issuing Authorities updating or correcting such record;
3. maintain a record of all Bonds or certificates issued by Issuing Authorities during each Year and may accept information from Issuing Authorities updating or correcting such record;
4. maintain a record of all information filed by Issuing Authorities under this Executive Order;
5. make available upon reasonable request a certified copy of all or any part of the records maintained by the Department under this Executive Order or a summary thereof including information regarding the volume Cap for each Year and any amounts available or at any time remaining available, for allocation under this Executive Order;
6. the Director shall serve as the State official designated under State Law to make any certifications required to be made under the Code including, without limitation, the certification required by Section 149(e)(2)(F) of the Code; and
7. promulgate reasonable rules not inconsistent with this Executive Order deemed necessary or expedient to allocate the Volume Cap hereunder.

Section 9: If any provision of this Executive Order shall be held to be, or shall, in fact, be invalid, inoperative or unconstitutional, the defect of the provision shall not affect any other provision of this Executive Order or render it invalid, inoperative, or unenforceable. To the extent this Executive Order shall be held or shall, in fact, be invalid, inoperative, or unconstitutional, all allocations of the Volume Cap previously made under this Executive Order shall be treated as allocations made by the Governor of the State in accordance with provisions of the State Law.

Section 10: This Executive Order replaces Executive Order No. 2018-05, which is now hereby repealed, provided that such replacement shall not affect any allocations in the State made prior to the effective date hereof pursuant to any other Executive Orders or laws of the State.

Section 11: The State pledges and agrees with the owners of any Bonds or certificates to which an allocation of the Volume Cap has been granted under this Executive Order that the State will not retroactively alter the allocation of the Volume Cap to such Bonds or certificates.

Section 12: No action taken pursuant to this Executive Order shall be deemed to create an obligation, debt or liability of the State or be deemed to constitute an approval of any obligation issued or to be issued hereunder.

Section 13: The purpose of this Executive Order is to maximize the benefits of financing and development through the use of Bonds and certificates providing a system for the implementation and administration of the formula specified in the State Law for allocating the Volume Cap within the meaning of Section 146 of the Code.

Section 14: This Executive Order shall be effective immediately and shall continue in effect until such time as it may be repealed or superseded by operation of State or federal law. Notwithstanding the foregoing, allocations for qualifying carry forward projects or programs pursuant to Section 5 hereof shall remain effective for the term of such allocation provided for in Section 146 of the Code.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this 12th day of December 2024, in the year of our Lord two thousand and twenty-four and of the Independence of the United States of America the two hundred forty-ninth and of the Statehood of Idaho the one hundred thirty-fifth.

A blue ink signature of Brad Little, written in a cursive style.

BRAD LITTLE
GOVERNOR

A blue ink signature of Phil McGrane, written in a cursive style.

PHIL MCGRANE
SECRETARY OF STATE