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CAROL OWENS

WISCONSIN STATE REPRESENTATIVE

Assembly Housing Committee

MEMO

To: Members of The Assembly Housing Committee

From: Representative Carol Owens, Chair

Date: December 4, 1995

The following Clearinghouse rule has been referred to the Assembly Housing Committee:

Rule No. 95-164: AN ORDER to repeal and recreate chapter DOD 13, relating to a volume cap on private activity bonds.

Enclosed is a copy of the rule. The deadline for committee action on this rule is December 29, 1995. If you are interested in requesting a hearing and/or submitting comments, please do so prior to that date.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that pursuant to ss. 560.032, Stats., the Department of Development will hold a hearing to consider the repeal and recreation of Ch. DOD 13 Wis. Adm. Code, which provides for a volume cap on private activity bonds at the following place and time: Department of Development, Room 908, 123 West Washington Avenue, Madison, WI, on October 12, 1995 at 10:00 a.m.

Analysis Prepared by the Department of Development

Section 560.032, Stats., requires the Department of Development to submit annually a system for the allocation of the volume cap on the issuance of private activity bonds. This order complies with this statutory mandate by establishing a volume cap allocation system for calendar year 1996.

Without this order, the availability of the annual volume cap for Wisconsin would be uncertain.

The private activity bonding available under the volume cap in Wisconsin during 1995 is approximately \$254 million. The volume cap for 1996 is based upon Wisconsin's 1995 population and should be slightly more than the cap available in 1995. Of the total, the rules provide under this order that \$105 million will be allocated to the Wisconsin Housing and Economic Development Authority (WHEDA), \$10 million will be allocated to the State Building Commission, \$25 million will be allocated to the Department of Development to be distributed to local issuers for multi-family housing and the remainder, approximately \$114 million, will be allocated to the Department of Development to be distributed to local issuers for a variety of economic development projects.

On September 1, any unused volume cap gets put into one category in the Department of Development and may be used for any of the purposes described.

This order is substantially the same as the rule currently in effect for 1995 with the following exceptions:

1. The allocation for multi-family housing is reduced from \$45 million to \$25 Million.
2. The Department will charge a fee to each issuer equal to three one hundredths of one percent of the amount of bonds sold by that issuer during the calendar year to recover the cost of the Department's service.
3. The language in s. DOD 13.03, is changed from the 1995 version to make it clear that any WHEDA or Building Commission allocation for which bonds have not been issued by September 1 shall be transferred to the Department of Development.

Since the allocation was created for multi-family housing, there has been an average of \$20 million requested each year for multi-family housing. After September 1 in each year, under either the proposed or current rules, all of the remaining allocation goes into one general allocation administered by the Department of Development and is available for all eligible projects including WHEDA and multi-family housing projects.

Since any unused allocation for multi-family housing is not transferred to the Department allocation until September 1, for many potential users there is insufficient time remaining to actually sell bonds prior to the close of the calendar year as required by the applicable federal law and Department administrative rule. The changes will make it more likely that Wisconsin takes advantage of the entire allocation made available to it during each calendar year.

The provision for the fee will have the businesses which make use of volume cap pay the state's cost for administration of the volume cap program.

Like the 1995 rule, the proposed rule provides for an allocation formula that will address the bonding needs of the state and local issuing authorities. It will also provide for the efficient and effective use of the state's annual volume cap allocation, and thus, will provide all eligible issuers with the opportunity to obtain an allocation. Finally, it provides for flexibility in making adjustments to the formula as needed.

Final Regulatory Flexibility Analysis

NOTICE IS HEREBY GIVEN that pursuant to s. 227.19 (3) (e), Stats., the proposed rules should have a minimal, if any, impact on small business. The final regulatory flexibility analysis required by s. 227.17(3)(e), Stats., is as follows:

- a. Methods of reducing the impact of the rule on small business: None.
- b. Issues raised during the hearing: None.
- c. Nature of reports and estimated cost of preparation: None.
- d. Nature and cost of other measures: None.
- e. Additional costs to the agency for administering or enforcing a rule which includes methods specified under s. 227.114 (2), Stats: None.
- f. Impact on public health, safety or welfare caused by including in the rules any method specified under s. 227.114 (2), Stats: None.

Fiscal Estimate

There is not likely to be any change in the workload of either the Department of Development or local governments. The fee to be charged under the proposed rule will produce approximately \$40,000 for the Department which approximates its cost of administering the volume cap program. The fees are likely to be paid primarily by the businesses that are the beneficiaries of the bond allocations and rarely by the local governments that issue the resolutions to

authorize the bonding, so there should be minimal fiscal effect upon local government.

Contact Persons

Dennis Fay, General Counsel, 608/266-6747.

Pursuant to the authority vested in the Department of Development by ss. 560.02 (4) and 560.032, Stats., the Department of Development hereby repeals and recreates rules interpreting s. 560.032, Stats., as follows:

SECTION 1. Chapter DOD 13 is repealed and re-created to read:

CHAPTER DOD 13

ALLOCATION OF VOLUME CAP ON PRIVATE ACTIVITY BONDS

DOD 13.01 Purpose	DOD 13.06 Department allocation
DOD 13.02 Definitions	DOD 13.07 Carryforward allocation
DOD 13.03 Initial allocation to the Wisconsin housing and economic development authority	DOD 13.08 Department Certification
13.04 Allocation to the Wisconsin housing and economic development authority	DOD 13.09 Designation of interest earned
13.05 Building commission allocation	

DOD 13.01 PURPOSE. The purpose of this chapter is to set forth a procedure for the annual allocation, pursuant to s. 560.032, Stats., of the amount of tax-exempt "private activity bonds" that may be issued by Wisconsin issuers pursuant to the internal revenue code of 1986, 26 USC s. 146.

DOD 13.02 DEFINITIONS In this chapter:

(1) "Carryforward purpose" has the meaning assigned to that term in 26 U.S.C. s. 146 (f) (5).

(2) "Code" means the internal revenue code of 1986, as amended.

(3) "Department" means the department of development.

(4) "Issuer" means any county, city, town, village or other public body described in s. 67.01 (5), Stats., or agency, authority or political sub-division of the state of Wisconsin, including any public corporation or commission established by or on behalf of any of these entities, that is empowered to borrow money.

(5) "Issuer-owned project bonds" means bonds issued for a facility that is owned by an issuer, would be treated as owned by the issuer pursuant to 26 USC s. 142 (b) (1) (B) and is described in 26 USC s. 142 (a) (1) to (11). It does not include single-family housing bonds but does include multi-family housing bonds.

(6) "Multi-family housing bonds" means bonds issued for a qualified residential rental project, as defined in 26 USC s. 142 (d) (1).

(7) "Official action" means either:

(a) An initial resolution issued by the governing body of the Wisconsin housing and economic development authority, expressing an intention, which may be subject to conditions therein stated, to issue private activity bonds other than multi-family housing bonds and single family housing bonds under s. DOD 13.03 in an amount stated, or a sum not to exceed a stated amount, or;

(b) A series resolution issued by the governing body of the Wisconsin housing and economic development authority, authorizing the authority to issue multi-family housing bonds or single family housing bonds, which may be subject to conditions therein stated, in an amount stated, or a sum not to exceed a stated amount.

(8) "Other private activity bonds" means private activity bonds other than those certified to the department as issuer-owned project bonds, multi-family housing bonds or single-family housing bonds.

(9) "Private activity bonds" has the meaning assigned to that term in 26 USC s. 141 (a).

(10) "Qualified redevelopment bonds" has the meaning assigned to that term in 26 USC s. 144 (c).

(10) "Single-family housing bonds" means qualified mortgage bonds as defined in 26 USC s. 143 (a).

(11) "Unified volume cap" means the annual state ceiling for the issuance of private activity bonds applicable to the state of Wisconsin.

NOTE: The "unified volume cap" is determined according to 26 U.S.C. s. 146 (d) (1) and (2). It is an amount equal to the prior year census estimate of the resident population of the state of Wisconsin released by the bureau of census multiplied by \$50 per person.

DOD 13.03 INITIAL ALLOCATION TO THE WISCONSIN HOUSING AND ECONOMIC DEVELOPMENT AUTHORITY. There is allocated annually to the Wisconsin housing and economic development authority \$105 million of the unified volume cap to be utilized for those purposes that the authority in its discretion shall determine are needed. The authority shall certify to the department promptly after issuance of any private activity bonds the amount of the bonds issued pursuant to this allocation. On September 1, the authority shall transfer to the department, to be further allocated as provided in s. DOD 13.06, any amount of the \$105 million allocation for which the authority has not issued private activity bonds or otherwise taken official action by September 1. The authority shall certify to the department, on September 1, the amount of allocation for which the authority has not issued private activity bonds or otherwise taken official action by September 1. On or before November 1, the executive director of the authority shall identify all projects which are reasonably expected to result in the issuance of private activity bonds by December 31, as well as the amount that is reasonably expected to be used for such bonds. Any amount of the \$105 million allocation that the authority does not reason-

ably expect to use for the issuance of private activity bonds by December 31 shall be automatically transferred to the department by November 1.

DOD 13.04 ALLOCATION TO THE WISCONSIN HOUSING AND ECONOMIC DEVELOPMENT AUTHORITY. Any application by the Wisconsin housing and economic development authority for an allocation under s. DOD 13.06 may be made no earlier than September 1 and shall contain a certification by the issuer that the allocation under s. DOD 13.03 and any unused allocation from a prior year carried forward and available to the issuer for that purpose has been or, as part of the bond issuance, will be fully utilized. If the allocation is for single-family housing bonds, the application shall contain a separate certification from the secretary of the department approving the bond issue. The secretary of the department shall provide the certification only after being advised of the current status of the allocation to the department made under s. DOD 13.06 (1) (a) and after giving due consideration to alternative uses of the allocation. The certification shall state that the secretary of the department has decided that the utilization of the allocation for the issue of single-family housing bonds is in the best interests of the people of the state of Wisconsin.

DOD 13.05 BUILDING COMMISSION ALLOCATION. There is allocated annually to the building commission \$10 million of the unified volume cap to be further allocated by the building commission and utilized for any private activity bonds as the building commission in its discretion shall determine are needed. Any amount of the allocation for which bonds have not been issued by September 1 shall be automatically transferred to the department to be further allocated as provided in s. DOD 13.06. The building commission shall promptly certify to the department, on September 1, the amount of unused allocation.

DOD 13.06 DEPARTMENT ALLOCATION AND ALLOCATION PROCESS. There is allocated to the department on behalf of the issuers the remainder of the annual unified volume cap, to be further allocated as follows:

(1) (a) Prior to September 1, the allocation to the department shall be set aside and accounted for in 2 categories, as follows:

1. Forty-five million dollars for multi-family housing bonds. An allocation made out of this subdivision may not be for more than \$6 million and shall meet the following requirements:

a. At least 10% of the housing units shall be barrier free as defined by United States department of housing and urban development rules.

b. Any firm involved in construction of a project for which an allocation is requested shall meet applicable affirmative action plan requirements.

c. A project for which an allocation is requested prior to September 1 shall either be new construction or an adaptive reuse of an existing building unless at least 95 percent of the completed project units are to be occupied or held for occupancy during the qualified project period as defined in 26 USC Section 142 (d) (2) by individuals or families whose income is 50 percent or less of county median gross income, determined in a manner consistent with Section 8 of the United States Housing Act of 1937, with adjustments for family size.

2. The remainder, including any amount that has been surrendered or terminated pursuant to subs. (7) and (8), for issuer-owned project bonds, qualified redevelopment bonds and other private activity bonds, but not for single-family housing bonds.

(b) On and after September 1, the allocation to the department shall be aggregated into a single category and available for issuer-owned project bonds, qualified redevelopment bonds, multi-family housing bonds, single-family housing bonds issued by the Wisconsin housing and economic development authority and other private activity bonds.

(2) (a) Any issuer, or any person acting on its behalf, may make an application to the department for an allocation of the unified volume cap. Each application shall provide:

1. Evidence that official action has been taken by the issuer with respect to the issuance of the obligation which, for obligations issued pursuant to s. 66.521, Stats., shall be the initial resolution previously filed with the department with respect to the obligation, and

2. A written, signed opinion of the issuer's legal counsel, or of bond counsel, to the effect that a reasonable basis exists to conclude that the obligations would be private activity bonds subject to the unified volume cap and indicating whether the bonds would be issuer-owned project bonds, qualified redevelopment bonds, multi-family housing bonds or other private activity bonds.

(b) Any application with respect to a federally-assisted project shall also contain a statement that the application is for a federally-assisted project and shall include a copy of:

1. The application, on the form prescribed by the United States department of housing and urban development, for an urban development action grant pursuant to 42. USC s. 5318 with respect to the project, or

2. An application, on the form prescribed by the respective federal agency, for insurance or guarantee in connection with the bonds issued by the federal housing administration, the government national mortgage association of the department of housing and urban development pursuant to the national housing act, as amended, or the United States housing act of 1937, as amended.

(c) Any application for other private activity bonding shall also contain the number of jobs created by the project for which other private activity bonding is being requested, the total dollar investment in the project, the taxable real property created by the project, the unemployment rate in the county in which the project is located and the average income of persons residing in the county in which the project is located in such form as the department shall prescribe.

(3) Upon receipt of any application, the department shall record it by date and time of receipt. The department shall promptly certify the portion of the relevant category of its allocation of the unified volume cap that has not been allocated to an issuer and shall allocate the available portion of the amount requested to the issuer. The allocation shall be valid for a period equal to the lesser of 90 calendar days or, in the case of an application

for a federally-assisted project, 120 calendar days or the remainder of the calendar year. The amount of the allocation shall not exceed the maximum amount authorized for issuance under the official action taken by the issuer with respect to the obligation. Certain allocations are subject to earlier termination pursuant to sub. (8). Any allocation received under this section shall be valid only with respect to bonds issued in the same calendar year. Any allocations for a carryforward purpose shall be obtained under the provisions of s. DOD 13.07.

(4) (a) In making an allocation, except allocations made for multi-family housing bonds, allocations for other private activity bonds after one-half of the initial sub. (1) (a) 2. allocation has been allocated and allocations of \$5 million or more made under sub. (10), the department shall only consider compliance with the requirements of sub. (2), the dollar amount of the request and the portion of the relevant category of its allocation of the unified volume cap that has not been allocated to an issuer. When making an allocation for a multi-family housing bond, the department shall also consider the requirements in sub. (1) (a) 1.a., b., and c. When making allocation for other private activity bonds after one-half of the initial sub. (1) (a) 2. allocation has been allocated, the department shall determine that a project proposed for other private activity bonding receives a score of a least 12 based upon standards contained in pars. (b) to (f).

(b) A project that is expected to create a net increase of jobs within the state shall receive up to 5 points under this paragraph as follows:

1. For 2 or fewer jobs for each \$500,000 allocation requested, one point.
2. For 3 to 6 jobs for each \$500,000 of allocation requested, 2 points.
3. For 7 to 10 jobs for each \$500,000 of allocation requested, 3 points.
4. For 11 to 14 jobs for each \$500,000 of allocation requested, 4 points.
5. For 15 or more jobs for each \$500,000 of allocation requested, 5 points.

(c) A project in which there is expected to be a total investment equal to or greater than the allocation requested shall receive up to 5 points under this paragraph as follows:

1. For a total investment of 100% or less of the allocation request, one point.
2. For a total investment of 101 to 105% of the allocation request, 2 points.
3. For a total investment of 106 to 110% of the allocation request, 3 points.
4. For a total investment of 111 to 115% of the allocation request, 4 points.
5. For a total investment of 116% or more of the allocation request, 5 points.

(d) A project in which there is expected to be taxable real or personal property shall receive up to 5 points under this paragraph as follows:

1. For a project which creates taxable property equal to 25% or less of the allocation request, one point.
2. For a project which creates taxable property of 26 to 50% of the allocation request, 2 points.
3. For a project which creates taxable property of 51 to 75% of the allocation request, 3 points.
4. For a project which creates taxable property of 76 to 100% of the allocation request, 4 points.
5. For a project that creates taxable property in excess of 100% of the allocation request, 5 points.

(e) A project that is located in a county with significant unemployment shall receive up to 5 point under this paragraph as follows:

1. If in a county with an unemployment rate of 2 percentage points or more below the statewide average, one point.
2. If in a county with an unemployment rate of less than 2 percentage points and not less than one percentage point below the statewide average, 2 points.
3. If in a county with an unemployment rate of less than 1 percentage point below and not more than the statewide average, 3 points.
4. If located in a county with an unemployment rate above the statewide average and not more than 1 percentage point above the statewide average, 4 points.
5. If located in a county with an unemployment rate greater than one percentage point above the statewide average, 5 points.

(f) A project that is located in a county with modest average per capita income shall receive up to 5 points under this paragraph as follows:

1. If in a county with average per capita income that is 5% or more above the statewide average per capita income, one point.
2. If in a county with average per capita income of not more than 5 and not less than 2% above the statewide average, 2 points.
3. If in a county with average per capita income that is less than 2 percentage points above and greater than the statewide average per capita income, 3 points.
4. If in a county with average per capita income of not more than the statewide average and not more than one percentage point below the statewide average, 4 points.
5. If in a county with average per capita income of more than one percentage point below the statewide average per capita, 5 points.

(g) The information required under sub. (2)(c) to respond to pars. (b) to (f) shall be provided in such form as the department shall require.

(5) (a) Each issuer, or a person acting on its behalf, shall notify the department in writing as to the amount of obligations issued pursuant to the allocation on or before 5 business days after the issuance of the bonds and as part of the notification, make a payment by cash or cashiers check to the department equal to 3-one hundredths of one percent of the amount of the obli-

gations issued pursuant to the allocation. In the case of a federally-assisted project, the notification shall include evidence of the award of:

1. An urban development action grant, or

2. Insurance, guarantee or a grant in connection with the bonds issued by the federal housing administration, the government national mortgage association or the department of housing and urban development pursuant to the national housing act, as amended, or the United States housing act of 1937, as amended, with respect to the project.

(b) Upon notification and payment under par. (a), the allocation in the amount issued shall, subject to par. (c), become permanent and irrevocable.

(c) The department shall treat any notice received pursuant to this subsection more than 5 business days after the issuance of the bonds as a reapplication pursuant to sub. (6). If an allocation is certified to the issuer pursuant to a reapplication, this subsection shall be deemed to have been complied with as though the notice of issuance had been timely received.

(6) All applications shall be processed in the order received by the department. An application shall be made only within 90 calendar days or, for a federally-assisted project, 120 calendar days, prior to the planned issuance of the bond. Any reapplication shall be effective only upon the day on which the previous allocation expires, except that a notice of issuance which is treated as a reapplication pursuant to sub. (5)(c) shall be effective upon receipt by the department.

(7) An issuer, or a person acting on its behalf, may surrender all or any part of its rights to a particular allocation, in whole or in part, under any section of this chapter prior to its expiration. If this event occurs, the allocation shall expire. An issuer that has received an allocation for a federally-assisted project, or a person acting on its behalf, may alternatively surrender only its right to an extended allocation period of 30 days, whereupon the allocation shall be treated as if it were not for a federally-assisted project.

(8) (a) Unless the department has received notice of the issuance of bonds pursuant to sub. (5) or a deposit of cash or a certified or cashier's check in an amount equal to .5 percent of the allocation requested, if prior to October 1, and one percent if requested on October 1 or thereafter, any allocation shall terminate on the earlier of 30 days after the allocation is made or December 1. Unless the department has received a deposit of cash or certified cashier's check in the required amount, no allocation may be made after December 1. No additional deposit may be required with respect to an allocation made upon reapplication if the required deposit has already been made, and not refunded, with respect to the project.

(b) 1. Subject to subd. 2., the deposit shall be refunded, without interest, if prior to January 1 of the succeeding year bonds are issued by the issuer pursuant to the allocation or to an allocation made upon reapplication.

2. A ratable portion of the deposit proportionate to the amount by which the allocation exceeds the face amount of the bonds issued may not be refunded.

3. Any deposits, or portions of the deposits, which have not become refundable pursuant to subds. 1 and 2 as of the fifth working day of the succeeding year shall vest in the state of Wisconsin to be used as provided by law.

4. Any refund shall be made within 30 days after a request for refund, together with any evidence as the department may reasonable require, is furnished to the department.

(9) Notwithstanding any other provision, the deposit required with respect to any issuer-owned project bonds or qualified redevelopment bonds shall be \$1,000 for each \$5 million of allocation or portion of \$5 million of allocation requested, and no deposit shall be required with respect to any allocation to the state building commission.

(10) Any allocation pursuant to this section in excess of \$5 million other than an allocation for single-family or multi-family housing bonds shall be provisional, and may not be used until approved by the secretary of the department. Any application by an issuer for an allocation shall contain a certification by the issuer that any allocation under s. DOD 13.03 or 13.05 available to the issuer for the bond issue has been, or as part of the bond issuance, will fully utilized. The secretary's approval shall not be effective unless prior notice has been given and opportunity to comment in writing and at a public hearing has been provided. Notice shall be given by publication in the official state newspaper and by mail to any person who has made a request of the department to receive the notice. The approval shall state that, after consideration of any comments received and after being advised of the current status of the allocation to the department made under sub. (1) and after giving due consideration to alternative uses of such allocation, the secretary has decided that the utilization of the allocation for the bond issue is in the best interests of the people of the state of Wisconsin. The allocation shall be revoked, and any deposit refunded, unless the secretary approves in writing the allocation within 14 calendar days after the public hearing.

DOD 13.07 CARRYFORWARD ALLOCATION PROCESS. (1) (a) On the department's next to last working day of the year the department shall determine the portion of its allocation of the unified volume cap that has not been allocated to issuers and shall then make allocations only for carryforward purposes. No allocation for carryforward purposes may be made pursuant to this subsection prior to that date. Any requests shall be considered by the department in the order received, and a request shall be deemed not to be received if an allocation has been made and not surrendered with respect to the same project or portion of the project. An allocation shall be made to any issuer that has:

1. Requested an allocation for a carryforward purpose.
2. Provided the department with information as is requested by the department and approved by the department as showing that an effective election can be made by the issuer under the federal tax reform act of 1986 and any applicable income tax regulations promulgated pursuant to 26 USC s. 146, and
3. Paid to the order of the department a deposit of immediately available funds or a certified or cashier's check in an amount equal to one percent of the amount of the allocation requested.

(b) The deposit paid under par. (a) 3. shall be refunded, without interest, if bonds are issued by the issuer on or before December 31 of the third succeeding year, for the carryforward purpose indicated in the application for the allocation, provided that an amount of a deposit equal to one percent of the amount by which the allocation exceeds the face amount of bonds actually issued shall not be refunded. Any refund shall be made within 30 days after a request for refund, together with any evidence as the department may reasonable require, is furnished to the department.

(c) Any deposits, under s. DOD 13.06 (8) shall not be credited toward the deposit under this subsection.

(d) Any deposits or portions of the deposits which have not become refundable pursuant to par. (b) as of January 1 of the fourth succeeding year shall vest in the state of Wisconsin to be used as provided by law.

(e) Notwithstanding any other provision, the deposit required with respect to any issuer-owned project bonds or qualified redevelopment bonds shall be \$1,000 for each \$5 million of allocation or portion of \$5 million of allocation requested, and no deposit shall be required with respect to any allocation to the state building commission.

(2) On the department's last working day of the year, the department shall determine the portion of its allocation of the unified volume cap that has not been allocated to issuers and for which it has not received requests for carryforward purposes. The department shall assign that portion to the Wisconsin housing and economic development authority with direction to the authority to make an election, pursuant to any applicable income tax regulations promulgated pursuant to 26 USC s. 146, to carry forward the portion for any carryforward purpose.

DOD 13.08 DEPARTMENT CERTIFICATION. At the request of an issuer that has complied with all of the provisions of this chapter and that received an allocation, or of any person acting on its behalf, the secretary of the department, or designee, shall certify that the bond issue meets the requirements of 26 USC s. 146.

DOD 13.09 DESIGNATION OF INTEREST EARNED. Any interest earned upon investment of amounts deposited under this chapter shall inure to the state of Wisconsin for the benefit of the people of the state of Wisconsin, to be used as provided by law.

EFFECTIVE DATE. The regulations set forth in this order shall be effective on the first day of the month following publication in the Wisconsin administrative register as provided in s.227.22 (2) (intro.), Stats.

Dated: _____ Agency: _____
William P. McCoshen
Secretary