

# **Annual Report 2010 State Volume Cap**

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**STATE OF NEW JERSEY  
Department of Treasury  
Office of Public Finance  
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## Annual Report on 2010 New Jersey State Volume Cap

### **I. Background Information**

The federal government, as authorized through the Internal Revenue Service (“IRS”) and under the Internal Revenue Code of 1986, as amended (the “Code”), grants state and local governments the ability to issue tax-exempt private activity bonds for qualified purposes on behalf of entities other than the governmental agency issuing the bonds. These bonds are known as Tax-Exempt Private Activity Bonds (“TEPABs”). The qualified purposes for which these bonds can be issued are defined under Sections 142-144 and 1394 of the Code. The issuance of TEPABs by states for these qualified purposes is formulaically limited to a defined maximum amount during a calendar year. This limit is known as the state volume cap limit and is defined under Section 146 of the Code.

Historically, the state volume cap limit has consisted solely of TEPABs defined under Section 146 of the Code (“General State Volume Cap”). On July 30, 2008, H. R. 3221, The Housing and Economic Recovery Act of 2008 (P.L. 110-289), authorized a temporary, one-time increase in the private activity bond volume cap in 2008 to be used through 2010 for states, specifically with respect to certain qualified housing issues (“2008 Housing Act Cap”).

Since then, the Code has been further amended and supplemented by the American Recovery and Reinvestment Act of 2009, P.L. No.111-5 (“ARRA”). This federal assistance Act authorized the issuance of certain tax-exempt, tax-credit and tax subsidy bonds, including "Recovery Zone Facility Bonds," "Recovery Zone Economic Development Bonds," "Qualified School Construction Bonds," "Qualified Zone Academy Bonds" and "Qualified Energy Conservation Bonds" and provided for volume cap limitations on such bonds. Under ARRA, some allocations of the annual volume limits on certain bonds have been made directly to the State, while others have been made directly to local issuers, including municipalities and counties.

As outlined above, each component of the currently available federal allocations was created under a separate authorization governing its distinct bonding capacity, usage and carryforward limitations. A brief overview of the components listed, are described below.

#### **Federal Allocations:**

- General State Volume Cap
- 2008 Housing Act Cap
- American Recovery and Reinvestment Act of 2009 - Authorized bonds with cap limits:
  - Recovery Zone Facility Bonds
  - Recovery Zone Economic Development Bonds
  - Qualified School Construction Bonds

- Qualified Zone Academy Bonds
- Qualified Energy Conservation Bonds

### ***General State Volume Cap***

#### Usage Limitations:

The State's General State Volume Cap was authorized in 1986 under Section 146 of the Code. As defined by Section 146, the State can use General State Volume Cap to finance a limited range of activities. Among the uses that qualify for General State Volume Cap are the sale of exempt facilities bonds, which encompass a variety of projects including among others, qualified residential projects, sewage and solid waste disposal facility projects, and electric energy and gas facility projects. Also, the sale of qualified student loan bonds, qualified redevelopment bonds, qualified mortgage bonds, and small issue industrial development bonds comply with these rules.

#### Capacity Limitations:

Per Section 146, the established federal formula for determining general volume cap limits per State by calendar year is an amount equal to \$75, plus an annual cost of living adjustment, multiplied by the State population according to the U.S. Census Bureau.

In the case of the State of New Jersey for calendar year 2010, the volume cap ceiling was set at \$783,696,510. This amount was based on the formula outlined above at an amount equal to the product of \$90 per person and the U.S. Census Bureau population estimate for New Jersey in 2009 of 8,707,739.

#### Carryforward Limitations:

Section 146 sets forth a carryforward mechanism for any unused General State Volume Cap. These carryforward rules require that an issuing authority must identify the usage category and the corresponding amount of unused cap for which the carryforward is being elected. The issuing authority then has the three following calendar years to issue bonds, not to exceed the stated amount, for the elected purpose.

### ***2008 Housing Act Volume Cap***

#### Usage Limitations:

The 2008 Housing Act Cap TEPAB bonding capacity authorized by H. R. 3221, The Housing and Economic Recovery Act of 2008 (P.L. 110-289), is statutorily limited to purposes relating to qualified housing issues and qualified mortgage revenue bonds. This legislation amends certain sections of the Code and applies only to those qualified

bonds issued subsequent to the effective date of the legislation in 2008 and through the end of calendar year 2010.

Capacity Limitations:

The 2008 Housing Act Cap was a temporary \$11 billion increase in private activity bond volume cap allocated among each of the states for 2008. Amended Section 146(d)(5)(A) of the Code defined the allocation methodology for each state as equal to \$11,000,000,000 multiplied by a fraction: (i) the numerator of which was the State General Volume Cap Limit for calendar year 2008 (determined without regard to the increase in Section 146(d)(5)(A)), and (ii) the denominator of which was the aggregate General Volume Cap Limit for all States. In accordance with the defined formula for this purpose, the supplemental 2008 Housing Act Cap allocated for New Jersey was equal to \$271,975,917.

The HMFA used its entire allocated amount by the end of calendar year 2010.

Carryforward Limitations:

The authorizing legislation and Section 146(f)(6) of the Code amendments for the 2008 Housing Act Cap provided for a two-year carryforward for bonds not issued by the close of calendar year 2008. For this reason, 2008 Housing Act Cap was tracked separately from General State Volume Cap. Now that calendar year 2010 has ended, no more bonds may be issued under the 2008 Housing Act Cap.

***ARRA Volume Cap Programs***

***Qualified School Construction Bonds***

Usage Limitations:

Qualified School Construction Bonds (“QSCBs”) are a new type of federal tax credit bond authorized under Section 54F of the Code to finance qualified school construction projects. QSCBs are federal tax credit bonds. The QSCBs must be issued by the state or local government within the jurisdiction in which the school is located. The issuer must designate the bonds as QSCBs for purposes of Code Section 54F.

Capacity Limitations:

Pursuant to Section 54F(c) of the Code, the national bond limitation authorization was \$11 billion for calendar year 2009 and \$11 billion for calendar year 2010.

The annual \$11 billion QSCB allocation was allocated among the states in proportion to the respective amounts each state is eligible to receive under section 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) for the most

recent fiscal year ending before such calendar year. Each state will allocate this amount to issuers within that state.

For calendar year 2010, \$6.6 billion of the \$11 billion national QSCB volume cap was allocated among the states and \$4.4 billion was allocated to certain large local educational agencies. For calendar year 2010, the State was allocated \$215,904,000 of QSCB volume cap and the City of Newark was allocated \$25,753,000 of QSCB volume cap.

Carryforward Limitations:

Under Section 54F(e) of the Code, a state may carryforward its unused QSCB volume cap for 2009 or 2010 to the next calendar year. QSCB volume cap allocated to a state does not expire. Large local educational agencies are not authorized to carryforward their unused QSCB volume cap. However, pursuant to Section 54F(d) of the Code, a large local educational agency may reallocate any unused volume cap for a calendar year to the state in which it is located for use during such calendar year.

***Qualified Zone Academy Bonds***

Usage Limitations:

Qualified Zone Academy Bonds (“QZABs”) are authorized under Section 54E of the Code for the purpose of financing qualified zone academies. “Qualified zone academies” are defined in more detail in section 54E(d) of the Code. QZABs are federal tax credit bonds.

Capacity Limitations:

Pursuant to Code Section 54E(c)(2), the volume cap limitation for QZABs is allocated by the United States Treasury Secretary among the states on the basis of their respective populations of individuals below the poverty line (as defined by the federal Office of Management and Budget). The amount allocated to the State is allocated by the State Commissioner of Education to qualified zone academies within the State pursuant to Code Section 54E(c)(2).

The QZAB volume cap allocation for the State for calendar year 2009 was \$25,535,000 and for calendar year 2010 was \$25,271,000. Pursuant to Code Section 54E(c)(1), as amended by ARRA, the QZAB program ended on December 31, 2010.

Carryforward Limitations:

If a state does not use its entire QZAB allocation for a calendar year, the unused allocation is carried forward to the following calendar year, resulting in an increase in such state’s allocation for the following calendar year by the carryforward amount.

Pursuant to Code Section 54E(c)(4)(B), the allowable carryforward duration is limited to a two-year period following the unused allocation year.

### ***Qualified Energy Conservation Bonds***

#### Usage Limitations:

Qualified Energy Conservation Bonds (“QECBs”) are authorized under Section 54D of the Code for the purpose of financing projects for qualified conservation purposes. “Qualified conservation purposes” are defined in more detail in section 54D(f) of the Code. QECBs are federal tax credit bonds.

#### Capacity Limitations:

Code Section 54D(d), as amended by ARRA, authorizes a maximum national volume cap limitation for the QECB program of \$3.2 billion.

The QECB volume cap allocation for the State is \$90,078,000. There is currently no time limit on the use of this volume cap allocation. The State has not yet made the reallocations to the large local governments in the State pursuant to Code Section 54D(e)(2). It is expected to do so in calendar year 2011.

#### Carryforward Limitations:

The QECB program will end after each state allocation of the national volume cap for the program is exhausted, if no action is taken by the federal government to reauthorize the program.

### ***Recovery Zone Economic Development Bonds***

#### Usage Limitations:

Recovery Zone Economic Development Bonds (“RZEDBs”) were authorized under Sections 54AA and 1400U-2 of the Code for the purpose of financing projects with a “qualified economic development purpose” within “recovery zones.” RZEDBs are federal tax credit bonds.

#### Capacity Limitations:

Pursuant to Code Section 1400U-1(a), the volume cap limitations for RZEDBs were allocated by the United States Treasury Secretary to the states based on the percentage of each state’s 2008 state employment decline measured against the aggregate of the 2008 state employment declines for all of the states. The national volume cap limitation for the RZEDB program was \$10 billion.

The total RZEDB volume cap allocation for the State was \$251,104,000, however the U.S. Department of the Treasury and the IRS suballocated all of the State's RZEDB volume cap allocation directly to the counties and municipalities of the State as detailed in **Attachment I** to this report.

Carryforward Limitations:

The RZEDB program ended on December 31, 2010.

***Recovery Zone Facility Bonds***

Usage Limitations:

Recovery Zone Facility Bonds ("RZFBs") were authorized under Sections 54AA and 1400U-3 of the Code for the purpose of financing "recovery zone property." "Recovery zone properties" are defined in more detail in Section 1400U-3 of the Code. RZFBs are federal tax credit bonds.

Capacity Limitations:

Pursuant to Code Section 1400U-1(a), the volume cap limitations for RZFBs were allocated by the United States Treasury Secretary to the states based on the percentage of each state's 2008 state employment decline measured against the aggregate of the 2008 state employment declines for all of the states. The maximum national volume cap limitation for the RZFB program was \$15 billion. The total RZFB volume cap allocation for the State was \$376,655,000. The U.S. Department of the Treasury and the IRS suballocated all of the State's RZFB volume cap allocation directly to the counties and municipalities of the State as detailed in **Attachment I** to this report.

Carryforward Limitations:

The RZFB program ended December 31, 2010.

**II. The New Jersey Bond Volume Cap Allocation Act**

The New Jersey Bond Volume Cap Allocation Act, L. 1987, c. 393, as amended by L. 2009, c. 76 (the "Act") addresses the treatment and allocation of the State Volume Cap Limits, including the ARRA Volume Cap Limits, granted each calendar year or as otherwise provided in the Code. As summarized in N.J.S.A. 49:2A-2(h), the Legislature recognized that "[t]here is a Statewide need to assure that the limited amount of tax exempt private activity bond financing and other types of tax-exempt, tax-credit or tax subsidy bond financing which are now authorized under the Code or may be authorized under the Code in the future, is used in the most effective manner by issuers of bonds in the State in order to provide the greatest benefits to the State, and that need can best be

met by authorizing the Governor to continue to allocate portions of the State's volume cap among issuers.”

The Act also provides, in N.J.S.A. 49:2A-4(a), the Governor with the authority to establish a procedure for allocation of the State Volume Cap. According to the statute, any allocation procedure the Governor establishes requires the entire State Volume Cap to be allocated to the Department of the Treasury for reallocation by the State Treasurer. Executive Order No. 185 (Kean 1985) (Executive Order 185) allocated the entire State Volume Cap for 1988 and for each year thereafter to Treasury as required by L. 1987, c. 393 and remains in effect. Executive Order No. 167 (Corzine 2010) (Executive Order 167) allocates the ARRA Volume Cap received by the State directly from the federal government to the Department of the Treasury to be held by the State Treasurer. It further provides that the State Treasurer may allocate all or any part of the ARRA Volume Cap among State Entities (as defined in Executive Order No. 147 (Kean 1986) (“Executive Order 147)) or Local Government Units authorized to issue ARRA Tax-Credit Bonds or ARRA Tax Subsidy Bonds (all as defined in Executive Order 167). The State Treasurer will set the terms and conditions for receiving an allocation of ARRA Volume Cap, reallocating ARRA Volume Cap and carryforward of ARRA Volume Cap.

### **III. Procedures for the Allocation of the State Volume Cap Limits**

#### ***General State Volume Cap***

The Office of Public Finance, a division of the New Jersey Department of the Treasury, on behalf of the State Treasurer, manages the State Volume Cap program. At the start of each calendar year, the Office of Public Finance determines the annual State Volume Cap Limits in accordance with the applicable Code provisions. The Office of Public Finance then conducts an informal survey of certain State and local agencies that are frequent issuing entities for the eligible purposes defined by the Code as to their expected issuing needs for the calendar year. As the agency’s needs are made known, the Office of Public Finance begins accepting requests for allocations of portions of the State Volume Cap Limit.

Applications or requests for allocations of the State Volume Cap are generally drafted by counsel and/or an executive in charge of financial matters within the requesting issuing entity. These requests typically outline the issuing agency’s anticipated financing needs, including, as applicable, the intended borrower and the specific project toward which the cap will be used, the anticipated par amount/issue price of bonds to be sold and an affirmation of the tax-exempt status of the project. Upon receipt of such requests, the Office of Public Finance reviews them and makes a recommendation to the State Treasurer regarding their approval.

At the end of each calendar year, the Office of Public Finance conducts a brief survey with each agency that accepted a portion of State Volume Cap during the calendar



year. This survey serves to inform Treasury of the amount of the State Volume Cap allocation that will be used by the end of that year and what, if any, foreseeable issuing needs agencies may have in the upcoming calendar year. Upon receipt of the survey responses, the Office of Public Finance prepares an Annual Report summarizing this usage, grants carryforward approvals where applicable, and directs the issuing agencies to file the appropriate IRS forms as to their volume cap usage.

#### Award Methodology for General State Volume Cap

In some cases, certain State issuers of TEPABs with large issuing needs are awarded, upon written request, a large allocation of General State Volume Cap at the beginning of the calendar year. During the year, an agency in this category will draw upon the large allocation to satisfy its many smaller issuing obligations throughout the year. State entities in this category are the New Jersey Economic Development Authority (“EDA”), the Higher Education Student Assistance Authority (“HESAA”) and the New Jersey Housing and Mortgage Finance Agency (“HMFA”) (collectively the “State Agencies”). These entities issue a high volume of TEPABs, particularly small issue industrial development bonds, qualified student loan bonds, qualified mortgage bonds and exempt facility bonds, respectively.

The EDA board meets on a monthly basis and considers approval of the sale of various small issue industrial development bonds, among others, that require the use of its upfront allocation. Upon the EDA board’s approval, Treasury is notified of the pending sales through certifications prepared by the EDA which are then reviewed for the State Treasurer’s approval. Typically, HESAA uses its upfront allocation to issue qualified student loan bonds on behalf of citizens of the State in a single annual bond issue. Similarly, HMFA uses its allocation to issue either qualified mortgage bonds or exempt facility bonds for the purpose of qualified residential rental projects on behalf of the citizens of the State in one or more series of bond issues.

With the exception of the upfront allocations for these entities, all other allocations of State Volume Cap are awarded based on a review of submitted written requests from other issuers that outline the specific project and intended use of the allocation. In keeping with Treasury’s policy of the last several years, the current allocation award policy is to award volume cap on a first-come, first-serve basis. Allocations of State Volume Cap among the various issuing entities are recorded and monitored carefully throughout the year.

All State Volume Cap allocated during the calendar year is issued with specific notification of the calendar year-end expiration. Notification is also given that if the bonds are not sold in the full amount of the allocation, or at all, within the period beginning the day the allocation is awarded and the last calendar day of that same year, the entity will lose its authorization to issue bonds under that allocation. In these cases, the State Treasurer rescinds the allocation and either reallocates it or grants carryforward allocations to other State Agencies.

### ***2008 Housing Act Volume Cap***

At the direction of the Treasurer in 2008, the entirety of the 2008 Housing Act Cap limitation received by the State was allocated directly to the HMFA due to its position as the State's housing finance Agency. That amount was equal to \$271,975,917. By the end of calendar year 2010, the HMFA had used the entirety of that amount.

### ***ARRA Volume Cap Programs***

Executive Order No. 167 (Corzine 2010) (Executive Order 167) allocated the ARRA Volume Cap received by the State directly from the federal government to the Department of the Treasury to be held by the State Treasurer for reallocation of all or any part of the ARRA Volume Cap among State Entities or Local Government Units authorized to issue ARRA Tax-Credit Bonds or ARRA Tax Subsidy Bonds.

## **IV. Carryforward Policies**

If the bonds that have been allocated State Volume Cap are not sold by the expiration deadline, the IRS, in certain instances, affords the State the right to permit extensions or carryforward elections of certain types of unused State Volume Cap.

### ***General State Volume Cap***

The State's carryforward policy for General State Volume Cap ("General State Volume Cap Carryforward" policy) allows the State Agencies that have not sold all of the bonds pursuant to their allocations, to carryforward that amount of unused General State Volume Cap for a three-year period, as authorized by the Code.

State policy does not allow county and municipal issuers to carryforward any amount of unused General State Volume Cap allocated to them. If a county or municipal issuer does not use its General State Volume Cap allocation by year-end, the State Treasurer rescinds the allocation and reallocates it to a State Agency with regular TEPAB issuing needs. If local issuers have projects pending that require allocation of General State Volume Cap, the local issuers are invited to apply for allocations of General State Volume Cap from the upcoming year. Priority is given to these issuers for General State Volume Cap allocations from the upcoming year.

### ***2008 Housing Act Volume Cap***

The carryforward policy relating to the 2008 Housing Act Volume Cap ("2008 Housing Act Volume Cap Carryforward" policy) differs from the General State Volume Cap Carryforward policy as a result of certain distinctions imposed by the 2008 Housing Act Cap authorizing legislation.

The 2008 Housing Act Volume Cap Carryforward election(s) were designated and approved for the HMFA for use solely for qualified housing issues. Further, the legislation limits the allowable carryforward duration to a two-year period. So, no bonds eligible for issuance under the 2008 Housing Act Volume Cap may be issued after the end of calendar year 2010.

### ***ARRA Volume Cap***

**Qualified School Construction Bonds:** Under Section 54F(e) of the Code, a state may carryforward its unused QSCB volume cap for 2009 or 2010 to the next calendar year. QSCB volume cap may be brought forward indefinitely. Large local educational agencies are not authorized to carryforward their unused QSCB volume cap. However, pursuant to Section 54F(d) of the Code, a large local educational agency may reallocate any unused volume cap for a calendar year to the state in which it is located for use during such calendar year.

**Qualified Zone Academy Bonds:** Under the Code, as amended by ARRA, the State can carryforward any unused QZAB allocation for two years. As noted above, Pursuant to Code Section 54E(c)(1), as amended by ARRA, the QZAB program ended on December 31, 2010.

**Qualified Energy Conservation Bonds:** The Code does not impose a time limit on the issuance of the QESBs.

**Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds:** These allocations expired on December 31, 2010.

## **V. Usage of State Volume Cap in 2010**

### ***General State Volume Cap Limit for New Jersey***

- The federal formula for calculating general volume cap limits per state in calendar year 2010 was \$90 (plus a cost of living adjustment) per person using population estimates released by the U.S. Census Bureau.
- The 2010 General State Volume Cap limit for New Jersey was based on this formula, incorporating a cost of living adjustment, with the U.S. Census Bureau population estimate for 2009 being 8,707,739.
- Determined by the formula given above, the total dollar amount of General State Volume Cap for the State of New Jersey for calendar year 2010 was **\$783,696,510**.

- 2010 General State Volume Cap usage is summarized in **Attachment II**.

#### ***2008 Housing Act Cap Limit for New Jersey***

- In 2009 \$181,657,220 of 2008 Housing Act Cap was available for use by the HMFA through carryforward approval. Of that amount, \$96,775,418 was used in calendar year 2009.
- In calendar year 2010, the HMFA used the remaining \$84,881,802 of 2008 Housing Act Cap.
- 2008 Housing Act Cap usage in 2009 is summarized in **Attachment II**.

#### ***ARRA Volume Cap Limit for New Jersey***

- ***Qualified School Construction Bonds***  
For calendar year 2010, the State had an aggregate \$439,183,000 of QSCB volume cap available.

A portion of the City of Newark's QSCB volume cap was transferred to the State. On January 18, 2010, the State Treasurer granted carryforward approval for this balance to the EDA solely for use by the EDA on behalf of the Kipp TEAM Charter School in the City of Newark. This amount was allocated in December 2010 to the State for reallocation in 2011.

\$30,000,000 in QSCB volume cap was allocated to the EDA solely to support projects financed by charter schools. This amount was unused in 2010 and was returned to the State for reallocation in 2011.

- ***Qualified Zone Academy Bonds***  
The State was allocated \$25,271,000 of QZAB volume cap for calendar year 2010. To date, the State has issued no QZABs from the \$25,271,000 allocation it received.

**VI. State Volume Cap Allocations for 2011**

*General State Volume Cap*

- The State has been awarded, based on a revised federal formula of \$95 per person using the U.S. Census Bureau population estimate from 2010 (8,791,894), a General State Volume Cap limit for calendar year 2011 in the amount of **\$835,229,930**.
- As of February 1, 2011, no allocations of 2011 General State Volume Cap have been awarded:

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