



## Ohio Administrative Code

### Rule 122-4-05 Confirmation of state ceiling allocation for issuance of bonds in subsequent years -- carryforwards.

Effective: July 23, 2020

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(A) Notice of intent for carryforward. Subject to paragraph (A)(6) of this rule, a notice of intent may be filed by an issuer with the director before five p.m. on the second Thursday of December of the year in which the allocation was first eligible with respect to carryforward bonds which are expected to be issued in subsequent years; are eligible for the election pursuant to Section 146(f) of the Internal Revenue Code to carry forward an unused portion of that year's state ceiling in which the notice of intent is filed with the director; and may be issued after said year as obligations, the interest on which is excluded from gross income pursuant to section 103 of the Internal Revenue Code.

(1) Except with respect to the Ohio housing finance agency, such notice of intent must be accompanied by such items as the director may require and by a written statement or statements signed by an officer of the issuer or by an officer of the benefited enterprise setting forth, as pertinent:

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

(b) Evidence of the need for the amount of allocation sought (setting forth, among other things, the amount of carryforward from any prior year which will be available for use in the next following year).

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

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

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

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



investment banker, financial institution).

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

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

(2) Upon receipt of a carryforward confirmation pursuant to paragraph (B) of this rule, the issuing authority will be responsible timely for filing "IRS Form 8328" (or such other form as may be prescribed by the internal revenue service for that purpose. The Ohio housing finance agency may submit an "IRS Form 8328" (or such other forms as may be prescribed by the internal revenue service for the purpose) that is complete with respect to all such agency's carryforward allocations under paragraph (A)(1) or (A)(6) of rule 122-4-02 of the Administrative Code.

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



the confirmation is filed with the director. The amount of the fee retained by the director pursuant to paragraph (A)(3)(b) of this rule of the preceding sentence will be refunded within thirty days after one or more notices of issuance for the carryforward confirmation are received by the director evidencing use of the carryforward confirmation. The amount of the fee equal to one thousand dollars will not be refunded under any circumstance. Notwithstanding the foregoing, the Ohio housing finance agency will not be required to pay the fees contemplated by this paragraph.

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

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

(6) With respect to a notice of intent filed by the Ohio housing finance agency for carryforward in a given year under this rule or under paragraph (A)(1)(b) of rule 122-4-02 of the Administrative Code, such carryforward will relate to any of its lawful purposes and such notice of intent will be filed by the Ohio housing finance agency with director by five p.m. on January twentieth of the next subsequent year.

(B) Confirmations for carryforward bonds.

(1) All properly completed (including required accompanying items) notices of intent for carryforward which are received as provided in paragraph (A) of this rule will be considered, without regard to the order of filing of such notices of intent, for the allocation of the balance of the state ceiling for that year. Confirmations will be made upon some or all of those notices of intent, and for all or a portion of the amount stated in the notice of intent, which would, in the judgment of the director, upon guidance from the select committee, best serve the interests of the state, taking into account the factors stated in section 133.021 of the Revised Code and the following considerations:

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



the bonds will be used for the intended purposes.

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

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

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

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

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

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

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

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