Commonwealth of Pennsylvania
GOVERNOR'S OFFICE
EXECUTIVE ORDER

Subject		Number
1987 Allocations of the Unified Volume Cap Under the Tax Reform Act of 1986		1987-1
Date	**Distribution**	**By Direction Of**
January 7, 1987	B	Dick Thornburgh, Governor

WHEREAS, Section 103(n) and 103A of the Internal Revenue Code of 1954, as amended, 26 U.S.C. Section 103(n), imposed separate ceilings during each calendar year on the aggregate amount of "private activity bonds" and qualified mortgage bonds, respectively, that may be issued by or on behalf of the Commonwealth of Pennsylvania and its political subdivisions; and

WHEREAS, The General Assembly of the Commonwealth of Pennsylvania has adopted the Act of December 20, 1985 (P.L. 483, No. 113), known as the "Tax-Exempt Bond Allocation Act" to provide for the allocation of the Section 103(n) ceiling on private activity bonds; and

WHEREAS, Section 6(a) of the Tax-Exempt Bond Allocation Act, as amended by the Act of July 9, 1986 (P.L.____, No. 98), authorizes the Secretary of Commerce to promulgate regulations, with the approval of the Governor, to enable the Commonwealth to utilize tax-exempt bonds to their maximum benefit in the event a change in federal law impairs the ability of the Commonwealth to use tax-exempt bonds to their maximum benefit and permits the Secretary to suspend other provisions of the Tax-Exempt Bond Allocation Act to the extent deemed necessary to implement any such regulations; and

WHEREAS, the Tax Reform Act of 1986 changes the volume cap on tax-exempt bonds to the extent that such change conflicts with the Tax-Exempt Bond Allocation Act by expanding the definition of "private activity bonds" to include qualified mortgage bonds and qualified residential rental project bonds, and by significantly lowering the volume cap on such private activity bonds; and

WHEREAS, the formula for allocation of the volume cap of private activity bonds included in Section 146(b) and (c) of the Internal Revenue Code as amended by the Tax Reform Act of 1986 is ill-suited for the needs of the Commonwealth of Pennsylvania and its political subdivisions because the volume cap is allocated to local agencies using a complex formula based upon population that will excessively fragment the power to draw upon issuing authority and result in an inability of local agencies to effectively utilize available allocations; and

WHEREAS, Section 146(e)(2) of the Internal Revenue Code, as amended by the Tax Reform Act of 1986, provides that the Governor of any state may proclaim a different formula for allocating the volume cap among the governmental units in such state having the authority to issue qualified private activity bonds; and

WHEREAS, in order to comply with both the requirements of Section 6(a) of the Tax-Exempt Bond Allocation Act and Section 146(e)(2) of the Internal Revenue Code, it is necessary to both issue an administrative regulation of the Department of Commerce and an Executive Order proclaiming an allocation formula; and

WHEREAS, as the resident population of the Commonwealth of Pennsylvania, based on the most recent estimate published by the Bureau of Census before the beginning of 1986, is 11,889,000, the $75 per capita volume cap provided by Section 146(d) of the Internal Revenue Code as amended by the Tax Reform Act of 1986 would result in a state ceiling for the Commonwealth of Pennsylvania for the calendar year 1987 of $891,675,000.

NOW, THEREFORE, I, Dick Thornburgh, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws, do hereby order as follows:

1. **Allocations,** The State ceiling for the issuance of qualified private activity bonds provided by Section 146(d) of the Internal Revenue Code, as amended by the Tax Reform Act of 1986, for calendar year 1987 shall be allocated utilizing the authority provided by Section 146(e) of the Internal Revenue Code, as amended by the Tax Reform Act of 1986, and Section 6(a) of the Act of December 20, 1985 (P.L. 983, No. 113), known as the "Tax-Exempt Bond Allocation Act," in the manner provided by this order and by regulations adopted by the Department of Commerce at 13 Pa. Code, Chapter 57 (relating to 1987 allocation of private activity bonds).

2. **Housing related bonds.** An amount equal to $150,000,000 shall be allocated for housing related bonds, including qualified residential rental projects and qualified mortgage bonds as defined by Sections 142(d) and 143(a) of the Internal Revenue Code as amended by the Tax Reform Act of 1986. Requests to apply the housing related bond allocation to specific projects or uses, including mortgage credit certificate programs, will be reviewed and may be approved or disapproved by the Board of the Pennsylvania Housing Finance Agency. Applications for housing related bond allocations shall be made to the Executive Director of the Housing Finance Agency.

3. **Qualified student loan bonds.** An amount equal to $50,000,000 shall be allocated to the Pennsylvania Higher Education Assistance Agency for qualified student loan bonds provided by Section 144(b) of the Internal Revenue Code as amended by the Tax' Reform Act of 1986.

4. **Qualified small issue bonds.** An amount equal to $345,837,500 shall be allocated for qualified small issue bonds pursuant to Section 144(a) of the Internal Revenue Code as amended by the Tax Reform Act of 1986. This amount shall be allocated among counties by the Secretary of Commerce in accordance with the formula set forth in Section 5(A)(l) of the Tax-Exempt Bond Allocation Act. Requests to apply this allocation to specific projects or uses will be reviewed and may be approved or disapproved by the Secretary of Commerce. Applications for allocations shall be made to the Bureau of Economic Assistance in the Department of Commerce. The Secretary shall provide allocations for qualified small issue bonds utilizing the procedures and subject to the requirements imposed by 13 Pa. Code, Section 57.3 (relating to allocation procedures).

5. **Other qualified private activity bonds.** An amount equal to $345,837,500 shall be allocated to all other qualified private activity bonds subject to the volume cap provided by the Tax Reform Act of 1986. Requests to apply this allocation to specific projects or uses will be reviewed and may be approved or disapproved by the Secretary of Commerce. Applications for allocations shall be made to the Bureau of Economic Assistance in the Department of Commerce.

6. Reallocations. The unused portion of any allocation provided pursuant to Sections 2, 3, 4, or 5 of this order (relating to housing related bonds, qualified student loan bonds, qualified small issue bonds, and other qualified private activity bonds) shall be reallocated by the Secretary of Commerce in cooperation with the Executive Director of the Housing Finance Agency in the manner provided by Section 5(b) and 5(c) of the Tax-Exempt Bond Allocation Act. Reallocations pursuant to Section 5(b)(1)(ii) of the Tax-Exempt Bond Allocation Act may be made to any eligible project or use provided by Sections 2-5.

7. Administrative procedures. The Secretary of Commerce and the Executive Director of the Housing Finance Agency may establish additional policies, guidelines, forms, and reporting requirements necessary to insure compliance with this order.

8. Miscellaneous provisions,

a. State agencies and other entities involved with the issuance or approval of qualified private activity bonds related to this order will cooperate with the Department of Commerce and the Housing Finance Agency in implementing this allocation system.

b. Issuers failing to comply with the requirements of this order will be denied allocation approvals until compliance is achieved.

c. The Secretary of Commerce is hereby authorized to incorporate by reference any or all of the provisions of this order into regulations adopted pursuant to Section 6(a) of the Tax-Exempt Bond Allocation Act and the Housing Finance Agency is hereby directed pursuant to Section 501 of the Act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929" to assist the Department of Commerce in the performance of its duties as provided by the Tax-Exempt Bond Allocation Act.

d. Any regulations adopted by the Secretary of Commerce pursuant to Section 6(a) of the Tax-Exempt Bond Allocation Act for the purpose of the initial implementation of this order, effective January 1, 1987, are hereby declared to be emergency regulations as provided by Section 6(b) of the Act of February 21, 1986 (P.L. 47, No. 16), known as the "Regulatory Review Act," and shall take effect for 120 days notwithstanding any orders of disapproval entered pursuant to the Regulatory Review Act, Such regulations are deemed to be emergency rules because of the critical need to avoid delays in financing economic development activities early in 1987.

e. Pursuant to Section 149(e)(3)(F) of the Internal Revenue Code, as amended by the Tax Reform Act of 1986, the Secretary of Commerce, or any of his deputies, is hereby designated pursuant to the Tax-Exempt Bond Allocation Act as the State official authorized to issue certifications that private activity bonds for which allocations have been approved under this order meet the requirements of Section 146 of the Internal Revenue Code.

f. This order shall take effect immediately and apply to qualified private activity bonds which are issued on or after January 1, 1987, subject to the volume cap provided by the Tax Reform Act of 1986.