

**NEBRASKA DEPARTMENT
OF EDUCATION**

RULE 87

**REGULATIONS GOVERNING QUALIFIED ZONE ACADEMY BONDS AND
QUALIFIED SCHOOL CONSTRUCTION BONDS ALLOCATIONS**

**TITLE 92, NEBRASKA ADMINISTRATIVE CODE,
CHAPTER 87**

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**TITLE 92 -- NEBRASKA DEPARTMENT OF EDUCATION
CHAPTER 87 -- REGULATIONS GOVERNING QUALIFIED ZONE ACADEMY
BONDS AND QUALIFIED SCHOOL CONSTRUCTION BONDS
ALLOCATIONS**

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001 General Information

001.01 Purpose of this Chapter.

001.01A Title 26, United States Code, Section 54E (See Appendix A), provides that state or local governments within the jurisdiction of which is located a “qualified zone academy,” as defined in that law, may issue “qualified zone academy bonds,” for “qualified purposes” as those terms are defined in that law. That law further provides that the United States Secretary of Treasury, each calendar year, shall allocate among the states on the basis of their respective populations of individuals below the poverty line, an amount which such states’ qualified zone academies may issue in qualified zone academy bonds, and that this limitation amount allocated to each state shall be allocated by the State education agency to qualified zone academies within such states. This chapter provides the allocation procedure of the Nebraska Department of Education to eligible qualified zone academies.

001.01B The American Recovery and Reinvestment Act of 2009, (Title 26, United States Code, Section 54F, See Appendix B) provides that a state or local government, within the jurisdiction of which is a public school facility or land on which such a facility is to be constructed, may issue “qualified school construction bonds.” That Act further provides that the United States Secretary of the Treasury shall allocate among the States a bond limitation 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. The limitation amount allocated to a State is allocated by the State to issuers within the State. This Chapter provides the allocation procedure of the Nebraska Department of Education with respect to qualified school construction bonds.

001.01C Potential applicants for allocation authority for the issuance of bonds under either sections 001.01A or 001.01B may contact the Nebraska Department of Education’s Office of School Finance and Organization Services for information on the existing Nebraska allocation amount.

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001.02 Statutory Authority.

001.02A Title 26, United States Code, Section 54E(c)(2) and (3), See Appendix A, provides:

Allocation of Limitation - - The national zone academy bond limitation for a calendar year shall be allocated by the Secretary [of the Treasury] among the states on the basis of their respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). The limitation amount allocated to a state under the preceding sentence shall be allocated by the State education agency to qualified zone academies within such state. (3) Designation Subject to Limitation Amount --The maximum aggregate face amount of bonds issued during any calendar year which may be designated under Title 26, United States Code, Section 54E(a)(2) with respect to any qualified zone academy shall not exceed the limitation amount allocated to such academy under Title 26, United States Code, Section 54E(c)(2) for such calendar year.

001.02B Allocation of limitation and National Qualified School Construction Bonds--Except as provided in 26 U.S.C. 54F(d)(2)(C), the national limitation for Qualified School Construction Bonds applicable under subsection 26 U.S.C. 54F(c) for any calendar year is allocated by the United States Secretary of the Treasury among the States in proportion to the respective amounts each such 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. The limitation amount allocated to a State under the preceding sentence shall be allocated by the State to issuers within such State.

001.02C Designation Subject to Limitation Amount - - The national qualified school construction bond limitation for a calendar year shall be allocated by the Secretary. The limitation amount allocated to a state under the preceding sentence shall be allocated by the State education agency to school districts within such state. The maximum aggregate face amount of bonds issued during any calendar year which may be designated under Title 26, United States Code, Section 54A shall not exceed the limitation amount allocated under Title 26, United States Code, Section 54F(d) for each calendar year.

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001.02C Section 79-319 of the Nebraska Revised Statutes provides in part:

“The State Board of Education has the authority to (5) receive and distribute according to law any money, commodities, goods, or services made available to the board from the state or federal government or from any other source and distribute money in accordance with the terms of any grant received, including the distribution of money from grants by the federal government to schools, preschools, day care centers, day care homes, nonprofit agencies, and political subdivisions of the state or institutions of learning not owned or exclusively controlled by the state or a political subdivision thereof, so long as no public funds of the state, any political subdivision, or any public corporation are added to such federal grants.”

001.02D Section 79-10,110(13) of the Nebraska Revised Statutes provides that the State Department of Education shall establish procedures for allocating bond authority to school boards as may be necessary pursuant to an American Recovery and Reinvestment Act of 2009 bond.

001.03 Related Laws. Title 26, United States Code, Section 54A contains laws regarding credit to holders of qualified tax credit bonds, including Qualified Zone Academy Bonds and Qualified School Construction Bonds.

002 Definitions. For purposes of this chapter, “Department” shall mean the Nebraska Department of Education. The following definitions shall have the same meaning as used in Title 26, United States Code, Sections 54E and 54F:

002.01 Allocation/allocation of limitation. (Title 26, United States Code, Section 54E(c) and 54F(d))

002.02 Eligible Local Education Agency. (Title 26, United States Code, Section 54E(d))

002.03 National Limitation. (Title 26, United States Code, Sections 54E(c)(1) and 54F(c))

002.04 Private Business Contribution Requirement. (Title 26, United States Code, Section 54E(b))

002.05 Qualified School Construction Bonds. (Title 26, United States Code, Section 54F(a))

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002.06 Qualified Purpose, (Title 26, United State Code, Section 54E(d)(3))

002.07 Qualified Zone Academy, (Title 26, United States Code, Section 54E(d)(1))

002.08 Qualified Zone Academy Bond, (Title 26, United States Code, Section 54E(a))

003 Procedure and Method of Allocation to Qualified Zone Academies

003.01 School Districts or other eligible state or local governments under Title 26, United States Code, Section 54E, within the jurisdiction of which a Qualified Zone Academy is located, may submit requests to the Department for allocation of any portion of the then existing allocation of limitation amount as allocated to the state of Nebraska. School districts, or other eligible governmental entities must specify which individual school, (or program within such school), it is that is within their jurisdiction that is a Qualified Zone Academy for which the allocation is requested and the amount requested. All such requests must be received by the Department by no later than October 1 of each year. School districts or other eligible entities are limited to one allocation request per calendar year.

003.02 All such requests must be to the Department in writing and must demonstrate compliance with all applicable requirements for such allocation under Title 26, United States Code, Section 54E in that all requests must:

003.02A Be for an allocation for the issuance of a Qualified Zone Academy Bond(s) as defined by law and as demonstrated by:

003.02A1 The requesting school district or other eligible governmental entity's written assurance that 100 percent of the available project proceeds of such a bond issuance are to be used for a qualified purpose with respect to the Qualified Zone Academy.

003.02A2 The bond issuer being a local government within the jurisdiction of which such a Qualified Zone Academy is located. The request for allocation shall state the basis upon which the requesting entity has determined that the particular school or program within the school under its jurisdiction is a Qualified Zone Academy.

003.02A3 A written assurance that the bond issuer will designate such bond(s) for the purposes of issuance as a Qualified Zone Academy Bond.

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003.02A4 The bond issuer certifying that it has written assurances that the private business contribution requirement will be met with respect to the Qualified Zone Academy.

003.02A5 The bond issuer certifying that it has the written approval of the Eligible Local Education Agency, (See Appendix A), for such bond issuance.

003.03 If all requirements of Section 003.02 are met, the Department will allocate, by December 31, to the school districts or other eligible governmental entities submitting the requests, as follows:

003.03A The amount of allocation requested; or,

003.03B If the total of all the eligible requests received exceeds the allocation of limitation available then available to Nebraska pursuant to Title 26, United States Code, Section 54E, then an amount equal to the pro rata share of the available allocation of limitation based upon the amount requested. In no case shall a requesting entity receive an allocation amount which exceeds the amount it requested.

003.04 Pursuant to Title 26, United States Code, Section 54E(c)(4), the Department shall carry over unallocated limitation amounts from one calendar year to the following calendar year. The total of the previous calendar year's unallocated limitation amounts shall be added to the current year's limitation amount.

003.05 Issuing school districts and other eligible issuing governmental entities are responsible for compliance with all applicable laws and regulations governing the terms and conditions of such bond issuance(s) upon being allocated any amounts by the Department.

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004 Procedure and Method of Allocation to Qualified School Construction Bonds

004.01 School Districts or other eligible state or local governments under Title 26, United States Code, Section 54F, within the jurisdiction of which a public school facility is located, may submit requests to the Department for allocation of any portion of the then existing National Qualified School Construction Bond limitation amount as allocated to the state of Nebraska. School districts must specify which individual school it is that is within their jurisdiction for which the allocation is requested and the amount requested. All such requests must be received by the Department no later than February 15. If this Chapter is not effective on February 15, 2010, then the deadline for that calendar year 2010 will be prior to the expiration of 30 days from the effective date of this Chapter. School districts or other eligible entities are limited to one allocation request per calendar year.

004.02 All such requests must be to the Department in writing and must demonstrate compliance with all applicable requirements for such allocation under Title 26, United States Code, Section 54F in that all requests must:

004.02A Be for an allocation for the issuance of a Qualified School Construction Bond(s) as defined by law and as demonstrated by:

004.02A1 The bond issuer being a local government within the jurisdiction of which a public school facility is located. The request for allocation shall state the requesting entity has determined that the particular school is within its jurisdiction.

004.02A2 A written assurance that the bond issuer will designate such bond(s) for the purposes of issuance as a Qualified School Construction Bond.

004.02A3 The bond issuer certifying that 100 percent of the available proceeds are to be used for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such facility is to be constructed.

004.03 If all requirements of Section 004.02 are met, the Department will allocate by March 15, or, for calendar year 2010, 30 days from the effective date of this Chapter as provided in Section 004.01, to the school districts or other eligible governmental entities submitting the requests, as follows:

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004.03A The amount of allocation requested; or,

004.03B If the total of all the eligible requests received exceeds the allocation of limitation available then available to Nebraska pursuant to Title 26, United States Code, Section 54F, then an amount equal to the pro rata share of the available allocation of limitation based upon the amount requested. In no case shall a requesting entity receive an allocation amount which exceeds the amount it requested.

004.04 Pursuant to Title 26, United States Code, Section 54F(e), the Department shall carry over unallocated limitation amounts from one calendar year to the following calendar year. The total of the previous calendar year's unallocated limitation amounts shall be added to the current year's limitation amount. This includes amounts allocated to Nebraska in calendar year 2009 by the United States Secretary of the Treasury.

004.05 Issuing school districts are responsible for compliance with all applicable laws and regulations governing the terms and conditions of such bond issuance(s) upon being allocated any amounts by the Department.

004.06 A large local education agency that is eligible for a qualified school bond construction bond allocation directly from the Secretary of the United States Treasury pursuant to Title 26, United States Code, Section 54F(d)(2) is not eligible to also receive an additional allocation from the Department under Section 004 of this Chapter for that same calendar year unless the large local education agency has reallocated that direct allocation to the State, via the Department, pursuant to Title 26, United States Code, Section 54F(d)(2)(D).

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APPENDIX A - TITLE 26, UNITED STATES CODE, SECTION 54E

United States Code Annotated Title 26.
Internal Revenue Code Subtitle A. Income Taxes Chapter 1. Normal Taxes and Surtaxes
Subchapter A. Determination of Tax Liability
Part IV. Credits Against Tax Subpart I. Qualified Tax Credit Bonds
§ 54E. Qualified zone academy bonds

(a) Qualified zone academy bonds.--For purposes of this subchapter, the term "qualified zone academy bond" means any bond issued as part of an issue if--

(1) 100 percent of the available project proceeds of such issue are to be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency,

(2) the bond is issued by a State or local government within the jurisdiction of which such academy is located, and

(3) the issuer--

(A) designates such bond for purposes of this section,

(B) certifies that it has written assurances that the private business contribution requirement of subsection (b) will be met with respect to such academy, and

(C) certifies that it has the written approval of the eligible local education agency for such bond issuance.

(b) Private business contribution requirement.--For purposes of subsection (a), the private business contribution requirement of this subsection is met with respect to any issue if the eligible local education agency that established the qualified zone academy has written commitments from private entities to make qualified contributions having a present value (as of the date of issuance of the issue) of not less than 10 percent of the proceeds of the issue.

(c) Limitation on amount of bonds designated.--

(1) National limitation.--There is a national zone academy bond limitation for each calendar year. Such limitation is \$400,000,000 for 2008 and \$1,400,000,000 for 2009 and 2010, and, except as provided in paragraph (4), zero thereafter.

(2) Allocation of limitation.--The national zone academy bond limitation for a calendar year shall be allocated by the Secretary among the States on the basis of their respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). The limitation amount allocated to a State under the preceding sentence shall be allocated by the State education agency to qualified zone academies within such State.

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(3) Designation subject to limitation amount.--The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (a) with respect to any qualified zone academy shall not exceed the limitation amount allocated to such academy under paragraph (2) for such calendar year.

(4) Carryover of unused limitation.--

(A) In general.--If for any calendar year--

(i) the limitation amount for any State, exceeds

(ii) the amount of bonds issued during such year which are designated under subsection (a) with respect to qualified zone academies within such State,

the limitation amount for such State for the following calendar year shall be increased by the amount of such excess.

(B) Limitation on carryover.--Any carryforward of a limitation amount may be carried only to the first 2 years following the unused limitation year. For purposes of the preceding sentence, a limitation amount shall be treated as used on a first-in first-out basis.

(C) Coordination with section 1397e.--Any carryover determined under section 1397E(e)(4) (relating to carryover of unused limitation) with respect to any State to calendar year 2008 or 2009 shall be treated for purposes of this section as a carryover with respect to such State for such calendar year under subparagraph (A), and the limitation of subparagraph (B) shall apply to such carryover taking into account the calendar years to which such carryover relates.

(d) Definitions.--For purposes of this section--

(1) Qualified zone academy.--The term "qualified zone academy" means any public school (or academic program within a public school) which is established by and operated under the supervision of an eligible local education agency to provide education or training below the postsecondary level if--

(A) such public school or program (as the case may be) is designed in cooperation with business to enhance the academic curriculum, increase graduation and employment rates, and better prepare students for the rigors of college and the increasingly complex workforce,

(B) students in such public school or program (as the case may be) will be subject to the same academic standards and assessments as other students educated by the eligible local education agency,

(C) the comprehensive education plan of such public school or program is approved by the eligible local education agency, and

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(D)(i) such public school is located in an empowerment zone or enterprise community (including any such zone or community designated after the date of the enactment of this section), or

(ii) there is a reasonable expectation (as of the date of issuance of the bonds) that at least 35 percent of the students attending such school or participating in such program (as the case may be) will be eligible for free or reduced-cost lunches under the school lunch program established under the National School Lunch Act.

(2) Eligible local education agency.--For purposes of this section, the term "eligible local education agency" means any local educational agency as defined in section 9101 of the Elementary and Secondary Education Act of 1965.

(3) Qualified purpose.--The term "qualified purpose" means, with respect to any qualified zone academy--

(A) rehabilitating or repairing the public school facility in which the academy is established,

(B) providing equipment for use at such academy,

(C) developing course materials for education to be provided at such academy, and

(D) training teachers and other school personnel in such academy.

(4) Qualified contributions.--The term "qualified contribution" means any contribution (of a type and quality acceptable to the eligible local education agency) of--

(A) equipment for use in the qualified zone academy (including state-of-the-art technology and vocational equipment),

(B) technical assistance in developing curriculum or in training teachers in order to promote appropriate market driven technology in the classroom,

(C) services of employees as volunteer mentors,

(D) internships, field trips, or other educational opportunities outside the academy for students, or

(E) any other property or service specified by the eligible local education agency.

(Added Pub.L. 110-343, Title III, § 313(a), Oct. 3, 2008, 122 Stat. 3869, and amended Pub.L. 111-5, Div. B, Title I, § 1522(a), Feb. 17, 2009, 123 Stat. 358.)

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APPENDIX B - TITLE 26, UNITED STATES CODE, SECTION 54F

United States Code Annotated Title 26. Internal Revenue Code
Subtitle A. Income Taxes
Chapter 1. Normal Taxes and Surtaxes
Subchapter A. Determination of Tax Liability
Part IV. Credits Against Tax Subpart I. Qualified Tax Credit Bonds

§ 54F. Qualified school construction bonds

(a) Qualified school construction bond.--For purposes of this subchapter, the term "qualified school construction bond" means any bond issued as part of an issue if--

- (1)** 100 percent of the available project proceeds of such issue are to be used for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue,
- (2)** the bond is issued by a State or local government within the jurisdiction of which such school is located, and
- (3)** the issuer designates such bond for purposes of this section.

(b) Limitation on amount of bonds designated.--The maximum aggregate face amount of bonds issued during any calendar year which may be designated under subsection (a) by any issuer shall not exceed the limitation amount allocated under subsection (d) for such calendar year to such issuer.

(c) National limitation on amount of bonds designated.--There is a national qualified school construction bond limitation for each calendar year. Such limitation is--

- (1)** \$11,000,000,000 for 2009,
- (2)** \$11,000,000,000 for 2010, and
- (3)** except as provided in subsection (e), zero after 2010.

(d) Allocation of limitation.--

(1) Allocation among States.--Except as provided in paragraph (2)(C), the limitation applicable under subsection (c) for any calendar year shall be allocated by the Secretary among the States in proportion to the respective amounts each such 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. The limitation amount allocated to a State under the preceding sentence shall be allocated by the State to issuers within such State.

(2) 40 percent of limitation allocated among largest school districts.--

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(A) In general.--40 percent of the limitation applicable under subsection (c) for any calendar year shall be allocated under subparagraph (B) by the Secretary among local educational agencies which are large local educational agencies for such year.

(B) Allocation formula.--The amount to be allocated under subparagraph (A) for any calendar year shall be allocated among large local educational agencies in proportion to the respective amounts each such agency received 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.

(C) Reduction in State allocation.--The allocation to any State under paragraph (1) shall be reduced by the aggregate amount of the allocations under this paragraph to large local educational agencies within such State.

(D) Allocation of unused limitation to State.--The amount allocated under this paragraph to a large local educational agency for any calendar year may be reallocated by such agency to the State in which such agency is located for such calendar year. Any amount reallocated to a State under the preceding sentence may be allocated as provided in paragraph (1).

(E) Large local educational agency.--For purposes of this paragraph, the term "large local educational agency" means, with respect to a calendar year, any local educational agency if such agency is--

(i) among the 100 local educational agencies with the largest numbers of children aged 5 through 17 from families living below the poverty level, as determined by the Secretary using the most recent data available from the Department of Commerce that are satisfactory to the Secretary, or

(ii) 1 of not more than 25 local educational agencies (other than those described in clause (i)) that the Secretary of Education determines (based on the most recent data available satisfactory to the Secretary) are in particular need of assistance, based on a low level of resources for school construction, a high level of enrollment growth, or such other factors as the Secretary deems appropriate.

(3) Allocations to certain possessions.--The amount to be allocated under paragraph (1) to any possession of the United States other than Puerto Rico shall be the amount which would have been allocated if all allocations under paragraph (1) were made on the basis of respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). In making other allocations, the amount to be allocated under paragraph (1) shall be reduced by the aggregate amount allocated under this paragraph to possessions of the United States.

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(4) Allocations for Indian schools.--In addition to the amounts otherwise allocated under this subsection, \$200,000,000 for calendar year 2009, and \$200,000,000 for calendar year 2010, shall be allocated by the Secretary of the Interior for purposes of the construction, rehabilitation, and repair of schools funded by the Bureau of Indian Affairs. In the case of amounts allocated under the preceding sentence, Indian tribal governments (as defined in section 7701(a)(40)) shall be treated as qualified issuers for purposes of this subchapter.

(e) Carryover of unused limitation.--If for any calendar year--

(1) the amount allocated under subsection (d) to any State, exceeds

(2) the amount of bonds issued during such year which are designated under subsection (a) pursuant to such allocation,

the limitation amount under such subsection for such State for the following calendar year shall be increased by the amount of such excess. A similar rule shall apply to the amounts allocated under subsection (d)(4).

(Added Pub.L. 111-5, Div. B, Title I, § 1521(a), Feb. 17, 2009, 123 Stat. 355.)