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# COMMONWEALTH OF VIRGINIA



## OFFICE OF THE GOVERNOR

### NUMBER ONE HUNDRED TWO (2009)

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#### **REISSUANCE OF EXECUTIVE ORDER REGARDING USE OF VIRGINIA RECOVERY ZONE VOLUME CAP ALLOCATIONS PROVIDED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

##### **Background**

The American Recovery and Reinvestment Act of 2009 ("ARRA") created Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds (together, "Recovery Zone Bonds"), that must be issued before January 1, 2011 (the "Expiration Date"). Recovery Zone Bonds are intended to lower the costs of borrowing for purposes of promoting job creation and economic recovery in areas designated as Recovery Zones. Pursuant to ARRA and as described in Notice 2009-50 of the Internal Revenue Service ("Notice 2009-50"), the Commonwealth of Virginia (the "Commonwealth") received volume cap allocations of \$104,396,000 in Recovery Zone Economic Development Bonds and \$156,595,000 in Recovery Zone Facility Bonds (together, the "Commonwealth Allocation"). Notice 2009-50 further provides that the Commonwealth Allocation be initially allocated among counties and cities of the Commonwealth as provided on Exhibit A (the "Originally Awarded Localities" and the "Original Allocations").

Together, the ARRA and Notice 2009-50 provide that all or any portion of the Original Allocations may be waived or deemed waived by the Originally Awarded Localities, and upon such waiver, the state shall be authorized to re-allocate the waived volume cap in any reasonable manner as it shall determine in good faith in its discretion. For additional information on Recovery Zone Bonds please visit: <http://www.irs.gov/pub/irs-drop/n-09-50.pdf>.

It is critical that the Commonwealth and its localities take advantage of this financing mechanism to create jobs, foster economic development, and develop critical infrastructure. Therefore, to the extent any Original Allocation will not be used by the Originally Awarded Localities, it is imperative to provide for the re-allocation of such unused amounts to projects

that would promote economic recovery of the Commonwealth prior to the Expiration Date.

On September 30, 2009, I issued Executive Order Number 94 to establish a procedure for the waiver of allocations by Originally Awarded Localities, and further to direct my Chief of Staff to serve as re-allocation director (the "Re-allocation Director") to establish a process for the re-allocation of such allocations waived by the Originally Awarded Localities. Since September 30, 2009, my office has received a number of requests and comments from Originally Awarded Localities and other interested parties concerning Executive Order Number 94, particularly regarding paragraph 3) under the heading "Waiver Requirements."

In response to these requests and comments and by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and Sections 2.2-103 and 2.2-435.7 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby rescind my previously-issued Executive Order Number 94 and reissue it in the form of this order to establish the following procedure for the waiver of allocations by Originally Awarded Localities, and further to direct my Chief of Staff to serve as re-allocation director (the "Re-allocation Director") to establish a process for the re-allocation of such allocations waived by the Originally Awarded Localities. The only changes to Executive Order Number 94 are set forth below in paragraph 3) under the heading "Waiver Requirements" and provide an extension of the filing deadline contained therein and additional flexibility with respect to the commitment letter filing requirement.

### **Waiver Requirements**

- 1) By November 2, 2009, Originally Awarded Localities intending to utilize all or any portion of the Original Allocations must file a completed Notice of Intent with the Re-allocation Director. The amount so indicated will be reserved for such locality (the "Reserved Amount"). The form for such Notice of Intent is available from the Virginia Association of Counties, the Virginia Municipal League, and at [www.stimulus.virginia.gov](http://www.stimulus.virginia.gov).
- 2) Failure by any Originally Awarded Locality to file such Notice of Intent shall be deemed a waiver of its entire Original Allocation. Any amounts so waived, with any amounts in excess of Reserved Amounts and such other amounts described herein, will be considered waived by the Originally Awarded Locality (together, "Waived Amounts").
- 3) By January 12, 2010, any Originally Awarded Locality with a Reserved Amount must file a Project Verification Report with the Re-Allocation Director. Such documentation will include, as applicable, (i) a resolution or action designating the Recovery Zone in accordance with Section 1400-U-1 through 1400U-3 of the ARRA, (ii) a resolution of the issuer approving the project, which may take the form of a reimbursement resolution or an inducement resolution, (iii) documentation of the appropriate governing bodies' or elected official's approval of the project, in conformity with applicable federal and state law, (iv) an opinion of bond counsel, and (v) a commitment letter from a purchaser or underwriter of the subject bonds or such other evidence of the Originally Awarded

Locality's ability to sell the subject bonds before March 15, 2010, as may be reasonably acceptable to the Re-Allocation Director (such as, for example, a letter from the financial advisor to an Originally Awarded Locality stating that the Locality reasonably expects, based on the Locality's credit ratings, to be able to sell the subject bonds in a competitive or negotiated sale). The form for such Project Verification Report including applicable attachments is available from the Virginia Association of Counties, the Virginia Municipal League, and at [www.stimulus.virginia.gov](http://www.stimulus.virginia.gov).

- 4) Failure to provide a Project Verification Report shall be deemed a waiver of the Reserved Amount, and such amount so waived shall be included in the Waived Amounts.
- 5) Within 30 days of issuance of any Recovery Zone Bonds, the Originally Awarded Locality (or the entity issuing Recovery Zone Bonds on its behalf) shall provide to the Re-allocation Director the completed Internal Revenue Service reporting form then in effect for the type of Recovery Zone Bonds being issued.
- 6) Any Original Allocation, including any Reserved Amount, of Recovery Zone Bonds not issued by **March 15, 2010** will be deemed waived, and such amount so waived shall be included in the Waived Amounts.

Any Waived Amounts, including amounts voluntarily waived, deemed waived or returned to the Re-allocation Director pursuant to the process, will be available for re-allocation by the Re-allocation Director to another locality or issuer ("Subsequent Awarded Entity"). Notwithstanding anything herein to the contrary, any Originally Awarded Locality or any Subsequent Awarded Entity may voluntarily waive its allocation at any time by providing notice to the Re-allocation Director.

### **Re-Allocation Process**

- 1) The Re-allocation Director shall develop a process for the application, evaluation and re-allocation of the Waived Amounts to maximize the use of this financing mechanism to stimulate jobs and develop critical infrastructure within the Commonwealth.
- 2) The Re-allocation Director is hereby authorized to delegate to any official or agency or department of the Commonwealth any matter or task described herein, to take any action that he, as the Re-allocation Director, deems necessary or desirable to affect the purposes hereof, and to create an advisory committee consistent with, and in furtherance of, this Executive Order.
- 3) Determination of compliance with the procedures and requirements set forth herein or in the additional guidance, including any filings to be made and the timing and substance thereof, shall be subject to the sole discretion of the Re-allocation Director. The Re-allocation Director shall have sole discretion as to the manner and location of any on-line postings required herein or pursuant to such further rules and procedures promulgated by him so long as such posting are on an official website of the Commonwealth.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until December 31, 2011, unless sooner amended or rescinded by further executive order.

Executive Order Number 102 (2009)

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Given under my hand and under the Seal of the Commonwealth of Virginia this 4th day of December 2009.

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Timothy M. Kaine, Governor

Attest:

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Secretary of the Commonwealth