

State of New Mexico

Office of the Governor

Bill Richardson
Governor

EXECUTIVE ORDER 2010-028

ESTABLISHING A SYSTEM FOR ALLOCATING VOLUME CAP FOR RECOVERY ZONE BONDS IN THE STATE

WHEREAS, Sections 1400U-1 through U-3 of the Internal Revenue Code of 1986, as amended (the "Code") provide that until December 31, 2010 certain bonds can be issued to finance projects in "recovery zones" and subjects such bonds to volume limitations (the "Volume Cap");

WHEREAS, the Code provides for the implementation and administration of recovery zone bonds and established a formula for the allocation of such Volume Cap;

WHEREAS, certain counties and municipalities which have been allocated recovery zone bonding capacity have either wholesale relinquished the allowable bonds or have determined or are likely to determine that they will use none or only a certain portion of the allowable capacity; and

WHEREAS, in order to maximize the benefits of such bonds, the New Mexico Finance Authority should be able to work with those counties and municipalities which do not intend to exercise the Volume Cap allowable and reallocate the available bonding capacity for other projects in a manner consistent with the provisions of the Code.

NOW THEREFORE, I Bill Richardson, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and the laws of the State of New Mexico, do hereby establish a system for allocating Volume Cap for Recovery Zone Bonds, as follows:

Section 1

As used in this Executive Order:

(1) "Allocation Dollars" means the dollar amount of the Volume Cap expressed in terms of dollars. Each Allocation Dollar equals one dollar of Volume Cap that may be allocated under this Executive Order.

(2) "Board" means the Board of Directors of the New Mexico Finance Authority.

(3) "Bonds" means the Recovery Zone Bonds for which an allocation of the Volume Cap is required by the Code.

(4) "Code" means the Internal Revenue Code of 1986, as amended, including the American Recovery and Reinvestment Act of 2009, and any related regulations, including without limitation, the Notice, all as may be amended or supplemented.

(5) "Form 8038" means the IRS form 8038, 8038-G or any other federal tax form or other method of reporting required by the Department of the Treasury under Section 149(e) of the Code.

(6) "Initial Allocations" means the sum of the Initial Allocations established under the Notice and referred to in Section 2 hereof.

(7) "Issuing Authority" means any entity authorized to issue Recovery Zone Bonds under State Law.

(8) "Notice" means IRS Notice 2009-50, as amended.

(9) "Recovery Zone" means an area so designated as provided in the Code and Notice.

(10) "Recovery Zone Bonds" means Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds.

(11) "Recovery Zone Economic Development Bonds" means bonds, notes or other obligations issued for one or more "qualified economic development purposes" as provided in the Code and the Notice.

(12) "Recovery Zone Facility Bonds" means bonds, notes or other obligations issued to finance "recovery zone property" as provided in the Code and Notice.

(13) "State" means the state of New Mexico.

(14) "Subsequent Allocation" means an allocation of Volume Cap by the Board acting for the State of all or a portion of Initial Allocations returned to the State by waiver under the Code and Notice.

(15) "Ultimate Beneficiary" means the ultimate beneficiary of the Volume Cap as provided in the Code and Notice.

(16) "Volume Cap" means the volume cap for Recovery Zone Bonds for the State as computed under Sections 1400U-1 through U-3 of the Code, the Notice and related regulations.

Section 2

The Initial Allocations of Volume Cap for Recovery Zone Bonds for the State have been made to State counties and a municipality in set amounts. Such amounts were determined by the Internal Revenue Service under the Notice and are intended to be further allocated by those counties and municipalities to Ultimate Beneficiaries as provided in the Notice. The Initial Allocations do not expire until December 31, 2010 unless all or a portion is returned to the State by waiver or deemed waiver as provided in the Code and Notice.

Section 3

If, and to the extent all or a portion of the Initial Allocations is returned to the State, by waiver or deemed waiver as provided in the Code and Notice, Subsequent Allocations of Recovery Zone Volume Cap shall be allocated in accordance with the procedures set forth in this Executive Order. The Board shall seek waivers of Initial Allocations prior to September 1, 2010 or as soon as practicable thereafter from applicable counties or

municipalities that choose not to make their own allocations under the Code and Notice and allow the Board to make Subsequent Allocations.

Section 4

(1) In order to obtain a Subsequent Allocation of Volume Cap, an Issuing Authority or Ultimate Beneficiary shall, prior to the issuance of such Bonds, submit an application to the Board in a form acceptable to the Board and containing all information reasonably required by the Board. Information so obtained may be subject to the Inspection of Public Records Act or Statewide Economic Development Act of the State.

(2) The Board shall be under no obligation to process any application that is incomplete. Any application submitted by an Issuing Authority or Ultimate Beneficiary that the Board does not process shall be returned within a reasonable time with a brief explanation as to why the application was not processed.

(3) Subsequent Allocations shall be made on the basis of need, economic impact and efficient distribution of resources in the State as determined by the Board. Subsequent Allocations for Recovery Zone Economic Development Bonds may be made only from Volume Cap related to Initial Allocations for Recovery Zone Economic Development Bonds returned to the State by waiver or deemed waiver and Subsequent Allocations for Recovery Zone Facility Bonds may be made only from Volume Cap related to Initial Allocations for Recovery Zone Facility Bonds returned to the State by waiver or deemed waiver. Subsequent State Allocation may be made for an amount equal to or less than the amount requested as determined by the Board.

Section 5

(1) A certificate of allocation evidencing the granting of a Subsequent Allocation of Volume Cap shall be issued by the Chair of the Board or his designee to the requesting Issuing Authority or Ultimate Beneficiary.

(2) Every Subsequent Allocation of the Recovery Zone Volume Cap shall remain effective until 12:00 o'clock midnight on December 31, 2010, or such later time as may be authorized by federal law. Any allocation for which Bonds are issued on or prior to the applicable date specified in this subsection shall be irrevocably allocated to such Bonds.

(3) The expiration date of an allocation of Volume Cap under this Executive Order may be extended upon prior written approval of the Board, as evidenced by an amended certificate of allocation.

Section 6

(1) After the effective date of this Executive Order, each Issuing Authority shall advise the Board on or before the fifteenth day after the issuance of any Bonds of the principal amount of Bonds issued under an Initial Allocation or under a Subsequent Allocation by delivering to the Board a copy of the Form 8038 which was delivered to the Internal Revenue Service in connection with such Bonds.

(2) If all or a stated portion of Bonds, for which a Subsequent Allocation was made, were not, or will not be, issued, the related Issuing Authority shall advise the Board in writing of such fact on or before the earlier of: (A) the fifteenth day after the

final decision not to issue all or a stated portion of such Bonds, or (B) the expiration date of the Subsequent Allocation.

Section 7

In addition to the duties otherwise specifically set forth in this Executive Order, the Board shall:

- (1) maintain a record of all applications filed by Issuing Authorities or Ultimate Beneficiaries and all certificates of allocation issued hereunder;
- (2) maintain a record of all Bonds issued by Issuing Authorities;
- (3) maintain a record of material information filed by Issuing Authorities or Ultimate Beneficiaries under this Executive Order;
- (4) make available upon reasonable request a certified copy of all or any part of the records maintained by the Board under this Executive Order or a summary thereof, including information regarding the Volume Cap allocated and any amounts remaining available, for allocation under this Executive Order;
- (5) establish an allocation process, including a form of application, not inconsistent with this Executive Order, deemed necessary or expedient to allocate the Volume Cap hereunder; and
- (6) as requested, submit reports and other necessary documentation to the New Mexico Office of Recovery and Reinvestment in order to meet federal and other reporting requirements.

Section 8

If any provision of this Executive Order shall be held to be, or shall, in fact, be invalid, inoperative or unconstitutional, the defect of the provision shall not affect any other provision of this Executive Order or render it invalid, inoperative, or unenforceable. To the extent this Executive Order shall be held or shall, in fact, be invalid inoperative, or unconstitutional, all allocations of the Volume Cap previously made under this Executive Order shall be treated as allocations made by the Governor of the State in accordance with this Executive Order.

Section 9

The State pledges and agrees with the owners of Bonds, to which an allocation of the Volume Cap has been granted under this Executive Order, that the State will not retroactively alter the allocation of the Volume Cap to such Bonds after the issuance date of such Bonds.

Section 10

No action taken pursuant to this Executive Order shall be deemed to create an obligation, debt or liability of the State or be deemed to constitute an approval of any obligation issued or to be issued for the purposes set forth herein.

Section 11

The purpose of this Executive Order is to maximize the benefits of financing and development through the use of Bonds by providing a system for the implementation and administration of the formula provided under the Code for allocating Volume Cap.

Section 12

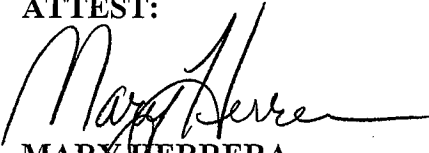
The Volume Caps previously waived to the State by Sandoval County in the amount of \$7,274,000 and Torrance County in the amount of \$952,000 are hereby reallocated to UNM Sandoval Regional Medical Center, Inc, a New Mexico non-profit corporation and University Research Park and Economic Development Act Corporation.

Section 13

This Executive Order shall be effective immediately and shall continue in effect until such time as it may be repealed or superseded by operation of State or Federal law.

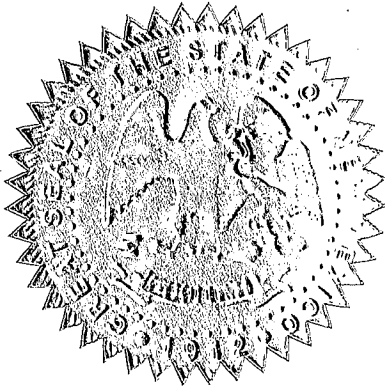
THIS ORDER supersedes any other previous orders, proclamations, or directives in conflict. This Executive Order shall take effect immediately and shall remain in effect until such time as it is rescinded by the Governor.

ATTEST:


MARY HERRERA
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE
THIS 15TH DAY OF JULY, 2010

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO




BILL RICHARDSON
GOVERNOR