



**Wisconsin Economic Development Corporation
Program Guidelines for Fiscal Year 2020**

Program Name: Industrial Revenue Bonding (IRB)
Program Inception: 1969 Wisconsin Act 278
Lead Division: Business and Community Development
 New **Revised** Click here to insert date
 Aid **Pass-thru Aid** **Technical Assistance**

Program Goal:

The goal of the Industrial Revenue Bonds (IRB) Program is to primarily incent expansions of manufacturing facilities in the state of Wisconsin.

This program primarily supports the following WEDC Strategic Pillar and Focus Area:

Business Development: Business Retention & Expansion

Program Description:

WEDC is responsible for allocating volume cap on the issuance of private activity bonds¹. The volume cap limits the amount of bonding authority that can be issued in a year. Once the annual cap is established under federal law, WEDC allocates bonding authority pursuant to Section 238.10 and the Policy on the Allocation of Volume Cap².

Generally, the volume cap allocated by WEDC is for Industrial Revenue Bonds (IRBs). At the federal level, Industrial Revenue Bonds are covered by Sections 103 and 141 through 149 of the Internal Revenue Code and Income Tax Regulations, which establish the nature and size of projects which qualify for federal tax exemption of interest.³

IRB bonds are tax-exempt bonds that can be used to stimulate capital investment and job creation by providing private borrowers with access to financing at interest rates that are lower than conventional bank loans. The IRB process involves five separate entities – the borrower, lender, bond attorney, issuer, and WEDC. Each year, federal law establishes a "volume cap" which applies at the state level. The municipalities and counties sell the IRBs and loan the proceeds to eligible businesses undertaking eligible projects.

Eligibility Requirements:

Manufacturers can use the IRB proceeds for building, land or equipment but not working capital. There are restrictions on bond size and total capital expenditures. Manufacturing includes nearly every type of processing that results in a change in the condition of tangible personal property. The facility being financed must be located in the state of Wisconsin unless otherwise allowed by law.⁶

¹ Wis. Stat. § 238.10

² Wis. Stat. § 238.10

³ I.R.C. § 103; I.R.C. § 141-149.

⁶ 26 USC § 146(k)



According to federal tax law, the maximum size of a IRB issue is \$10 million.⁷ For IRB issues exceeding \$1 million, capital expenditures in the municipality where the project is located cannot exceed \$20 million during the three years before and the three years after the date the IRBs are issued.⁸ The \$20 million capital expenditure limitation includes any principal user of the facility and also related persons⁹. Also, the total amount of IRBs outstanding at all related operations of the business, in all states, may not exceed \$40 million.¹⁰

Exempt Facility Bonds are bonds issued for one of the following project type, and are not subject to the same rules as other private activity bonds:¹¹

- airports
- docks and wharves
- mass-commuting facilities such as high-speed rail
- facilities for furnishing water
- sewage facilities
- solid waste disposal facilities
- facilities for the local furnishing of electric energy or gas
- facilities for local district heating and cooling
- qualified hazardous waste facilities.

WEDC can allocate volume cap for any private activity bond, including both exempt and non-exempt projects.

To qualify for an IRB volume cap allocation, the following must be satisfied:

- **Notice of intent:** At least 30 days prior to entering into a revenue agreement with a municipality or county, the business benefitting from the bonds must give WEDC a notice of intent to enter into the agreement, on a form prescribed by WEDC.¹³ No later than 20 days after receipt of this notice, WEDC will issue a **Job Impact** to the municipality or county, estimating whether the project is expected to eliminate, create, or maintain jobs on the project site and elsewhere in the state and the net number of jobs expected to be eliminated, created, or maintained as a result of the project.¹⁴
- **Good faith estimate:** Prior to adoption of an initial resolution, WEDC must receive a good faith estimate of attorney fees which will be paid from bond proceeds.¹⁵
- **Initial resolution:** Within 20 days following publication of notice, WEDC must be provide a copy of the initial resolution together with a statement indicating when the public notice required under s. 66.1103(10)(b) was published.¹⁶
- **Notice of closing:** After the closing of the bond issue, WEDC shall be notified of the closing date, any substantive changes made to documents previously filed with WEDC, and the principal

⁷ I.R.C. § 144(a)(4).

⁸ I.R.C. § 144 (a)(4)

⁹ I.R.C. § 144 (a)(3)

¹⁰ I.R.C. § 144 (a)(10)(A)

¹¹ I.R.C. § 142

¹³ Wis. Stat. § § 66.1103(4m)(a)1 & 238.11(1).

¹⁴ Wis. Stat. § § 238.11(2) &(5).

¹⁵ Wis. Stat. § 66.1103(10)(g).

¹⁶ Wis. Stat. § 66.1103(10)(c).



amount of the financing.¹⁷ This notice must be filed with WEDC within five business days from the date of the closing. The notice must also include the following information: buyer/underwriter, type of sale (public or private), term, and interest rates.

Incentives and Available Funding (FY20):

Volume Cap is allocated on a calendar year basis. The total amount for WEDC for calendar year 2019 was **\$300,212,320**. The federal tax code allows each state to establish by law its own formula for allocating its volume cap.¹⁸ Volume cap is allocated on a state-wide basis pursuant to § 238.10, Wis. Stats. and the Policy on the Allocation of Volume Cap.¹⁹

Specifically, WEDC must:

- (a) Ensure that the amount of private activity bonds issued in a calendar year does not exceed WEDC's volume cap for such calendar year.²⁵
- (b) Calculate the state ceiling which is calculated using information published in the federal register each year. State population is to be determined on the basis of the most recent census estimate of the resident population of the state released by the Bureau of Census before the beginning of the calendar year.²⁶
- (c) WEDC may elect to carryforward excess volume cap from a calendar year to the following calendar year if it identifies the amount and use of such excess.²⁷

Activities and Expected Outcomes:

Assist 10 businesses through the authorization of tax-exempt municipal bond sales.

Performance Reporting:

Performance is measured by the number of bond issues that occur each year as a result of the volume cap being allocated, as documented by the number of bond closings.

For each allocation of volume cap for an IRB, the following must occur:

- Employers that do not certify to the municipality or county prior to entering into the revenue agreement that their project is not expected to result in lost jobs must submit a quarterly report every three months during the first year after the construction of the project is completed, providing information about new jobs, lost jobs, and offers of employment made to persons who were formerly at lost jobs.²⁸

¹⁷ Wis. Stat. § 66.1103(10)(c).

¹⁸ I.R.C. § 146

¹⁹ Wis. Stat. § 238.10

²⁵ 26 USC § 146(a)

²⁶ 26 USC § 146(j)

²⁷ 26 USC § 146(f)

²⁸ Wis. Stat. § 66.1103(4s)(b).



- Within 12 months after the project is completed or 2 years after a revenue bond is issued to finance the project, whichever is sooner, the business benefitting from the bonds must submit to WEDC, on a form prescribed by WEDC, the net number of jobs eliminated, created, or maintained on the project site and elsewhere in the state as a result of the project.²⁹

WEDC annually selects awards on a sample basis for an audit. All backup to the performance report is required to be maintained for the life of the award.

WEDC may impose additional reporting requirements to evaluate project performance and to ensure compliance with statutory requirements.

Volume cap issued by WEDC for bonds other than an IRB do not require performance reports.

Application and Awards Process:

The IRB program has a continuous application process. Applicants for an Industrial Revenue Bond volume cap allocation should complete an application through an Account Manager. The completed application will be assigned to an underwriter and go through the award review process.

If bonds are not sold within 30 days from the certification date or by December 1, whichever comes first, the applicant must submit a deposit of 0.5% of the allocation (a 1.0% deposit if the allocation is requested on or after October 1) to WEDC.³⁰ The deposit reserves the allocation for a period equal to the lesser of 90 days from the certification date or the remainder of the calendar year. The deposit is refundable following the bond closing, but is forfeited if the bonds are not sold. However, the deposit and forfeiture may be waived if circumstances warrant. In addition, a non-refundable fee equal to 0.10% of the amount of the bond issue must be submitted with the notice of bond issuance³¹.

For more information on application review, internal process, and award distribution, please refer to WEDC’s award administration policies and procedures.

Revision History:

Effective Date	Description of Change
7/1/2018	Added statutory citations
7/1/2018	Clarified eligibility and performance reporting requirements
7/1/2019	Aligned eligibility requirements, incentives and available funding, and performance reporting with federal Internal Revenue Code and Income Tax Regulations; eliminated cap on bond issuance fees; clarified performance reporting requirements

²⁹ Wis. Stat. §§ 66.1103(4m)(b) & 238.11(1)

³⁰ Wis. Stat. 238.10(3).

³¹ Wis. Stat. 238.10(3)



PROGRAM REVIEW:

This document has been reviewed by the following parties (Check all that apply):

- Chief Operating Officer
- Chief Legal Officer
- Chief Financial Officer
- Other _____

Senior Director of Public Policy: _____ Date _____

Division Vice President: _____ Date _____

AUTHORIZED APPROVAL:

CEO or Designee: _____ Date _____