

# *Private Activity Bonds (PAB) Overview and DOH Roles*

CHFA PAB Webinar  
May 2, 2024



**COLORADO**  
Department of Local Affairs



# *What are PABs?*

- Tax-exempt bonds issued for *privately* developed projects.
- IRS allows a limited amount, also know as PAB “Cap”.
- Municipalities (or Authorities) issue the bonds, but have no obligation to repay investors.
- Investors buy the bonds.
- PABs make rental housing eligible for 4% LIHTC.



# *PAB Requirements*

- Underwriters use the investors' \$\$, or “bond proceeds,” to make a loan to the project. (Currently 4.0% - 6.2%)
- The *project* pays back the loan & investors get repaid + interest. (Lower interest amortizing loan)
- Specified Uses:
- PABs make rental housing eligible for 4% LIHTC.



# Initial PAB Allocation Process

\$125 per person in the state = the “Volume Capacity”  
2024: \$734,701,250 | 2023: \$700,791,120 | 2022: \$639,227,590

50% of Allocation

**Statewide Authorities**

- Colorado Housing and Finance Authority (CHFA)
- CO Agriculture Development Authority (CADA)

50% of Allocation

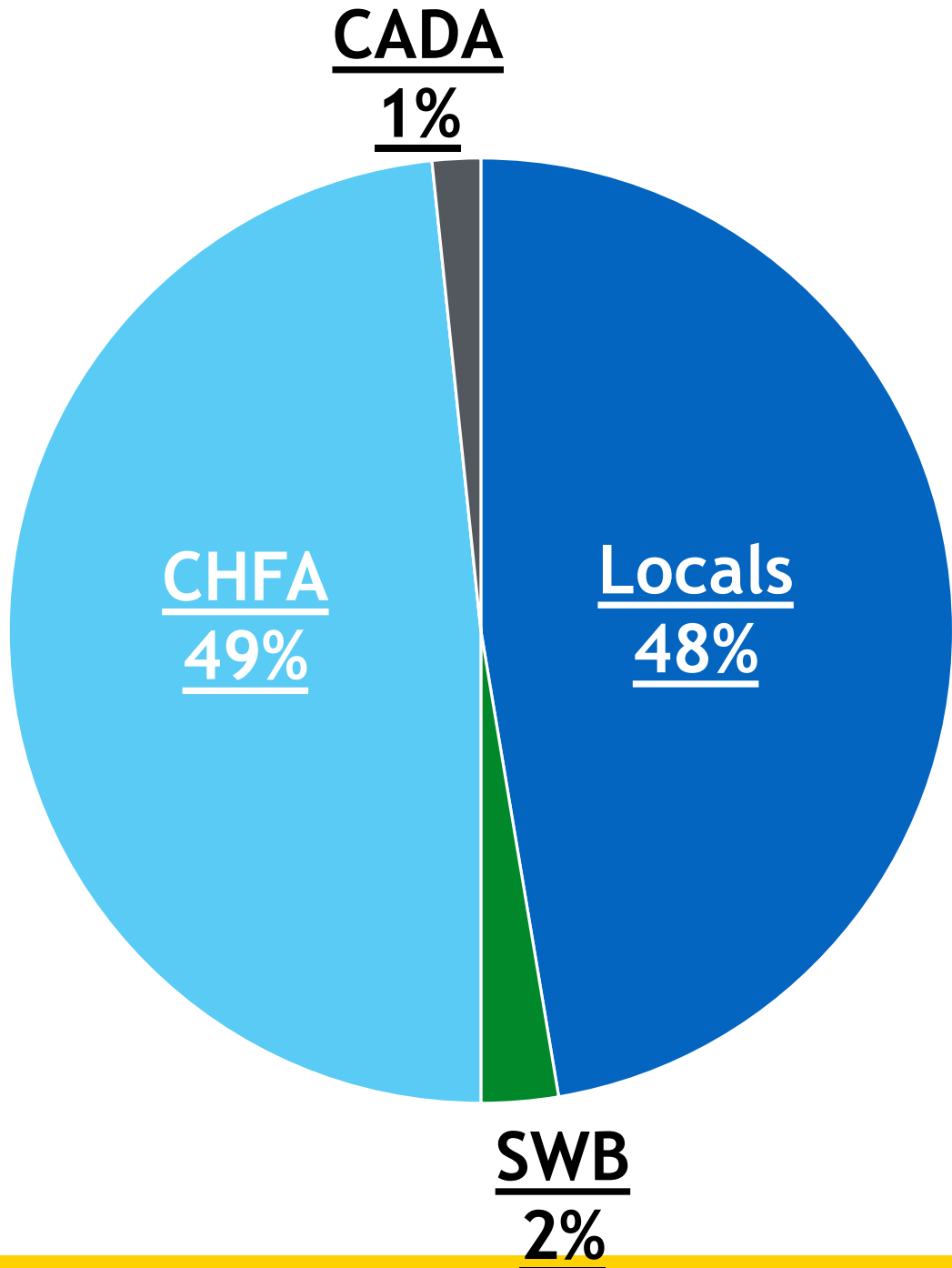
**Local Governments**

- 16,000 Persons or more
- \$62.50 per capita

**Statewide Balance**  
Remaining cap administered  
by CO - DOLA/DOH



# January 2024 PAB Allocation



66 Local Issuers - \$354,109,080  
CHFA - \$362,350,625  
CADA - \$5,000,000  
SWB - \$13,241,545



# Local Issuers - 2024 Allocations

Local Issuers	PAB Cap
Denver	\$44,836,357
Colorado Springs	\$30,523,317
Aurora	\$24,617,884
Douglas County	\$14,547,531
El Paso County	\$14,181,423
Jefferson County	\$12,746,682
Fort Collins	\$10,812,010
Lakewood	\$9,728,783
Thornton	\$9,041,551
Arapahoe County	\$8,502,112
Arvada	\$7,753,280
Weld County	\$7,477,340
Adams County	\$7,318,720
Westminster	\$7,246,554
Pueblo	\$7,064,348
Greeley	\$6,932,476
Centennial	\$6,720,575
Boulder	\$6,647,089
Larimer County	\$6,518,363
Longmont	\$6,277,708
Mesa County	\$5,721,154
Castle Rock	\$4,975,659



# Local Issuers - 2024 Allocations

Local Issuers	PAB Cap
Loveland	\$4,901,984
Broomfield	\$4,791,378
Grand Junction	\$4,253,193
Commerce City	\$4,087,661
Garfield County	\$3,916,783
Parker	\$3,876,703
Boulder County	\$3,660,653
Pueblo County	\$3,592,575
Eagle County	\$3,478,699
Littleton	\$2,814,364
Brighton	\$2,587,111
Northglenn	\$2,418,119
Windsor	\$2,408,618
La Plata County	\$2,334,127
Erie	\$2,144,308
Englewood	\$2,118,260
Fremont County	\$2,022,692
Delta County	\$1,986,957
Wheat Ridge	\$1,963,487
Lafayette	\$1,943,480
Summit County	\$1,924,167
Fountain	\$1,887,925
Morgan County	\$1,843,192
Elbert County	\$1,750,392
Montezuma County	\$1,665,014



# Local Issuers - 2024 Allocations

Local Issuers	PAB Cap
Routt County	\$1,574,604
Teller County	\$1,563,593
Evans	\$1,442,290
Montrose County	\$1,430,400
Montrose	\$1,325,266
Golden	\$1,315,199
Logan County	\$1,309,226
Chaffee County	\$1,274,746
Durango	\$1,224,222
Louisville	\$1,220,196
Otero County	\$1,150,989
Firestone	\$1,135,070
Johnstown	\$1,128,338
Park County	\$1,126,200
Canon City	\$1,096,062
Gunnison County	\$1,086,502
Pitkin County	\$1,060,516
Alamosa County	\$1,042,836
Frederick	\$1,040,067
<b>Total</b>	<b>\$354,109,080</b>





# *Local Issuers & Statewide Authorities*

- Receive allocation by January 15<sup>th</sup>
- Establish priorities & *act* by September 15<sup>th</sup>
  - Bond issuance requires an inducement resolution and closing by December 23rd; OR
  - Carry-Forward bond cap for eligible purpose to close within a 3 year period - requires filing with IRS; OR
  - Relinquish to Statewide Balance; OR

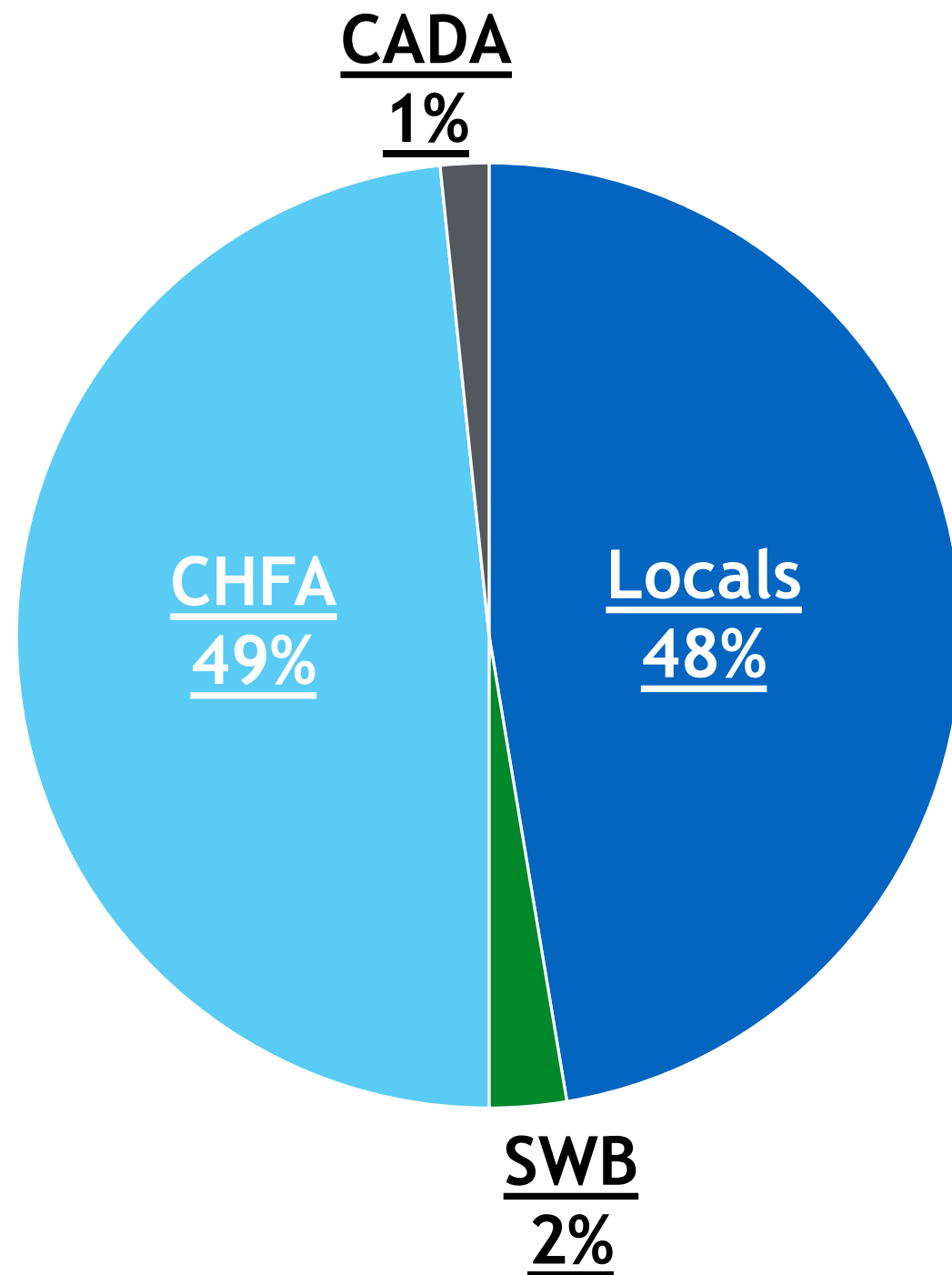


# **Local Issuers & Statewide Authorities**

- Receive allocation by January 15<sup>th</sup>
- Establish priorities & *act* by September 15<sup>th</sup>
  - Relinquish to Statewide Balance; OR
  - Assign to another issuer for an eligible purpose
  - If you Receive an Assignment - issue it or carry it forward, or it will also relinquish on 9/15.



# January 2023 PAB Allocation



64 Local Issuers - \$336,662,358

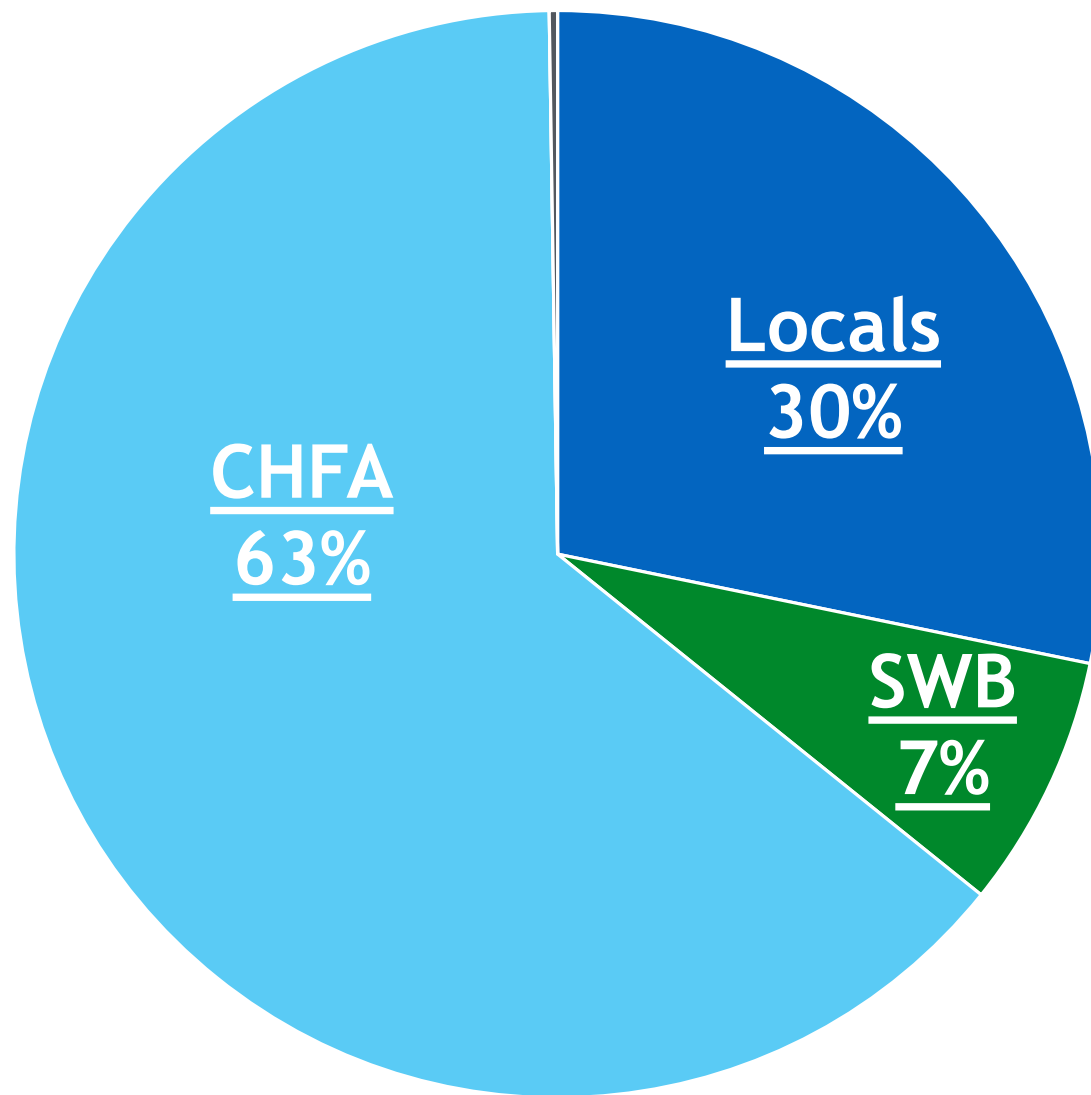
CHFA - \$345,395,560

CADA - \$5,000,000

SWB - \$13,733,202



# September 2023 PAB Allocation Est.



Denver - \$20,405,135

Colorado Springs - \$29,163,118

20 Other Locals - \$153,008,190

CHFA - \$425,215,981

CADA - \$0

SWB - \$44,238,977



**COLORADO**

Department of Local Affairs



# **State Housing Board Role**

- **Colorado Revised Statute 24-32-1707**

***On and after September 15 each year, the statewide balance may be allocated among all issuing authorities. The Executive Director (DOLA) shall make all of the allocations from the statewide balance in his or her sole discretion with the advice of the Board and in accordance with the priorities pursuant to this section.***

***The Board shall review and recommend to the Executive Director (DOLA) statewide priorities for the allocation of the statewide balance.***



# **Statewide Balance Applications**

- DOLA receives allocation by January 15<sup>th</sup> & relinquished bond cap on Sept. 15<sup>th</sup>
- **Three application rounds. Applications are due:**
  - March 1, 2023, June 1, 2023, and November 1, 2023.
  - March and June Rounds - Only issuers that did not receive a direct allocation or issuers that have exhausted their direct allocations may apply.
  - Relinquished bond cap distributed through November round.
  - 8 week process from application to State Housing Board to award letter.



# **Statewide Balance Applications Review Criteria**

- **Project readiness to proceed within 12 months**
- **Local support (local or neighboring community PAB)**
- **Based on economic or demographic need**
- **Project size between \$3MM and \$20MM.**
- **Limit total PAB per project to 52-55% of the aggregate basis.**



# **Statewide Balance Applications**

- All close by December 23<sup>rd</sup> (OR re-award for carry forward)
  - 0.027% issuance fee on bonds issued from direct allocations
- **Demonstrated local support & need:**
  - Certified copy of an inducement resolution from the local government/issuer.
  - Local financial commitment of PAB allocation or other local financial subsidies.
  - Demonstrate market need.
  - Deepness of Housing Affordability





# **Statewide Balance Applications**

- **Feasibility:**

- Reasonable costs for development & operation.
- Readiness to proceed - site under control, local planning & zoning approved, tax credits and financing commitments.
- Financially sound - reasonable income/expense estimates.
- Development team experience, capacity.



# 2023-24 Statewide Balance Requests/Awards

<b>Date</b>	<b>Project / Applicant</b>	<b>Requested</b>	<b>Awarded</b>
12/2023	City of Northglenn / Glennpark Village	\$1,800,000	\$4,800,000
12/2023	Boulder County Housing Partners / Penrose Place	\$12,000,000	\$7,800,000
12/2023	Douglas County Housing Partners / The Sophia	\$2,500,000	\$4,500,000
12/2023	City of Grand Junction / Pipeline	\$4,031,651	\$9,000,000
12/2023	Colorado Agricultural Development Authority / Pipeline	\$616,000	\$2,050,279
12/2023	The Arvada Housing Authority / Marshall Pointe	\$5,000,000	\$8,500,000
12/2023	City and County of Denver-HOST / 4995 Washington St	\$10,000,000	\$1,214,420
12/2023	Colorado Housing and Finance Authority / Pipeline	\$8,408,326	\$6,814,851
04/2024	Eagle County Housing Development Authority / Eagle Villas	\$13,200,000	\$13,200,000
<b>2023 Totals</b>		<b>\$44,355,977</b>	<b>\$44,679,550</b>
<b>2024 Totals</b>		<b>\$13,200,000</b>	<b>\$13,200,000</b>





Wayne McClary  
Housing Development Team Manager  
& PAB Program Manager  
(303) 864-7819  
wayne.mcclary@state.co.us

Department of Local Affairs, Division of Housing  
dola\_pab@state.co.us  
<https://www.colorado.gov/pacific/dola/division-housing>



**COLORADO**  
Department of Local Affairs



# CHFA and Private Activity Bonds 2024

May 2, 2024

colorado housing and finance authority





# about chfa

CHFA was established in 1973 by the Colorado General Assembly.

*financing the places where people live and work<sup>®</sup>*



**CHFA is not a state agency** and does not receive and direct appropriations.

Board of Directors: **11 Members**



**CHFA received authority to use bond proceeds** for economic development activities in 1982.



Approximately **\$33B** has been raised and invested in Colorado to date.

# volume cap

---

Each year Department of Local Affairs (DOLA) receives a Colorado population-based allocation of volume cap

- *Per statute:*
  - 50% to statewide authorities (CHFA, CADA)
  - 50% to local governments (>\$1M, pro-rata by population)
  - Balance to DOLA



# chfa's role

---

- CHFA uses its PAB volume cap in support of mission:
  - Mortgage Revenue Bonds
  - Multifamily Housing Revenue Bonds
  - Industrial Development Bonds (IDBs)
- CHFA issues tax-exempt bonds to support investment in communities statewide – conduit support
- CHFA is the allocator of federal housing credit and state affordable housing tax credit



FY 2023

Sources

State Allocation	\$ 312,663,795
Assignments	\$ 67,389,926
Unassigned	\$ 94,946,279
-	\$ -
	<hr/>
	\$ 475,000,000

Uses

2023 Single Family Lending	\$ 75,000,000
2022 Housing Tax Credit Round Two	\$ 250,000,000
2024 Multifamily Lending	\$ 50,000,000
2024 Business lending	\$ 25,000,000
2024 Top Off	\$ 25,000,000
<u>2022 Pipeline Support</u>	<u>\$ 50,000,000</u>
	\$ 475,000,000

FY 2024

Sources

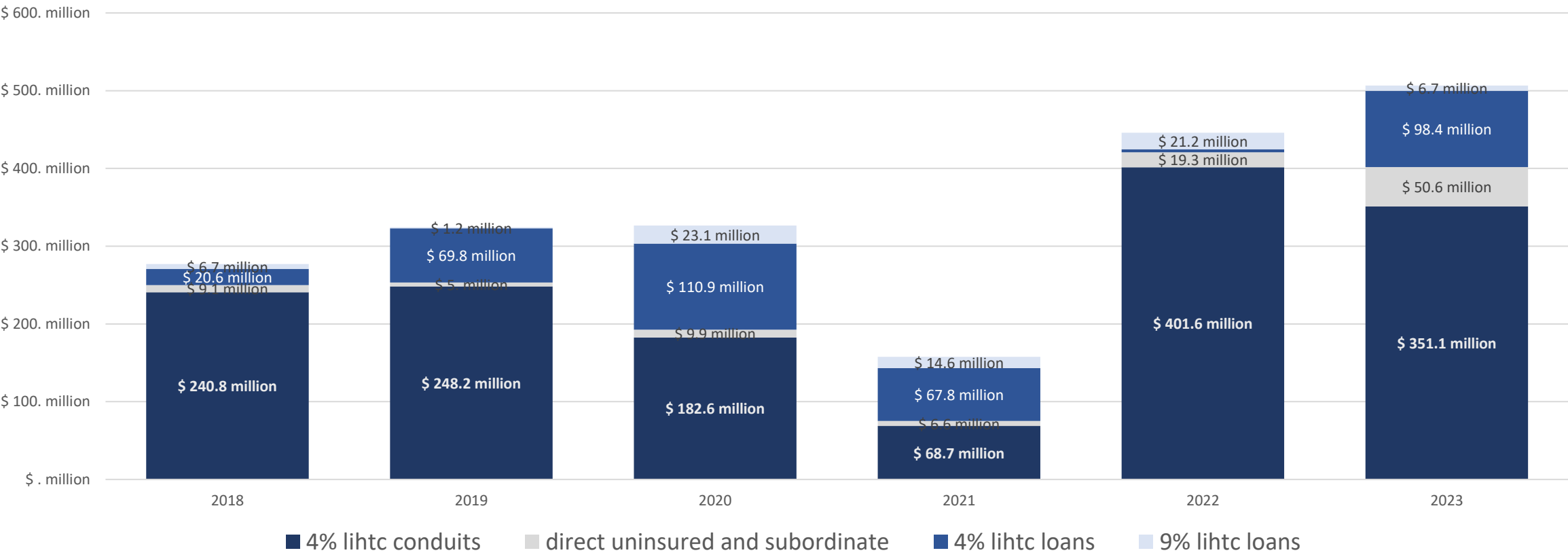
State Allocation	\$ 362,350,625
Assignments	\$ 79,820,421
Unassigned from prior support	\$ 19,000,000
Business current year unused	\$ 15,000,000
	<hr/>
	\$ 476,171,046

Uses

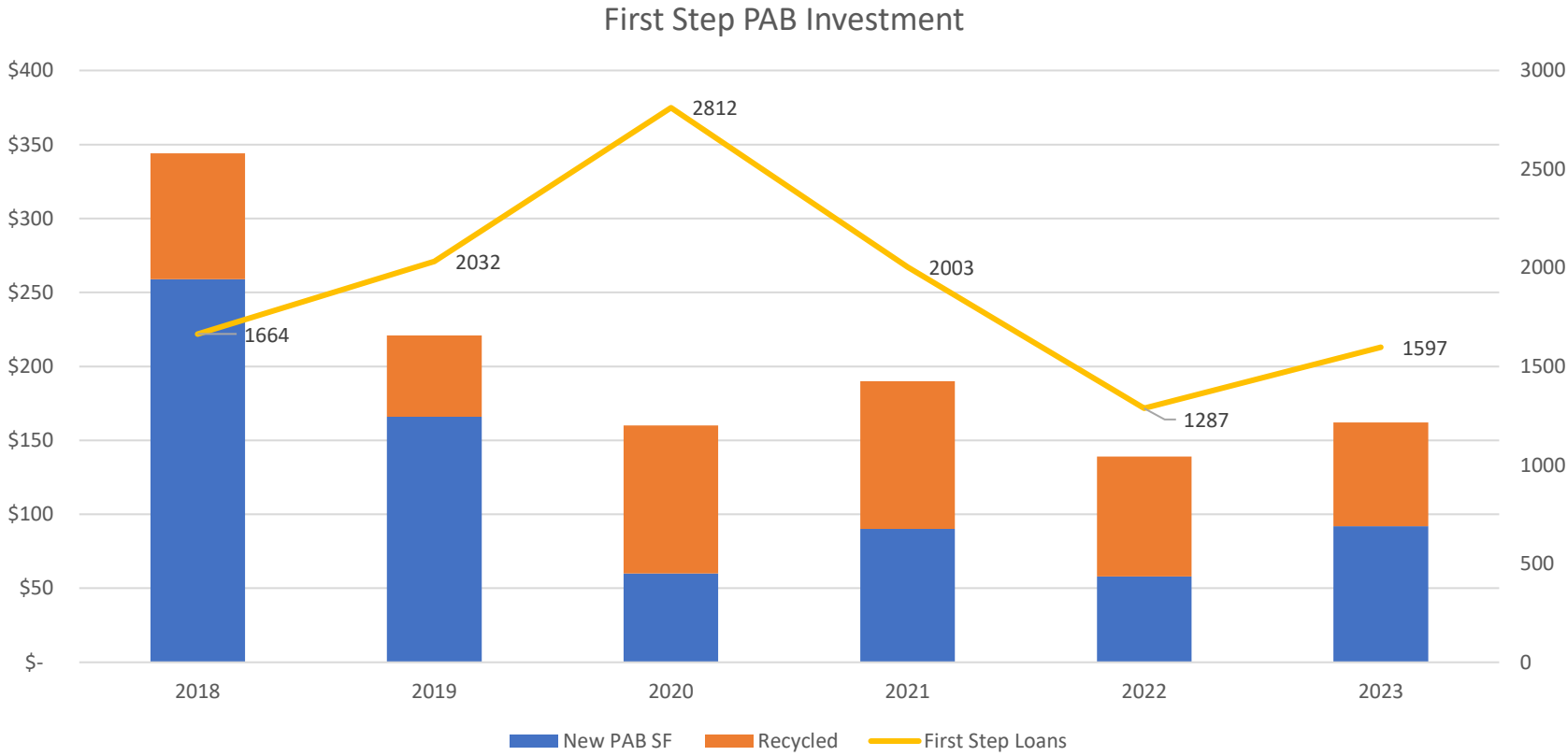
2024 Single Family Lending	\$ 80,000,000
2023 Housing Tax Credit Round Two	\$ 250,000,000
2024 Multifamily Lending	\$ 65,000,000
2024 Business lending	\$ 10,000,000
2024 Top Off	\$ 25,000,000
<u>2023 Pipeline Support</u>	<u>\$ 46,171,046</u>
	\$ 476,171,046



# chfa multifamily production 2018-2023



# single family investment w/pab



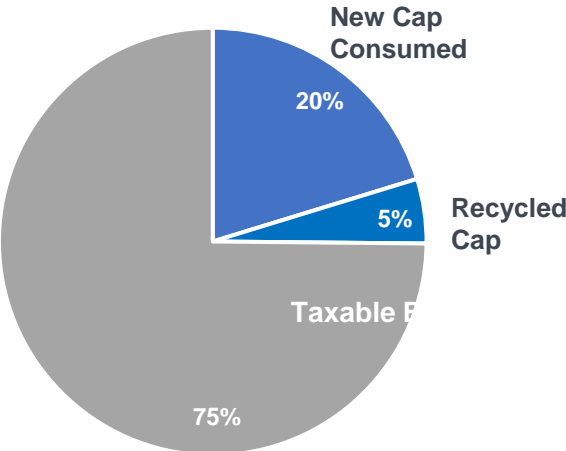
\*Leveraged with recycled PAB and taxable bonds

# Volume Cap Management

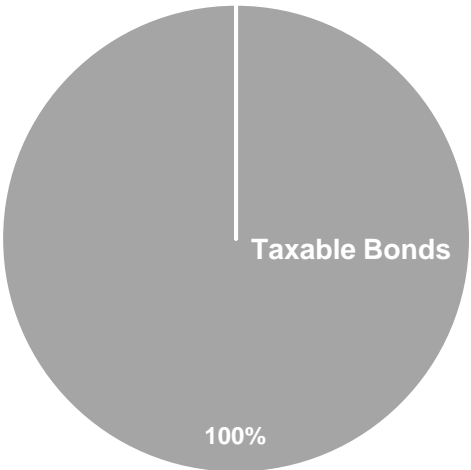
- CHFA has managed volume cap through substantial taxable issuance

## Issuance since November 2022

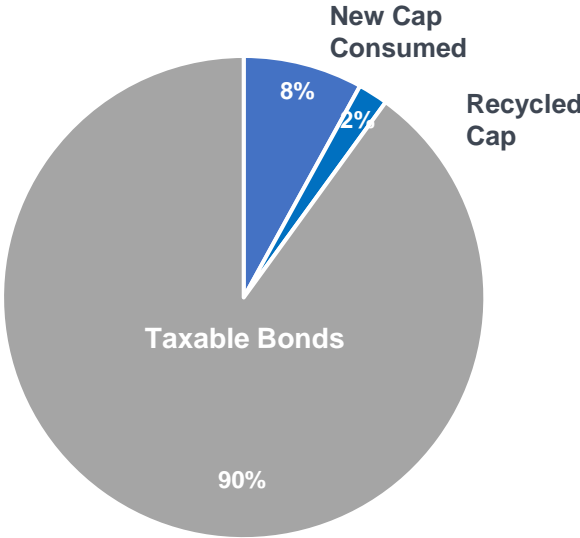
First Step: \$732MM



Smart Step: \$1.1BN



Total: \$1.8BN



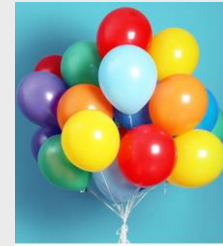
■ New Cap Consumed ■ Recycled Cap Used ■ Taxable Bonds Issued

# What do I do with my PAB?





Adams County	\$7,318,720
Alamosa	\$1,042,836
Arapahoe County	\$8,502,112
Arvada	\$7,753,280
Aurora	\$24,617,884
Boulder	\$6,647,089
Boulder County	\$3,660,653
Brighton	\$2,587,111
Broomfield	\$4,791,378
Canon City	\$1,096,062
Castle Rock	\$4,975,659
Centennial	\$6,720,575
Chaffee County	\$1,274,746
Colorado Springs	\$30,523,317
Commerce City	\$4,087,661
Delta County	\$1,986,957
Denver	\$44,836,357
Douglas County	\$14,547,531
Durango	\$1,224,222
Eagle County	\$3,478,699



How do we get the House to go UP?







Critical Mass



# assignment/transfer of cap to CHFA

---

- There are only three documents necessary to assign cap to CHFA:
  - Assignment of Allocation
  - *Assignment Resolution or Ordinance*
  - Attorney Certification

Look for this banner on the main pab page on the website

## PAB Assignment and Delegation Documents

A PAB Guide for Local Communities - includes a PAB overview, assignment documents, and delegation forms.

[Learn more](#)

# CHFA resources for PAB information

## PABs in Colorado

In Colorado, the Department of Local Affairs (DOLA) through the Division of Housing (DOH) is the administrator of PAB cap. Colorado law requires that 50 percent of the volume cap goes to statewide authorities including CHFA (48 percent) and the Colorado Agricultural Development Authority (2 percent). Up to 50 percent of the remaining cap is allocated to local issuers (cities and counties - 47 percent) with a minimum population of 19,048 (equal to a minimum of \$1 million in volume cap). Any remaining volume cap (3 percent) is retained by the DOLA for future allocations from a statewide pool (referred to as the Statewide Balance). Due to changes in population, volume cap allocated to local issuers can change annually. More information about DOH's PAB administration is available at <https://www.colorado.gov/pacific/dola/private-activity-bonds>.

## Local Issuers

Local issuers have several options for using their volume cap.

1. **Local issuers can issue the bonds.** Examples may include a manufacturing project or an affordable housing development located in the community. However, for local issuers who receive a relatively small amount of volume cap, acting as the issuer may not make economic sense.
2. **Local issuers can assign their volume cap to another local issuer.** It is not uncommon for local issuers to assign cap to another issuer or to combine cap within a city and county relationship. This creates the opportunity to support a larger project.
3. **Local issuers can assign their volume cap to CHFA.** CHFA provides funding for a wide variety of housing and economic development related projects. If they have a specific project in mind or would like to support projects in their jurisdiction, local issuers can assign to CHFA to be used for any eligible project, including a specific project. CHFA uses its best efforts to utilize a local issuer's cap in their community, however utilization is based on project needs statewide. There is no cost to assign cap to CHFA; CHFA handles all DOLA and IRS reporting on behalf of the local issuer.
4. **Local issuers can do nothing and let their cap revert to DOLA's Statewide Balance.** Local issuers have until September 15 to decide what to do with their volume cap, which includes completing all the applicable assignment documents and notifying DOLA. For any local issuer who does not meet the September 15 deadline, the cap is automatically returned to the statewide pool.

## Local Issuers Assigning to CHFA

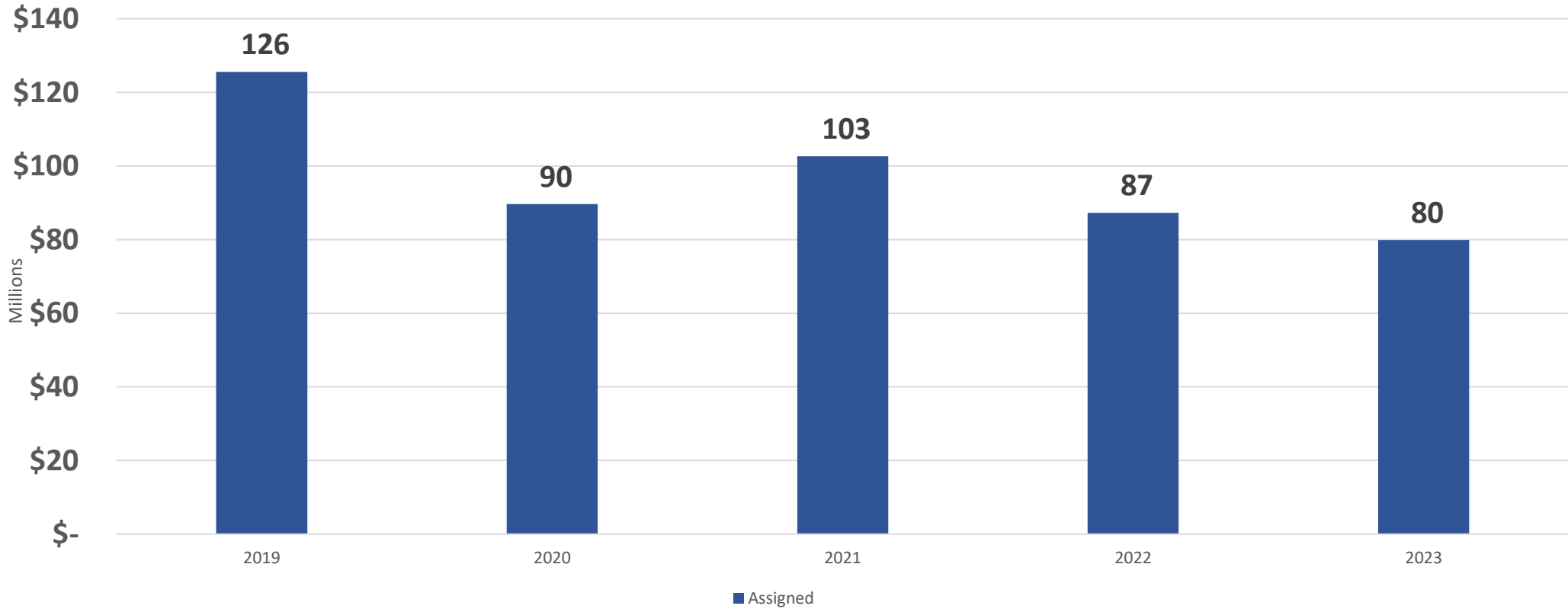
If a local issuer is considering assigning its CAP to CHFA, we offer the following:

- In-person presentations and training to elected officials and staff.
- Standardized template documents. There are only three documents necessary to assign cap to CHFA:
  - Assignment of Allocation
    - [Assignment of Allocation - City](#)
    - [Assignment of Allocation - County](#)
    - [Assignment of Allocation - Town](#)
  - Assignment Resolution or Ordinance
    - [Assignment Resolution or Ordinance](#)
  - Attorney Certification
    - [Attorney Certifications - City](#)
    - [Attorney Certifications - County](#)
    - [Attorney Certifications - Town](#)
- Ability to identify a specific multifamily project as potentially eligible for volume cap within their community for up to one year.
- Set aside for SFMRBs for a specific community.
- Subject to the availability of CHFA's cap, local issuers can collaborate with CHFA on future multifamily or manufacturing projects.

CHFA welcomes the opportunity to speak to you about this valuable resource and help you make the best decision for your community. Please contact [Denver Maw](#) for more information or to schedule a concept meeting, training, or presentation.

Remember, this is a time sensitive resource. All documentation must be received by CHFA no later than September 14, in order for CHFA to provide proper notice to DOLA . We look forward to your partnership.

# transfers to CHFA



# chfa's multifamily pab strategy

## preservation and recycling

- CHFA limits PAB to **52% - 55%** of the aggregate basis.
- Volume cap can be recycled on a limited basis.

## blended resources

- Cap transferred from other municipalities supports projects in their region.
- CHFA can “top off” cap for other issuers / projects.



# 2024 multifamily pab

- Focus is to ensure all current commitments are able to close
- CHFA continues a budget for top-off requests from other issuers





## Denver Maw

*Director of Finance*

 800.877.chfa (2432) | direct 303.297.7348

 dmaw@chfainfo.com

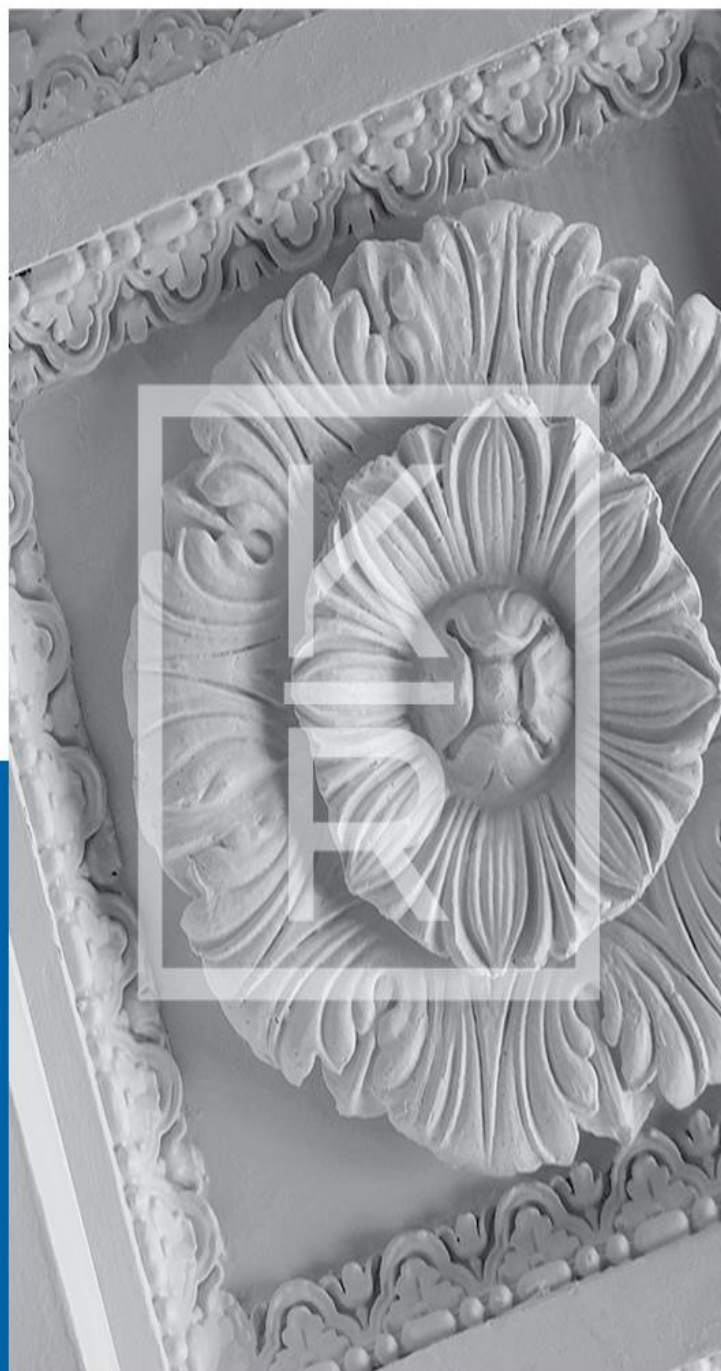
## Wyatt Jones

*Manager of Finance*

 800.877.chfa (2432) | direct 303.297.7341

 wjones@chfainfo.com





# Private Activity Bonds: Background and LIHTC Calculation

Frederic H. Marienthal

John H.T. Bales

Kutak Rock LLP

*May 2024*

**KUTAKROCK**

[kutakrock.com](http://kutakrock.com)

# Types of Private Activity Bonds

Bonds 1-15 are private activity bonds subject to the unified volume ceiling or cap and eligible for carryforward. Bond #15 is not eligible for carryforward. Bonds 16-20 are private activity bonds, each of which has its own separate cap—these bonds do not fall under volume ceiling.

1. Qualified student loan (Sec. 144(b))
2. Qualified mortgage bonds or mortgage credit certificates (Sec. 143(a) and Sec. 25)
3. Qualified redevelopment bonds (Sec. 144(c))
4. Exempt facility bonds (airports, docks & wharves, hydroelectric generating facilities, etc.) (Sec. 142)
5. Mass commuting facilities (Sec. 142(c))
6. Water furnishing facilities (Sec. 142(e))
7. Sewage facilities (Sec. 142(a)(5))
8. Solid waste disposal facilities (Sec. 142(a)(6))
9. Qualified residential rental projects (Sec. 142(d))
10. Facilities for the local furnishing of electric energy or gas (Sec. 142(f))
11. Local district heating and cooling facilities (Sec. 142(g))
12. Qualified hazardous waste facilities (Sec. 142(h))
13. High-speed intercity rail (Sec. 142(i))
14. Qualified enterprise zone facility bonds (Sec. 1394)
15. Qualified small issues (only category subject to cap but not eligible for carryforward) (Sec. 144(a))

# Types of Private Activity Bonds (Continued)

Bonds 1-15 are private activity bonds subject to the unified volume ceiling or cap and eligible for carryforward. Bond #15 is not eligible for carryforward. Bonds 16-20 are private activity bonds, each of which has its own separate cap—these bonds do not fall under volume ceiling.

16. Qualified public educational facilities bonds have their own volume cap and unused portions may be carried forward. The cap is the greater of \$10 times the state population or \$5 million. (Sec. 142(k))
17. Qualified zone academy bonds have their own separate cap. This volume cap is allocated among states based on their respective populations below the poverty level and is then allocated by each state to qualified zone academies within the state. (Sec. 54A)
18. Qualified highway or surface freight transfer facilities. Also has separate cap. (Sec. 142(m))
19. Clean energy renewable bonds are also subject to their own separate volume cap. (Sec. 54C)
20. There are other bonds, which are also subject to their own separate volume ceilings such as Gulf Opportunity Zone, qualified empowerment zone facility bonds, District of Columbia enterprise zone facility bonds, qualified green building and sustainable design projects, and New York Liberty Zone bonds.

# LIHTC Calculation Basics

- Step 1 – Only “eligible basis” of project qualifies, which is (1) cost of new construction and any rehabilitation (sticks, bricks, materials and labor) and (2) cost of acquisition of existing buildings; included is common space intended for tenants/amenities reasonably necessary for the project; excluded are land, site preparation, soft costs not project related (e.g., syndication costs), reserves, marketing and management.
- Step 2 – Eligible basis may be boosted by 30% if project is in (1) a HUD designated qualified census tract (QCT); (2) a HUD designated difficult development area (DDA) or small area difficult development areas (SADDA); or (3) an area that receives a CHFA basis boost for certain 9% LIHTC projects.
- Step 3 – The “applicable fraction” is the lesser of (a) LIHTC units as a percentage of total units (other units are “market rate”), or (b) low-income housing square footage as a percentage of total project square footage.
- Step 4 – Multiply eligible basis by the applicable fraction; the product is called “qualified basis.”
- Step 5 – Multiply qualified basis by the “applicable percentage:” 9% for 9% LIHTC projects (only 4% for acquisition cost of existing building) or 4% for 4% LIHTC projects; this is maximum amount of annual tax credits.

# LIHTC Calculation Basics

	9% LIHTC (conventional financing)	4% LIHTC (tax-exempt bonds)
<b>Total Development Cost</b>	<b>\$21,000,000</b>	<b>\$21,000,000</b>
<b>Less: Ineligible costs, including land, marketing, esc.</b>	<b>-\$1,000,000</b>	<b>-\$1,000,000</b>
<b>Eligible Basis (Total LIHTC Eligible Basis)</b>	<b>\$20,000,000</b>	<b>\$20,000,000</b>
<b>Basis Boost QCT/DDA/SADDA</b>	<b>x 130%</b>	<b>--</b>
<b>Eligible Basis (adjusted)</b>	<b>\$26,000,000</b>	<b>\$20,000,000</b>
<b>Applicable Fraction (% of LIHTC Units)</b>	<b>x 100%</b>	<b>x 40%</b>
<b>Qualified Basis</b>	<b>\$26,000,000</b>	<b>\$8,000,000</b>
<b>Applicable Percentage (4% for acquisition of building)</b>	<b>x 9%</b>	<b>x 4%</b>
<b>Annual Credit</b>	<b>\$2,340,000</b>	<b>\$320,000</b>
<b>Total Credit (Annual Credit x 10)</b>	<b>\$23,400,000</b>	<b>\$3,200,000</b>



# Project Costs/Sources of Funds

- Project – New Construction, 4% LIHTC, Using Previous Example

## Project Costs

Eligible Basis (construction)	\$20,000,000
Land and site improvement	500,000
Other ineligible costs (reserves, tax credit syndication, etc.)	<u>500,000</u>
Total Costs	\$21,000,000

## Sources of Funds

Tax-Exempt Bonds (PAB) (must be at least 50% of aggregate basis)	\$10,920,000
LIHTC Sale (\$3,200,000 x 99.99%)	3,199,680
Taxable Loan	4,680,320
Subordinate loans/soft loans	2,000,000
Deferred Developer Fee	<u>200,000</u>
Total Costs	\$21,000,000

# Ongoing Compliance Tax Regulatory Agreement

- Qualified Project Period:
  - **Start:** “First day on which 10% of the dwelling units in the Property are first occupied
  - **End:** The latest of (a) the date which is 15 years after the date on which 50% of the dwelling units in the Property are first occupied; (b) the first date on which no tax-exempt private activity bond issued with respect to the Property is outstanding; or (c) the date on which any assistance provided with respect to the Property under Section 8 of the Housing Act terminates”
- Borrower covenants to restrict the Property by income for the Qualified Project Period, known as “low-income set-asides” or “set-asides” (20% of tenants at 50% area median income or 40% of tenants at 60% of area median income
  - 20% of tenants at 50% area median income (20/50); or
  - 40% of tenants at 60% of area median income (40/60)
- The “Compliance Period” for maintaining low-income set-asides is 15 years, during which the IRS has enforcement powers
  - If a Project falls out of compliance, all or a portion of the credit may be recaptured
  - An Issuer may choose to extend this period

# Ongoing Compliance Tax Credit Regulatory Agreement or Land Use Restriction Agreement

- “Extended Use Period” of an additional 15 years (or more), during which the Colorado Housing and Finance Authority (CHFA) has enforcement powers
  - Extended Use period terminates upon foreclosure or State’s inability to find buyer willing to present a “qualified contract” to purchase the Property and maintain low-income and rent restrictions.
- Must be entered into to qualify for Low Income Housing Tax Credits (LIHTCs)



## Amendments/ Reissuance

- Significant modifications, including change in interest rate, change in obligor, change in weighted average maturity may require a reissuance of the Bonds
- Reissuance would require a new 8038 and tax review
- Reissuance could impact bondholder's tax-exemption and 50% test

Source: Treas. Reg. Section 1.1001-3



# Bond Proceeds Are Not Enough Most Multifamily Transactions; Use One or More of the Following Subordinate Financing

- HOME Funds
- State and Local Affordable Housing Loans
- Seller Take-Back Financing
- Equity
- Deferred Fees
- CDBG Funds
- State Tax Credits
- Opportunity Zone Investments

# PAB Advocacy

- IDBs
  - Expand the definition of manufacturing to include both tangible and intangible production
  - Eliminate the restrictions on “Functionally Related and Subordinate Facilities”
  - Increase the maximum bond size limitation from \$10 million to \$30 million and increase the capital expenditure limitation from \$20 million to \$40 million
  - Establish a mechanism for unused PAB cap to be redistributed to states that have used up their PAB cap
- Housing
  - Increase the Cap on Private Activity Bonds
  - Enhance Low Income Housing Tax Credits (Affordable Housing Credit Improvement Act of 2019 S.1703 and H.R. 3077)
  - Protect HFA Down Payment Assistance Programs
  - Restore and Increase HUD Funding

# Questions or Comments?

## **Contact:**

John Bales

Fred Marienthal

Kutak Rock LLP

Suite 3000

1801 California Street

Denver, CO 80202

Telephone: (303) 297-2400

[John.Bales@KutakRock.com](mailto:John.Bales@KutakRock.com)

4847-7831-3370

# Sherman & Howard

ROLE OF BOND COUNSEL  
&  
BOND ISSUANCE PROCESS

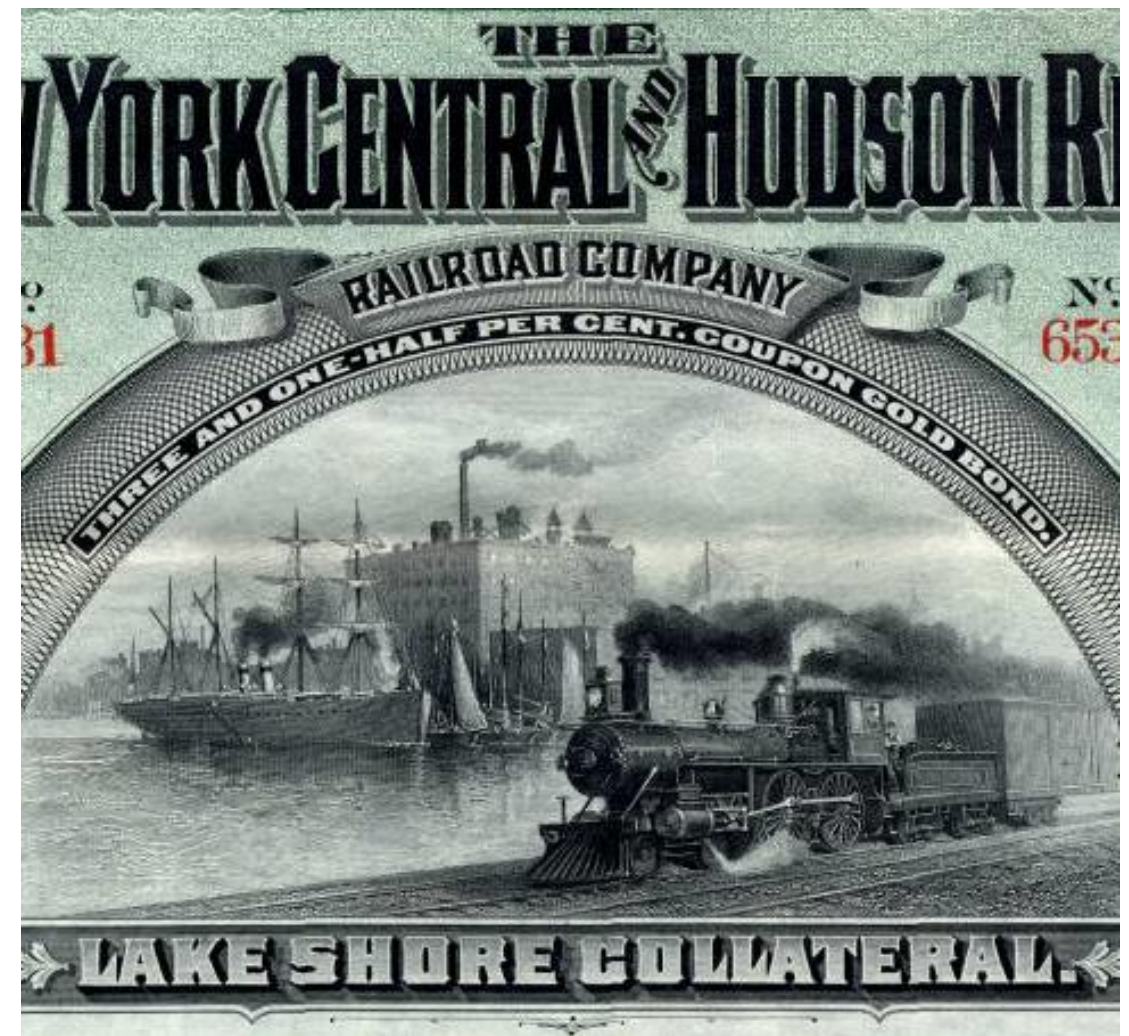
CHFA REACH BONDS 101  
MAY 2, 2024



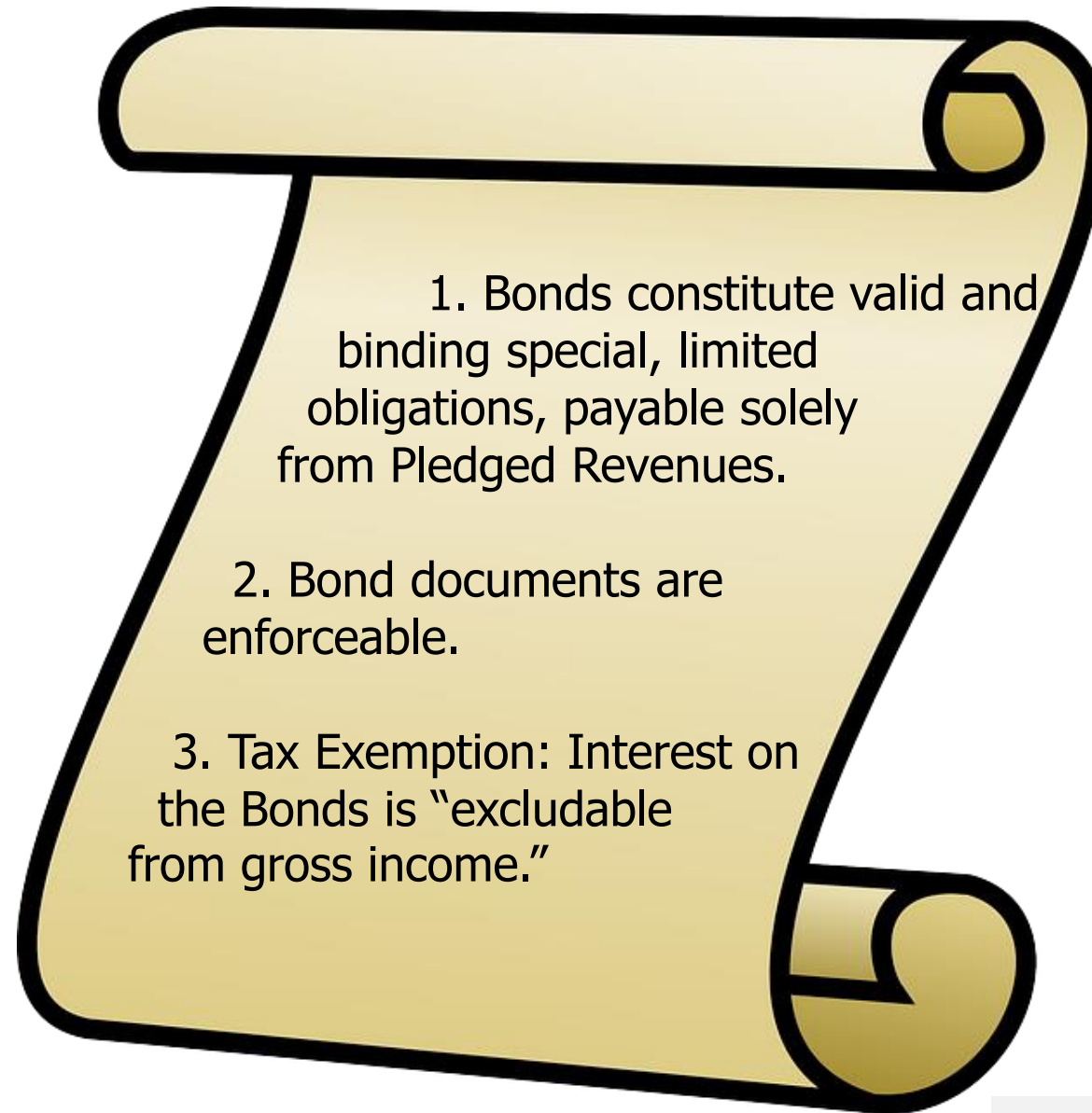


## Role of Bond Counsel

- ▶ Historical beginnings of bond counsel: “railroad-aid bonds”
- ▶ Market demanded expertise!
- ▶ Approving Opinion required from a Red Book law firm



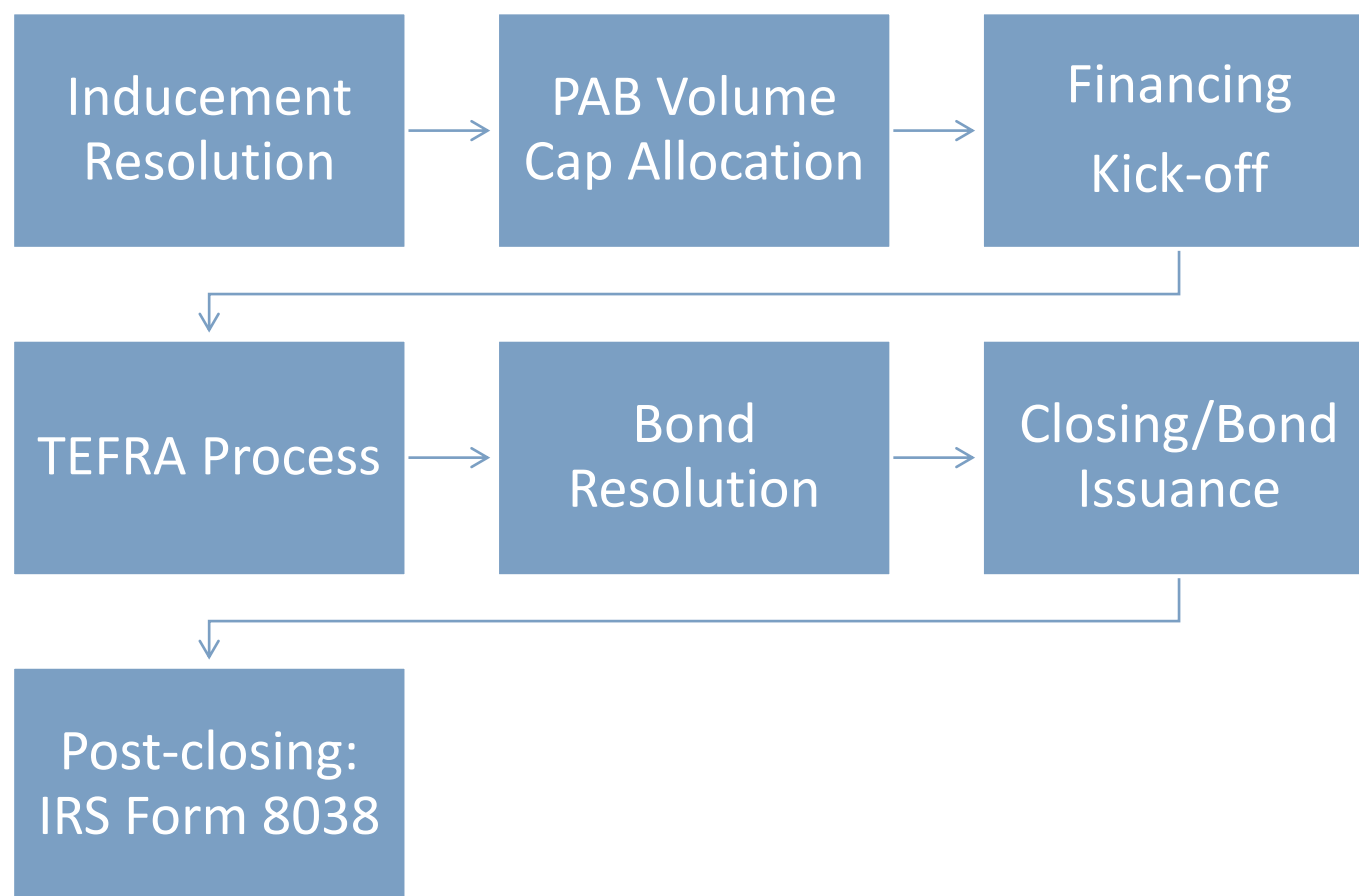
# Bond Opinion



# Bond Counsel in LIHTC Deals

- ▼ Tax-Exempt Bonds
  - ❖ Section 103 of the Tax Code
  - ❖ Bonds = Debt obligation of a “state or other political subdivision”
  - ❖ Conduit Revenue Bonds
- ▼ Governmental Bonds –vs– Private Activity Bonds
- ▼ Section 142(d): Qualified Residential Rental Projects
  - ❖ Set-asides (40/60)
  - ❖ 95/5 Rule – Good costs/bad costs
- ▼ Section 42: Tax Credits and the 50% Test

# Timeline of Bond Issuance Process





# Timeline of Bond Issuance Process



Inducement  
Resolution

PAB  
Cap A

TEFRA Process

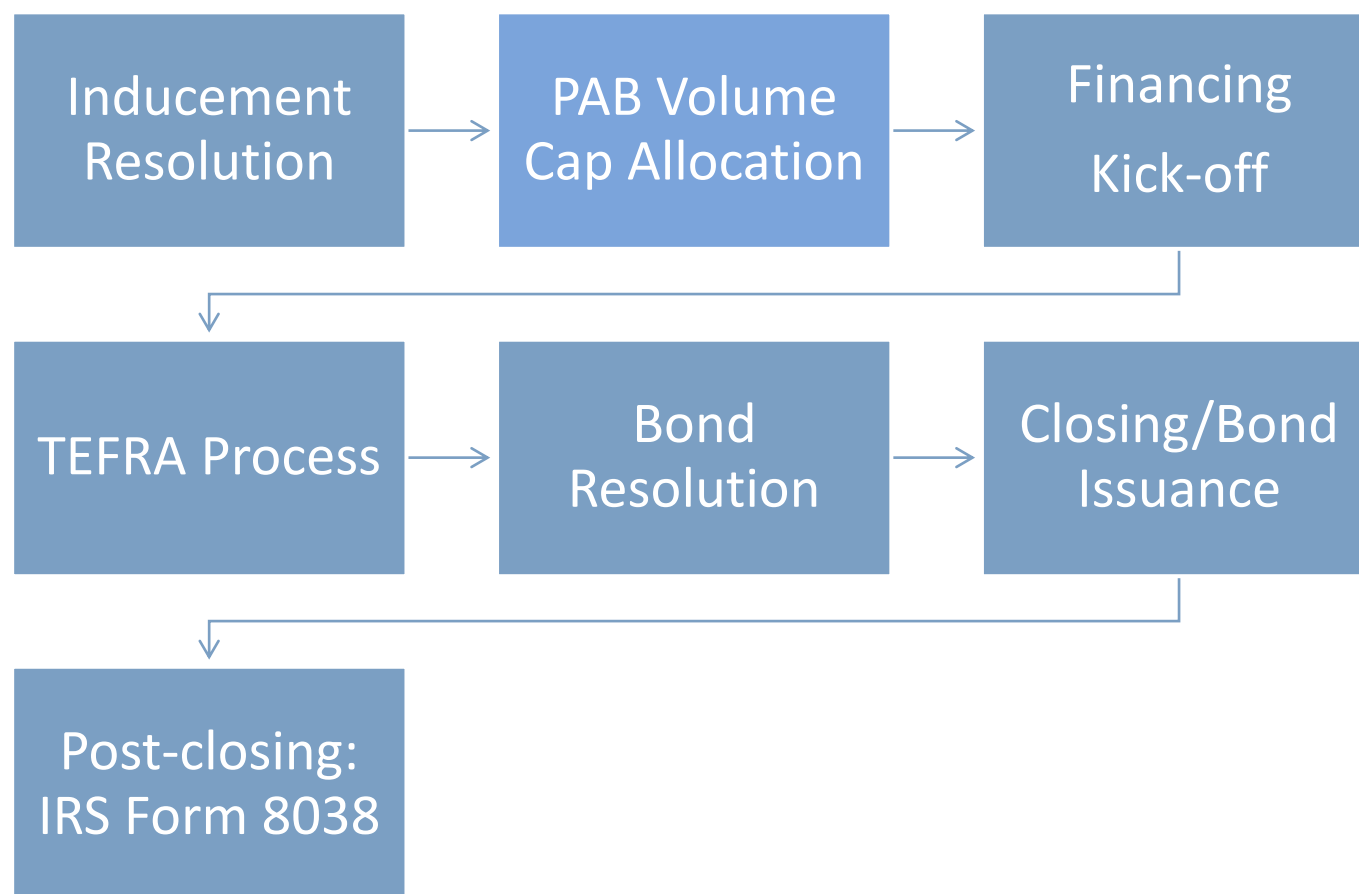
E  
Res

# Inducement Resolution

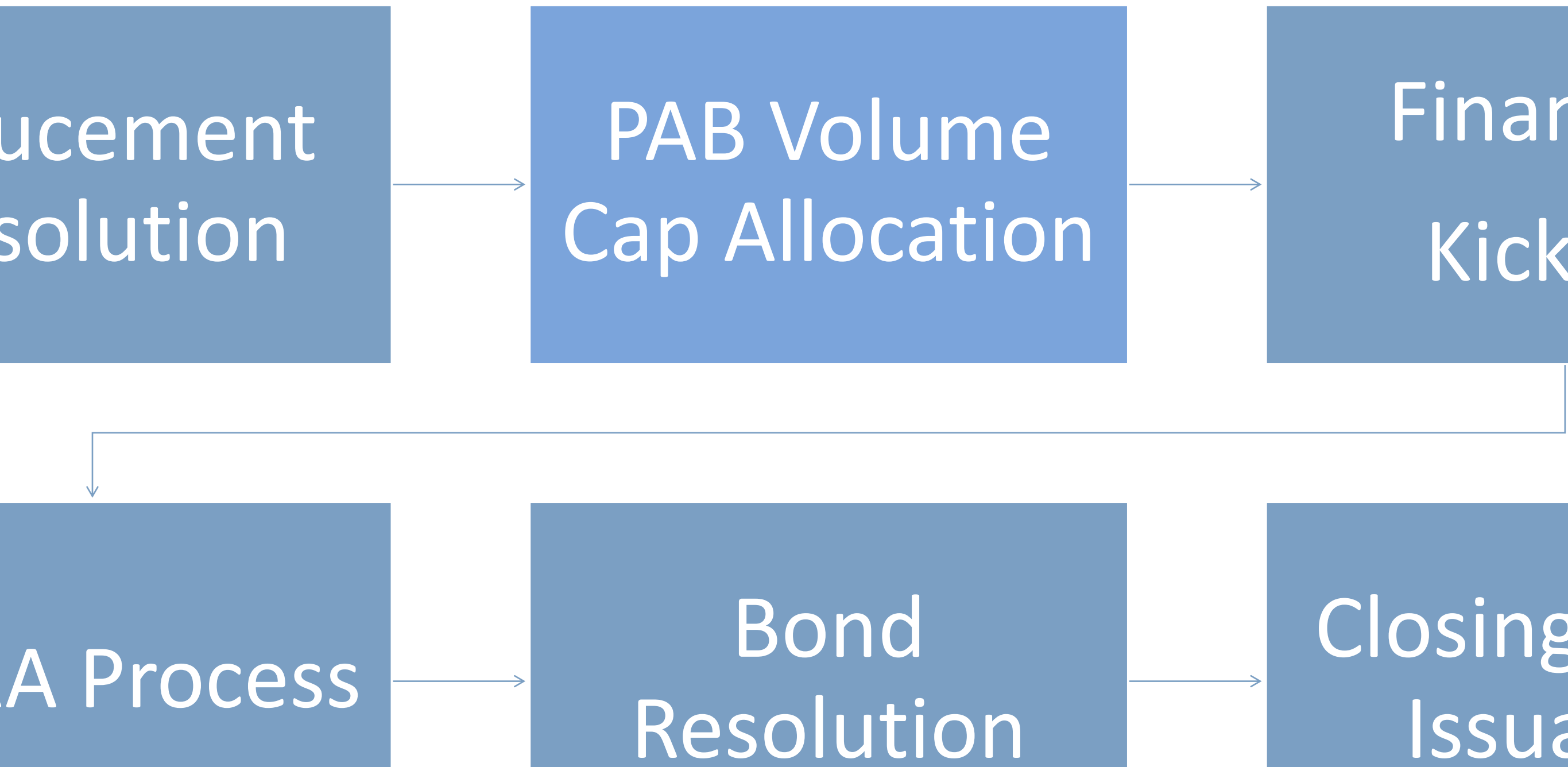
- ▶ Tax Reason: Declares “official intent” to issue bonds pursuant to Treasury Regulations § 1.150-2
  - ❖ Starts the clock for reimbursement
- ▶ State Law Reason: Required by the State for Volume Cap
  - ❖ Statewide Balance Applications
  - ❖ Carryforward Volume Cap
- ▶ CHFA Process: Loan Committee; upon request of Borrower
- ▶ Issuer has NO obligation to issue bonds at this stage...



# Timeline of Bond Issuance Process



# Timeline of Bond Issuance Process

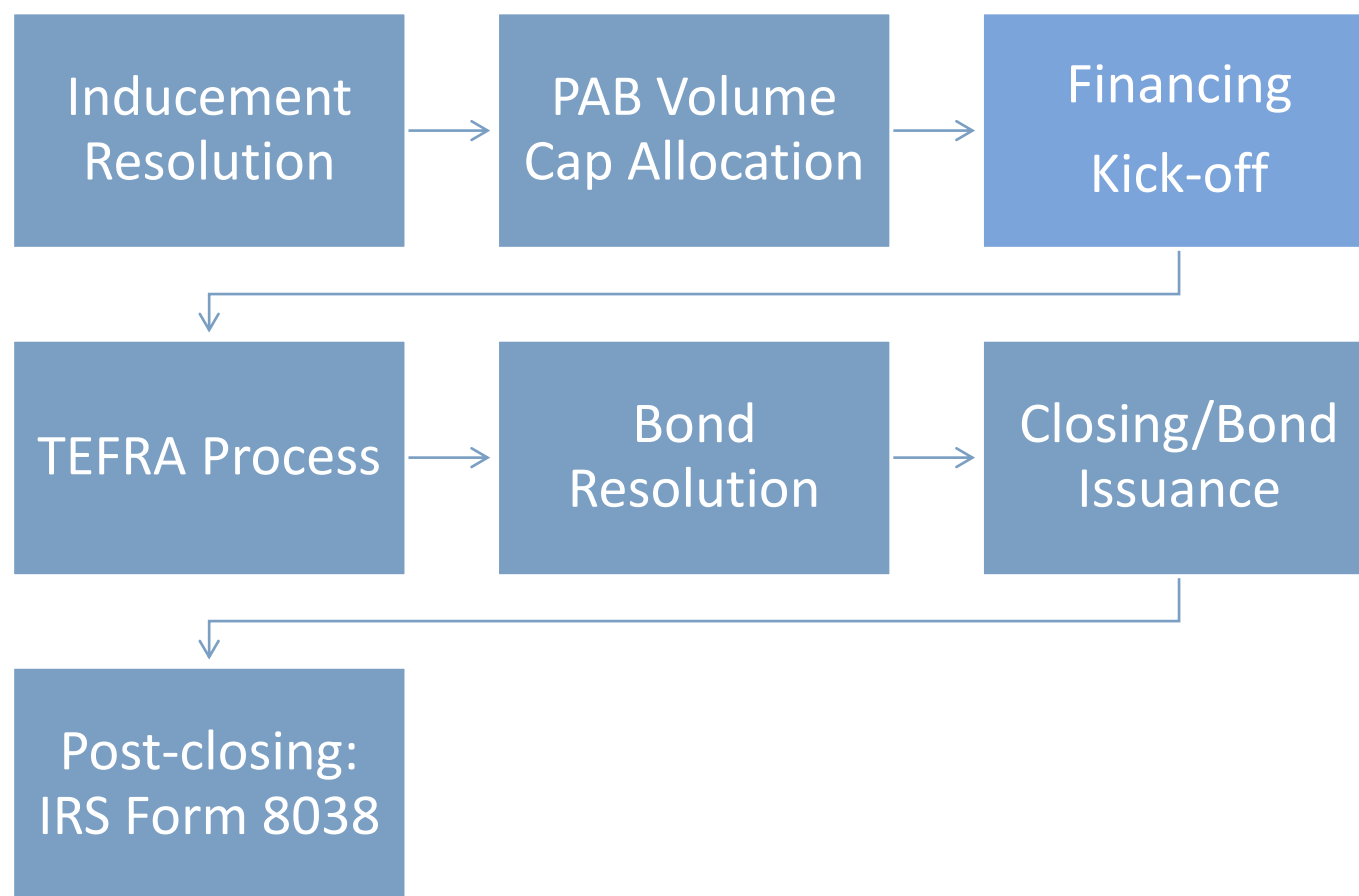




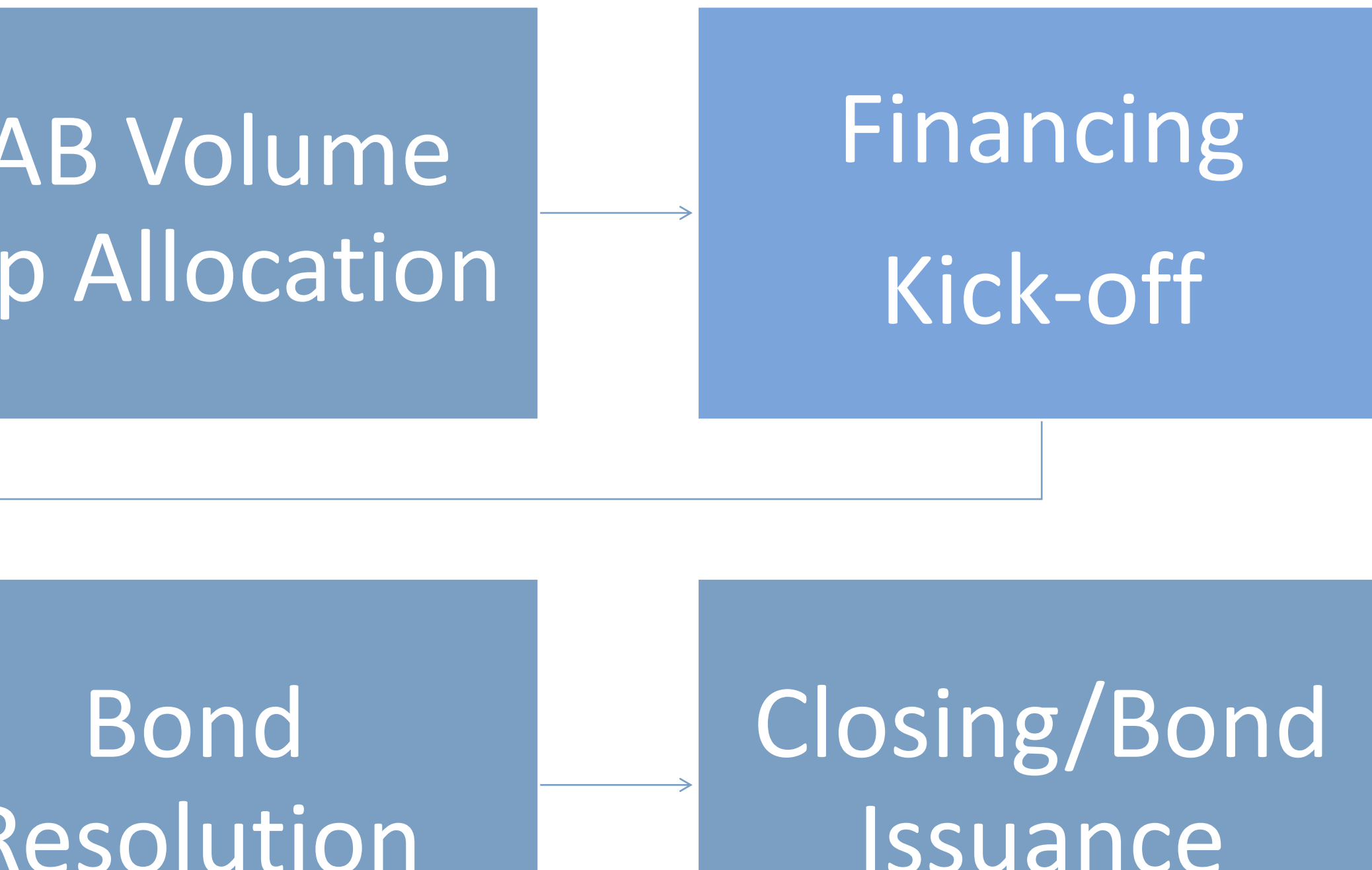
# PAB Volume Cap

- ▶ Colorado Private Activity Bond Ceiling Allocation Act
- ▶ Assignments –vs– Delegations
- ▶ DOLA: Notification of Carryforward
  - ❖ Requires Inducement Resolution, Diligence Cert & Bond Opinion
  - ❖ When: September 15
- ▶ IRS Form 8328: Carryforward Election of Unused Private Activity Bond Volume Cap
  - ❖ When: due earlier of (1) Feb. 15 of following year, or (2) closing

# Timeline of Bond Issuance Process



## Timeline of Bond Issuance Process



Resolution

Cap Allo

## Timeline of Bond Issuance Process

TEFRA Process

Bo  
Resol

Post-closing:  
IRS Form 8038





# TEFRA Process



## Notice

- “Reasonable public notice”
- At least 7 days advanced published notice
- Methods: Newspaper publication; radio or television; governmental unit’s website (new); or state law notice



## Hearing

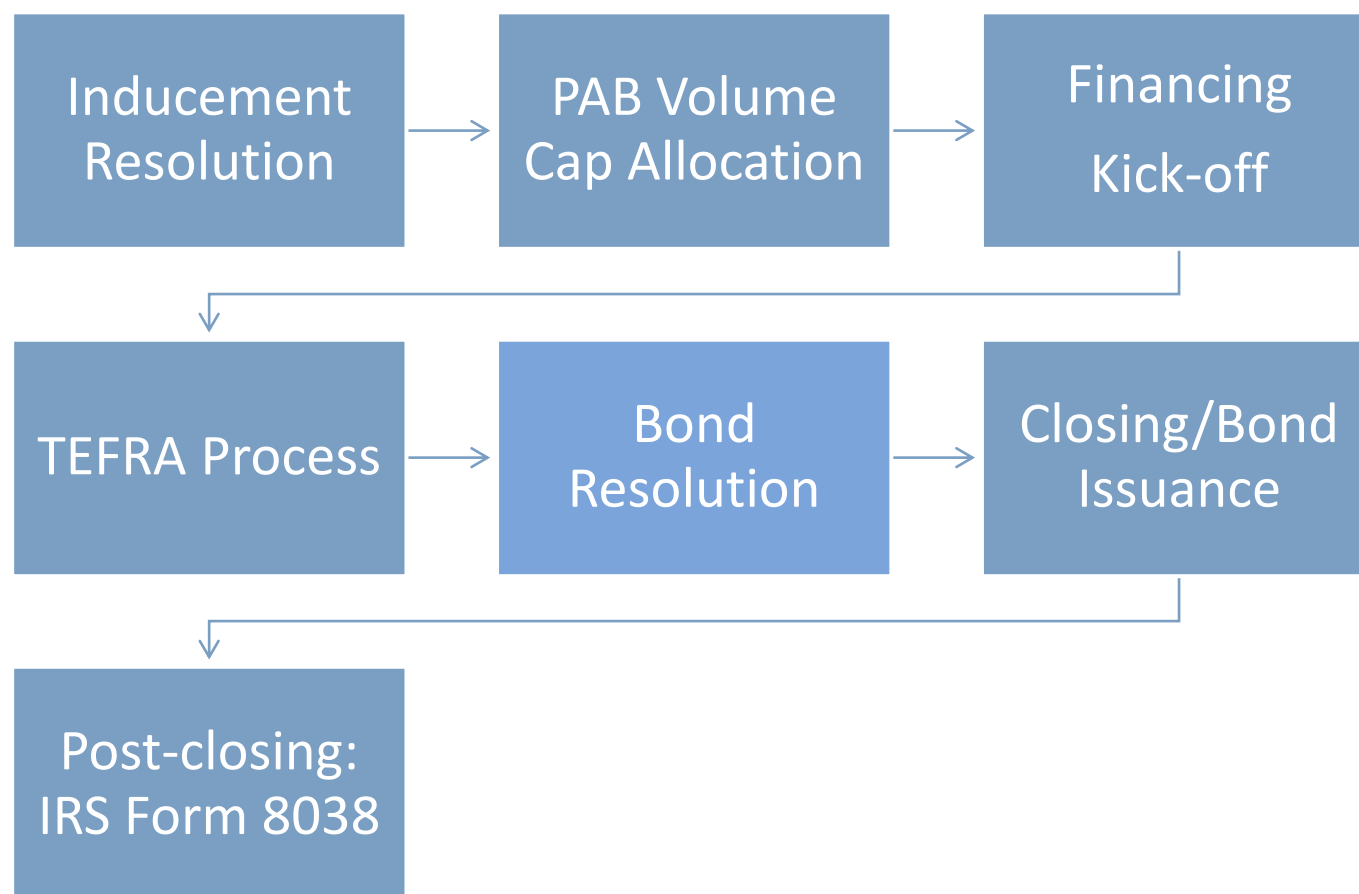
- Forum for public to express views, oral or written
- 1-800 number – Rev. Proc. 2022-20



## Approval

- “Applicable Elected Representative”
  - \* If CHFA → State of Colorado (Governor or designee = Treasurer)
  - \* If local issuer → Mayor or City Council
- Approval is good for one year

# Timeline of Bond Issuance Process



Placement  
Resolution

FXB Volume  
Cap Allocation

Kid

### Timeline of Bond Issuance Process

ERA Process

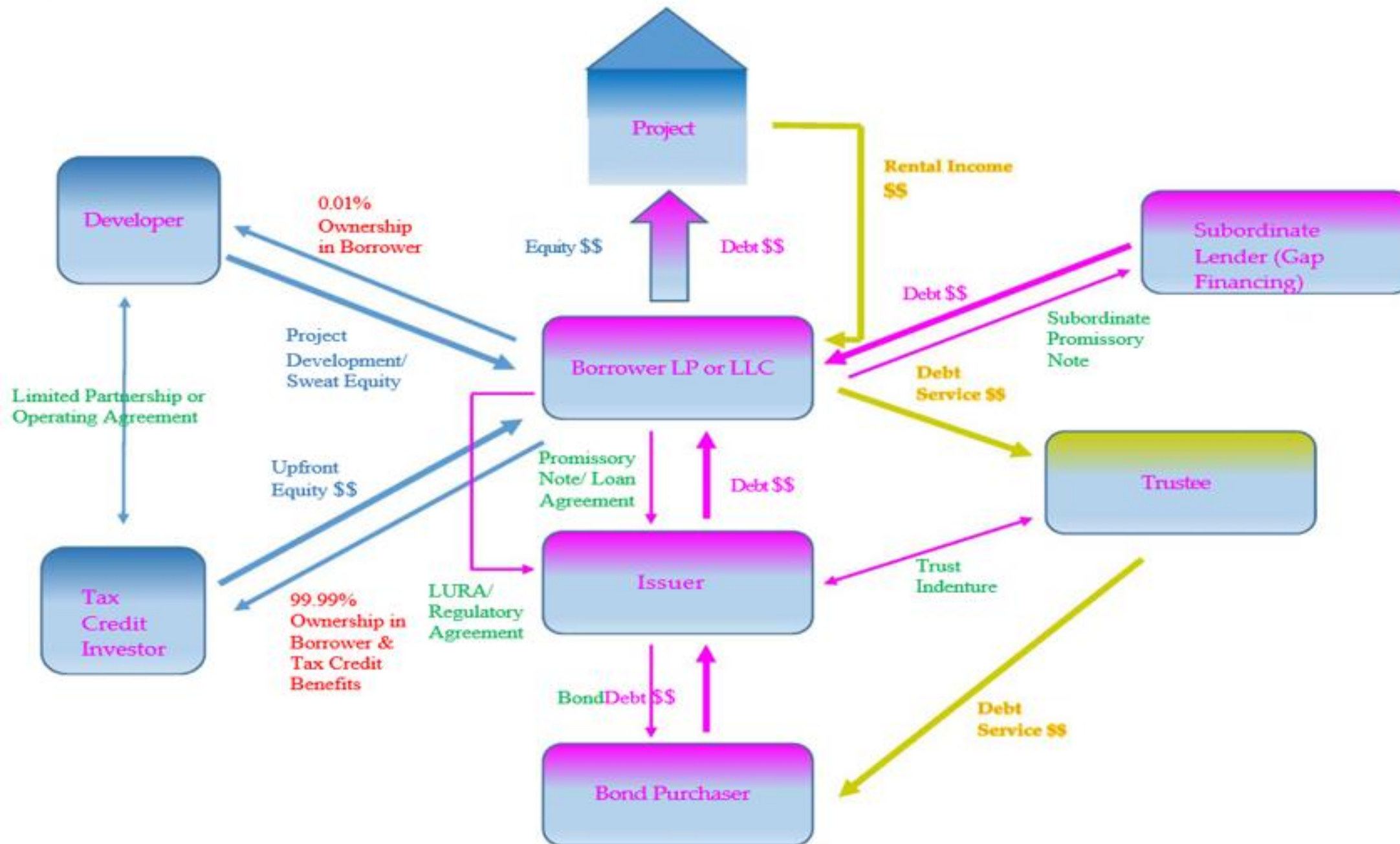
Bond  
Resolution

Closing  
Issu

Post-closing:  
Form 8038

# Negotiating the Deal

## Basic Private Placement 142(d) with LIHTC Transaction

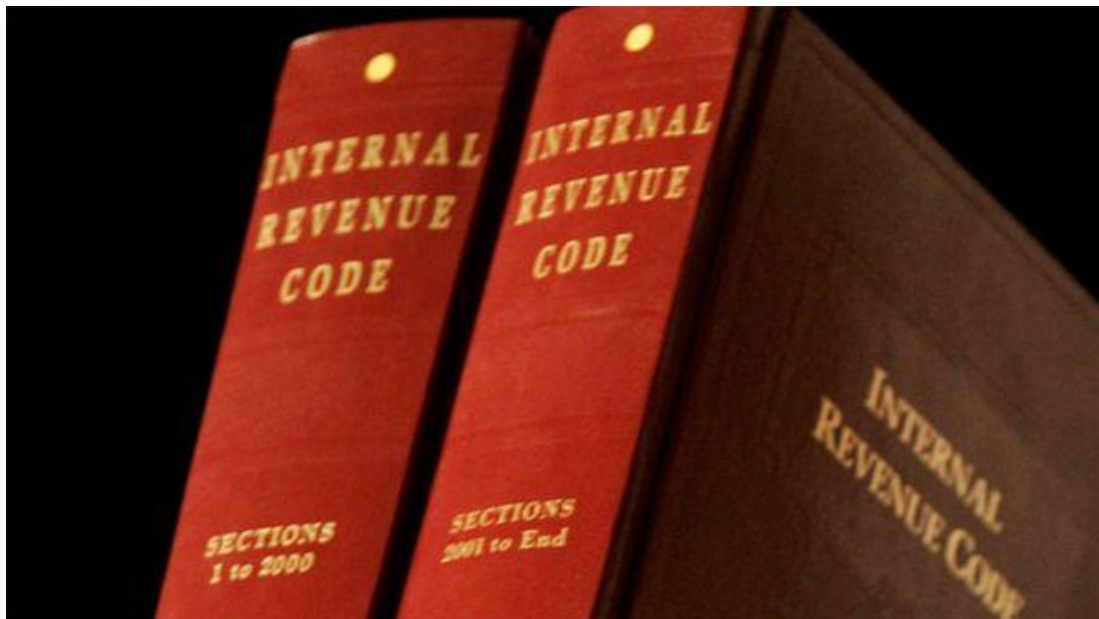




# Nonliability of the Issuer

- ▼ Special, Limited Obligations of the Authority
  - ❖ Payable solely from Rents and other Revenues of the Borrower
  - ❖ Not a debt or multiple-fiscal year obligation of the Authority, the City or the State
  - ❖ CHFA does not have taxing power
  - ❖ No personal liability of CHFA Directors or Agents
- ▼ Borrower agrees to Reimburse, Defend and Indemnify the Authority

# Tax Matters

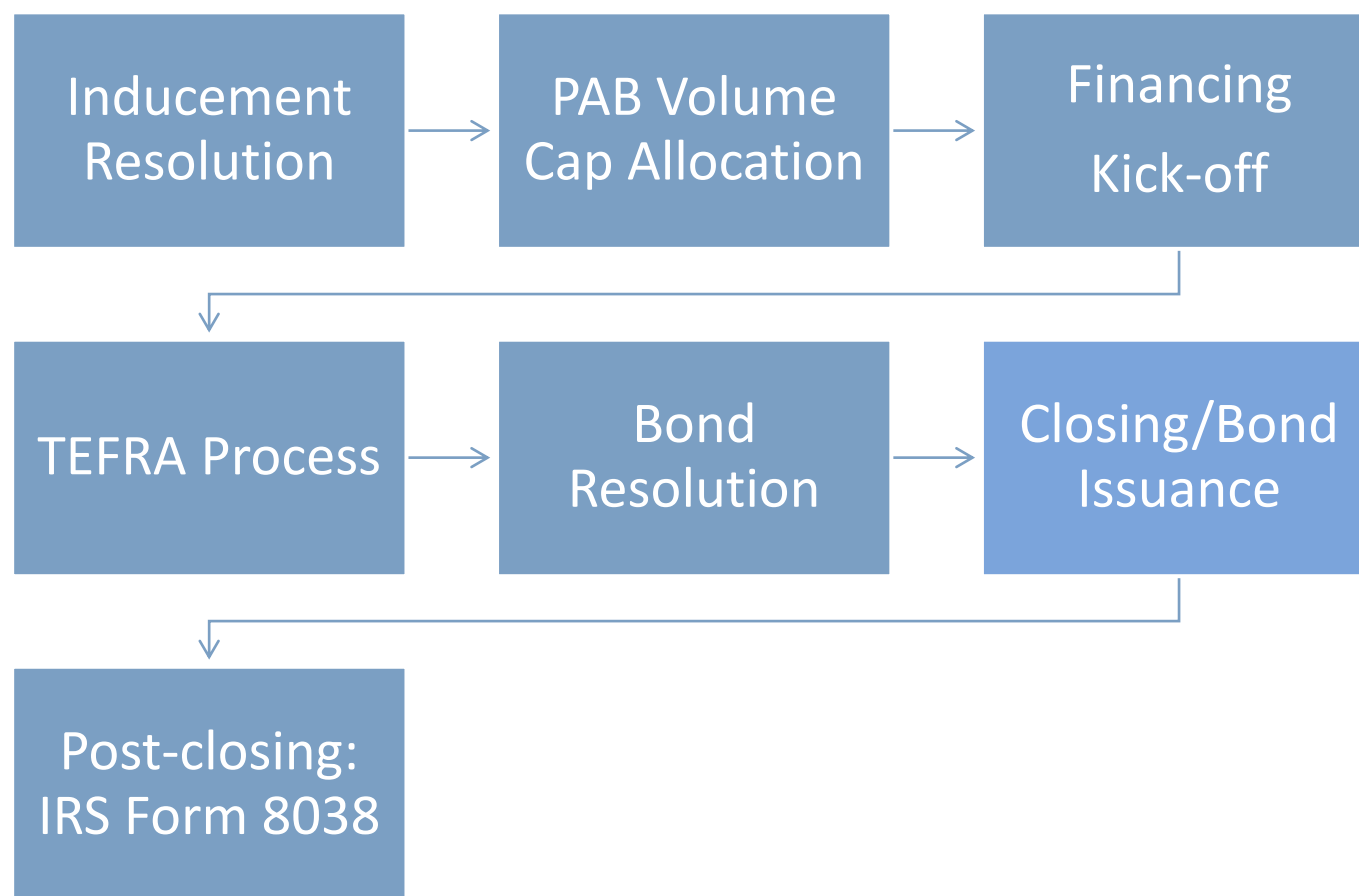


- ▼ 95/5 Test
- ▼ 2% Limitation on COI
- ▼ Rehab Requirement
- ▼ Substantial User
- ▼ TEFRA
- ▼ Volume Cap

# Issuer Board: Bond Resolution

- ▶ Approves issuance of Bonds/Notes/Obligations
- ▶ Parameters Resolution - Supplemental Public Securities Act (C.R.S. Section 11-57-201, et. seq.)
  - ❖ Maximum principal amount
  - ❖ Maximum interest rate
  - ❖ Not-to exceed maturity date
- ▶ “Substantially Final” Bond Documents
- ▶ Statutory findings for income limits/Housing Facilities

# Timeline of Bond Issuance Process





AD Volume  
ap Allocation



Kick-off

Timeline of Bond Issuance Process

Bond  
Resolution



Closing/Bond  
Issuance

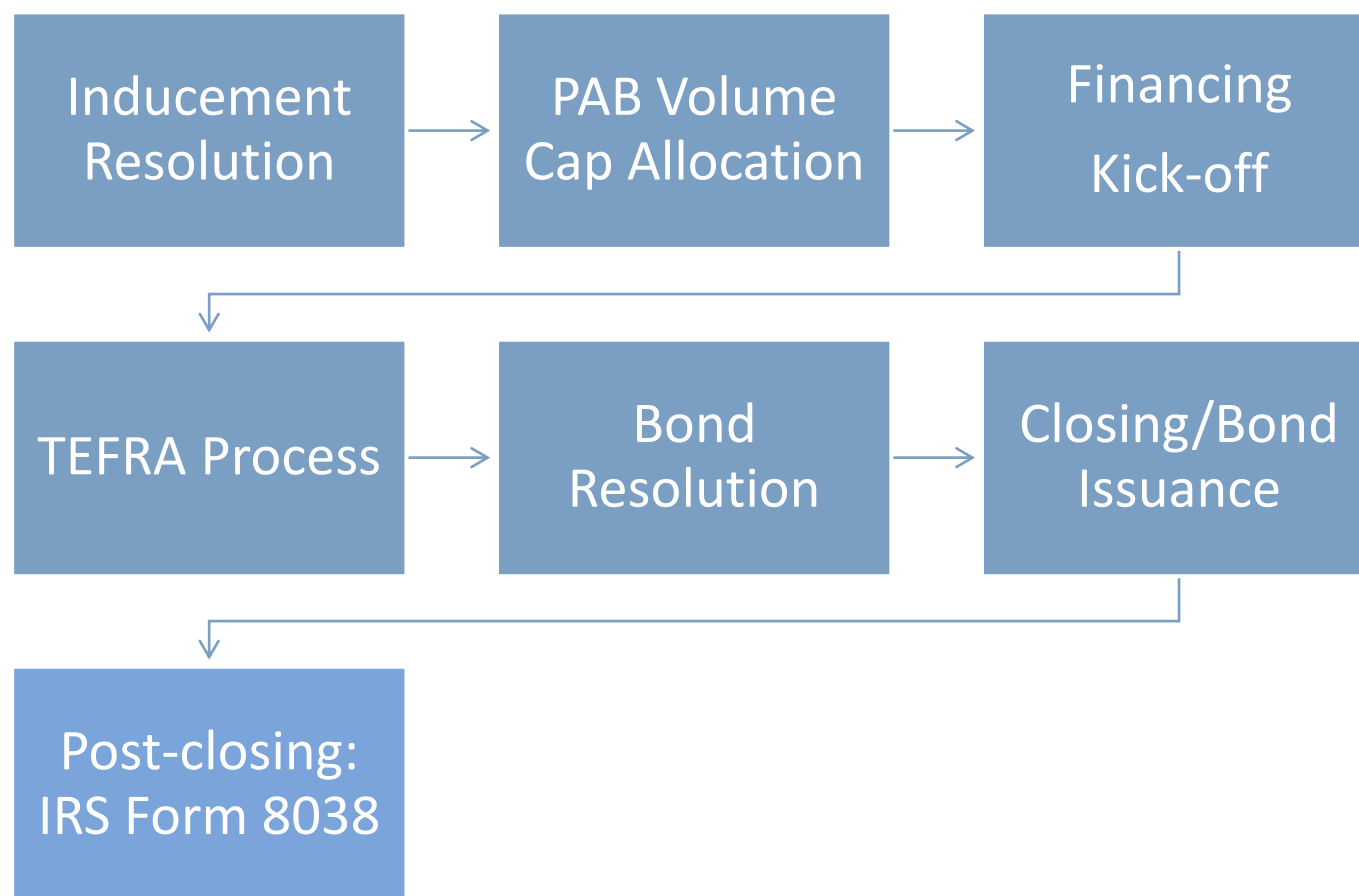


# Closing/Bond Issuance

- ▼ All parties agree:
  - ❖ Borrower
  - ❖ Equity Investor
  - ❖ Debt/Lender
  - ❖ Issuer/Bond Counsel
- ▼ Funding: at least \$50,001
- ▼ Release of Opinions
- ▼ Recording of Documents
  - ❖ Regulatory Agreement



# Timeline of Bond Issuance Process



TEFRA Process

Resolu

## Timeline of Bond Issuance Process

Post-closing:  
IRS Form 8038



# Post-Closing Requirements ...

**Form 8038** Information Return for Tax-Exempt Private Activity Bond Issues  
 (Rev. September 2018) (Under Internal Revenue Code section 149(e)) OMB No. 1545-0720  
 Department of the Treasury See separate instructions.  
 Internal Revenue Service Go to [www.irs.gov/Form8038](http://www.irs.gov/Form8038) for instructions and the latest information.

**Part I Reporting Authority** Check if Amended Return

<b>1</b> Issuer's name		<b>2</b> Issuer's employer identification number	
<b>3a</b> Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		<b>3b</b> Telephone number of other person shown on 3a	
<b>4</b> Number and street (or P.O. box if mail is not delivered to street address)	Room/suite	<b>5</b> Report number (For IRS Use Only) 1 <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
<b>6</b> City, town, or post office, state, and ZIP code		<b>7</b> Date of issue (MM/DD/YYYY)	
<b>8</b> Name of issue		<b>9</b> CUSIP number	
<b>10a</b> Name and title of officer or other employee of the issuer whom the IRS may call for more information		<b>10b</b> Telephone number of officer or other employee shown on 10a	

**Part II Type of Issue** (Enter the issue price.)

Type of Issue	Issue Price
<b>11</b> Exempt facility bond:	
<b>a</b> Airport (sections 142(a)(1) and 142(c))	<b>11a</b>
<b>b</b> Docks and wharves (sections 142(a)(2) and 142(c))	<b>11b</b>
<b>c</b> Water furnishing facilities (sections 142(a)(4) and 142(e))	<b>11c</b>
<b>d</b> Sewage facilities (section 142(a)(5))	<b>11d</b>
<b>e</b> Solid waste disposal facilities (section 142(a)(6))	<b>11e</b>
<b>f</b> Qualified residential rental projects (sections 142(a)(7) and 142(d)) (see instructions)	<b>11f</b>
Meeting 20-50 test (section 142(d)(1)(A))	<input type="checkbox"/>
Meeting 40-60 test (section 142(d)(1)(B))	<input checked="" type="checkbox"/>
Meeting 25-60 test (NYC only) (section 142(d)(6))	<input type="checkbox"/>
Has an election been made for deep rent skewing (section 142(d)(4)(B))?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

## Information Reporting

- ❖ IRS Form 8038

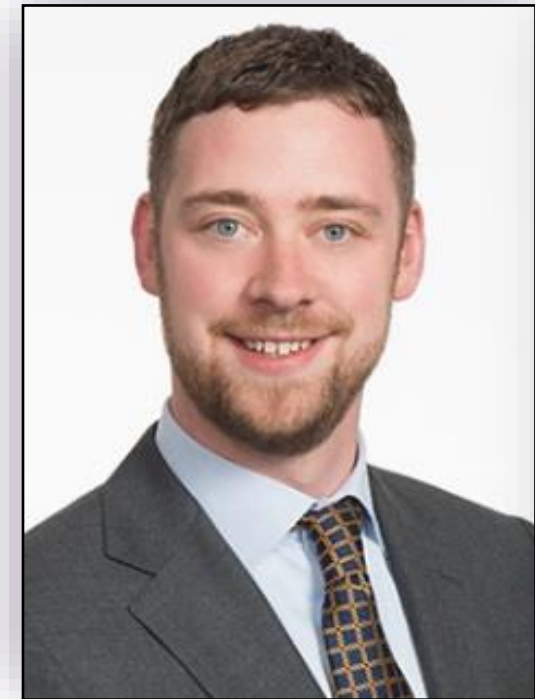
- ❖ DOLA Notification

## Be on the lookout:

- ❖ Significant Modifications / Reissuance

- ❖ IRS Audits





Cory Kalanick  
Member, Denver  
(303) 299-8373  
ckalanick@sah.com



Parker Schenken  
Member, Denver



Sydnee Beam  
Associate, Denver



Alejandro Armelles Bello  
Associate, Denver



Jessie Salas  
Associate, Denver



**QUESTIONS?**