

# *Private Activity Bonds Use it or Lose It Webinar*

CHFA PAB Webinar  
July 18, 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

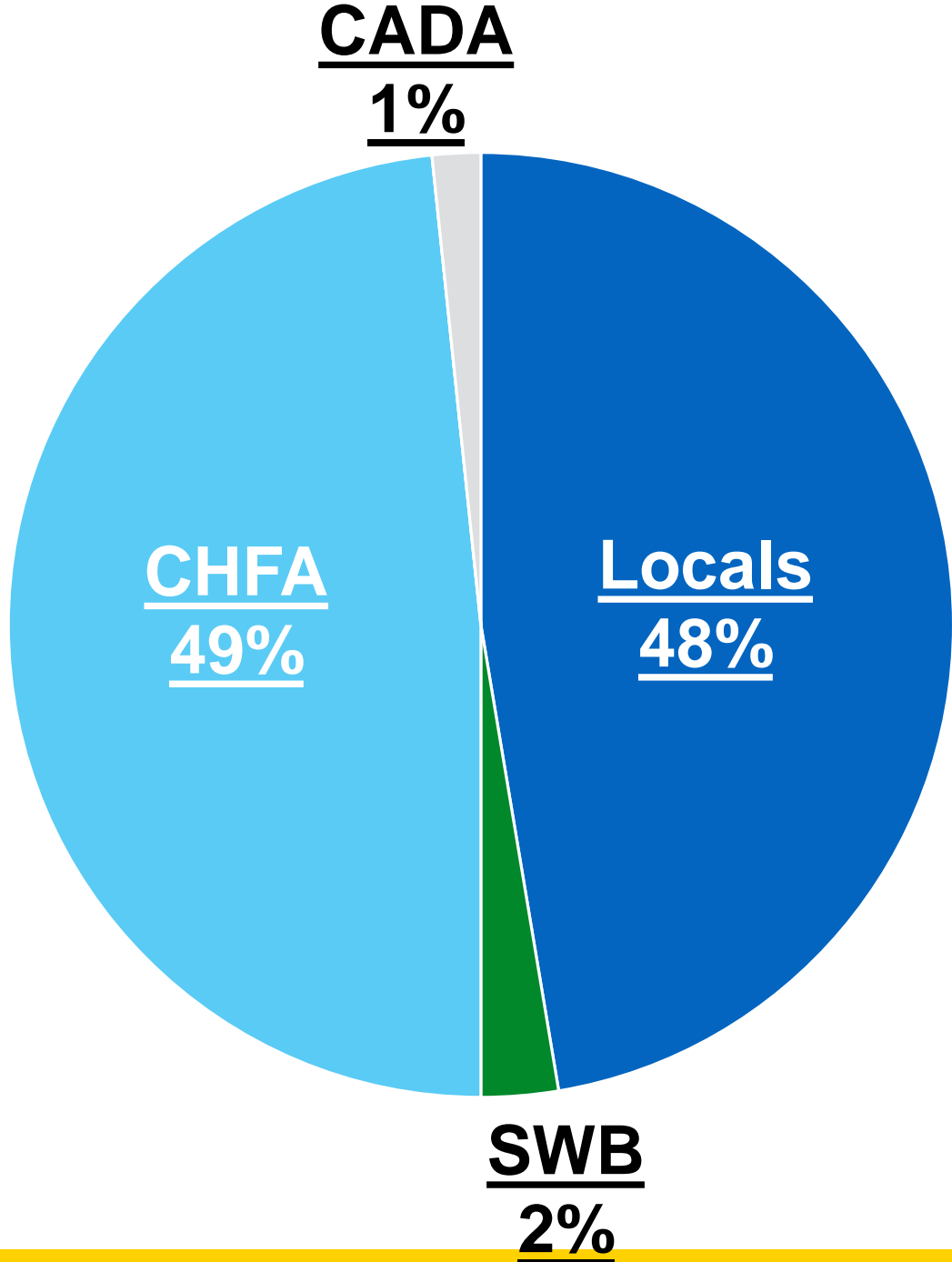
**Local Governments**

- 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

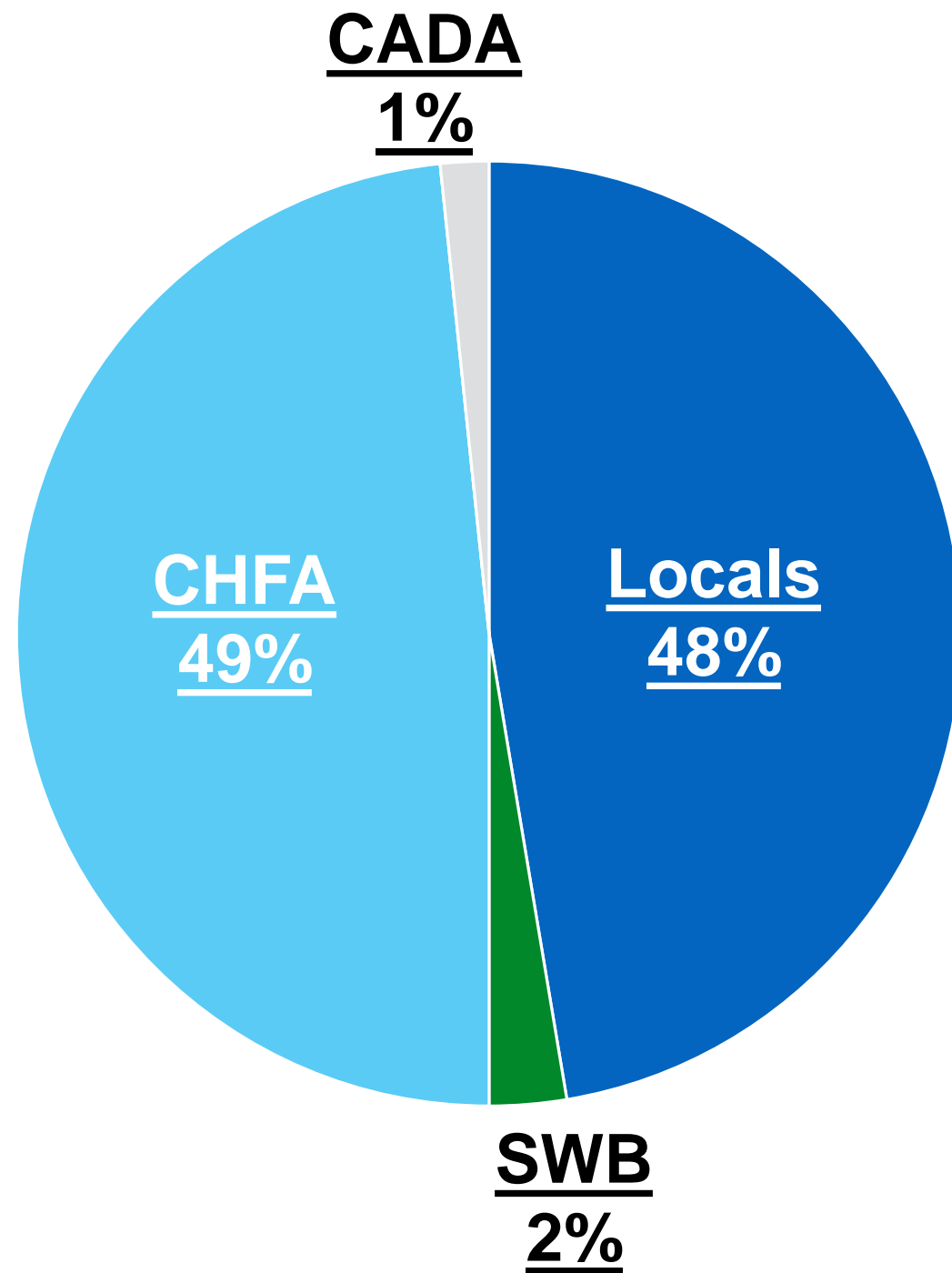


# *Local Issuers & Statewide Authorities*

- 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

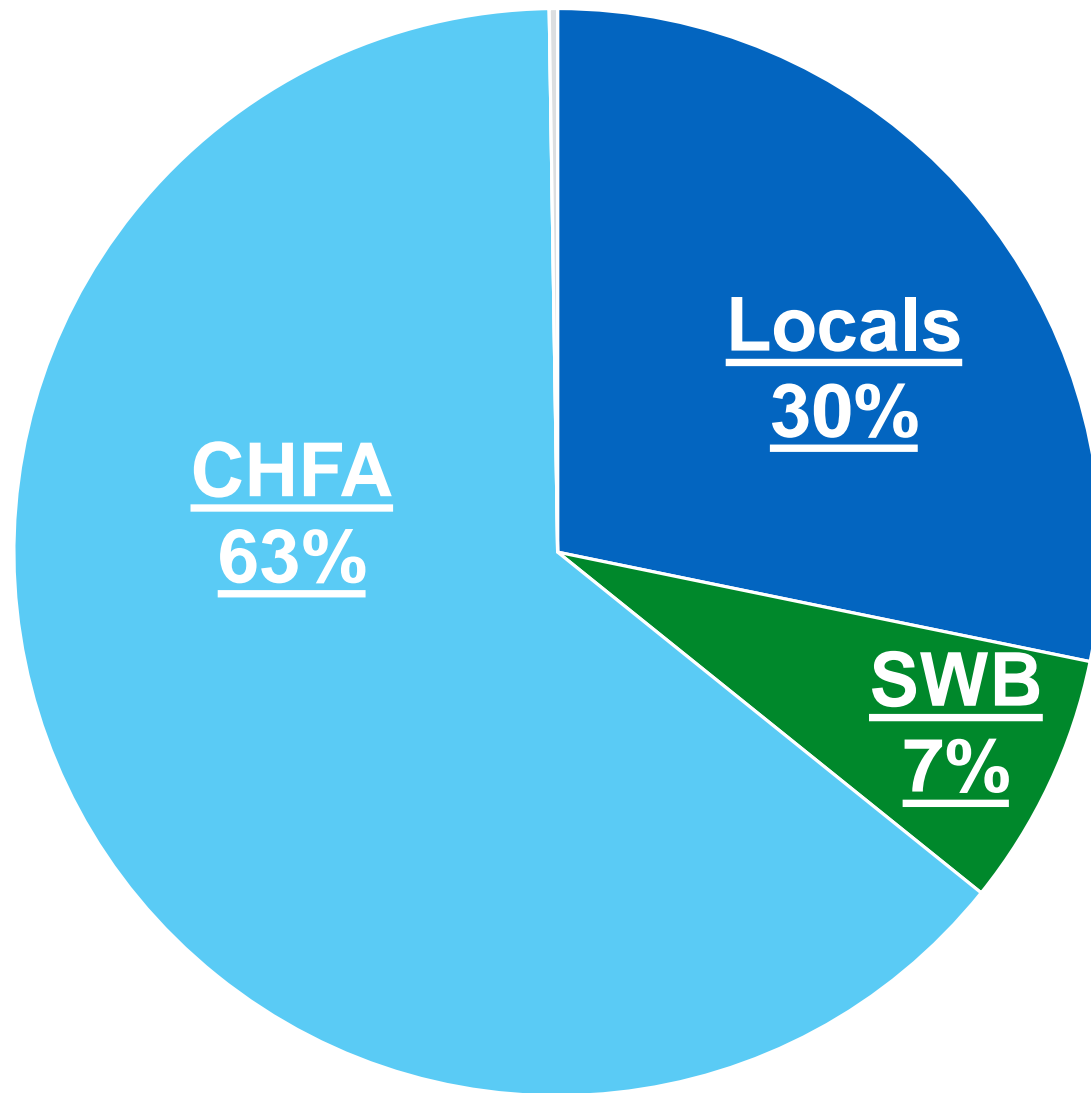
CHFA - \$345,395,560

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





# **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, 2024, June 1, 2024, and November 1, 2024.
  - 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)
- **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 / Glenn Park Village	\$1,800,000	\$1,800,000
12/2023	Boulder County Housing Partners / Penrose Place	\$12,000,000	\$12,000,000
12/2023	Douglas County Housing Partners / The Sophia	\$2,500,000	\$2,500,000
12/2023	City of Grand Junction / Pipeline	\$4,031,651	\$4,031,651
12/2023	Colorado Agricultural Development Authority / Pipeline	\$616,000	\$616,000
12/2023	The Arvada Housing Authority / Marshall Pointe	\$5,000,000	\$5,000,000
12/2023	City and County of Denver HOST / 4995 Washington St.	\$10,000,000	\$10,000,000
12/2023	Excess SWB Cap to CHFA / Pipeline	\$8,408,326	\$8,408,326
<b>2023 Totals</b>		<b>\$44,355,977</b>	<b>\$44,355,977</b>
04/2024	Eagle County Housing Development Authority / Eagle Villas	\$13,200,000	\$13,200,000
<b>2024 Totals</b>		<b>\$13,200,000</b>	<b>\$13,200,000</b>





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<https://www.colorado.gov/pacific/dola/division-housing>



**COLORADO**  
Department of Local Affairs



# CHFA and Private Activity Bonds 2024

July 18, 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

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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

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- CHFA uses its PAB volume cap to support its 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

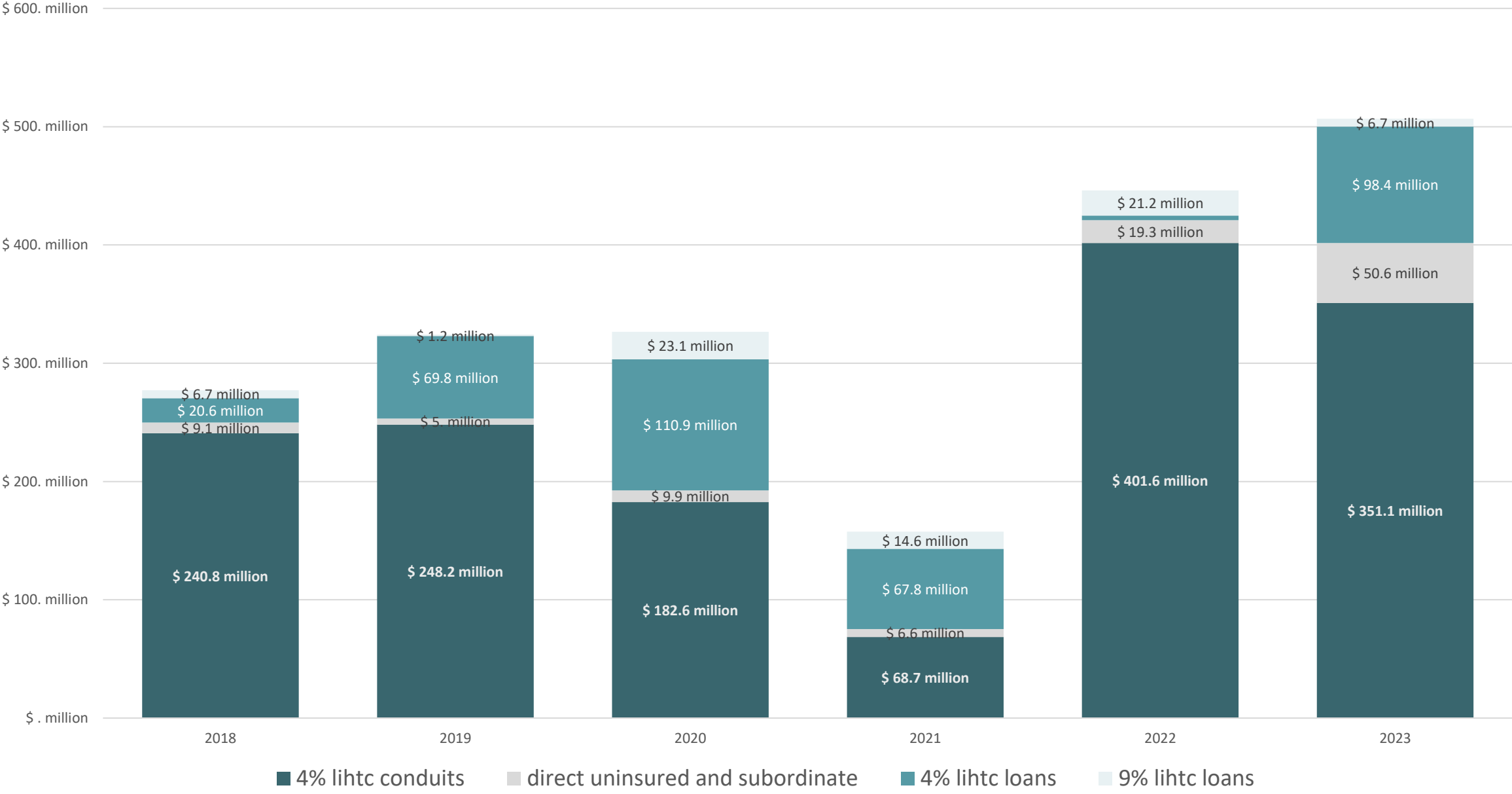
State Allocation	\$ 362,350,625
Assignments	\$ 79,820,421
Unassigned from prior support	\$ 19,000,000
Business current year unused	\$ 15,000,000
	<hr/>
	\$ 476,171,046

Uses

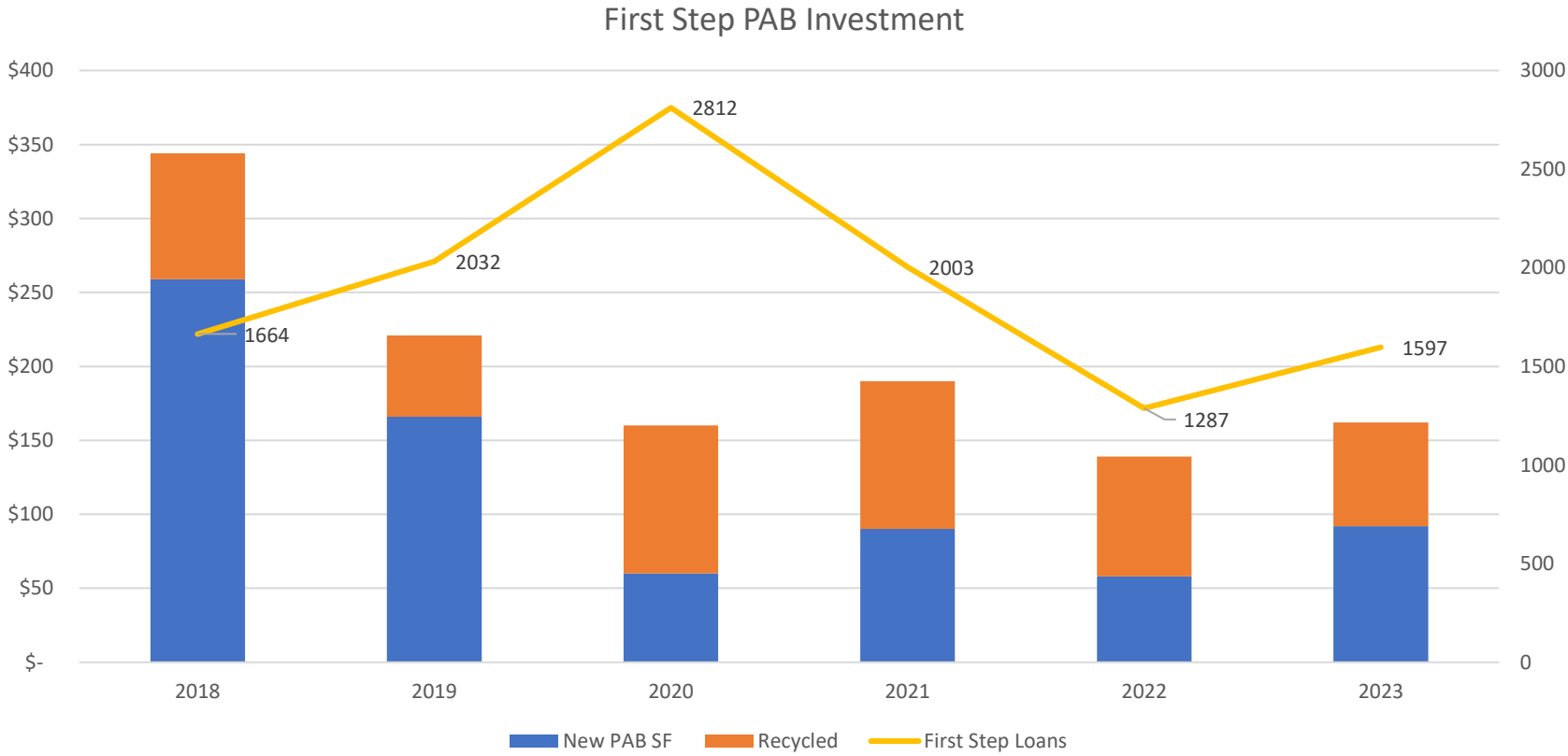
2024 Single Family Lending	\$ 80,000,000
2023 Housing Tax Credit Round Two	\$ 250,000,000
2024 Multifamily Lending	\$ 65,000,000
2024 Business lending	\$ 10,000,000
2024 Top Off	\$ 25,000,000
<u>2023 Pipeline Support</u>	<u>\$ 46,171,046</u>
	\$ 476,171,046



# chfa multifamily production 2018-2023

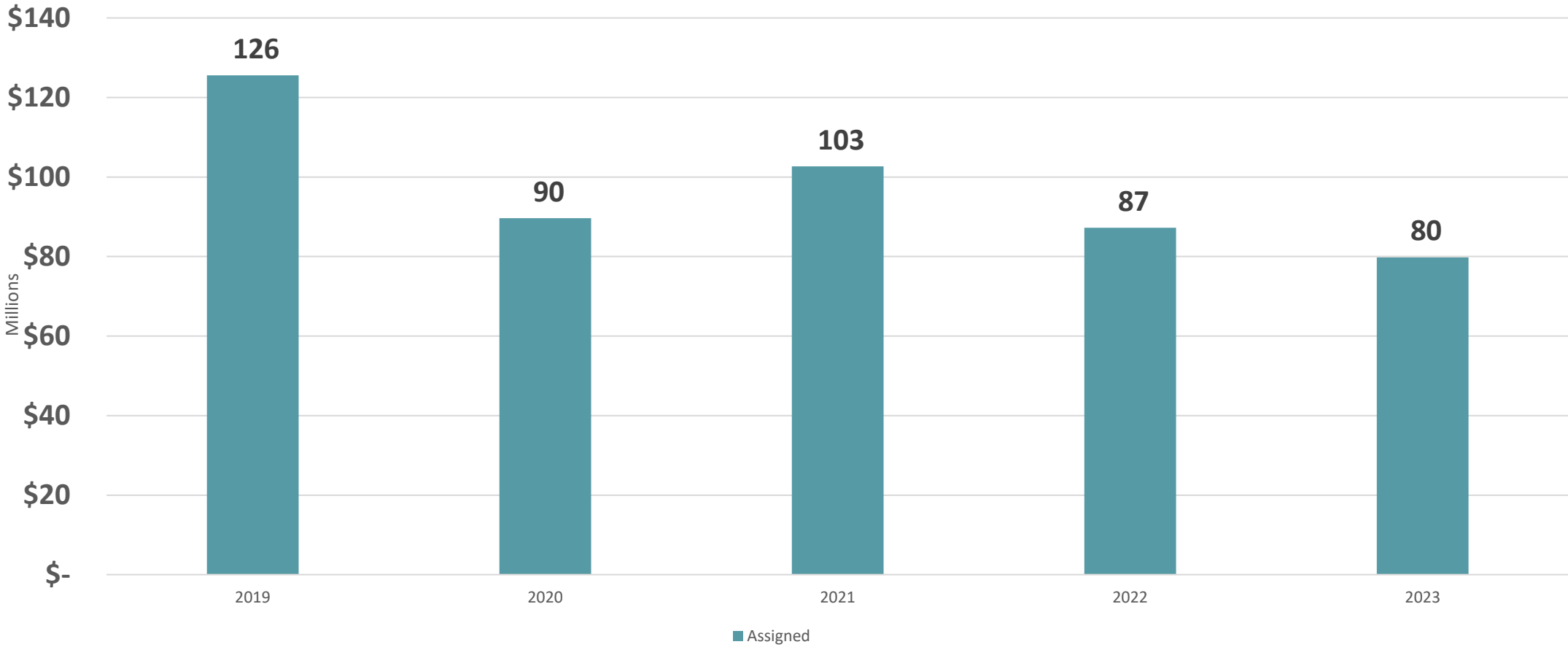


# single family investment w/pab



\*Leveraged with recycled PAB and taxable bonds

# transfers to CHFA



# What do I do with my PAB?

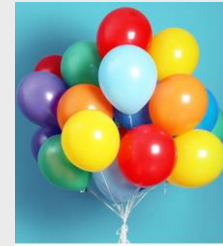


**COLORADO**  
**Department of Local Affairs**  
Division of Housing





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
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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?

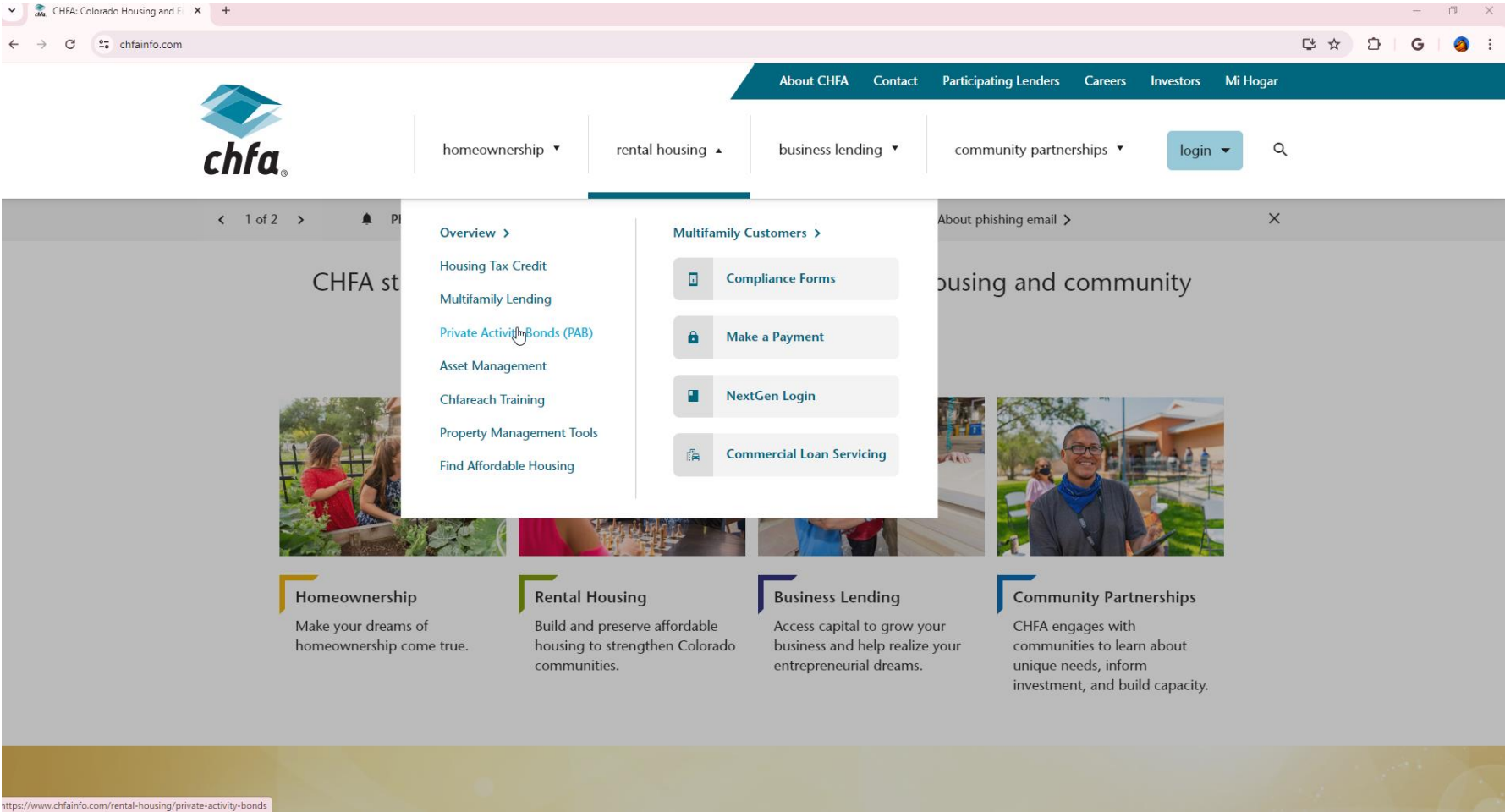








# assignment/transfer of cap to CHFA



# assignment/transfer of cap to CHFA

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- 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](#)

# assignment/transfer of cap to CHFA

## 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.

# assignment/transfer of cap to CHFA



## assignment of allocation - city

Multifamily Housing Facility Bonds/Single Family Mortgage Revenue Bonds

This Assignment of Allocation (the "Assignment"), dated this \_\_\_\_\_ day of \_\_\_\_\_, 2024, is between the City of \_\_\_\_\_, Colorado (the "Assignor" or the "Jurisdiction") and Colorado Housing and Finance Authority (the "Assignee").

### WITNESSETH:

WHEREAS, the Assignor and the Assignee are authorized and empowered under the laws of the State of Colorado (the "State") to issue revenue bonds for the purpose of providing single-family mortgage loans to low- and moderate-income persons and families; and

WHEREAS, the Internal Revenue Code of 1986, as amended (the "Code"), restricts the amount of tax-exempt bonds ("Private Activity Bonds") which may be issued in the State to finance such projects and for certain other purposes (the "State Ceiling"); and

WHEREAS, pursuant to the Code, the Colorado legislature adopted the Colorado Private Activity Bond Ceiling Allocation Act, Part 17 of Article 32 of Title 24, Colorado Revised Statutes (the "Allocation Act"), providing for the allocation of the State Ceiling among the Assignee and other governmental units in the State, and further providing for the assignment of allocations from such other governmental units to the Assignee; and

WHEREAS, pursuant to an allocation under Section 24-32-1706 of the Allocation Act, the Assignor has an allocation of the 2024 State Ceiling for the issuance of a specified principal amount of Private Activity Bonds prior to September 15, 2024, (the "2024 Allocation"); and

WHEREAS, the Assignor has determined that, in order to increase the availability of adequate affordable rental housing for low- and moderate-income persons and families within the Jurisdiction, Colorado and elsewhere in the State, it is necessary or desirable to provide for the utilization of all or a portion of the 2024 Allocation; and

WHEREAS, the Assignor has determined that the 2024 Allocation, or a portion thereof, can be utilized most efficiently by assigning it to the Assignee to issue Private Activity Bonds for the purpose of financing one or more multifamily rental housing projects for low- and moderate-income persons and families or to issue Private Activity Bonds for the purpose of providing single-family mortgage loans to low- and moderate-income persons and families ("Revenue Bonds"), and the Assignee has expressed its willingness to attempt to issue Revenue Bonds with respect to the 2024 Allocation assigned herein; and

## Assignment of Allocation

**THIS IS A FORM FOR YOUR GUIDANCE ONLY - PLEASE CONFORM TO YOUR LOCAL JURISDICTION REQUIREMENTS**

### RESOLUTION [or ORDINANCE] AUTHORIZING ASSIGNMENT TO THE COLORADO HOUSING AND FINANCE AUTHORITY OF A PRIVATE ACTIVITY BOND ALLOCATION OF [NAME OF CITY, COUNTY OR TOWN] PURSUANT TO THE COLORADO PRIVATE ACTIVITY BOND CEILING ALLOCATION ACT

WHEREAS, the [name of city, county or town] is authorized and empowered under the laws of the State of Colorado (the "State") to issue revenue bonds for the purpose of financing qualified residential rental projects for low- and moderate-income persons and families; and

WHEREAS, the [name of city, county or town] is authorized and empowered under the laws of the State of Colorado (the "State") to issue revenue bonds for the purpose of providing single-family mortgage loans to low- and moderate-income persons and families; and

WHEREAS, the Internal Revenue Code of 1986, as amended (the "Code"), restricts the amount of tax-exempt bonds ("Private Activity Bonds") which may be issued in the State to provide such mortgage loans and for certain other purposes; and

WHEREAS, pursuant to the Code, the Colorado legislature adopted the Colorado Private Activity Bond Ceiling Allocation Act, Part 17 of Article 32 of Title 24, Colorado Revised Statutes (the "Allocation Act"), providing for the allocation of the State Ceiling among the Colorado Housing and Finance Authority (the "Authority") and other governmental units in the State, and further providing for the assignment of such allocations from such other governmental units to the Authority; and

WHEREAS, pursuant to an allocation under Section 24-32-1706 of the Allocation Act, [name of city, county or town] has an allocation of the 2024 State Ceiling for the issuance of a specified principal amount of Private Activity Bonds prior to September 15, 2024 (the "2024 Allocation"); and

WHEREAS, [name of city, county or town] has determined that, in order to increase the availability of adequate affordable housing for low- and moderate-income persons and families within the [city, county or town] and elsewhere in the State, it is necessary or desirable to provide for the utilization of all or a portion of the 2024 Allocation; and

## Resolution or Ordinance

### CERTIFICATE OF THE CITY OF \_\_\_\_\_ COLORADO CONCERNING ASSIGNMENT OF PRIVATE ACTIVITY BOND VOLUME CAP ALLOCATION

I, the undersigned, hereby certify that I am a duly chosen, qualified and City Attorney of the City of \_\_\_\_\_, Colorado (the "City"), and that:

1. The City is a public body politic and corporate, duly organized and existing under the constitution and laws of the State of Colorado.

2. The City has been previously notified that, pursuant to Section 24-32-1706 of the Colorado Private Activity Bond Ceiling Allocation Act, Part 17 of Article 32 of Title 24, Colorado Revised Statutes (the "Allocation Act"), it has an allocation of the State ceiling (as defined in the Allocation Act) for 2024 in the amount of \$ \_\_\_\_\_ (the "2024 Allocation").

3. Attached hereto as Exhibit A is a true and correct copy of a resolution and the related minutes thereto (the "Resolution") authorizing the assignment to the Colorado Housing and Finance Authority (the "Authority") of all or a portion of the 2024 Allocation in an amount equal to \$ \_\_\_\_\_ (the "Assigned Allocation"), and authorizing the execution and delivery of an Assignment of Allocation dated as of \_\_\_\_\_, 2024 (the "Assignment of Allocation") between the City and the Authority in connection therewith, which Resolution was duly adopted by the City Council of the City (the "City Council") at a meeting thereof held on \_\_\_\_\_, 2024, at which meeting a quorum was present and acting throughout and which Resolution has not been revoked, rescinded, repealed, amended or modified and is in full force and effect on the date hereof.

4. The meeting of the City Council at which action has been taken with respect to the Assignment of Allocation was a regular meeting properly called and open to the public at all times.

5. With respect to the Assigned Allocation, the City has not heretofore: (a) issued private activity bonds; (b) assigned the Assigned Allocation to another "issuing authority," as defined in the Allocation Act; (c) made a mortgage credit certificate election; or (d) treated the Assigned Allocation as an allocation for a project with a carryforward purpose, as defined in the Allocation Act.

6. The Assignment of Allocation, attached hereto as Exhibit B, is in the form presented to and approved by the City Council at the meeting thereof held on \_\_\_\_\_, 2024.

7. On or before the date hereof, counterparts of the Assignment of Allocation were officially executed by the Mayor and the City Clerk of the City. On the date of such signing, such persons were the duly sworn, qualified and acting officers of the City, authorized to execute the Assignment of Allocation and holding the offices of the Mayor and City Clerk, respectively.

## Attorney Certification





## Denver Maw

*Director of Finance*

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 dmaw@chfainfo.com

## Wyatt Jones

*Manager of Finance*

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# Assignments & Delegations, Brought to you by Bond Counsel

Kutak Rock LLP – John Bales & Fred Marienthal  
Sherman & Howard L.L.C. – Cory Kalanick



*financing the places where  
people live and work*



# What is an Assignment?

- Assignment = transfer of current year direct allocation PAB volume cap from one issuing authority (state or local) to another issuing authority
  - Once transferred, volume cap belongs to Assignee
- Written notification to DOLA required
- Source: Colorado Private Activity Bond Ceiling Allocation Act, Sections 24-32-1705 and -1706

# Assignment Documents

1. Assignment of Allocation
  - Assignor cannot receive monetary consideration
2. Authorization:
  - Assignor Resolution
  - Assignee Resolution
3. Certificate of Assignor as to Volume Cap

# Carryforward PAB

- Issuing authority can elect to carryforward current year volume cap and use it for 3 additional years
  - I.e., 2021 carryforward expires 12/31/2024
  - Use it, delegate it, or lose it!
- Must be allocated to a specific carryforward purpose:
  - Qualified residential rental projects
  - Qualified mortgage bonds/mortgage credit certs
- Sources:
  - Allocation Act, 24-32-1705, -1706, -1709 and -1711
  - Tax Code, Sections 146(f) and 142(k)

# Carryforward Documents

- To DOLA by September 15 of current year:
  1. Inducement Resolution – project specific or general
  2. Diligence Certificate
  3. Preliminary Bond Counsel Opinion
  4. Carryforward Election
- To IRS by February 15 of following year:
  1. IRS Form 8328 (Carryforward Election of Unused Private Activity Bond Volume Cap)

# What is a Delegation?

- Delegation = intergovernmental agreement to delegate the power of one issuing authority to another to act as its agent to issue bonds
  - Usually carryforward volume cap
- For federal tax purposes, Delegator is the “issuer” of the portion of the bonds using delegated volume cap
- Source:
  - Colorado Constitution, Article XIV, Section 18 (Intergovernmental Relationships)
  - Intergovernmental Relationships Act, Section 29-1-201, et seq.



# Delegation Documents

1. Delegation Agreement
2. Authorization:
  - Resolution of Delegator
  - Resolution of Delegator
3. Certificate of Delegator as to Volume Cap
  - With original IRS Form 8038 for carryforward
4. Federal Tax Exemption Certificate of Delegator as to reasonable expectations

# Questions? Bond Counsel can Help!

**KUTAKROCK**  
ATTORNEYS AT LAW

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