

Private Activity Bonds

Mario T. Trimble
Kutak Rock LLP

July 9, 2018



KUTAKROCK

kutakrock.com

What are Private Activity Bonds?

- Bonds issued by or on behalf of a state or local government to provide financing for qualified projects, typically for a private user, where the government generally does not pledge its credit
- PABs are considered “qualified” when they are issued for a qualified project or for the benefit of certain entities (e.g. 501(c)(3) organizations)
- With certain exceptions, the I.R.S. limits the amount of PABs that may be issued in any year, also known as “Volume Cap”
- Access to and use of Colorado’s Volume Cap amount is governed by the Colorado Private Activity Bond Ceiling Allocation Act, Title 24, Article 32, Part 17, Colorado Revised Statutes, as amended

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))

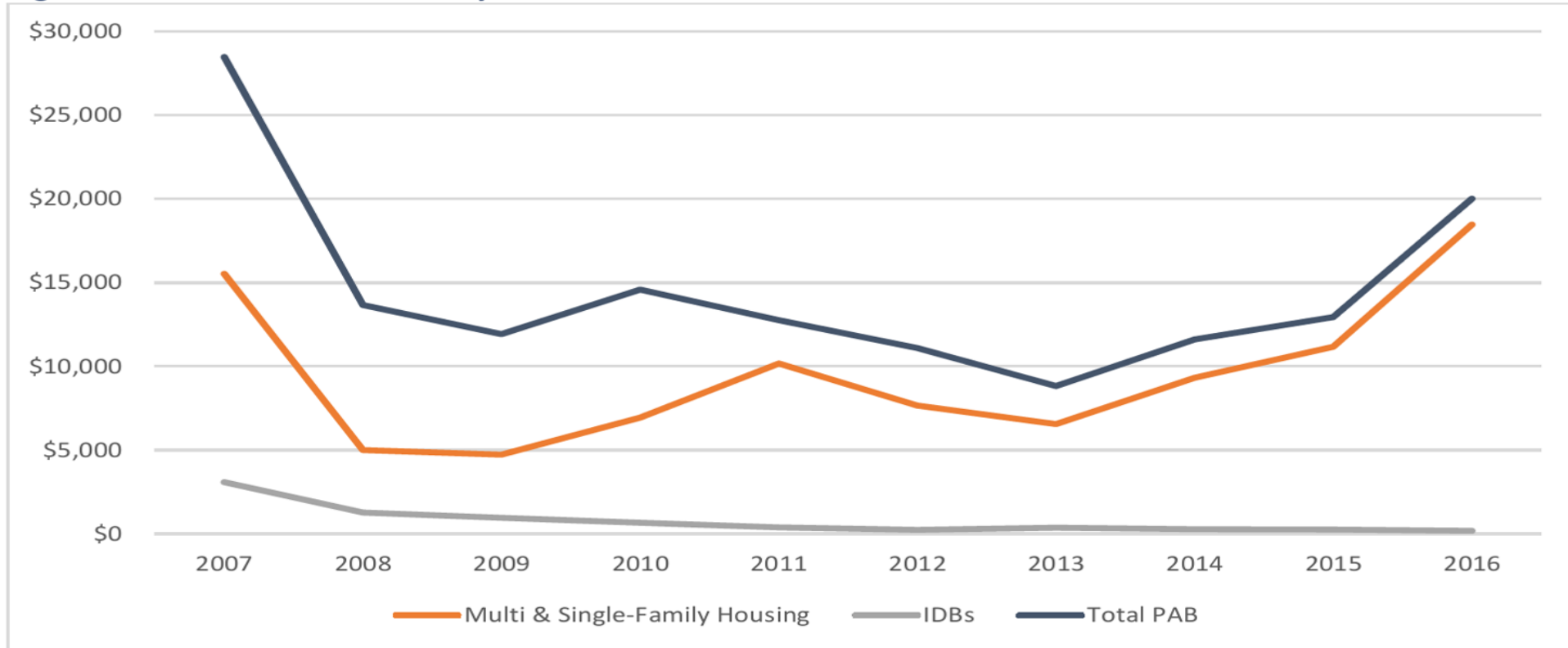
Types of Private Activity Bonds (Continued)

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.

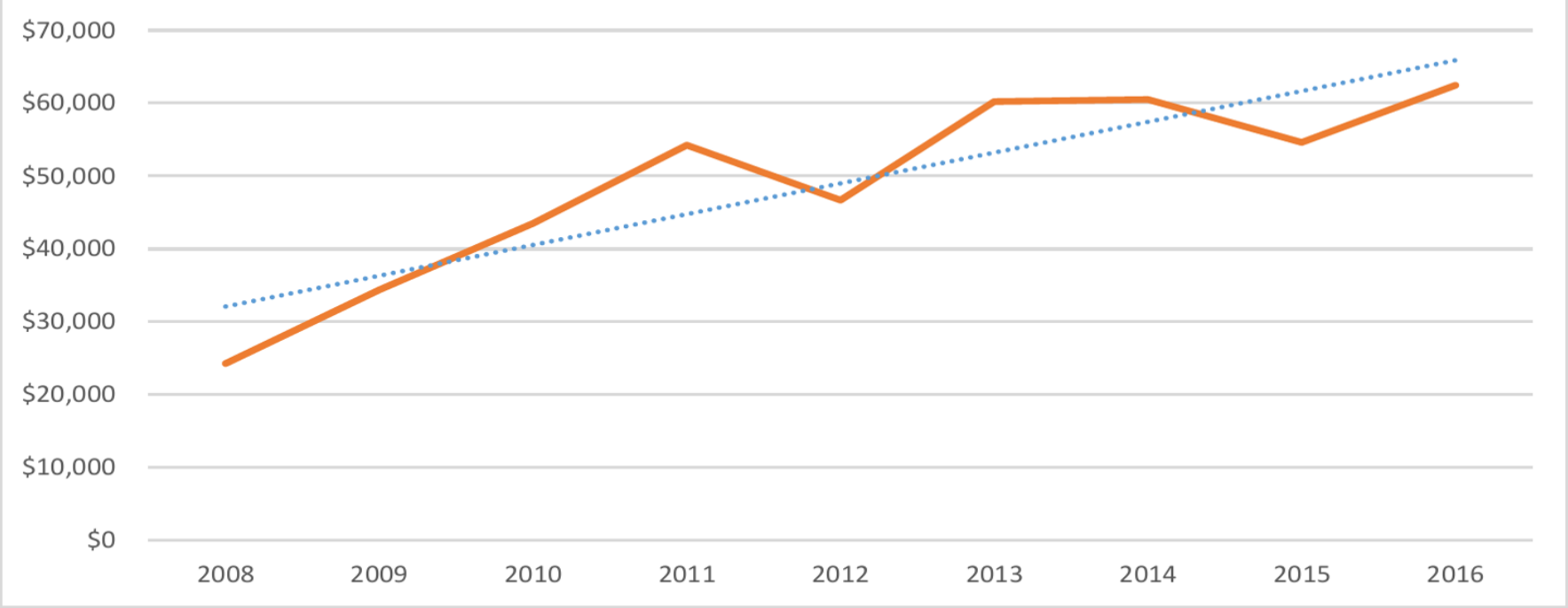
National Private Activity Bond Issuance

Figure 1. National Private Activity Bond Issuance in Millions of Dollars



National Volume Cap Carryforward

Figure 3. National Carryforward in Millions of Dollars



Volume Cap Options for Colorado Springs

2017: All of the City's \$22,579,250 allocation was assigned to El Paso County, Colorado

2018: By September 15th, you must either:

1. Issue Bonds up to Volume Cap amount for a specific PAB project;
2. Assign Volume Cap to another local government for use in financing a qualified project;
3. Assign Volume Cap to a Statewide Issuing Authority such as CHFA or the Metro Mayors Caucus for use or subsequent carryforward; or
4. Carryforward Volume Cap for up to three years for use in financing a qualified project.

... or your unused Volume Cap is automatically relinquished to the State.

Carryforward Process

By September 15th:

- Carryforward Resolution/Ordinance – Statement of intent to complete the financing in a future year by aggregating Volume Cap for up to 3 years toward the cost of the qualified project
- Certificate of the City regarding present intent to issue bonds within the carryforward period
- Preliminary opinion from Bond Counsel regarding the purpose of the proposed financing and its treatment under section 146 of the Internal Revenue Code
- Inducement Resolution-Declaration of intent to finance the qualified project in order to induce the borrower to locate the project in the City

Carryforward Process (Continued)

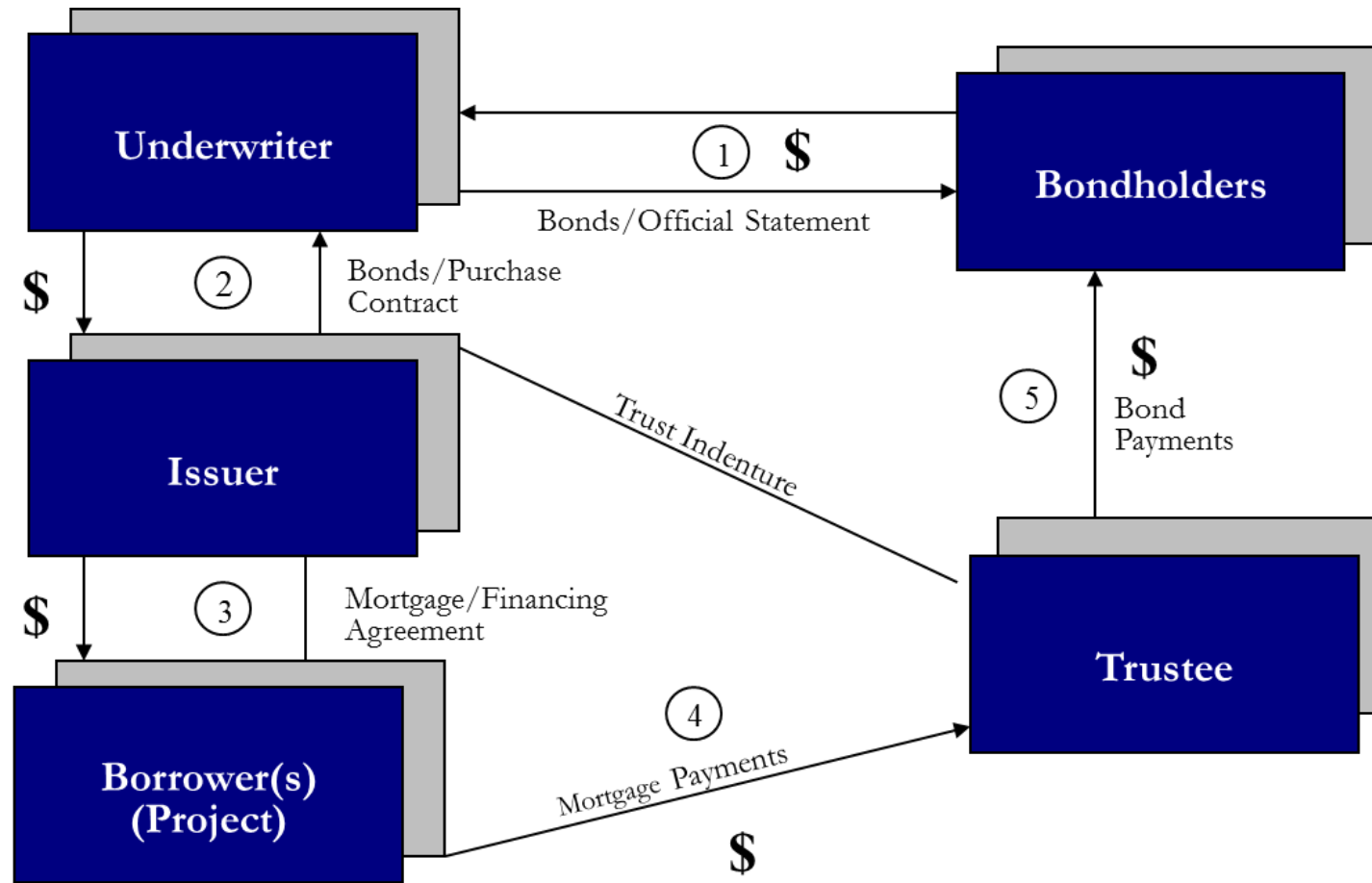
By February 15th of the following year:

- File Internal Revenue Service Form 8328, “Carryforward Election of Unused Private Activity Bond Volume Cap.” (Locks in Volume Cap amount to use by this issuer and only for the purpose indicated on the form.)

Steps for a Typical PAB Bond Issuance

- Step 1** - Issuer analyzes proposed issue with Borrower, Bond Counsel, Financial Advisor and Underwriter.
- Step 2** - Issuer adopts Inducement Resolution. If necessary, Issuer applies for additional State Volume Cap Allocation.
- Step 3** - Drafting begins on the bond documents and offering documents (Preliminary Official Statement). Cash flows and documents are sent to rating agencies. Rating agency discussions or investor meetings take place.
- Step 4** - Financing structure and principal documents are finalized. State Volume Cap Allocation is received and TEFRA hearing is held by Issuer. Parameter Bond Ordinance is adopted by Issuer.
- Step 5** - Preliminary Official Statement is posted; Bond issue terms are discussed among the Issuer, Borrower, investors and the Underwriters.
- Step 6** - Bonds are offered by the Underwriters to investors. Bonds are underwritten at interest rates and terms agreed to by the Issuer and Borrower. Bond Purchase Agreement is executed among the Issuer, Borrower and Underwriters.
- Step 7** - Bond issue is closed. Underwriters wire bond purchase price to Trustee and take delivery of Bonds.
- Step 8** - Bond proceeds are available to be spent by Borrower.

Typical PAB Bond Issue (Simple Fixed Rate)



Questions or Comments?

Contact:

Mario T. Trimble, Esq.
Kutak Rock LLP
Suite 3000
1801 California Street
Denver, CO 80202
Telephone: (303) 292-7764
Mario.Trimble@KutakRock.com