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## important notice

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### Notice to Potential Borrowers, Lenders and Investors with new tax-exempt bond transactions that have not yet closed.

The U.S. House of Representatives released the Tax Cuts and Jobs Act (H.R.1), on Thursday, November 2, 2017. While the bill itself is not final and multiple efforts are being made to amend several of its provisions, and notwithstanding differences contained in the Senate's mark of the bill (see Joint Committee on Taxation, Description of the Chairman's Mark of the "Tax Cuts and Jobs Act" (JCX-51-17), November 9, 2017), as currently drafted, there remains a substantial risk that after December 31, 2017, no additional tax-exempt private activity bonds can be issued. (Note: In this case no 4% Low Income Housing Tax Credits would be available, since they depend on issuance of tax-exempt private activity bonds.)

Assuming the bill moves forward as currently drafted, to allow pending projects to still close tax-exempt private activity bonds and retain the ability to access 4% tax credits, our counsel has advised us that:

**To avoid uncertainties presented by the pending legislation and the possibility of not being able to issue tax-exempt private activity bonds following December 31, 2017, new private activity bonds (including multi-family bonds and 501(c)(3) bonds) must be issued and closed and all bonds fully funded by December 31, 2017. (Note, however, that December 29, 2017 is the last business day of the year.)**

CHFA recognizes that to meet the December 31, 2017 deadline, bonds would likely need to close for any applicable project by **December 29, 2017** even if the construction loan conditions and other conditions for purchasing the site and disbursing loan proceeds will not occur until later.

For those borrowers who are not be able to close on their bonds before year-end and who may have a transaction which could benefit from CHFA's 4% risk-share FHA loan program, please review the Notice on that program on [CHFA's website](#) and contact Terry Barnard ([tbarnard@chfainfo.com](mailto:tbarnard@chfainfo.com); 303.297.4866) as soon as possible.

### register for conference call on november 13

CHFA will be holding a call to review this information with developers, their lenders, investors, and bond counsel on Monday, November 13, 2017 at 1:30pm (MT). Please [register to participate](#) in this call.

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## year-end pab bond application checklist

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**If you have not yet closed on a project**, but have either received a tax credit award or have already submitted a completed tax credit application to CHFA for 4% tax credits<sup>1</sup>, CHFA can potentially close individual new multi-family and 501(c)(3) **conduit bond issues** before December 31, 2017 provided the following conditions are met for each such transaction:

1. **Year-End PAB Bond Application.** The borrower must submit an application for a CHFA private activity bond **on or before November 15, 2017**, which application includes the following:
  - a. The name of the bond purchaser/lender and/or entity providing the credit enhancement (e.g. letter of credit, FHA

<sup>1</sup> 4% tax credit applications will still be accepted until November 30, 2017 in accordance with the 2017 QAP, however, new applications will not be considered for this year-end PAB program.

- or other enhancement) together with a term sheet or a signed commitment letter indicating the expected dollar amount to be lent/purchased and all requirements and conditions for the loan/purchase<sup>2</sup>.
- b. The name of the expected tax credit limited partner (for projects which will use 4% Low Income Housing Tax Credits), together with a general form of commitment letter indicating the expected dollar amount of equity and all requirements and conditions.
  - c. A narrative description of site control. If you have not already submitted evidence of site control acceptable to CHFA please include with your application.
  - d. A narrative description as to the status of zoning, entitlements, and timing of application for building permits.
  - e. A narrative description of your anticipated development and construction schedule.
  - f. Sources and uses for the project and the amount of tax-exempt private activity volume cap to be utilized (not to exceed 55% of eligible basis);
  - g. An explanation of how the bond closing conditions set forth below will be met.
  - h. A fee of \$25,000 as advance payment for CHFA bond counsel retainer. Unless otherwise agreed, CHFA bond counsel will be Sherman & Howard. This fee will be credited against the closing costs and CHFA bond counsel fees or if closing does not occur, the advance fee (less all charges for actual time and costs) will be refunded. **This advance fee should be paid by check payable to the Colorado Housing and Finance Authority and must be received by CHFA no later than November 16, 2017.**
  - i. If the application is for a transaction which has received tax credit approval and was anticipating bonds to be issued by another issuer, an assignment or delegation of private activity bond cap from the prior issuer may be required before bonds can be issued by CHFA.
  - j. If a TEFRA hearing has not already been held, the application must include all information needed for a TEFRA hearing (name of borrower, name of project, exact project address including city and county, number of units and unit mix, including number of buildings (and different addresses if applicable) and maximum dollar amount of tax-exempt issue). Note: please use a safely high number for the tax-exempt portion of the bonds to be issued. In the interest of time, CHFA may publish a single TEFRA notice for all projects covered by an application so make sure all information in the TEFRA notice is correct. An incorrect TEFRA Notice could result in a failed transaction.

**Please note that acceptance of an application by CHFA in no way obligates CHFA to issue bonds. This program is being undertaken as an accommodation to eligible borrowers who are working on pending projects, to help them deal with the pending congressional action and may change at any time.**

2. **CHFA Board Action.** CHFA's board will consider bond approvals at one or more board meetings in early December. In addition to submission of a completed application by the **November 15, 2017** deadline, bond counsel must have submitted a final draft bond resolution and bond and bank loan documents in a form acceptable to bond counsel and CHFA no later than **November 30, 2017**.

### 3. **Conditions to Bond Closing.**

- a. All bond funds must be drawn down at bond closing. Unless otherwise agreed by CHFA bond counsel, the funds must be placed in an escrow account held by an approved third-party trustee (and not the lender) with release conditions agreed to by the bank and borrower as to when funds can be released at construction loan closing or otherwise.
- b. The loan agreement must include provisions for covering any shortfall in escrow investment earnings (i.e. when the interest rate paid to the purchaser of the bonds is higher than the rate the borrower earns on the invested bond proceeds pending project disbursement).
- c. The borrower must fund all costs of issuance associated with the bond closing, which include fees of bond counsel, CHFA's up-front bond closing fees (50% of which are due at closing and 50% of which are due at construction loan closing) and other fees and expenses noted in the sources and uses.
- d. The borrower must reasonably expect to spend or enter into a binding obligation to spend 5% of the proceeds within six months of the issue date and must reasonable expect to spend 85% of the proceeds within three years of the issue date.

PAB Bond Applications should be submitted via email to: Tasha Weaver at [tweaver@chfainfo.com](mailto:tweaver@chfainfo.com) on or before **November 15, 2017**.

If you have any questions regarding this notice please listen to the Conference Call on November 13, 2017 referenced above or send your questions to [PAB2017@chfainfo.com](mailto:PAB2017@chfainfo.com).

<sup>2</sup> If a signed commitment letter is NOT included in the application, it must be submitted to CHFA by November 30, 2017 to be considered.