



# Private Activity Bonds for Local Officials

Issuing Private Activity Bonds

Frederic H. Marienthal

Kutak Rock LLP

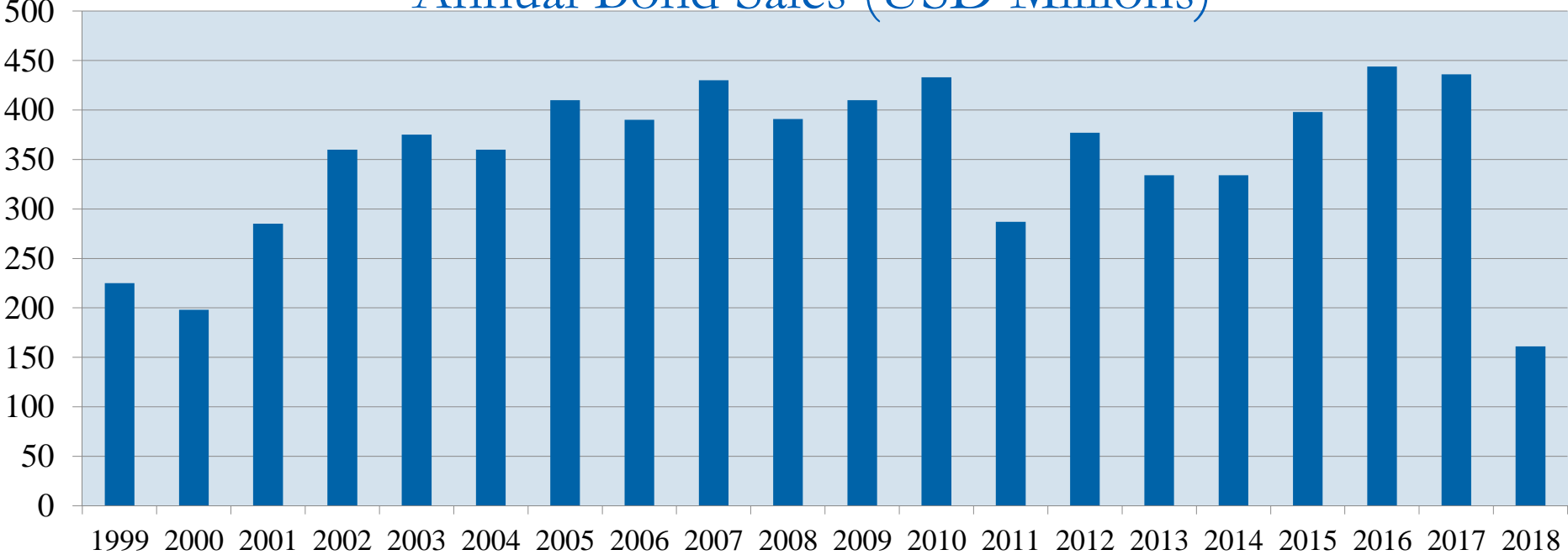
*July 2018*

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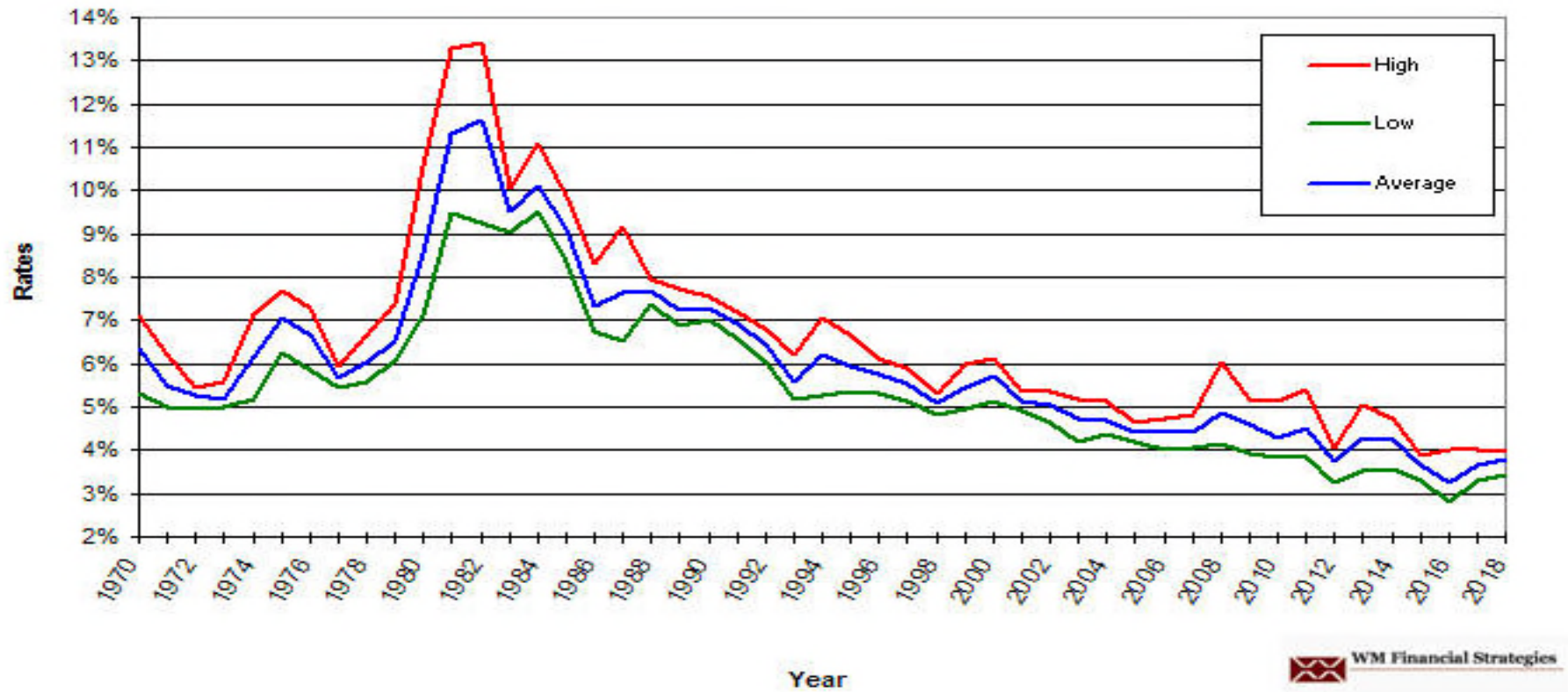
# Tax-Exempt Bond Market

## Annual Bond Sales (USD Millions)

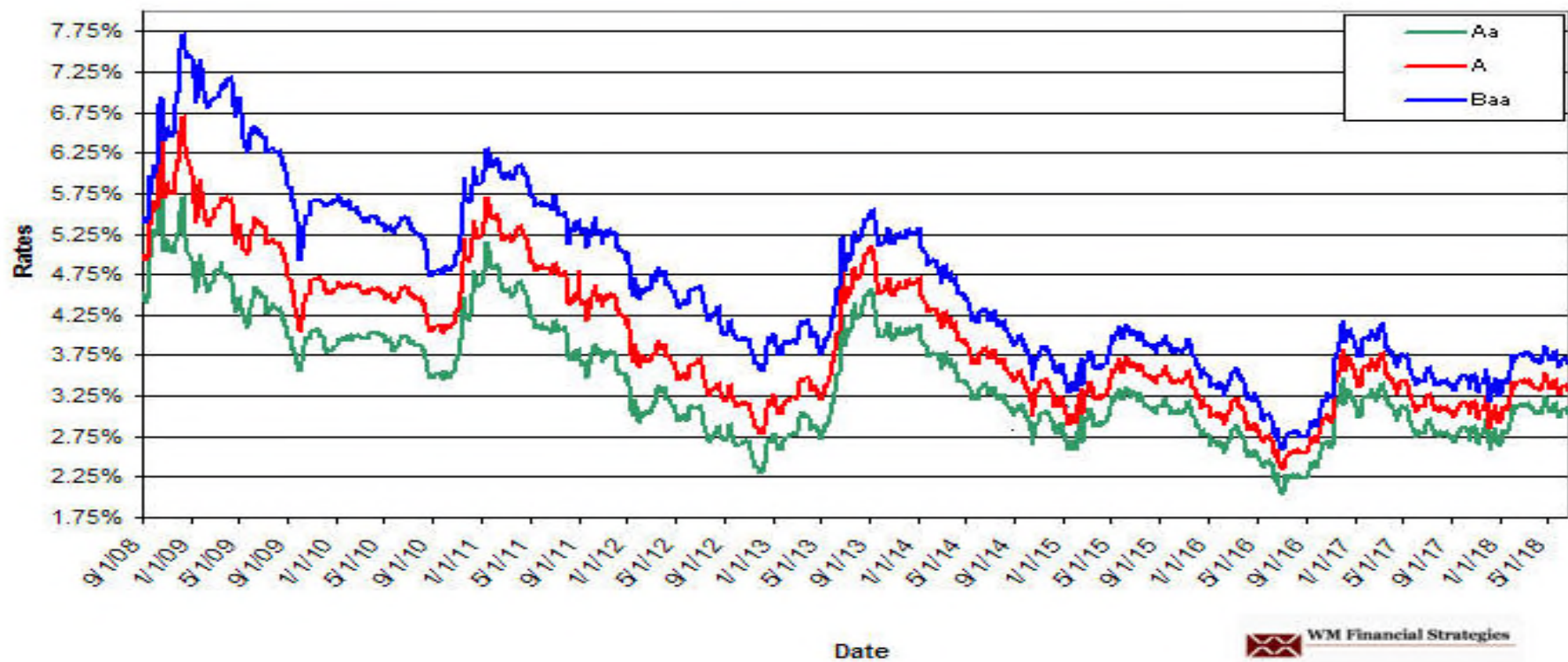


\*2018 = January-June 29, 2018  
Source: The Bond Buyer

## 20-BOND BUYER INDEX 1970-PRESENT



## MUNICIPAL MARKET DATA INDEX 20th YEAR MATURITY BY RATING GRADE



# 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))

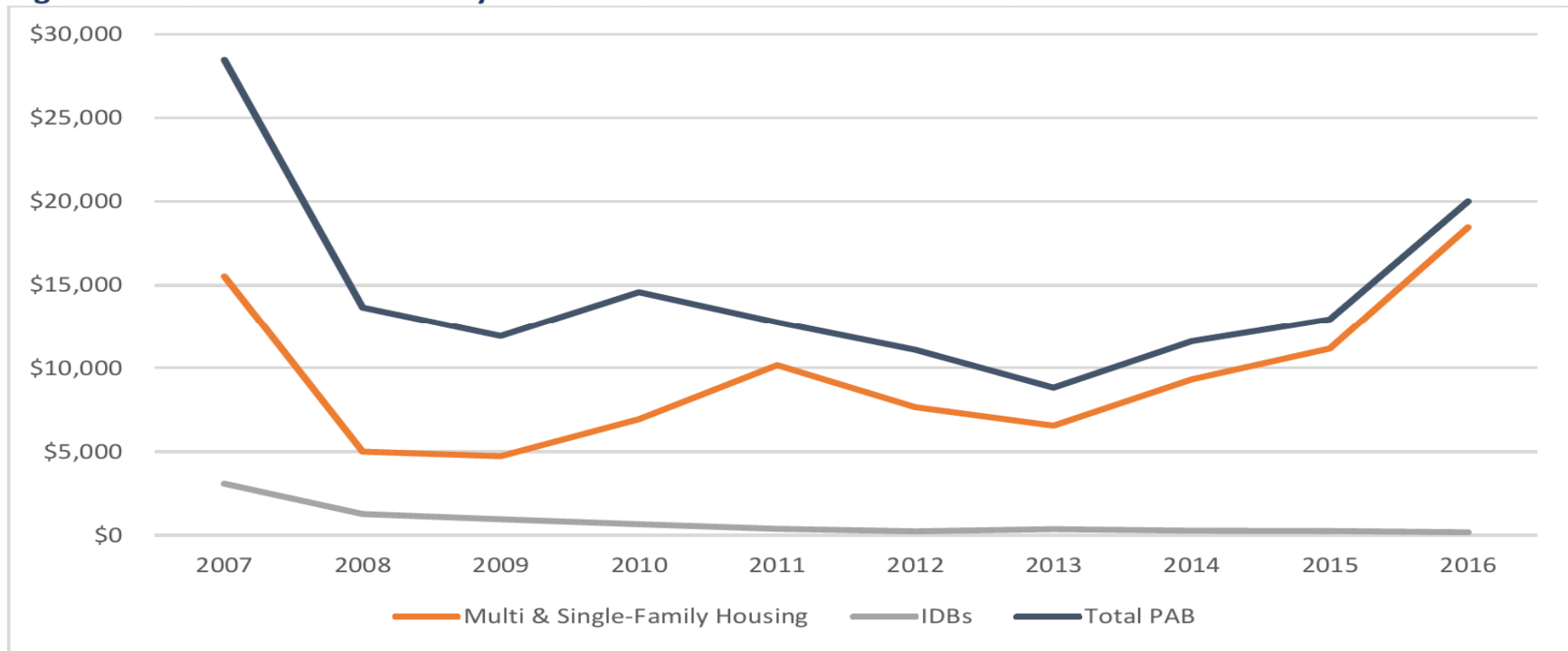
# Types of Private Activity Bonds (Continued)

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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.

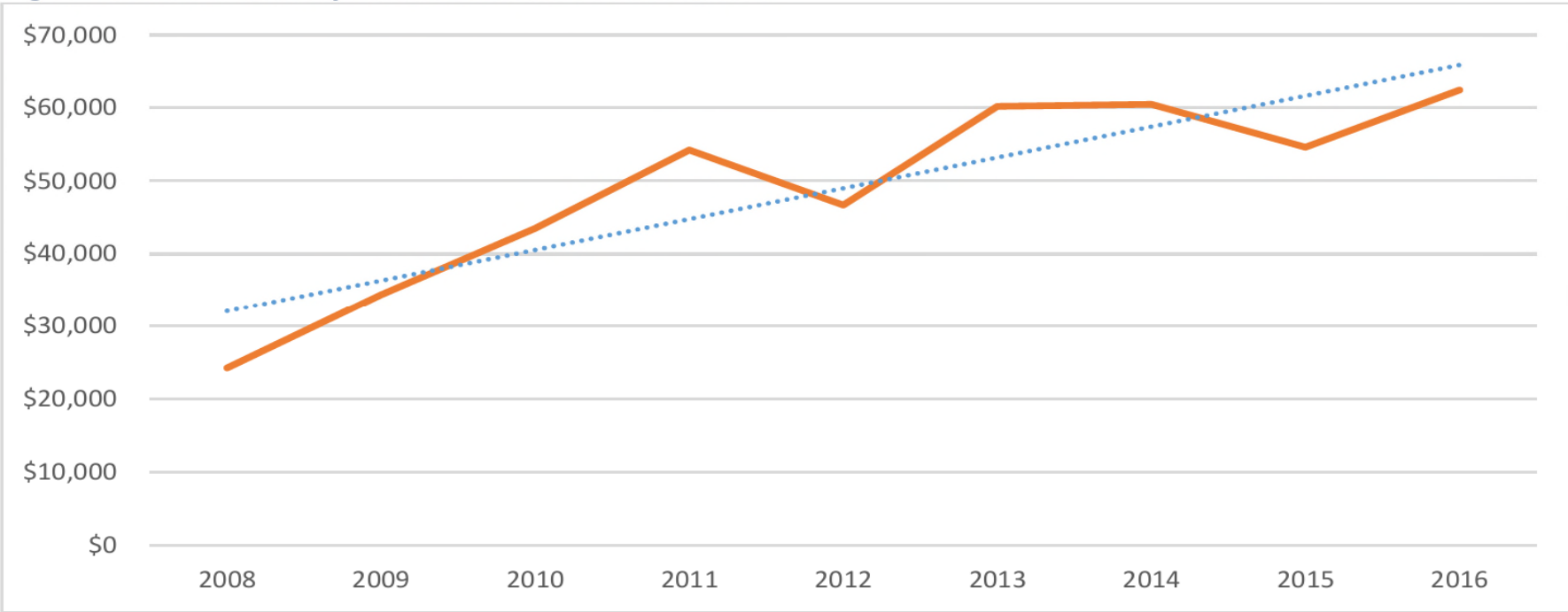
# National Private Activity Bond Issuance

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



# National Volume Cap Carryforward

Figure 3. National Carryforward in Millions of Dollars





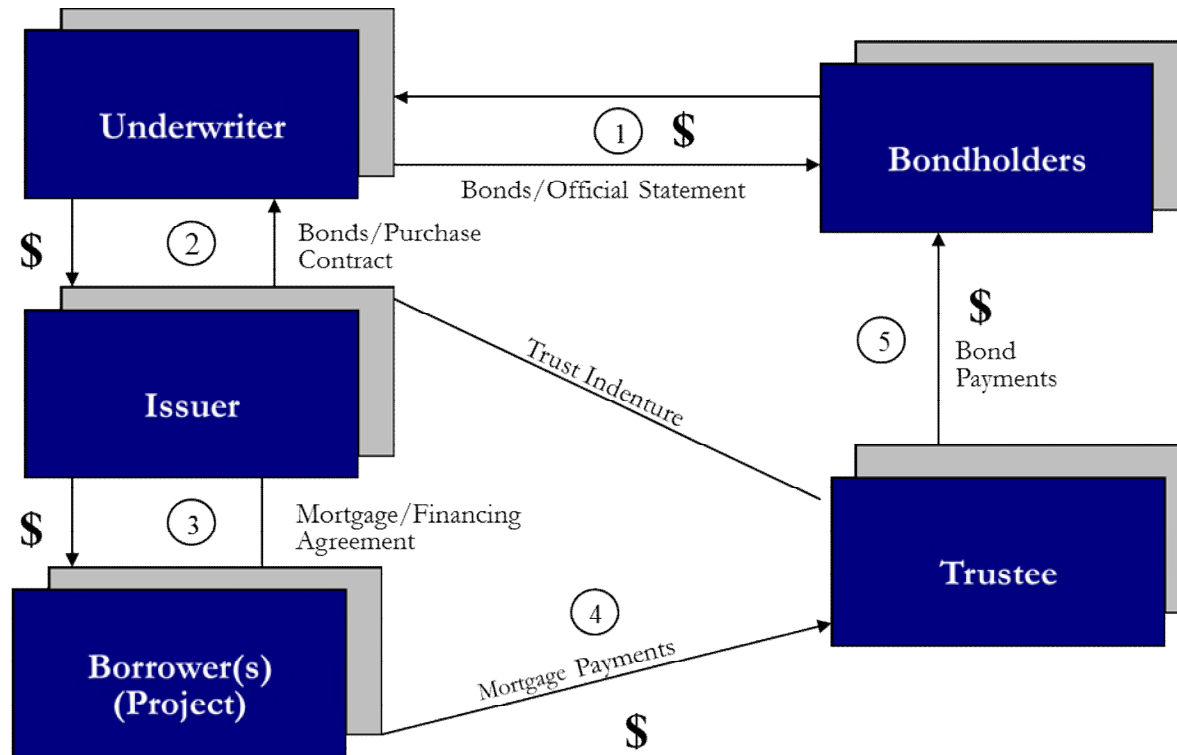
# Tax-Exempt Multifamily Bond Requirements

- Often issued by a State or Political Subdivision (the “Conduit” issuer) – Bonds are special limited revenue obligations of the Issuer
- Public Hearing (TEFRA) and approval requirements
- Inducement Resolution (Official Intent)
- Allocation of Private Activity Volume Cap requirement
  - Low Income Housing Tax Credits (“LIHTC”) (4%) maximized where at least 50% of construction (or acquisition/rehabilitation) costs are paid with tax exempt bonds.
- Proceeds used to Fund Multifamily Mortgage Loan(s) – 2% Cost of Issuance, 5% “Bad” money limits
- Tax Regulatory Agreement – designed to ensure tax exempt Bond interest
  - Borrower covenants to restrict Project by income for the Qualified Project Period (minimum-15 years)
    - 20% tenants at 50% AMI, or
    - 40% tenants at 60% AMI
- Tax Credit Regulatory Agreement (and agreements relating to certain sub-debt) may impose additional income and/or rent restrictions

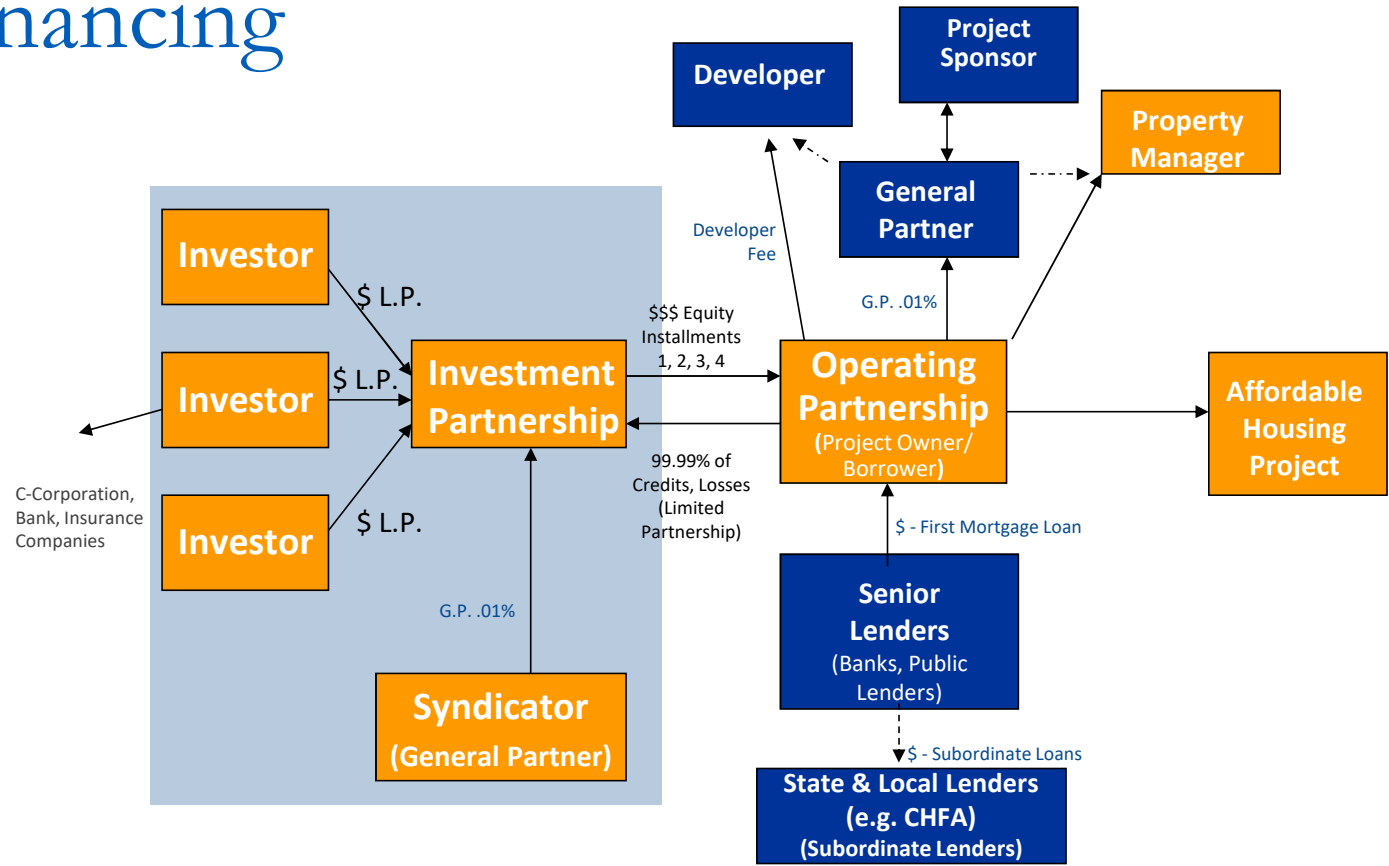
# Steps for a Typical Bond Issuance

- Step 1** - Issuer analyzes proposed issue with Borrower, Bond Counsel, Financial Advisor and Underwriter.
- Step 2** - Issuer adopts Inducement Resolution. If required, Issuer applies for State Volume Cap Allocation.
- Step 3** - Drafting is begun 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 documents are finalized. State Volume Cap Allocation is received and TEFRA hearing is held by Issuer. Parameter Bond Resolution is adopted by Issuer.
- Step 5** - Preliminary Official Statement is mailed; 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.

# Bond Issue (Simple Fixed Rate)



# Low Income Housing Tax Credit (“LIHTC”) Financing



# LIHTC Financing

- I. **Mechanics for Calculating and Obtaining Credits.** The amount of Annual Credit equals product of the “*Applicable Percentage*” times the “*Qualified Basis*” where:
  - A. The “*Applicable Percentage*” is 4% (bond transactions) or 9% (no bonds).
  - B. The “*Qualified Basis*” generally equals the percentage of “Low Income Units” in the Project times the cost of the Project (net of grants, etc.)
- II. **The Typical LIHTC Structure**
  - A. Borrower is typically a limited partnership or LLC.
  - B. The tax credit investor must be a partner or member of the Borrower.

# LIHTC Financing (Continued)

## III. Ongoing Compliance

- A. The “Compliance Period” for maintaining low-income set-aside is 15 years, during which the IRS has enforcement powers.
  - i. If a Project falls out of compliance, all or a portion of the credit may be recaptured.
  
- B. There is also an “Extended Use Period” of an additional 15 years (or more), during which the allocating/administering State Agency has enforcement powers.
  - i. Extended Use period terminates upon foreclosure or State’s inability to find buyer willing to present a “qualified contract” to purchase the Project and maintain low-income and rent restrictions.

# HUD Programs

## Often Present in Bond Transactions

- I. Section 8 – HAP Contracts. Provide guaranteed rents for units housing income qualifying tenants. Payments under HAP contracts are pledged as security for Borrower’s loan obligations.
- II. Sections 221(d)(3), 221(d)(4) and 223(f): most popular long term financing vehicles for multifamily construction and acquisition/rehabilitation. These programs provide a federal guaranty of Borrower payments on the underlying loan. Insured loans usually purchased by Ginnie Mae.

# 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
- CDBG Funds
- State Tax Credits



# Questions or Comments?

**Contact:**

Fred Marienthal  
Kutak Rock LLP  
Suite 3000  
1801 California Street  
Denver, CO 80202  
Telephone: (303) 292-7817  
[Frederic.Marienthal@KutakRock.com](mailto:Frederic.Marienthal@KutakRock.com)