

Implementing Proposition 123

Colorado Housing and Finance Authority

Special Achievement

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Summary

Proposition 123, a ballot measure passed by Colorado voters, established a dedicated fund to support affordable housing development. Following extensive stakeholder engagement and program development, Colorado Housing and Finance Authority (CHFA) successfully implemented the programs established by Proposition 123 that it administers in partnership with Colorado's state Office of Economic Development and International Trade (OEDIT).

Introduction

Proposition 123 is a statewide ballot measure passed by Colorado voters in 2022. It authorizes the state to retain money from existing state tax revenue each year to support affordable housing investment. These funds are split 60/40 between Colorado's Office of Economic Development and International Trade (OEDIT) and the Department of Local Affairs (DOLA) through its Division of Housing (DOH), respectively. OEDIT manages the Affordable Housing Financing Fund (AHFF) and selected Colorado Housing and Finance Authority (CHFA) to serve as their Contract Administrator.

[The Affordable Housing Financing Fund](#) supports the following programs to advance affordable housing across the state:

- [Land Banking](#): grants to eligible local and tribal governments and forgivable loans to eligible nonprofits with a demonstrated history of providing affordable housing to acquire and preserve land for the development of affordable housing.
- [Equity](#): below-market-rate equity investments to eligible for-profit and nonprofit entities for the construction or preservation of low- and middle-income multifamily rental developments.
- [Concessionary Debt](#): loan options to for-profit and nonprofit entities for the creation and preservation of affordable housing, including manufacturers of modular and factory-build housing.

To be eligible for most types of funding established by Proposition 123, applicants must be located in a jurisdiction that has filed a commitment with the state to increase their affordable housing units by nine percent over the course of three years (an average of three percent each year).

Responding to an Important State Need

A shortage of housing units is a nationwide challenge, and in recent years Colorado has consistently ranked among the top ten states experiencing the most severe shortages. In [a study conducted on housing underproduction in the United States](#) by Up for Growth in 2023, Colorado ranked as the eighth most underproducing state based on a formula calculating the difference between total housing need and total housing availability. There is a significant shortage of units for Coloradans at lower AMIs. According to the [2024 edition of The Gap](#), an annual report published by the National Low-Income Housing Coalition, Colorado currently has a shortage of 110,782 rental homes available to extremely low-income renters (defined as those at or below 30 percent of the Area Median Income).

The authors of Proposition 123 [estimated that it could support the development of approximately 10,000 additional affordable housing units](#) each year, directly responding to the state's current underproduction while investing in housing that is affordable to Coloradans by way of a dedicated source of funding.

Implementation and Innovation

The implementation of the Proposition 123 programs administered by CHFA required innovative approaches on several fronts, as well as close partnership with OEDIT and ongoing cross-departmental collaboration to launch and administer the newly established programs. CHFA's legal, information technology, accounting, research and strategy, multifamily lending, asset management, business finance, and marketing and community relations teams worked together to establish process flows to enable thorough and efficient evaluation of applicants as well as the distribution of resources to support affordable housing across the state.

The development of program guidelines for evaluating applicants and distributing funds involved extensive input from a range of stakeholders across the public and private sectors. Throughout the implementation process, CHFA partnered with OEDIT to host more than 30 events across Colorado communities large and small, including a series of webinars and virtual meetings designed to solicit and catalogue feedback from stakeholders.

Concurrently, CHFA's Marketing and Community Relations team worked in close partnership with OEDIT to develop a distinct brand for the Affordable Housing Financing Fund, including a logo, photography, and style guides that informed the creation of custom collateral, an eNewsletter, and a dedicated website (coloradoaffordablehousingfinancingfund.com) to serve as an ongoing source of information for AHFF programs.

Finally, the measure itself includes provisions for several housing solutions that are innovative, including funding the production of modular housing including panelized, tiny homes, kit homes, and 3D-printed homes. The Equity program requires a Tenant Equity Vehicle (TEV) to support residents in developments receiving equity financing. Development of these program components involved working with industry experts and consultants on emerging best practices in the modular housing industry and in the development and administration of successful Tenant Equity Vehicles elsewhere in the United States.

Programs also must abide by the statutory requirement that projects be consistent with environmental sustainability. Implementation and development of these guidelines required evaluating various certifications and environmental sustainability standards and the evaluation of applicants against these criteria to support sustainable development.

Achieving Intended Results

In its first year, the Affordable Housing Financing Fund was allocated approximately \$96 million in funding. Due to the timing of the measure becoming law, this amount represented half a year of tax revenue funding. A full year's worth of funding will be available to support Proposition 123 programs beginning July 2024.

CHFA began accepting applications for the Land Banking program in July 2023 – the first of the AHFF programs to launch. The launch of the Concessionary Debt and Equity programs followed in fall 2023 and spring 2024, respectively.

- CHFA received and evaluated 113 Letters of Intent representing more than \$255 million in funding requests for the Land Banking program. Following careful evaluation, 26 applicants were invited to a final round to compete for available funding. Ultimately, 16 projects were awarded \$25.34 million in funds to support land acquisition for affordable housing that will produce an estimated 1,380 units.
- The Concessionary Debt program received 38 applications for more than \$113 million in funding requests. Seven applicants representing \$14.5 million in funding requests were selected and are currently in the full underwriting process. These projects in underwriting will support an estimated 722 units.
- The modular housing financing portion of the Concessionary Debt program received applications from 14 manufacturers seeking \$40.8 million. Ten of these were selected to compete for available funding, and six applicants were awarded \$18 million. These six manufacturers are estimated to produce approximately 3,610 units of modular housing each year when fully operational.
- The Equity program received 35 applications representing over \$300 million in equity requested. The application window closed in April 2024, and applications are currently being evaluated. Final selections will be announced in July.

Lastly, since it was launched in July 2023, the Colorado Affordable Housing Financing Fund website has received more than 55,000 views from more than 22,000 unique users.

Providing Benefits that Outweigh Costs

The benefit of implementing and administering Proposition 123 programs includes the opportunity to support the development of thousands of affordable housing units each year. This is in direct alignment with CHFA's mission to strengthen Colorado by investing in affordable housing and community development and in synergy with CHFA's programs and investments supporting affordable housing development and preservation across the state.

Conclusion

Through cross-departmental collaboration, extensive community engagement, establishing program guidelines, developing a distinct brand identity and dedicated website, and building systems to evaluate applications and efficiently administer funds, CHFA has been successful in its implementation of the programs established by Colorado's voters. We look forward to continuing to administer these innovative programs in the coming years in partnership with the Office of Economic Development and International Trade to help meet Colorado's need for affordable housing.



Affordable Housing Financing Fund

In November 2022, Colorado voters passed Proposition 123, a ballot measure authorizing the state to retain money from existing state tax revenue to support affordable housing investment. These funds are split 60/40 between the Office of Economic Development and International Trade (OEDIT) and the Department of Local Affairs (DOLA) through its Division of Housing (DOH), respectively. OEDIT manages the **Affordable Housing Financing Fund**, described below, in partnership with Colorado Housing and Finance Authority (CHFA), which serves as Contract Administrator. DOH manages the Affordable Housing Support Fund.

60% Sixty percent of Proposition 123 funds are allocated to the **Affordable Housing Finance Fund**, which is managed by OEDIT and administered by CHFA. This fund includes three programmatic areas: Land Banking, Equity, and Concessionary Debt. Local and tribal governments must complete a Local Government Affordable Housing Commitment as required by Proposition 123, unless otherwise noted, in order for projects within their jurisdiction to be eligible for funding.

Land banking

The goal of this program is to provide funding for acquisition and preservation of land for the development of affordable housing. To qualify, housing must serve residents at 60 percent of Area Median Income (AMI) or below for rental housing and 100 percent of AMI or below for homeownership*. Funding is provided in the form of **grants to eligible local governments, including housing authorities, tribal governments, and forgivable loans to eligible nonprofits** with a demonstrated history of providing affordable housing.

Equity

The Equity program provides **below-market-rate equity investments** in low and middle income multifamily rental developments or existing affordable housing. Developments that receive equity financing must have a Tenant Equity Vehicle (TEV). Supported developments must serve an average of 90% of Area Median Income*.

Concessionary debt

This program provides debt financing in **four ways** to support affordable housing investment, three of which are subject to a requirement to serve an average of 60 percent AMI or below*, unless a secondary source of financing is used:

- Debt financing for low and middle income multifamily rental developments
- Gap financing in the form of subordinate debt and predevelopment loans for LIHTC projects
- Debt financing to preserve existing affordable multifamily rental housing units
- Debt financing for modular and factory-built housing manufacturers (not subject to AMI or Local Government Affordable Housing Commitment requirement)



*Higher AMI's will be allowed for Rural Resort Local Governments who have been approved through a Petition Process.

Local and tribal government resources and requirements

Commitment filing site ➔



bit.ly/co-123-commit

Baseline assistance tool ➔



bit.ly/co-123-baseline

Affordable Housing Financing Fund

September 18, 2023

Proposition 123: Land Banking Program Guidelines



COLORADO
Office of Economic Development
& International Trade



Proposition 123: Land Banking Program

The program provides grants to eligible local or tribal governments and forgivable loans to eligible nonprofit organizations to acquire and preserve land for the development of affordable housing.

Program Guidelines 09-18-2023

Bold items below are addressed in the statute.

Eligible Projects	<ul style="list-style-type: none"> • Acquisition and preservation of land for the development of affordable for-sale housing or affordable housing, homeownership, and mixed use if the predominate use is affordable housing. • New money transactions will be prioritized over a refinance or addressing financing gaps on existing projects.
Program Benefits	<ul style="list-style-type: none"> • Grants to eligible local and tribal governments • Forgivable loans to eligible nonprofits • Good faith efforts may be used for consideration of extensions.
Program Allocation	Program funding 15%-25% of total Financing Fund allocation
Maximum Grant or Loan Amount	Lesser of \$5 million or appraised value
Forgivable Loan Terms	<ul style="list-style-type: none"> • Proper zoning and development plan within 5 years • Permitted and funded within 10 years
Forgivable Loan Conditions	<ul style="list-style-type: none"> • If specified milestones are not achieved by 5 and 10 years, the forgivable loan plus interest must be repaid within 6 months unless the land is conveyed to a state agency or other entity for the development of affordable housing with the approval of CHFA. • Non-performance could impact future awards. • Upon repayment of the loan plus deferred interest, the property may be developed for any purpose.

Grant Conditions	If specified milestones are not achieved by 5 and 10 years, the grant must be repaid within 6 months
Interest Rates and Fees	<ul style="list-style-type: none"> • Forgivable loans bear a deferred interest rate of 2.0%. No interest is due if milestones are achieved. • Standard loan and grant closing costs apply. • Environmental Report required for transactions over \$750,000
AMIs Served	<ul style="list-style-type: none"> • Rental: Households with an annual income at or below 60% AMI • Homeownership: Households with an annual income at or below 100% AMI • Rural resort communities may petition the Colorado Division of Housing to use more flexible income requirements • Commercial or mixed-use development, including non-restricted housing is eligible provided that the predominant use (70%) is affordable. Projects proposing between 51% and 69% of the project to be utilized as affordable may apply with justification.
Geographic Distribution	Letters of Intent and/or applications will be reviewed to ensure equitable distribution of funds statewide to both rural and metro areas.
Reporting	Loan and grant recipients will annually report on development progress.
Funding Process and Distribution	<ul style="list-style-type: none"> • Letters of Intent will be required by August 21, 2023, prior to submission of an application. • Based on anticipated demand, applications may be reviewed through a competitive funding round. • Limited to one project per borrower per State fiscal year
Affordability Covenants	<ul style="list-style-type: none"> • All projects must have a Regulatory Agreement at the time of program funding which will cover the milestone period. • Final development must include a covenant maintaining affordability of rental housing units for at least 40 years after the final improvements are developed. • Homeownership developments shall remain affordable for at least 40 years through a ground lease or similar structure. • Projects may request a waiver to 20 years with a market analysis.
Priorities	<ul style="list-style-type: none"> • High-density housing • Mixed-income housing • Environmental sustainability

This chart is intended only to highlight certain program requirements. Loans are subject to other requirements, including the CHFA Credit Policy and applicable operating and replacement reserve requirements. To view all program details, please read the program guidelines.



COLORADO
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Proposition 123: Land Banking Program Guidelines

Program Description and Eligible Projects

The Land Banking Program (Program), as Part of Proposition 123, provides funding for the acquisition and preservation of land for the development of affordable for-sale housing, or affordable rental housing. Mixed commercial use is allowed if the predominate use is affordable housing. Land with pre-existing improvements is eligible; however, only the value of the land is eligible for financing under the Program.



Program Benefits and Funding Allocation

The Program provides forgivable loans to eligible nonprofit organizations and grants to eligible local and tribal governments.

The total amount allocated in any given year from Proposition 123 funds is estimated to be between 15% to 25% of the total available Financing Fund.

Eligible Recipients

The subject site must be located in the State of Colorado in a jurisdiction that has received approval through the Colorado Department of Local Affairs - Division of Housing to participate in the Financing Fund by completing a Local Government Affordable Housing Commitment. Local and tribal governments, and nonprofit organizations with prior experience in developing affordable housing are eligible to apply.

The title to the subject site being financed under the Program is not required to be the same as the recipient; however, the owner of the property will require prior approval of CHFA either before acquisition or a transfer of title. Any program restrictions placed on the property must be transferred with the title transfer to stay with the land.

Forgivable Loan and Grant Terms and Conditions

Loan or grant amounts shall not exceed \$5,000,000.00 or the appraised value. One hundred percent of the eligible land cost amount or appraised value, whichever is less, may be financed. All projects are required to achieve the following milestones: The project must be properly zoned and have a development plan submitted within 5 years of the Proposition 123 Land Banking loan or grant funding. Also, within 10 years of initial funding, all projects must be permitted and funded. CHFA and the recipient may establish additional terms if good faith efforts to meet the milestone timelines have been made by the recipient.

Non-performance of these conditions could impact the recipients' eligibility of future awards under the program.

Forgivable loans to nonprofit organizations will have an initial 5-year term and will be automatically renewed for an additional 5 years if the project meets the required milestones.

Land acquired with the assistance of the program that is not developed within the timeline above may be used by the owner for any purpose upon payment of the loan with interest or, in exchange for a waiver of interest, conveyed to a state agency or other entity for the development of affordable housing with the approval of the administrator. Upon conveyance of the land, the outstanding loan will be converted to a recoverable grant.

Grants to local and tribal governments must be repaid if the milestones are not achieved. If these requirements are not met within the 5- and 10-year deadlines, the grant must be repaid over the next 6 months. Upon repayment of the grant, the property may be developed for any purpose.

Interest Rate and Fees

Forgivable loans will bear a simple interest rate of 2.0%. All simple interest will be deferred through maturity and will only be due if the milestones are not achieved.

All loans and grants are subject to any standard third-party closing costs due at origination. These costs could include, but are not limited to, customary legal and third-party report fees.

Security Interest

All loans will be unsecured; however, the owner must obtain a title insurance policy at the closing of the program funds.

Area Median Income Restrictions

All rental units to be developed on the subject property will be restricted to households with annual incomes at or below 60% of the Area Median Income. All homeownership units to be developed on the subject property will be restricted to households with annual incomes at or below 100% of the Area Median Income. Rural resort communities as defined by the Colorado Division of Housing (DOH) may petition DOH to use more flexible Area Median Income percentages.

Commercial or mixed use is allowable provided the predominant use is affordable housing. Market-rate or non-restricted housing may be included in the allowable mixed-use space. Predominate use will be considered as anything over 70% of the improved space or units. Projects proposing between 51% and 69% of use as affordable may apply, but applicants will need to justify the reasoning in their application.

Project sites with pre-existing improvements must conform with the restrictions above by the 5- and 10-year milestone requirements.

Commercial or mixed-use properties are further restricted as described below:

The following uses and activities shall not be conducted in or on the Project: (i) activities which are illegal under federal, state, or local laws; (ii) selling, producing, or displaying sexually oriented material (e.g., adult book stores, adult video stores, adult theaters, etc.); (iii) non-medical massage services; (iv) a business generating greater than twenty-five percent (25%) of its revenues from the sale of alcoholic beverages not manufactured onsite or from selling alcoholic beverages for consumption off premises; (v) a business or organization that discriminates in its membership or facility usage

on the basis of race, color, national origin, religion, gender, age, disability, citizenship status, marital status, sexual orientation, or any other status protected by law; (vi) gambling activities (not including sale of state-sanctioned lottery tickets); (vii) selling or dispensing products illegal under federal, state, or local laws; (ix) religious services, instruction, or overtly sectarian activities; (x) pawn brokering; (xi) making “payday” or short-term loans by an entity that is not a bank, credit union, savings and loan, or other banking institution; and (xii) escort services.



Affordability Covenants

All projects must have a Regulatory Agreement filed by CHFA in a priority lien position at the time of loan or grant closing that shall exist until all milestones are achieved.

The final development must include a covenant maintaining affordability of rental housing units for at least 40 years after the final improvements are developed. Homeownership developments shall remain affordable for at least 40 years either through a ground lease or a regulatory agreement enforced by the recipient. All projects may request a waiver down to 20 years with a market analysis.

Geographic Distribution

Letters of Intent and applications will be reviewed to ensure equitable distribution of funds statewide to both rural and metropolitan areas. For applications for multiple projects within the same jurisdiction, applicants are strongly encouraged to work together to prioritize a specific site.



Reporting

Loan and grant recipients will be required to report on development progress as part of the development plan. The specific reporting requirements must include the following:

- Project Name
- Project Street Address
- City and County Location
- Housing Type (homeownership and/or rental)
- Unit Count for Deed-restricted Units
- Unit Count and Bedroom Count for Market-rate Units
- Proposed Units in Each AMI of the Project
- Proposed Percentage of Mixed Use
- Proposed Category of Non-residential Use
- Proposed Electrification Level - e.g., 100% electrification, EV charging infrastructure higher than required
- Meets the Transit-oriented Development Definition
- Meets the Walkable Neighborhood Definition
- Statutory Priority Satisfied by the Project - High-density, Mixed-income, and/or Environmental Sustainability

Statutory Priorities

All applications will be evaluated with an emphasis placed on the following criteria:

- High density Housing: Informed by local density definitions and maximum allowable density based on local conditions.
- Mixed Incomes: Commitment to serving a broad range of income levels within the development. (may need to reference the allowable percentage of Restricted affordable vs other)
- The Environmental Sustainability of the proposed project as defined below.

Applicants should be prepared to design future projects under the Environmental Sustainability Standards and local codes in place at the time of development planning.

Each of the following is required to meet the Environmental Sustainability Standard.

1. Certification from one of the following*:
 - a. 2020 Enterprise Green Communities (EGC)
 - b. Leadership in Energy and Environmental Design LEED v.4.1 (LEED)
 - c. National Green Building Standards NGBS ICC-700-2020 (NGBS)
 - d. Zero Energy Ready Homes standard (US DOE)

2. All-electric building using high efficiency electric appliances such as heat pumps and heat pump water heaters, or a mixed-fuel building that includes pre-wiring for efficient electric heating and appliances and includes pre-wiring to enable future installation of EV charging station(s) for at least 10% of parking spots or greater if required under local codes.

*Developments that achieve all-electric construction with high-efficiency electric appliances may opt-out of a formal green building certification.

3. Utilize water-efficient design inside and outside. Full guidance can be found at coloradowaterwise.org.
4. Developments should be located within a half-mile of existing or planned transit corridors.

In addition to the Statutory Prioritization above, for Fiscal Year 2023, proposals will be evaluated based on the following:

1. Readiness to proceed (shovel ready)
2. Development Plan status
3. Geographic distribution
4. Dollar amount of request
5. Financial feasibility
6. Total number of units proposed on the site

Application Process and Distribution

Prior to submitting an application, a Letter of Intent to Apply (LOI) for a Proposition 123 Land Banking loan or grant must be sent to CHFA to determine eligibility, including the status of local government opt-in, and available funding. LOIs must include the project location/address, size of the parcel (if known), and estimated loan or grant request. Based on anticipated demand, applications may be considered through a competitive funding round.

Recipients will be limited to receive funding for one project per State fiscal year.

Applicants who do not submit an LOI prior to August 21, 2023, may not be eligible to receive funding from FY22-23 State funding cycle. Depending on demand or the availability of funds, future State funding cycles, as well as loan amount, or number of loans from a recipient, may not have the same calendar deadline or Application and LOI requirements. Please contact the following individuals with questions:


Steve Boice
Manager of Business Finance
303-297-7468
sboice@chfainfo.com

Peter Martinez
Commercial Loan Officer II
303-297-7320
pmartinez@chfainfo.com

All LOIs must be emailed to landbanking@chfainfo.com by 11:59pm MT on August 21, 2023. Once the Letter of Intent to Apply is received and eligibility and funding availability is determined, LOI submitters will be sent an invitation to complete the Proposition 123 Land Banking Application via a secured email system on or around September 11th. All applications must be completed prior to 11:59pm MT on November 1, 2023.

Nonprofit organizations are encouraged to provide letters of support from local governments. The Proposition 123 Land Banking Application, in addition to the following information, will be required to be submitted to CHFA:

- Applicant resumé and list of previous developed projects
- Audited financial statements or tax returns for the most recent three years for the recipient entity or project sponsor
- Project Narrative, describing the proposed use of the project, including a breakdown of the proposed AMI percentages and any commercial use, if known at the time of application, alternative funding sources if Land Banking funds are not received, and how the project will address the priorities of density, mixed-income, and environmental sustainability in the market area
- Appraisal
- Phase I Environmental Report for transactions over \$750,000.00
- Purchase and sale agreement



For the fiscal 2023 funding cycle, applications will be accepted and reviewed based on the following criteria:

1. Readiness to proceed
2. Development Plan status
3. Financial feasibility
4. Geographic distribution
5. Dollar amount of request
6. Total number of units proposed on the site
7. Leverage of outside sources of funds

Once an application is approved, CHFA will provide the applicant with a loan commitment, along with a list of any due diligence items to be collected. The commitment will be valid for 12 months and must be signed and returned to CHFA.