

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF FINANCIAL ASSISTANCE**

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May 6, 2019

MEMORANDUM FOR: Current TOD and VHHP Award Recipients and Other HCD Stakeholders

FROM: Mark Stivers, Acting Deputy Director
Division of Financial Assistance

SUBJECT: **Revisions to the Transit Oriented Development (Rounds 1-3) and Veterans Housing and Homelessness Prevention (Rounds 1-4) Guidelines Relating to Developer Fee and Cash Flow for Projects Utilizing 4% Low-Income Housing Tax Credits**

The California Department of Housing and Community Development (Department) has amended the Transit Oriented Development (TOD) program rounds 1-3 Guidelines and the Veterans Housing and Homelessness Prevention (VHHP) program rounds 1-4 Guidelines to create an alternative method of calculating developer fee and to make a conforming change to priority cash flow payments for projects utilizing 4 percent low-income tax credits. These amendments apply to TOD and VHHP projects that have received an award but not yet converted to permanent financing. The Department intends to incorporate this new methodology as the sole developer fee calculation methodology for 4% tax credit projects into future TOD and VHHP Guidelines, to all other program guidelines as they are developed, and ultimately into the Uniform Multifamily Regulations (UMR). The purpose of this memo is to provide background and an explanation of the amendments.

The current language in the UMRs relating to developer fee limits for new construction projects utilizing 4 percent tax credits applies the California Tax Credit Allocations Committee's (TCAC) high-cost ratio adjuster to the amount of fee that may be paid from sources. A sponsor's base limit of fees that may be paid from sources is decreased 1 percent for each 1 percent the project's eligible basis exceeds the TCAC threshold basis limits (excluding increases for deeper targeting). Conversely, a sponsor's base limit of fees that may be paid from sources is increased 1 percent for each 1 percent that the project's eligible basis is less than TCAC's threshold basis limits (excluding increases for deeper targeting).

In the context of Department programs which allow a project to have a high-cost ratio of up to 160 percent (TCAC's limit for the 9 percent tax credit program to which the same adjuster applies is 130 percent), this can result in a severe reduction to a sponsor's fee

from sources.

With more experience, the Department finds the formula overly punitive in such cases. The amendment, for previously awarded TOD and IIG projects that have not yet closed permanent financing, creates an alternative developer fee calculation cuts in half the negative and positive effect of the high-cost ratio adjuster. Under the revised formula, a sponsor's base limit of fees that may be paid from sources is decreased 0.5 percent for each 1 percent that the project's eligible basis exceeds TCAC's threshold basis limits (excluding increases for deeper targeting). Conversely, a sponsor's base limit of fees that may be paid from sources is increased 0.5 percent for each 1 percent that the project's eligible basis is less than TCAC's threshold basis limits (excluding increases for deeper targeting). The amendment further refers to TCAC's methodology for calculating the high-cost ratio for 4 percent projects seeking state credits, as opposed to TCAC's high-cost ratio methodology for 9 percent projects. This is the more appropriate standard to use. In addition, the amendment allows projects to elect to remain under the developer fee limits in place at application. This will ensure that pipeline projects are not negatively affected by this amendment.

For all projects utilizing 4 percent tax credits, the amendment also eliminates the \$3.5 million cap on the amount of developer fee in cost as well as the ability to increase this cap by the amount of any capital contribution of funds or real property made by the sponsor or an affiliate. The amendment instead allows the developer fee in cost for a 4 percent tax credit project to be the amount allowed by TCAC. This will ensure that projects can generate the maximum amount of 4 percent tax credits.

Lastly, because these clarifications allow for higher developer fees in cost for 4 percent tax credit projects (up to the TCAC maximum), the amendment also caps the payment of deferred developer fee as a priority cash flow at the point at which the aggregate of the developer fee from sources and as deferred exceeds \$3.5 million. Whereas the total fee was previously capped at \$3.5 million, this maintains status quo with respect to priority uses of cash flow. If the sponsor elects to remain under the developer fee limit in place at application, then the project also remains under the cash flow rules in place at application.

Please contact Mark Stivers, Acting Deputy Director of Financial Assistance, with questions at mark.stivers@hcd.ca.gov.

Attachment: Notice of Amendment

Notice of Amendment to Veterans Housing and Homelessness Prevention (Rounds 1-4) and Transit Oriented Development (Rounds 1-3) Guidelines

WHEREAS the California Department of Housing and Community Development (Department) is authorized to adopt, promulgate, amend, repeal, and administer standards, requirements, procedures, and guidelines (collectively, Program Guidelines) for financial assistance offered pursuant to Department housing finance programs by means of notices of funding availability for the following programs:

Veterans Housing and Homelessness Prevention Program (VHHP) -
Article 3.2 (commencing with Section 987.001) of Chapter 6 of Division 4 of the Military and Veterans Code.

Round 1 - 2/20/15; as amended 3/11/19 & 3/25/19

Round 2 - 10/13/15; as amended 3/11/19 & 3/25/19

Round 3 - 12/14/16; as amended 3/11/19 & 3/25/19

Round 4 - 5/9/18; as amended 5/18/18, 6/22/18, 3/11/19, & 3/25/19

Transit-Oriented Development (TOD) Implementation Program – Part 13
(commencing with Section 53560) Health and Safety Code, Division 31.

Round 1 - 12/11/07

Round 2 - 1/30/09

Round 3 - 5/10/13

WHEREAS pursuant to the statutory authority set forth above, the Program Guidelines shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) Title 2 Government Code, Part 1 of Division 3.

WHEREAS the Uniform Multifamily Regulations (UMR) are set forth in Title 25, California Code of Regulations (CCR), Division 1, Chapter 7, Subchapter 19 (commencing with section 8300).

WHEREAS the UMRs provide uniform standards and program rules for multifamily rental housing developments assisted by the Department;

WHEREAS the Department's regulatory action to make comprehensive amendments to the UMRs became effective on November 15, 2017;

WHEREAS the Program Guidelines expressly incorporate by reference some, or all of the UMRs; and

WHEREAS the Department is issuing the following amendments to the Program Guidelines as a result of the November 15, 2017 UMR amendments and in anticipation of any future amendments thereto.

Now, THEREFORE, by the authority of the Department's Director, as indicated by his signature below, the Department hereby adopts and amends into the Program Guidelines the following omnibus addendums thereto, as if such provisions were originally set forth in each publication of the foregoing Program Guidelines:

Addendum Section 1 - Developer Fees

Notwithstanding anything in these guidelines to the contrary, for projects utilizing 4 percent tax credits, developer fee payments shall not exceed the amount that may be included in project costs pursuant to 4 CCR, Section 10327. In addition, the developer fee paid from development funding sources shall not exceed the following:

- 1) For acquisition and/or rehabilitation projects or adaptive reuse projects, the lesser of the amount of the developer fee in project costs or \$2,000,000.
- 2) For new construction projects, the base limit shall be the lesser of the amount that may be included in project costs or \$2,200,000. To arrive at the final limit on the developer fee paid from development funding sources, the base limit shall then be multiplied by a ratio that is the average of (i) the difference between two (2) and the project's high-cost ratio, as calculated pursuant to 4 CCR, Section 10317(i)(6) and (ii) 100 percent.

In lieu of these provisions, a sponsor may elect to use the developer fee limit in place at the time of application.

Addendum Section 2 - Net Cash Flow

Notwithstanding anything in these guidelines to the contrary, operating income remaining after payment of approved current and prior year operating expenses, reserve deposits, and mandatory debt service shall be applied in the following priority order:

- (1) First, towards payment of any:

- (A) Approved deferred developer fee, pursuant to 25 CCR, Section 8312, provided that the aggregate of the developer fee paid from development funding sources and paid as deferred shall not exceed \$3,500,000.

A project that makes an election pursuant to Addendum Section 1 above to use the developer fee limit in place at the time of application shall be exempt from the \$3,500,000 limit imposed by the preceding sentence;

(B) Asset management, partnership management, and similar fees, including fees paid to investors, in an amount not to exceed the sum of:

1. An amount for the current year, equal to \$30,000 for 2016 and increased at the rate of 3.5 percent for each subsequent year, plus
2. Unpaid asset management, partnership management, and similar fees accrued for a period not to exceed three project fiscal years following the year during which they are earned, up to the difference between the limit for the year and the amount paid for that year; and

(C) Supportive services costs that these guidelines would allow to be paid as operating costs, but that other funding sources do not.

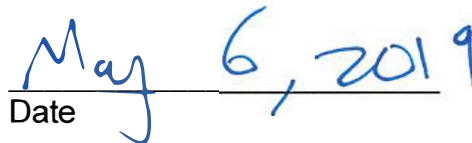
(2) Second, 50 percent to the Sponsor as Distributions and 50 percent to the Department as payments on the program loan.

(A) If the terms of other public agencies' financing also require payments from remaining cash flow, the Department may agree to share what would otherwise be its 50 percent share of available cash flow with the public agencies in amounts proportional to the agencies' respective assistance amounts (total local government assistance, as defined in Section 8315, and total Department loans and grants).

(B) To be consistent with the terms of other public agency loans or leases, the Department may agree to set the percentage payable to the Sponsor at an amount less than 50 percent.

(C) For projects with income from project-based Section 8 or similar project-based rental assistance that is not underwritten by other project lenders, the Department may reduce the Sponsor's share to an amount equivalent to the amount they would receive if one of the other lender's loan amounts were based on an income stream that included the income from the rental assistance.


Ben Metcalf, Director


Date