

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

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**ADMINISTRATIVE NOTICE**
Notice Number: 19-01

June 11, 2019

MEMORANDUM FOR: Interested Parties

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

SUBJECT: 2017 Uniform Multifamily Regulations (UMR) Developer Fee
Limits and Capital Contributions

Administrative Note: This Administrative Notice establishes a formal written notification of administrative guidelines that affect the operation of Department programs. This format is used to identify, clarify, and record administrative guidelines and interpretations of public interest.

This advisory clarifies the Department's interpretation of Section 8312 of the 2017 UMRs relating to developer fees limits.

Through cross-reference to the TCAC regulations, the 2017 UMRs define Developer Fee as "All Funds paid *at any time* as compensation for developing the proposed project." [Emphasis added] As a result, the use of the term Developer Fee in the UMRs refers to the total amount of developer fee in project cost, which may include fee paid by development funding sources, deferred developer fee paid by cash flow, and developer fee contributed back to the project as general partner equity.

Section 8312 of the UMRs establishes the limits on Developer Fee. Subdivision (a) relates to projects not utilizing tax credits. Subdivision (b) related to projects utilizing 9% tax credits and sets HCD's Developer Fee limit at TCAC's limit on developer fee in cost. Subdivision (c) relates to projects utilizing 4% tax credits, and only in this instance can there be a difference between the TCAC limit on developer fee in cost and HCD's limit on Developer Fee. Subdivision (c) states:

(c) For Projects utilizing 4% percent tax credits, Developer Fee payments shall

not exceed the lesser of \$3,500,000 or the sum of:

- (1) the amount that could be included in project costs pursuant to Title 4, California Code of Regulations, Section 10327 [TCAC regulations] if the project was receiving 9% competitive credits; plus
- (2) any remaining deferred Developer Fee (payable exclusively from operating income) that is allowed in eligible basis under Title 4, California Code of Regulations, Section 10327 of the TCAC regulations.

Subdivision (c), as clarified by the Department's Administrative Notice of August 15, 2018 ([August 15, 2018 Administrative Notice](#)), further establishes the amount in (1) above as the limit on the amount of the Developer Fee paid from development funding sources for projects utilizing 4% tax credits.

Subdivision (c)(2) refers to deferred Developer Fee paid as a priority payment (prior to payment of residual receipts to the Department) of operating cash flow pursuant to UMR Section 8314(a). Any deferred Developer Fee in excess of the \$3,500,000 limit per UMR Section 8312(c) shall be paid from owner distributions remaining after the payment of residual receipts to the Department (non-priority deferred developer fee).

Subdivision (d) of Section 8312 further provides:

- (d) The dollar value of any capital contribution of funds or real property made by the Sponsor or an affiliate, as approved by the Department, for Project development costs shall increase the Developer Fee limit by the dollar value of the capital contribution.

Subdivision (d) uses the defined term Developer Fee and does not reference the portion of the Developer Fee paid from funding sources. **As a result, a capital contribution to the project that meets the criteria of subdivision (d) only increases the limit on Developer Fee in project cost and does not affect the limit on the portion of the Developer Fee that may be paid from development funding sources.** In order for a project to maximize tax credit basis and equity, this subdivision allows a 4% project to utilize the TCAC maximum developer fee in project cost, even if it exceeds the HCD maximum Developer Fee of \$3,500,000 pursuant to subdivision (c), provided that a capital contribution of an equal or greater amount that meets the criteria of subdivision (d) remains in the project. The maximum developer fee paid from development funding remains the amount described in Section 8312(c)(1), [i.e., \$2,000,000 for rehabilitation or adaptive reuse; and \$2,200,000 for new construction as adjusted by the TCAC high cost test for 9% tax credit projects], regardless of any capital contribution. This ensures that 100% of the additional tax credit equity is utilized to close project funding gaps rather than to increase the portion of the developer fee paid from development funding sources.

This memo also provides guidance on the type of capital contributions that the Department will approve pursuant to Section 8312(d). Whereas, the Department shares the interest in maximizing basis and access to 4% tax credits, it will approve a

contribution of developer fee in the form of general partner equity, sponsor loan, or sponsor affiliate loan. If structured as a sponsor loan or sponsor affiliate loan, the loan shall be repayable solely from owner distributions remaining after the payment of residual receipts to the Department (non-priority payment from distributions). The aggregate limit of Developer Fee paid from funding sources and paid as a priority payment of operating cash flow pursuant to UMR Section 8314 remains \$3,500,000. The Department will also approve any other equity contribution or a donation of real property to the project, provided that the contribution or donation comes solely from the sponsor or the sponsor's affiliate. Sources under the control of the partnership, such as net operating income or reserves, are not contributions from the sponsor. In addition, the contributions must not be a pass-through from another source, such as an Affordable Housing Program grant, a state grant, or a land donation from a third party.