



GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT



Office of the Director
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Amendment to Developer Fee Calculation

Issued: November 17, 2016

Introduction

In order to simplify process, provide clarity to applicants, and reduce conflicting requirements, the Department of Housing and Community Development (DHCD) has amended the allowable developer fee calculation as detailed in this communication. The amended calculation works to better align with the calculation currently in use by the DC Housing Finance Agency (DCHFA) for Low Income Housing Tax Credit/tax exempt bond projects.

Scope

The amended developer fee calculation shall apply to all initial financing applications received by DHCD's Development Finance Division (DFD) on or after November 17, 2016.

Waiver Process Established

DHCD will review waiver requests seeking to have the amended developer fee calculation applied to projects outside of the scope of this amendment if the following four (4) conditions are met:

1. initial financing application was received by DFD on or after January 1, 2015 but prior to November 17, 2016; and
2. the project is currently active in DFD's underwriting pipeline; and
3. the amended calculation will result in an increase to the developer fee; and
4. DHCD receives a written request for the waiver on or before December 31, 2016. The request must be addressed to the Director and provide a justification for applying the amended developer fee calculation.

DHCD will make a determination on all waiver requests within 30 days of receipt of the request. DHCD reserves the right to deny any and all waiver requests.

Safe Harbor

It is important to note that in cases involving federal resources, the then-current requirements of HUD's Safe Harbor standards will apply if the standards are more restrictive than the District's policy.

Amendment to Developer Fee Calculation, Continued

Developer Fee Changes

1. Developer Consultant Fees excluded:

Prior published guidance required that the Maximum Developer Fee include all fees paid to processing agents and development consultants (Per DHCD 2015 and 2016 RFPs).

The new guidance for all eligible applications is that the Developer Consultant Fee(s) including fees paid to processing agents and development consultants will not be included in the calculation of Maximum Developer Fee. However, Developer Consultant Fee(s) will be carefully scrutinized. And, in cases where there may be identity of interest issues, the Developer Consultant Fee(s) may be netted against the Maximum Development Fee.

2. Maximum Developer Fee:

The prior guidance capped the maximum developer fee at \$4 million. Further, a maximum of \$2 million could be paid from the development budget with the remainder deferred. The percentages used to calculate the developer fee were also reduced above the \$10 million threshold.

The new guidance removes the maximum cap, and establishes a calculation to determine the amount of the fee that must be deferred. Any calculated developer fee in excess of \$2 million must be deferred, but only to the point that the deferred fee can be recovered from cash flow over a twelve (12) year period. If on a particular project the low income housing tax credit investors require the deferred fee be limited to what may be paid back over the initial ten (10) year period, the Department will consider this requirement.

Lastly, the percentages used to calculate the developer fee remain static regardless of the acquisition or development costs.

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Amendment to Developer Fee Calculation, Continued

Below, please find tables that illustrate and differentiate the current percentages and amended calculations:

Current Maximum Developer Fee Calculation

Fee on Development Costs (Total development costs do not include the following: hard or soft cost contingencies, syndication related costs; funded guarantee and reserve accounts that are required by lenders or investors; and developers' fees)	Fee on Acquisition Costs
15% on first \$10,000,000	5% on first \$10,000,000
10% on amount over \$10,000,000	2.5% on amounts over \$10,000,000
Total may not exceed \$4 million , with no more than \$2 million paid out of the development budget and up to an additional \$2 million deferred.	

Amended Maximum Developer Fee Calculation

Fee on Development Costs (Total development costs do not include the following: hard or soft cost contingencies, syndication related costs; funded guarantee and reserve accounts that are required by lenders or investors; and developers' fees)	Fee on Acquisition Costs (If there is an identity of interest between the seller and the purchaser, no fee shall be calculated on the acquisition price.)
15%	5%
No maximum cap. Any amount in excess of \$2 million shall be deferred, up to the amount that can be recovered from cash flow over 12 years of operations. Amounts that cannot be repaid during this period will be added to the initial \$2 million paid fee.	

3. Restrictions:

- a. Identity of Interest—It is important to note that if an identify of interest between the developer and construction contractor whereby contractor profit and overhead is considered together with the developer fee subject to the overall cap of 18 percent on development costs.***
- b. Federal and other funding source guidelines—Developer fees must comply with any other funding-source specific requirements, such as HUD's Safe Harbor standards.***