



## Developer's Fee and Overhead Policy

### A. Amount of Developer's Fee and Overhead

*(See Sample Developer's Fee Calculation Below)*

Developer's Fee and Overhead is calculated as a percentage of acquisition cost plus a percentage of "Fee-Based Development Costs", where Fee-Based Development Costs equal total development costs, less acquisition, capitalized reserves, developer's fee and overhead, and costs attributable to syndication. In terms of the One-Stop Application (OneStop 2000), acquisition cost equals Line 163, and Fee-Based Development Costs equals Line 194 – Line 163 – Line 189.

The maximum allowable Developer's Fee and Overhead consists of the sum of "Developer's Fee Payable", "Developer's Fee Loaned" and "Developer's Fee Contributed" as defined below:

**Developer's Fee Payable:** Developer's Fee Payable equals that portion of the Developer's Fee and Overhead which can be drawn from available capital resources. The maximum allowable Developer's Fee Payable is calculated as follows:

- 5% of project acquisition cost; plus
- 15% of the first \$3 million of Fee-Based Development Costs; plus
- 12.5% of Fee-Based Development Costs between \$3 and \$5 million; plus
- 10% of Fee-Based Development Costs in excess of \$5 million.

The Developer's Fee Payable will be reduced from the maximum allowable Developer's Fee Payable to the extent that capital resources are insufficient to pay the maximum.

For transactions receiving funding from the Department of Housing and Community Development (DHCD) together with Low Income Housing Tax Credits, the Maximum Developer Fee and Overhead calculation and Developer's Fee Payable must be in accordance with DHCD's Tax Credit Qualified Allocation Plan,

Note that, in accordance with DHCD policy, 80% of those capitalized reserves which are anticipated to be released during the first five years, and all development consultant fees, are considered part of the Developer's Fee Payable. The 80% factor applied to capitalized reserves is intended to approximate the present value of such reserves which might not be released for up to five years. The five year holding period is assumed to begin on the first day that the development has achieved sustaining occupancy.

**Developer's Fee Loaned:** Developer's Fee Loaned (also often referred to as deferred developer's fee) equals the amount, if any, by which the Developer's Fee Payable (including development consultant fees and the present value estimate of capitalized reserves) is less than the maximum allowable Developer's Fee Payable. Developer's Fee Loaned may be counted as Owner's Equity for purposes of calculating Limited Dividend (see Limited Dividend Policy for definitions of Owner's Equity and Limited Dividend).

**Developer's Fee Contributed:** The estimated present value of capitalized reserves, if any, by which Developer's Fee Payable is reduced, as described above, will be counted as Developer's Fee Contributed.

*For developments not utilizing the Low-Income Housing Tax Credit, a Developer's Fee Contributed may be budgeted as both a source and a use, in an amount equal to the difference between (i) 25% of acquisition and Fee-Based Development Costs, and (ii) the maximum allowable Developer's Fee Payable. Developer's Fee Contributed will contribute to Owner's Equity for purposes of calculating Limited Dividend (see Limited Dividend Policy for definitions of Owner's Equity and Limited Dividend).*

*Last Updated December 2015*

### **B. Timing of Payment of Developer's Fee and Overhead**

Up to 50% of Developer's Fee Payable may be paid at construction loan closing, up to 40% at final loan closing, and the remaining amount of the fee may be paid at sustaining occupancy (i.e., projected full occupancy at pro-forma rents). Modifications to this payment schedule may be made on a case-by-case basis to reflect requirements of a project's equity investor provided that, in MassHousing's discretion, sufficient performance-based incentives are maintained to achieve timely construction completion, final closing and rent-up of the project.

### **C. Subsidy Layering Guidelines**

Projects utilizing Low Income Housing Tax Credits in conjunction with any form of federal assistance (including FHA Risk Sharing) are subject to HUD Subsidy Layering regulations which may impose fee, overhead and profit limits that differ from MassHousing's limits. Consult MassHousing or HUD staff for more information.

### **D. Tax-Exempt Financing Limitations**

Federal law governing tax-exempt private activity bonds prohibit the use of tax-exempt bond proceeds to pay a profit to the owner or a party related to the owner. Thus, any portion of the Developer's Fee and Overhead representing "profit" must be paid by sources other than MassHousing tax-exempt mortgage proceeds, such as tax credit equity, HOME funds, etc.

## Sample Developer's Fee Calculation

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#### Fee-Based Development Costs:

Total Acquis., Constr. and Gen. Dev. Costs (Line 194)	\$10,800,000
Less:	
Acquisition cost (Line 163)	(\$1,000,000)
Development Consultant (Line 189)	(\$50,000)
Syndication costs (if not carried "off-budget")	\$0
Fee-Based Development Costs:	<u>\$9,750,000</u>

#### Capitalized Reserves Release Schedule:

Total Capitalized Reserves which may be released:		\$412,500
Year 1 (begins at sustaining occupancy)	0%	\$0
Year 2	25%	\$103,125
Year 3	25%	\$103,125
Year 4	25%	\$103,125
Year 5	25%	<u>\$103,125</u>
Total released within first five years:	100%	<u>\$412,500</u>
Estimated present value of capitalized reserves:	80%	\$330,000

#### Maximum Developer Fee & Overhead Payable:

5% of project acquisition cost	\$50,000
15% of first \$3 million of fee-based costs:	\$450,000
12.5% of fee-based costs between \$3 and \$5 million:	\$250,000
10% of fee-based costs in excess of \$5 million:	<u>\$475,000</u>
Subtotal:	\$1,225,000
Less:	
Present value of capitalized reserves:	(\$330,000)
Development consultant fees:	(\$50,000)
Maximum Allowable Fee & Overhead Payable:	\$845,000

#### Actual Developer's Fee/Overhead Payable:

Total Sources, excluding Fee/OH	\$11,600,000
Total Uses, excluding Fee/OH:	<u>(\$11,300,000)</u>
Actual Fee/Overhead Payable:	\$300,000

#### Developer's Fee Loaned (Deferred):

Maximum Allowable Fee/Overhead Payable	\$845,000
less Actual Fee/Overhead Payable:	<u>(\$300,000)</u>
Developer's Fee Loaned:	\$545,000

**Developer's Fee Contributed: \$330,000**