APPENDIX J

WHEDA'S Developer Fee Policy for Housing Tax Credit Developments
Revised October 2021

Developer Fees are limited to the following:

- Acquisition/rehab properties
  - Acquisition: 6% developer fee (identity of interest situations: developer fee is limited to a maximum of 3%)
  - Rehab: 16% developer fee

- New construction and adaptive reuse
  - Acquisition: 6% developer fee
    New construction and adaptive reuse costs: 15% for properties with 24 or fewer units. For other properties, the developer fee is limited to 12% for first 55 units, and 9% for units above 55

For all projects receiving points for Minority Developers in Scoring Category 12: Development Team, developer fee received must be allocated in proportionate to at least half of the percentage of ownership, evidenced by an executed Developer Agreement/MOU.

Developer fees for 9% transactions will be limited to a maximum of $21,000 per unit.

The following items and activities are to be combined under the developer fee limits described in this Appendix:

- Developer Fees
- Consultant Fees
- Construction Supervision
- Developer Overhead

A developer fee cannot be collected on amounts deposited into Project Reserves. The maximum developer fees will be calculated as follows:

- Acquisition/rehab properties – the maximum developer fee will be the sum of the Land & Building Acquisition and Rehab fees calculated below
  - Land & Building Acquisition: 6% * (Total Acquisition + Demolition)
    - Fee will be limited to 3% for identity of interest situations
  - Rehab: 16% * (Total Project Cost – Purchase of Land and Buildings - Developer Fee – Consultant Fee – Construction Supervision – Developer Overhead – Project Reserves)

- New construction and adaptive reuse - the maximum developer fee will be the sum of the Site Acquisition and New Construction and/or Adaptive Reuse fees calculated below
  - Site Acquisition: 6% * (Total Acquisition + Demolition)
  - New Construction and Adaptive Reuse costs: Developer Fee % identified below * (Total Development Cost – Purchase of Land and Buildings - Developer Fee – Consultant Fee – Construction Supervision – Developer Overhead – Project Reserves)

- Developer Fee %
  - 24 or Fewer Units: 15%
  - 25 to 55 units: 12%
  - More than 55 units: 12% for the first 55 units; 9% for remaining units

The sum of developer fees, consultant fees, construction supervision, and developer overhead will not be allowed to increase above the amount in the approved Housing Tax Credit (HTC) Carryover application.

4% Housing Tax Credit Applications

Applications for 4% HTCs are allowed to include a developer fee of up to 20%. In the event that an applicant requests a developer fee of 20%, or a developer fee % above the limits noted on the first page of this Appendix, the following requirements will apply:

- A minimum of 50% of the developer fee must be deferred
  - The 50% deferral requirement will be applied to the entire developer fee, rather than the amount exceeding the limits noted on the first page of this appendix. For example – an application with an 18% developer fee will be required to defer a minimum of 9%.
  - WHEDA will confirm that the 50% deferral requirement is met within the first HTC application and the 8609 application.
  - Should the application include a deferred fee of less than 50%, WHEDA will adjust sources to generate a 50% deferred fee, which could include a reduction of the annual HTC amount.
  - The application must include evidence that the deferred fee can be repaid through future cash flows at the property within the 15-year HTC compliance period.
- For acquisition/rehab applications, a maximum of 20% can be used in place of the 16% reference in the rehab calculation on the first page of this appendix
- For new construction applications, a maximum of 20% can be used in place of the variable rate percentage noted on the first page of this appendix.
- The 6% developer fee limit noted on page one of this appendix will continue to apply to site and building acquisition costs (3% in identity of interest situations).

For 4% transactions, any developer fee above the current limit for 9% transactions would not be included in the calculation of the Maximum Development Cost.

For 4% transactions, the sum of developer fees, consultant fees, construction supervision, and developer overhead will not be allowed to increase above the amount in the approved Housing Tax Credit (HTC) Tier 1 application.

Developer fees for 4% transactions will be limited to a maximum of $40,000 per unit.

Developer's Fee and Identity of Interest Situations

Those developments that include an "Identity of Interest" will be limited on the amount of developer's fee that can be charged. An Identity of Interest situation between the seller and

buyer, regardless of unrelated developer, of real estate limits the fee for the acquisition portion to 3% of the acquisition cost or a minimum of $5,000. The developer's fee for the rehabilitation portion will be scaled to the amount of rehab as identified above.

The Identity of Interest definition that WHEDA will follow is provided by HUD and bond regulations. HUD's Management Agent handbook (4381.5) defines Identity of Interest as:

"An identity of interest relationship exists if any officer, director, board member, or authorized agent of any development of any development team member (consultant, general contractor, attorney, management agent, seller of the land, etc.):

(a) is also an officer, director, board member or authorized agent of any other development team member;

(b) has any financial interest in any other development team member's firm or corporation;

(c) is a business partner of an officer, director, board member or authorized agent of any other development team member;

(d) has a family relationship through blood, marriage or adoption with an officer, director, board member, or authorized agent of any other development team member; or

(e) advances any funds or items of value to the borrower."