

Tab 29 Waiver Requests

Applicants requesting a waiver of any Agency requirement must provide a written request under this Tab of the Application stating the compelling circumstances and justification for seeking a waiver.

Requests for waivers of application processing and threshold requirements must be submitted to the Agency for review as part of the Application. Review of waiver requests prior to the submission of an Application will be considered by the Agency based on the nature of the request. The Agency will promptly review requests for waivers.

Detailed below is guidance regarding common Waiver requests.

MAXIMUM BASIS PER UNIT

The Agency may consider a waiver of the Maximum Basis per Unit limitations for Developments with a minimum of fifty-one percent 51% of the units in the development having three (3) or more bedroom units.

For all other Developments, the Agency may consider a waiver of the established limits based upon the demonstration of compelling circumstances and justification for the additional basis eligible costs. Compelling circumstances include:

1. preservation of a designated historic building or necessitated by building in or adjacent to a designated historical district;
2. construction costs attendant to providing supportive services to the resident population that are over and above that typically associated with such housing, including reasonable costs related to the construction of community service facilities;
3. costs due to structurally unsuitable subsoil conditions; costs associated with environmental remediation of an existing building that will remain in the development;
4. costs resulting from local conditions or attempts to exclude affordable housing (this may include excessive impact fees, building code requirements, restrictive zoning, extraordinary litigation costs incurred because of neighborhood opposition and planning requirements); and
5. other specific, clear and demonstrable cases that the extraordinary costs are justified.

For those Developments seeking to exceed limits based on items 1 through 4 in the list above, costs due to historic considerations, unsuitable subsoil conditions or costs associated with environmental remediation, evidence must be provided that such costs are in excess of expenditures required for eligibility for Tax Credits. In addition, a detailed cost breakdown must be provided indicating the difference between the costs for these items and those of typically constructed developments. Applicants must provide full explanation of all alternative site considerations and provide adequate justification of the need for the development at the identified location or a full explanation and adequate evidence of cost savings.

For those Developments seeking to exceed limits based on item 5 in the list above, the Agency will only approve waivers based on unique circumstances such as the development of scattered site housing or material increases in costs resulting from the Covid-19 pandemic.

For Applications affected by local attempts to exclude affordable housing, Agency staff will not approve Tax Credits above 30 percent of the Maximum Basis limitation. For all other circumstances, Agency staff will not approve Tax Credits above 15 percent of the Maximum Basis limitation.

All requests for waivers of the Maximum Basis per Unit limitations will be subject to a rigorous evaluation by Agency staff. The Agency reserves the right to make final decisions regarding waiver requests. A waiver of the Maximum Basis limitation is solely determined by the Agency.

STATE DESIGNATED 130% BASIS BOOST

Applicants for Competitive 9% Tax Credits may request a State Designated Basis Boost in an amount up to 130 percent (130%) of the eligible rehabilitation/new construction basis. The waiver request must include evidence satisfactory to the Agency that the Development will have excess development expenses and costs related to one of the following reasons:

1. location in areas of the Commonwealth with limited federal, state, local or financial resources; or
2. provision of general occupancy units in “areas of opportunity”, as defined by the Agency or their siting in order to affirmatively further fair housing or in areas that have not received representative resources in the past; or
3. provision of supportive housing opportunities; or
4. community impact developments; or
5. other specific, clear and demonstrable cases that a basis boost is justified.

Projects located in a Qualified Census Tract (QCT) or Difficult Development Area (DDA) as designated by HUD are automatically qualified for a 30% basis boost and are therefore not also eligible to receive the State Designated Basis Boost.

In accordance with Federal rules, applications for 4% Tax Credits and Tax-Exempt bonds are ineligible for a State Designated Basis Boost.

DEVELOPER’S FEE

Waivers of the caps on Developer’s Fee must provide detail regarding the justification for the fee. To the extent that the Development Budget anticipates a reinvestment/deferral of a portion of the Developer’s Fee, the operating projections must indicate an expectation that the entire reinvested/deferred amount will be repaid from operating cash flow in the first 10 years of operations.

In no case will the Agency provide a waiver of the methodology used to calculate the Developer’s Fee.

Waiver requests of the cap on Developer’s Fee for developments requesting Competitive 9% Tax Credits will not be granted by the Agency.

DEVELOPMENT DESIGN THRESHOLD CRITERIA

Applicants requesting a waiver of any of the Design Threshold Criteria shall provide a written request identifying the criteria for which the waiver is sought, and a detailed explanation of the compelling circumstances preventing compliance with the requirements. Drawings, specification, photos, contractor's cost estimates, or any other documentation supporting the justification for a waiver should be included

Note: For Preservation developments, waivers regarding existing dwelling unit size, room size, corridor/stair width, closet door width and minimum number of baths will not be required unless interior spaces will be reconfigured.

PER-UNIT FURNISHINGS EXPENDITURE CAP

Applicants requesting a waiver of the furnishings cap outlined in Cost Limits Schedule shall provide a written request identifying the reason(s) for requesting a waiver. Waiver Requests must include a detailed monetary breakdown of all proposed furniture.

LEGAL FEES

All requests for payment of fees to developer's counsel shall be for work completed by counsel and accompanied by detailed and itemized statements on the letterhead of the firm. The total amount of legal fees included in the Development Budget shall not exceed **\$100,000**. The only legal costs not subject to this cap are third party legal expenses charged by the syndicator or charged by the financial institution(s) providing financing for the development and only if they are clearly stated in the financing letters at application. This fee is the maximum allowable and includes all fees, travel, expenses, incidentals, and other costs incurred by the firm or the counsel in connection with the work.

The Agency may allow payment (and inclusion in Tax Credit eligible basis) of documented additional legal fees attributable to matters such as 1.) NIMBY litigation; 2.) document preparation and negotiation with the U.S. Department of Housing and Urban Development for preservation or Hope IV transactions; 3.) document preparation and loan negotiation for transactions involving more than three funding sources; or 4.) additional legal work deemed reasonable in the Agency's sole discretion. **Such additional fees may not exceed \$100,000 per development and documentation requesting this waiver must be included in this tab with submission.**