

# **LRA-OCD-LHFA Piggyback Program CDBG Subsidy Layering Policy**

## **Overview**

Unlike HOME, CDBG is not subject to the formal subsidy layering requirement under the HUD Reform Act of 1989; instead, HUD requires CDBG grantees to follow prudent practices to ascertain that the amount of CDBG funds provided is not excessive. OCD and this policy use the term “subsidy layering review” to refer to OCD’s prudent practices for this purpose.

The term “QAP” refers to LHFA’s 2007-2008 GO Zone Qualified Allocation Plan, published in October 2006. CDBG Piggyback funding has been combined with LIHTCs in:

- The original awards pursuant to the QAP in late 2006.
- The supplemental “Lightning Round” awards in late 2008, pursuant to the QAP and an additional Tax Credit Allocation Plan memo published by LHFA July 14, 2008.
- LRA-OCD’s Piggyback Round Two (CDBG funds combined with tax-exempt bonds and 4% LIHTCs) pursuant to guidance published by LRA-OCD May 2, 2008.

The term “QAP Application” refers to:

- For projects re-processed by LHFA, the QAP application that was most recently re-processed by LHFA.
- For other projects, the QAP application submitted in response to (a) the QAP in November 2006; (b) the Lightning Round in late 2008; or (c) Piggyback Round Two in late 2008, as applicable.

## **Reasonableness of Compensation**

In determining that amounts paid to compensate parties to the transaction are reasonable, OCD will use the following standards:

1. Developer Fee
  - A. OCD will define and limit developer fee in the same manner as LHFA (e.g., developer fee includes soft cost contingencies). See QAP Section VI.D.i (page 22).
  - B. OCD will limit the total developer fee to the amount proposed by the borrower in its QAP Application
  - C. For purposes of the subsidy layering review, OCD will consider the total developer fee, without regard to the timing of payment.
2. Builder Fee - OCD will define and limit builder fee in the same manner as LHFA. See QAP Section VI.D.ii (page 22).
3. Builder Overhead - OCD will define and limit builder overhead in the same manner as LHFA. See QAP Section VI.D.iii (page 22).

4. General Requirements - OCD will define and limit general requirements in the same manner as LHFA. See QAP Section VI.D.iv (page 22).
5. Syndication Costs - OCD will define and limit syndication costs in the same manner as LHFA. See QAP Section VI.D.v (page 22).
6. Acquisition Price – the acquisition price proposed by the borrower in its QAP Application will be considered reasonable by OCD. On a case by case basis, OCD may consider any actual higher acquisition price reasonable, based on OCD’s review of documentation submitted by the borrower, provided the higher amount is clearly and thoroughly substantiated.

### **Reasonableness of Other Development Costs**

OCD will consider development costs paid to third parties to be reasonable if the amount is not more than 20% above the amount proposed by the borrower in its QAP Application. On a case by case basis, OCD may consider any actual higher amounts reasonable, based on OCD’s review of documentation submitted by the borrower, provided the higher amounts are clearly and thoroughly substantiated.

### **Post-Completion Subsidy Layering Review**

OCD will document the review using a format similar to the attached.

### **Developer’s Submission for Post-Completion Subsidy Layering Review**

OCD will require signed copies of the following documents for this purpose:

1. LHFA Estimate and Certificate of Actual Cost.
  - a. Complete both Part A Estimate and Part B Actual Cost.
  - b. OCD requires that 100% of costs are included in the cost certification, without regard to the amount of cost necessary to support the project’s LIHTC reservation.
2. LHFA Financing Certification.
3. LHFA Syndication Information and Certification.
4. Certified copy of Ownership Entity Organizational Documents (e.g., Partnership Agreement, Operating Agreement).