

Mayor's Office of Housing and Community Development
City and County of San Francisco



London N. Breed
Mayor

Daniel Adams
Acting Director

NOTICE REGARDING OPTION TO REMOVE CAPS ON DISTRIBUTIONS OF RESIDUAL RECEIPTS

FEBRUARY 21, 2020

The Mayor's Office of Housing and Community Development (MOHCD) will consider the modification of certain limits on distributions of excess project income (often defined as "Residual Receipts" or "Surplus Cash") to owners of affordable housing projects that are subject to agreements under the administration of MOHCD ("Projects"). Beginning April 15, 2020, Project owners may apply for a revision of the terms in the City's agreements to implement this change.

Background

The City and County of San Francisco (the "City"), through MOHCD and its predecessors, has financed or otherwise supported the development of affordable housing since the 1980s, using a variety of local and federal funding sources. Many of the financing, regulatory and ground lease agreements that have been entered into for this purpose have included limitations on the amount of excess Project income that a Project owner may retain as a distribution ("Owner's Residual Income"). For example, a common limitation caps the owner's annual distribution to the lesser of a) 33% of Residual Receipts or b) \$500 per unit. A less common limitation sets the cap at 10% of annual project income. In a few cases, the agreements do not allow for any distributions to the Project owner and require such Project owner to apply 100% of Surplus Cash towards repayment of the City's loan.

Option to Apply for Removal of Caps

To facilitate the preservation of existing MOHCD-regulated affordable housing, and support the capacity of affordable housing Owners to effectively manage their Projects and fund capital needs, MOHCD will consider requests for the removal of certain caps on the Owner's Residual Income. For eligible Projects approved by MOHCD, the City will amend the existing legal agreements to remove these caps and instead allow for the Owner's Residual Income to be determined by [MOHCD's current Residual Receipts Policy](#), which took effect in 2016 and allows for 1/3 of Residual Receipts to be retained by the Project owner as a distribution.

Which Projects Can Apply?

Any project that is currently subject to a City legal document that limits annual distributions as described below or in some other way that is more restrictive than [MOHCD's current Residual Receipts Policy](#). This includes agreements originally executed by the former San Francisco Redevelopment Agency that have been assigned to and administered by MOHCD.

Please see below for examples of language that can be changed under this option:

- Language limiting the annual distribution as a percentage of Project Income:
 - ✓ Example: “...Borrower may receive Distributions in an aggregate maximum amount equal to TEN PERCENT (10%) of Project Income”
- Language that prohibits any distributions:
 - ✓ Example: “Maker agrees to utilize all “Surplus Cash” (as defined below) generated by the Project to pay principal and interest due hereunder...”
- Language imposing specific caps on the amount of allowable distributions:
 - ✓ Per-unit - Example: “...Borrower may retain a portion of Residual Receipts in an amount equal to the lesser of thirty-three percent (33%) or \$500 per Unit per year”
 - ✓ Specific dollar amounts - Example: “Developer may use Surplus Cash ... to pay an incentive management fee equal to a thirty-three percent portion of the Surplus Cash (to a maximum of \$50,000)”

Project owners should review City loan, grant or regulatory agreements, ground leases, and promissory notes to find the above language or anything similar that governs distributions and surplus cash.

Applicants must be prepared to formally agree to satisfy MOHCD’s current [Capital Needs Assessment Policy](#), including verification that replacement reserves (as required under the agreements) are adequately funded.

This option to amend is only viable for Projects that are in full compliance with the terms of MOHCD agreements.

MOHCD will impose a [Proposal Review Fee](#) for each application that is processed.

How to Apply

For each project seeking to exercise this option, the Project owner must prepare and submit the “[Distribution Cap Removal Request Application](#)”. This Excel Workbook consists of the following worksheets:

- General Information about the project
- A list of each of the relevant sections in each MOHCD agreement that contains any language imposing a limitation on the distribution of Residual Receipts and/or Surplus Cash.
- A worksheet for pasting excerpts from each section.
- The existing Rent Roll with the option to model any anticipated rent increases.
- MOHCD’s standard 1st Year/20-year operating budget that includes a projection of the replacement reserve activity per the most-recent Capital Needs Assessment (CNA), a copy of which must also be submitted with the application.

Application Deadlines and Applicable Reporting Periods

Project owners must submit applications for their Projects by one of the deadlines set forth below, in accordance with the AMR reporting cycle of their projects, either CY (calendar year) or FY (fiscal year). For each Project, there are two opportunities to apply over the next two years. Only one application is necessary. If a Project owner misses the deadline for a project in 2020, they may apply by the deadline in 2021. No exceptions can be made for late applications.

If an application is submitted under a particular deadline and approved, the modifications would cover the corresponding Applicable Reporting Period, and all subsequent periods in the term of the loan/grant agreement or ground lease. For an approved Project, MOHCD will allow Project owners to take 2/3 of Residual Receipts as a distribution for the first Applicable Reporting Period only (see table below). MOHCD will allow Project owners to take 1/3 of Residual Receipts as a distribution in subsequent Reporting Periods.

Annual Monitoring Report (AMR) Due Date	Application Deadline	Applicable Reporting Period
CY2019 AMRs due 5/31/2020	4/15/2020	1/1/2019-12/31/2019
CY2020 AMRs due 5/31/2021	4/15/2021	1/1/2020-12/31/2020
FY2020 AMRs due 11/30/2020	10/15/2020	7/1/2019-6/30/2020
FY2021 AMRs due 11/30/2021	10/15/2021	7/1/2020-6/30/2021

Review Process

Once an application is submitted, the review process will consist of the following steps:

- Application will be reviewed to ensure that it is complete; incomplete applications will not be considered.
- Application and project compliance status will be reviewed to make a cursory viability determination; MOHCD staff will alert applicants of any applications that do not appear to be viable at least 5 days prior to the AMR Due date.
- Within 4 weeks of submission, MOHCD staff will communicate to the applicant a proposed schedule for eligibility analysis with an outline of remaining analytical steps.
- Where needed, MOHCD staff may require revisions to the proposed budgets to ensure that the replacement reserves are adequately funded.
- If the analytical process exposes any unique contractual requirements that are not being satisfied, further negotiation may be necessary.
- Once the analysis is complete, MOHCD staff will provide the relevant legal templates for applicants to complete, and a proposed timeline for completing the document drafting work.
- The applicable Proposal Review Fee must be paid before the City executes any amendments.

Please also note:

- Ground Lease amendments may require approval by the Board of Supervisors of the City and County of San Francisco; this will usually add several weeks to the approval process.
- Applicants that are unable to work within timelines provided by MOHCD will not be able to move forward with the process.

If you have any questions about this option, contact Ricky Lam (ricky.lam@sfgov.org, (415) 701-5542) to be connected with the Asset Manager assigned to your project to discuss further.