

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



London N. Breed
Mayor

Eric D. Shaw
Director

MEMORANDUM

TO: Citywide Affordable Housing Loan Committee

FROM: Mike McLoone

DATE: February 19, 2021

RE: 2021 Supplement to the MOHCD Residual Receipts Policy: COVID-19 Allowance

1. Background

The purpose of this memo is to summarize proposed changes to the MOHCD Residual Receipts Policy via the attached 2021 Supplement, and authorize MOHCD staff to approve certain emergency financial assistance to stabilize the affordable housing portfolio in response to COVID-19.

MOHCD's multifamily housing portfolio ("MOHCD Portfolio") is subject to contractual agreements in the form of grants, loans, ground leases, and/or regulatory agreements made in consideration of the City's investment of public resources. Among other things, these contracts establish certain repayment provisions related to the City's affordable housing investments. Such repayment provisions are typically subject to the availability of surplus cash (operating cash remaining after "must pay" expenses) and governed by MOHCD's Residual Receipts Policy. (In general, the Residual Receipts Policy requires that 2/3 of Residual Receipts are paid to MOHCD, and that the remaining 1/3 may be distributed to the sponsor.)

As a result of COVID-19, affordable housing developments are experiencing significant operating deficits. Decreased residential and commercial revenue is being collected because of the spikes in underemployment, unemployment, and business closures caused by the pandemic, shelter in place order, and economic recession. This is being compounded by increased expenses for janitorial, supportive services, administrative support, IT, supplies (such as cleaning supplies and personal protective equipment), utilities, insurance, staff salaries and repairs/maintenance. The combination of revenue losses and increased expenses, along with the tightening of credit markets, affordable housing sponsors face unprecedented challenges to manage their liquidity and remain financially solvent while maintaining operations at properties in the MOHCD Portfolio.

To help mitigate the financial impact of COVID-19, MOHCD proposes the following changes under the 2021 Supplement:

- Sponsors will be allowed to take as much as twice the share of Residual Receipts as an owner distribution; and
- Sponsors will be allowed to distribute amounts owed to MOHCD to cross-subsidize Reserves at other sponsor-owned projects in the MOHCD Portfolio that are at risk due to COVID-19.
- The option to utilize these alternative distributions of Surplus Cash is available for one year of financial reporting only: calendar year 2020 or fiscal year 19-20.

In June 2020, MOHCD published a notice to Sponsors to alert them of the alternative distribution options available under the MOHCD Residual Receipts Policy 2021 Supplement. Approval of this Policy Supplement is needed to authorize the Asset Management Team to formally approve the requests that have been received. Time is of the essence because sponsors need immediate financial relief to ensure the continuity of affordable housing operations, and they need to finalize 2019/2020 financial records.

2. LOAN COMMITTEE MODIFICATIONS

3. LOAN COMMITTEE RECOMMENDATION

Approval indicates approval with modifications, when so determined by the Committee.

APPROVE. DISAPPROVE. TAKE NO ACTION.

Eric D. Shaw, Director
Mayor's Office of Housing and Community Development

Date: _____

APPROVE. DISAPPROVE. TAKE NO ACTION.

Salvador Menjivar, Director of Housing
Department of Homelessness and Supportive Housing

Date: _____

APPROVE. DISAPPROVE. TAKE NO ACTION.

Sally Oerth, Acting Director
Office of Community Investment and Infrastructure

Date: _____

APPROVE. DISAPPROVE. TAKE NO ACTION.

Anna Van Degna
Public Finance Director, Controller's Office

Date: _____

Attachments:

- MOHCD Residual Receipts Policy 2021 Supplement
- MOHCD Residual Receipts Policy (2016) -updated, redline
- MOHCD Residual Receipts Policy (2016) -updated, clean

Chavez, Rosanna (MYR)

From: Shaw, Eric (MYR)
Sent: Wednesday, February 24, 2021 8:41 AM
To: Chavez, Rosanna (MYR)
Subject: Supplemental Residual Receipts Policy

I approve

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Chavez, Rosanna (MYR)

From: Menjivar, Salvador (HOM)
Sent: Friday, February 19, 2021 12:50 PM
To: Chavez, Rosanna (MYR)
Cc: Shaw, Eric (MYR)
Subject: MOHCD's Residual Receipts Policy

I approve the proposal to alter MOHCD's Residual Receipts Policy for calendar year 2020 in order to help mitigate the financial impact of COVID-19.

salvador



Salvador Menjivar
Director of Housing
Pronouns: He/Him
San Francisco Department of Homelessness and Supportive Housing
salvador.menjivar1@sfgov.org | 415-308-2843

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Chavez, Rosanna (MYR)

From: Oerth, Sally (CII)
Sent: Friday, February 19, 2021 11:48 AM
To: Chavez, Rosanna (MYR)
Cc: Shaw, Eric (MYR); McLoone, Michael (MYR)
Subject: 20-21 Residual Receipts Policy - 2.19.21 Loan Committee

I approve the 20-21 Residual Receipts Policy as presented at the 2.19.21 Loan Committee



Sally Oerth
Interim Executive Director

📍 One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
📞 415.749.2588
🏠 www.sfocii.org

Chavez, Rosanna (MYR)

From: Katz, Bridget (CON)
Sent: Friday, February 19, 2021 11:46 AM
To: Chavez, Rosanna (MYR)
Cc: Shaw, Eric (MYR)
Subject: 2021 Residual Receipts Policy

Approve

Bridget Katz

Development Finance Specialist, Office of Public Finance
Controller's Office | City & County of San Francisco
Office Phone: (415) 554-6240
Cell Phone: (858) 442-7059
E-mail: bridget.katz@sfgov.org

Mayor's Office of Housing and Community Development
Residual Receipts Policy – 2021 Supplement
COVID-19 Allowance
Effective: February 19, 2021

This document (the “**2021 Supplement**”) supplements the current Residual Receipts [Policy](#) (the “**Policy**”) of the Mayor's Office of Housing and Community Development (MOHCD), which took effect on April 1, 2016. The 2021 Supplement temporarily supplements certain provisions of the Policy in order to aid affordable housing projects (“**Projects**”) and Borrowers/Owners that have been negatively impacted by the COVID-19 pandemic. It reduces the portion of Residual Receipts that must be paid to the City, and it allows Borrowers/Owners to retain a greater share of Residual Receipts than is allowed under the current Policy. It applies only to Projects that were operational in 2019 and that remain operational during the effective period of the 2021 Supplement.

The options under the 2021 Supplement can be utilized for a single year of financial reporting, unless otherwise extended by MOHCD, in its sole discretion. Other than the period covered by the 2021 Supplement and any future extension, the original provisions of the Policy that govern payment of Residual Receipts to MOHCD shall remain effective indefinitely.

The following language supplements the Policy's narrative Section II to provide for a “**COVID-19 Allowance**,” as hereinafter defined. All sections of the Policy not explicitly addressed in this 2021 Supplement remain in force.

COVID-19 Allowance

In recognition of the financial impacts of the COVID-19 pandemic on affordable housing, organizational partners, and residents, MOHCD hereby establishes the “COVID-19 Allowance,” which allows Borrowers/Owners to retain as a distribution a greater share of Residual Receipts from calendar year 2019 or fiscal year 2019-2020. It also allows Borrowers/Owners to request approval to use the remaining portion of Residual Receipts, which would otherwise be payable to MOHCD, to support other MOHCD-financed Projects under their ownership or control that have suffered financially as a result of the pandemic.

The COVID-19 Allowance applies to any Project with a MOHCD contract that specifically refers to the MOHCD Residual Receipts Policy, as well as any other MOHCD contract that requires annual payment obligations from Residual Receipts and that limits distributions in a manner that is similar to the current Policy, even if it does not refer explicitly to the Policy.

The COVID-19 Allowance allows for the following two changes in how Residual Receipts are allocated. Project Borrowers/Owners may elect either or both options:

1. Owners that are currently allowed to retain 1/3 of Residual Receipts will instead be allowed to retain and distribute 2/3 of Residual Receipts.
2. The remaining portion of Residual Receipts is payable to MOHCD. However, Owners can request approval to distribute up to the entire amount to other Project(s) under contract with MOHCD if the Owners can show that the recipient Project(s) would otherwise suffer a COVID-

Mayor's Office of Housing and Community Development
Residual Receipts Policy – 2021 Supplement
COVID-19 Allowance
Effective: February 19, 2021

19- related shortfall in the Operating Reserve account, or a shortfall in the Replacement Reserve along with an urgent, unfunded capital replacement need.

If an Owner elects to retain a greater share of Residual Receipts as a distribution under option #1, 2/3 of Residual Receipts, the remaining portion that may be used to support other Projects is 1/3 of Residual Receipts. If an Owner does not elect option #1, then the remaining portion of Residual Receipts that may be allocated to other Project(s) is 2/3.

As conditions to utilize either or both option/s, Owners must:

- Be in compliance with MOHCD agreements regarding Reserve accounts and with MOHCD's current Operating Fees [Policy](#);
- Prevent the Residual Receipts that would otherwise be payable to MOHCD from being collected by any other parties, and;
- Provide a plan detailing how such alternative Residual Receipts distributions will directly benefit residents and/or mitigate the COVID-19 financial impacts affecting residents of the subject Project(s).

The COVID-19 Allowance under the 2021 Supplement can be utilized for a single year of financial reporting for Projects that were operational in 2019 and remain operational during the effective period of this 2021 Supplement. It is applicable to Residual Receipts that a Project generated during calendar year 2019 (1/1/2019-12/31/2019) or fiscal year 2020 (7/1/2019-6/30/2020).

The COVID-19 Allowance is available only upon approval by MOHCD. Project Owners must request approval via the Annual Monitoring Report (CY2019 or FY2020) that they submit for a specific Project. Under the provisions of this 2021 Supplement and the requirements of existing MOHCD contracts, MOHCD shall determine in its sole discretion if a request satisfies the conditions of approval and reserves the right to approve the entire request, a portion of it or none of it.

Mayor’s Office of Housing and Community Development
Residual Receipts Policy
Effective April 1, 2016

With 2021 Supplement, effective Feb 19, 2021

INTRODUCTION

The Mayor’s Office of Housing and Community Development (MOHCD) typically requires annual payments under the Ground Leases and Loans provided for the purpose of developing or preserving affordable housing to the extent that making payments is feasible and does not jeopardize the long-term affordability or maintenance of safe and secure housing for its residents. Payments may be required under one or a combination of several structures, including amortization, deferral, or payment from residual receipts, depending on the circumstances.

When a development financed by MOHCD is projected to enjoy more income than is needed to pay expenses, service other debt, fully fund its reserves, and make approved payments out of surplus, it is MOHCD’s policy that a portion of the remaining “residual” income be directed toward repayment of MOHCD’s investment.

MOHCD also permits a modest portion of “residual” income to be distributed by the borrower. Distribution of any portion of “residual receipts” is conditioned on MOHCD’s annual determination that certain performance standards and benchmarks have been met.

SUMMARY (see below for detailed requirements)

I. Definition of Residual Receipts	As depicted in the approved MOHCD Operating Budget Proforma for each project, the amount remaining in the annual operating budget after calculation of Net Operating Income (Project Income less Project Expenses) and allowable payments of surplus. .
II. Annual Residual Receipts Payments Due to MOHCD	Generally, 2/3 rd of residual receipts is payable to the City. Larger Tax Credit projects may be eligible to use an alternative ½ - ½ split for up the first 10 years of a new tax credit period, see the Developer Fee Policy for more details.
III. When more than one MOHCD contract requires residual payments	The approved MOHCD Operating Budget Proforma is a required exhibit to the last-executed MOHCD contract and must reflect a comprehensive summary of approved cash flow waterfall, listing of all lenders, relative lien positions, underlying loan terms and amounts owed to MOHCD annually across all MOHCD contracts.
IV. When a project has other Lenders in addition to MOHCD that require residual payments	The portion to be repaid to each Lender is typically determined by the proportional amount of capital funded under each loan. The approved MOHCD Operating Budget Proforma must include a list of all loans and details about projected amounts owed annually, including how the portion of residual receipts to be paid to each lender will be calculated, if not based on a proportional amount.

V. Conditions to Distribution of Residual Receipts to Borrower	Distribution of Residual Receipts may be made only upon: (1) MOHCD approval of Annual Monitoring Report; (2) determination by MOHCD that borrower is not in default; and (3) approval by MOHCD of amount of Distribution.
VI. Use of Residual Receipts Distributed to the Borrower	MOHCD strongly encourages borrowers to use distributions for activities in San Francisco that would be eligible uses under the CDBG Program Income rules (except to the extent that those rules may prohibit the use of funds for new construction).
VII. Uses of Project Income for Services and other Extraordinary Costs Associated with the Project	Any other use of the income derived from housing developed or preserved with MOHCD financing apart from ordinary and routine operating expenses, debt service or required reserves must be approved by the Loan Committee and the Mayor at the time MOHCD financing is committed and approved.
MOHCD Repayment Waiver Option	The repayment waiver option has been terminated.

I. Definition of Residual Receipts

- A. Residual Receipts is the amount remaining in the annual operating budget after calculation of Net Operating Income (Project Income less Project Expenses) and allowable payments from surplus.
- B. The project-specific Funding Agreements and/or Ground Leases define what Project Income entails and which Project Expenses are allowable. In general, the definition of allowable Project Expenses will include mandatory or “hard” debt service payments, minimum or Base Rent owed under a Ground or Land lease, and required annual payments into Reserve accounts. Each MOHCD contract will include a copy of the approved Operating Budget Proforma.
- C. When MOHCD requires repayments from Residual Receipts, the formula usually requires payment of a portion of the available Residual Receipts. The use of a proportional formula makes it is essential to clearly define which uses of surplus cash have been approved for payment prior to the calculation of the amount owed to MOHCD.
- D. The approved uses of any available surplus may also be referred to as the cash flow waterfall. The approved MOHCD Operating Budget Proforma is used to document the approved cash flow waterfall. In general, the following expenses may be a part of a cash flow waterfall:
 - 1. Fees payable to the project, the GP, the LP or the parent entity
 - 2. Fees payable to project funders
 - 3. “Soft” debt repayments to lenders / lessors

Please see the City’s Developer Fee Policy and Operating Fees Policy for a list of allowable fees and any applicable limits.

- E. Limited Partnership Agreements may also provide a narrative summary of the cash flow waterfall. In the event that a Limited Partnership Agreements is found to be inconsistent with

the MOHCD Funding Agreement and/or the approved MOHCD Operating Budget Proforma, the MOHCD documents shall control.

II. Annual Residual Receipts Payments due under MOHCD Ground Leases & Loans

Except as recommended by the Loan Committee and approved by the Mayor on a project by project basis, the portion to be paid to the City shall be $\frac{2}{3}$ ^{ds} of Residual Receipts. Larger Tax Credit projects may be eligible to use an alternative $\frac{1}{2}$ - $\frac{1}{2}$ split for up the first 10 years of a new tax credit period and the borrower's portion of Residual Receipts shall be considered payment of Deferred Developer Fee. See the Developer Fee Policy for more details.

Any residual receipts payments shall be applied toward the unpaid balance of MOHCD loan/s according to the terms in the Promissory Note and/or Funding Agreement, and toward the payments required under the MOHCD Ground Lease.

III. When more than one MOHCD contract requires residual payments:

Some projects supported by MOHCD may be governed by more than one MOHCD contract. The MOHCD Operating Budget Proforma provides a comprehensive summary of the approved cash flow waterfall, a listing of all lenders, the relative position of each lien, the amounts owed and the relevant repayment terms, and will also reflect the cumulative amount of repayments owed to MOHCD annually across all MOHCD contracts. Projects governed by more than one MOHCD contract that extend or initiate a MOHCD contract after the effective date of this policy will be required to get approval of a new MOHCD Operating Budget Proforma.

IV. When a project has other Lenders in addition to MOHCD that require residual payments

- A. If any other project lenders besides MOHCD require repayment from residual receipts, the portion to be repaid to each Lender will typically be determined by the proportional amount of capital supplied under each loan. For example, if a project received a \$2 million loan from MOHCD and a \$3 million loan from another lender, MOHCD would receive $\frac{2}{5}$ ^{ths} of the amount available to be repaid, and the other lender would receive $\frac{3}{5}$ ^{ths} of the amount available to be repaid. The approved MOHCD Operating Budget Proforma must include a list of all Loans and provide an appropriate amount of detail about the projected amounts owed annually including details about how the portions to be paid to each lender will be calculated. If a project makes an agreement with any other lender/s after executing a MOHCD contract containing the final MOHCD-approved Operating Budget Proforma, prior to making any payments to such other lender/s, the project must request and be approved in writing to amend the MOHCD-approved Operating Budget Proforma to include the new lender/s.
- B. During operations, MOHCD will require Residual Receipts payments using MOHCD's method of calculating surplus and any amounts owed to the MOHCD. If there is a difference in the amount calculated to be owed to any other lenders under another lender's repayment calculation method when compared to MOHCD method, then each lender will be paid according to its calculation, so long as doing so would not result in a reduction in the amount payable to MOHCD.

V. Conditions to Distribution of Residual Receipts to Borrower

- A. Distribution of Residual Receipts to the borrower of a MOHCD loan, or lessee of a MOHCD ground lease, may be made only upon:
 - 1. MOHCD approval of the Annual Monitoring Report submitted for that year; and
 - 2. Determination by MOHCD that the borrower is not in default under terms of the Loan; and
 - 3. Approval by MOHCD of the amount to be distributed.
- B. No distribution of Residual Receipts shall be made under any of the following circumstances:
 - 1. When a written notice of default has been issued by any lender or investor and such default has not been cured; or
 - 2. When the City determines that the borrower or the borrower's management agent has failed to maintain the housing and its surroundings in a safe and sanitary manner in accordance with local health, building, and housing codes; or
 - 3. If any operating expense, including debt service on non-City loans remains unpaid; or
 - 4. If any required reserve account is not fully funded according to the terms of the MOHCD contract/s; or
 - 5. In the event of any other material failure to comply with the provisions of the MOHCD contract/s.

VI. Use of Residual Receipts Distributed to the Borrower

MOHCD strongly encourages borrowers to use the portion of Residual Receipts that is not applied toward repayment of MOHCD's loan or payment of residual rent under a MOHCD ground lease for activities in San Francisco that would be eligible uses under the CDBG Program Income rules (except to the extent that those rules may prohibit the use of funds for new construction).

VII. Uses of Project Income for Services and other Extraordinary Costs Associated with the Project

- A. With the exception of Residual Receipts retained by a borrower pursuant to this policy, any other use of the income derived from housing developed or preserved with MOHCD financing apart from ordinary and routine operating expenses, debt service or required reserves must be approved by the Loan Committee and the Mayor at the time MOHCD financing is committed and approved.
- ~~B.~~ B. The Loan Committee may approve variations of this policy on a project-specific basis, including the payment of costs associated with the provision of social, educational, vocational, counseling or other supportive services to residents either as a project expense or out of that portion of Residual Receipts that would otherwise be repaid to the City.

~~B.~~ B. Effective 2/19/2021, the Residual Receipts Policy 2021 Supplement was added in response to COVID-19.

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Mayor's Office of Housing and Community Development

Residual Receipts Policy

Effective April 1, 2016

With 2021 Supplement, effective Feb 19, 2021

INTRODUCTION

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B. During operations, MOHCD will require Residual Receipts payments using MOHCD's method of calculating surplus and any amounts owed to the MOHCD. If there is a difference in the amount calculated to be owed to any other lenders under another lender's repayment calculation method when compared to MOHCD method, then each lender will be paid according to its calculation, so long as doing so would not result in a reduction in the amount payable to MOHCD.

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A. Distribution of Residual Receipts to the borrower of a MOHCD loan, or lessee of a MOHCD ground lease, may be made only upon:

1. MOHCD approval of the Annual Monitoring Report submitted for that year; and
 2. Determination by MOHCD that the borrower is not in default under terms of the Loan; and
 3. Approval by MOHCD of the amount to be distributed.
- B. No distribution of Residual Receipts shall be made under any of the following circumstances:
1. When a written notice of default has been issued by any lender or investor and such default has not been cured; or
 2. When the City determines that the borrower or the borrower's management agent has failed to maintain the housing and its surroundings in a safe and sanitary manner in accordance with local health, building, and housing codes; or
 3. If any operating expense, including debt service on non-City loans remains unpaid; or
 4. If any required reserve account is not fully funded according to the terms of the MOHCD contract/s; or
 5. In the event of any other material failure to comply with the provisions of the MOHCD contract/s.

VI. Use of Residual Receipts Distributed to the Borrower

MOHCD strongly encourages borrowers to use the portion of Residual Receipts that is not applied toward repayment of MOHCD's loan or payment of residual rent under a MOHCD ground lease for activities in San Francisco that would be eligible uses under the CDBG Program Income rules (except to the extent that those rules may prohibit the use of funds for new construction).

VII. Uses of Project Income for Services and other Extraordinary Costs Associated with the Project

- A. With the exception of Residual Receipts retained by a borrower pursuant to this policy, any other use of the income derived from housing developed or preserved with MOHCD financing apart from ordinary and routine operating expenses, debt service or required reserves must be approved by the Loan Committee and the Mayor at the time MOHCD financing is committed and approved.
- B. The Loan Committee may approve variations of this policy on a project-specific basis, including the payment of costs associated with the provision of social, educational, vocational, counseling or other supportive services to residents either as a project expense or out of that portion of Residual Receipts that would otherwise be repaid to the City.

Effective 2/19/2021, the [Residual Receipts Policy 2021 Supplement](#) was added in response to COVID-19.