MAYOR’S OFFICE OF HOUSING
CITY AND COUNTY OF SAN FRANCISCO

Effective: 10/05/2010

Policy on Use of Residual Receipts

A. Background:

In general, the Mayor’s Office of Housing (MOH) requires repayment of loans provided for the purpose of developing or preserving affordable housing to the extent that such repayment is feasible and does not jeopardize the long-term affordability or maintenance of safe and secure housing for its residents. Repayment therefore may be required under one or a combination of several alternative structures, including amortization, deferral, or payment from residual receipts, depending on the circumstances.

When there is a possibility that, due to the availability of rent or operating subsidies, the retiring of other debt, or some other circumstance, a development financed by MOH could enjoy more income than is needed to pay expenses, service other debt and fully fund its reserves, it is MOH’s policy to expect that the remaining “residual” income be directed toward repayment of MOH’s investment.

However, in order to provide an incentive for strong asset management, business management and property management, to ensure accountability both during the development of the housing and its operation, and to enhance successful owners’ capacity to develop additional affordable housing in San Francisco, MOH will permit a modest portion of such “residual” income to be retained by the borrower and its affiliates for use toward housing-related activities in San Francisco. Retention of any portion of “residual receipts” will be conditioned on MOH’s annual determination that certain performance standards and benchmarks have been met.

B. Definition of Residual Receipts

“Residual Receipts” means the amount by which Project Income exceeds Project Expenses in any given fiscal year. Notwithstanding the above, the partnership management fee and deferred development fee are not part of Residual Receipts. Residual Receipts will be calculated after the disbursement of the partnership management fee and any deferred development fee from funds remaining after the subtraction of Project Expenses from Project Income.

C. Repayment of MOH Loans by Residual Receipts

When repayment of loans made by MOH is conditioned on the availability of Residual Receipts, starting one year after the completion of the project, and annually thereafter, borrower shall pay all or part of any Residual Receipts for the previous fiscal year to the City in repayment of the outstanding balance of the loan. Except as recommended by the Loan Committee and approved by the Mayor on a project by project basis, the minimum portion of Residual Receipts to be paid to the City shall be that portion that remains after subtracting the lesser of 1/3 of the Residual Receipts or $500 per unit per year from the total.
Any such residual receipts payments shall apply toward the unpaid balance of the loan, including accrued interest.

**D. Conditions to Distribution of Residual Receipts to Borrower**

Distribution of Residual Receipts to the borrower of a MOH loan may be made only upon: (1) MOH approval of the Annual Monitoring Report submitted for that year; (2) determination by MOH that the borrower is not in default under terms of the Loan; and (3) approval by MOH that the amount of such Distribution is appropriate. Such approval may be assumed unless MOH’s disapproval has been presented to the borrower within 60 days of receiving borrower’s request for such approval.

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 other 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 Loan Agreement; or

5) in the event of any other material failure to comply with the provisions of the Loan Agreement.

**E. Use of Residual Receipts Distributed to the Borrower**

That portion of Residual Receipts that is not applied toward repayment of MOH’s loan must be used 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).

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

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 MOH 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 MOH financing is committed and approved.

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.

G. MOH Repayment Waiver Option

In recognition of the existence of shortfalls in revenue needed to maintain existing affordable housing in San Francisco, MOH is willing to consider requests from the parent organizations affiliated with borrowers that are subject to Residual Receipt repayment obligations to retain the portion of residual receipts that are otherwise due to be repaid to MOH, so long as the amounts retained are used toward maintenance of existing affordable housing in San Francisco.

The parent organization must submit with its Annual Monitoring Reports a request for MOH to waive repayment of any amount of the portion of Residual Receipts that is owed to MOH under one or multiple loans associated with one or multiple projects.

The parent organization must submit requests using the most recent version of MOH’s Repayment Waiver Request Form.

The parent organization must document all proposed sources and uses of amounts otherwise owed to MOH on MOH’s Repayment Waiver Request Form.

MOH may grant such requests only if:

1) the proposed uses meet the requirements noted above in paragraph “E. Use of Residual Receipts Distributed to the borrower”; and

2) the proposed amounts will be deposited an account of another project located in San Francisco that is owned or otherwise controlled by the parent organization or its affiliates; and

3) the proposed uses will alleviate shortfalls in the projects that are proposed to receive distributions; and

4) for requests that propose to distribute greater than $50,000, 100% of the amount in excess of $50,000 must be used toward immediate capital needs and be expended within 12 months of MOH’s approval.

MOH will consider only one Repayment Waiver Request per parent organization per year.

The maximum amount of repayment obligation that can be waived administratively for each parent organization each year is $100,000; requests to waive repayment obligations greater than $100,000 must be approved by the Loan Committee.

MOH retains sole discretion for approval of MOH Repayment Waiver Requests.
The approval of any waiver request will not reduce the amount of principal or accrued interest owed on the underlying residual receipt loan/s.

The parent organization must obtain written waiver from MOH prior to borrower distributing any amounts proposed in the Repayment Waiver Request. MOH may require the parent organization to sign an agreement in conjunction with the granting of a waiver.

In any year following approval of any MOH Repayment Waiver Request, the parent organization and its affiliates will be subject to heightened reporting obligations for the projects relevant to the Approved Waiver Request. The parent organization or its affiliates may be required to supply or provide access to records deemed appropriate by the City to verify that funds distributed were used according to the proposed uses approved by the City. The City may require parent organizations and their affiliates to fully satisfy such request for records within 20 business days. The failure of the parent organization or its affiliates to satisfy the request within the designated timeframe will subject the borrower and its successor/s to reinstatement of the original repayment obligation. Upon receipt of notice from the City of a failure to satisfy a records request, the City will have, at its sole discretion, the right to impose a repayment due date as short as 10 business days from receipt of notice of a failure to satisfy a records request. The failure to satisfy the reinstated repayment obligation will subject the borrower to a Declaration of Default by the City.