

## 471 LIMITED DIVIDEND (LD) PAYMENT POLICY

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### Purpose of LD Policy

This policy provides guidance regarding the owner's LD request for distributions from an Authority-financed developments' surplus cash available at the end of each fiscal year. LD distributions are allowed to provide Limited Dividend Housing Associations (LDHAs) with a return on their equity investment in an Authority-financed development. The regulatory agreement sets forth the maximum percentage of return on equity that an owner may draw and defines the equity calculation for each development. The percentage and definition of equity may vary significantly, depending on a number of factors. Therefore, each owner should refer to the development's regulatory agreement for the exact LD percentage and calculation.

### Requests for LD Approval

The owner must submit a request and receive approval from the Authority for an LD payment before any LD distribution can occur. The request must be submitted to the assigned Asset Manager on the Limited Dividend Payment Approval Request form (MSHDA Mgmt. 471A), which includes a certification of the financial and physical status of the development and recognition that all outstanding payments due per the owner's annual certified audit have been submitted to the Authority.

No LD payments may be distributed from the proceeds of any mortgage loan, 1602 loan, TCAP loan, HOME loan, or other borrowed funds. The owner must satisfy the following requirements in order to receive approval for an LD distribution:

- Final close the mortgage loan (converting the construction/rehab loan to a permanent loan), unless otherwise agreed to by the Rental Development Division;
- Submit and receive approval of the annual certified audit for the past five years of operations (or all years of active operations, if fewer than five);
- Satisfy all outstanding annual certified audit findings, as well as any non-compliance and Management Letters issued during the past five years of operations (or all years of active operations, if fewer than five);
- Submit all payments due to the Authority, as determined by the approved annual certified audit;
- Satisfy all financial (e.g., funding of escrows and reserves, timely submission of budgets and audits) and physical obligations to the Authority and Federal Government (e.g., under all regulations, guidebooks and written agreements binding the owner or the development, such as loan documents, regulatory or use agreement(s), management agreement, subsidy contracts, etc.);
- Resolve any pending or threatened claims against the Mortgagor that could have a material, negative effect on the financial condition of the development;
- Verify the development's remaining cash on hand, after the LD distribution, is sufficient to meet its current financial obligations; **Sufficient cash exists** if Liquidity (as defined in the MIE Guide Policy) plus Development Cost Escrow (DCE) Interest minus the LD distribution requested equals zero or greater;
- Request a distribution amount that does not exceed the amount permitted by the development's regulatory agreement, as calculated on the Schedule II of the latest approved annual certified audit; and
- Provide written certification that the owner has complied with all applicable requirements listed above (this certification is part of the LD Payment Approval Request form).

## LD Disbursements

Upon receiving approval of the LD distribution from MSHDA, the owner has until December 31<sup>st</sup> of the current year to draw the approved LD amount. If the approved LD amount is not paid by December 31<sup>st</sup> of the current year, then the owner may not draw the LD in any subsequent year until a new Limited Dividend Payment Request form (MSHDA Mgmt. 471A) has been submitted and the owner has satisfied all requirements for approval set forth above. Any approved but unpaid LD must be recorded properly on the **Audit Input** tab as "Undisbursed LD Payments Approved in Prior Years."

Initial Disbursement – The first LD accrual and disbursement cannot begin until a cut-off date has been set, typically based on the final closing date. During the first year when the cut-off date is set, the accrual of the LD Potential begins the day after the cut-off date through December 31<sup>st</sup> of the cut-off year. The LD accrual amount is pro-rated on a daily basis.

## Definitions

Equity – Refer to the regulatory agreement for each development’s specific equity calculation. Generally, equity equals (1) the total development cost, established by the Mortgagor’s cost certification as approved by the Authority, minus (2) all indebtedness, and minus (3) local grants or other federal or state project investment, including but not limited to, HOME funds, CDBG, Federal Home Loan Bank Affordable Housing Program grants, Rental Rehabilitation loans, TCAP funds, or other sources.

Cut-off Date – The date when an owner is eligible to start accrual of LD payments from the development. Refer to the development’s regulatory agreement for an explanation of each development’s cut-off date. Currently, the cut-off date is set on the Establishment of Date of Initial Closing Date or Mortgage Cut-off (MSHDA PSD 12:001) form. Once the cut-off date is set, it cannot change.

Cumulative LD – The percentage or dollar amount of the LD payment that is designated as cumulative in the regulatory agreement. If a percentage is specified in the regulatory agreement, this percentage is multiplied by the equity to calculate the Cumulative LD amount.

Non-Cumulative LD – The percentage or dollar amount of the LD payment that is designated as non-cumulative in the regulatory agreement. If a percentage is specified in the regulatory agreement, this percentage is multiplied by the equity to calculate the Non-Cumulative LD amount.

Maximum LD – The sum of the Cumulative and Non-Cumulative LD amounts for the current year.

Surplus Funds Available for Distribution – The amount of surplus cash on hand and in all eligible accounts after setting aside one month's gross rent potential and after all required development obligations have been met. This amount is calculated on one of the various Schedule I forms in the Audit Input template workbook.

Potential LD – The sum of the Cumulative LD amount for the current year plus the lesser of (i) the Surplus Funds Available for Distribution or (ii) the Non-Cumulative LD amount for the year. The Potential LD accrues and is included in the LD carry forward.

- Any portion of Non-Cumulative LD that exceeds the amount of Surplus Funds Available for Distribution for that year cannot accumulate in Potential LD and cannot be carried forward.

LD Paid – The amount of any payments made to the owner or reductions made on behalf of the owner to partnership liabilities and/or expenses from development operations during the audit year. Note: In a few cases HOME loan payments may come out of the LD approved amount and should be included as part of the LD paid amount.

LD Carry Forward – All Potential LD carry forward balances from previous years, plus the Potential LD for the current year, minus any LD paid with respect to the current year.

## Schedules and Example

Understanding the LD calculation requires a brief explanation of the schedules used to calculate the LD amounts. The various schedule I forms calculate the payment obligations due to the Authority and the surplus funds available for distribution for each development.

The schedule II is a cumulative summary by year of the amount of Surplus Funds Available for Distribution, Potential LD, LD Paid and the net LD Carry Forward for the year. The amount of Surplus Funds Available for Distribution calculated on the schedule I from the audit year carries over to the schedule II.

Example of a completed schedule II:

SCHEDULE II				
FUNDS AVAILABLE FOR DISTRIBUTION				
December 31, 2012				
1.	OWNER INITIAL EQUITY		\$	500,000
1a.	SECTION 8/236 PRESERVATION		\$	-0-
2.	MAXIMUM L.D. PAYMENT:		\$	60,000
3.	CUMULATIVE %	10%	\$	50,000
4.	NON-CUMULATIVE %	2%	\$	10,000
	CUT-OFF DATE:	January 1, 2008		
5.	SALE/PRESERVATION TRANSACTION			
	CLOSING DATE:			
I.	II.	III.	IV.	V.
YEAR OF OPERATION	Surplus Funds Available For Distribution	POTENTIAL L.D.	L.D. PAID	CARRY FORWARD
2008	4,000	54,000	0	54,000
2009	7,000	57,000	4,000	107,000
2010	12,000	60,000	6,000	161,000
2011	84,000	60,000	12,000	209,000
2012	8,000	58,000	75,000	192,000

If any of the owner's LD is characterized as non-cumulative, the amount of Surplus Funds Available for Distribution can affect the Potential LD amount. The Potential LD for each year is limited to the Cumulative amount of LD plus the lesser of (i) the Surplus Funds Available for Distribution or (ii) the Non-Cumulative amount. E.g. In 2009, there is \$7,000 of Surplus Cash Available for Distribution, so the potential LD for 2009 is limited to \$57,000 (\$50,000 Cumulative LD + \$7,000 of Surplus Funds Available for Distribution). The amount of LD that can be paid is limited to the lesser of the current years "Surplus Funds Available for Distribution" or LD Carry Forward.

## Forms

471A – Limited Dividend Payment Approval Request