MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY

COMMUNITY DEVELOPMENT DIVISION

SUBJECT: **Financial Assistance and Lien Requirements**

Policy Bulletin #9

EFFECTIVE DATE: **January 1, 2008 (Updated 10/17/2011)**

The purpose of this memo is to define the financial assistance and lien requirements for the Community Development Division (CDD) funded homeowner, homebuyer, rental rehabilitation, and rental development. These requirements include:

1 Minimum financial assistance limits

2 Maximum financial assistance limits

3 Lien requirements for homeowner, homebuyer, rental rehabilitation, and rental development projects

4 Miscellaneous provisions

FINANCIAL ASSISTANCE

Minimum Financial Assistance Limits

Minimum financial assistance limits apply only to HOME funded projects. HOME regulations require a minimum HOME investment of $1,000. Projects funded through other sources have no minimum investment limit.

Maximum Financial Assistance Limits

Homeowner Rehabilitation or Replacement Housing

The maximum CDD assistance for a homeowner rehabilitation or replacement housing project is $35,000, this is inclusive of all project costs including costs attributable to lead based paint hazard reduction or abatement This is also inclusive of soft costs, including administrative costs specifically attributable to the project (see below).

NOTE: Project related soft costs that could also be classified as eligible administrative costs may be charged as a project cost. The limit would be 10% of the project cost for HOME or MSHDA funded projects or 2% for CDBG funded projects. See Policy Bulletin #21 for more details

Homebuyer

Homebuyer Purchase with Rehabilitation (HPR; homebuyer assistance with moderate rehabilitation.) The HPR program provides MSHDA funding of up to $37,500 including a maximum of up to $10,000 for down payment assistance and closing costs. The maximum investment of $37,500 is inclusive of all project costs including down payment assistance and closing costs, rehabilitation costs, costs specifically attributable to lead-based paint hazard reduction or abatement (see below), and eligible developer fee.

HOME-funded Acquisition Development and Resale (ADR; acquisition of real estate with rehabilitation or new construction for resale). CDD can finance the full amount of the project cost up to the HOME Maximum Per Unit Subsidy limit (see **Attachment A, HOME Maximum Per Unit Subsidy).** The maximum net subsidy (subsidy in the project at completion) is $75,000, inclusive of all project costs including a maximum of $30,000 in homebuyer subsidy and costs associated with acquisition, construction, lead-based paint hazard reduction or abatement, and eligible developer fee. Net subsidy will be defined as the project setup minus the program income returned to MSHDA at resale.

Note: The maximum assistance to the homebuyer is outlined below in the section on Lien Requirements.

NSP-funded Homebuyer – there are no cost or subsidy limits for NSP-funded projects, however grantees are required to make sure costs are reasonable and projects are feasible.

Lead-Based Paint Hazard Reduction

As of January 1, 2008, no additional funds in excess of the per unit funding limits above will be provided for costs associated with Lead Based Paint Remediation activities. Rather than continuing to allow "extra" funding for lead, per unit funding limits have generally been increased and defined by total per unit costs.

County Allocation Programs only

Down Payment Assistance (DPA) only. Generally, CDD does not award funding for DPA only. (Refer to PB#16 for further clarification.) In areas where MSHDA's Links to Homeownership Program is not available, counties with CDBG allocations may offer DPA assistance up to $10,000, with the balance deferred until sale or title transfer of the property. Funds provided can include a portion of the down payment required, prepaid expenses, reasonable closing costs, and a principal reduction payment to meet the lender's underwriting criteria.

Rental Rehabilitation

If HOME-Assisted**:**

- The minimum CDD assistance is $1,000 per unit.

- The maximum CDD assistance for a HOME funded rental rehabilitation project is $14,999 per unit inclusive of all project costs, including costs attributable to lead based paint hazard reduction, and inclusive of eligible administrative costs that can be attributable to the project (see below).

- There is no maximum number of units allowed, but CDD encourages projects with 11 or fewer units.

If CDBG or MSHDA Assisted:

- Generally MSHDA or CDBG funds will be used only for targeted programs. In NPP or downtown revitalization areas, MSHDA may approve maximum CDD assistance of $25,000 per unit for existing units (occupied as legal residences within the past 5 years), or $35,000 for the creation of new units (converting office/commercial/storage space into residential units). The $25,000 or $35,000 limit is inclusive of all project costs, including costs attributable to lead based paint hazard reduction, and inclusive of eligible administrative costs that can be attributable to the project (see below).

Other Eligible Projects costs:

Project related soft costs that could also be classified as eligible administrative costs may be added to the project cost. The limit would be 10% of the project cost for HOME or MSHDA funded projects or 2% for CDBG funded projects. See Policy Bulletin #21 for more details

- No minimum CDD assistance per unit requirement.

- There is no maximum number of units allowed, but CDD encourages projects with seven or fewer units.

NOTE: Grantees awarded HOME or MSHDA funds for Rental Rehabilitation on or after December 1, 2010 are allowed to charge a maximum 15% soft costs (Administrative budget is reduced to 5%).

Rental Development

MSHDA CDD currently has a moratorium regarding the funding of rental development projects.

LIEN REQUIREMENTS

Homeowner Rehabilitation

- If the total amount of OCD assistance for a project does not exceed $2,500, no lien is required on the property. For County Allocation programs, if the total OCD assistance is **greater than $2,500, but not exceeding $5,000**, the OCD investment must be secured by a lien. The lien can be forgiven over five years if there was a dollar for dollar leverage in the project.

- CDD requires a 100% deferred lien when the total CDD assistance for hard costs exceeds $5,000 and the assisted unit is not located within a targeted area. However, costs up to $5,000 specifically attributable to lead based paint hazard reduction or abatement and any unitemized soft costs charged to the project (maximum of 2% for CDBG, or 10% for HOME and MSHDA) may be excluded from the lien.

NOTE: Grantees awarded HOME funds for Homeowner Rehabilitation on or after December 1, 2010 are allowed to charge a maximum 15% soft costs (Administrative budget is reduced to 5%).

- CDD allows a 50% Deferred/50% Forgivable lien for activities located within a targeted area. The terms of the note state 50% of the assistance secured by the lien is forgiven over a five (5) year period and 50% of the assistance is deferred and repaid upon sale or transfer of ownership of the property, or if the current owner no longer resides in the property, or any other default as set forth in the mortgage and note.

- Other types of liens will be considered by CDD on a case-by-case basis. Grantees may not use other lien types without prior approval by CDD.

- The liens for projects funded with PIP-Plus CDBG funds can be forgiven over a five (5) year period.

- All parties listed on the Warranty Deed (regardless of whether or not they are household members) must be included on the mortgage document. The applicable household members are required to sign the note; however, all parties on the Warranty Deed may also sign the note.

County Allocation Programs only

Counties may select forgivable loans instead of deferred loans

After July 1, 2006, counties may choose to offer all homeowner rehabilitation (over $2,500) assistance as a forgivable loan. The terms of forgiveness would be limited to the following:

- Years 0-5, No Forgiveness (lien is deferred)
- Years 6-15, Loan is forgiven by 10 percent per year (or 1/120 per month) until totally forgiven at the end of year 15.

Changes in a County's lien policy must be approved by the County Board of Commissioners

Prior to changing the local lien policy, the county governing board must approve these changes through a board resolution at a public meeting. MSHDA will require that County grantees certify their informed approval of such a policy change by acknowledging that having forgivable instead of deferred repayable loans will result in the county both serving fewer households and a reduction in administrative funds available to the program because less program income would be received by the county. In order for the lien terms to take effect, the signed resolution and revised program guidelines must be submitted to the CDD at least 30 days prior to the proposed effective date **(see Sample Resolution - Attachment C to this policy**)

At a minimum, the resolution (a) must include the specified language, but it may include any other language in support of these changes that are deemed locally appropriate, and (b) specify an effective date. *Only loans closed after the effective date may be covered by a changed lien policy*. If the CDD does not act to reject or require modifications within 15 days of receipt of the resolution and program guidelines, the new local lien policy may go into effect. Please submit these requests to your Community Development Specialist.

Local Amortized Loans Through County Allocation Programs

County Grantees that receive a HOME or CDBG allocation of funds may elect to loan funds to homeowners and require the funds be paid back with regular installments (monthly, bi-monthly, quarterly). The Grantee can charge a reasonable interest rate, but not to exceed the current market rate. The loan must be a fixed rate and term. A Grantee cannot offer an adjustable rate or require that the homeowner pay a higher interest rate or payment during the loan term. The grantee can suspend or defer interest payment for hardship cases. However, all loan requirements must be in the Grantee's Program Guidelines and disclosed to applicant at time of application.

Homebuyer

The lien requirement for homebuyer assistance is based on the **homebuyer subsidy**. A **homebuyer subsidy** is the amount of public funds (HOME or CDBG) provided which enables a family to buy a home.

The homebuyer subsidy is limited to the public funds used to cover:

- The difference between the market value of the property at the time of sale and the homebuyer's investment (i.e., the amount of the first mortgage plus the homebuyer's down payment); and,

- Closing costs, prepaid escrows, and tax prorations.

The minimum homebuyer subsidy for HOME, CDBG, or NSP-funded Acquisition-Development-Resale (ADR) is $1000.

The maximum homebuyer subsidy for HOME and CDBG-funded Acquisition-Development-Resale (ADR) projects is $30,000. There is no maximum homebuyer subsidy for NSP-funded ADR. The following loan/lien requirements apply to homebuyer subsidies:

- The homebuyer subsidy will be secured by a lien which is forgiven over a period of five (5), ten (10), or fifteen (15) years depending on the amount of assistance provided (per HUD HOME Affordability requirements). When the buyer no longer occupies the home as his/her primary place of residence the repayment will be pro-rated, or forgiven if more than five (5), ten (10), or fifteen (15) years have passed.

- When the CDBG/HOME/NSP assistance is in the form of a development subsidy, that subsidy would not be subject to a lien, and is immediately forgiven. (The development subsidy is the amount of public funds provided to a project, which exceeds the after rehab or construction value of the project.)

- **Note:** In the Homebuyer Purchase Rehabilitation (HPR) program, an after rehabilitation appraisal is required to determine if there was a development subsidy in the project. If there is no after rehabilitation appraisal, all homebuyer assistance would be in the form of a five (5), ten (10) or fifteen (15) year forgivable loan (see above).

Rental Rehabilitation

If HOME-assisted:

- A five-year affordability period (lien) is required for projects not exceeding the $14,999 per unit assistance limit.

- All rehabilitation costs including costs attributable to lead base paint hazard reduction or abatement, or landscaping must be included in the affordability period (lien). Additionally, soft costs such as inspections, work specifications and other soft costs charged to the project must be added to the lien and counted when calculating the affordability period.

- Repayment of HOME-assistance for noncompliance does not remove affordability requirements for the remaining lien period.

If CDBG or MSHDA-assisted**:**

- A five-year compliance period enforced by a lien is required. During the compliance period the property must be maintained to property standards and local property maintenance code requirements and continued to be utilized for residential rental use and fairly marketed to the general public.

- All rehabilitation costs including costs attributable to lead base paint hazard reduction or abatement, or landscaping must be included in the lien. Additionally, soft costs such as inspections, work specifications and other soft costs charged to the project must be added to the lien.

- In the event of sale, should a new owner agree to continue to abide by the terms of the CDBG or MSHDA-assistance for the remainder of the lien period, repayment of the CDBG or MSHDA-assistance would not be required. Otherwise, repayment would be required.

Rental Development:

MSHDA CDD currently has a moratorium on the funding of Rental Development projects.

MISCELLANEOUS PROVISIONS

Land Contracts For Homeowner Rehabilitation Projects.

An enforceable lien would require the signatures of all parties with a legal interest in the property. The CDBG/HOME applicant(s) and all Land Contract holder(s) in the chain of title must sign the lien agreement. Only the borrower(s) would sign the mortgage note.

An alternative to the Land Contract Seller(s) signing the lien agreement would be for them to sign a Land Contract Subordination Agreement. This document would be recorded and would give the Grantee a superior lien position to the Land Contract Seller(s). A sample agreement is attached to this policy (**Attachment B, Land Contract Subordination Agreement**).

Life Estates

For HOME-funded grants, life estates are not eligible.

For CDBG and MSHDA-funded grants, person(s) occupying a dwelling under a life estate agreement are eligible for homeowner rehabilitation assistance under the following conditions:

1. The life estate person(s) occupying the dwelling to receive rehabilitation must be income eligible.
2. The life estate agreement terms must be written, signed, recorded and a copy provided to grantee.
3. The holders of the remainder interest in the dwelling must agree, in writing, prior to the initiation of the rehabilitation to repay the loan when the dwelling ceases to be the principal place of residence of the current life estate person(s).
4. Both the owner of the life estate and the holder(s) of the remainder interest must sign the mortgage.
5. The loan is treated as an owner-occupied loan.
6. The applicant must execute the "Homeowner Certification and Program Agreement" form (see PB 16, attachment F).

Liens with Multiple Funding Sources

<u>County Allocation Liens</u>. Counties with allocation funding from MSHDA CDD can put a single lien on a project funded from various funding sources (including CDBG). MSHDA recommends that counties have a blanket Memorandum of Understanding with funding sources for county projects about how liens will be handled. MSHDA does not intend to regulate how counties handle or track the interests of the funders, including our funds granted under a county allocation. The county must recognize that allowing priority of interest to other funders may reduce the county's program income.

MSHDA Housing Resource Fund. When MSHDA Housing Resource Funds (HRF) are involved. MSHDA would be the Mortgagee. In these cases, MSHDA requires that it be the sole funder relative to the MSHDA lien. Other funding sources in the project would need to have separate liens.

Subordination of Liens

MSHDA discourages the subordination of liens resulting from CDD funded projects. If subordination is allowed locally, we prefer that it be allowed only for refinancing of existing debt from mortgages for rate and/or term improvement. This type of subordination is allowed and does not require MSHDA approval, because no new debt is being incurred. For liens held in MSHDA's name, subordinations will only be considered for rate and/or term improvement. MSHDA will not subordinate to reverse mortgages. MSHDA will allow reverse mortgages if our lien is paid off or MSHDA is in first lien position.

Subordination of a lien where new debt is being incurred will be allowed by MSHDA only for CDD funded homeowner rehabilitation projects, and only if the following criteria are met:

- A local policy and review process must be established to approve subordination requests. This policy and process must be approved by the legal counsel of the Grantee.
- Eligible and ineligible purposes for subordination must be outlined in the Grantee's policy.
- The local policy must be approved by MSHDA prior to policy implementation.
- A copy of each lien subordination approval letter must be kept in the project file and available for review by MSHDA.
- The total amount of all liens against the property (including the lien resulting from MSHDA CDD funding) cannot exceed 80% of the value of the property based on a current appraisal.
- The household must have income at or below 80% of AMI.
- A minimum of one year must have expired since the MSHDA CDD assistance was received.
- The interest rate for the new loan and associated loan costs must be competitive with the lowest rates and costs available in the lending industry. A worksheet evaluating current loan rates and costs must be part of the approval process.
- The proceeds of the loan the Grantee is subordinating to must be disbursed by the lender for the approved purposes of the loan. Grantee must keep copies of disbursement checks in project file.

The local plan for subordination of liens can be more restrictive than the above guidelines allow. The plan must be submitted to the Grantee's CD Specialist at MSHDA for approval.

Assumption of Liens

Liens resulting from CDD funded Homeowner Rehabilitation projects can be assumed by income-eligible heirs who will occupy the residence as their year round residence with approval by the Grantee and MSHDA.

Rental Rehabilitation liens can be assumed (with prior approval from MSHDA) if the buyer assumes all the conditions of the lien requirements.

Lien Forgiveness

With prior MSHDA approval, part (or all) of the CDBG or HOME funds due at the time the property is sold may be forgiven if the proceeds from the sale are insufficient to pay all superior liens and the CDBG/HOME lien. However, HOME Rental liens cannot be forgiven prior to the expiration of the period of affordability, generally, the balance of affordability period must be assumed by the buyer.

Remember, all liens must be recorded at the applicable Register of Deeds office. If you have questions, contact your CD Specialist.

Attachments:
A, HOME Maximum Per Unit Subsidy
B, Land Contract Subordination Agreement
C, Homeowner Rehabilitation Resolution