

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**  
**DIVISION OF COMMUNITY AFFAIRS**  
**HOME Investment Partnerships Program**

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October 12, 2001

**TO:** HOME State Recipients

**FROM:** Wayne Walker  
HOME Section Chief

**RE:** HOME Affordability Requirements, the Repayment and Recapture of HOME Funds, and Program Income

The purpose of this Management Memo is to provide guidance to State Recipients in their enforcement of the affordability requirements of the HOME Program and to ensure that affordable housing will continue to be provided in both rental and homeownership inventories. The Department, as the Participating Jurisdiction (PJ), and its State Recipients, through our State Standard Agreements, must ensure that HOME investments yield affordable housing over the long term. HOME imposes rent and occupancy requirements over the entire affordability period regardless of the term of the loan, regardless of whether the loan is prepaid, and regardless of any change of ownership in rental projects.

**Rental Housing**

Rental units assisted with HOME funds are required to remain affordable for a designated length of time. The HOME-assisted units must remain affordable regardless of the term of the loan or any change in ownership. The affordability period is dictated by the amount of HOME funds committed to each HOME-assisted unit and the type of housing activity funded. Federal Final Rule Section 92.252 addresses the minimum period of affordability for rental units.

For HOME-assisted rental units, the PJ must enforce income, occupancy, and rent requirements, property standards, and affirmative marketing for the period of affordability. Neither the Department, as the PJ, nor any State Recipient, Community Housing Development Origination (CHDO) or Subrecipient is permitted to opt-out of the affordability requirements without triggering the "repayment" requirements. Further, the Department requires all State Recipients to fully enforce the affordability of any HOME-assisted rental units, even if it requires the use of legal remedies by the State Recipient.

When HOME funds are invested in a rental project that is terminated before completion, or invested in housing which failed to comply with the affordability requirements for the entire affordability period, the Participating Jurisdiction must repay these funds to the Treasury (92.503(b)). Due to the fact that the Department must repay these funds, any State Recipient which fails to maintain the affordability requirements for rental housing projects will be required to repay the Department in full (including any required interest). Failure to immediately repay HOME funds to the Department will result in penalties, including prohibition from submitting future applications for funding until the amount is repaid in full, and performance penalties the next time the State Recipient applies for funding.

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### **Homeownership**

HOME funds used to assist homebuyers also have affordability requirements. The minimum affordability periods are listed in 24 CFR 92.254. In accordance with 92.254(a)(5), HUD allows PJs two options for ensuring the affordability of housing acquired by HOME-assisted homebuyers if the housing does not continue to be the principal residence of the family during the duration of the period of affordability. These options are: the Recapture option or the Resale option. The option selected by the PJ must be used by State Recipients and subrecipients, also.

The Recapture option is a mechanism to recapture all or a portion of the direct HOME subsidy if the HOME recipient decides to sell the house before the end of the affordability period, at whatever price the market will bear. The Recapture option provides the PJ, the State Recipient, and the assisted homebuyer with maximum flexibility. The homebuyer is permitted to resell the property at whatever price the market will bear, lenders are more comfortable with the recapture provision, and recapture is easier to administer.

Therefore, the Department has selected the Recapture option of ensuring the affordability of housing acquired by HOME-assisted homebuyers. The Department has also elected to allow State Recipients to reduce the amount of the HOME investment that is recaptured on a pro rata basis to reflect the number of years the homeowner has owned and occupied the housing measured against the required affordability period (92.254(a)(5)(ii)(A)(2)). For example: A homeowner who received a \$20,000 HOME loan, requiring a 10 year affordability period, sells the house after living in it for 5 years. The full principal amount of \$20,000 is repaid, but the State Recipient may treat 50% of the returned principal as Recaptured Funds and 50% as Program Income.

### **Program Income vs. Recaptured Funds**

HUD makes an important distinction in the way PJs and State Recipients can use Program Income and Recaptured Funds. When a PJ or a State Recipient receives Program Income, they are permitted to keep 10% of the funds for administration. However, when Recaptured Funds are received, no administrative funds can be kept. 100% of Recaptured Funds must be invested in another HOME-eligible activity.

Recaptured funds and Program Income do not have to be expended on the same type of activity as that from which the funds were generated, but they are required to be expended before any new HOME funds can be drawn down from the Treasury (24 CFR 504(c)(viii)). The Department has begun enforcing this requirement by holding back disbursement requests received from State Recipients that have a balance in their local HOME account.

Quarterly and Annual Reports are required of all State Recipients, even those that do not have an active HOME contract. The Quarterly and Annual Reports must clearly show the amount of Program Income and Recaptured Funds received, expended and on-hand. If a balance has been eliminated since the last report, include with the disbursement request a letter indicating that the funds have been expended.

Please refer to the attached CPD Notice 97-09 entitled "HOME Program Income, Recaptured Funds, Repayments and CHDO Proceeds" for additional information. If you have any questions regarding this matter, please contact your HOME Program Representative.

Attachment: CPD Notice 97-09