

California HOME Resale and Recapture Policy

For First-Time Homebuyer Programs

February 9, 2024





Welcome



- Trainers:
 - Lisa A Baker, HOME Consultant, Lisa.Baker@hcd.ca.gov
 - Jay Cortese, HOME Program Manager, Jay.Cortese@hcd.ca.gov
 - Niki McCay, HOME Section Chief, nicole.mccay@hcd.ca.gov

Introduction and quick poll





Overview



Image Credit: Pixabay

- Introduction
- Goals and Background
- Overview of New Policy and Requirements
- Policy Implementation and Approvals Process
- Timeline

Goals and Background





Goals for Today

GOAL SETTING



- Overview of Program.
- Broad Overview of federal HOME requirements with regard to resale and recapture.
- Understanding HCD's approach and requirements.
- Implementing changes, HCD approvals and process.



Background



- State HCD operates the HOME program, including the First-Time Homebuyer Program. That program has been on pause, pending approval by HUD of a new Resale and Recapture Policy.
- We're excited to share that we now have a policy to both meet federal requirements AND serve you better.

Brief Overview of Federal HOME Requirements for Resale and Recapture





Brief Summary

In the **federal HOME Homebuyer provisions**, at 24 CFR, section 92.254, the **basics of resale/recapture are laid out beginning at section 92.254 a (5)**:

- The grantee (HCD) must establish resale or recapture requirements that comply with both the State's Consolidated Plan and the standards of the statute.
- Assisted housing must meet affordability requirements, based on the amount of assistance provided.
- Recapture provisions must ensure the grantee recoups all or a portion of the assistance to homebuyers, if the housing doesn't continue to be the principal place of residence of the family for the duration of the Period of Affordability.
- Programs have some latitude in structuring their recapture provisions based on program design and market conditions.
- When recapture is triggered by sale of the unit, amount recaptured cannot exceed the net proceeds, if any. Net proceeds are sales price, minus superior loan payment (other than HOME) and closing costs.

HCD's Approach and Requirements





HCD's Approach to Resale Recapture

Overall Philosophy

- Meet the needs of low-income Californians through locally operated HOME-funded First-Time Homebuyer programs.
- To do so by better aligning with federal requirements and streamlining the process so that grantees and recipients have clear and transparent direction to meet the mission.
- To provide for ease of administration for both HCD and the grantee.

How that informs the new Policy and Procedures

- Both the policy and the new procedures have been created to meet these objectives.

Resale and Recapture Policy

First-Time Homebuyer Program

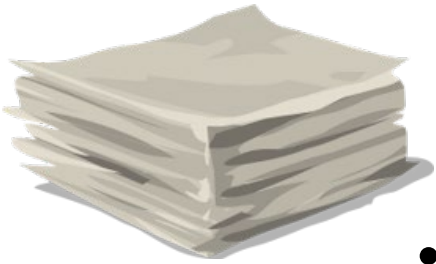




New Policy Overview (refer to the Resale Recapture Policy provided)

The new policy is laid out with the following sections:

- **Purpose and Goals**
- **Overview**
- **Background**
- **Definitions**
- **HOME First-Time Homebuyer Resale and Recapture Policy**
- **Ongoing Monitoring**



Resale and Recapture Policy – Sections I & II

- **Purpose and Goals** – Designed to assist grantees in meeting housing goals, including:
 - Homeownership for low-income households.
 - Increasing affordable housing in California.
 - Increasing housing options and availability within the State.
- **Overview** - This section enumerates the applicable interrelated policies and documents of the First-Time Homebuyer Program (FTHB) and sets out the compliance requirements in the following areas:
 - 24 CFR Part 92 (sections 92.254 and 92.504).
 - Period of Affordability and Recapture provisions.
 - Allowable grantee program design and recapture options.



Resale and Recapture – Section II, Overview, cont.

- Interrelated policies – these include
 - Cross-cutting federal requirements and non-HOME-specific policies, such as Fair Housing, Section 3 (where applicable)
 - State Loan Underwriting Guidelines, and
 - State Loan Servicing Guidelines



Resale and Recapture Policy – Section III, Background.

- **Background** – HOME is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act (HOME statute) and the rule can be found at 24 CFR Part 92.
 - Section 215 of the HOME statute states that housing must:
 - Be single family, modest housing as defined at 24 CFR Section 92.254(a)(2) with initial purchase price limit of 95% of median purchase price of the area.
 - Be acquired and used as the principal place of residence by purchaser.
 - Meet affordability requirements for specific period.
 - Be subject to resale or recapture provisions – including units funded with HOME Program Income (PI).



Resale and Recapture Policy – Section III, Background, cont.

- The HOME rule also requires that provisions be laid out in a HOME Written Agreement between the program and the homebuyer [see 24 CFR sections 92.254 and 92.504(c)(1)(x)]
- These provisions are included in the HOME Program First-Time Homebuyer Resale and Recapture Policy



Resale and Recapture Policy – Section IV, Definitions

Definitions – Similar to other policies, a definitions section for common terms has been included. This includes HOME-specific program terms, such as CHDO (Community Housing Development Organization), PJ (Participating Jurisdiction), etc., that appear in the Policy, but also includes financial terms that apply to HOME homebuyer loans, such as Appreciation and Net Proceeds to help ensure a shared understanding of the terms.



Section V, First-Time Homebuyer Resale and Recapture Policy



Image Credit: Canva free via Pixabay



Resale and Recapture Provisions, Section V.

A. Resale Provisions

- **First up** - resale provisions are not being utilized in HOME First-Time Homebuyer (FTHB) direct-assistance activities. HCD is using the recapture option to:
 1. Help first-time homebuyers build equity over time; and
 2. Ease administration for both the State and the grantee.
- However, despite the fact that we are not using resale provisions, there are a variety of recapture options available to the grantee to best meet community needs.



Resale and Recapture Provisions, Section V. B.

1. Recapture Provisions, Period of Affordability

- Recapture requirements are based on the Period of Affordability provisions found at 24 CFR 92.254(a)(4)
 - Period of Affordability is based on the **direct HOME subsidy** the homebuyer received to buy the home.
 - HOME Program Income used to provide direct assistance is included when determining the Period of Affordability.



Resale and Recapture Provisions, Section V. B. 1.

Recapture provisions, Period of Affordability, cont.

Total HOME Investment in the unit is:	The Period of Affordability is:
Under \$15,000	5 years
Between \$15,000 and \$40,000	10 years
Over \$40,000	15 years

HCD's recapture approach requires that all or a portion of the direct subsidy provided to the homebuyer be recaptured from net proceeds of the sale.



Resale Recapture Provisions, Section V. B. 2. HOME Recapture Provisions

- HOME Recapture provisions allow the original homebuyer to sell the property to any willing buyer during the Period of Affordability and the Lender can recapture all, or a part of the HOME assistance that was provided.
 - There are **2 Key concepts** in recapture requirements that determine full amount of HOME assistance subject to recapture and correct Period of Affordability.



Resale Recapture Provisions, Section V. B. 2. HOME Recapture Provisions, cont.

- These concepts are:
 - 1) Direct subsidy to the homebuyer; and
 - 2) Net proceeds.
- The State's approach requires that all or a portion of the *direct subsidy provided* be recaptured from the *net proceeds* of sale.



Resale and Recapture Provisions, Section V.

B. 2. Recapture Provisions, cont.

- **Terms Defined:**

1. **Direct HOME Subsidy** is the amount of HOME assistance, *including any Program Income*, that enabled the homebuyer to buy the home. The direct subsidy includes the down payment, closing costs, interest subsidies, or other HOME assistance provided directly to the homebuyer. In addition, direct subsidy also includes any assistance that reduces the purchase price from fair market value to an affordable price. If HOME funds are used for the cost of developing a property and the unit is sold below fair market value, the difference between the fair market value and the purchase price is considered directly attributable to the HOME subsidy.
2. **Net proceeds** are defined as the sales price *minus superior loan repayment* (other than HOME funds) and any closing costs. Under no circumstances can the Lender recapture more than is available from the net proceeds of the sale.
3. **Long-Term Affordability:** Under recapture, there is no requirement that the original HOME-assisted homebuyer sell the unit to another low-income homebuyer. Instead, if the homebuyer transfers the property (either voluntarily or involuntarily) during the Period of Affordability, the State (or State grantee) recovers, from available net proceeds, all or a portion of the HOME assistance to the homebuyer.



Resale and Recapture Provisions, Section V. B. 3.

HOME Recapture Provisions, Models

- **Recapture Models for HCD's HOME program** (we will be using Lender at this point although, in most instances, the lender is also the grantee):



1. *Recapture of Entire Direct Subsidy*: Lender recaptures only the HOME direct subsidy provided at time of purchase, plus any interest due according to the terms of the HOME Promissory Note.
2. *Owner Investment Returned First*: Lender allows the homebuyer to recapture their cash contributions at the time of purchase prior to Lender recapturing the HOME direct subsidy.
3. *Shared Net Proceeds*: Lender shares appreciation with the homebuyer.



Resale and Recapture Provisions, Section V. B. 3, Models, cont.

- *Recapture of Entire Direct Subsidy*
 - *Lender recaptures only the HOME direct subsidy from time of purchase plus interest due in accordance with the note before homebuyer receives any return.*
 - *Where there is appreciation, the homebuyer would retain any net proceeds in excess of the subsidy plus interest due.*
- Homebuyer receives \$10,000 in direct subsidy. The period of affordability is 5 years.
 - If the homebuyer sells after 3 years, Lender recaptures all \$10,000 in direct subsidy including any interest also due (assuming sufficient net proceeds).
 - Homebuyer would receive any net proceeds which exceed that amount.



Resale and Recapture Provisions, Section V. B. 3, Models, cont.

- *Owner Investment Returned First*
 - Once net proceeds of sale are determined, homebuyer's initial investment and any qualified capital improvements are deducted from net proceeds available for recapture. The entire HOME subsidy plus interest is then recaptured. Any remaining net proceeds are retained by the homebuyer.
- Homebuyer receives \$5,000 in assistance and provides \$5,000 of own funds. After purchasing the home, s/he invests \$2,000 for capital improvements to the home (\$7,000 in total investment).
 - 2 years into the Period of Affordability, s/he decides to sell the home. The Lender's recapture provisions allows the homebuyer to recover the entire investment.
 - Net proceeds are \$10,000.
 - Homebuyer recovers \$7,000 and Lender is only able to recapture \$3,000.
 - In this case, Lender is not responsible for repaying the \$2,000 difference between recapture amount and what is available from net proceeds.



Resale and Recapture Provisions, Section V. B. 3, Models, cont.

- *Shared Net Proceeds*
 - The HOME final rule states that if net proceeds are not sufficient to recapture entire HOME investment or enable the homebuyer to recover the amount of downpayment and capital improvements since purchase, Lender may share net proceeds. Homebuyer must have documented evidence of the costs of capital improvements in order to include them in shared net proceeds calculations.
- Calculating amount of net proceeds to be returned to Lender:
 - Divide direct HOME subsidy by sum of the HOME subsidy and homebuyer's investment, then without rounding the result,
 - Multiply by the net proceeds to calculate the amount of HOME investment to return to Lender.
- Calculating the amount of net proceeds available to buyer:
 - Divide the homebuyer's investment by the sum of the direct HOME subsidy and homebuyer's investment, then without rounding the result,
 - Multiply by the net proceeds to calculate the amount of homebuyer investment to return to the homebuyer.



Resale and Recapture Provisions, Section V. B. 3, Models, cont.

EXAMPLE: A homebuyer received \$10,000 in HOME down payment assistance and provided \$2,000 of her own funds for the down payment. She also invested another \$3,000 on capital improvements to the property. She is selling the home after two years. The Lender, has structured its recapture policies to share the net proceeds between the HOME-assisted homebuyer and Lender. In this example, the net proceeds of the sale are \$5,000. Using the two formulas set forth above, the amount of the net proceeds to be recaptured by the Lender is \$3,333.

$$\frac{\$10,000}{(\$10,000 + \$5,000)} \times \$5,000 = \$3,333$$

The amount of the net proceeds to be recovered by the homebuyer is \$1,667.

$$\frac{\$5,000}{(\$10,000 + \$5,000)} \times \$5,000 = \$1,667$$



Resale and Recapture Provisions, Section V.

B. 3. Models, Caveats

- ***Recapture of Entire Direct Subsidy*** – In some cases, as in declining housing markets, net proceeds available at time of sale may be insufficient to recapture the entire direct HOME subsidy plus interest due. The HOME final rule limits recapture to *available* net proceeds. Where there are insufficient net proceeds at sale, the Lender/PJ is not required to repay the difference.
- ***Owner Investment Returned First*** – Where net proceeds are insufficient to repay all or any of the homeowner's initial investment, the homebuyer will not receive the full amount of their initial investment. They will receive only what net proceeds are available. In such circumstances, the Lender/PJ is not responsible for repaying to the account that provided the original assistance the difference between the amount of direct HOME subsidy due and recaptured amount available.
- ***Shared Net Proceeds*** – Is based on formula. Where there are insufficient funds from shared appreciation (net proceeds) to repay the recapture amount of direct HOME subsidy and interest due, the Lender/PJ is not responsible for repaying the difference.
- **Important Note:** The lender/grantee will need good documentation in such cases to demonstrate compliance with the regulations.



Resale and Recapture Provisions, Section V. B. Imposing Recapture Provisions, a. Requirements

Requirements and Monitoring -

- HOME regulations require HCD, as the Participating Jurisdiction (PJ) to perform annual loan servicing and to ensure that homebuyers in the portfolio maintain their housing as their principal residence during the affordability period.
- To accomplish this, both HCD and grantee/subrecipient must have approved FTHB guidelines in place, including procedures for monitoring the portfolio and for notifying HCD, as the PJ, of sale during the Period of Affordability.
- HCD, as the PJ, will monitor State grantees/recipients/subrecipients for compliance with these requirements.

And Now for Something New





Resale and Recapture Provisions, Section V. B.

Recapture Provisions: b. HOME Written Agreement

- New to HCD HOME programs, but required by federal regulations, is the need for a **HOME Written Agreement** that is different from the HOME Standard Agreement.
- Regardless of which recapture variation is used, the **HOME Written Agreement** will be required and must be executed, in addition to the HOME Promissory Note, the recorded HOME Deed of Trust, and any recorded Rider.
- This Agreement must accurately reflect the recapture provisions with the homebuyer at, or before, the time of sale. Elements of the Agreement include the period of affordability, principal residence requirement, loan terms, and conditions of recapture.
- Lenders are required to use the Department's approved HOME First-Time Homebuyer (FTHB) Written Agreement Template to ensure the agreement meets regulatory requirements.
- **Important:** the HOME Written Agreement will not be recorded; however, its terms will be enumerated in the Deed of Trust, which is recorded.



Resale and Recapture Provisions, Section V. B. HOME Written Agreement

- The resale and recapture requirements are embedded in the State's Annual Action Plan. If/when the State revises the provisions of its policy in the future, it will also be codified in the Annual Action Plan. When this occurs, the State must also modify the Written Agreement template(s) to reflect these changes as the executed agreements create legal obligations for the State and its grantees/subrecipients.



Resale and Recapture Provisions, Section V. B. Recapture Provisions, b. HOME Written Agreement, cont.

- **Note 1:** HOME FTHB activities entered into before changes to the Annual Action Plan will be governed by the previously-executed agreements.
- **Note 2:** The terms and conditions in the executed written agreement and recorded documents govern the individual deal. If the State later modifies its recapture or resale provisions in the Annual Action Plan but does not make similar changes to its written agreements/lending docs, the resale or recapture provisions in the written agreement would prevail.
- **Note 3:** The HOME Written Agreement must be a separate legal document from any loan instrument and must comply with requirements in the federal regulations as cited in the State's Resale and Recapture policy.



Resale and Recapture Provisions, Section V. B. Recapture: Imposing Recapture, c. Enforcement

Enforcement Mechanisms:

- The Written Agreement between the parties, as well as the mortgage and lien documents (Note and Deed of Trust, and any Riders) constitutes the HOME program's enforcement mechanisms.
- The purpose is to ensure the proper recapture of the direct subsidy to the assisted buyer if the property is sold, transferred, or used for an ineligible purpose.



Resale and Recapture Provisions, Section V. B. Imposing Recapture Provisions, d. Noncompliance

Noncompliance:

- Where the homebuyer no longer occupies the property as their principal residence or where the home was sold during the Affordability Period, and applicable recapture provisions were not enforced:
 - If program noncompliance occurs, the entity responsible for day-to-day operations of its HOME program must repay the HOME Investment Trust Fund with non-federal funds. The amount of repayment is dependent on the program design and use of funds.
 - Repayment of *any outstanding HOME* funds invested in the housing must be repaid as codified at 24 CFR 92.503(b), "Repayments," (1) – (3).



Resale and Recapture Provisions, Section V. B. Imposing Recapture Provisions, d. Noncompliance, cont.

- In any such cases of noncompliance under the provisions, the subrecipient (“Lender”) would repay the State, who serves as the PJ, and then the State, as the PJ, would repay HUD.
- The amount subject to repayment is the total amount of HOME funds invested in the housing (whether HOME development subsidy, downpayment or other assistance such as closing costs) *minus* any HOME funds already repaid (such as payment of principal on the HOME loan).
- Interest paid on the loan is considered program income and cannot be counted against the outstanding investment amount.



Resale and Recapture Provisions, Section V. B. Imposing Recapture Provisions, d. Noncompliance, cont.

EXAMPLE: A grantee provided a \$20,000 HOME development subsidy as a grant to the developer, and the homebuyer received \$5,000 in down payment assistance as a deferred loan. If the homebuyer rents out the property in year 3, they would be in noncompliance with the HOME principal residency requirement. The State, or grantee, would be required to repay the entire \$25,000 HOME investment – i.e., the \$20,000 development subsidy *plus* the balance on the homebuyer's \$5,000 loan.



Resale and Recapture Provisions, Recapture: Foreclosure, Transfer in lieu, or Assignment to HUD

Foreclosure, deed in lieu, assignment to HUD

- Termination of affordability restrictions in case of foreclosure, deed in lieu, or assignment of an FHA-insured mortgage to HUD does **not** satisfy the requirement that the property remains qualified as affordable housing under the statute. The following rules apply in such cases:
 - **Recapture** Homebuyer housing with a recapture agreement is not subject to the affordability requirements after the State or grantee has recaptured the HOME funds in accordance with its written agreement. If the ownership of the housing is conveyed pursuant to a foreclosure or other involuntary sale, the State or grantee must attempt to recoup any net proceeds available through the foreclosure sale. Because all recapture provisions must be limited to net proceeds, the State or grantee's repayment obligation is limited to the amount of the HOME subsidy, if any, that it is able to recover.
 - **Resale is not a currently permitted option in State HOME FTHB programs.**



Resale and Recapture Provisions, Section V.

B. Recapture Provisions: Refinancing

Refinancing

- In completing your FTHB Guidelines, as an approved HOME Program lender, grantees/recipients/subrecipients must have an HCD-approved written refinancing policy included that will govern the refinancing of senior debt when asked to subordinate its interest. This agreement should specify conditions under which the Lender agrees to subordinate to new debt as well as how such requests will be processed by the Lender.
- **Something New:** HCD will now allow refinancing, but strictly limit refinancing of senior debt and subordination to circumstances where the original homebuyer is securing more favorable terms to reduce monthly housing costs, or if sufficient equity exists, to take cash out **only** for items such as immediate repairs to the property to correct identified health and safety violations.



Resale and Recapture Provisions, Section V. B. Recapture Provisions, Refinancing, cont.

- Examples of circumstances where the homeowner would benefit from a refinance transaction:
 - Where the original homebuyer is securing better terms to reduce monthly housing costs, without cashing out equity in the property.
 - Where the original homebuyer has sufficient equity to take cash out for pre-approved and necessary property repairs to correct health and safety violations when other forms of funding do not exist.

In the examples cited above, where the original note has been paid off and the FTHB note has moved to first position, the State will subordinate its Note to a new mortgage in first position where the homebuyer is using the proceeds for pre-approved property repairs and rehabilitation.



Recapture Provisions: Monitoring

- HOME regulations require HCD, as the Participating Jurisdiction (PJ), perform annual loan servicing and ensure that homebuyers in the portfolio maintain their housing as their principal residence during the affordability period.
 - To accomplish this, both HCD and grantee/subrecipient must have approved FTHB guidelines in place, including procedures for monitoring the portfolio and for notifying HCD, as the PJ, of sale during the period of affordability.
- Monitoring Implementation: HCD, as the PJ, will monitor State grantees/recipients/subrecipients for compliance.
 - Items that must **annually** meet compliance include:
 - That the home is the current place of residence.
 - That property taxes and insurance premiums are current and paid.

Assistance, Timeline





Types of Assistance -

Types of assistance we provide:

- Mandatory Written Agreement Template
- Mandatory Program Guidelines Template
- 1:1 Technical Assistance, including review and approval of grantee Promissory Note and Deed of Trust

Of these, what is the most useful to you?

- What are we missing? Do you have additional suggestions?



Timeline

- Step 1 – Draft of Revised Resale and Recapture Policy. Status: *Complete*.
- Step 2 – Approval of New Resale and Recapture Policy by HUD. Status: *Complete*.
- Step 3 – Creation of new HOME Written Agreement. Status: *Complete*.
- Step 4 – Final approval to use the new HOME Written Agreement. Status: *Complete*.
- Step 5 – Revisions to HOME First-Time Homebuyer Guidelines for Subrecipients.
Status: *Complete*.
- Step 6 – Approval of Revised sample Guidelines. Status: *Substantially complete*.
- Step 7 – Begin to receive revised plans for HCD review and approval. Status: *Estimated to open on Friday, March 1st*.
- Step 8 – Review process, expected time to review and approve complete document packages is 30 working days from verification that packages are complete.
- Step 9 – Resume Homebuyer Activity. Status: Approval letter will include the date certain by which the awardee can resume program activities.

Updated and Upcoming Policies and Procedures





Updated and Upcoming

- **Available Now** – Minimum Rehabilitation Standards (multi-family) for HOME Housing Rehabilitation.
- **Sneak Preview** –
 - All-new HOME Monitoring Handbook, forms, guidance.
 - HOME is transitioning from State HOME Program Regulations to State HOME Guidelines.
 - New HOME Contract Management Manual – to more easily meet federal requirements and recipient/subrecipient needs.



Questions?

Image Credit: Pixabay





Stay in the know: Sign up for HCD email at www.hcd.ca.gov

CA.GOV

California Department of Housing and Community Development

CONTACT ABOUT JOBS NEWSROOM

Grants & Funding Manufactured & Mobilehomes Building Standards Planning & Community Development Policy & Research

Select Language
Powered by Google Translate

IMPROVING LIVES & COMMUNITIES ACROSS CALIFORNIA

Contact
Email Sign up
Questions, Comments, Feedback



Follow HCD on social media



Like us on Facebook: [/CaliforniaHCD](#)



Follow us on Twitter: [@California_HCD](#)



Follow us on LinkedIn: [/company/californiahcd](#)



Join Team HCD

HCD values diversity at all levels of the department and is committed to fostering an environment in which employees from a variety of backgrounds, cultures, and personal experiences are welcomed and can thrive. We believe the diversity of our employees and their unique ideas inspire innovative solutions to complex housing challenges.

Join us and help improve the lives of all Californians.

To find jobs at HCD:

Visit: jobs.ca.gov and click “Advanced Job Search.”

- Search for California Department of Housing and Community Development

New to state service? Don't worry.

You can view the step-by-step process on jobs.ca.gov.



THANK YOU FOR
ATTENDING!