

## RESALE AND RECAPTURE REQUIREMENTS

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## A Little About Us ...

- HUD's Community Planning and Development Training Initiative
- Workshop developed by HUD and ICF Consulting
- Who are we?
  - HUD CPD staff
  - ICF staff



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## Welcome and Overview

- Workshop structure
- Training goals
- Rules
- Agenda
- Breaks
- Exercises and overheads

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## Training Goals

- Understand basics of HOME Program resale/recapture requirements
- Practice determining when and how to use resale and recapture
- Understand PJ's responsibilities when assisted homebuyer sells or defaults

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## Rules!!!!

- Ask questions
- Please keep side conversations to minimum
- Parking lot
- No cell phones that ring, please

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## HOMEBUYER PROGRAM REQUIREMENTS

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## Typical Programs

- Assistance to homebuyers:
  - Downpayment and/or closing cost assistance
  - Direct loans – first or junior mortgage to fill financing gap
  - Interest subsidies – reducing the mortgage interest rate
  - Loan guarantees – insuring the lender against loss if homebuyer defaults

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## Typical Programs (cont)

- Subsidies to developers:
  - Construction financing
  - Gap between cost and market value
  - Below-market sales price

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## Eligible Activities for Homeownership

- HOME can be used for:
  - Acquisition
  - Acquisition/rehabilitation
  - New construction
  - Lease-purchase if conveyed within:
    - ✓ 36 months of signing OR
    - ✓ 42 months of project completion (only if homebuyer does not purchase within 36 month period)
    - ✓ Converts to rental housing after 42 months

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## Forms of Assistance

- PJs generally use:
  - Grants
  - Deferred payment loans
  - Below-market rate loans
- Subsidy limits, both maximum and minimum, apply
- Subsidy layering analysis required for projects with additional sources of government funds

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## Eligible Costs

- Hard costs:
  - Acquisition
  - Site preparation or demolition
  - Construction
- Soft costs:
  - Fees and appraisals
  - Homebuyer counseling
- Relocation Costs

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## Eligible Properties

- Eligible property types:
  - Single-family home
  - Two-to-four unit property
    - ✓ Other units may be subject to HOME rents
    - ✓ Depends on how funds invested
  - Manufactured homes
- Homes must be modest and meet HOME sales price/value limits

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## Property Standards

- Different standards for acquisition only, acquisition/rehab and new construction
- PJ must inspect assisted units prior to occupancy by homebuyer

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## Homebuyer Applicants

- Low-income
- Property will be principal residence
- No HOME affordability requirement applies to affordable principal, interest, taxes, and insurance (PITI):
  - At purchase OR
  - Remain affordable over time
- Good practice to use ratios to determine ability to afford
  - Front end (housing cost)
  - Back end (all debt)
- Ratios help PJ avoid over-subsidizing units and meet subsidy layering requirements

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## Forms of Ownership

- Types of ownership allowed:
  - Fee-simple ownership
  - 99-year leasehold (or 50 years on Indian Trust land)
  - Condo ownership, and coop or mutual housing ownership/ membership, if recognized by state
  - Other forms must be HUD-approved
- Contract for deed is not ownership

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### Long-Term Affordability Period

HOME \$	Affordability Period
< \$15,000	5 yrs.
\$15,000 - 40,000	10 yrs.
Over \$40,000	15 yrs.

- HOME affordability periods are minimums -- PJs can set longer terms

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### Affordability Restrictions

- Written HOME agreement with homebuyer specifies length of affordability period
  - Agreement must enable PJ to enforce affordability restrictions, regardless of who develops and sells unit
- PJs can require longer affordability periods
- Affordability "in perpetuity" through:
  - Land trusts
  - Deed restrictions

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### Mortgage Financing vs. Recapture/Resale

- Financial documents (mortgage or deed of trust & promissory note) are:
  - Separate documents from, and
  - Independent of HOME agreement
- Must have affordability period independent of HOME financing
- Pre-payment of HOME investment provided as loan does not terminate affordability period

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## HOME and Refinancing

- PJs should adopt refinancing policies for:
  - Subordination of superior mortgages or HOME investment
- Refinancing policy should be in HOME written agreement
  - If allowed or unallowed
    - ✓ If allowed, under what circumstances
  - Procedure for approval (if applicable)

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## Resale and Recapture

- For each homebuyer, UP FRONT, the PJ must select the compliance requirement during the period of affordability, either:
  - Resale or
  - Recapture
- PJ cannot mix Resale and Recapture -- must choose one

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## Consolidated Plan

- PJ must specify in Consolidated Plan which method -- or both -- will be used
- If both methods, then describe how method will be chosen for each assisted household/home
  - Need to be consistent and treat families in same circumstances fairly

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### Consolidated Plan: States

- State PJs “pass down” resale and/or recapture requirements to state recipients, including:
  - HUD approval through Con Plan process
  - Specified language in HOME written agreements
- Either resale and/or recapture can be offered as options
  - If one option chosen, state should provide specific language in HOME written agreement (from State Con Plan)

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### THE RESALE APPROACH

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### What is Resale?

- Restricts homebuyer’s ability to resell to HOME-eligible buyer
- Can be used for any HOME eligible project for any type of assistance
- Repayment of HOME funds dependent on PJ’s mortgage financing terms

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### Affordability Period Under Resale

- Affordability period based on **total HOME investment** in the property
  - Must include \$\$\$ of HOME assistance to buyer
  - PLUS total amount of HOME funds provided to developer

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### Affordability Period Under Resale

HOME subsidy provided to developer  
 + HOME funds provided directly to homebuyer

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= Amount used to determine resale period

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### Resale Affordability Period Example

- \$25,000 HOME second mortgage at 3% interest for 20 years
- \$6,000 HOME downpayment assistance to homebuyer
- **Total subsidy: \$31,000**
- **Affordability period: 10 years**

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### Resale Affordability Period Example

- \$100,000 HOME provided to a developer
- Unit is sold \$20,000 below market
- **Total subsidy: \$100,000**
- **Affordability period: 15 years**

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### Resale Affordability Period Example

- \$50,000 HOME development assistance to CHDO
- \$10,000 HOME downpayment assistance to homebuyer
- **Total HOME investment: \$60,000**
- **Affordability period: 15 years**

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### Resale Affordability Period Example

- \$50,000 HOME development assistance to CHDO
- Property will be sold for \$10,000 below market
- \$20,000 HOME second mortgage at 3% interest for 20 years
- \$6,000 HOME downpayment assistance to homebuyer
- **Total subsidy: \$76,000**
- **Affordability period: 15 years**

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## Resale: When Home is Sold

- Must be affordable to a reasonable range of low-income buyers
- New buyer must:
  - Be low-income
  - Occupy house as principal residence
- Seller must receive a “fair return” on original investment + improvements

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## Affordable to Range of Homebuyers

- Defined by PJ in Consolidated Plan
- PJs typically require PITI not exceed stated percentage of income for targeted range of low-income homebuyers
  - Example: PITI must be 30% for low-income homebuyers between 60 and 80% of AMI

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## Fair Return to Seller

- PJ must define “fair return” in Consolidated Plan
- Consider whether definition should be based on:
  - Initial investment plus improvements (min required)
  - May provide return on investment
- Note: a high return to the original owner means a high sales price
  - ... and higher probability that next buyer will need subsidy

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## Implementing the Resale Approach

- PJ must:
  - Prepare appropriate agreements
    - ✓ Written HOME agreement with buyer
    - ✓ Mortgage and note if HOME loan provided to buyer
  - Execute written agreement with homebuyer at or before completion of sale
    - ✓ Timing depends on activity
    - ✓ Purchase of existing home vs. new construction
  - Complete homebuyer's income eligibility within acceptable time limit

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## Developing the Resale Agreement

- Written agreement must be between PJ and homebuyer, or enable PJ to legally enforce
- Written agreement must specify:
  - Obligations of PJ, homebuyer and subrecipient or CHDO if involved
  - Principal residency requirement
  - Restrictions on resale of property:
    - ✓ Role of PJ in determining sales price, identifying and qualifying new purchaser
    - ✓ How fair return will be determined
    - ✓ Continuation of affordability period

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## Developing the Resale Agreement (cont)

- Written agreement should specify:
  - Forgiveness/loan term for any HOME funds loaned to homebuyer
    - ✓ Term **at least** equal to period of affordability provides leverage
    - ✓ Key info from mortgage/note
    - ✓ Explain loan payoff doesn't end affordability period
  - Actions PJ will take if homebuyer in noncompliance

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## Recording the Resale Agreement

- Restriction must be tied to the land and recorded via:
  - Deed restriction
  - Land covenant
- Separate lien for HOME \$\$ to be repaid
- PJ must be able to enforce the agreement, including principal residency:
  - Consult with counsel
  - Ensure agreement legally binding and recorded

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## Notifying Lienholders

- Important for PJ to ensure lienholders are aware of resale agreement
- Send letter requesting notification of delinquency or default
- Educate lenders and servicers about resale agreements
- Foreclosure by a lienholder could wipe out PJ's agreement

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## Monitoring Resale Agreement

- Monitor ownership
  - Review tax records
  - Request copy of insurance bill
  - Establish system for flagging pending sales
- Recommend monitoring principal residency
  - Request copy of insurance and/or utility bill
  - Send out letter and certification form with "Do Not Forward"
- PJs typically monitor annually

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## Enforcing the Resale Agreement

- If owner doesn't sell but fails to occupy unit as principal residence or meet another PJ condition:
  - Owner is in noncompliance
  - PJ must take legal action to restore principal residency or collect funds
  - Total outstanding HOME investment must be repaid to PJ's HOME account
    - ✓ Minus HOME \$ paid back, if applicable
  - Funds collected are "repayment funds" (returned funds in IDIS) NOT program income or recaptured funds
  - Activity must be canceled in IDIS

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## Managing a Sale Under a Resale Agreement

- Two types of sales possible:
  - Voluntary by homeowner to another eligible homebuyer
  - Foreclosure by a lender holding loan in default
- Resale provisions triggered by both
- Title transfer without sale also triggers resale provisions

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## Managing a Sale Under a Resale Agreement (cont)

- Voluntary sale (including sale before foreclosure):
  - PJ must approve sales price and calculate fair return to seller
  - New purchaser must be income qualified
  - Resale provisions and balance of affordability period remain in place if no additional HOME funds provided
  - Funds received by PJ from seller to repay any HOME loan are program income
- PJs should maintain a list of eligible homebuyers for resale

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### Managing a Sale Under a Resale Agreement (cont)

- If PJ provides HOME funds to new purchaser:
  - PJ can use either resale or recapture
  - Affordability period begins anew based on amount of new HOME assistance
    - ✓ PJ can also add new period to existing, and/or choose longer of the two
- PJ monitors compliance by new purchaser

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### Presumption of Affordability Period

- PJ option for resale
- Limits administrative burden by allowing PJ to do market study
- PJ periodically documents that all homes in this neighborhood are affordable to low-income buyers using conventional financing
  - Document in Action Plan; update as necessary throughout period of affordability

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### Resale With New Affordability Period

- Homeowner sells home at end of 4<sup>th</sup> year of 5 year affordability period
- PJ provides \$10,000 in HOME downpayment assistance
- **New period of affordability under resale:**

**5 years**

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### Foreclosure and Resale

- Foreclosure also triggers resale provisions
- PJ has two options:
  - Ensure sale to low income person under terms of resale agreement
  - OR
  - Repay total amount of outstanding HOME assistance to PJ's HOME account
    - ✓ Minus any HOME \$ paid back, if applicable
    - ✓ These are "repayment funds" not program income or recaptured funds

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### Foreclosure and Resale (cont.)

- PJ may specify right of first refusal or purchase option in original agreement with homebuyer
- PJ may:
  - Purchase prior to or at foreclosure sale, or
  - Assist another eligible homebuyer to purchase before or at foreclosure sale

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### Foreclosure and Resale (cont)

- Additional HOME funds may be used for next buyer:
  - For acquisition, rehab, and new buyer if within subsidy limit
  - Cannot use HOME funds to reimburse PJ or retire existing HOME debt
- If property at subsidy limit, HOME admin may be used to acquire

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## Repaid Funds Process

- Repay funds to HUD
  - Via check
  - Wire transfer
- Revise draws in IDIS
  - IDIS does not automatically revise the activity
  - Negative draw occurs (under Activity 1 in system for the year in which the funds were repaid)
  - Draws revised manually
- Cancel activity in IDIS

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## Screen C04MD01: Drawdown Menu

```

09/11/07          IDIS      C04MD01
                DRAWDOWN MENU
                01  DRAWDOWN AUTHORIZATION
                02  VIEW GRANT SUMMARY OR DETAILS
                03  VIEW ACTIVITY FUNDING DETAILS
                04  CREATE DRAWDOWNS / VOUCHER
                05  MAINTAIN DRAWDOWNS / VOUCHERS
                06  APPROVE DRAWDOWNS / VOUCHERS

TYPE SELECTION AND PRESS ENTER 01
F4 = MAIN MENU
  
```

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## Screen C04MD05: Drawdown Authorization

```

07/27/07 12:18      DRAWDOWN AUTHORIZATION      C04MD05
LOGIN GRANTEE NAME: XYZ
ENTER GRANTEE NAME TO SEARCH:
SEL <----- GRANTEE NAMES ----->      CITY
-  XYZ                                     XYZ
-
-
-
-
-
ENTER NAME TO SEARCH OR ENTER *X* UNDER SEL COLUMN TO SELECT
GRANTEE FROM LIST
F4 = MAIN MENU  F7 = PREV  F8 = NEXT  F17 = UP  F18 =
DOWN
  
```

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## Screen C04MD53: Maintain Drawdowns

```

07/27/07 12:28 MAINTAIN DRAWDOWNS C04MD53
-----
DATE:  /  /  VOUCHER NBR:  HUD ACTIVITY NUM: 1
SELECTION: X - INQUIRE, C - CANCEL, R - REVISE
PAGE: 001

VOUCHER LINE  VOUCHER HUD ACT  VOUCHER  PGM PR SRCE FUND
DRAWDOWN
S NUMBER ITEM      DATE NUMBER  STATUS   CD YR TYPE TYPE
AMOUNT
R -----

DD008E ALL AVAILABLE DATA SHOWN: CONTINUE ENTRY
F4 = MAIN MENU  F7 = PREV  F12 = EXIT IDIS  F17 = UP  F18 =
DOWN
  
```

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## Screen C04MD52: Revise Drawdown

```

12/01/07 11:26 REVISE DRAWDOWN C04MD52
-----
VOUCHER NUMBER: 1423559/0001 BATCH: 0002848 BATCH DATE: 06/26/2007
LOCS GRANT NUM: LOCS CNTL NUM: 000000000
TRANSACTION TYPE: PAYMENT CREATION DATE: 06/26/2007
IDIS STATUS: APPROVED LOCS STATUS: APPROVED
PROGRAM AREA: HOME FISCAL YR: 2005 SOURCE TYPE: MC RECIPIENT TYPE: LG
PRIOR YEAR: FUND TYPE: EN DRAWDOWN AMOUNT: 850,000
HUD ACT NUM: 000000001 NAME: HOME RESALE PROJECT 200

VOUCHER APPROVAL DATE: 06/26/2007 VOUCHER SUBMISSION DATE: 06/26/2007
PAY TO: 061152 / 00001 GRANTEE NAME:

ENTER REVISED ACTIVITY AND AMOUNT DETAILS
-----
HUD ACTIVITY NAME:
REVISED HUD ACTIVITY NUMBER: 1
REVISED DRAWDOWN AMOUNT: -250,000

SPECIAL REMARK: PROCESSED

F4 = MAIN MENU  F7 = PREV  F8 = NEXT  F12 = EXIT IDIS
  
```

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## Repaid Funds Resources

- See HOME Facts, Vol. 1, Number 1
  - Step by step process for repayments (e.g., resale and other projects that do not live through period of affordability)
- IDIS TAU 1-877-483-8282
- If funds repaid are for 2002 program year or later, call HUD first

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## Resale Program Design Considerations

- Education of key parties:
  - Homebuyers
  - Lenders
  - Title companies
  - Real estate agents
- Effective method for monitoring:
  - Agreement compliance
  - Pending sales

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## Resale Program Design Considerations (cont)

- Plan and process for second homebuyer and determining:
  - Affordable price
  - Who?
    - ✓ Waiting list
    - ✓ Affirmative marketing and advertisements
    - ✓ Real estate agents
  - Whether to provide additional HOME subsidy
  - What if buyer can't be found?

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## THE RECAPTURE APPROACH

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## What is Recapture?

- Homebuyer may sell home:
  - To any willing buyer
  - At any price
  - At any time
- PJ must collect part or all of HOME assistance from the net sale proceeds (if sufficient)

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## Use of Recapture

- Recapture can only be used when:
  - Provide direct subsidy to homebuyer
  - Must have an amount that can be recaptured
    - ✓ If pure grant, then must use resale
- Resale can be used for any HOME-assisted homebuyer

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## Direct Subsidy

- Direct subsidy to the homebuyer:
  - Financial assistance that reduces purchase price for homebuyer below market OR otherwise subsidizes the homebuyer
  - Examples:
    - ✓ Downpayment loan
    - ✓ Purchase financing
    - ✓ Assistance to CHDO to develop and sell unit below market
    - ✓ Closing cost assistance

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## Affordability Period Under Recapture

- Affordability period based on total direct subsidy benefiting homebuyer
  - Known as "amount subject to recapture"
- *Does not* include HOME amounts to subsidize development when that cost exceeds market
  - Known as development subsidy

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## Development Subsidy Example

- Subdivision of 15 town homes
- Total development costs of \$2,400,000 or \$160,000 per home
- Development subsidy:
 

Cost per home:	\$ 160,000
Market value:	\$ <u>130,000</u>
Development subsidy:	\$ 30,000 per home
- Under recapture, this subsidy not included when determining affordability period

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## Affordability Period Under Recapture (cont)

- Amount subject to recapture:
  - Amounts provided directly to, or on behalf of, the homebuyer, including:
    - ✓ Downpayment / closing cost assistance
    - ✓ Direct loan

PLUS

  - HOME assistance that lowers cost of home below market price
- Must have lien covering full amount subject to recapture

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### Recapture Affordability Period Formula

Market value of home (if development HOME assisted)

- Sales price of home
- = Discount benefiting homebuyer
- + HOME funds provided directly to homebuyer

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= Amount subject to recapture

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### Recapture Affordability Period Example

- Homebuyer purchases existing home on the open market
- \$45,000 HOME second mortgage at 3% interest for 20 years
- \$6,000 HOME downpayment assistance deferred, forgivable loan
- **Total direct subsidy: \$51,000**
- **Affordability period: 15 years**

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### Recapture Affordability Period Example

- \$50,000 HOME development assistance to CHDO
- Property will be sold for \$10,000 below market
- \$6,000 HOME downpayment assistance to homebuyer
- **Total direct subsidy: \$16,000**
- **Affordability period: 10 years**

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### Resale or Recapture?

- \$45,000 in HOME development assistance to CHDO
- House value: \$100,000
- Sales price: \$100,000
- No financial assistance to homebuyer
- Affordability period?

**15 years (resale)**

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### Resale or Recapture?

- \$80,000 in HOME development assistance to CHDO
- House value: \$160,000
- Sales price: \$150,000
- No additional financial assistance to homebuyer
- Affordability period?

**5 years if recapture  
15 years if resale**

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### Resale or Recapture?

- \$25,000 in a HOME second mortgage loan to homebuyer (at 2% interest)
- House value: \$160,000
- Sales price: \$160,000
- Affordability period?

**10 years  
(can be resale or recapture)**

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### Resale or Recapture?

- \$60,000 in HOME development assistance to CHDO
- House value: \$160,000
- Sales price: \$150,000
- \$10,000 in HOME downpayment to homebuyer
- Affordability period?

**10 years if recapture  
15 years resale**

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### Developing the Recapture Agreement

- Written agreement must be between PJ and homebuyer, or enable PJ to legally enforce
- Written agreement must specify:
  - Principal residency requirement
  - Duration of affordability period
  - Recapture of funds if sale occurs before end of affordability period
    - ✓ Limited by net proceeds, to protect PJ
    - ✓ How recapture amount will be calculated

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### Developing the Agreement (cont)

- Should address following elements (as in resale agreement):
  - Forgiveness/loan term for any HOME funds loaned to homebuyer
    - ✓ Term **at least** equal to period of affordability provides leverage
    - ✓ Key info from mortgage/note
    - ✓ Explain loan payoff doesn't end affordability period
  - Actions PJ will take if homebuyer in noncompliance

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## Recording the Recapture Agreement

- Can be recorded via:
  - Promissory note or lien
  - Consider land covenant or deed restriction to ensure senior debt holder notifies PJ of delinquency
- PJ must be able to enforce the agreement:
  - Consult with legal counsel
  - Ensure agreement legally binding and recorded

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## Notifying Lienholders

- Important for PJ to ensure senior lienholders are aware of recapture agreement
- Send letter requesting notification of delinquency or default
- Educate lenders and servicers about recapture agreements
- Foreclosure by a senior lienholder could wipe out PJ's agreement
- State laws differ on lien holder notification

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## Monitoring the Recapture Agreement

- Same issues/strategies as for resale
- Monitor ownership
  - Review tax records
  - Request copy of insurance bill
  - Establish system for flagging pending sales
- Recommend monitoring principal residency:
  - Request copy of insurance and/or utility bill
  - Send out letter and certification form with "Do Not Forward"
- PJs typically monitor annually

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### Enforcing the Recapture Agreement

- If owner does not sell but fails to occupy unit as principal residence or meet another PJ condition:
  - Owner is in noncompliance
  - PJ is responsible for taking legal action to collect funds
  - Full amount of outstanding HOME investment must be repaid to PJ's HOME account (repayment funds, not recapture)
    - ✓ Minus HOME \$ paid back, if applicable

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### Managing a Sale Under a Recapture Agreement

- Two types of sales possible:
  - Voluntary by homeowner to another eligible homebuyer
  - Foreclosure by a lender holding loan in default
- Recapture provisions triggered by both
- Title transfer without sale also triggers recapture provisions

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### Managing a Sale Under Recapture (cont)

- PJ recapture should be based on net proceeds
- Recapture agreement is satisfied upon receipt of any funds due
- Lien is released and affordability period terminates
- PJ has no further role unless purchaser receives HOME assistance

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### Amount to Recapture – Prior to November 2004

- Interim rule published on November 22, 2004
  - Recapture amount must be "capped at available net proceeds"
- Recapture provisions may be missing net proceeds language in written agreements
- Amendment to Consolidated Plan is not required, so long as PJ does not want to collect more than net proceeds

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### Amount to Recapture – post November 2004

*Sale Price*

- Superior Non HOME Debt
- Closing Costs

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= *Net proceeds*

- PJ cannot collect more than net proceeds
- Required for written agreements and Consolidated Plans after November 22, 2004
- Program waivers must be submitted and approved by HUD Offices

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### Recapture Calculation Example

- Sales price:            \$ 165,000
- (Superior debt):     \$ 145,000
- (Closing costs):     \$ 10,000
- Net proceeds:        \$ 10,000
- **\$10,000 is the maximum amount available to recapture**

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### Actual Recapture Amount

- Based on the PJ's recapture requirement as approved by HUD and capped by net proceeds
- Options approved by HUD:
  - Recapture amount of direct HOME subsidy to the homebuyer;
  - Forgive direct HOME subsidy pro-rata over the affordability period;
  - Proportionately share net proceeds; or
  - Allow buyer to recover his/her initial investment first.
- Can combine any of these options with shared appreciation

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### Actual Recapture: Entire Amount of Direct Subsidy

- HOME assistance \$30,000
- Owner downpayment: \$10,000
- *PJ gets repaid first*
- Sale at end of year 6
- Sales price: \$175,000
- Superior non-HOME debt: \$150,000
- Owner closing costs: \$5,000
- Amount to recapture?

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### Actual Recapture: Entire Amount of Direct Subsidy (cont.)

- **Net Proceeds**

\$175,000	(sales proceeds)
- \$150,000	(superior private debt)
- \$ 5,000	(closing costs)
<hr/>	
\$ 20,000	(net proceeds)
- **Direct HOME Subsidy**  
\$30,000
- **Amount to Recapture**  
\$20,000
- **Owner gets \$0** (invested \$10,000)

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### Actual Recapture: Reduction during Affordability Period

- HOME assistance \$30,000
- Owner downpayment \$10,000
- PJ forgives 10% per year
- Sale at end of 6<sup>th</sup> year of 10 year affordability period
- Sales price: \$175,000
- Superior private debt: \$150,000
- Owner closing costs: \$5,000
- Amount to recapture?

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### Actual Recapture: Reduction during Affordability Period (cont.)

- **Net Proceeds**

\$175,000	(sales proceeds)
- \$150,000	(superior private debt)
- \$ 5,000	(closing costs)
<hr/>	
\$ 20,000	(net proceeds)
- **Reduction to Direct Subsidy**

\$30,000 X 10% = \$3,000/year  
 6 years X \$3,000/year = \$18,000 forgiven  
 \$30,000 - \$18,000 = \$12,000
- **Amount to Recapture**  
\$12,000
- **Owner gets \$8,000**(invested \$10,000)

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### Actual Recapture: Proportionately Share Net Proceeds

- HOME assistance \$30,000
- Owner downpayment \$10,000
- PJ proportionately shares proceeds
- Sale at end of year 6
- Sales price: \$175,000
- Superior private debt: \$150,000
- Owner closing costs: \$5,000
- Amount to recapture?

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### Actual Recapture: Sharing in Appreciation

- HOME assistance \$30,000
- Owner downpayment \$10,000
- PJ proportionately shares proceeds and appreciation
- Sale at end of year 6
- Sales price: \$250,000
- Superior private debt: \$150,000
- Owner closing costs: \$5,000
- Amount to recapture?

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### Actual Recapture: Sharing in Appreciation (cont)

- **Net Proceeds**

\$250,000	(sales proceeds)
- 150,000	(superior private debt)
- \$ 5,000	(closing costs)
<hr/>	
\$ 95,000	(net proceeds)
- **HOME Share of Appreciation**

$\$30,000 / \$40,000 = 0.75$   
 $0.75 * (\$95,000) = \$71,250$
- **PJ gets \$71,250** (invested \$30,000)
- **Owner gets \$23,750** (invested \$10,000)

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### Choosing the Right Recapture Option

- 1. Recapture PJ's investment first
  - Could affect homeowner's motivation in soft/declining markets
  - PJ may collect \$\$ to reinvest
  - Works best in appreciating markets
- 2. Forgive subsidy over affordability period
  - Creates incentive for owner to stay
  - Reduces potential increase of \$\$ to PJ
  - Most useful in stable markets

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### Choosing the Right Recapture Option (cont)

- 3. Proportionately share proceeds
  - Homebuyer and PJ share risk
  - PJ may collect \$\$ to reinvest
- 4. Pay homeowner first
  - Reduces financial risk to homeowner
  - Tool for programs targeting revitalizing neighborhoods
  - Most useful in weak markets with risk of declining values

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### Foreclosure Under a Recapture Agreement

- Foreclosure also triggers recapture agreement
- Funds must be repaid to PJ's HOME account
- If recapture agreement:
  - Limits payment to PJ to net proceeds of sale, then PJ's obligation to repay \$\$ upon foreclosure also limited
  - Not limited to net proceeds, then full amount of outstanding HOME assistance must be repaid

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### Foreclosure Under Recapture (cont)

- Remember:
  - PJ may specify right of first refusal or purchase option in agreement
  - PJ may purchase at foreclosure sale and additional HOME funds may be spent:
    - ✓ For acquisition/rehab/new buyer
    - ✓ If within subsidy limit
  - If property at subsidy limit, HOME admin may be used to acquire
  - If PJ forecloses on own loan can't spend any additional HOME \$\$ to acquire

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### Recaptured vs. Repaid Funds

- When home is sold, recapture agreement triggers payment of “recaptured” funds
  - Recaptured funds are receipted in PJ’s local HOME account
- Funds paid if non-compliance on a recapture agreement but no property sale are “repayment” funds
  - Example: property is no longer principal residence
  - Repaid funds are returned to either PJ’s local or Treasury HOME account
  - Depends on source of original funds invested
  - Use process for repayments covered earlier

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### Recaptured Funds vs. Program Income

- Loan payments made by all homebuyers are program income
- When home is sold, recapture agreements trigger payment of “recaptured” funds
- Recaptured funds may not be used for program admin

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### PJ Responsibilities

- PJs need mechanism for tracking recaptured funds, including funds received by subrecipients and CHDOs
- Recaptured funds must be:
  - Recorded in IDIS
  - Spent before additional funds drawn from Treasury account

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## Partner Responsibilities

- Subrecipients and CHDOs must:
  - Track recaptured funds
  - Report recaptured funds to PJ
- PJ's written agreement with partners must specify treatment of recaptured funds:
  - Not program income
  - Report as separate category of \$\$

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## Recapture Receipt Process in IDIS

- Create the receipt (same process as for program income)
- Create drawdown

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## Screen C04MI00: Receipts Menu

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07/27/07 THE INTEGRATED DISBURSEMENT AND INFORMATION SYSTEM C04MI00
          RECEIPTS MENU
01 RECEIPT AUTHORIZATION
02 CREATE RECEIPT
03 REVISE OR CANCEL RECEIPT
04 REVISE RE FUND TYPE
05 VIEW RECEIPT ACCOUNT
06 VIEW RECEIPT AUDIT TRAIL

TYPE SELECTION AND PRESS ENTER 01
PLEASE SELECT THE OPTION AND PRESS ENTER...
F4 = MAIN MENU
  
```

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### Program Design Considerations (cont)

- Refinancing of senior debt
  - PJ will be asked to subordinate its interest
  - Review and evaluate purpose
    - ✓ Will new loan lower homeowner's costs?
    - ✓ Is loan size increasing? If so, why?
      - Funds to pay for housing costs, e.g., repairs
      - Funds for non-housing costs

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### Program Design Considerations (cont)

- Strategies for identifying pending sales and foreclosures
  - Periodic communication with real estate agents, lenders, and title companies
  - Provide list of assisted addresses to taxing entity and request notification
  - Others?

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### Program Design Considerations (cont)

- Homebuyer counseling
  - Encourage homeowners in financial trouble to contact PJ
  - PJ may offer counseling referrals and resources
    - ✓ Can't use HOME funds to provide counseling to previously assisted household
    - ✓ Identify other local resources that may be able to help

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## Program Design Considerations (cont)

- Assistance to new purchasers when sale occurs
  - Does PJ want to invest again in same property?
  - May be necessary in appreciating markets
  - Funds recaptured from sale can be reinvested to assist new homebuyer
  - Offer to assist purchaser to help ensure PJ notified of pending sale

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## WHICH OPTION TO CHOOSE?

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## Key Questions to Ask

- Do homebuyers require direct HOME assistance?
- Will developers receive HOME funds?
  - If yes, will units sell below market?
- If no subsidy to homebuyer, must use resale
- If homebuyer subsidy, can choose

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## When to Use Resale or Recapture

- Recapture used in all types of housing markets
  - Works best in stable housing markets
  - Typically easiest to administer
  - PJs operating in markets with increasing prices may require equity-sharing
- Resale typically used in markets with escalating prices
  - Ensures assisted properties remain affordable
  - Provides some return to home seller

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## Advantages and Disadvantages of Resale

- Especially appropriate for communities with rapidly increasing home prices
- Ensures affordability of home for duration of the affordability period
- Better “return” on development subsidies, **BUT**
- More difficult to administer and market

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## Advantages and Disadvantages of Recapture

- Easiest for homebuyer to understand and for PJ to administer and market
- Opportunity to reuse funds for another family, **BUT**
- Ensures affordability of home for first purchaser, only
- Recaptured \$\$ may be insufficient to help another homebuyer in rapidly appreciating market

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## Seminar Wrap Up

- Suggested next steps
  - Develop “to do” list items for when you return to your office
  - Identify people with whom to consult (e.g., legal counsel, program manager)
- Stay tuned for revised Resale and Recapture guidebook

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