

## Appendix AP-A: Resale and Recapture Provisions

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**A description of the guidelines that will be used for resale or recapture of HOME funds when used for homebuyer activities as required in 92.254, is as follows:**

The HOME program provides financial assistance for income eligible households to acquire housing through homeownership activities. Homeownership funding will be provided to local governments working with non-profit organizations to provide loans to income eligible households that are secured by for the duration of the period of affordability. Interested entities intending on using HOME funds for financial assistance activities must adhere to laws which prohibit discrimination in housing and special outreach efforts should be implemented to attract minorities and other protected classes in the homebuyer pool. Additional information and guidance can be found in the HOME grant administration manual available on the Commerce website.

In order to apply resale and recapture provisions appropriately, the HOME program requires grantees to structure their homebuyer assistance programs based on local market conditions, geographical constraints, and their target market. Therefore, applicants must submit reasonable justification for carrying out homebuyer activities based on local market conditions, geographical constraints, target market and other factors in the housing market where funds will be targeted. Additionally, applicants must select either the resale provision or the recapture provision for the target area and submit a Resale/Recapture Plan and Procedures as to how the selected provision will be implemented through procedures that must include informing beneficiaries, documenting compliance, and tracking through the period of affordability. Successful applicants will adopt and implement these provisions as a method of securing the investment of HOME funds for all homebuyer assistance activities.

Successful applicants must include the following, at a minimum, in the development and implementation of the Resale/Recapture Plan and Procedures, but can elect to be more restrictive if justification is provided that market conditions warrant such restrictions.

1. Every homebuyer (original or subsequent homebuyer) must be determined income eligible according to the HUD income limits at the time of sale (income limits are available online);
2. HUD approved homebuyer counseling courses have been completed prior to any HOME-assisted acquisition from occurring;
3. Property that is assisted with HOME funds to be purchased may be newly constructed or existing “for sale” property, regardless, all property assisted with HOME funds must meet the UPCS established by HUD prior to HOME funding the acquisition of the unit;

4. Property that was previously assisted with HOME funds and is intended to be resold must meet the UPCS standards established by HUD prior to the unit being sold to subsequent homebuyers through the resale process;
5. The initial buyer must reside in the home as his/her principal residence for the duration of the period of affordability, as agreed to in the HOME Occupancy Agreement. Residency status must be reviewed annually to verify compliance with the principal residency requirement;
6. Resale or recapture provisions must be secured by a legal mechanism, such as a deed restriction, land covenant, or other similar legal instrument, throughout the period of affordability;
7. A resale or recapture provision is triggered by any voluntary or involuntary transfer of title during the period of affordability, or if recipients of HOME subsidies fail to maintain the HOME-assisted unit as their primary residence;
8. The purchase price or sales price must be determined at fair market value, typically through an appraisal, and made affordable taking into account market conditions. "Affordable" is defined as a maximum percentage of the purchaser's income that can be used to pay the fixed costs of owning a home (i.e., loan payments of principal and interest, taxes, and insurance, typically referred to as PITI). The HOME Program has defined this percentage as a minimum of 27% of the borrower's gross household income, up to a maximum of 34% of the borrower's gross household income;
9. All HUD regulatory requirements must be followed according to the HOME administration manual; and
10. The minimum period of affordability must be based on the amount of HOME funds invested in the unit, as follows:

<b>Amount of HOME Funds; Per-unit (Resale) Direct Subsidy to Buyer (Recapture)</b>	<b>Minimum Period of Affordability</b>
Under \$15,000	5 years
\$15,000 to \$40,000	10 years
Over \$40,000	15 years

Restrictions that terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD will be handled on a case-by-case basis to ensure that if possible resale and recapture provisions are carried out. Purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability may be implemented by the grantee to protect the original investment of HOME funding.

Noncompliance with the terms and conditions of the HOME loan, including but not limited to the conditions listed above, will trigger the resale or recapture provision and the HOME grantee must repay the total amount of HOME funds invested in the housing. This amount is based on the total amount of HOME funds invested, including both development funds and direct subsidy to the buyer minus any principal HOME loan repayments. Note, the repayment amount is not subject to any reductions that might be otherwise applicable under a recapture provision (such as forgiveness for term of occupancy or repayment to owner first) including any development and homebuyer subsidies on the homeowner's behalf.

A. Resale

The resale provision allows the original HOME-assisted beneficiary to sell the HOME-assisted unit to an income eligible homebuyer. The resale provision does not require repayment of the HOME funds used to assist the original homebuyer, but rather preserves the affordability of the unit through the sale of the property to a subsequent income eligible homebuyer. All HOME resale restrictions (as stated above and as established in the original deed restriction) must apply to the original and any subsequent homebuyer throughout the period of affordability.

Sales and/or transfers of title of HOME-assisted units subject to resale requirements that occur during the period of affordability must meet the ten criteria listed above and as follows:

1. Upon sale, during the period of affordability, the subsequent homebuyer must be determined income eligible according to the HUD income limits at the time of sale;
2. During the period of affordability, all subsequent homebuyers will start a new period of affordability if an infusion of new HOME funds is required to make the unit affordable; and
3. If resale occurs during the period of affordability, the price at resale must provide the original HOME-assisted homebuyer a "fair return" on his/her investment is defined by the grantee based on the market conditions and must be included in the Resale/Recapture Plan and Procedures and implemented throughout the duration of the program. A standard that ties the return to the original homebuyer to the price that a specific homebuyer or a defined group of homebuyers are able to pay does not constitute fair return and is not acceptable.

B. Recapture

The recapture provision allows the original HOME-assisted beneficiary to sell the HOME-assisted unit to any willing buyer, regardless of income, and repay the HOME investment back to the original HOME grantee. The grantee may continue to use recaptured funds for other HOME-eligible activities within their jurisdiction.

Recapture provisions may permit a subsequent income eligible homebuyer to assume the original HOME assistance (subject to the HOME requirements for the remainder of the period of affordability) if the subsequent homebuyer is low-income and no additional HOME assistance is provided (this does not trigger the resale provision).

Grantees must structure their recapture provision and specific terms and conditions based on the total amount of HOME subsidy that enabled the beneficiary to purchase the unit, local market conditions, and the target market; however, under no circumstances may the amount recaptured exceed available net proceeds upon sale. Net proceeds are the sales price minus the superior loan repayment (other than HOME funds) and any closing costs.

Grantees' recapture provisions may include the following mechanisms, or a combination thereof:

1. Recapture the entire amount of the HOME investment;
2. Recapture a portion of the HOME investment only if the grantee's Resale/Recapture Plan and Procedures include prorated forgiveness throughout period of affordability. This means that the amount of funds recaptured is based on a predetermined pro-rata portion of the original HOME subsidy based on the length of time the HOME beneficiary occupied the assisted unit; and
3. Shared net proceeds from the sale if market conditions justify insufficient sales price to recapture the full amount of the HOME investment and only if the grantee's Resale/Recapture Plan and Procedures include this provision. The HOME grant administration manual has additional information to implement this recapture provision.