U.S. Department of Housing and Urban Development
Community Planning and Development

Special Attention of:

All Secretary's Representatives
All State/Area Coordinators
Regional Directors for CPD
CPD Division Directors
All HOME Coordinators
All HOME Participating Jurisdictions

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Subject: Guidance on Resale and Recapture Provision Requirements under the HOME Program.

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I. PURPOSE

The purpose of this Notice is to outline the basic requirements for resale and recapture provisions in HOME Investment Partnerships (HOME) program homebuyer projects. This Notice also provides HOME participating jurisdictions (PJs) with guidance concerning the contents of acceptable resale and recapture provisions for HOME homebuyer projects, and the consolidated planning requirements of these provisions. In addition, the Notice provides HUD Field Office staff with guidance concerning their review and approval of the resale and recapture requirements contained in PJs' consolidated plans.

II. BACKGROUND

HOME is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act (HOME statute), as amended. HOME provides formula grants to States and localities, called PJs, in order to expand the supply of decent, safe, sanitary, and affordable housing available to low-income and very low-income residents. Eligible HOME-funded activities include the acquisition, construction or rehabilitation of rental or homeownership housing, homebuyer assistance, and tenant-based rental assistance.

PJ programs to assist homebuyers may include acquisition, rehabilitation, or new construction of single-family for-sale housing to individual low-income homebuyers. The HOME subsidy can be provided to the developer, the homebuyer, or both, and can be structured in a variety of ways, including low-interest, zero-interest, or deferred payment loans, grants, or interest rate subsidies.

Section 215 of the HOME statute establishes specific requirements that all HOME-assisted homebuyer housing must meet in order to qualify as affordable housing. Specifically, all HOME-assisted homebuyer housing must have an initial purchase price that does not exceed 95 percent of the median purchase price for the area, be the principal residence of an owner whose family qualifies as low-income at the time of purchase, and be subject to either resale or recapture provisions. The HOME statute states that resale provisions must limit subsequent purchase of the property to income-eligible families, provide the owner with a fair return on investment, including any improvements, and ensure that the housing will remain affordable to a reasonable range of low-income homebuyers. The HOME statute also specifies that recapture provisions must recapture the HOME investment from available net proceeds in order to assist other HOME-eligible families. Each PJ must establish its resale and/or recapture provisions in writing and submit the provisions to HUD for approval.

III. HOMEBUYER REQUIREMENTS

The HOME-assisted homebuyer requirements set forth in Section 215 of the HOME statute are promulgated in the HOME rule found at 24 CFR Part 92. Specifically, 24 CFR 92.254, *Qualification as Affordable Housing: Homeownership*, states that in order for homeownership housing to qualify as affordable housing it must:

- Be single-family, modest housing,
- Be acquired by a low-income family as its principal residence, and
- Meet affordability requirements for a specific period of time as determined by the amount of assistance provided.

In addition, to ensure affordability, the PJ must impose either resale or recapture requirements on the housing. The HOME rule at §92.254(a)(5) establishes the resale and recapture requirements HOME PJs must use for all homebuyer activities. These provisions are imposed for the duration of the period of affordability on all HOME-assisted homebuyer projects through a written agreement with the homebuyer, and enforced via lien, deed restrictions, or covenants running with the land. The resale or recapture provisions are triggered by any transfer of title, either voluntary or involuntary, during the established HOME period of affordability.

A PJ undertaking HOME-assisted homebuyer activities, *including any projects funded with HOME program income,* must establish resale or recapture provisions that comply with HOME statutory and regulatory requirements and set forth the provisions in its consolidated plan. HUD must determine that the provisions are appropriate. The written resale and/or recapture provisions that a PJ submits in its Annual Action Plan must clearly describe the terms of the resale and/or recapture provisions, the specific circumstances under which these provisions will be used (if more than one set of provisions is described), and how the PJ will enforce the provisions. HUD reviews and approves the provisions as part of the consolidated plan's Annual Action Plan process.

States in particular may choose to include multiple provisions in their Annual Action Plan in order to address varying market and socioeconomic characteristics in different areas of the State. If a State includes multiple provisions in its Annual Action Plan, it must specify under what conditions each provision will be used. If a State adds or modifies its provisions following the submission of the Annual Action Plan, it must submit the new or revised provisions to the HUD Field Office for review and approval before using the provisions.

Provisions that fail to meet the requirements set forth in §92.254(a)(5) and this Notice will be disapproved by HUD, and a PJ's homebuyer program will not be allowed to proceed until acceptable provisions are submitted to and approved by HUD. Common reasons for disapproval of a PJ's resale or recapture provisions include the following:

- Provisions that are a hybrid of the resale and recapture requirements,
- Applying recapture requirements to projects that include only a development subsidy,
- Failing to clearly define what constitutes a fair return on investment, including provisions that tie fair return on investment to the sales price that a specific homebuyer is able to pay,
- Failing to clearly identify the population of low-income homebuyers the PJ will target when resale is triggered, and what is considered affordable to that population,
- Failing to limit recapture to the net proceeds available at sale, and
- Failing to enforce the affordability restrictions by imposing deed restrictions, covenants running with the land, or other similar mechanisms.

IV. PERIOD OF AFFORDABILITY

The HOME rule at §92.254(a)(4) establishes the period of affordability for all homebuyer housing. How a PJ calculates the amount of HOME assistance in each unit and therefore the applicable period of affordability varies depending on whether the unit is under resale or recapture provisions.

a. Period of Affordability Under Resale Provisions

Under resale, §92.254(a)(5(i) of the HOME rule states that the period of affordability is based on the *total* amount of HOME funds invested in the housing. In other words, the total HOME funds expended for the unit determines the applicable affordability period. Any HOME program income used to assist the project is included when determining the period of affordability under a resale provision.

b. Period of Affordability Under Recapture Provisions

For HOME-assisted homebuyer units under the recapture option, the period of affordability is based upon the *direct HOME subsidy* provided to the homebuyer that enabled the homebuyer to purchase the unit. Any HOME program income used to provide direct assistance to the homebuyer is included when determining the period of affordability.

The following table outlines the required minimum affordability periods.

If the total HOME investment (resale) or direct subsidy (recapture) 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

V. RESALE PROVISIONS

The *HOME resale requirements* are established in the HOME rule at §92.254(a)(5)(i). Under HOME resale provisions, the PJ is required to ensure that, when a HOME-assisted homebuyer sells his or her property, either voluntarily or involuntarily, during the affordability period,

1) The property is sold to another low-income homebuyer who will use the property as his or her principal residence;
2) The original homebuyer receives a fair return on investment, (i.e., the homebuyer's downpayment plus capital improvements made to the house); and

3) The property is sold at a price that is "affordable to a reasonable range of low-income buyers."

If a PJ only provides HOME assistance to develop the unit and HOME funds are not used to lower the purchase price from fair market value to an affordable price, resale provisions must be used.

The resale option is typically used in areas with predominantly high home sales prices, areas subject to rapidly appreciating housing costs, areas with a shortage of affordable homes for sale and no available land to build new homes, and areas where affordability will not be preserved through the unrestricted sale of the unit.

a. Ensuring Long term Affordability

The HOME rule at §92.254(a)(3) requires that all HOME-assisted homebuyer housing be acquired by an eligible low-income family, and the housing must be the principal residence of the family throughout the period of affordability. If the housing is transferred, voluntarily or otherwise, during the period of affordability, it must be made available for subsequent purchase *only* to a buyer whose family qualifies as low-income, and will use the property as its principal residence. The HOME resale provisions must enforce these requirements as any housing assisted with HOME funds must remain affordable for the duration of the period of affordability.

b. Fair Return on Investment

The PJ's resale requirements must ensure that, if the property is sold during the period of affordability, the price at resale provides the original HOME-assisted homebuyer a fair return on investment (including the original homebuyer's initial investment and any capital improvement). The PJ must define *fair return on investment* and include this definition in its resale provisions in its Annual Action Plan.

PJs have flexibility in defining fair return on investment; however, the PJ must ensure that the definition is both clear and objective so the original HOME-assisted homebuyer understands how his or her investment and any return on that investment may be determined at the time of sale. *A PJ must determine the original homebuyer's fair return on investment based on an objective standard or index that is publicly accessible and can be easily measured at the time of original purchase and at resale*. For example, the PJ may measure the percentage change in median sales prices over the period of ownership, the percentage change in the Consumer Price Index (CPI) over the period of ownership, or some other reasonable index. In determining the standard or index it selects, PJs should keep in mind that an index directly related to real estate prices in the area will simplify the resale approach by taking both market appreciation and depreciation into account. PJs *may not* tie fair return on investment to the sales price that a specific, subsequent homebuyer is able to pay. This does not constitute a fair return because the return is not based on an objective standard.

A PJ must also describe the basis to which the fair return standard or index will apply. The basis for calculating fair return includes 1) the HOME-assisted homebuyer's original investment (i.e., any down payment), plus 2) the specific types of capital improvements made by the original homebuyer that may add value to the property. Accordingly, when discussing fair return on investment, the PJ must broadly describe what types of capital improvements it will include in the basis for calculating fair return. It must also broadly discuss how it will value any capital improvements. The value of capital improvement can be based on the actual costs of the improvements as documented by the homeowner's receipts, or on the average increase in value a specific type of improvement brings at sale (e.g., nationally, a kitchen remodel increases a home's value by sixty percent of the cost of the improvement).

While a detailed discussion of what constitutes a capital improvement and how the PJ will value the improvement is not required in resale provisions in the Annual Action Plan, the PJ's homebuyer program design should specifically outline how it will value capital improvements, and include a comprehensive description of what will constitute a capital improvement for purposes of determining fair return.

A PJ provides HOME funds for the construction of a single-family homebuyer unit. The homebuyer provides $5,000 for a downpayment. The PJ uses the average change in the Consumer Price Index over the period of ownership as its standard index for fair return on investment.

The original homebuyer decides to sell his home during the period of affordability and is able to sell the home at a price that permits the original homebuyer to realize a full return on his investment as defined in the PJ's resale provisions.

In the past year, the original homebuyer undertook a $9,000 kitchen renovation. The PJ has determined that the average change in the Consumer Price Index over the original homebuyer's period of ownership is 3.5 percent. The original homebuyer's initial downpayment investment of $5,000 plus the kitchen improvements, valued at $9,000, would result in a fair return of $490. Total return at sale, assuming the price at sale permits the original homebuyer to realize a full return on his investment, would include the original homebuyer's initial investment of $5,000, plus the $9,000 investment in capital improvements, plus a $490 fair return on both of those investments.

($5,000 +$9,000) X 3.5% = $490 fair return on initial and capital investments
$5,000 + $9,000 + $490 = $14,490 total return to the original homebuyer at sale

It is important to note that in certain circumstances, such as a declining housing market where home values are depreciating, the original homebuyer may not receive a return on his or her investment because the home sold for less or the same price as the original purchase price.

A homebuyer put a $5,000 downpayment on a $150,000 home. One year later he invested $9,000 in kitchen improvements. The original homebuyer decides to sell the home three years later. Assuming the PJ used a 3.5 percent increase in the consumer price index to calculate fair return, the original homebuyer would expected to receive a $490 return on his investment (see example immediately above).

Since the original homebuyer purchased the home four years ago, the local housing market declined significantly. The fair market value of his home is now $140,000. Because there is a $10,000 loss on the sale, it is not possible to provide the original homebuyer's $490 fair return on his investment, or return any portion of his $14,000 investment.

c. Continued Affordability

In addition to ensuring that the HOME-assisted homebuyer receives a fair return on his or her investment, the PJ's resale requirements must ensure that the housing under a resale provision will remain affordable to a reasonable range of low-income homebuyers. The PJ must define *affordable to a reasonable range of low-income homebuyers* and include this definition in the description of its resale requirements in its Annual Action Plan.

When defining *affordable to a reasonable range of low-income homebuyers*, a PJ must identify:

1. The population of low-income homebuyers it will target for subsequent purchase of the unit, and
2. What is affordable for that population.

When defining what constitutes "a reasonable range of low-income homebuyers," the PJ must identify a specific target population most appropriate for homeownership. For example, while the HOME rule defines low-income as a family at or below 80 percent of area median income, a PJ's definition of a reasonable range of low-income homebuyers may specify that families between 70 and 80 percent of area median income are an appropriate target population for homeownership.

Affordability may be defined a number of ways; however most PJs state that affordability is measured as a percentage of the homebuyer's income that must be spent on the fixed costs of owning a home: principal, interest, property taxes, and insurance (PITI). For example, many PJs use a standard of roughly 30 percent as a maximum percentage of income that a household should dedicate to housing costs. Consequently using the example provided above, what is *affordable to a reasonable range of low-income homebuyers* would be defined as a family at 70 to 80 percent of area median income paying no more than 30 percent of income for principal, interest, property taxes, and insurance.

To ensure that a property remains affordable to a reasonable range of low-income homebuyers, a PJ must establish a maximum resale price that its target population can afford. For example, if the fair market value of a HOME-assisted homebuyer property is more than what the PJ's defined range of low-income homebuyers can afford, the PJ must set a resale price that provides a fair return to the original homebuyer while ensuring that the property is affordable to its target population. In some instances, it may be necessary for a PJ to provide HOME assistance to the subsequent homebuyer to ensure that the original homebuyer receives a fair return and the unit is affordable to the defined low-income population. A PJ cannot require that the resale price be set based upon what is affordable to a *specific* homebuyer.

d. Presumption of Affordability

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In certain neighborhoods, housing can be presumed to provide a fair return to an original homebuyer upon sale, to be available and affordable to a reasonable range of low-income homebuyers, and to serve as the primary residence of a low-income family during the period of affordability. In such cases, the PJ does not need to impose resale restrictions because the characteristics of the neighborhood make it probable that these requirements will be met without the imposition of the restrictions. Instead, §92.254(a)(5)(i)(B) of the HOME rule states that the PJ may identify certain neighborhoods with housing and income conditions that will:

1) Provide ongoing affordable home prices,
2) Ensure that the sales price of a home will provide a fair return to the original homebuyer, and
3) Provide a pool of income-eligible homebuyers from the residents of the neighborhood.

A presumption of affordability will allow a PJ to meet the HOME resale requirements without the imposition of specific enforcement mechanisms. PJs can also perform a combined market analysis for a limited number of contiguous neighborhoods that are similarly situated with respect to demographic profile, housing market, and economic conditions

A PJ that wishes to obtain a presumption of affordability must complete a market analysis of the neighborhood in which the housing is located, and submit the analysis for HUD review and approval. The market analysis must include an evaluation of the location and characteristics of the housing and residents in the neighborhood, including:

1) Sale prices,
2) Age and amenities of the housing stock,
3) Incomes of residents, and
4) Percentage of owner-occupants.

The PJ must compare these neighborhood-specific data to the housing conditions and incomes in the larger housing market area. Using an average period of affordability based on its expected investment per unit (e.g., 5, 10 or 15 years), the PJ must analyze the current and projected incomes of neighborhood residents and determine that such data supports the conclusion that a reasonable range of low-income families will continue to qualify for mortgage financing. An analysis of housing data must support the conclusion that home values are affordable, and will continue to be affordable, for the same average period of affordability.

If the PJ continues to provide homeownership assistance for housing in the neighborhood without the imposition of resale restrictions, it must annually verify that conditions have not changed. Every three to five years it must undertake a new market analysis to ensure that it is still reasonable to presume continued affordability.

VI. RECAPTURE PROVISIONS

The HOME recapture provisions are established at §92.253(a)(5)(ii), and unlike the resale approach, permit the original homebuyer to sell the property to any willing buyer during the period of affordability while the PJ is able to recapture all or a portion of the HOME-assistance provided to the original homebuyer.

Two key concepts in the recapture requirements – *direct subsidy to the homebuyer* and *net proceeds* - must be understood in order to determine the amount of HOME assistance subject to recapture, and the applicable period of affordability on the unit. The recapture approach requires that all or a portion of the *direct subsidy* provided to the homebuyer be recaptured from the *net proceeds* of the sale.

Direct HOME subsidy is the amount of HOME assistance, *including any program income*, that enabled the homebuyer to buy the unit. The direct subsidy includes downpayment, closing costs, interest subsidies, or other HOME assistance provided directly to the homebuyer. In addition, direct subsidy includes any assistance that reduced 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 to be directly attributable to the HOME subsidy.

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 PJ recapture more than is available from the net proceeds of the sale.

Recapture provisions cannot be used when a project receives only a development subsidy and is sold at fair market value, because there is no direct HOME subsidy to recapture from the homebuyer. Instead, resale provisions must be used.

The recapture option is used by most PJs because it is generally easier to administer than the resale option. The recapture option works well when the sale of the property will most likely preserve affordability without the imposition of resale restrictions.

a. 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 PJ recovers, from available net proceeds, all or a portion of the HOME assistance to the homebuyers.

b. Acceptable Recapture Models

The four basic recapture options are described in the HOME rule and discussed below. However, a PJ should structure its recapture provisions based on its program design and market conditions. In most cases, PJs have adopted a variation of the recapture options presented in the HOME rule. Such variations typically address how the PJ will share any appreciation in the value of HOME-assisted housing with the homebuyer, including:

- PJ retains all appreciation,
- PJ allows the homebuyer to retain all appreciation, or
- PJ shares the appreciation with the homebuyer.

For example, many PJs have developed recapture provisions that reduce, on a pro rata basis, the amount of direct HOME subsidy due at sale, and combine it with additional provisions that will account for market appreciation of the housing, with the PJ and the homebuyer sharing any appreciation.

1. PJ Recaptures Entire Direct HOME Subsidy

In this option, the PJ recaptures the entire amount of the direct HOME subsidy provided to the homebuyer before the homebuyer receives a return. The PJ's recapture amount is limited to the net proceeds available from the sale.

> A homebuyer receives $10,000 of HOME downpayment assistance to purchase a home. The direct HOME subsidy to the homebuyer is $10,000, which results in a five-year period of affordability. If the homebuyer sells the home after three years, the PJ would recapture, assuming that there are sufficient net proceeds, the entire $10,000 direct HOME subsidy. The homebuyer would receive any net proceeds in excess of $10,000.

In some cases, such as declining housing markets, the net proceeds available at the time of sale may be insufficient to recapture the entire direct HOME subsidy provided to the homebuyer. Since the HOME rule limits recapture to available net proceeds, the PJ can only recapture what is available from net proceeds. If a PJ's recapture provisions state that it will recapture the entire direct HOME subsidy and there are insufficient net proceeds available at sale, the PJ is not required to repay the difference between the total direct HOME subsidy and the amount the PJ is able to recapture from available from net proceeds.

2. Reduction During Affordability Period

The PJ may chose to reduce the amount of direct HOME subsidy on a pro-rata basis for the time the homebuyer has owned and occupied the housing, measured against the required affordability period. The resulting ratio would be used to determine how much of the direct HOME subsidy the PJ would recapture. The pro rata amount recaptured by the PJ cannot exceed what is available from net proceeds.

- To determine the pro rata amount recaptured by the PJ:

  - Divide the number of years the homebuyer occupied the home by the period of affordability,
  - Multiply the resulting figure by the total amount of direct HOME subsidy originally provided to the homebuyer.

$$\frac{\text{Number of years homebuyer occupied the home}}{\text{Period of affordability}} \times \text{Total direct HOME subsidy} = \text{Recapture Amount}$$

If a PJ's recapture provisions state that it will recapture a prorated portion of the direct HOME subsidy and there are insufficient net proceeds available at sale to recapture the full pro rata amount due, the PJ is not required to repay the difference between the prorated direct HOME subsidy due and the amount the PJ is able to recapture from available from net proceeds.

> A homebuyer receives $10,000 of HOME downpayment assistance and purchases a home developed with HOME funds for $10,000 below fair market value. The total direct HOME subsidy to the homebuyer is $20,000 and requires a 10-year period of affordability. If the homebuyer sells the unit in year 5 of the 10-year period of affordability, the PJ would *forgive* 50 percent of the direct HOME subsidy and *recapture* 50 percent of the direct HOME subsidy, or $10,000 of the $20,000 HOME investment, assuming that there are sufficient net proceeds available.
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> $$\frac{\text{Owner resided in home for 5 years}}{\text{10-year period of affordability}} \times \text{\$20,000 HOME investment} = \text{\$10,000 recaptured}$$

3. Owner Investment Returned First

In this approach, the PJ permits the homebuyer to recover their entire investment (downpayment and capital improvements made by the owner since purchase) before recapturing the HOME investment.

If net proceeds are insufficient, the homebuyer may not receive their entire investment back, or the PJ may not be able to recapture the full amount due under the recapture agreements from the net proceeds available. In instances where there are insufficient net proceeds to recapture the amount due, the PJ is not responsible for repaying the difference between the amount of direct HOME subsidy due and the recaptured amount available from net proceeds.

A homebuyer receives $5,000 in HOME downpayment assistance and provides $5,000 of his or her own funds for down payment. After purchasing the home the homebuyer invests $2,000 for capital improvements to the property. Two years into the 5 year period of affordability, the homebuyer decides to sell the home. The PJ's recapture provisions allow the HOME-assisted homebuyer to recover, from net proceeds, his or her entire investment in the property before the PJ recaptures any HOME subsidy. The net proceeds from the sale total $10,000. The homebuyer recovers his or her $7,000 investment (down payment plus capital improvements) from the net proceeds of the sale. The PJ is only able to recapture, from the remaining net proceeds, $3,000 of its original $5,000 investment. The PJ is not responsible for repaying the $2,000 difference between the recapture amount due and what is available from net proceeds.

4. Shared Net Proceeds

In this option, the HOME rule states that if the net proceeds are not sufficient to recapture the entire HOME investment or a reduced amount as described above, plus enable the homebuyer to recover the amount of the downpayment and any investment in the form of capital improvements made by the homebuyer since purchase, the PJ may share the net proceeds. In practice, this approach has been the most widely used model and has been applied to all recapture situations, not just insufficient net proceeds. Shared net proceeds, in combination with the pro rata reduction over time, is the most commonly used approach.

- To calculate the amount of net proceeds (or shared appreciation) to be returned to the PJ:
  - Divide direct HOME subsidy by the sum of the direct HOME subsidy and the homebuyer's investment,
  - Multiply by the net proceeds to calculate the amount of HOME investment to return to the PJ.

$$\frac{\text{Direct HOME Subsidy}}{\text{Direct HOME Subsidy + Homebuyer Investment}} \times \text{ Net Proceeds } = \text{ HOME Recapture}$$

- To calculate the amount of net proceeds (or shared appreciation) available to the homebuyer:
  - Divide the homebuyer's investment by the sum of the direct HOME subsidy and the homebuyer's investment,
  - Multiply by the net proceeds to calculate the amount of homebuyer investment to return to the homebuyer.

$$\frac{\text{Homebuyer Investment}}{\text{Direct HOME Subsidy + Homebuyer Investment}} \times \text{ Net Proceeds } = \text{ Amount to Homebuyer}$$

A homebuyer received $10,000 in HOME downpayment assistance and provided $2,000 of her own funds for the downpayment. She also invested another $3,000 on capital improvements to the property. She is selling the home after two years. The PJ structured its recapture provisions to share the net proceeds between the HOME-assisted homebuyer and the PJ. 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 PJ 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.

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

VII. IMPOSING RESALE AND RECAPTURE PROVISIONS

Compliance with resale and recapture provisions is not only required by statute and regulation, but it is also vital to operating a successful homebuyer program. PJs are responsible for ensuring that homebuyers maintain the housing as their principal residence for the duration of the applicable affordability period. If the home is sold during the period of affordability, the PJ must be notified of the sale, and the applicable resale or recapture provisions must be employed. Consequently, it is important that PJs use effective enforcement mechanisms to secure the resale and recapture requirements on specific HOME-assisted properties. It is also important that the PJ understands its repayment obligations in the event of noncompliance, whether voluntary or involuntary. Finally, PJs should be aware that ongoing monitoring will help ensure that HOME-assisted homebuyer projects qualify as affordable housing for the duration of the affordability period.

a. Written Agreements

Regardless of whether a PJ uses resale or recapture, it must execute a HOME written agreement that accurately reflects the resale or recapture provisions with the homebuyer before or at the time of sale. A clear, detailed written agreement ensures that all parties are aware of the specific HOME requirements applicable to the unit (i.e., period or affordability, principal residency requirement, terms and conditions of either the resale or recapture requirement), and helps the PJ enforce those requirements. When making revisions to the resale or recapture provisions in its Annual Action Plan submission, PJs must ensure that all homebuyer written agreements are modified to reflect any changes. The written agreement creates a legal obligation for the PJ. Consequently, if the PJ modifies its resale or recapture provisions in its Annual Action Plan submission but does not make similar changes to its written agreement, the resale or recapture provisions in the written agreement prevail. *The HOME written agreement must be a separate legal document from any loan instrument and must, at a minimum, comply with the requirements at §92.504(c)(5) of the HOME rule.* If the PJ provides HOME funds to a subrecipient, State recipient or CHDO to develop and sell affordable housing, the PJ must prepare and execute the agreement with the buyer, or be a party to the agreement along with the entity it funded. In all instances, the PJ is responsible for ensuring that it can enforce the written agreement.

b. Enforcement Mechanisms

1. Resale

While mortgage and lien documents are used to secure repayment of the HOME subsidy, these documents are not sufficient to enforce the resale requirements. Except in instances of presumed affordability under §92.254(a)(5)(i)(B), separately recorded deed restrictions, covenants running with the land, or other similar mechanisms must be used to impose the resale requirements (§92.254(a)(5)(i)(A)) in HOME-assisted homebuyer projects under the resale option. The purpose of these enforcement mechanisms is to secure and retain the affordable re-use of the property, while providing a fair return to the seller.

2. Recapture

The written agreement between the homebuyer and the PJ, as well as mortgage and lien documents are typically used to impose the recapture requirements in HOME-assisted homebuyer projects under recapture provisions. The purpose of these enforcement mechanisms is to ensure that the PJ recaptures the direct subsidy to the HOME-assisted homebuyer if the HOME-assisted property is transferred. Unlike the resale option, deed restrictions, covenants running with the land, or other similar mechanisms are not required by the HOME rule to be used in homebuyer projects under the recapture option. However, many PJs choose to use these mechanisms for enforcing the affordability period and as notification of the transfer of the property.

c. Noncompliance

Failure to comply with the resale or recapture requirements means that 1) the original HOME-assisted homebuyer no longer occupies the unit as his or her principal residence (i.e., unit is rented or vacant), or 2) the home was sold during the period of affordability and the applicable resale or recapture provisions were not enforced. If this noncompliance occurs, the PJ, as the entity responsible for the day-to-day operations of its HOME program, must repay its HOME Investment Trust Fund with non-Federal funds. How much of the original HOME investment must be repaid is dependent on the PJ's program design and use of funds.

In cases of noncompliance under either resale or recapture provisions, the PJ must repay to the HOME Investment Trust Fund in accordance with §92.503(b), any *outstanding HOME funds* invested in the housing. The amount subject to repayment is the total amount of HOME funds invested in the housing (i.e., any HOME development subsidy to the developer plus any HOME dowpayment or other assistance (e.g., closing costs) provided to the homebuyer) minus any HOME funds already repaid (i.e., payment of principal on a HOME loan). Any interest paid on the loan is considered program income and cannot be counted against the outstanding HOME investment amount. *Note that noncompliance with principal residency requirements by a homebuyer under a recapture provision is not a transfer. Consequently, the amount the PJ must repay is not subject to prorated or other reductions included in its recapture provisions.*

> A PJ provided a $20,000 HOME development subsidy as a grant to the developer, and the homebuyer received $5,000 in downpayment assistance as a deferred forgivable loan. The recapture agreement provides for pro rata reduction of the direct subsidy over 5 years. If the homebuyer rents the property in year 3, he would be in noncompliance with the HOME principal residency requirement. The PJ 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.

The PJ must repay the HOME investment in accordance with §92.503(b)(3) whether or not it is able to recover any portion of the HOME investment from the noncompliant homebuyer. Therefore, it is crucial for the PJ to have enforcement mechanisms in its written agreements with homebuyers to protect its investment and minimize its risk in HOME-assisted homebuyer projects in the event of noncompliance by the homebuyer.

d. Foreclosure, Transfer in Lieu of Foreclosure, or Assignment to HUD

In HOME-assisted homebuyer projects, the affordability restrictions imposed by deed restrictions, covenants running with the land, or other similar mechanisms may terminate upon foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD. The PJ may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. However, the affordability restrictions must be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, obtains an ownership interest in the housing.

In addition, the termination of the affordability restrictions in the event of foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD, does not satisfy the requirement that the property remains qualified as affordable housing under §92.254 for the period of affordability. Consequently, the following rules apply to HOME-assisted homebuyer projects in the event of foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD.

1. Resale

For HOME-assisted homebuyer housing under a resale agreement, if the affordability is not preserved by a subsequent purchase at a reasonable price by a low-income homebuyer who will use the property as its principal residence, and who agrees to assume the remainder of the original affordability period, the PJ must repay the HOME investment.

2. Recapture

Homebuyer housing with a recapture agreement is not subject to the affordability requirements after the PJ 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 PJ must attempt to recoup any net proceeds that may be available through the foreclosure sale. Because all recapture provisions must be limited to net proceeds, the PJ's repayment obligation is limited to the amount of the HOME subsidy, if any, that it is able to recover.

e. Refinancing

PJs should have a written policy on refinancing of senior debt when the PJ will be asked to subordinate its interest. A written refinancing policy should specify the conditions under which the PJ agrees to subordinate to new debt in order to protect its interests and the interests of the homebuyer, as well as how such requests will be processed. Refinancing of senior debt should typically be limited to circumstances in which the original homebuyer is securing better terms that reduce monthly housing costs, or if sufficient equity exists, to take cash out for immediate property repairs or catastrophic expenses.

f. Investment of Additional HOME Funds

The HOME rule at §92.254(a)(9) of the HOME rule provides PJs with the flexibility to invest additional HOME funds in homebuyer projects to preserve affordability. As noted above, when faced with foreclosure, PJs may use additional HOME funds to acquire the housing through a purchase option, right of first refusal, or other preemptive right to ensure affordability is preserved. PJs may also use HOME funds to rehabilitate any housing acquired through foreclosure. If the PJ charges such costs as eligible project costs in accordance with §92.206, the total amount of the original HOME investment, plus any additional HOME investment, cannot exceed the maximum per-unit subsidy limit in §92.250.

A PJ also has the option of charging acquisition, rehabilitation, and holding costs as a reasonable HOME administrative cost in accordance with §92.207 of the HOME rule. If the PJ charges these costs as reasonable administrative expenses, the investment of additional HOME funds is not subject to the maximum per-unit subsidy limit, and the PJ can reimburse its administrative account, in whole or in part, once the housing is sold to a new eligible homebuyer.

Additional HOME funds may also be used to provide assistance to another eligible homebuyer following either the PJ's acquisition of a foreclosed unit or a sale of a unit under resale or recapture provisions during the period of affordability. If a PJ provides HOME assistance to another eligible HOME buyer, the additional HOME investment must be treated as an amendment to the original project. Consequently, the additional HOME investment may extend the original period of affordability. For example, if the original HOME investment was $10,000 and resulted in a five year period of affordability, the addition of another $10,000 to a subsequent homebuyer would extend the period of affordability to ten years. As noted above, the original HOME investment plus any additional HOME investment cannot exceed the maximum per unit subsidy since the cost of assisting a subsequent homebuyer is a project-specific cost.

g. Ongoing monitoring

For HOME-assisted homebuyer projects under resale or recapture agreements, HUD strongly recommended that PJs perform ongoing monitoring of the principal residency requirement during the period of affordability. Ultimately, it is the PJ's responsibility to ensure that the HOME-assisted housing qualifies as affordable housing under §92.254 during the period of affordability.

Confirmation that the buyer is using the property as his or her principal residence can often be accomplished by verifying that the buyer's name appears on utility company records or insurance company records for the home. In addition, postcard or letters mailed with "do not forward" instructions can demonstrate whether the buyer is receiving mail at the home.

VIII. CONSOLIDATED PLAN REQUIREMENTS

a. Regulatory Requirements

The consolidated plan regulations at 24 CFR Part 91 set forth the requirements for state and local HOME PJs' consolidated plans and Annual Action Plans. The HOME-specific requirements of the Annual Action Plan are described at §91.220(l)(2) for local PJs and §91.320(k)(2) for states. A local PJ or state, under §91.220(l)(2)(ii) and §91.320(k)(2)(ii) respectively, that will use HOME funds to assist homebuyers, must state in its Annual Action Plan the guidelines for resale and/or recapture, as required in §92.254(a)(5) of the HOME rule.

In addition, §92.254(a)(5) of the HOME rule states, *"the PJ must establish the resale or recapture requirements that comply with the standards of this section and set forth the requirements in its consolidated plan. HUD must determine that they are appropriate."*

Accordingly, Field Offices must review each PJ's resale and/or recapture requirements to ensure that they meet the HOME requirements. PJs may not use any funds for homebuyer assistance until the Field Office makes the determination and approves the provisions. If the PJ will use both resale and recapture provisions for different projects or programs, it must explain, in its plan, how it will determine which provisions will be used in each case. PJs are strongly encouraged to review the attached checklist to ensure that their resale and recapture provisions satisfy the conditions for HUD approval.

IX. FIELD OFFICE REVIEW OF RESALE/RECAPTURE PROVISIONS

During the Field Office review of each PJ's consolidated plan and Annual Action Plan, HUD must determine that the resale and/or recapture provisions employed by the PJ are appropriate (§92.254(a)(5)). Field Office staff should use the following checklist to assist in the review of the resale and/or recapture provisions submitted by PJs. PJs should use the checklists to determine if their provisions satisfy the HOME requirements.

Questions with a “No” response may indicate the PJ has not met the requirements of §91.220(l)(2)(ii) or §91.320(k)(2)(ii) and §92.254(a)(5). If Field Office staff identify issues with a PJ’s Annual Action Plan submission, it must contact the PJ and ask that it revise and resubmit the resale and/or recapture provisions before the end of the 45-day Annual Action Plan review period. If the PJ is unable to comply by resubmitting acceptable resale and/or recapture provisions within the 45-day timeframe, the Field Office must inform the PJ, in writing in the Annual Action Plan approval letter, that the PJ cannot use any HOME funds for homebuyer assistance until it has submitted and HUD has approved the resale and/or recapture provisions to be used.

X. ANNUAL ACTION PLAN REVIEW CHECKLIST FOR FIELD OFFICE STAFF

General Review Criteria	Conclusion	Comments/Basis for Conclusion
A1: If the PJ proposes to use any HOME funds for assisting homebuyers (whether through down payment assistance, new construction or rehabilitation), does the Annual Action Plan include resale or recapture provisions? Explanation: PJs must submit resale or recapture provisions to HUD for review and approval before using any HOME funds for this purpose. HUD must determine that the provisions meet the requirements established in 24 CFR 92.254(a)(5)(i) and (ii). Field Office Action: If yes, continue to Question A2. If no, you must contact the PJ and ask that it submit the resale and/or recapture provisions before the end of the 45-day Annual Action Plan review period or you must inform the PJ in writing in the Annual Action Plan approval letter that it may not use any HOME funds for homebuyer assistance until it has submitted and HUD has approved the resale and/or recapture provisions to be used.	☐ Yes ☐ No	

General Review Criteria	Conclusion	Comments/Basis for Conclusion
A2: If the PJ will use subrecipients, State recipients, urban county or consortium members, CHDOs or other entities to provide the homebuyer assistance, are the resale or recapture provisions to be used by these entities submitted for HUD review and approval as part of the Annual Action Plan? <u>Explanation</u>: All resale or recapture provisions to be used in a PJ's program must be reviewed and approved by HUD before the PJ can use any HOME funds for homebuyer projects using those provisions. <u>Field Office Action</u>: If yes, proceed with your review. If no, you must contact the PJ and ask that it submit the resale and/or recapture provisions to be used by one or more of these entities before the end of the 45-day Annual Action Plan review period. If this is not possible or the PJ fails to respond or submit an acceptable revision, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its resale and/or recapture provisions and the entity may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the resale and/or recapture provisions to be used.	☐ Yes ☐ No ☐ N/A	

General Review Criteria	Conclusion	Comments/Basis for Conclusion
A3: If the PJ proposes to use more than one set of provisions (e.g., both resale and recapture, different sets of recapture provisions), does the Annual Action Plan provide an explanation of the circumstances under which each form will be used? <u>Explanation</u>: For example, a PJ may use recapture provisions for its HOME downpayment assistance program, but impose resale provisions on homebuyer units newly constructed with HOME funds by its CHDO. The Annual Action Plan must explain when it will use each set of provisions. <u>Field Office Action</u>: If yes or N/A, proceed with your review. If no, you must contact the PJ and ask that it revise its discussion of its resale and/or recapture provisions to include an explanation of the circumstances under which each set of provisions will be used before the end of the 45-day Annual Action Plan review period. If this is not possible or the PJ fails to respond or submit an acceptable revision within the review period, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its resale and/or recapture provisions and it may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the resale and/or recapture provisions to be used.	☐ Yes ☐ No ☐ N/A	

Recapture Provisions	Conclusion	Comments/Basis for Conclusion
Recapture Provisions permit the HOME-assisted homebuyer to sell their unit at any time during the period of affordability, to any willing buyer, and at the price the market will bear. The PJ imposes recapture provisions by written agreement and by recorded lien. In the event of a voluntary or involuntary sale during the period of affordability, the PJ must recapture the amount specified under its recapture provisions.		
B1: Do the provisions reflect one of the following models? - **PJ recaptures entire amount;** - **Pro rata reduction of recapture amount during affordability period;** - **Owner recovers entire investment (down payment and capital improvements) before PJ recaptures HOME investment;** - **Shared net proceeds in event of insufficient net proceeds;** - **PJ-developed or modified provisions.** Explanation: The HOME regulations at 24 CFR 92.254(a)(5)(ii)(A) list four acceptable recapture models and permit PJs to adopt, develop or modify their own recapture requirements for HUD approval.	☐ Yes ☐ No	**Specify:**

Recapture Provisions	Conclusion	Comments/Basis for Conclusion
B2: Are the provisions described in adequate detail for the HUD Reviewer and interested members of the public to understand the PJ's method for recapturing funds? <u>Explanation</u>: The Annual Action Plan must describe the recapture provision(s) to be used in sufficient detail for HUD and the public to understand which provisions it has chosen and how they will be implemented. Provisions that simply cite or repeat HOME regulations are not acceptable. The provisions must be described in the Annual Action Plan. Similarly, if the PJ has developed its own provisions or made modifications to the regulatory models, it must describe those provisions in sufficient detail. <u>Field Office Action</u>: If yes, proceed with your review. If no, you must contact the PJ and ask that it revise its discussion of its recapture provisions to include sufficient detail to permit HUD and the public to understand the recapture requirements being adopted. If this is not possible or the PJ fails to respond or submit an acceptable revision within the 45-day review period, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its recapture provisions and it may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the recapture provisions to be used.	☐ Yes ☐ No ☐ N/A	

Recapture Provisions	Conclusion	Comments/Basis for Conclusion
B3: Do the provisions indicate that the amount subject to recapture is the direct subsidy received by the homebuyer? Explanation: Direct subsidy includes HOME investment that enabled the homebuyer to purchase the property. This includes down payment assistance, closing costs, or other HOME assistance provided directly to the homebuyer and/or the difference between the fair market value of the property and a reduced sales price attributable to HOME development assistance. Development subsidies (i.e., the difference between the cost of producing the unit and the fair market value of the unit) cannot be subject to recapture since the homebuyer did not realize a direct benefit from these funds. Field Office Action: If yes, proceed with your review. If no, you must contact the PJ and ask that it revise its recapture provisions to state that only direct subsidy to the homebuyer is subject to recapture. If this is not possible or the PJ fails to respond or submit an acceptable revision within the 45-day review period, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its recapture provisions and it may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the recapture provisions to be used.	☐ Yes ☐ No	

Recapture Provisions	Conclusion	Comments/Basis for Conclusion
B4: Do the provisions limit the amount to be recaptured to the net proceeds available from the sale? Explanation: The net proceeds are the sales price minus loan repayment (other than HOME funds) and closing costs. The PJ must limit the amount subject to recapture to the net proceeds available from the sale. This limitation applies to all units regardless of the type of recapture provisions used or to the nature of the sale (voluntary sales including short sales, and involuntary sales including foreclosures). Any recapture provisions that do not explicitly include this limitation are unacceptable and cannot be approved. Field Office Action: If yes, proceed with your review. If no, you must contact the PJ and ask that it revise its recapture provisions to state that its recapture provisions limit the amount to be recaptured to the net proceeds of the sale. If this is not possible or the PJ fails to respond or submit an acceptable revision within the 45-day review period, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its recapture provisions and it may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the recapture provisions to be used.	☐ Yes ☐ No	

Resale Provisions	Conclusion	Comments/Basis for Conclusion
Resale Provisions preserve the affordability and availability of the HOME-assisted homebuyer unit to low-income households for the entire period of affordability. The PJ controls the resale price by establishing an objective methodology for determining what is a fair return to the original homebuyer, in an effort to make the property affordable to a reasonable range of low-income homebuyers. If the established resale price is not affordable to the subsequent low-income homebuyer, the PJ may be required to provide additional assistance to that homebuyer – but may not adjust the resale price as a result.		

Resale Provisions	Conclusion	Comments/Basis for Conclusion
C1: Does the resale provision limit resale of the property during the HOME period of affordability only to a buyer whose family qualifies as a low-income family? Explanation: Resale provisions that permit resale of a HOME-assisted unit to a subsequent homebuyer who is not low-income – regardless of the circumstance – are not acceptable. Resale provisions that provide a recapture option to facilitate sale to a subsequent buyer who is not income-eligible (i.e., resale/recapture hybrids) are not acceptable. Field Office Action: If yes, proceed with your review. If no, you must contact the PJ and ask that it revise its resale provision to state that the housing may only be resold to a family that qualifies as low-income. If this is not possible or the PJ fails to respond or submit an acceptable revision within the45-day review period, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its resale provisions and it may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the resale provisions to be used.	☐ Yes ☐ No	

Resale Provisions	Conclusion	Comments/Basis for Conclusion
C2: Does the provision contain a specific definition of "fair return on investment?" Explanation: The provision describes in detail what return homebuyers can expect if they sell their unit during the period of affordability. The PJ is expected to identify an objective standard or index that will determine "fair return" on resale. (see C3) Field Office Action: If yes, proceed with your review. If no, you must contact the PJ and ask that it revise its resale provision to include a definition of "fair return on investment." If this is not possible or the PJ fails to respond or submit an acceptable revision within the 45-day review period, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its resale provisions and it may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the resale provisions to be used	☐ Yes ☐ No	

Resale Provisions	Conclusion	Comments/Basis for Conclusion
C3: Is fair return based upon an objective index or standard? Explanation: An objective standard or index is concrete and publicly accessible and can be easily measured at the time of original purchase and at resale. Examples include: a percentage of the change in median sales prices over the period of ownership, the percentage change in area median income over the period of ownership, and the percentage change in the Consumer Price Index over the period of ownership. In depressed or declining markets, a loss on investment can constitute a fair return. A standard that ties the return to the original homebuyer to the price that a specific homebuyer or a defined group of low-income homebuyers are able to pay *does not* constitute fair return and is not acceptable. Field Office Action: If yes, proceed with your review. If no, you must contact the PJ and ask that it revise its resale provisions to specify the standard or index that will be applied upon resale to provide a fair return to the homebuyer. If this is not possible or the PJ fails to respond or submit an acceptable revision within the 45-day review period, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its resale provisions and it may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the resale provisions to be used.	☐ Yes ☐ No	

Resale Provisions	Conclusion	Comments/Basis for Conclusion
C4: Does the basis upon which fair return is calculated include the homebuyer's original investment in the property and the increase in market value attributable to homebuyer investments in or capital improvements to the property? Explanation: The provision must specifically state that the basis for calculating fair return is the original investment by the homebuyer and specific types of upgrades or additions that will add value to the property. (Generally, replacing worn or dated components such as appliances or carpet would not be considered an improvement that adds value). The provision must address the types of changes that it will or will not include in that basis. Field Office Action: If yes, proceed with your review. If no, you must contact the PJ and ask that it revise its resale provisions so that homebuyer investment includes both the homebuyer-provided down payment and homebuyer-financed improvements that would increase the value of the home. If this is not possible or the PJ fails to respond or submit an acceptable revision within the 45-day review period, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its resale provisions and it may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the resale provisions to be used.	☐ Yes ☐ No	

Resale Provisions	Conclusion	Comments/Basis for Conclusion
C5: Does the resale provision specifically define "reasonable range of low-income buyers" and does it specifically define that range of low-income persons? Explanation: The provision must specifically define what constitutes a reasonable range of low-income buyers in its communities (e.g., between 70% and 80% of area median income). Specifying a family at 80% of area median income is not acceptable because it does not constitute a range of low-income buyers. Field Office Action: If yes, proceed with your review. If no, you must contact the PJ and ask that it revise its resale provisions to specifically define a reasonable range of low-income buyers. If this is not possible or the PJ fails to respond or submit an acceptable revision within the 45-day review period, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its resale provisions and it may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the resale provisions to be used.	☐ Yes ☐ No	

Resale Provisions	Conclusion	Comments/Basis for Conclusion
C.6 Does the resale provision specifically describe how the PJ will ensure that the housing remains affordable to the defined range of low-income buyers? Explanation: The PJ cannot require that the resale price be set based **solely** upon what is affordable to a specific buyer or the defined range of low-income buyers, since this would not provide a fair return on the original homebuyer's investment. Consequently, the PJ must outline the steps that it will take to ensure that the property is affordable to a defined range of low-income homebuyers (note that this does not guarantee affordability to a specific homebuyer whose income is lower than the defined range). These steps may include the provision of down payment or second mortgage assistance, first mortgage interest write-downs, or other mechanisms that enhance affordability. Field Office Action: If yes, proceed with your review. If no, you must contact the PJ and ask that it revise its resale provisions to specify a standard that will ensure affordability to the range of low-income buyers identified by the PJ, or to specify what steps it will take to ensure affordability to subsequent low-income buyers. If this is not possible or the PJ fails to respond or submit an acceptable revision within the 45-day review period, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its resale provisions and it may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the resale provisions to be used.	☐ Yes ☐ No	

Presumption of Affordability	Conclusion	Comments/Basis for Conclusion
D1: If the PJ plans to use a presumption of affordability instead of enforcement mechanisms to meet the resale requirement, does the resale provision identify specific neighborhoods that will be subject to the presumption of affordability? Explanation: A presumption of affordability cannot be sought or approved for an entire PJ. The presumption can only be made on a neighborhood basis. Field Office Action: If yes, proceed with your review. If the presumption is not neighborhood or neighborhood(s)-specific, you must reject the presumption, and prohibit the PJ from using any HOME funds without imposing either resale or recapture requirements. The PJ may resubmit a new presumption request for HUD's approval at any time during the program year. If this is not possible or the PJ fails to respond or submit an acceptable revision within the 45-day review period, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its resale provisions and it may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the resale provisions to be used.	☐ Yes ☐ No	

Presumption of Affordability	Conclusion	Comments/Basis for Conclusion
D2: If this is a new request or renewal of a presumption issued previously, did the PJ submit a recent market analysis for each neighborhood for which approval of the presumption of affordability is sought? <u>Explanation:</u> The PJ must submit a separate market analysis for each neighborhood for which it seeks approval of a presumption of affordability, except that it can perform a combined market analysis for a limited number of contiguous neighborhoods that are similarly situated with respect to demographic profile, housing market, and economic conditions. The analysis must be recent (performed within the last 12 months). <u>Field Office Action:</u> If yes, proceed with your review. If the PJ did not submit a market analysis, did not submit analyses for all neighborhoods, or submitted analyses that were not completed within the last 12 months, you must contact the PJ and ask that recent market analyses supporting the presumption be submitted. If the analyses are not submitted timely, you must reject the presumption, and prohibit the PJ from using any HOME funds without imposing either resale or recapture requirements. The PJ may resubmit a new presumption request for HUD's approval at any time during the program year.	☐ Yes ☐ No ☐ N/A	

Presumption of Affordability	Conclusion	Comments/Basis for Conclusion
D3: If the market analysis was originally submitted with a previous year's Annual Action Plan, does the Plan indicate that the PJ has determined that an updated analysis is not warranted by any changes in the neighborhood's market conditions? Explanation: If the PJ becomes aware that significant changes in a neighborhood's market conditions since the preparation of market analysis make continuation of the presumption of affordability inappropriate, it must indicate that in its Annual Action Plan. The PJ must indicate in the Annual Action Plan that, in the absence of significant changes, it is continuing its use of the presumption of affordability for another program year. Field Office Action: If yes, proceed with your review. If no, you must contact the PJ and ask that it revise and include this information in the presumption section of its Annual Action Plan before continuing your review. If this is not possible or the PJ fails to respond or submit an acceptable revision within the 45-day review period, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its presumption of affordability and it may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the presumption of affordability.	☐ Yes ☐ No ☐ N/A	

Presumption of Affordability	Conclusion	Comments/Basis for Conclusion
D4: Does the market analysis include the following: • **An evaluation of the location and characteristics of the housing and residents in the neighborhood (e.g., sale prices, age and amenities of the housing stock, incomes of residents, percentage of owner-occupants) in relation to housing and incomes in the housing market area?** • **An analysis of the current and projected incomes of neighborhood residents for an average period of affordability for homebuyers in the neighborhood that supports the conclusion that a reasonable range of low-income families will continue to qualify for mortgage financing?** Explanation: The market analysis, which can included a combined market analysis for a limited number of contiguous neighborhoods that are similarly situated with respect to demographic profile, housing market, and economic conditions, must contain this evaluation and the analysis of the data must support the conclusion that a reasonable range of low-income families will continue to qualify for mortgage financing. Field Office Action: If yes, proceed with your review. If no, you must contact the PJ and request that an acceptable market analysis be submitted. If the analysis is not submitted timely, you must reject the presumption, and prohibit the PJ from using any HOME funds without imposing either resale or recapture requirements. The PJ may resubmit a new presumption request for HUD's approval at any time during the program year.	☐ Yes ☐ No	

Presumption of Affordability	Conclusion	Comments/Basis for Conclusion
D5: Does the information presented in the market analysis support the PJ's conclusion that the following conditions are likely to be met in the event of a resale of the HOME-assisted housing located in the neighborhood during the affordability period without the imposition of enforcement mechanisms by the PJ: - **the housing will be available and affordable to a reasonable range of low-income homebuyers;** - **a low-income homebuyer will occupy the housing as a principal residence; and** - **the original owner will be afforded a fair return on investment?** Explanation: The market analysis must support the conclusion that housing may be presumed to meet the resale restrictions. If the analysis is flawed or does not support this conclusion, the HUD Field Office must disapprove the presumption of affordability. Field Office Action: If yes and all other requirements related to the presumption have been met, you may approve the presumption of affordability. If no, you must reject the presumption of affordability and require the use of approved resale or recapture provisions in the neighborhood(s).	☐ Yes ☐ No ☐ N/A	

Appendix A – HOME Resale and Recapture Summary

HOME Resale and Recapture Summary

Scenario	Amount Owed Back to HOME Account	Income to PJ Considered	HOME Requirement Discussion	Examples
• **Recapture**				
Owner remains in unit and repays HOME mortgage principal and interest to PJ over time	Periodic loan payments—Receipt the program income (PI) in IDIS	Program income	None	• Homebuyer gets $20,000 HOME loan from PJ. Owner repays $200 per month in principal plus interest to PJ. • Monthly $200 is program income
Owner remains in unit but elects to pay off outstanding balance of HOME loan	Loan payoff—Receipt the PI in IDIS	Program income	The repayment of the HOME loan does not terminate the affordability period. The period remains in effect for written agreement timeframe unless the unit is sold. Significant impacts of this are principal residence requirement and shared appreciation at sale (if this option is chosen by PJ).	• Homebuyer gets $18,000 HOME loan from PJ. In year 3, owner decides to pay off existing loan balance and pays $15,000 to PJ to pay off the HOME loan. • $15,000 is program income • Owner is still subject to principal residence and if the PJ stipulated it in its original agreement with the buyer, any net proceeds agreement for shared appreciation until the 10 year affordability period is complete.
Owner does not sell but moves out and fails to occupy as principal residence during the afford period (subleases the home)—assumes that the owner does not return to the unit or sell it	Total outstanding HOME investment. This is HOME investment minus HOME principal payments received from owner to date. Repayment process involves wiring funds back to HUD and/or paying by check (if less than $2,000) and amending draws within IDIS.	Repaid funds	PJ must attempt to bring unit into compliance and enforce the HOME written agreement. First, the PJ should try to get the owner to reoccupy the unit. Second, if re-occupancy doesn't occur, the PJ must try to recoup the amount owed back by the owner. The PJ must have a clause in its HOME written agreement that states repayment is triggered if the principal residency requirement. If the PJ does not, they are unlikely unable to enforce the principal residence requirement and the PJ itself may have to repay the outstanding HOME investment (in essence it becomes an ineligible project).	• Homebuyer gets $16,000 HOME forgivable loan from PJ. $1600 is forgiven for each year of occupancy. In year 8, owner moves out and rents the home. • Of the $16,000 HOME loan, $12,800 has already been forgiven (8X$1600). • However, owner and/or PJ owes program back the whole $16,000 in initial HOME investment since none has been repaid by owner to date. • If instead the loan was amortizing and the owner had already paid the PJ $10,000 in HOME principal + interest, the PJ/owner would only owe $6,000 back to the HOME account.

HOME Resale and Recapture Summary (cont'd)

Scenario	Amount Owed Back to HOME Account	Income to PJ Considered	HOME Requirement Discussion	Examples
• **Recapture**				
Owner voluntarily sells during affordability period	Net proceeds—Receipt process identical to PI in IDIS	Recaptured funds	PJ must stipulate recapture approach, subject to net proceeds, in its agreement with buyer (PJ paid first, owner paid first, forgiveness over time, or proportional + shared appreciation option).	• Homebuyer gets $27,000 HOME loan from PJ. In year 5 owner decides to sell. • Outstanding HOME loan balance is $22,000. Net proceeds are $12,000. • Owner repayment to PJ capped at $12,000 • $12,000 divided between PJ and owner according to PJ's selected net proceeds approach
Unit is foreclosed and sold to another owner	Net proceeds—Receipt process identical to PI in IDIS	Recaptured funds	PJ must stipulate recapture approach, subject to net proceeds, in its agreement with buyer (PJ paid first, owner paid first, forgiveness over time, or proportional + shared appreciation option).	• Homebuyer gets $32,000 HOME loan from PJ. In year 8, private lender forecloses and home is sold. • Outstanding HOME loan balance is $28,000. After bank is paid at foreclosure, remaining net proceeds are $2,000. • PJ gets $2,000 in net proceeds and no additional money is owed

HOME Resale and Recapture Summary (cont'd)

Scenario	Amount Owed Back to HOME Account	Income to PJ Considered	HOME Requirement Discussion	Examples
Resale				
Owner remains in unit and repays HOME mortgage principal and interest to PJ over time	Periodic loan payments—Receipt the PI in IDIS	Program income	None	• Homebuyer gets $20,000 HOME loan from PJ. Owner repays $200 per month in principal plus interest to PJ. • Monthly $200 is program income
Owner remains in unit but elects to pay off outstanding balance of HOME loan	Loan payoff—Receipt the PI in IDIS	Program income	The repayment of the HOME loan does not terminate the affordability period. The resale provision stays in place including the entire affordability period remains in effect and the principal residency requirement, as initially determined by the PJ based on the amount of HOME investment in the unit.	• Homebuyer gets $18,000 HOME loan from PJ. In year 3, owner decides to pay off existing loan balance and pays $15,000 to PJ to pay off the HOME loan. • $15,000 is program income • Owner is still subject to principal residence and at the time of sale if during the affordability period, must sell to another low income buyer at an affordable price
Owner does not sell but moves out and fails to occupy the unit as its principal residence during the afford period (subleases the home)—assumes that the owner does not return to the unit or sell it	Total outstanding HOME investment. This is initial HOME investment minus HOME loan principal payments received to PJ from owner or developer to date, if any. Repayment process involves wiring funds back to HUD and/or paying by check (if less than $2,000) and amending draws within IDIS.	Repaid funds	PJ must attempt to bring unit into compliance (enforce the HOME written agreement). First, the PJ should try to get the owner to reoccupy the unit. Second, if re-occupancy doesn't occur, the PJ must try to recoup the amount owed back by the owner. The type of income these funds would be depends on whether owner received a HOME loan or if financing was only provided to developer. If owner received a HOME loan, the PJ should include language about principal residence and owing money back to the PJ for noncompliance. Amount owed back for noncompliance would then be the HOME loan minus any program income (PI) received to date. If construction financing was provided to a developer it is unlikely that the homebuyer has repaid any PI to the PJ. However, the PJ's or developer's agreement with the owner must still specify the resale requirements, including principal residence requirement, and should specify penalties for noncompliance. If the developer has repaid the HOME construction loan to the PJ, that PI would be counted toward the amount owed back to the program for the noncompliant unit.	• CHDO gets $70,000 construction loan from PJ. The CHDO pays back $50,000 of this initial investment once construction is done and unit is sold to homebuyer. • In year 8, the owner moves out and rents the home (but does not sell). • Owner and/or PJ owes program back the $20,000 remaining from the initial HOME investment ($70,000 - $50,000), depending on the written agreement and its enforceability. • If the PJ had allowed the CHDO to keep the funds earned from the initial sale as CHDO proceeds and none was repaid to the PJ (no $50,000 payment), the PJ and/or owner would owe the program the full $70,000 initial HOME investment for the noncompliant unit.

HOME Resale and Recapture Summary (cont'd)

Scenario	Amount Owed Back to HOME Account	Income to PJ Considered	HOME Requirement Discussion	Examples
Resale				
Owner voluntarily sells during affordability period	Loan payoff, if any—Receipt the PI in IDIS	Program income	None	• Homebuyer gets $27,000 HOME loan from PJ. In year 5 owner decides to sell. • Outstanding HOME loan balance is $22,000. • Owner repays the $22,000 to the PJ and sells to another low income buyer at affordable price.
Unit is foreclosed and sold to another owner	Answer depends on what happens under foreclosure: If affordability period survives foreclosure and unit is sold to another low income buyer at afford price, no repayment is required unless the household has an outstanding HOME loan. Depending on the home's value and foreclosure sale price, the PJ may get some repayment for that HOME loan. If the affordability period does not survive, PJ owes total outstanding HOME investment. This is initial HOME investment minus program income (loan principal payments—not interest) received to PJ from owner or developer to date, if any.	Program income if unit affordability period survives foreclosure and some of the outstanding HOME loan is repaid through foreclosure sale Repaid funds if affordability period is terminated	None	• CHDO gets $40,000 construction loan from PJ. They repay back $30,000 of this loan to the PJ. The owner also gets $15,000 in a HOME downpayment assistance grant. • In year 6, the owner defaults and lender forecloses and the affordability period is wiped out. The home is sold on the open market. • Owner and/or PJ owes program back the $15,000 downpayment, depending on the written agreement and its enforceability. • The PJ and/or CHDO also owes the $10,000 of initial investment it did not get earn back as PI • In total $25,000 is owed back to the PJ's HOME account, either from the owner (unlikely in this scenario), CHDO or PJ itself ($10,000 plus $15,000).