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Replaces Program Policy Notice OCD 09-02

SUBJECT: Affordability Requirements
ISSUED: July 1, 2013
DISTRIBUTED TO: Office of Community Development Award Recipients and their Affiliates

PROGRAM POLICY

The following Office of Community Development program policy complements Code of Federal Regulations (CFR) 24 Section 92.252 (rental affordability requirements) and Section 92.254 (homeownership affordability requirements).

Background

The U.S. Department of Housing and Urban Development requires HOME Investment Partnerships Program award recipients to abide by the affordability period regulations outlined in the CFR Sections listed above. To help Community Housing Improvement Program award recipients comply with the regulations and Office of Community Development rules, the following information is provided regarding the appropriate management of returned funds, recaptured funds and program income. Note: Community Housing Improvement Program grants are funded with both HOME Program and Community Development Block Grant Program funds. The Community Development Block Grant Program regulations do not address affordability periods. Therefore, references to Community Housing Improvement Program in this policy refer to HOME-funded Community Housing Improvement Program grants only.

Affordability Period

The affordability period for Community Housing Improvement Program-assisted rental rehabilitation, homeownership, and acquisition/rehabilitation/resale or new housing construction units is:

Table with 2 columns: Amount of Assistance and Affordability Period. Rows include \$0-14,999 (5 years), \$15,000-\$40,000 (10 years), and More than \$40,000 (15 years).

NOTE: For any Community Housing Improvement Program-assisted new construction rental project, the affordability period is 20 years, regardless of the amount of subsidy.

Timing

Any time a Community Housing Improvement Program award recipient receives funds as a result of the repayment of an affordability subsidy, the award recipient must determine which of the following time periods is applicable to determine the appropriate way to classify and manage the funds:

- If the funds are received by the award recipient during the work completion period of the grant agreement (i.e., start date of the grant agreement to the work completion date), the funds are considered returned and must be reallocated by the award recipient to another eligible project. Note: In such cases, the grant's final performance report *may* reflect two (or more) units as being assisted with the returned funds. In order to count a unit as an outcome, some funds must remain in the unit at the end of the work completion period for the grant (see examples #1 and #2).
- If the funds are received by the award recipient after the work completion date but prior to the issuance of the grant closeout letter by the Office of Community Development, the funds are considered recaptured and must be returned to the Office of Community Development.
- If the funds are received by the award recipient after the grant closeout letter is issued by Office of Community Development but prior to the end of the affordability period for the unit, the funds are considered recaptured and the award recipient may keep the funds. However, no administrative dollars may be used to administer the recaptured funds in the future. Therefore, the recaptured funds must be tracked separately from administration.

**Exception:** If **loan** payments (i.e., a required monthly repayment of funds to the program) are received by the award recipient after the work completion date but prior to issuance of the grant closeout letter by Office of Community Development or by the award recipient after the grant closeout letter is issued by Office of Community Development but prior to the end of the affordability period for the unit, the repayments are considered **program income**. In such situations, the award recipient may use administrative dollars to administer those funds in the future.

- If the funds are received after the affordability period for the unit ends, the funds are considered program income and the award recipient may keep the funds and use administrative dollars to administer the funds in the future.

### Recaptured Funds

In cases where the sale of a homeownership, acquisition/rehabilitation/resale or new housing construction subsidized unit results in less proceeds available than are required to meet the demands of all liens and owner investments, the amount to be recaptured must be based on the net proceeds available from the sale, rather than the entire amount of the affordability subsidy. If there are no net proceeds from the sale, repayment will not be required and the affordability subsidy will be considered satisfied. For rental rehabilitation and new rental construction activities, if the affordability period is not met, the entire amount of affordability subsidy must be repaid.

### Community Housing Improvement Program Grant Timeline/Important Dates

Start Date:	Traditionally, September 1
Work Completion Date:	Traditionally, October 31, two years later from the Start Date
Final Draw Deadline:	30 days after the Work Completion Date
Final Performance Report Date:	60 days after the Work Completion Date
Close-out Date:	Dependent upon monitoring date and release of monitoring by Office of Community Development and could be several years after the Final Performance Report Date
Affordability Period:	Dependent on amount of assistance provided

### Example #1

#### **Background**

FY 2009 Community Housing Improvement Program Grant Awarded to City A

Grant Period: September 1, 2009 – December 31, 2011

Work Completion Date: October 31, 2011

Drawdown Deadline: November 30, 2011

Final Performance Report Due: December 31, 2011

City A receives an FY 2009 Community Housing Improvement Program grant and, with part of those funds, provides Ms. Jones with an affordability subsidy to purchase a home in December 2009. Ms. Smith sells the home in May 2010 and returns the funds to City A. The funds are returned funds. City A provides the returned funds to Mr. Smith as an affordability subsidy to purchase a home. In this example, the final performance report should only reflect Mr. Smith's home as an assisted unit.

### Example #2

#### **Background**

FY 2009 Community Housing Improvement Program Grant Awarded to City B

Grant Period: September 1, 2009 – December 31, 2011

Work Completion Date: October 31, 2011

Drawdown Deadline: November 30, 2011

Final Performance Report Due: December 31, 2011

City B receives an FY 2009 Community Housing Improvement Program grant, acquires land at a cost of \$20,000 and constructs a house on the acquired land at a cost of \$100,000 for both hard and soft costs. Subsequently, City B sells the house to a low-income household that can afford an \$80,000 mortgage, and provides the household with a \$40,000 affordability subsidy. The fair market value of the home is \$120,000. At the bank loan closing, City B receives \$80,000. The \$80,000 funds are recaptured funds and may be used to build another home before October 31, 2011. In this example, if the \$80,000 is used to assist another eligible household, the final performance report for the grant should reflect both units as assisted.

### Example #3

#### **Background**

FY 2006 Community Housing Improvement Program Grant Awarded to County C

Grant Period: September 1, 2006 – December 31, 2008

Work Completion Date: October 31, 2008

Drawdown Deadline: November 30, 2008

Final Performance Report Due: December 31, 2008

County C receives an FY 2006 Community Housing Improvement Program grant and, in April 2007, provides an affordability subsidy to help Mr. and Mrs. Williams purchase a newly constructed home. In October 2009, Mr. Williams becomes ill and, subsequently, unemployed. In January 2009, Mr. and Mrs. Williams sell the house and repay the owed affordability subsidy to County C. Office of Community Development has not issued the grant closeout letter for County C's FY 2006 Community Housing Improvement Program grant. The funds are recaptured funds and County C must return the funds to Office of Community Development.

#### Example #4

##### **Background**

FY 2001 Community Housing Improvement Program Grant Awarded to City D

Grant Period: September 1, 2001 – December 31, 2003

Work Completion Date: October 31, 2003

Drawdown Deadline: November 30, 2003

Final Performance Report Due: December 31, 2003

City D receives a FY 2001 Community Housing Improvement Program grant and, in May 2002, helps the Beavers purchase an \$80,000 house by providing the Beavers with \$20,000 of affordability assistance. In June 2004, Office of Community Development issues the City of D's FY 2001 Community Housing Improvement Program closeout letter. In May 2009, the Beavers sell the house and return the remaining portion owed affordability subsidy to City D. The affordability period ends in 2013. In this example, the funds are recaptured funds and City D may keep the funds to spend on an eligible activity. However, no administrative dollars may be used to administer the recaptured funds in the future. Therefore, the recaptured funds must be tracked separately from administration.

#### Example #5

##### **Background**

FY 2002 Community Housing Improvement Program Grant Awarded to County E

Grant Period: September 1, 2002 – December 31, 2004

Work Completion Date: October 31, 2004

Drawdown Deadline: November 30, 2004

Final Performance Report Due: December 31, 2004

County E received a FY 2002 Community Housing Improvement Program grant and, in November 2002, provided \$20,000 to rental property owner/landlord to rehabilitate his rental property. In July 2005, Office of Community Development issued a grant closeout letter for County E's FY 2002 Community Housing Improvement Program grant. In 2010, the property owner sells the rental property. The property owner must return the entire affordability subsidy (\$20,000) to County E. County E may keep the funds. However, no administrative dollars may be used to administer the recaptured funds in the future. Therefore, the recaptured funds must be tracked separately from administration.

#### Example #6

##### **Background**

FY 1994 Community Housing Improvement Program Grant Awarded to County F

Grant Period: September 1, 1994 – December 31, 1996

Work Completion Date: October 31, 1996

Drawdown Deadline: November 30, 1996

Final Performance Report Due: December 31, 1996

In December 1994, County F helped the Elder family purchase a \$70,000 rehabilitated home by providing a \$30,000 affordability subsidy. In February 2008, Mr. Elder died and, two months later, Mrs. Elder died. Their son, who inherited the home as part of settling the estate in June 2008, repaid the owed portion of the subsidy to County F. The affordability period ended in 2004. The funds are program income. County F may keep the funds and use administrative dollars to administer the funds in the future.