

## Recapture Provisions

The State of Montana will use recapture provisions for the CDBG program for all CDBG Housing Stabilization projects. State recipients and sub-recipients are eligible entities (entities) to carryout eligible activities and must use the recapture provisions. The CDBG subsidy can be structured through zero-interest or low interest loans, deferred payment loans, or interest rate subsidies.

### Recapture Requirements

Commerce expects that all activities will include assistance to LMI beneficiaries or result in affordable housing made available to LMI households. Therefore, recapture provisions will be used. Any of the entities who have elected to provide financial assistance under this program are required to specify their recapture provisions as applicable to the period of affordability. Written agreements for CDBG assistance activities funded by Commerce will include the recapture provisions to ensure the period of affordability, principal residency requirements, and any other recapture terms and conditions.

During grant monitoring of the CDBG program entities, the state will review the deed restrictions, trust indenture, covenants running with the land, mortgages, or other similar mechanisms placed on the CDBG -assisted property to ensure the provisions being used are in accordance with those stated in the written agreement with the entities.

During the period of affordability, the entities must complete an annual compliance check to ensure that the initial homebuyer still resides in the property as their principal residence. The most current utility statement, proof of paid taxes, or certificate of homeowner's insurance are acceptable documentation.

Noncompliance occurs when the owner does not comply with the terms and conditions of the written agreement during the period of affordability, which includes when the homeowner does not occupy the unit as their principal residence, when the home is voluntarily or involuntarily sold or a transaction changing ownership has occurred without notice and the recapture provisions were not enforced, or when the housing unit is not rented to qualified LMI households. In the event of noncompliance, the beneficiary is subject to repayment of all CDBG assistance invested in the housing unit. This is based on the amount of direct subsidy invested in the property (direct subsidy includes any program income or direct CDBG funds invested). The repayment amount is not subject to any reductions that might be otherwise apply under the recapture provisions listed in this document.

### Required Recapture Provisions

During the period of affordability, Commerce must be notified of a voluntary or involuntary sale or transaction changing ownership, and the applicable recapture provisions must be carried out. Recapture provisions must ensure that the entity recoups all or a portion of the CDBG assistance to the beneficiary when a voluntary or involuntary sale or transaction changing ownership occurs during the period of affordability (see Period of Affordability Table). The CDBG investment subject to recapture is based on the amount of CDBG assistance that enabled the beneficiary to buy the dwelling unit. The CDBG funds subject to recapture include any direct subsidy and may include down payment assistance, closing costs, the amount reducing the purchase price from fair market value to an affordable price, rehabilitation, new construction, or any other CDBG assistance provided directly to the beneficiary. The recaptured funds must be used to carry out CDBG-eligible activities.

The recapture provisions must be established and enforced through a written agreement as well as deed restrictions, trust indenture, covenants running with the land, mortgages, or other similar enforcement mechanisms. Commerce or any entity will specify which enforcement mechanism it will use. In addition, a written agreement with each beneficiary will be executed and will specify the affordability requirements to enable Commerce to retain the authority to enforce them.

## **Low- to Moderate-Income Household Residency**

The beneficiary must reside in the home as his/her principal residence for the duration of the period of affordability (see Period of Affordability Table) or the residence must be rented to qualified LMI households for the duration of the period of affordability.

## **Triggering Recapture**

If an owner voluntarily or involuntarily transfers his or her property (e.g., through sale or foreclosure) during the period of affordability, or if the unit is not rented to a qualified LMI household the recapture provisions will go into effect.

## **Direct CDBG Subsidy/Amount Subject to Recapture**

The amount subject to recapture is the direct CDBG subsidy. The direct CDBG subsidy is the total amount of CDBG assistance. This amount includes assistance for: down payment assistance, closing costs, the amount reducing the purchase price from fair market value to an affordable price, rehabilitation or new construction costs, or any other CDBG assistance provided directly to the beneficiary. Commerce has adopted the following provisions for recapture are outlined in the CDBG regulations and in CPD notice 12-003:

- Recapture of the entire direct CDBG subsidy; and
- Owner investment is returned first.

Commerce may also adopt recapture provisions that differ from the model provisions in the CDBG regulations. The recapture provision adopted (whether one of the models or an alternate approach) requires an amendment to the Annual Action Plan and with specific HUD approval.

Commerce or an entity can never recapture more than the amount of available net proceeds upon voluntary or involuntary sale or transaction changing ownership, unless noncompliance has occurred. Net proceeds is defined as the sale price of the home minus the superior loan repayment (not including CDBG loans) and any closing costs. If the amount to be recaptured is more than the net proceeds (i.e., foreclosure or declining housing markets) the seller would be required to repay the balance of the net proceeds, which could be less than the original CDBG direct subsidy.

## **Recapture of the Entire Direct CDBG Subsidy**

The following are the conditions under which Commerce will enforce the use of recapture of the Entire Direct CDBG Subsidy as a recapture provision. In this recapture provision, Commerce or the entity recaptures the entire amount of CDBG subsidy provided to the beneficiary before the household receives proceeds from the sale of the property. This recapture is limited to the net proceeds available from the voluntary or involuntary sale or transaction changing ownership during the period of affordability or the total amount of CDBG assistance in the event the property is not rented by qualified LMI households.

This recapture provision will be enforced upon a triggering event that occurs during the period of affordability years zero through 9, as applicable to the Period of Affordability Table. Enforcement of the recapture provision that occurs during the period of affordability year 10 through year 15 (see Period of Affordability Table) will follow the recapture provision: Owner Investment is Returned First. If the period of affordability is less than 10 years, recapture of the entire direct CDBG subsidy will only be used, no other recapture provision will be permitted. This will be enforced through the written agreement with the household.

As an example, if the assisted unit received \$12,000 in CDBG assistance and the unit is voluntarily or involuntarily sold

or a transaction changing ownership has occurred during year 4, the entire direct CDBG subsidy (\$12,000) would need to be repaid according to the net proceeds calculation. If the assisted unit received \$42,000 in CDBG assistance and the unit is voluntarily or involuntarily sold or a transaction changing ownership has occurred during year 11, the Entire Direct Subsidy recapture provision would not be triggered, rather the Owner Investment Returned First recapture provision would be triggered.

**Owner Investment Returned First**

The following are the conditions under which Commerce will enforce the use of Owner Investment Returned First as a recapture provision. In this recapture provision, Commerce or the entity recaptures all or a portion of the CDBG subsidy provided to the beneficiary, but allows the beneficiary to recover their entire investment (down payment and capital improvements made by the owner since the purchase) before recapturing the CDBG investment. This recapture includes the net proceeds available from the voluntary or involuntary sale or transaction changing ownership, or the total amount of CDBG assistance in the event the property is not rented by qualified LMI households, during the period of affordability. However, if net proceeds are insufficient, the homebuyer may not receive their entire investment back, and Commerce or the entity may not be able to recapture the full amount due from the net proceeds available.

Eligible capital improvements include permanent property improvements that improve or enhance the basic livability or utility of the property, but are not normal or recurring maintenance items. The value of capital improvements will be based on the actual costs of the improvements as documented by the homeowner’s receipts.

This recapture provision will be enforced in the event of a voluntary or involuntary sale or transaction changing ownership, or the total amount of CDBG assistance in the event the property is not rented by qualified LMI households, that occurs during the period of affordability years 10 through the minimum years (see Period of Affordability Table) to include owner investment returned first. This will be enforced through the written agreement with the household.

As an example, if the assisted unit received \$40,000 and the unit is voluntarily or involuntarily sold or a transaction changing ownership has occurred during year 10, the homebuyer’s investment would be calculated based on the documented capital improvements made during the period of affordability and any investment made during the original sale. This amount would be deducted from the amount to be repaid according to the net proceeds calculation that would be paid to homeowner and Commerce or the entity.

**Period of Affordability**

The recapture provisions are in effect for a period of affordability. This period is based on the amount of direct CDBG subsidy to the buyer, as follows:

CDBG Assistance to Beneficiary	Period of Affordability
Less than \$15,000	5 years
\$15,000 - \$40,000	10 years
More than \$40,000	15 years
Newly constructed rental	20 years