# HOME PROGRAM RESALE AND RECAPTURE POLICY

## First-Time Homebuyer Program

### PURPOSE AND GOALS

To meet the needs of low-income Californians, the State of California's Department of Housing and Community Development ("Department") as a Participating Jurisdiction ("PJ") has authorized State Recipients, Subrecipients (hereinafter known as the "grantee" or "Grantee"), Community Housing Development Organizations ("CHDOs"), and Developers to operate local HOME-funded First-Time Homebuyer ("FTHB") programs and/or develop FTHB projects as eligible HOME activities for eligible areas in accordance with the regulations from the U.S. Department of Housing and Urban Development ("HUD").

These programs and projects are designed to assist grantees with meeting housing goals, including:

- Providing low-income households with the opportunity to become homeowners;
- Increasing affordable housing opportunities in California; and
- Facilitating increased housing options and availability within the state.

Eligible Applicants and Availability of programs and projects will be determined through the Department through the regular Notice of Funding Availability ("NOFA") process.

### OVERVIEW

To achieve these goals and ensure that HOME program funds are expended in compliance with the HOME program's statutory and regulatory requirements, the Department's FTHB program consists of several interrelated policies and documents that, together, make up the HOME FTHB Program. These include:

- State of California HOME Program First-Time Homebuyer Policy;
- HOME FTHB Resale and Recapture Policy;
- Fair Housing Policy - HOME Affirmative Marketing and Prohibited Discrimination;
- Section 3 Policy (where it is applicable to development projects);
- State of California Loan Underwriting Guidelines;
- The State of California HOME Standard Agreement (between the Department and subrecipients/CHDOs/developers);
- The HOME written Agreement (between Lender and Mortgagee);
- State of California HOME Monitoring Policy and Procedures; and
- State of California Loan Servicing Procedures.

This Resale and Recapture Policy is for the use of Grantees and program staff tasked with HOME oversight and with monitoring of FTHB loan portfolios, whether for FTHB loan programs or projects. This Policy sets out requirements in the following areas:

1. Compliance with 24 Code of Federal Regulations (hereinafter “CFR”) Part 92 and, specifically, 24 CFR Section 92.254 and 24 CFR Section 92.504;
2. Compliance with Period of Affordability Requirements;
3. Compliance with required Recapture provisions for FTHB direct assistance programs;
4. Outlining allowable options for Grantees in program design and eligible recapture options for net proceeds; and
5. Outlining requirements for written agreements, loan documents, local program design and implementation, as well as for loan portfolio management.

## BACKGROUND

HOME is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act (HOME statute), as amended. The federal HOME regulations found in 24 CFR Part 92 dictate how the funds are to be used and the federal policies that must be met to utilize the funding as established in the HOME statute. The State of California receives a formula grant from HUD, to be used to expand the supply of decent, safe, sanitary, and affordable housing available to low-income and very low-income California residents. Eligible HOME-funded activities include the acquisition, construction, or rehabilitation of rental or homeownership housing, homebuyer assistance, and tenant-based rental assistance.

Programs to assist homebuyers may include acquisition, acquisition with rehabilitation of existing housing, or new construction of single-family for-sale housing to individual low-income homebuyers. HOME funds can be provided to the applicant and passed on to the homebuyer as deferred payment loans in a First-Time Homebuyer (FTHB) program/project. Funds can also be used in grantee FTHB programs as direct deferred payment loans to reduce the amount of cash contribution an eligible household needs to acquire an eligible property within the grantee’s jurisdiction.

Section 215 of the HOME statute (carried over in the federal HOME regulations) establishes specific requirements that all HOME-assisted homebuyer housing must meet to qualify as a HOME affordable housing activity. Specifically, all HOME-assisted homebuyer housing must meet the following:

- Be single-family, modest housing, as defined at 24 CFR Section 92.254(a)(2). Have an initial purchase price that does not exceed 95 percent of the median purchase price for the area;
- Be acquired by and the principal residence of an owner whose family qualifies as low-income at the time of purchase;
- Meet affordability requirements for a specific period as determined by the amount of assistance provided; 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 additional HOME-eligible families. The federal regulations require that the Department, when undertaking HOME-assisted homebuyer activities, including any projects funded with HOME Program Income (PI), to establish its own resale and recapture provisions policy, subject to review by the Department of Housing and Urban Development (HUD) prior to engaging in FTHB activities.

Specifically, 24 CFR Sections 92.254 and 92.504(c)(1)(x) require that these provisions be set out in a written agreement between the program and the homebuyer (with the terms of the agreement being enforced via recorded deed restrictions and/or covenants running with the land). In conformance with the law, resale or recapture provisions are automatically triggered by any transfer of title, either voluntary or involuntary, during the established HOME Period of Affordability. The written resale and/or recapture provisions that the Department 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 State will enforce the provisions. HUD reviews and approves the provisions as part of the consolidated plan's Annual Action Plan process.

In accordance with these requirements, this document contains the State of California's HOME Program Resale and Recapture Policies for First-Time Homebuyer Programs.

## DEFINITIONS

**Appreciation**: means the financial gain on resale attributable solely to the home's increase in value over time, and not attributable to government assistance. Total actual appreciation may be less where a FTHB program allows a reduction based on an objective standard due to capital improvements made by the homeowner prior to sale.

**CHDO:** In accordance with HOME regulations at 24 CFR Section 92.2, a Community Housing Development Organization (CHDO) is a private nonprofit, community-based organization organized under State or local laws that is not under the direction or control by individuals or entities seeking to derive profit or gain, is not a governmental entity or controlled by a governmental entity and where a sponsoring for-profit or governmental entity cannot appoint more than one-third of the membership of the CHDO's governing body and where those so appointed cannot appoint the remaining two-thirds of the board members. The officers and employees of the sponsoring entity may not be officers or employees of the CHDO. The CHDO must be free to contract for goods and services from vendors of its own choosing. The CHDO must have among its purposes the "provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in is charter, articles of incorporation, resolutions, or by-laws". For a full definition of requirements, see 24 CFR Sections 92.2(1) – (10).

**Lender**: for purposes of this policy, Lender refers to either the State as the Participating Jurisdiction (PJ) when it makes a direct loan of HOME funds under this program, or to a State recipient of the PJ who is receiving an award of HOME funds to operate a First-Time Homebuyer program or project.

**Net Proceeds**: are defined as the sales price minus superior loan repayment (other than HOME funds) and any closing costs. Net proceed calculations are used to determine total amount of funds available for recapture of HOME funds as a result of sale.

**Program Income:** In accordance with 24 CFR Section 92.2, Program Income means gross income received by the participating jurisdiction, State recipient, or a subrecipient directly generated from the use of HOME funds or matching contributions. When Program Income is generated by housing that is only partially assisted with HOME funds or matching funds, the income shall be prorated to reflect the percentage of HOME funds used. For purposes of this Resale and Recapture Policy, Program Income includes, but is not limited to, the following:

1. Proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated, or constructed with HOME funds or matching contributions;
2. Proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated, or constructed with HOME funds or matching contributions;
3. Payments of principal and interest on loans made using HOME funds or matching contributions;
4. Proceeds from the sale of loans made with HOME funds or matching contributions;
5. Interest earned on Program Income pending its disposition; and
6. Any other interest or return on the investment of HOME funds or matching contributions permitted under 24 CFR Section 92.205(b).

**PJ**: means Participating Jurisdiction (PJ) that has been so designated by HUD in accordance with 24 CFR Section 92.105. For purposes of this policy, the PJ is the State of California as the PJ for areas and jurisdictions not under another PJ.

**Project**: means a site or sites together with any building (including a manufactured housing unit) or buildings on the site that are to be assisted with HOME funds as a single undertaking under this program. The project includes all the activities associated with the site and buildings.

**Recapture**: Recaptured funds are HOME funds which are recouped by the PJ or subrecipient when a housing unit assisted by the HOME program does not continue to be the principal place of residence of the assisted homebuyer for the full Period of Affordability as required by federal statute.

**Resale**: means that a HOME-assisted property is sold to another low-income homebuyer who will use the property as their principal residence.

**State recipient:** In accordance with 24 CFR Section 92.201(b)(2), a State recipient is a unit of general local government designated by a State to receive HOME funds from a State (in this case, the State of California Department of Housing and Community Development as the PJ).

**Subrecipient**: means a public agency or nonprofit organization selected by the PJ to administer all or some of the PJ's HOME programs. For purposes of this policy, it is to provide down payment assistance or to produce affordable housing.

## HOME First-Time Homebuyer Resale and Recapture Policy

### A. Resale Provisions

At this time and until further notice, resale provisions are not being utilized in State HOME FTHB direct-assistance activities. The State reserves the right to reconsider the use of resale provisions in the future during an overall program update and as a product of an inclusive planning process.

The State has chosen to use the recapture option in lieu of the resale for the following reasons:

1) the ability for first-time homebuyers to create wealth over time; and

2) for ease of administration for both the State and the State's grantees to meet affordability requirements for a specific period as determined by the amount of assistance provided.

To achieve community development goals, this Policy allows grantees to choose among a variety of Recapture options, as outlined below, to best meet the needs of their community.

### B. Recapture Provisions (24 CFR 92.254[a][5][ii])

1. **Period of Affordability under Recapture Provisions (24 CFR 92.254[a][4])**

   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 Period of Affordability:

| 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 |

2. **<u>HOME Recapture Provisions</u>**

HOME Recapture Provisions permit the original homebuyer to sell the property to any willing buyer during the Period of Affordability and the Lender (either the State, or the subrecipient), can recapture all or a portion of the HOME assistance provided to the original homebuyer. There are two key concepts in the recapture requirements that must be understood to determine the full amount of HOME assistance subject to recapture and the correct Period of Affordability.

These concepts are:

a) *direct subsidy to the homebuyer,* and

b) *net proceeds*

In compliance with federal HOME requirements, the State's 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.

***<u>1) Direct HOME Subsidy</u>*** is the amount of HOME assistance, *including any Program Income*, that enabled the homebuyer to buy the home. The direct subsidy includes the down payment, closing costs, interest subsidies, or other HOME assistance provided directly to the homebuyer. In addition, direct subsidy includes any assistance that reduces 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 directly attributable to the HOME subsidy.

***<u>2) Net proceeds</u>*** are defined as the sales price *minus* superior loan repayment (other than HOME funds) and any closing costs. Under no circumstances can the Lender recapture more than is available from the net proceeds of the sale.

***<u>3) Long-Term Affordability:</u>*** 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 State (or State grantee) recovers, from available net proceeds, all or a portion of the HOME assistance to the homebuyer.

***NOTE:*** In accordance with CPD Notice 12-03, recapture provisions cannot be used when a project receives only a development subsidy and is sold at fair market value, without providing any HOME assistance to the homebuyer. In this scenario, no additional funds would be provided by the State, resulting in no direct HOME subsidy to recapture from the homebuyer. Instead, resale provisions must be used.

Currently, the State does not provide HOME funds to homebuyer projects as development subsidies only; therefore, the need to use resale provisions is not applicable. If the State were to provide future HOME funds as development subsidies, it would amend this policy to include resale provisions in cases where a project would receive only a development subsidy and where the project is sold at fair market value.

**3. <u>Acceptable Recapture Models for the State of California's HOME Program</u>**

As outlined below, the State has adopted the following allowable recapture variations of the HOME final rule for grantees to utilize as described below. To conform to the State's program requirements, each grantee must incorporate their preferred variation within their approved program guidelines. The options presented address how the grantee, in conformance with HOME requirements, may share any appreciation in the value of HOME-assisted housing with the homebuyer, including:

a. Lender recaptures only the HOME direct subsidy provided at the time of purchase plus any interest due according to the terms of the HOME Promissory Note. (Recapture of entire direct subsidy described in "1)" below);
b. Lender allows the homebuyer to recapture their cash contributions at the time of purchase prior to the Lender recapturing the HOME direct subsidy (Owner investment returned first described in "2)" below");
c. Lender shares appreciation with the homebuyer (Shared net proceeds) described in "3)" below.

1) <u>Recaptures Entire Direct HOME Subsidy Option</u>
Lender recaptures the entire amount of the direct HOME subsidy provided to the homebuyer, plus any interest due according to the terms of the HOME Promissory Note, before the homebuyer

receives a return. The recapture amount is limited to the net proceeds available from the sale.

In cases where there is appreciation, (see definition of Appreciation), the homebuyer would retain any net proceeds in excess of the direct HOME assistance plus interest due recaptured. See Example below:

> **Example:** A homebuyer receives $10,000 of HOME down payment 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 grantee or state would recapture, assuming that there are sufficient net proceeds, the entire $10,000 direct HOME subsidy plus any interest due according to the terms of the HOME Promissory Note. The homebuyer would receive any net proceeds in excess of that amount.

In some cases, such as in declining housing markets, net proceeds available at the time of sale may be insufficient to recapture the entire direct HOME subsidy plus interest due provided to the homebuyer. Since the HOME Final Rule limits recapture to available net proceeds, the Lender, can recapture only what is available from net proceeds. In a scenario where recapture provisions state that it will recapture the entire direct HOME subsidy plus interest 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 available for recapture from net proceeds back to HUD.

2) <u>Owner Initial Investment Returned First</u>
In this approach, the homebuyer recovers their entire down payment before recapture is calculated. Once the net proceeds from the sale are determined the homeowner's initial investment is then deducted from the remaining net proceeds available for recapture. The entire HOME subsidy plus interest is recaptured from the net proceeds. The homeowner retains the remaining net proceeds.

Where net proceeds are insufficient to repay all or any of the homeowner's initial investment, the homebuyer will not receive the full amount of their initial investment. They will receive only what net proceeds are available. The Lender may not be able to recapture the full amount due under the recapture agreements from the net proceeds available. In such circumstances, the PJ (or the subrecipient) is not responsible for repaying to the account that provided original assistance the difference between the amount of direct HOME subsidy due and the recaptured amount available from net proceeds.

**Example:** 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 able to recapture, from the remaining net proceeds, only $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.

3) <u>Shared Net Proceeds</u>
In this option, the HOME Final Rule states that if net proceeds are not sufficient to recapture the entire HOME investment or a reduced amount as described above or enable the homebuyer to recover the amount of the down payment and **any** investment in the form of capital improvements made by the homebuyer since purchase, the Lender may share the net proceeds. Homebuyer must have documented evidence of the costs of any capital improvements made in order to include those costs in the shared net proceeds calculation.

To calculate the amount of net proceeds (or shared appreciation) to be returned to the Lender:

- Divide the direct HOME subsidy by the sum of the direct HOME subsidy and the homebuyer's investment; without rounding the result; and

- Multiply that result by the net proceeds, to calculate the amount of HOME investment to return to the Lender.

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, without out rounding the result; and
- Multiply that result by the net proceeds, to calculate the amount of homebuyer investment to return to the homebuyer.

> EXAMPLE: A homebuyer received $10,000 in HOME down payment assistance and provided $2,000 of her own funds for the down payment. She also invested another $3,000 on capital improvements to the property. She is selling the home after two years. The Lender , has structured its recapture policies to share the net proceeds between the HOME-assisted homebuyer and Lender. 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 Lender 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.
>
> $$\frac{\$5{,}000}{(\$10{,}000 + \$5{,}000)} \times \$5{,}000 = \$1{,}667$$

## 4. <u>Imposing Recapture Provisions</u>

a. <u>Requirements and Monitoring</u>

The PJ is responsible for ensuring that homebuyers maintain the housing as their principal residence for the duration of the applicable Period of Affordability. The PJ requires that the State recipient/subrecipient, as the Lender, perform annual loan servicing on its portfolio and the PJ monitors for compliance.

If the home is sold during the Period of Affordability, the PJ must be notified of the sale. The Lender must notify the PJ to ensure that the applicable recapture provisions are employed.

To ensure HOME-assisted homebuyers, or HOME-assisted projects, continue to qualify as eligible affordable housing for the duration of the Period of Affordability, the PJ and subrecipient must have approved FTHB program guidelines, including procedures for monitoring its FTHB loan portfolio. The PJ, as the responsible entity, monitors State recipients/subrecipients for compliance.

b. Written Agreements

Regardless of what recapture variation option is used, a written HOME agreement, in addition to the HOME Promissory Note, recorded Deed of Trust, and any Rider, must be executed that accurately reflects the current 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 home (i.e., period or affordability, principal residency requirement, terms, and conditions of the recapture requirement), and helps the Lender (or the Department) enforce the requirements. Lenders are required to utilize the Department’s approved HOME FTHB written agreement template to ensure the agreement meets the regulatory requirements.

1) The recapture and resale parameters are embedded in the State’s Annual Action Plan. In the future, if/when the State revises the recapture or resale provisions in its Annual Action Plan, the State must ensure that all FTHB approved written agreement templates are modified to reflect any changes. The executed written agreements create legal obligations for the State.

***NOTE 1:*** HOME FTHB activities entered into before changes to the Annual Action Plan will be governed by the terms of the previously executed agreements.

***NOTE 2:*** The terms and conditions in the executed written agreement and recorded documents govern the deal. Therefore, if the State modifies its recapture or resale provisions in the Annual Action Plan but does not make similar changes to its written agreement, the resale or recapture provisions in the executed written agreement would prevail.

***NOTE 3:*** The HOME written agreement must be a separate legal document from any loan instrument and must, at a minimum, comply with the requirements at 24 CFR Section 92.504(c)(5) of the HOME Final Rule.

This includes compliance with Section 92.504(c)(1), which requires provisions in the written agreement between the State and the subrecipient to comply with requirements established by the State; and with Section 92.504(c)(xi), which requires that before providing any funds, a subrecipient must have an executed written agreement with the entity that meets the eligibility requirement of the program, whether that is a for-profit owner, developer, nonprofit owner/developer, sponsor, homebuyer, or contractor who will be providing services to the subrecipient.

2) If the State provides HOME funds to a CHDO or Developer to develop and sell affordable housing, the State 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 State is responsible for ensuring that it can enforce the written agreement.

c. <u>Enforcement Mechanism</u>

The written agreement between the homebuyer and the State recipient/subrecipient (Lender), and/or the Department, as well as mortgage and lien documents which are typically used to impose the recapture requirements in HOME-assisted homebuyer projects under recapture provisions, constitutes the HOME program's enforcement mechanisms. The purpose of these enforcement mechanisms is to ensure that the grantee, or the State, recaptures the direct subsidy to the HOME-assisted homebuyer if the HOME-assisted property is sold, transferred, or used for an ineligible purpose.

d. <u>Non-Compliance</u>

Failure to comply with the State's recapture requirements occurs when:

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 recapture provisions were not enforced.

If noncompliance occurs, the PJ or subrecipient, 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 or subrecipient's program design and use of funds (depending on whether the Lender is the PJ or the subrecipient).

In such cases of noncompliance under the recapture provisions, the Lender (State or Grantee) must repay to the HOME Investment Trust Fund in accordance with 24 CFR Section 92.503(b), any *outstanding HOME funds* invested in the housing. In such circumstances, the subrecipient would repay the State as the PJ, and the PJ would repay HUD. The State, as the PJ, is responsible to HUD for repayment of any HOME funds that would be due.

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 down payment 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.

EXAMPLE: A grantee provided a $20,000 HOME development subsidy as a grant to the developer, and the homebuyer received $5,000 in down payment assistance as a deferred loan. If the homebuyer rents the property in year 3, they would be in noncompliance with the HOME principal residency requirement. The State, or grantee, 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.

***Note 1:*** Noncompliance with principal residency requirements by a homebuyer under a recapture provision is <u>not</u> a transfer. Consequently, the amount the Lender must repay is not subject to prorated or other reductions included in its recapture provisions.

***Note 2:*** The Lender must repay the HOME investment in accordance with 24 CFR Section 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 State as the PJ, and for its subrecipients, to have enforcement mechanisms in their written agreements and in their recordable instruments with homebuyers to protect their investment and minimize risk in HOME-assisted homebuyer projects in the event of noncompliance by the homebuyer.

## 5. 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 State or grantee may use purchase options, rights of first refusal, or other preemptive rights to purchase the housing before foreclosure to preserve affordability. However,, in accordance with CPD Notice, issued January 2012 Section VII(d), the affordability restrictions must be revived according to the original terms if, during the original Period of Affordability, 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 24 CFR Section 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.

a) **Resale:** At this time, the resale option is not permitted with State HOME FTHB programs.

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

## 6. Refinancing

The PJ as a direct lender, or a subrecipient operating a FTHB program, must have a State approved written policy included in their program guidelines regarding refinancing of senior debt when asked to subordinate its interest. A written refinancing policy should specify the conditions under which the grantee agrees to subordinate to new debt to protect its interests and the interests of the homebuyer, as well as how such requests will be processed.

Approved refinancing of senior debt will be limited by the State to circumstances in which the original homebuyer is securing more favorable terms that reduce monthly housing costs, or if sufficient equity exists, to take cash out for only items such as for immediate repairs to the property to correct identified health and safety violations.

Examples of circumstances where the homeowner would benefit from a refinance transaction:

a. Where the original homebuyer is securing better terms to reduce monthly housing costs, without cashing out equity in the property;

b. Where the original homebuyer has sufficient equity to take cash out for pre-approved and necessary property repairs to correct health and safety violations when other forms of funding do not exist.

c. In (a) and (b) cited above, where the original note has been paid off and the FTHB note has moved to first position, the State will subordinate its Note to a new mortgage in first position where the homebuyer is using the proceeds for pre-approved property repairs and rehabilitation.

7. **Investment of Additional HOME Funds**

The HOME Final Rule at 24 CFR Section 92.254(a)(9) provides the State, or the grantee, with the flexibility to invest additional HOME funds in homebuyer projects to preserve affordability. As noted above, when faced with foreclosure, the State at its sole discretion on a case-by-case basis, 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.

**Rehabilitation:** The State, or the grantee, may also use HOME funds to rehabilitate any housing acquired through foreclosure. If the State, or the grantee, charges such costs as eligible project costs in accordance with 24 CFR Section 92.206, the total amount of the original HOME investment, plus any additional HOME investment, cannot exceed the Per-Unit Subsidy Limit referenced in 24 CFR Section 92.250.

**Acquisition, rehabilitation and holding costs:** The State, or grantee, also has the option of charging acquisition, rehabilitation, and holding costs as a reasonable HOME administrative cost in accordance with 24 CFR Section 92.207 of the HOME Final rule. If the State, or grantee, 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 grantee can reimburse its administrative account, in whole or in part, once the housing is sold to a new eligible homebuyer.

**Assistance to another eligible homebuyer post-Acquisition of foreclosed property:** Additional HOME funds may also be used to provide assistance to another eligible homebuyer following either the State, or grantee's, *acquisition of a foreclosed HOME unit during the Period of*

*Affordability*. If the State, or grantee, provides HOME assistance to another eligible homebuyer, the additional HOME investment must be treated as an amendment to the original project.

**Extension of Period of Affordability:** 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 (10) 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.

The State or the grantee must have written policies and procedures to invest additional HOME funds in a previously-assisted project. These can be a separate policy or incorporated into the grantee's guidelines.

**For Homeownership Projects:**

<u>Acquisition and Holding Costs</u>: In the event of potential default in a project where the State is the direct Lender, the State as PJ reserves the right to determine on a case-by-case basis whether to cure default and acquire the property. In such cases, the State will evaluate the public purpose and availability of funds in reaching its determination.

In accordance with 24 CFR 92.254(a)(9), the State, where sufficient uncommitted HOME funds are available and where it is in concert with federal HOME regulations, may invest additional HOME funds in a previously-assisted project . The State, in its sole discretion, may also determine, where HOME funds cannot be used or are not available, or to look at other eligible funds for such purposes where it is in the public good to do so to preserve affordability. See below for additional information under Extension of Period of Affordability.

<u>Rehabilitation</u>: Where the State, as Lender, cures default, the State/PJ, in accordance with federal regulations, will use HOME administrative funds for holding costs. Where rehabilitation is needed to keep the property viable and affordable, the State will use HOME funds as eligible and available to effect required rehabilitation in accordance with HOME program standards. The State, in its sole discretion, reserves the right to use other funds it may have for rehabilitation where it is in the best interest of the State to carry out the public purpose of preserving affordability and viability of the product.

<u>Assistance to Another Qualified Buyer Post Acquisition</u>: The State will use additional HOME funds, as allowed by the regulation, to provide assistance to another eligible homebuyer following the State's acquisition *of a foreclosed unit during the Period of Affordability*. In the case where the State provides HOME assistance to another eligible homebuyer, the

additional HOME investment will be treated as an amendment to the original project. In all cases, whether or not the investment results in an extension of Period of Affordability (see immediately below), all such proposed additional HOME investment would be subject to the applicable HOME requirement NOT to exceed the applicable maximum per unit subsidy limits.

Extension of Period of Affordability: The State recognizes that, in such cases, the State shall extend the Period of Affordability where the amount of additional subsidy changes the Period of Affordability in accordance with the HOME requirements (see Section B: **Period of Affordability under Recapture Provisions (24 CFR Section 92.254[a][4]).**)

## ONGOING MONITORING

For HOME-assisted homebuyer projects under recapture agreements, the Lender (either the State for PJ CHDO Development Program, or the subrecipient), must perform annual ongoing monitoring of the principal residency requirement during the Period of Affordability. Ultimately, it is the State's responsibility to ensure that the HOME-assisted housing qualifies as affordable housing under 24 CFR Section 92.254 during the Period of Affordability. The lender must annually monitor its homebuyer loan portfolio for compliance with the following requirements regardless of whether or not the HOME assistance loan has been repaid: 1) The home is the current residence of the original borrower; and 2) Property taxes and Insurance premiums are paid and current. For programs operated directly by the State, please refer to State of California Loan Servicing Procedures. For subrecipient monitoring, please refer to State of California HOME FTHB Monitoring Policy and Procedures.