

THE HFA INSTITUTE 2021

Resale/Recapture

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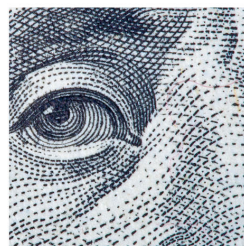
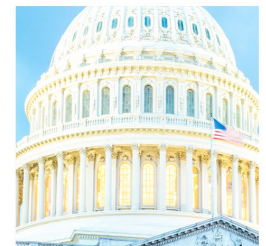
**MRBs and
Other Federal
Homeownership
Programs**
FEBRUARY 1 – 3



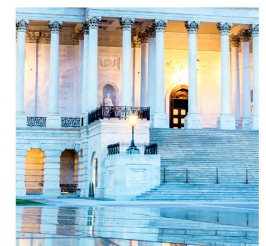
Housing Credit
FEBRUARY 3 – 5



**Section 8 and
Other Federally
Assisted
Multifamily
Housing**
FEBRUARY 8 – 10



**HOME and
Housing Trust
Fund**
FEBRUARY 10 – 12



Topics

- Overview
- Recapture
- Resale
- Choosing the appropriate method(s)

Trainers

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Recapture/Resale

- Each assisted homebuyer housing unit must:
 - Meet affordability requirements for a minimum period of time, and
 - Be subject to resale or recapture requirements in the event of sale
- For each homebuyer activity, PJ must select Resale OR Recapture (92.254(a)(5)):
 - Select option before assistance is provided
- Guidance: Notice CPD-12-003 (HUD expects to update)
 - www.hudexchange.info/resource/2690/notice-cpd-12-003-guidance-resale-recapture-home/



Key Features: Recapture v. Resale

HOME Requirement	Recapture	Resale
Next buyer	No restrictions (unless LI buyer assumes or receives new HOME assistance)	Must sell to another LI buyer (during POA)
Resale price	Price not restricted <u>but</u> Seller must repay some or all of HOME assistance out of net proceeds	Restricted price: <ul style="list-style-type: none"> • Affordable to reasonable range of LI buyers <u>and</u> • Fair return to seller
Post-sale restrictions	None (unless LI buyer assumes or receives new HOME assistance)	Buyer subject to principal residency & resale for remaining POA



Administrative Requirements

- PJ must identify its resale and/or recapture provisions in its Consolidated/Annual Plan
- HUD must approve the resale and/or recapture provisions
- Resale or recapture restrictions are imposed thru:
 - Written agreement with the developer/subrecipient (if appl.)
 - Written agreement with the homebuyer
 - Mortgage/trust deed (recapture), or deed restrictions/covenants running with the land (resale)
- Resale/recapture policy incorporated in:
 - Program policies & procedures
 - Housing counseling & training



Recapture



Recapture Basics

- May sell to anyone, but some or all of HOME is subject to recapture from net proceeds of sale
- Recapture options in Rule (92.254(a)(5)(ii)):
 - Recapture full amount of direct buyer subsidy
 - Forgive direct HOME subsidy pro-rata over the affordability period
 - Proportionately share net proceeds
 - Allow buyer to recover initial investment first
 - *Other approved by HUD (ConPlan/Annual Plan)*

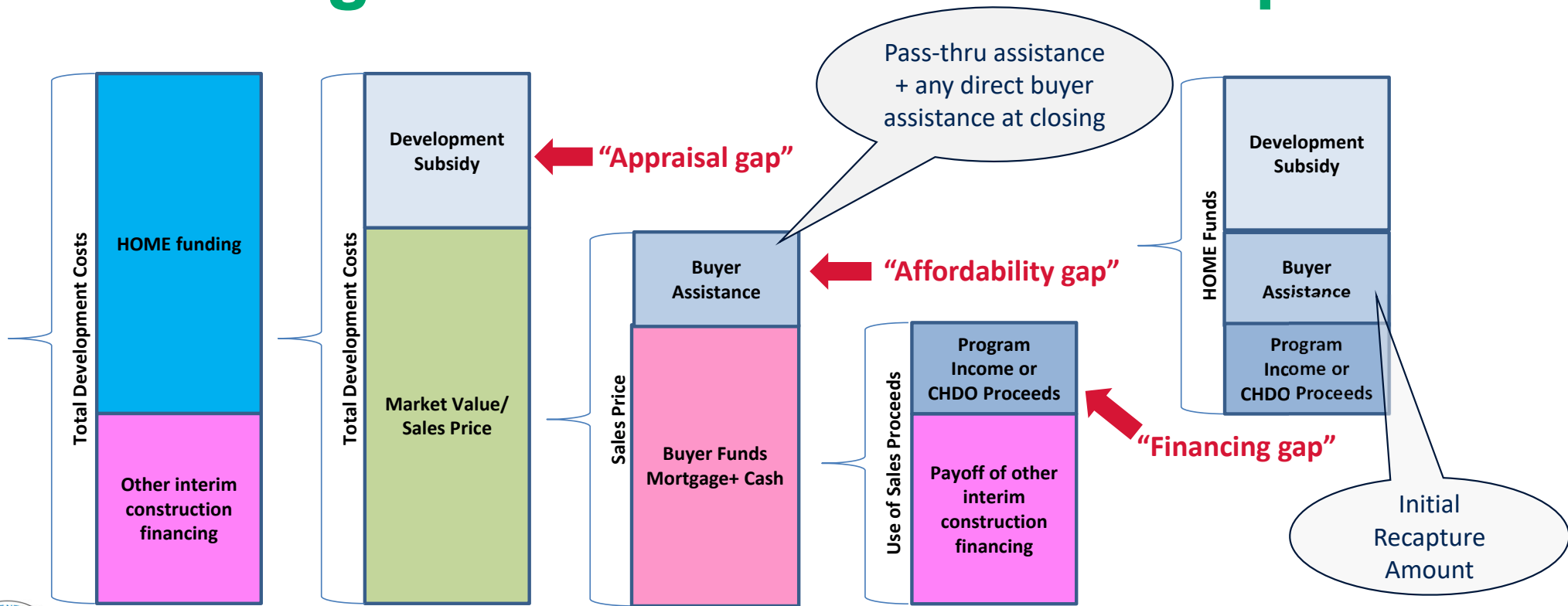


Recapture: “Direct Subsidy”

- Direct subsidy to the buyer: assistance that reduces purchase price below market OR otherwise subsidizes homebuyer, e.g.:
 - Down payment and closing cost assistance
 - Purchase financing (e.g., 2nd mortgage)
 - Assistance to developer passed through to the buyer as part of sales financing (“pass-thru assistance”)
- Affordability period based on direct subsidy
 - Does not include HOME development subsidy (costs that exceeds value) or “appraisal gap”

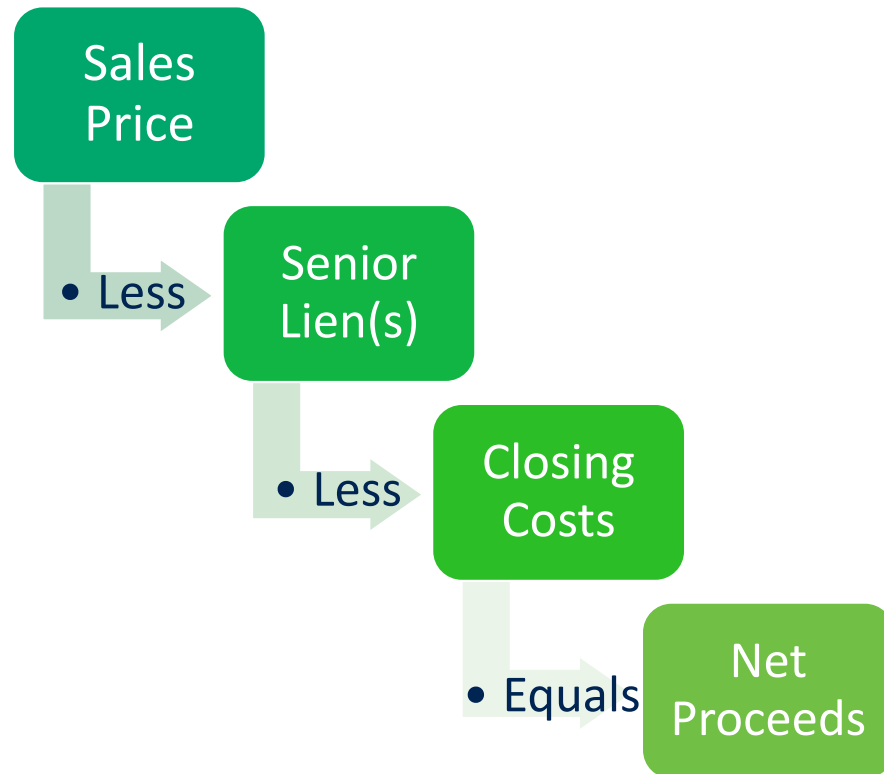


Tracking HOME Assistance: Recapture



Recapture: “Net Proceeds”

- Recapture is capped at what is available out of “net proceeds”



Recapture: Legal Documents

- Must be in written agreement with buyer
 - Agreement must also enforce residency status
- Typically secured by:
 - Promissory note
 - Recorded Lien (mortgage or deed of trust)
- May also be applied via deed restriction



Recapture: Assumption Option

- Under recapture, PJ cannot require initial buyer to sell to Low-Income buyer, but
- PJs are permitted to allow subsequent buyer to assume the HOME assistance if:
 - New buyer is Low-Income
 - No additional HOME assistance is provided
 - Residency & recapture apply for remainder of POA
- PJ may always assist new LI buyer with new funds and new affordability period



Resale



Resale Basics

- When the home is sold (during POA):
 - Buyer must be Low-Income
 - Buyer must occupy house as principal residence
 - Resale price
 - Must be affordable to a reasonable range of low-income buyers
 - Original buyer must receive a “fair return”
 - Remaining resale restrictions apply to new buyer
 - But if additional HOME assistance provided, the period of affordability must be extended



Affordable to Range of LI Buyers

- PJ defines affordability range in resale policy
 - Max is 80% AMI, but should the bottom limit be 50%/60%/70% to 80%? (e.g., “Household @ 60-80% AMI spending \leq 30% of income on PITI”)
 - What HH size relative to unit size?
 - What housing ratio? Lower ratio (e.g. 25-28%) will be more affordable to more buyers, higher ratio (e.g. 30-32%) will provide more return to seller
- Presumption of affordability option?
 - Neighborhood market/demographics show all housing affordable to LI
 - Requires market assessment and HUD approval via Action Plan



Fair Return to Seller

- PJ must define “fair return” in policy
 - Objective methods acceptable to HUD
 - Independent appraisals (at purchase & resale); standard for share of appreciation (see HOMEfires Vol 15 No1: <https://www.hudexchange.info/resource/5963/homefires-vol-15-no-1-appraisal-based-resale-formulas/>)
 - Owner initial investment and capital improvements adjusted by index (refer to CPD-12-003, update expected)
 - Higher return means higher sales price and the more likely the need to subsidize next buyer



Resale Affordability Period

- Affordability period based on total HOME investment; includes both:
 - Total amount of HOME funds provided to developer
 - PLUS**
 - Any direct additional HOME assistance to buyer at time of purchase



Resale Legal Documents

- Must be included in buyer written agreement
 - Must also enforce principal residency
- Must also be recorded via deed restriction, land covenant, or similar restriction
- Depending on program design, PJ may also use note and mortgage/deed of trust



Choosing the Appropriate Resale/Recapture Method(s)



When to Use Resale or Recapture



- Resale can be used for any homebuyer
- Recapture can only be used when:
 - There is a direct subsidy to homebuyer (including pass-thru)
 - If pure grant, then must use resale
- Resale also used for community land trusts

Choosing the Right Policy

- Resale/recapture policy should balance goals:
 - Provide a fair deal to the buyer
 - Achieve long-term LI ownership affordability
 - Protect/recover the public investment
- PJ should consider:

Market Conditions

- Availability of affordable ownership
- Level of assistance needed/provided
- Appropriateness to changing market conditions

Policy Goals

- Degree of control on long-term affordability
- Funds for future activities

Admin Capacity

- Administrative capacity to administer future transfers



Tradeoffs

	Resale	Recapture
Response to market conditions	Strong controls for appreciating markets & limited LI homeownership opportunities	Options for different markets: <ul style="list-style-type: none"> • Full: stable markets • Declining: flat/declining markets • Owner investment returned 1st: flat/declining markets • Shared appreciation: appreciating markets
Administrative burden	Monitor principal residency Transaction involvement: <ul style="list-style-type: none"> • Price approval • Buyer approval 	Monitor principal residency Calculate/collect recapture amount on sale Reutilize recaptured funds
Long-term impact	Preserves affordable units for POA May need additional funding for new buyer	Recapture of all or some funds, but may not cover funding needed for another unit



Questions

- What questions do you have about the resale and recapture requirements and alternatives?
- Is your current resale/recapture policy achieving your policy objectives & does it fit your current market conditions?
- What changes are you considering?



Wrap Up



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