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Previously known as Policy Notice OHCP 09-02

SUBJECT: Affordability Requirements
ISSUED: November 20, 2009
DISTRIBUTED TO: Office of Community Development Award Recipients and their Affiliates

POLICY

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

Affordability Period

The affordability period for CHIP- and NSP-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 CHIP-/NSP-assisted new construction rental project, the affordability period is 20 years, regardless of the amount of subsidy.

Timing

Any time a CHIP or NSP 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 OCD, the funds are considered recaptured and must be returned to OCD.
- If the funds are received by the award recipient after the grant closeout letter is issued by OCD 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 OCD or by the award recipient after the grant closeout letter is issued by OCD 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.

CHIP Grant Timeline/Important Dates

Start Date:	Traditionally, September 1
Work Completion Date:	Traditionally, August 31 of the same year as the Start Date
Final Performance Report Date:	60 days after the Work Completion Date
Close-out Date:	Dependent upon monitoring date and release of monitoring by OCD and could be several years after the Final Performance Report Date
Affordability Period:	Dependent on amount of assistance provided

Example #1

Background

FY 2009 CHIP Grant Awarded to City A
Grant Period: September 1, 2009 – October 31, 2011
Work Completion Date: August 31, 2011
Drawdown Deadline: September 30, 2011
Final Performance Report Due: October 31, 2011

City A receives an FY 2009 CHIP 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 CHIP Grant Awarded to City B
Grant Period: September 1, 2009 - October 31, 2011
Work Completion Date: August 31, 2011
Drawdown Deadline: September 30, 2011
Final Performance Report Due: October 31, 2011

City B receives an FY 2009 CHIP 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 August 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 CHIP Grant Awarded to County C
Grant Period: September 1, 2006 – October 31, 2008
Work Completion Date: August 31, 2008
Drawdown Deadline: September 30, 2008
Final Performance Report Due: October 31, 2008

County C receives an FY 2006 CHIP 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. OCD has not issued the grant closeout letter for County C's FY 2006 CHIP grant. The funds are recaptured funds and County C must return the funds to OCD.

Example #4

Background

FY 2001 CHIP Grant Awarded to City D
Grant Period: September 1, 2001 – October 31, 2003
Work Completion Date: August 31, 2003
Drawdown Deadline: September 30, 2003
Final Performance Report Due: October 31, 2003

City D receives a FY 2001 CHIP 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, OCD issues the City of D's FY 2001 CHIP 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 CHIP Grant Awarded to County E
Grant Period: September 1, 2002 – October 31, 2004
Work Completion Date: August 31, 2004
Drawdown Deadline: September 30, 2004
Final Performance Report Due: October 31, 2004

County E received a FY 2002 CHIP grant and, in November 2002, provided \$20,000 to rental property owner/landlord to rehabilitate his rental property. In July 2005, OCD issued a grant closeout letter for County E's FY 2002 CHIP 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 CHIP Grant Awarded to County F
Grant Period: September 1, 1994 – October 31, 1996
Work Completion Date: August 31, 1996
Drawdown Deadline: September 30, 1996
Final Performance Report Due: October 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.