



Issue Date	April 13, 2010
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Audit Report Number	2010-CH-0002
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TO: Yolanda Chávez, Deputy Assistant Secretary for Grant Programs, DG

FROM:   
Heath Wolfe, Regional Inspector General for Audit, 5AGA

SUBJECT: The Office of Affordable Housing Programs' Oversight of Resale and Recapture Provisions for HOME Investment Partnerships Program-Assisted Homeownership Projects Was Inadequate

## **HIGHLIGHTS**

### **What We Audited and Why**

We audited the U.S. Department of Housing and Urban Development's (HUD) Office of Affordable Housing Programs' (Office) oversight of resale and recapture provisions for HOME Investment Partnerships Program (Program)-assisted homeownership projects (project). The audit was part of the activities in our fiscal year 2009 annual audit plan to contribute to improving HUD's execution of and accountability for its fiscal responsibilities and our strategic plan to help HUD resolve its major management challenges. Our objective was to determine whether HUD's Office had adequate oversight of participating jurisdictions' use of resale and recapture provisions to enforce HUD's affordability requirements for Program-assisted projects.

### **What We Found**

HUD's Office did not ensure that participating jurisdictions complied with HUD's requirements in their use of resale and recapture provisions to enforce HUD's affordability requirements for Program-assisted projects.

Of the 40 projects selected for review, 27 participating jurisdictions did not include appropriate resale and/or recapture provisions in their 29 consolidated

and/or action plans that were in effect at the time the participating jurisdictions set up 32 projects in HUD's Integrated Disbursement and Information System. Further, 18 participating jurisdictions did not ensure that appropriate resale or recapture provisions were implemented for 21 projects. In addition, three participating jurisdictions did not ensure that HUD's interest was sufficiently protected in three projects for which more than \$43,000 in Program funds was used for home-buyer assistance.

## What We Recommend

We recommend that HUD's Deputy Assistant Secretary for Grant Programs require the Office to

- Ensure that the State of New York and Cobb County, GA, Consortium, reimburse their Programs \$30,000 and \$9,947, respectively, for the two projects for which they did not ensure that they met HUD's affordability requirements;
- Ensure that the State of Montana places a deed restriction, land covenant, affidavit, and/or lien on a property to ensure that it would recoup all or a portion of the \$3,139 in Program funds used for a project if the housing does not continue to be the principal residence of the household for the duration of the affordability period or reimburse its Program \$3,139; and
- Implement adequate procedures and controls to address the finding cited in this audit report.

For each recommendation without a management decision, please respond and provide status reports in accordance with HUD Handbook 2000.06, REV-3. Please furnish us copies of any correspondence or directives issued because of the audit.

## Auditee's Response

We provided our discussion draft audit report to HUD's Deputy Assistant Secretary for Grant Programs during the audit. We held an exit conference with HUD's Director of Affordable Housing Programs on March 16, 2010.

We asked the Deputy Assistant Secretary to provide comments on our discussion draft audit report by April 4, 2010. The Deputy Assistant Secretary provided written comments, dated March 31, 2010. The Deputy Assistant Secretary agreed with our finding and recommendations. The complete text of HUD's written comments, along with our evaluation of that response, can be found in appendix B of this report.

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## BACKGROUND AND OBJECTIVE

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**The Program.** Authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, the HOME Investment Partnerships Program (Program) is funded for the purpose of (1) increasing the supply of affordable standard rental housing; (2) improving substandard housing for existing homeowners; (3) assisting new home buyers through acquisition, construction, and rehabilitation of housing; and (4) providing tenant-based rental assistance.

The U.S. Department of Housing and Urban Development (HUD) allocated more than \$1.6 billion in Program funds annually to all of the participating jurisdictions for Program years 2005 through 2009. The following table shows the amount of Program funds HUD awarded the participating jurisdictions for Program years 2005 through 2009.

Program year	Program funds
2005	\$1,789,051,305
2006	1,682,673,690
2007	1,681,516,834
2008	1,633,227,931
2009	1,816,947,050
<b>Total</b>	<b><u>\$8,603,416,810</u></b>

HUD's Office of Affordable Housing Programs (Office) has oversight responsibility for the Program. HUD's Office relied on HUD's Office of Community Planning and Development field offices' (field office) monitoring activities and consolidated and/or action plan reviews to ensure that participating jurisdictions complied with HUD's affordability requirements for Program-assisted homeownership projects (project).

Our objective was to determine whether HUD's Office had adequate oversight of participating jurisdictions' use of resale and recapture provisions to enforce HUD's affordability requirements for Program-assisted projects.

## RESULTS OF AUDIT

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### Finding: HUD's Office Lacked Adequate Controls Over Participating Jurisdictions' Use of Resale and Recapture Provisions

HUD's Office did not ensure that participating jurisdictions complied with HUD's requirements in their use of resale and recapture provisions for Program-assisted projects. Of the 40 projects statistically selected for review, 27 participating jurisdictions did not include appropriate resale and/or recapture provisions in their 29 consolidated and/or action plans that were in effect at the time the participating jurisdictions set up 32 projects in HUD's Integrated Disbursement and Information System (System). Further, 18 participating jurisdictions did not ensure that appropriate resale or recapture provisions were implemented for 21 projects. In addition, three participating jurisdictions did not ensure that HUD's interest was sufficiently protected in three projects for which more than \$43,000 in Program funds was used for home-buyer assistance. These conditions occurred because the Office lacked adequate procedures and controls to ensure that participating jurisdictions appropriately followed HUD's requirements. As a result, HUD lacked assurance that appropriate resale or recapture provisions were imposed for and its interest was sufficiently protected in participating jurisdictions' projects.

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#### **Participating Jurisdictions Did Not Include Appropriate Resale and/or Recapture Provisions in Their Consolidated and/or Action Plans**

HUD's Office did not ensure that participating jurisdictions included appropriate resale and/or recapture provisions in their consolidated and/or action plans. HUD's regulations at 24 CFR (Code of Federal Regulations) 91.220(1)(2)(ii) state that if a participating jurisdiction intends to use Program funds for home buyers, it must state the guidelines for resale or recapture, as required in 24 CFR 92.254, in its action plan. HUD's regulations at 24 CFR 92.254(a)(5) state that to ensure affordability, a participating jurisdiction must impose either resale or recapture provisions that comply with the standards of section 92.254(a)(5) and include those provisions in its consolidated plan.

We statistically selected for review 40 projects, which were administered by 35 different participating jurisdictions, to determine whether the participating jurisdictions included appropriate resale and/or recapture provisions in their consolidated and/or action plans. The projects totaled more than \$1 million and had completion dates in HUD's System from June 30, 2008, through June 30, 2009.

Contrary to HUD's requirements, 27 of the 35 participating jurisdictions selected for review did not include appropriate resale and/or recapture provisions in their 29 consolidated and/or action plans that were in effect at the time the participating jurisdictions set up 32 of the 40 projects in HUD's System. The amount of Program funds used for the 32 projects totaled nearly \$698,000. Further, HUD's field offices reviewed and approved at least 27 of the 29 consolidated and/or action plans, despite the plans' not including appropriate resale and/or recapture provisions. We could not determine whether HUD's field offices reviewed and approved two of the action plans since HUD's field offices could not provide their action plan review checklists for the two action plans.

We included in appendix D of this report specific details on the 27 participating jurisdictions that did not include appropriate resale and/or recapture provisions in their 29 consolidated and/or action plans.

**Participating Jurisdictions Did Not Ensure That Appropriate Resale or Recapture Provisions Were Implemented for Their Projects**

HUD's Office did not ensure that appropriate resale or recapture provisions were implemented for participating jurisdictions' Program-assisted projects. HUD's regulations at 24 CFR 92.254(a)(4) state that Program-assisted housing must meet HUD's affordability requirements. Section 92.254(a)(5) states that to ensure affordability, a participating jurisdiction must impose either resale or recapture provisions that comply with the standards in section 92.254(a)(5).

Two of the forty projects selected for review, which were administered by two participating jurisdictions, were not subject to the implementation of resale or recapture provisions. As a result, we did not include the two participating jurisdictions or projects as part of our review to determine whether the participating jurisdictions ensured that appropriate resale or recapture provisions were implemented for their projects.

Contrary to HUD's requirements, 18 of the 33 participating jurisdictions did not ensure that appropriate resale or recapture provisions were implemented for 21 of the 38 projects reviewed. The amount of Program funds secured by inappropriate resale or recapture provisions for the 21 projects totaled nearly \$318,000.

Based on our statistical sample, we estimate that participating jurisdictions did not ensure that appropriate resale or recapture provisions were implemented for at least 8,825 of the 22,306 projects with a completion date in HUD's System from June 30, 2008, through June 30 2009. Our methodology for this estimate is explained in the Scope and Methodology section of this audit report.

We included in appendix E of this report specific details on the 18 participating jurisdictions that did not ensure that appropriate resale or recapture provisions were implemented for 21 of their projects.

**Participating Jurisdictions Did Not Ensure That HUD's Interest Was Sufficiently Protected in Three Projects**

HUD's Office did not ensure that HUD's interest was sufficiently protected in participating jurisdictions' Program-assisted projects. HUD's regulations at 24 CFR 92.254(a)(5) state that to ensure affordability, a participating jurisdiction must impose either resale or recapture provisions that comply with the standards in section 92.254(a)(5). Section 92.254(a)(5)(ii) states that a participating jurisdiction's recapture provisions must ensure that the participating jurisdiction recoups all or a portion of the Program assistance to the home buyers if the housing does not continue to be the principal residence of the household for the duration of the period of affordability. If Program assistance is only used for development subsidies, the resale option must be used. Chapter 5, part I, of HUD's "Building HOME: A Program Primer" states that a deed restriction, land covenant, affidavit, and/or lien is the legal instrument that can be used to meet the requirements of HUD's recapture restrictions. Recapture provisions may not be used for properties that only receive development subsidies. Part II states that recapture provisions cannot be used when a direct Program subsidy is not provided to the home buyer.

As previously mentioned, 2 of the 40 projects selected for review, which were administered by two participating jurisdictions, were not subject to the implementation of resale or recapture provisions. As a result, we did not include the two participating jurisdictions or projects as part of our review to determine whether HUD's interest was sufficiently protected in participating jurisdictions' Program-assisted projects.

Contrary to HUD's requirements, 3 of the 33 participating jurisdictions did not ensure that HUD's interest was sufficiently protected in 3 of the 38 projects reviewed. The participating jurisdictions' projects did not meet HUD's affordability requirements. The amount of Program funds used for the three projects totaled more than \$43,000.

Home HeadQuarters, Incorporated (Home HeadQuarters), a community housing development organization of the State of New York (State), used \$30,000 in Program funds for a development subsidy for a home under project number 23424. Additional Program funds were not used for the project, and the home buyer did not receive direct Program assistance. However, the State did not ensure that resale restrictions were placed on the property. Home HeadQuarters



inappropriately placed recapture restrictions on the property rather than resale restrictions. Therefore, the State could not ensure that if the home did not continue to be the principal residence of the household for the duration of the period of affordability, the home would later be made available for purchase only to a home buyer whose household qualified as a low-income family and who would use the property as the household's principal residence.

Cobb Housing, Incorporated, a community housing development organization of the Cobb County, GA, Consortium (Consortium), used \$9,947 in Program funds to purchase a property which was eventually sold to a home buyer under project number 2222. Additional Program funds were not used for the project, and the home buyer did not receive direct Program assistance. However, the Consortium did not ensure that resale restrictions were placed on the property. Therefore, the Consortium could not ensure that if the home did not continue to be the principal residence of the household for the duration of the period of affordability, the home would later be made available for purchase only to a home buyer whose household qualified as a low-income family and who would use the property as the household's principal residence.

Northwest Montana Human Resources, Incorporated (Northwest), a community housing development organization of the State of Montana (State), used \$3,139 in Program funds to assist a home buyer in purchasing a home under project number 3515. Northwest placed recapture restrictions on the property that were included in a promissory note between Northwest and the home buyer in the amount of \$3,050. However, the promissory note was not dated. Further, the State did not ensure that a deed restriction, land covenant, affidavit, and/or lien was placed on the property. Therefore, the State did not ensure that it would recover all or a portion of the Program funds if the housing did not continue to be the principal residence of the household for the duration of the affordability period.

Based on our statistical sample, we estimate that participating jurisdictions did not ensure that HUD's interest was sufficiently protected in at least 151 of the 22,306 projects with a completion date in HUD's System from June 30, 2008, through June 30 2009. Our methodology for this estimate is explained in the Scope and Methodology section of this audit report.

### **HUD's Office Lacked Adequate Procedures and Controls**

The weaknesses regarding the participating jurisdictions (1) not including appropriate resale and/or recapture provisions in their consolidated and/or action plans, (2) not ensuring that appropriate resale or recapture provisions were implemented for Program-assisted projects, and (3) not ensuring that HUD's interest was sufficiently protected in projects occurred because HUD's Office



lacked adequate procedures and controls to ensure that participating jurisdictions appropriately followed HUD's requirements.

HUD's Office relied on HUD's field offices' monitoring activities and consolidated and/or action plan reviews to ensure that participating jurisdictions complied with HUD's affordability requirements for projects. The Office did not have a formal process for reviewing the field offices' oversight of participating jurisdictions' resale and recapture provisions. HUD conducted quality management reviews to assess the field offices' management practices. HUD's quality management review process generally did not include an assessment of the field offices' Program performance. However, when the Office participated in quality management reviews, it also reviewed participating jurisdictions' resale and/or recapture provisions for compliance with HUD's regulations at 24 CFR 92.254. When the Office identified issues with the participating jurisdictions' resale and/or recapture provisions, it provided the field offices a list of the issues and asked the field offices to follow-up with the participating jurisdictions to correct the issues. However, the Office did not ensure that the field offices followed-up with the participating jurisdictions to ensure the problems identified with the resale and/or recapture provisions were corrected. In fiscal year 2007, the Office decided to no longer participate in the quality management reviews.

During fiscal years 2000 through 2002, HUD's Office began providing HUD's field offices' staff Program management training covering the required elements of participating jurisdictions' consolidated and action plans and appropriate resale and recapture provisions. The Office resumed these trainings in August 2006. However, due to the Office's increased workload, it has not been able to provide the field offices with Program management training since April 2008.

HUD's Deputy Director of Affordable Housing Programs said that it appeared that the field offices did not understand the level of detail that participating jurisdictions must include in their consolidated and action plans and legal instruments regarding resale and recapture provisions. HUD's Office planned to issue an updated community planning and development notice and a new HOMEfires (HUD's official policy newsletter for the Program) to clarify HUD's requirements regarding resale and recapture provisions. Further, HUD's Office of Community Planning and Development was drafting a proposed rule to amend HUD's regulations at 24 CFR Part 91 to require specific written approval by the field offices of the resale and/or recapture provisions in participating jurisdictions' consolidated and action plans.

## Conclusion

As previously mentioned, HUD's Office lacked adequate procedures and controls to ensure that participating jurisdictions appropriately followed HUD's requirements in their use of resale and recapture provisions for Program-assisted projects. Of the 40

projects statistically selected for review, 27 participating jurisdictions did not include appropriate resale and/or recapture provisions in their 29 consolidated and/or action plans that were in effect at the time the participating jurisdictions set up 32 projects in HUD's System. Further, 18 participating jurisdictions did not ensure that appropriate resale or recapture provisions were implemented for 21 projects. In addition, three participating jurisdictions did not ensure that HUD's interest was sufficiently protected in three projects for which more than \$43,000 in Program funds was used for home-buyer assistance. As a result, HUD lacked assurance that appropriate resale or recapture provisions were imposed for and its interest was sufficiently protected in participating jurisdictions' projects.

## Recommendations

We recommend that HUD's Deputy Assistant Secretary for Grant Programs require the Office to

- 1A. Implement adequate procedures and controls to ensure that participating jurisdictions (1) include appropriate resale and/or recapture provisions in their consolidated and/or action plans and (2) implement appropriate resale or recapture provisions for their projects.
- 1B. Require the State of New York and Cobb County, GA, Consortium to reimburse their Programs \$30,000 and \$9,947, respectively, from non-Federal funds for the two projects that they did not ensure met HUD's affordability requirements.
- 1C. Require the State of Montana to place a deed restriction, land covenant, affidavit, and/or lien on the property to ensure that it would recoup all or a portion of the \$3,139 in Program funds used for project number 3515 if the housing does not continue to be the principal residence of the household for the duration of the affordability period. If the State cannot place a deed restriction, land covenant, affidavit, and/or lien on the property, it should reimburse its Program \$3,139 from non-Federal funds.

## SCOPE AND METHODOLOGY

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To accomplish our objective, we reviewed

- Applicable laws; HUD’s regulations at 24 CFR Parts 91 and 92; HUD’s “Building HOME: A Program Primer”; HUD’s HOMEfires, volume 5, numbers 2, 4, and 5; HUD’s Consolidated Plan Review Guide – HOME Program Elements; HUD’s field offices’ action plan review checklists for the 35 participating jurisdictions, as applicable; and Office of Inspector General (OIG) Audit Reports 2008-CH-1014, issued September 26, 2008, and 2008-LA-1001, issued November 1, 2007.
- Financial and Program data from HUD’s System and the 35 participating jurisdictions.

In addition, we interviewed HUD’s staff and the participating jurisdictions’ employees.

We statistically selected 40 of the 22,306 projects with a completion date in HUD’s System from June 30, 2008, through June 30 2009, to determine whether participating jurisdictions (1) included appropriate resale and/or recapture provisions in their consolidated and/or action plans, (2) ensured that appropriate resale or recapture provisions were implemented for their Program-assisted projects, and (3) ensured that HUD’s interest was sufficiently protected in their projects. The 40 projects totaled more than \$1 million in Program funds and were administered by 35 different participating jurisdictions. Our sample method was an unrestricted attribute sample with a 90 percent confidence level and a precision level of plus or minus 10 percent. Two of the forty projects selected for review, which were administered by two participating jurisdictions, were not subject to the implementation of resale or recapture provisions. The State of Indiana’s project number 23316 involved a community housing development organization predevelopment loan for a project that never moved forward. The City of Muskegon, MI’s project number 507 was part of its lease-to-purchase program in which the lessee had yet to purchase the property. As a result, we did not include the two participating jurisdictions or projects as part of our review to determine whether the participating jurisdictions ensured that appropriate resale or recapture provisions were implemented for their projects and ensured that HUD’s interest was sufficiently protected.

Our sampling results determined that participating jurisdictions did not ensure that appropriate resale or recapture provisions were implemented for 21 projects reviewed. Therefore, using attribute sampling methodology and the most conservative approach, we estimate with 95 percent certainty that participating jurisdictions did not ensure that appropriate resale or recapture provisions were implemented for at least 8,825 of the 22,306 projects with a completion date in HUD’s System from June 30, 2008, through June 30 2009.

Our sampling results determined that participating jurisdictions did not ensure that HUD’s interest was sufficiently protected in three projects reviewed. Therefore, using attribute sampling methodology and the most conservative approach, we estimate with 95 percent certainty that participating jurisdictions did not ensure that HUD’s interest was sufficiently protected in at least

151 of the 22,306 projects with a completion date in HUD's System from June 30, 2008, through June 30 2009.

We performed our audit work from July 2009 through February 2010 at HUD's Chicago, IL, regional office. The audit covered the period October 2007 through June 2009 and was expanded as determined necessary.

We performed our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our finding and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objective.

## **INTERNAL CONTROLS**

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Internal control is an integral component of an organization's management that provides reasonable assurance that the following objectives are achieved:

- Program operations,
- Relevance and reliability of information,
- Compliance with applicable laws and regulations, and
- Safeguarding of assets and resources.

Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals, and objectives. They include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

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### **Relevant Internal Controls**

We determined that the following internal controls were relevant to our audit objective:

- Program operations - Policies and procedures that management has implemented to reasonably ensure that a program meets its objectives.
- Validity and reliability of data - Policies and procedures that management has implemented to reasonably ensure that valid and reliable data are obtained, maintained, and fairly disclosed in reports.
- Compliance with laws and regulations - Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.
- Safeguarding resources - Policies and procedures that management has implemented to reasonably ensure that resources are safeguarded against waste, loss, and misuse.

We assessed the relevant controls identified above.

A significant weakness exists if management controls do not provide reasonable assurance that the process for planning, organizing, directing, and controlling program operations will meet the organization's objectives.

## Significant Weakness

Based on our review, we believe the following item is a significant weakness:

- HUD's Office lacked adequate procedures and controls to ensure that participating jurisdictions appropriately followed HUD's requirements in their use of resale and recapture provisions (see finding).

## APPENDIXES

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### Appendix A

#### SCHEDULE OF QUESTIONED COSTS

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Recommendation number	Ineligible 1/
1B	\$39,947
1C	<u>3,139</u>
Total	<u>\$43,086</u>

- 1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or Federal, State, or local policies or regulations.





# Appendix B

## AUDITEE COMMENTS AND OIG'S EVALUATION

### Ref to OIG Evaluation

### Auditee Comments

2027081744	Affordable Housing Pro	10:14:53 a.m.	04-01-2010	2 / 2
	U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT WASHINGTON, DC 20410-7000			
OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT	MAR 31 2010			
MEMORANDUM FOR:	Heath Wolfe, Regional Inspector General for Audit, 5AGA			
FROM:	Yolanda Chávez, Deputy Assistant Secretary for Grant Programs, DG 			
SUBJECT:	CPD Response to Discussion Draft Audit Report Oversight of Resale and Recapture Provisions HOME Investment Partnerships Program			
<p>This memorandum responds to the Discussion Draft Audit of the Office of Affordable Housing Programs' (OAHP) oversight of resale and recapture provisions for HOME-assisted homeownership projects that you provided to me for comment on March 6, 2010.</p> <p>Staff from OAHP and Region V OIG has worked cooperatively to clarify certain statements in the audit. In addition, at OAHP's request, OIG has agreed to drop Recommendation 1D because it was duplicative of Recommendation 1A. I agree with the findings and recommendations contained in the audit, as it has been revised. Specific actions to address the recommendations and resolve the audit will be provided as part of the resolution process.</p> <p>If you have any questions, please contact me at 202-708-2111, or Cliff Taffet, Director, Office of Affordable Housing Programs, at 202-708-2684.</p>				
		<a href="http://www.hud.gov">www.hud.gov</a>	<a href="http://espanol.hud.gov">espanol.hud.gov</a>	

### Comment 1

## OIG's Evaluation of Auditee Comments

**Comment 1** We revised the report to state that HUD's Office relied on HUD's field offices' monitoring activities and consolidated and/or action plan reviews to ensure that participating jurisdictions complied with HUD's affordability requirements for projects. The Office did not have a formal process for reviewing the field offices' oversight of participating jurisdictions' resale and recapture provisions. HUD conducted quality management reviews to assess the field offices' management practices. HUD's quality management review process generally did not include an assessment of the field offices' Program performance. However, when the Office participated in quality management reviews, it also reviewed participating jurisdictions' resale and/or recapture provisions for compliance with HUD's regulations at 24 CFR 92.254. When the Office identified issues with the participating jurisdictions' resale and/or recapture provisions, it provided the field offices a list of the issues and asked the field offices to follow-up with the participating jurisdictions to correct the issues. However, the Office did not ensure that the field offices followed-up with the participating jurisdictions to ensure the problems identified with the resale and/or recapture provisions were corrected. In fiscal year 2007, the Office decided to no longer participate in the quality management reviews.

We also revised the report to state that during fiscal years 2000 through 2002, HUD's Office began providing HUD's field offices' staff Program management training covering the required elements of participating jurisdictions' consolidated and action plans and appropriate resale and recapture provisions. The Office resumed these trainings in August 2006. However, due to the Office's increased workload, it has not been able to provide the field offices with Program management training since April 2008.

We removed the recommendation that HUD's Deputy Assistant Secretary for Grant Programs require the Office to implement adequate procedures and controls to ensure that participating jurisdictions' projects meet HUD's affordability requirements.

## Appendix C

### HUD'S REQUIREMENTS

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Section 215(b) of Title II of the Cranston-Gonzalez National Affordable Housing Act (Act), as amended, states that housing that is for homeownership shall qualify as affordable housing under Title II of the Act only if the housing is subject to resale restrictions that are established by the participating jurisdiction and determined by HUD's Secretary to be appropriate to (1) allow for the later purchase of the property only by a low-income household at a price which will provide the owner a fair return on investment and ensure that the housing will remain affordable to a reasonable range of low-income home buyers or (2) recapture the Program investment to assist other persons in accordance with the requirements of Title II of the Act, except when there are no net proceeds or when the net proceeds are insufficient to repay the full amount of the assistance.

HUD's regulations at 24 CFR 91.200(a) state that a complete consolidated plan consists of the information required in 24 CFR 91.220.

HUD's regulations at 24 CFR 91.220(1)(2)(ii) state that the action plan must include the guidelines for resale or recapture, as required in 24 CFR 92.254, if a participating jurisdiction intends to use Program funds for home buyers.

HUD's regulations at 24 CFR 92.150 state that to receive its Program allocation, a participating jurisdiction must submit a consolidated plan in accordance with 24 CFR Part 91. 24 CFR Part 91 includes requirements for the content of the consolidated plan, the process of developing the consolidated plan including citizen participation, the submission date, HUD approval, and amendments.

HUD's regulations at 24 CFR 92.254(a)(4) state that Program-assisted housing must meet the affordability requirements for not less than the applicable period specified in section 92.254(a)(4), beginning after project completion. Section 92.254(a)(5) states that to ensure affordability, a participating jurisdiction must impose either resale or recapture provisions that comply with the standards of section 92.254(a)(5) and include the provisions in its consolidated plan. Section 92.254(a)(5)(i) states that a participating jurisdiction's resale provisions must ensure, if the housing does not continue to be the principal residence of the household for the duration of the period of affordability, that the housing is made available for later purchase only to a home buyer whose household qualifies as a low-income family and who will use the property as the household's principal residence. The resale provisions must also ensure that the price at resale provides the original Program-assisted owner a fair return on investment and ensure that the housing will remain affordable to a reasonable range of low-income home buyers. Deed restrictions, covenants running with the land, or other similar mechanisms must be used to impose the resale requirements. Section 92.254(a)(5)(ii) states that a participating jurisdiction's recapture provisions must ensure that the participating jurisdiction recoups all or a portion of the Program assistance to the home buyers if the housing does not continue to be the principal residence of the household for the duration of the period of affordability. In establishing its recapture provisions, the participating jurisdiction is subject to the limitation that when the

recapture provision is triggered by a voluntary or involuntary sale of the housing unit and there are no net proceeds or the net proceeds are insufficient to repay the Program investment due, the participating jurisdiction can only recapture the net proceeds if any. The recaptured funds must be used to carry out Program-eligible activities in accordance with the requirements of 24 CFR Part 92. If the Program assistance is only used for development subsidy and, therefore, not subject to recapture, the resale option must be used.

HUD's regulations at 24 CFR 92.504(a) state that a participating jurisdiction is responsible for managing the day-to-day operations of its Program, ensuring that Program funds are used in accordance with all Program requirements and written agreements, and taking appropriate action when performance problems arise. The use of state recipients, subrecipients, or community housing development organizations does not relieve the participating jurisdiction of this responsibility.

HUD's HOMEfires, volume 5, number 5, requires a participating jurisdiction to select either resale or recapture provisions for its Program-assisted home-buyer projects. The participating jurisdiction may select resale or recapture provisions for all of its home-buyer projects or resale or recapture provisions on a case-by-case basis. However, the participating jurisdiction must select whether resale or recapture will be imposed for each home-buyer project at the time the assistance is provided. A participating jurisdiction may adopt any one of four options in designing its recapture provisions. All of the options the participating jurisdiction will employ must be identified in its consolidated plan and approved by HUD.

Chapter 5, part I, of HUD's "Building HOME: A Program Primer" states that a deed restriction, land covenant, affidavit, and/or lien is the legal instrument that can be used to meet the requirements of HUD's recapture restrictions. Recapture provisions may not be used for properties that only receive development subsidies. Part II states that recapture provisions cannot be used when a direct Program subsidy is not provided to the home buyer.

## Appendix D

### RESALE AND/OR RECAPTURE PROVISIONS IN PARTICIPATING JURISDICTIONS' CONSOLIDATED AND/OR ACTION PLANS

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#### Allegheny County, PA, Consortium

Contrary to HUD's requirements, the Consortium did not include appropriate resale and/or recapture provisions in its fiscal year 2008 action plan. The Consortium inappropriately included provisions that were a hybrid of HUD's resale and recapture requirements. Further, the Consortium's resale aspect of its provisions was incomplete since it did not consider what would occur if the resale price of a home was insufficient to pay off the first mortgage and return the home buyer's investment in the home. However, HUD's Pittsburgh, PA, Office of Community Planning and Development stated in its action plan review checklist, dated February 28, 2008, that the Consortium's fiscal year 2008 action plan contained appropriate resale and/or recapture provisions.

#### Cobb County, GA, Consortium

Contrary to HUD's requirements, the Consortium included recapture provisions in its fiscal year 2004 action plan that did not limit the amount of Program funds that could be recaptured to the net proceeds from the sale of a home. Further, the Consortium did not include any resale provisions in its fiscal year 2004 action plan although it was required to ensure that resale restrictions were placed on the property under project number 2222. However, HUD's Atlanta, GA, Office of Community Planning and Development stated in its action plan review checklist, dated January 14, 2004, that the Consortium's fiscal year 2004 action plan contained appropriate resale and recapture provisions.

#### State of Florida

Contrary to HUD's requirements, the State included resale provisions in its program years 2006 to 2007 and 2008 to 2009 action plans that did not define a fair return on investment to the original Program-assisted owner or affordability to a reasonable range of low-income home buyers. However, HUD's Jacksonville, FL, Office of Community Planning and Development stated in its action plan review checklist, dated June 24, 2008, that the State's program year 2008 to 2009 action plan contained appropriate resale provisions. HUD's Jacksonville Office of Community Planning and Development could not provide its action plan review checklist for the State's program year 2006 to 2007 action plan.

#### Fresno County, CA

Contrary to HUD's requirements, the County included recapture provisions in its fiscal year 1996 to 1997 action plan that did not limit the amount of Program funds that could be recaptured to the net proceeds from the sale of a home. Further, the County did not describe which option of recapture it would use for its projects. HUD's San Francisco, CA, Office of Community Planning and Development could not provide its action plan review checklist for the County's fiscal year 1996 to 1997 action plan due to the expiration of the record retention period.

#### Harris County, TX

Contrary to HUD's requirements, the County included recapture provisions in its program year 2008 action plan that did not limit the amount of Program funds that could be recaptured to the net proceeds from the sale of a home. Further, the County did not describe which option of recapture it would use for its projects. However, HUD's Houston, TX, Office of Community Planning and Development stated in its action plan review checklist, dated February 28, 2008, that the County's program year 2008 action plan contained appropriate recapture provisions.

#### Holyoke, MA, Consortium

Contrary to HUD's requirements, the Consortium included recapture provisions in its fiscal year 2008 action plan that did not limit the amount of Program funds that could be recaptured to the net proceeds from the sale of a home. However, HUD's Boston, MA, Office of Community Planning and Development stated in its action plan review checklist, dated July 1, 2008, that the Consortium's fiscal year 2008 action plan contained appropriate recapture provisions.

#### City of Huntsville, AL

Contrary to HUD's requirements, the City included recapture provisions in its fiscal year 2009 action plan that did not limit the amount of Program funds that could be recaptured to the net proceeds from the sale of a home. However, HUD's Birmingham, AL, Office of Community Planning and Development stated in its action plan review checklist, dated June 29, 2009, that the City's fiscal year 2009 action plan contained appropriate recapture provisions.

#### State of Indiana

Contrary to HUD's requirements, the State included resale provisions in its fiscal year 2008 action plan that did not define a fair return on investment to the original Program-assisted owner. However, HUD's Indianapolis, IN, Office of Community Planning and Development stated in its action plan review checklist, dated June 24, 2008, that the State's fiscal year 2008 action plan contained appropriate resale provisions.

#### Jefferson County, CO

Contrary to HUD's requirements, the County included recapture provisions in its program year 2008 action plan that did not limit the amount of Program funds that could be recaptured to the net proceeds from the sale of a home. Further, the County included resale provisions that did not define a fair return on investment to the original Program-assisted owner or affordability to a reasonable range of low-income home buyers. However, HUD's Denver, CO, Office of Community Planning and Development stated in its action plan review checklist, dated May 30, 2008, that the County's program year 2008 action plan contained appropriate resale and recapture provisions.

#### Commonwealth of Kentucky

Contrary to HUD's requirements, the Commonwealth did not include resale and/or recapture provisions in its fiscal year 2009 action plan. The Commonwealth stated in its fiscal year 2009 action plan that an administrator of its Program, the Kentucky Housing Corporation, would allow applicants to choose either resale or recapture provisions after considering the needs of the community and the income levels to be served. Further the Commonwealth stated that all provisions would comply with HUD's regulations at 24 CFR 92.254. However, HUD's

Louisville, KY, Office of Community Planning and Development stated in its action plan review checklist, dated June 25, 2009, that the Commonwealth's fiscal year 2009 action plan contained appropriate resale and/or recapture provisions.

#### City of Lawrence, MA

Contrary to HUD's requirements, the City included recapture provisions in its program year 2008 to 2009 action plan that did not limit the amount of Program funds that could be recaptured to the net proceeds from the sale of a home. Further, the City did not describe which option of recapture it would use for its projects. However, HUD's Boston, MA, Office of Community Planning and Development stated in its action plan review checklist, dated July 1, 2008, that the City's program year 2008 to 2009 action plan contained appropriate recapture provisions.

#### Madison County, IL

Contrary to HUD's requirements, the County included resale provisions in its fiscal year 2007 action plan that did not define a fair return on investment to the original Program-assisted owner. However, HUD's Chicago, IL, Office of Community Planning and Development stated in its action plan review checklist, dated August 24, 2007, that the County's fiscal year 2007 action plan contained appropriate resale provisions.

#### State of Maine

Contrary to HUD's requirements, the State did not include resale and/or recapture provisions in its program year 2008 action plan. The State stated in its program year 2008 action plan that its resale and recapture provisions would be consistent with the requirements of the Program and with any other specifics identified in each individual financial agreement package. The State did not provide nor did HUD's Manchester, ME, Office of Community Planning and Development request additional documentation regarding the State's resale and/or recapture provisions. However, HUD's Manchester Office of Community Planning and Development stated in its action plan review checklist, dated December 11, 2007, that the State's program year 2008 action plan contained appropriate resale and/or recapture provisions.

#### State of Montana

Contrary to HUD's requirements, the State included resale provisions in its program year 2008 action plan that did not define a fair return on investment to the original Program-assisted owner. However, HUD's Denver, CO, Office of Community Planning and Development stated in its action plan review checklist, dated March 4, 2008, that the State's program year 2008 action plan contained appropriate resale provisions.

#### City of New Britain, CT

Contrary to HUD's requirements, the City did not include resale and/or recapture provisions in its program year 2006 action plan. Further, the City did not state whether it would require resale and/or recapture provisions to be imposed for its projects. However, HUD's Hartford, CT, Office of Community Planning and Development stated in its action plan review checklist, dated June 28, 2006, that the City's program year 2006 action plan contained appropriate resale and/or recapture provisions.



#### State of New Mexico

Contrary to HUD's requirements, the State included recapture provisions in its program year 2009 action plan that did not limit the amount of Program funds that could be recaptured to the net proceeds from the sale of a home. However, HUD's Albuquerque, NM, Office of Community Planning and Development stated in its action plan review checklist, dated December 2, 2008, that the State's program year 2009 action plan contained appropriate recapture provisions.

#### State of New York

Contrary to HUD's requirements, the State included resale provisions in its program years 2008 and 2009 action plans that did not define a fair return on investment to the original Program-assisted owner or affordability to a reasonable range of low-income home buyers. However, HUD's New York, NY, Office of Community Planning and Development stated in its action plan review checklists, dated December 28, 2007, and December 29, 2008, that the State's program years 2008 and 2009 action plans, respectively, contained appropriate resale provisions.

#### State of North Dakota

Contrary to HUD's requirements, the State did not include resale and/or recapture provisions in its program year 2008 action plan. However, the State's program year 2008 action plan included a Web address for its 2008 Program description, which contained the State's resale and recapture provisions. The State included resale provisions in its 2008 Program description that did not define a fair return on investment to the original Program-assisted owner. HUD's Denver, CO, Office of Community Planning and Development stated in its action plan review checklist, dated March 17, 2008, that the State's program year 2008 action plan did not contain appropriate resale and recapture provisions. However, HUD's Denver Office of Community Planning and Development approved the State's program year 2008 action plan.

#### State of Ohio

Contrary to HUD's requirements, the State included resale provisions in its fiscal year 2005 consolidated plan that did not define a fair return on investment to the original Program-assisted owner. However, HUD's Columbus, OH, Office of Community Planning and Development stated in its consolidated plan review checklist, dated June 16, 2005, that the State's fiscal year 2005 consolidated plan contained appropriate resale provisions.

#### Orange County, CA

Contrary to HUD's requirements, the County included resale provisions in its fiscal year 2008 to 2009 action plan that did not define a fair return on investment to the original Program-assisted owner. Further, the County did not include recapture provisions in its fiscal year 2008 to 2009 action plan although the County was required to ensure that recapture provisions were placed on the property under project number 1884. However, HUD's Los Angeles, CA, Office of Community Planning and Development stated in its action plan review checklist, dated June 11, 2008, that the County's fiscal year 2008 to 2009 action plan contained appropriate resale and recapture provisions.

#### Pinellas County, FL, Consortium

Contrary to HUD's requirements, the Consortium included recapture provisions in its program year 2007 to 2008 action plan that inappropriately stated that Program funds recaptured during a project's period of affordability would be used to assist other eligible home buyers in accordance with Program regulations. However, HUD's Jacksonville, FL, Office of Community Planning and Development stated in its action plan review checklist, dated September 20, 2007, that the Consortium's program year 2007 to 2008 action plan contained appropriate recapture provisions.

#### City of Syracuse, NY

Contrary to HUD's requirements, the City did not include resale and/or recapture provisions in its program year 2008 to 2009 action plan. The City stated in its program year 2008 to 2009 action plan that the guidelines for resale and recapture would be incorporated into each successful applicant's signed promissory note. HUD's Buffalo, NY, Office of Community Planning and Development requested and received the City's standard promissory note templates as part of its review of the City's program year 2008 to 2009 action plan. However, HUD's Buffalo Office of Community Planning and Development stated in its action plan review checklist, dated April 29, 2008, that the City's program year 2008 to 2009 action plan contained appropriate resale and recapture provisions. Further, HUD's Buffalo Office of Community Planning and Development approved the City's program year 2008 to 2009 action plan without requiring the City to include its resale and recapture provisions.

#### State of Tennessee

Contrary to HUD's requirements, the State included recapture provisions in its fiscal year 2008 to 2009 action plan that did not limit the amount of Program funds that could be recaptured to the net proceeds from the sale of a home. However, HUD's Knoxville, TN, Office of Community Planning and Development stated in its action plan review checklist, dated June 19, 2008, that the State's fiscal year 2008 to 2009 action plan contained appropriate recapture provisions.

#### Commonwealth of Virginia

Contrary to HUD's requirements, the Commonwealth did not include recapture provisions in its program year 2008 to 2009 action plan. The Commonwealth stated in its program year 2008 to 2009 action plan that its recapture provisions were included in its Program details. HUD's Richmond, VA, Office of Community Planning and Development requested and received the Commonwealth's 2008 to 2009 homeownership program guidelines/details, which included the Commonwealth's recapture provisions, as part of its review of the Commonwealth's program year 2008 to 2009 action plan. However, HUD's Richmond Office of Community Planning and Development stated in its action plan review checklist, dated June 25, 2008, that the Commonwealth's program year 2008 to 2009 action plan contained appropriate recapture provisions. Further, HUD's Richmond Office of Community Planning and Development approved the Commonwealth's program year 2008 to 2009 action plan without requiring the Commonwealth to include its recapture provisions.

#### Washington County, OR, Consortium

Contrary to HUD's requirements, the Consortium included recapture provisions in its program year 2008 action plan that did not limit the amount of Program funds that could be recaptured to the net proceeds from the sale of a home. However, HUD's Portland, OR, Office of Community

Planning and Development stated in its action plan review checklist, dated June 20, 2008, that the Consortium's program year 2008 action plan contained appropriate recapture provisions.

Waterloo, IA, Consortium

Contrary to HUD's requirements, the Consortium included resale provisions in its fiscal year 2008 action plan that did not define a fair return on investment to the original Program-assisted owner or affordability to a reasonable range of low-income home buyers. However, HUD's Omaha, NE, Office of Community Planning and Development stated in its action plan review checklist, dated June 26, 2007, that the Consortium's fiscal year 2008 action plan contained appropriate resale provisions.

City of Worcester, MA

Contrary to HUD's requirements, the City included recapture provisions in its program year 2008 to 2009 action plan that did not limit the amount of Program funds that could be recaptured to the net proceeds from the sale of a home. Further, the City did not describe which option of recapture it would use for its projects. However, HUD's Boston, MA, Office of Community Planning and Development stated in its action plan review checklist, dated August 12, 2008, that the City's program year 2008 to 2009 action plan contained appropriate recapture provisions.

## Appendix E

### IMPLEMENTATION OF RESALE OR RECAPTURE PROVISIONS FOR PARTICIPATING JURISDICTIONS' PROJECTS

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#### Allegheny County, PA, Consortium

The Consortium did not ensure that its subrecipient, the Allegheny County Residential Finance Authority, implemented appropriate resale or recapture provisions for project number 4500. Although the mortgage between the Authority and the home buyer included affordability requirements for the project, the mortgage inappropriately included provisions that were a hybrid of HUD's resale and recapture requirements.

#### Cobb County, GA, Consortium

The Consortium did not ensure that its community housing development organization, Cobb Housing, Incorporated, implemented resale provisions for project number 2222. Cobb Housing used \$9,947 in Program funds to purchase property which was eventually sold to a home buyer. Additional Program funds were not used for the project, and the home buyer did not receive direct Program assistance. However, the Consortium did not ensure that resale restrictions were placed on the property.

#### State of Florida

The State did not ensure that its administrator of the Program, the Florida Housing Finance Corporation, implemented appropriate recapture provisions for project numbers 8031, 8954, and 9844. Although the mortgages and the promissory notes between the Corporation and each home buyer included affordability requirements for the projects, neither the mortgages nor the promissory notes contained language that limited the amount of Program funds that the Corporation could recapture to the net proceeds from the sale of the home.

#### Fresno County, CA

The County did not ensure that it implemented appropriate recapture provisions for project number 130. Although the deed of trust and the promissory note between the County and the home buyer included affordability requirements for the project, neither the deed of trust nor the promissory note contained language that limited the amount of Program funds that the County could recapture to the net proceeds from the sale of the home.

#### Jefferson County, CO

The County did not ensure that its subrecipient, the Colorado Housing Assistance Corporation, implemented appropriate recapture provisions for project number 636. Although the deed of trust and the promissory note between the Corporation and the home buyer included affordability requirements for the project, neither the deed of trust nor the promissory note contained language that limited the amount of Program funds that the Corporation could recapture to the net proceeds from the sale of the home.

### Commonwealth of Kentucky

The Commonwealth did not ensure that an administrator of its Program, the Kentucky Housing Corporation, implemented appropriate recapture provisions for project numbers 13231 and 13516. Although the mortgages and the promissory notes between the Corporation and each home buyer included affordability requirements for the projects, neither the mortgages nor the promissory notes contained language that limited the amount of Program funds that the Corporation could recapture to the net proceeds from the sale of the home.

### City of Lawrence, MA

The City did not ensure that it implemented appropriate recapture provisions for project number 1944. Although the mortgage and the promissory note between the City and the home buyer included affordability requirements for the project, neither the mortgage nor the promissory note contained language that limited the amount of Program funds that the City could recapture to the net proceeds from the sale of the home.

### Madison County, IL

The County did not ensure that its administrator of the Program, Madison County Community Development, implemented appropriate recapture provisions for project number 2610. Although the mortgage and the promissory note between Madison County Community Development and the home buyer included affordability requirements for the project, neither the mortgage nor the promissory note contained language that limited the amount of Program funds that Madison County Community Development could recapture to the net proceeds from the sale of the home.

### State of Montana

The State did not ensure that its community housing development organization, Northwest Montana Human Resources, Incorporated, implemented appropriate recapture provisions for project number 3515. Although the promissory note between Northwest and the home buyer included affordability requirements for the project, the promissory note did not contain language that limited the amount of Program funds that Northwest could recapture to the net proceeds from the sale of the home. Further, the State did not ensure that a deed restriction, land covenant, affidavit, and/or lien was placed on the property purchased under project number 3515.

### City of New Britain, CT

The City did not ensure that it implemented appropriate recapture provisions for project number 1317. Although the mortgage and the promissory note between the City and the home buyer included affordability requirements for the project, neither the mortgage nor the promissory note contained language that limited the amount of Program funds that the City could recapture to the net proceeds from the sale of the home.

### State of New York

The State did not ensure that its community housing development organization, Home HeadQuarters, Incorporated, implemented appropriate resale provisions for project number 23424. Home HeadQuarters used \$30,000 in Program funds for a development subsidy for a home under project number 23424. Additional Program funds were not used for the project and the home buyer did not receive direct Program assistance. However, the State did not ensure that

resale restrictions were placed on the property. Home HeadQuarters inappropriately placed recapture restrictions on the property rather than resale restrictions.

#### State of North Carolina

The State did not ensure that its administrator of the Program, the North Carolina Housing Finance Agency, implemented appropriate recapture provisions for project number 19200. The Agency's Program funding was loaned to the home buyer under a combination loan arrangement in which a single loan was funded by the Agency and its program participant, Habitat for Humanity of High Point, Archdale, and Trinity, Incorporated. Habitat was responsible for servicing the combination loan and remitting to the Agency its pro rata share of the home buyer's payments. Although the deed of trust and the promissory note between Habitat and the home buyer included affordability requirements for the project, neither the deed of trust nor the promissory note contained language that limited the amount of Program funds that the Agency or Habitat could recapture to the net proceeds from the sale of the home.

#### State of Ohio

The State did not ensure that its recipient, Fayette County, implemented appropriate recapture provisions for project number 14627. Although the mortgage and the promissory note between the County and the home buyer included affordability requirements for the project, neither the mortgage nor the promissory note contained language that limited the amount of Program funds that the County could recapture to the net proceeds from the sale of the home.

#### Orange County, CA

The County did not ensure that it implemented appropriate recapture provisions for project number 1884. Although the deed of trust and the promissory note between the County and the home buyer included affordability requirements for the project, neither the deed of trust nor the promissory note contained language that limited the amount of Program funds that the County could recapture to the net proceeds from the sale of the home.

#### City of Syracuse, NY

The City did not ensure that its subrecipient, Home HeadQuarters, Incorporated, implemented appropriate recapture provisions for project number 3935. Although the mortgage and the promissory note between Home HeadQuarters and the home buyer included affordability requirements for the project, neither the mortgage nor the promissory note contained language that limited the amount of Program funds that Home HeadQuarters could recapture to the net proceeds from the sale of the home.

#### Commonwealth of Virginia

The Commonwealth did not ensure that its administrator of the Program, the Virginia Department of Housing and Community Development, implemented appropriate recapture provisions for project number 11265. Although the deed of trust and the promissory note between the Department and the home buyer included affordability requirements for the project, neither the deed of trust nor the promissory note contained language that limited the amount of Program funds that the Department could recapture to the net proceeds from the sale of the home.

Wheeling, WV, Consortium

The Consortium did not ensure that its member, Brooke County, implemented appropriate recapture provisions for project number 1145. Although the deed of trust and the promissory note between the County and the home buyer included affordability requirements for the project, neither the deed of trust nor the promissory note contained language that limited the amount of Program funds that the County could recapture to the net proceeds from the sale of the home.

City of Worcester, MA

The City did not ensure that it implemented appropriate recapture provisions for project number 1377. Although the mortgage and the promissory note between the City and the home buyer included affordability requirements for the project, neither the mortgage nor the promissory note contained language that limited the amount of Program funds that the City could recapture to the net proceeds from the sale of the home.