



# Boulder County Collaborative Recapture Plan for CDBG-DR

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## Overview

The Boulder County Collaborative (BCC) is responsible for making a good faith effort to only fund eligible applicants and projects with the Community Development Block Group-Disaster Recovery (CDBG-DR) funds from the Department of Housing and Urban Development (HUD). The City of Longmont (the City) is the Lead Agency for the BCC and is also responsible for monitoring recipients of the CDBG-DR funds for compliance with the terms of their award. In the execution of these responsibilities, the City of Longmont may on occasion seek to recapture funds awarded to residents or sub-grantees (“recipients”) who did not spend the funds according to the rules of the Program, or who were awarded funds erroneously. HUD does not distinguish between persons who received funds due to an error on the part of staff or an error on the part of the applicant, however HUD does allow different recapture (collection) processes for residents who deliberately withheld or falsified information in the application process, as this is fraud.

HUD has no set guidelines or regulations for recapture of funds from individuals. This plan and timeframe was designed to be consistent with OMB Circular A-87 (2 CFR Part 225), OMB Circular A-85, 31USC 37 901 and 902, 24 CFR 17 Subpart C, 31CFR, Forgivable Promissory Note, Homeowner/Contractor Agreement, Intergovernmental Agreement for Delegation of Activities, and closing documents and/or Grant Agreements signed by recipients of the program, and is designed to provide guidance on recapturing funds erroneously given out or erroneously spent through the HUD CDBG Disaster Recovery Program (Program) from the 2013 flood in Boulder County.

The first part of this plan deals with recapture procedures for funds awarded erroneously or for Program noncompliance. The second part of this plan deals with the recapture of funds obtained fraudulently. In the third part of the plan, BCC puts forth the method by which it will redistribute the recaptured funds within the local community.

## Background

The City of Longmont as the Lead Agency for the BCC conducts an internal review of Program files. The review is to determine that in the awarding and disbursing of Program funds the files are documented according to program policies. Documentation must be in the files and the reviews are to determine whether safeguards exist to ensure that recipients use funds for their intended purposes.

The Statute of Limitations for initiating recapture proceedings is six (6) years following signature on the application forms [24 CFR 28.35(a)].

## **Choice to Not Recapture or Settle for Less than Whole Amount**

The various federal regulations cited above establish the City of Longmont as Lead Agency with the authority to recapture the full amount of ineligible assistance whether awarded due to errors by BCC partners or a Housing Assistance Program recipient. However, for claims under \$100,000, if City of Longmont as Lead Agency, the State, or HUD determines that the recipient cannot repay ineligible grant assistance, BCC may choose to 1) forgive the funding or 2) negotiate another amount. If negotiated, the City may defer the repayment to sale, refinance or transfer of the existing home or otherwise place a lien on the property or enter into a repayment plan with the recipient. BCC defines "ability to pay" as: "determined based on an assessment of the respondent's resources available both presently and prospectively from which BCC could ultimately recover the total award, which may be predicted based on historical evidence."

The City will make initial determinations and bring findings to the BCC in determining whether to recapture ineligible assistance. The BCC will consider the cost- effectiveness of such action given the amount of ineligible assistance and the availability of records to support BCC's determination.

*BCC may forgo collection of ineligible assistance if the following conditions are met:*

1. A demand for recovery of the ineligible assistance was made; AND
2. The ineligible assistance did not result from inaccurate or false information knowingly or fraudulently provided by the recipient; AND
3. BCC determines that the recipient is unable to comply with the ineligible assistance repayment demand, but is otherwise willing and able to meet BCC requirements; AND
4. BCC believes that it is in the best interest of the Federal Government to forgo collection of the ineligible assistance for amounts less than \$5,000. BCC will normally return files concerning default amounts that are less than a threshold amount of \$5,000 because the minimum cost to pursue a legal proceeding to recover money is unlikely to be less than that amount.

***Note that ALL FOUR conditions above must be met for forbearance***

BCC may elect to accept a compromise settlement. If a compromise amount is negotiated and then put on an installment plan, the executed contract must say that if the recipient defaults, the recipient will owe the ENTIRE amount of the originally determined ineligible assistance, not just the negotiated amount. Assessment of a recipient's negotiated compromise amount will be based on receipt of financial statements, obtained on penalty of perjury, showing assets, liabilities, income, expenses, credit reports and other pertinent financial information. {31 USC 902.2(g)}

## Requirements for Recapturing Funds Awarded Erroneously or for Non-Compliance with Program Rules

### *Notification*

The City will provide notice to recipients upon determining that ineligible assistance was received. The notice will be delivered by registered or certified mail, or will be delivered by some other means that can be confirmed and documented. The notice will:

- Specify in detail the reason(s) that the assistance was determined to be ineligible; stating the amount of ineligible assistance to be repaid;
- Offer a meeting for the recipient to discuss the basis for the claim giving a recipient an opportunity to provide facts, figures, written records, or other information that might alter the determination that the assistance was ineligible;
- Outline the recipient's appeal rights;
- Specify the address to which a response must be sent;
- Contain a statement that failure to submit an answer within 15 days of receipt of the letter may result in the imposition of the maximum amount of penalties, allowable by law/regulation, and assessments sought.

Generally, the City will set the meetings within 30 days of the date of the initial letter. Upon request, the City may grant additional time for the recipient to assemble the necessary documentation. If additional time is granted, the recipient file will be documented, on a case by case basis, as to why additional time was granted.

### *Corrective Action*

If the problem causing the assistance to be ineligible can be corrected, appropriate corrective action will be required. For example:

- Where the recipient is a homeowner and did not follow the Forgivable Promissory Note requirement to obtain flood insurance, the insurance must be obtained promptly, and upon demonstrating proof of insurance, the recipient will re-sign the Forgivable Promissory Note in order to restart the Effective Period.
- If the recipient is a homeowner and is not using the house as his/her primary residence, when the recipient proves s/he has moved in to the home permanently, the Forgivable Promissory Note document will be re-signed and the Effective Period will restart.
- If a sub-grantee executes a change order on an infrastructure project without a sufficient cost estimate and signatures, then the recipient will need to obtain a cost estimate that justifies the change in costs and also get appropriate signatures.

If the recipient is a homeowner and the problem causing the assistance to be ineligible cannot be corrected, a recipient who has defaulted on the requirements but wishes to remain

in the dwelling, may stipulate to reverting from the current loan structure and converting the loan into a conventional non-forgivable mortgage loan having a fixed term (between 5 and 15 years), or into a deferred loan with repayment of principal and interest due at sale, refinance or transfer of the property at the currently prevailing interest rate., An example of an irremediable violation of Forgivable Promissory Note is:

- The homeowner is renting the property and is unwilling to terminate the lease.
- The homeowner will not allow final inspection
- The homeowner received more monies from other sources than what was reported in the application for federal assistance

For recipients of assistance under the Buyout or Acquisition Programs, if the recipient refuses a repayment plan or ceases payments on the repayment plan, the City will institute legal proceeding to recover the funds.

If a sub-grantee has expended funds ineligibly and a corrective action cannot be determined, then the City will negotiate a zero interest loan repayment with the sub-grantee.

### *Repayment Agreement*

If violations are irremediable, then the City may seek repayment of all ineligible assistance received by a recipient, plus the cost of collection, to the fullest extent permitted by law. The City's efforts to collect ineligible assistance may include repayment agreements, court orders, garnishment of wages and/or income tax returns, the use of private or public collection agents, intergovernmental agreements with the BCC partners, and any other remedies available, on a case-by-case basis.

The recipient may repay the City in a lump-sum payment of the entire amount or by entering into a repayment agreement. A recipient who is a homeowner and who has defaulted on the rehabilitation requirements but wishes to remain in the dwelling, may agree to convert the current loan into a conventional non-forgivable mortgage loan having a fixed term (between 5 and 15 years) at the currently prevailing interest rate.

A repayment agreement is a formal document prepared by the City and signed by the recipient, in which the recipient acknowledges the debt and the amount owed. The agreement specifies:

1. The amount to be paid, including processing fees.
2. How the amount owed is to be repaid.
3. Where payments are to be sent.
4. The specific date each month when the payment is due.
5. Consequences of delinquent or defaulted payments.

The terms will not require prohibitive payments for homeowners that would force them to sell their property (except in the case of fraud), and will be over a period of time consistent with the recipient's ability to pay. However, payments may not extend beyond

a period of ten years {31 USC901.3(a)}.

31USC 901.8(g) allows the City to decide not to charge interest on the repayment agreement; if it can be shown that interest is "against equity and good conscience". The recipient will pay a set fee each payment period equaling the repayment amount plus the processing costs of collection (31 USC 901.9(c)). The City's approval of a repayment schedule will take into consideration the best interests of the recipient, the BCC, the State of Colorado, and the Federal Government.

A lien will be placed on property for the duration of the payment schedule (31USC 901.8(c)).

The City will retain copies of all correspondence and a record of all conversations between the City and a recipient regarding ineligible assistance received by a recipient. If a recipient refuses to enter into a repayment schedule, the City will initiate enforcement actions such as civil or criminal penalties.

31USC 3711Part (e) states that HUD, the City in this case, must report the recipient to the Consumer Credit Reporting Agencies if the recipient goes past due on the payment plan or if a settlement is not reached.

## **Requirements for Collecting Ineligible Assistance Obtained by Possible Fraud**

*NOTE: 24 CFR28.10 (d) states that no proof of specific intent to defraud is required to establish liability under this program.*

If the BCC paid too much assistance on the recipient's behalf because of discrepancies in information furnished by the recipient and if the City has sufficient evidence that the recipient intentionally misrepresented its circumstances, the City must pursue debt collection. In cases where the City has compelling evidence that the recipient knowingly omitted or falsified information in order to receive a housing assistance grant, buyout or acquisition assistance, rental assistance, or an infrastructure grant, the City will seek repayment of all ineligible assistance received by the recipient by turning the case directly over to the HUD Office of Inspector General (OIG) and local law enforcement officials.

### *General Administrative Procedures*

The City may choose to handle collections or may decide to hire a private collection agency to handle collections for this program (31 USC 901.5) as long as the following conditions are met in the contract with the collection agency:

1. The collection agency is a City-approved collector who can transfer funds to the City.

2. The City retains the right to resolve disputes, to compromise debts (negotiate settlement amounts less than the full amount), suspend or terminate collection, and refer debt for litigation.
3. The collection agency cannot offer debtors discounts or incentives
4. The contract with the collection agency requires the collection agency to follow the Privacy Act of 1974 and State and Federal laws for debt collection practices, including the Fair Debt Practices Act, 15 USC 1692.
5. The collection agency accounts for all amounts collected.

The City will be responsible for file and documentation maintenance, communication with recipients, and arrangements for appeals hearings. The City is also responsible for reports to the State or HUD. The City will manage procurement of a private collection agency and payment of same, if this method of collection is chosen, and other financial matters associated with the Program, using approved BCC and federal procurement and financial accounting standards if it chooses to hire a collection agency.

The City will maintain full and complete documentation of all debt, calculations performed and communications with recipients. In all communications, precaution must be taken to prevent the distribution of any Personally Identifiable Information (PII).

Administrative costs on recapture will reflect only the actual costs of recapture.

The City or designee will collect the monies due, and all collections data will be entered as a miscellaneous "Housing Program Collection" or "Infrastructure Program Collection." These categories will be added to the City's financial chart of accounts. The City will ensure that all money collected from the recipient is reported to the State and/or HUD and repaid to the State and/or HUD if required.

### **Redistribution Plan**

Any funds recaptured by the City through its efforts will be returned to the BCC account. These funds will be made available for redistribution by BCC within the Housing Assistance or Buyout/Infrastructure Program, whichever is applicable. Funds recovered from the Program will be re-assigned to the same Program. New recipients will be selected in priority order based on the existing Program rules.

New recipients will be identified and contacted as funds come available. No commitments will be made based on projected collections.

If collected funds exceed eligible recipients at Program end, remaining collected funds will be transferred to another CDBG-DR eligible activity after approval by the State or HUD of a substantial amendment.

## APPENDIX A

# STEPS IN THE PROCESS FOR THOSE ELIGIBLE TO RESTART THE EFFECTIVE PERIOD

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1. Verify, to the extent possible, that all information in the recipient's file is current, complete and accurate.
  
2. The City will send a certified NOTICE OF CONCERNS REGARDING PROMISSORY NOTE EFFECTIVE PERIOD letter to the recipient indicating that the recipient is out of compliance on Forgivable Promissory Note, but that the five year Effective Period can be restarted by having the recipient agree to comply with all provisions of the Promissory Note. Appeals info is also included in the letter.
  - a. If the recipient responds to the initial notification within 15 days of the date of the letter and agrees to restart the Effective Period, complete all required paperwork to document the resolution of compliance issues, have the recipient re-sign the Promissory Note with the new Effective Date, and restart the Effective Period; no further action is required and recapture is not necessary.
  
  - b. If the recipient responds to the initial notification within 15 days of the date of the letter and opts to appeal, s/he must follow the procedure outlined in BCC Appeals Procedure, copies of which are available from the City.
  
  - c. If the recipient responds to the initial notification within 15 days of the date of the letter and opts to pay back the funds, the City will work with the recipient to negotiate a repayment plan and complete necessary documentation. The City may negotiate a reduced or fully waived repayment under certain conditions of financial hardship proven by the recipient. Assessment of a recipient's negotiated compromise amount will be based on recipient financial statements, obtained on penalty of perjury, showing assets, liabilities, income, expenses, credit reports and other pertinent financial information. This reduction of payment must have prior approval from the State or HUD. The City will place a lien on the property for the duration of the payment schedule, and release it once the debt is fully paid. Actual administrative costs of recapture may be added to the payment amount each payment period.
  
  - d. If the recipient does not respond within 15 days from the date of the first letter, a second certified NOTICE OF SERIOUS ONGOING CONCERNS letter will be sent to the recipient. This letter clearly states the basis of the ineligible assistance determination and the amount of ineligible assistance to be repaid,

along with the recipient's appeal rights and the specific actions to be taken by the City. This letter will also specify a date and time for a meeting with BCC officials - approximately 15 days from the date of this letter - to discuss the issues stated in the letter. The recipient will have the opportunity to reschedule the meeting to a more convenient date and time, provided the response is prior to the originally scheduled meeting date.

3. If the recipient does not respond to the second letter within the allotted time period, a third certified FINAL DETERMINATION NOTICE/DEMAND LETTER will be sent to the recipient. This letter will state that recapture proceedings will be initiated 30 days from the date of the letter unless the recipient initiates the formal appeal process before then. If there is no response from the recipient, the file will be turned over to legal or a collection agency for recapture. The City will report the recipient to Credit Reporting Bureaus.
4. If a compromise amount is negotiated and then put on an installment plan, the contract must say that if the recipient defaults, s/he will owe the ENTIRE amount of the distribution, not just the negotiated amount.
5. For any negotiated settlements where full payment is not immediate, upon discharge of the debt, the discharge must be reported to the State or HUD.

# STEPS IN THE PROCESS OF RECAPTURING A NON-FRAUDULENT DISTRIBUTION

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1. Verify, to the extent possible, that all information in the recipient's file is current, complete and accurate.

## **For Housing Assistance or Buyout/Acquisition Program Recipients:**

2. The City will send a certified NOTICE OF CONCERNS letter to the recipient detailing the specific compliance issue which compels recapture of the distribution.
  - a. If the recipient responds to the initial notification within 15 days of the date of the letter and can provide documentation proving compliance with the Forgivable Promissory Note, or in the case of buyouts, documentation to the contrary of funds received, update the file accordingly and document the satisfactory resolution.
  - b. If the recipient responds to the initial notification within 15 days of the date of the letter and can show that the concern stated in the letter can, in fact, be remediated and the recipient is willing to do so and restart the Effective Period, refer to STEPS IN THE PROCESS FOR THOSE ELIGIBLE TO RESTART THE EFFECTIVE PERIOD for guidance.
  - c. If the recipient responds to the initial notification within 15 days of the date of the letter and opts to appeal, s/he must follow the procedure outlined in BCC Appeals Procedure, copies of which are available from the City of Longmont.
  - d. If the recipient responds to the initial notification within 15 days of the date of the letter and opts to pay back the funds, the City will work with the recipient to negotiate a repayment plan and complete necessary documentation. The City may negotiate a reduced or fully waived repayment under certain conditions of financial hardship proven by the recipient. Assessment of a recipient's negotiated compromise amount will be based on recipient financial statements, obtained on penalty of perjury, showing assets, liabilities, income, expenses, credit reports and other pertinent financial information. This reduction of payment must have prior approval from the State and/or HUD. The City will place a lien on the property for the duration of the payment schedule, and release it once the debt is fully paid. Actual administrative costs of recapture may be added to the payment amount each payment period

- e. If the recipient does not respond within 15 days from the date of the first letter, a second certified NOTICE OF SERIOUS ONGOING CONCERNS letter will be sent to the recipient. This letter clearly states the basis of the ineligible assistance determination and the amount of ineligible assistance to be repaid, along with the recipient's appeal rights and the specific actions to be taken by the City. This letter will also specify a date and time for a meeting with BCC officials - approximately 15 days from the date of this letter - to discuss the issues stated in the letter. The recipient will have the opportunity to reschedule the meeting to a more convenient date and time, provided the response is prior to the originally scheduled meeting date.
- f. If the recipient does not respond to the second letter within the allotted time period, a third certified FINAL DETERMINATION NOTICE/DEMAND LETTER will be sent to the recipient. This letter will state that recapture proceedings will be initiated 30 days from the date of the letter unless the recipient initiates the formal appeal process before then. If there is no response from the recipient, the file will be turned over to legal or collection agency for recapture.

### **For Subgrantees (BCC Partners) Recipients:**

- 3 The City will send a certified NOTICE OF CONCERNS letter to the recipient detailing the specific compliance issue which compels recapture of the distribution.
  - a. If the recipient responds to the initial notification within 15 days of the date of the letter and can provide documentation proving compliance or a feasible alternative solution, update the file accordingly and document the satisfactory resolution.
  - b. If the recipient does not respond within 15 days from the date of the first letter, a second certified NOTICE OF SERIOUS ONGOING CONCERNS letter will be sent to the recipient. This letter clearly states the basis of the ineligible assistance determination and the amount of ineligible assistance to be repaid, along with the recipient's appeal rights and the specific actions to be taken by the City. This letter will also specify a date and time for a meeting with BCC officials - approximately 15 days from the date of this letter - to discuss the issues stated in the letter. The recipient will have the opportunity to reschedule the meeting to a more convenient date and time, provided the response is prior to the originally scheduled meeting date.
  - c. If the recipient does not respond to the second letter within the allotted time period, a third certified FINAL DETERMINATION NOTICE/DEMAND LETTER will be sent to the recipient. This letter will state that recapture proceedings will be initiated 30 days from the date of the letter unless the recipient initiates the formal appeal process before then. If there is no response from the recipient, the file will be turned over to legal or collection agency for recapture.

4. The City will maintain reports for collections not in default on a quarterly basis and aggregate the data.
5. The aggregated data will be reported quarterly to the State.
6. If a compromise amount is negotiated and the recipient is put on an installment plan, the contract must say that if the recipient defaults, the recipient will owe the ENTIRE amount determined ineligible, not just the negotiated amount.
7. For any negotiated settlements where full payment is not immediate, upon discharge of the debt, the discharge must be reported to the State and/or HUD.

## Approval and Revision Tracking

Policy and Procedure Name	BCC Recapture Plan	Original Approval Date	
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Complete the below for each revision:				
No.	Brief Description of Revision	Date sent for Approval	Signature of Person Approving	Date/Approval