**Recover Colorado Business Grant and Loan Program**

**Recapture Plan**

**Introduction**

HUD has no set guidelines or regulations for recapture of funds from individuals. This plan was designed to provide guidance on recapturing funds distributed through the Recover Colorado Business Grant and Loan Program funded through the Community Development Block Grant Disaster Recovery (CDBG-DR) program.

The Office of Economic Development and International Trade (OEDIT) and its partners in the Grant Program, Upstate Colorado Economic Development, Colorado Small Business Development Centers (SBDCs), Colorado Department of Local Affairs (DOLA), etc. conduct reviews of Program files. These reviews help ensure that appropriate documentation is being maintained in files to document that funds are being used 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).

**Notification**

Upon determining that ineligible assistance was distributed or that other serious violations of the Program have occurred, OEDIT will provide written notice to the recipient. The notice will:

* Describe the assistance that was determined to be ineligible or details on the violation of the Program;
* Inform the recipient that they may arrange a meeting with OEDIT staff to discuss the issue(s) and provide additional information/documentation to resolve the issue;
* State that failure to submit an answer within 15 days of receipt of the letter may result in the required repayment of all CDBG-DR assistance received without further due process.

**Corrective Action**

If the issue(s) can be resolved, appropriate corrective action will be required. For example:

* Where the recipient did not follow the requirement to disclose all pertinent financial details about the business or its owner(s) and lack of that information affected the calculation of potential assistance, all documentation must be submitted promptly, and any effects on the assistance amount must be appropriately addressed.

* If a recipient did not disclose all assistance received for recovery, they must reimburse the program for the amount affected, provide additional documentation to justify the assistance (continued unmet needs, etc.), or fully correct the problem in some other way as determined by OEDIT, DOLA, HUD or other agency.

**Repayment**

Depending on the issue(s), OEDIT may seek repayment of all ineligible assistance received by a recipient, plus the cost of collection, to the fullest extent permitted by law. OEDIT’s efforts to collect assistance funds may include any remedies available, to be determined on a case-by-case basis.

The recipient may repay OEDIT in a lump-sum payment of the entire amount or by entering into a repayment agreement satisfactory to OEDIT. A repayment agreement is a formal document prepared by OEDIT and signed by the recipient, in which the recipient acknowledges the debt and the amount owed. If a recipient refuses to enter into a repayment schedule, OEDIT may initiate formal legal or other enforcement actions.

Repayment will not be pursued from businesses that have ceased operations.

**Collections**

OEDIT may choose to handle collections or may decide to hire a private collection agency to handle collections for this program (31 USC 901.5). Any agreement with a collection agency will include the following at a minimum:

1. The collection agency is a State-approved collector who can transfer funds to Colorado State agencies.

2. OEDIT retains the right to resolve disputes, 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 agreement 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.

OEDIT or its designee will collect the monies due, and all collections data will be forwarded to the Colorado Department of Local Affairs (DOLA). DOLA will ensure that all money collected from the recipient is reported to and coordinated with HUD to meet all requirements.

**Re-distribution of Funds**

Any funds recaptured will be submitted to DOLA. DOLA will determine how the funds will be re-distributed within the State’s Disaster Recovery Program.

**APPENDIX A**

**STEPS IN THE PROCESS**

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

2. OEDIT will send a letter to the recipient detailing the specific issue(s).

3. The recipient is required to respond to the initial letter within 15 days of their receipt.

4. The recipient’s response must include appropriate and adequate documentation of one of the following:

* Justification of the total amount of assistance received. OEDIT will then update the file accordingly and document the satisfactory resolution.
* Description of how they will correct the issue described in the letter. OEDIT will then work with the recipient to correct the concern, update the file accordingly and document the satisfactory resolution.
* Appeal of the issue described in the letter. Must follow the procedure outlined in OEDIT’s Appeals Procedure.
* Pay back of the funds. The recipient may repay OEDIT in a lump-sum payment of the entire amount or by entering into a repayment agreement. The terms of a lump-sum payment or repayment agreement (amounts, due dates, etc.) must be satisfactory to OEDIT.

5. If the recipient does not respond within 15 days from the date of the first letter, and follow-up efforts are not successful, a final letter will be sent to the recipient. This letter will state that OEDIT will begin the recapture process if no response is received from the applicant within 30 days of the date of the letter. The recapture process will begin with OEDIT consulting with all partners (DOLA, HUD, Upstate Colorado Economic Development, SBDCs, HUD and others) to determine the appropriate course of action.