

City of Minot Recapture Plan

Section 1: Introduction

The City of Minot makes every attempt to ensure resources are allocated to the right project, at the right time, for the right reason. However, on occasions where that does not occur, there must be a means to retrieve funds and redistribute them appropriately. This plan details the city’s policy and processes for unintentional concerns. For intentionally erroneous distribution, please consult the City of Minot Fraud Policy. The Federal Statute of Limitations for initiating recapture proceedings is six (6) years following signature on the application forms (24 CFR 28.35(a)).

Section 2: Recapture Priorities

1. The City has authority, and shall consider recapturing the full amount of ineligible assistance, regardless of City staff or recipient responsibility in errors.
2. If recipients cannot repay ineligible grant funds, the City may be able to waive repayment under terms of the signed Promissory Note, Grant Agreement, or similar document.
3. Recapture priority levels are based on ineligible amounts of funds received. In all cases, the city will assess the recovery amount, recipient’s ability to repay, cost effectiveness, and other mitigating circumstances, in order to make a determination. Each priority level has a progressively higher threshold for waiver consideration. Recipient case files shall include documentation noting consideration factors and final results.

Grant Recovery Amount	Priority Level
> \$5,000	High Priority
\$1,000 - \$5,000	Medium Priority
< \$1,000	Low Priority

Section 3: Funds Recapture Procedures

Section 3.1. Notification:

1. The City will immediately notify recipients upon discovery of ineligible assistance.
 - a. Delivery will be by registered/certified mail, or other verifiable means.
 - b. Notices will:
 - i. Specify in detail the reason(s) that assistance was deemed ineligible;
 - ii. State the amount of ineligible assistance to be repaid;
 - iii. Offer a meeting to discuss the basis for claim, and give recipient an opportunity to provide facts, figures, written records, or other information that may affect the eligibility determination;
 - iv. Outline recipient appeal rights;

- v. Specify the address responses must be delivered to;
- vi. Clearly state that failure to submit written response within 15 business days of notice receipt, may result in processing the full amount sought.

Section 3.2. Repayment Options

1. Compromise settlements may be negotiated. If reached, the contract must state that if default occurs, recipient will owe the *entire* amount of the distribution, not simply the negotiated amount. Compromise should consider recipient's finances and ability to pay.
2. Program recipients who default on Rehabilitation/Reconstruction requirements but wish to remain in the dwelling, may reaffirm the mortgage loan receding balance, forgivable over the specified term, at zero interest (0.0% APR), by converting it into a non-forgivable mortgage. The owner may also agree to terms of a fixed loan and remain in the dwelling until sold, at which time the City can collect the amount due from sale proceeds.
3. Recipients can repay in a lump-sum payment of the entire amount due, or enter into a repayment agreement. This formal document is prepared by the City, signed by both parties, and stored in the city record system. The agreement specifies:
 - a. Amount to be paid, including processing fees.
 - b. Payment schedule: specific due dates and number of months.
 - c. Address for payments to be received.
 - d. Consequences for delinquent or defaulted payments.
4. Terms will not require prohibitive payments that would force the recipient to sell the property 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.
5. Accrued interest may be waived from the repayment agreement if the city determines interest is "against equity and good conscience". The recipient will pay a set fee each payment period equaling the repayment amount plus processing costs of collection.
6. Repayment schedule approval shall consider the best interests of the recipient, the City of Minot, and the federal government.
7. For Rehabilitation or Reconstruction grants, a lien will be placed on the property for the duration of the payment schedule.
8. The City will retain copies of all correspondence and a record of all conversations between the City and recipients regarding ineligible assistance received by a client.
9. Enforcement actions, such as civil or criminal charges, shall be initiated if an ineligible assistance recipient refuses to pay in full or enter a repayment schedule.
10. The City will notify Consumer Credit Reporting Agencies if the recipient becomes past due on the payment plan or if a settlement is not reached.
11. If no agreement can be reached, the City may use the fullest extent of the law to seek repayment of all ineligible assistance received plus the collection costs. City 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, and any other remedies available, on a case-by-case basis.

Section 3.3. General Administrative Procedures for Collection

1. Collections may be done internally or by contracting a private collection agency. If a private firm is used, the following conditions must be met:
 - a. Agency must be city-approved with direct funds transfer capability.

- b. The City retains rights to resolve disputes, compromise debts (negotiate settlement amounts less than the full amount), suspend or terminate collection, and refer debt for litigation.
 - c. Collection agencies cannot offer discounts or incentives to debtors.
 - d. Contract must include provision to follow the Privacy Act of 1974, state, and federal debt collection laws, i.e. the Fair Debt Practices Act, 15 USC 1692.
 - e. All amounts collected shall be accounted for by the collection agency.
2. The Finance Department will procure and pay private collection agencies if chosen for collections, using approved City and Federal procurement standards. Finance also uses accepted financial accounting standards for all other collection program matters.
 3. Recipient correspondence records, file and documentation maintenance, appeals hearings arrangements, and HUD reporting (if necessary) shall be city responsibility.
 4. Full and complete documentation of all debts, calculations performed, and recipient communications will be maintained by the city. Additionally, precautions shall be taken to prevent distribution of any Personally Identifiable Information (PII).
 5. Administrative costs of collection will only reflect actual costs.

Section 4: Redistribution of Funds

1. Recaptured funds will be made available for redistribution by the City within the activity the funds were originally appropriated under, if applicable.
2. Select new recipients by priority order from the wait list, based on existing program rules.
3. If collected funds exceed eligible clients at program end, coordinate redistribution and Action Plan amendment options with HUD prior to execution.

Section 5: Recapturing Non-Fraudulent Distributions

1. Verify all information in the recipient's file is current, complete, and accurate.
2. The City will send a NOTICE OF CONCERNS letter via USPS to the recipient detailing the specific compliance issue which compels recapture of the distribution.
 - a. Actions taken based on response within 15 business days of notification
 - i. If suitable documentation proving compliance with rules and regulations of the funded activity are provided, annotate file and document resolution.
 - ii. If situation can be remediated and recipient is willing to do so; proceed with remediation, update file and document satisfactory resolution.
 - iii. If recipient chooses to appeal, s/he must follow the City of Minot Program Appeals Procedures, available from the Disaster Recovery Office.
 - iv. If recipient chooses to repay funds, options and documentation shall be prepared by the city.
 - b. No response after 15 business days of original letter delivery shall prompt a NOTICE OF SERIOUS ONGOING CONCERNS letter, sent via USPS.
 - i. The basis of ineligible assistance determination, amount of ineligible assistance to be repaid, along with the recipient's appeal rights and the specific actions to be taken by the City shall be stated.
 - ii. Recipients shall have the ability to request a meeting with city officials within approximately 15 days from the letter date - to discuss concerns.

- c. Failure to respond to second letter shall trigger FINAL DETERMINATION NOTICE/DEMAND LETTER be sent via USPS to the recipient.
Notification that recapture proceedings will begin 30 days from letter date, unless repayment arrangements are made or appeal process initiated.
3. Reports on collections not in default shall be generated quarterly and reported to HUD.
4. If a compromise is negotiated and installment plan enacted, the contract must state that default will trigger the *entire* distribution amount being due, not the negotiated amount.
5. For negotiated settlements where full payment is not immediate, upon discharge of the debt, HUD must be notified.

Section 6: Recapturing Suspected Fraudulent Distributions

Refer to Fraud Policy

Section 7: Determining Cost Effectiveness of Recapture

It is estimated to take at least 4 hours of management and 4 hours of administrative time to complete a recapture; including letters, follow up, determining applicant's financial condition and ability to repay, developing and implementing a repayment agreement, potential collection agency involvement, check receipt and processing, etc. Using a consultant billing rate of \$135/hour, it would be ineffective to recapture under \$1,000.