

maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or participating jurisdiction must subtract a monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant. HUD will provide average occupancy per unit assumptions to be used in calculating the maximum rent allowed under paragraph (a)(2)(ii) of this section;

(iii) If the rent determined under this paragraph (a)(2) is higher than the applicable rent under paragraph (a)(1) of this section, then the applicable maximum rent for units under this paragraph would be that calculated under paragraph (a)(1) of this section

except for units that receive Federal or state project-based rental assistance.

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10. In § 92.254, paragraph (a)(4)(ii) is revised to read as follows:

**§ 92.254 Qualification as affordable housing: homeownership.**

(a) \* \* \*

(4) \* \* \*

(ii) A participating jurisdiction may structure the recapture provisions, subject to HUD approval, based on its program design and market conditions.

(A) The following methods of recapture would be acceptable to the Department:

(1) Recapture the entire amount of the HOME investment, except that the HOME investment amount may be

reduced prorata based on the time the homeowner has owned and occupied the unit measured against the required affordability period.

(2) If the net proceeds (i.e., the sales price minus loan repayment, other than HOME funds, and closing costs) are not sufficient to recapture the full (or a reduced amount as provided for in paragraph (a)(4)(ii)(A)(1) of this section) HOME investment plus enable the homeowner to recover the amount of the homeowner's downpayment and any capital improvement investment, the participating jurisdiction's recapture provisions may share the net proceeds. The net proceeds may be divided proportionally as set forth in the following mathematical formulas:

$$\frac{\text{HOME investment}}{\text{HOME investment} + \text{homeowner investment}} \times \text{Net proceeds} = \frac{\text{HOME amount to be recaptured}}{\text{HOME investment} + \text{homeowner investment}}$$

$$\frac{\text{homeowner investment}}{\text{HOME investment} + \text{homeowner investment}} \times \text{Net proceeds} = \text{amount to homeowner}$$

(3) Alternatively, the PJ may also allow the homebuyer to recover all the homebuyer's investment (downpayment and capital improvements) first before recapturing the HOME investment.

(B) The HOME investment that is subject to recapture is based on the amount of HOME assistance that enabled the homebuyer to buy the dwelling unit. This is also the amount upon which the affordability period is based. This includes any HOME assistance that reduced the purchase price from fair market value to an affordable price, but excludes the amount between the cost of producing the unit and the market value of the property (i.e., the development subsidy). The recaptured funds must be used to carry out HOME-eligible activities. If no HOME funds will be subject to recapture, the provisions at § 92.254(a)(4)(i) apply.

(C) Upon recapture of the HOME funds used in a single-family, homebuyer project with two to four units, the affordability period on the rental units may be terminated at the

discretion of the participating jurisdiction.

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11. In § 92.356, paragraphs (a)(1) and (a)(2) are revised to read as follows:

**§ 92.356 Conflict of interest.**

(a) \* \* \*

(1) In the procurement of property and services by participating jurisdictions, state recipients, and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply.

(2) In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply. These cases include the acquisition and disposition of real property and the provision of assistance by the participating jurisdiction, by the state recipient, by subrecipients, or to individuals, housing developers, and other private entities under eligible activities which authorize such assistance (e.g., rehabilitation of housing).<sup>4</sup>

\* \* \* \* \*

<sup>4</sup> See § 92.505 concerning the availability of OMB Circulars.

12. Section 92.505, is revised to read as follows:

**§ 92.505 Applicability of uniform administrative requirements.**

(a) *Governmental entities.* The requirements of OMB Circular No. A-87 and the following requirements of 24 CFR part 85 apply to the participating jurisdiction, state recipients, and any governmental subrecipient receiving HOME funds: §§ 85.6, 85.12, 85.20, 85.22, 85.26, 85.32-85.34, 85.36, 85.44, 85.51, and 85.52, of this title.

(b) *Non-profit organizations.* The requirements of OMB Circular No. A-122 and the following requirements of 24 CFR part 84 apply to subrecipients receiving HOME funds that are private nonprofit organizations: §§ 84.2, 84.5, 84.13-84.16, 84.21, 84.22, 84.26-84.28, 84.30, 84.31, 84.34-84.37, 84.40-84.48, 84.51, 84.60-84.62, 84.72, and 84.73, of this title.

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**Henry G. Cisneros,**  
Secretary.

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