

**§ 954.308**

**24 CFR Ch. IX (4-1-02 Edition)**

(2) Is the principal residence of an owner whose family qualifies as a low-income family at the time of purchase; and

(3) Is subject—for minimum periods of: 5 years where the per unit amount of HOME funds provided is less than \$15,000; 10 years where the per unit amount of HOME funds provided is \$15,000 to \$40,000; and 15 years where the per unit amount of HOME funds provided is greater than \$40,000—to resale restrictions, as described in paragraph (a)(3)(i) of this section, or recapture provisions, as described in paragraph (a)(3)(ii) of this section, that are established by the grantee and determined by HUD to be appropriate.

(i) Resale restrictions must make the housing available for subsequent purchase only to a low income family that will use the property as its principal residence; and

(A) Provide the owner with a fair return on investment, including any improvements; and

(B) Ensure that the housing will remain affordable, pursuant to deed restrictions, covenants running with the land, or other similar mechanisms to ensure affordability, to a reasonable range of low-income homebuyers. The affordability restrictions must terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD. The grantee may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event reacquires title to the property.

(ii) A grantee's recapture provisions must provide for the recapture of the full HOME investment out of net proceeds, except as provided in paragraph (a)(3)(ii)(B) of this section.

(A) Net proceeds means the sales price minus loan repayment and closing costs.

(B) If the net proceeds are not sufficient to recapture the full HOME investment plus enable the homeowner to recover the amount of the home-

owner's downpayment, principal payments, and any capital improvement investment, the grantee's recapture provisions may allow the HOME investment amount that must be recaptured to be reduced. The HOME investment amount may be reduced pro rata based on the time the homeowner has owned and occupied the unit measured against the required affordability period; except that the grantee's recapture provisions may not allow the homeowner to recover more than the amount of the homeowner's downpayment, principal payments, and any capital improvement investment.

(C) The HOME investment that is subject to recapture is the HOME assistance that enabled the first homebuyer to buy the dwelling unit. This includes any HOME assistance, whether a direct subsidy to the homebuyer or a construction or development subsidy, that reduced the purchase price from fair market value to an affordable price. The recaptured funds must be used to carry out HOME-eligible activities. If no HOME funds will be subject to recapture, the provisions at § 954.306(a)(3)(i) apply.

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

(b) *Rehabilitation not involving purchase.* Housing that is currently owned by a family qualifies as affordable housing only if—

(1) The value of the property, after rehabilitation, does not exceed 95% of the median purchase price for the type of single family housing (1- to 4-family residence, condominium unit, combination manufactured home and lot, or manufactured home lot) for the area as determined by HUD, and which may be appealed in accordance with 24 CFR 203.18b; and

(2) The housing is the principal residence of an owner whose family qualifies as a low-income family at the time HOME funds are committed to the housing.

**§ 954.308 Prohibited activities.**

(a) HOME funds may not be used to—

(1) Provide a project reserve account for replacements, a project reserve account for unanticipated increases in operating costs, or operating subsidies; except as authorized under § 954.302; (2) Provide nonfederal matching contributions required under any other Federal program;

(3) Provide assistance in connection with programs authorized under part 950 (Indian Housing Programs) of this title;

(4) Provide assistance to eligible low-income housing under part 248 (Prepayment of Low Income Housing Mortgages) of this title; or

(5) Provide assistance (other than tenant-based rental assistance or assistance to a homebuyer to acquire housing previously assisted with HOME funds) to a project previously assisted with HOME funds during the period of affordability established by the grantee under § 954.306 or § 954.307. However, additional HOME funds may be committed to a project up to one year after project completion (see § 954.500), but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under § 954.400.

(b) Grantees may not charge monitoring, servicing and origination fees in HOME-assisted projects. However, grantees may charge nominal application fees (although these fees are not an eligible HOME cost) to project owners to discourage frivolous applications.

### Subpart D—Project Requirements

#### § 954.400 Maximum per-unit subsidy amount.

The amount of HOME funds that a grantee may invest on a per-unit basis in affordable housing may not exceed the total development cost standard for the area, as issued by HUD under 24 CFR 950.220. These total development cost standards are available from HUD Area ONAPs.

#### § 954.401 Property standards.

(a) Housing that is assisted with HOME funds, at a minimum, must meet the housing quality standards in § 882.109 of this title. In addition, housing that is newly constructed or sub-

stantially rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances. The grantee must have written standards for rehabilitation. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

(b) The following requirements apply to housing for homeownership that is to be rehabilitated after transfer of the ownership interest:

(1) Before the transfer of the ownership interest, the grantee must:

(i) Inspect the housing for any defects that pose a danger to health; and

(ii) Notify the prospective purchaser of the work needed to cure the defects and the time by which defects must be cured and applicable property standards met.

(2) The housing must be free from all noted health and safety defects before occupancy and not later than 6 months after the transfer for completion of the transitional housing tenancy period.

(3) The housing must meet the applicable property standards (at a minimum, the housing quality standards in § 882.109 of this title) not later than 2 years after transfer of the ownership interest.

#### § 954.402 Tenant and participant protections.

(a) *Lease.* The lease between a tenant and an owner of rental housing assisted with HOME funds must be for not less than one year, unless by mutual agreement between the tenant and the owner.

(b) *Prohibited lease terms.* The lease may not contain any of the following provisions:

(1) *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;

(2) *Treatment of property.* Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition,