

PART E

MFA RECAPTURE/AFFORDABILITY GUIDELINES

A.1. MFA RESOURCES TO BE APPLIED IN 2018

When necessary, MFA will require repayment of the outstanding amount of HOME funds in the event of noncompliance with HOME affordability requirements. Noncompliance occurs when, if at any time during the period of affordability: 1) the original HOME-assisted homebuyer fails to occupy the unit as the principal residence (i.e., the unit is rented or vacant), or 2) the home is sold and the recapture provisions are not enforced. Affordability is ensured through the recordation of restrictive covenants accompanied by a lien filed on the property.

Maintaining Affordability

In general, all HOME activities require the borrower or beneficiary to execute, at a minimum, a Restrictive Covenants Agreement or Tribal Land Award Agreement. Loans are due upon sale or transfer of the property, with some exceptions in owner-occupied rehabilitation. In the case of the DPA program, mortgage liens are placed in second position behind MFA's first-time homebuyer mortgage backed security (MBS) program loans. In MFA's Owner-Occupied Rehabilitation program, these liens can assume a variety of positions, including first. Finally, in the case of MFA's Rental New Construction and Rehabilitation programs, a Land Use Restriction Agreement is executed along with the note and mortgage to ensure long term compliance with HUD guidelines. All guidelines under which repayment must be made are spelled out in the note, mortgage and/or restrictive covenant documents, depending upon the activity.

MFA ensures long-term affordability of assisted properties as follows:

For homebuyer properties, MFA has chosen the recapture provision over the resale option as discussed in HOME regulations at 24 CFR 92.254(a)(5). This is discussed in more detail in the following subsection.

For Rental Projects, the length of the affordability period is based on the amount of HOME funds invested in the property, as well as on the nature of the activity funded.

RENTAL Activity	Average Per-Unit HOME	Minimum Affordability Period
Rehabilitation or Acquisition of Existing Housing	<\$15,000 15,000 - \$40,000 >\$40,000	5 years 10 years 15 years
Refinance of Rehabilitation Project	Any dollar amount	15 years
New Construction or Acquisition of New Housing	Any dollar amount	20 years

In the case of foreclosure on the property during the period of affordability, MFA files an answer and monitors the foreclosure. If there are any excess funds at the foreclosure sale, MFA will file a claim for those funds. This demonstrates that MFA has made every effort to recover the HOME funds on behalf of HUD. For all homeowner activities, recapture provisions must be limited to net proceeds, and MFA's repayment obligation is limited to the amount of the HOME subsidy, if any, that it is able to recover. For rental activities, per §92.252(e)(4), the termination of the restrictions on the project does not terminate the participating jurisdiction's repayment obligation under §92.503(b). However, in §92.252(e)(2), though, "the participating jurisdiction may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure in order to preserve affordability." After the period of affordability, MFA files a disclaimer to the property.

In the case of a bankruptcy during the period of affordability, MFA files an answer and proof of claim on the property thus establishing MFA's interest in the property. After the period of affordability, a disclaimer is filed.

Recapture guidelines:

Under the Down Payment Assistance Program, homebuyer projects are subject to a Note and Mortgage with a recapture provision. The length of the affordability period is based on the amount of HOME funds provided as a direct subsidy to the homebuyer, as shown in the table below.

Amount of HOME Subsidy to the Buyer	Minimum Affordability Period
<\$15,000	5 years
15,000 - \$40,000	10 years
>\$40,000	15 years

A direct subsidy is funding that makes a home more affordable to a homebuyer, and includes down payment and closing cost assistance as well as the difference between fair market value and the sale price, or the amount of a soft second mortgage that makes the home affordable to the buyer.

The borrower executes notes and mortgages for these loans as well as a HOME written agreement (i.e. MFA Disclosure to Buyer). The HOME-assisted homebuyer may sell the unit to any person, at any price the market will bear, at any time during the period of affordability. However, if the property is sold or transferred during the period of affordability, these recapture provisions apply:

In the event there are sufficient net proceeds from the sale to repay the total amount of the borrower's initial investment (down payment) and the outstanding HOME balance, then both parties shall recover their investments. The borrower will pay to lender the entire

balance due on the loan. Additional proceeds will be shared between the borrower and the lender.

In the event, however, the net proceeds from the sale or transfer of the property are **not** sufficient for the borrower to recover its initial investment and repay the outstanding HOME loan balance, then MFA will permit the borrower to recover its down payment first, and the remaining amount of net proceeds from the sale will then be recaptured. Upon recapture, the borrower's loan will be considered satisfied. MFA will never recapture more than the amount of net proceeds than are available. If there are no net proceeds from the sale or transfer, then no HOME funds will be recaptured and the loan will be considered satisfied. The term "Net Proceeds" means the sales price of the property, less the amount necessary to repay any loans superior to the HOME mortgage secured by the property, and less any closing costs associated with such sale or transfer. (That is: Net proceeds are defined as: Sales Price - Superior (non-HOME) debt - Closing costs = Net Proceeds). The amount to be recaptured will be limited to the available net proceeds.

Homebuyers must agree to reside in the HOME-assisted property for the duration of the period of affordability, or until there is a sale or other transfer of ownership of the property. MFA will monitor principal residency throughout the period of affordability. First, as a lien holder, MFA will be notified upon a sale of the property, and second, MFA is a loss payee on the hazard insurance and would be advised of any change in the insurance coverage. Should the homebuyer cease to reside in the home as its principal residence by vacating or renting the unit during the period of affordability, then the outstanding amount of the down payment assistance loan will be due and payable immediately, and the lender will take legal action to enforce the residency requirement.

Any variation on this recapture provision must be submitted to the State of New Mexico for review and approval by the State and by HUD.