HOMEfires - Vol. 9 No. 4, August 2008 (Revised)

Q: Can Participating Jurisdictions (PJs) use the higher statutory exceptions to the maximum Section 221(d)(3) mortgage amounts, authorized by Section 221 of the General Provisions of Title II, Division K of the FY 2008 Appropriations Act, to determine their maximum HOME per-unit subsidy limits? The FY 2008 Appropriations Act increases the maximum exceptions that the Secretary can grant from 140 percent to 170 percent for high cost areas; and from 170 percent to 215 percent for specific projects in high cost areas.

A. No. PJs cannot use the higher 170 percent or 215 percent Section 221(d)(3) statutory exceptions for high cost areas to determine their maximum HOME per-unit subsidy limits, because doing so would violate the HOME statute. PJs should contact the Community Planning and Development (CPD) Division in their local HUD Field Offices to obtain the latest maximum HOME per-unit subsidy limits that apply to their jurisdictions.

Background

The HOME statute and the HOME regulation at 24 CFR 92.250(a) limit the amount of HOME funds that a PJ may invest in a HOME-assisted unit. The maximum HOME per-unit subsidy limit is the basic Section 221(d)(3)(ii) mortgage limit for elevator-type projects, by bedroom size. However, the HOME statute authorizes HUD to increase the per-unit subsidy limit in any "high cost" geographic area by an amount not to exceed 140 percent of the basic Section 221(d)(3) mortgage limit. The maximum HOME per-unit subsidy limit thus is 240 percent of the Section 221(d)(3) basic mortgage limit (i.e., 100 percent plus 140 percent).

Although the FY 2008 Appropriations Act increases the maximum exceptions that the Secretary can grant for the Section 221(d)(3) program, the Act did not make conforming changes to the HOME statute. Therefore, the maximum HOME per-unit subsidy limit that HUD can approve for a PJ remains 240 percent of the basic Section 221(d)(3) mortgage limit.

Each year, HUD's Office of Multifamily Housing updates the Section 221(d)(3)(ii) basic mortgage limits and publishes them in the Federal Register. The Office of Multifamily Housing also establishes high cost percentage exceptions (HCP) for specific areas. The HCP is a multiplier of the basic mortgage limit. Updated limits and high cost percentages are usually published in January or February. The HOME regulations authorize the CPD Division in the HUD Field Office to increase a PJ's HOME per-unit subsidy limit when HUD's Office of Multifamily Housing has increased the PJ's high cost percentage above 210 percent of the basic Section 221(d)(3) mortgage limit.

The CPD Division may authorize a PJ to use the most recent high cost percentage and corresponding Section 221(d)(3) mortgage limit, provided the resulting HOME per-unit subsidy limit does not exceed 240 percent of the basic Section 221(d)(3) mortgage limit (as required by the HOME statute). For a PJ whose HCP has been increased above 240 per cent, the CPD Division must cap the HOME per-unit subsidy limit at 240 percent of the Section 221(d)(3) basic mortgage limit.

Participating Jurisdictions should contact the CPD Division in their local HUD Field Offices to obtain the maximum HOME per-unit subsidy limits that apply to their jurisdictions. Participating Jurisdictions should not calculate their own HOME per-unit subsidy limits by using the High Cost Percentages and the basic Section 221(d)(3)(ii) mortgage limits that are published in the Federal Register by HUD's Office of Multifamily Housing.