

CHAPTER 2

MULTIFAMILY PROPERTY REQUIREMENTS

When owners purchase an AHP property, they agree to follow a set of requirements designed to assure that the property provides affordable housing for low income families, an obligation established when the LURA is signed and recorded at closing.

The role of state monitoring agencies is to check a property's occupancy status periodically to assess whether the owner is complying with the program's requirements. If an owner fails to follow the required procedures, the agency must take enforcement actions to compel the owner to bring the property into compliance.

It is essential that owners understand the requirements that apply to the program. This chapter describes these requirements, which fall into eight basic areas:

- ◇ Occupancy Requirements;
- ◇ Tenant Eligibility;
- ◇ Maximum Rents;
- ◇ Dwelling Lease Requirements;
- ◇ Leasing Procedures when Insufficient Qualifying Units;
- ◇ Record-Keeping and Reporting Requirements;
- ◇ Monitoring Fees; and
- ◇ Resale Requirements.

2.1 OCCUPANCY REQUIREMENTS

The LURA requires an owner to lease a specified portion of the units in the property to low income tenants, and to maintain the required units over the life of the LURA.

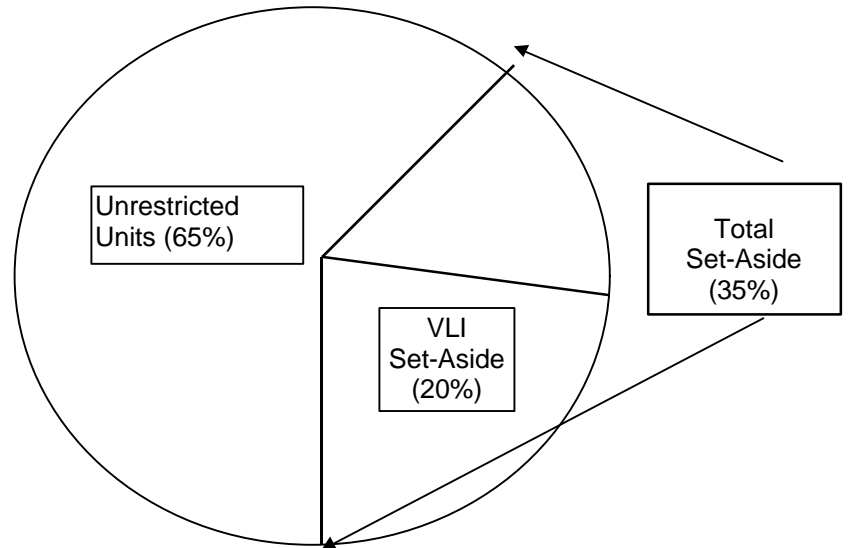
A. Low Income Unit Requirements

Under most circumstances, an owner of an AHP property must meet two specific low income unit requirements:

- ◆ a **Total Set-Aside**; and

◆ a **Very Low Income (VLI) Set-Aside** .²

The VLI Set-Aside is part of the Total Set-Aside. Units that qualify for the VLI Set-Aside also count toward the Total Set-Aside obligation. Exhibit 2-1 illustrates this relationship between the two set-asides.



Units that are designated or reserved to meet these Set-Asides are subject to all of the occupancy requirements contained in this Manual. Units that are not counted toward the Set-Asides are referred to as “unrestricted units”, and are not subject to the requirements of this Chapter unless and until they are needed to replace units in the Set-Asides as described in Chapter 3.

Total Set-Aside

The Total Set-Aside specifies the portion of the total units in the property that must be designated for occupancy by low income tenants.

² For some properties, such as some bulk sale condominiums, no VLI Set-Aside was established because the units were expected to be resold to individual LI buyers. If a property's LURA established no VLI Set-Aside, then owners are only required to designate LI tenants and charge LI rents as provided herein, and the requirements for VLI do not apply.

To qualify as a Low Income tenant, a household's annual (gross) income must not exceed 80 percent of the median income for that area after adjusting for family size. These income limits are defined annually by HUD, and distributed by FDIC and your monitoring agency. (Section 2.2 discusses in greater detail income eligibility and how annual (gross) income for a household is defined.)

Generally, the Total Set-Aside is set at 35 percent of the total units in the property. However, in some cases higher set-asides were negotiated and the number of units that must be kept available for low income families can range from 35 percent up to 100 percent of the units.³ The Total Set-Aside established for a given property is found in Section 2.2 (a) of its LURA, and is specified as an actual number of units rather than percentages.

Very Low Income (VLI) Set-Aside

The VLI Set-Aside establishes the number of units in a property that the owner must designate for occupancy by Very Low Income tenants.

A Very Low Income household must have an annual (gross) income equal to or less than 50 percent of the area median income after adjusting for family size, as defined by HUD and the FDIC.

The VLI Set-Aside for a specific property can be found in the same paragraph of the LURA as the Total Set-Aside, section 2.2(a). For most properties, the VLI Set-Aside is 20 percent of the total units in the property.⁴ VLI units also count toward the Total Set-Aside.

For purposes of this Manual, all examples will be provided using the above Program standards of a 35 percent Total Set-Aside, including a 20 percent Very Low Income Set-

³ For bulk purchases of AHP properties, the 35 percent minimum Total Set-Aside applies to the entire purchase. Individual properties within the purchase may have a Total Set-Aside less than 35 percent as long as the set-asides established for the other properties bring the purchase up to the 35 percent minimum.

⁴ In general, the required number of VLI units represents roughly 60 percent of the Total Set-Aside because that was the proportion established by the final rule for the program. In some cases however, the negotiations for higher unit requirements resulted in VLI Set-Aside that make up a larger or smaller share of the total Low Income units. These cases occurred primarily in bulk purchases where the owners are aggregating units among certain properties within the purchase. While the VLI units for the entire purchase represent roughly three-fifths of the Low Income units, the share of VLI-QUs for a given property in the purchase may vary.

Aside. Refer to the LURA for your property to identify the exact requirements for your property.

Proportionality

In addition to achieving a total number of QUs to meet the required Set-Asides, owners are required to use best efforts to achieve and maintain a reasonable distribution of the QUs throughout the property. Section 2.2 of the LURA requires owners to use best efforts to achieve and maintain a distribution of QUs across unit sizes in proportion to the overall distribution of units. (For example, if 40 percent of the units are 1 BRs, 40% are 2 BRs, and 20% are 3 BRs, then the owners should attempt to maintain over time a 40/40/20 distribution of QUs across the three sizes.) It also requires owners to avoid physical concentrations of QUs, instead asking owners to keep QUs physically distributed throughout the property.

This is a best efforts clause, since the FDIC recognizes that market conditions and unit turnover make it impossible to always maintain an exact distribution. Owners should monitor the distribution of their QUs units, and make efforts to rebalance the distribution of unit sizes and disperse units when turnover opportunities permit.

B. Designating Qualifying Units (QUs)

Owners need to designate the units within the property that they have chosen to fulfill the set-asides. The units occupied by Very Low Income tenants that the owner counts toward meeting the VLI Set-Aside are called Very Low Income Qualifying Units (VLI-QUs). When these units are added to the units occupied by low income residents -- designated as Low Income Qualifying Units (LI-QUs), the sum should equal the number of units required by the Total Set-Aside.⁵

For example, an owner who purchased a 60 unit rental property with a 21 unit Total Set-Aside (35 percent of 60 units) would have to rent at least 12 units (20 percent of 60 units) to Very Low Income households to meet the VLI

⁵ Low and Very Low Income families may occupy unrestricted units in the property. A unit with a low income tenant only becomes a qualifying unit if the owner takes the steps necessary to designate it as one.

Set-Aside. These 12 units would also count toward a Total Set-Aside requirement.

An owner must meet both Set-Aside requirements, not just one, to be in compliance with the occupancy requirements.

Note: Not all units occupied by Low income and Very Low Income tenants must be designated as Qualifying Units. Only the minimum required by the Set-Asides must be designated. Low and Very Low Income tenants may occupy unrestricted units in the property.

There are two principal methods owners can use to designate QUs. They can:

- ◇ lease vacant units to income eligible tenants; and/or
- ◇ identify existing tenants who are income eligible.

Owners may use one or both of these approaches to obtain the required number of QUs. Section 3.4 of this manual describes each method in greater detail.

C. Vacated QUs

When a tenant moves out of a QU and the property is below the required Set Asides, the owner must reserve and rent this unit (or another unit) to a qualifying tenant to meet the Set Aside requirements.

While the owner is seeking a replacement tenant, the vacated unit retains the pre-vacancy QU designation (VLI or LI) until the unit or replacement unit has been occupied by a new Qualifying tenant. Once the unit is rented or a replacement unit is found, the unit must be occupied by a Qualified Household to retain its designation as a QU. (See Section 3.5 for a description of procedures for renting or replacing vacant QUs.)

D. Shifting the QU Designation

A QU designation is not permanently tied to a given unit. However, when an owner designates a unit as a QU, that unit must remain a QU as long as the tenant who occupies the unit remains eligible (as determined by an annual re-

certification) and continues to reside there. For example, if Unit 201 was designated as a LI-QU based on the income of Household X, the owner may not remove the QU designation from Unit 201 until Household X is determined to be over-income or moves out.

Furthermore, when the Qualifying Tenant of a QU moves to another unit within the property, the QU designation must be shifted to the new unit occupied by the tenant.⁶ Using the example above, if Household X is income eligible and moves from Unit 201 to Unit 101, the LI-QU designation shifts to Unit 101 and the owner may rent Unit 201 to any tenant (assuming all Set-Aside requirements are met).

Section 3.5 of this manual provides further information on changing QU designations.

E. Treatment of In-Place Tenants

One of the most important provisions of AHP is the protection for in-place tenants . The procedures for reaching the occupancy requirements for a property are designed to allow owners to lease QUs as existing units become available. **Under no circumstances should an owner terminate the occupancy of any tenant in-place at the time the LURA became effective solely for the purpose of achieving compliance with the property's occupancy requirements.** In-place tenants enjoy this protection for as long as they reside in the property.

2.2 TENANT ELIGIBILITY AND LEASE REQUIREMENTS

Before a unit can be designated as a QU, the owner must establish that the tenant is a Low or Very Low Income household. To determine a household's income status, the owner must compare the household's annual income to the income limits for Low and Very Low Income tenants, as published annually for your area by HUD and FDIC. To help assure that a tenant's eligibility is established properly, owners must verify the household's income and have the tenant certify its accuracy on the AHP Tenant Income Certification (TIC). These

⁶ If a tenant of a QU stays in the development, that tenant remains eligible until the household's annual income exceeds 140 percent of the Low Income limit (see Section 2.2.H).

requirements are summarized below, and explained in detail in Chapter 4.

Because income and household composition may change over time, the owner must re-examine the eligibility of tenants in QUs at least once a year. Recertification requirements are covered in Section 4.7.

Finally, to assist and protect the owner in determining eligibility and completing the re-examination process, the owner must incorporate specific provisions into the lease agreement for each QU that establish the tenant's obligation to provide accurate information regarding household income and composition. These requirements are covered in Chapter 5.

The steps described below apply only to the households that are to be certified for a QU. These requirements do not apply to any unrestricted unit which is not part of the Set-Aside for QUs.

A. Establish the AHP Income Limits

The FDIC establishes the income limits owners must use in determining whether a household qualifies as a Low or Very Low Income tenant. The FDIC has adopted HUD's definitions of Low Income and Very Low Income respectively as the basis for these limits in AHP.

For most areas of the country, Low Income and Very Low Income are calculated as 80 percent and 50 percent of area median income with an adjustment for family size. However, there are some areas of particularly high or low median income where HUD adjusts the calculations of Low and Very Low Income. The FDIC uses HUD's published income limits, and these will be provided annually by the monitoring agency.

Owners should use only those income limits provided by the monitoring agency. Census Bureau and other definitions of median income are not appropriate surrogates for AHP's published limits.

When the AHP income limits are received from the monitoring agency, there may be listings for multiple communities in the state. Owners should identify the limits that apply to your property based upon the location of the

property. Owners do not need to apply 50 percent or 80 percent factors to calculate the income limits. These are already computed on the sheets provided by the monitoring agency. There are no mathematical calculations required.

Units occupied by tenants with annual (gross) incomes at or below these limits may be designated as QUs. For example, a unit occupied by a tenant with an annual (gross) household income equal to 60 percent of the area median income for families of the same size could be designated as a LI-QU.

When determining eligibility, owners must use the income limits in effect on the date the tenant is certified as income eligible. Monitoring agencies will provide owners with copies of the current income limits as they are updated.

B. Determine Household Size

Because income limits vary by size of household, owners must establish the number of people in a tenant's household to determine whether that household is income eligible. Section 4.2 of this manual provides further information on determining household size. AHP is only concerned about household size in terms of income eligibility. Unlike many HUD programs, AHP does not dictate the size unit for which a household is eligible.

C. Determine Income Eligibility

To determine whether a tenant is eligible, an owner must compare the tenant's anticipated annual (gross) income for the next 12 months to the income limits (as noted above) for the appropriate household size.

AHP uses the definition of annual household income as defined by HUD to determine the gross annual (or eligibility) income of families and individuals receiving housing assistance through the Section 8 program, except as the FDIC has specifically defined income for student households (see Appendix C).⁷

⁷ Special rules have been developed for student households in AHP. Scholarships or educational grants for tuition and school expenses may be excluded, as can student loans, but the portions of scholarships or grants for subsistence plus any payments from any other persons (such as parents or family members) must be included as income.

Under this definition, household annual income includes employment or earned income of all adult members, most benefits and periodic payments, and income from assets.

The sources of income that must be included and excluded are detailed in Chapter 4 and the AHP "Guide for Determining Annual Income" in Appendix C.

Any changes which HUD makes to the Section 8 Program regarding income definitions may be incorporated automatically into AHP by the state monitoring agencies to maintain consistency across programs. The exception is revision of the AHP definition of student household income, which may be changed only through direct issuance by the FDIC. As HUD publishes updates to these requirements, monitoring agencies will inform owners of the changes.

FDIC has developed a sample rental application that owners may use to collect the information needed to calculate annual income. This form should aid in determining applicant eligibility and is included in Appendix A of this manual. If you wish to use a different application format, make certain that all required income elements, including assets, are incorporated into the application, and it is recommended that you ask the State Monitoring Agency to review the form.

D. Execute Tenant Release and Consent Form

To help owners retrieve the required eligibility information, the LURA specifies that the household head and other appropriate members of the household execute a monitoring agency approved Release and Consent Form (see Appendix B). When seeking Qualified Tenants, owners should have all prospective tenants who appear to be eligible sign this form. This is required by law.

The form authorizes the following parties to furnish/release information needed to evaluate household eligibility:

- ◇ depository institutions;
- ◇ private sources of income; and
- ◇ any federal, state, or local agency.

Use or disclosure of information obtained from a household or another source pursuant to the Release and

Consent Form must be limited specifically to the purpose of determining tenant eligibility to occupy a QU.

E. Verify Tenant Income

If the anticipated annual income of a prospective or existing tenant appears to fall under the applicable income limits (by household size), the next step is for the owner/manager to verify that the income information provided by the tenant is accurate.

The verification procedures for AHP properties follow methods quite similar to those used in other affordable housing programs, such as the Low Income Housing Tax Credit, tax-exempt bond, mortgage revenue bond, and HUD-assisted housing programs.

There are three acceptable methods of verifying household income:

- ◆ **Third-party written verifications** are the preferred method. The owner must attempt to use this method wherever feasible. However, tenants who are self-employed are one example where this method may not be feasible.
- ◆ **First-hand documentation** should be used in cases where third-party verification is not feasible. Examples of acceptable forms of firsthand documentation include: pay check stubs, W-2 forms, certified tax returns, and bank statements.
- ◆ **Third-party oral verification** may be used when there is no response to the owner's request for written verification. Owners must document information that is provided orally in the tenant file with signed and dated notes. Oral verifications also may be used to update written verifications.

These verification methods must be used to document all income reported, including all assets when the total assets exceed \$5,000. When assets are less than \$5,000, the asset information is not required to be verified (but asset income is included in the income calculation, and all other information still must be verified.)

Section 4.4 provides more detailed information on acceptable verification procedures.

F. Execute Tenant Income Certifications

Upon verification of eligible income and prior to designation of the unit as a QU, owners must have tenants of QUs sign a written certification that the information they provided regarding their income and household composition is complete and accurate.

Owners must use the Tenant Income Certification (TIC) Form included in Appendix E, or a comparable form approved by the State Monitoring Agency. The TIC consists of:

- ◆ **Part I** -- household composition and tenant income verified by the owner or manager;
- ◆ **Part II** -- tenant certification of the accuracy of the information shown in Part I;
- ◆ **Part III** -- owner or manager signature and the household's designation (Low Income or Very Low Income); and
- ◆ **Part IV** -- relevant dates, rents and rent limits, and income limits as of the time of execution.

The verification of income and completion of the TIC Form must be performed prior to occupancy. Execution of the TIC at the same time as the lease is executed is recommended.

G. Execute the Tenant Lease Provisions

The LURA requires that leases with tenants occupying QUs contain certain provisions establishing the obligations of their tenancy. Leases for all QUs must require tenants to:

- ◇ provide information regarding household size and annual income; and
- ◇ certify the accuracy of this information.

These lease requirements can be incorporated through a lease addendum rather than executing a new lease. AHP does not specify required lease terms. The specific provisions (and some prohibited clauses) are discussed in Chapter 5.

H. Re-examine Tenant Income Annually

On at least an annual cycle, owners must re-examine the eligibility of tenants living in QUs. During each re-examination, owners must gather and verify information on changes in household composition or the annual income of the tenant.

Conducting Re-Examinations

In conducting re-examinations, owners must have the tenant of each QU report any changes in household size or annual income.

Even if no changes have taken place, tenants still must provide information showing that their status remains the same. Tenants then must certify the accuracy of the information provided.

In assessing the ongoing eligibility of tenants, the applicable VLI limit is used to determine eligibility of VLI tenants. However, the income limit used to determine eligibility as a Low Income tenant is set at 140 percent of the applicable LI income limit. Chapter 4 of the AHP Owner's Compliance Manual describes how to calculate the recertification limit.

The chart below shows the relationship between income and recertification limits.

| <i>Income Limits</i> | | |
|-----------------------------|------------------------------|------------------------|
| | Initial Certification | Recertification |
| Very Low Income | 50% | 50% |
| Low Income | 80% | 140% of 80% |

When conducting a re-examination, owners must execute a TIC Form (see Appendix E), but mark the recertification box. As with initial certifications, all income information must be verified following the methods in Section 4.5, even if no change occurred.

The re-examination must be completed no later than the recertification date for the unit. It is recommended generally that the anniversary of the effective date of the tenant's lease serve as the standard recertification date. However, owners may establish different recertification dates as long as the re-examination is completed within 12 months of the initial certification or the most recent recertification.

Changes in QU Status

Once the recertification has been obtained, owners must assess whether the status of the QU has changed. For example, if the recertified income of a tenant living in a VLI-QU now exceeds the VLI limit, the status of the QU has changed.

When an owner re-examines tenant eligibility there are three ways the status of a QU may change:

- ◆ **VLI/LI-QU Becomes Over-Income Unit.** If the recertified income of a tenant in a QU (VLI or LI) exceeds 140 percent of the applicable LI limit, the owner **must** use the special Over-Income Qualifying Unit (OI-QU) designation until the unit is properly replaced with a VLI-QU or LI-QU (see Section 3.5), and the rent may be adjusted to a market rent.
- ◆ **VLI-QU Becomes LI-QU.** If the recertified income of a tenant in a VLI-QU exceeds the applicable VLI limit but remains within the LI limit for QU tenants (140 percent of LI limit), the owner **must** re-designate the unit as a LI-QU, and the LI rent limit (as described in Section 2.3 below) can be applied.
- ◆ **LI-QU Becomes VLI-QU.** If the recertified income of a tenant in a LI-QU falls within the VLI Limit, the owner **must** re-designate the unit as a VLI-QU, and the VLI rent limit (as described below) **must** be applied.

2.3 MAXIMUM RENTS

To assure that Set-Aside units are affordable to Low and Very Low Income households, the LURA establishes the maximum rents that owners can charge for these units. The rent limits are set at levels affordable to Low and Very Low Income households based on the median income for the area in which the property is located. The rent limits for each type of QU will vary by unit size. See Chapter 5 of this manual for further information.

The rent limits are determined as follows:

- ◆ **LI Rent Limit.** Rents for LI-QUs must not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the area median (based on the adjustments set forth in the LURA) with adjustment for family size.
- ◆ **VLI Rent Limit.** Rents for VLI-QUs must not exceed 30 percent of the adjusted income of a family whose income equals 50 percent of the area median (based on the adjustments set forth in the LURA) with adjustment for family size.

These rent limits are determined annually based upon median income calculations of HUD, and are distributed simultaneously with new income limits by your monitoring agency.

These maximum rents are not adjusted for tenant-paid utilities, and any additional service charges to tenants over and above basic shelter rent are permissible only to the extent that they are customary in the local market, are charged to all tenants. The monitoring agency will review to determine that additional charges meet these standards.

Since the rent limits are calculated based upon local incomes, and not local market rents, they may vary from prevailing market rents. They are the maximum an owner may charge tenants for contract rent. Owners may need to charge less based upon local market conditions in order to maintain full occupancy.

2.4 REACHING AND MAINTAINING THE SET-ASIDES

The Set-Aside requirements apply to the full compliance period, which can be 40 years or more. An owner's goal should be to achieve and maintain the required Set-Aside of QUs throughout the compliance period. However, it is often the case that a newly purchased property will not meet the applicable Total and VLI Set-Asides. The properties are considered to be in the "Pre-Compliance" stage, and owners and their managers need to follow specific procedures to obtain the necessary number LI and VLI units as described in Section 3.4. Owners have the flexibility of drawing on existing tenants, marketing units to new tenants, or both.

Over time, owners that have met their Set-Asides may lose QUs as previously qualified tenants experience income changes or move out. Owners will not be considered out of compliance due to such changes as long as the procedures are followed to replace the qualified tenants. Section 3.5 outlines the procedures for replacing these units.

If an owner fails to follow the procedures to replace QUs which have experienced tenant income changes or vacancy, the property will be out of compliance with the LURA. In such a case, the owner must restore compliance with the property's occupancy requirements by following the procedures for renting available units presented in Section 3.6.

2.5 RECORD-KEEPING AND REPORTING REQUIREMENTS

There are record-keeping and reporting requirements that owners must meet to assure compliance with the LURA. These requirements fall into five major groups:

- ◇ on-site record-keeping;
- ◇ monthly reports during the pre-compliance period;
- ◇ annual compliance reports;
- ◇ owner certifications; and

- ◇ cooperation during agency on-site reviews.

A. On-Site Records

As set forth in the LURA, all records concerning the property must be kept separate from the owner's other business records unrelated to the property and in a reasonable condition to allow for proper audit. The records must be maintained as required by the monitoring agency and in accordance with the procedures in the Owner's Compliance Manual. Representatives of FDIC or the monitoring agency may examine or make copies of documents pertaining to the property during regular business hours.

There are two principal types of on-site records owners must maintain and keep available for inspection: tenant files and monthly unit listings.

Tenant Files

Owners must keep a tenant file for each QU. Each file must contain:

- ◇ the tenant's rental application;
- ◇ a Release and Consent Form signed by all adult members of the household;
- ◇ proper income verification documents;
- ◇ the current TIC; and
- ◇ a proper dwelling lease.

All tenant files must be maintained for at least three years after the date the tenant moves out.

Monthly Unit Listings

Owners also must keep monthly unit listings that correctly reflect occupancy at the property on the beginning of each month or a date established by the monitoring agency. These listings will provide monitoring agencies with an up-to-date record of QUs. They also allow monitoring staff to track changes in the status of QUs and unrestricted units during past months to confirm that over-income and vacated QUs were properly replaced.

A monthly listing should provide the following information for each unit:

- ◇ unit number
- ◇ number of bedrooms
- ◇ tenant name
- ◇ household size
- ◇ effective lease date
- ◇ monthly rent
- ◇ unit status (VLI-QU, LI-QU, OI-QU or unrestricted unit)

Owners may meet this requirement by adapting their monthly rent rolls to provide the necessary information. Also, the computerized reporting system as described later in Chapter 6 may be used to maintain this information.

Monitoring agencies may request that owners provide a copy of the most recent unit listing at any time during the monitoring year. Owners must keep accurate copies of the unit listings for the past three years.

B. Compliance Reports

Every owner also must submit regular compliance reports to their monitoring agency. These reports document a property's occupancy and show whether an owner is in compliance with the provisions of the LURA for the property.

The compliance report summarizes the status of the property's QUs and includes a listing of every unit in the property, including both QUs and unrestricted units. The types of information the owner must provide for each unit include:

- ◇ building identification
- ◇ unit number
- ◇ number of bedrooms
- ◇ tenant name
- ◇ number of persons
- ◇ date of lease agreement
- ◇ unit designation (VLI-QU, LI-QU, OI-QU, unrestricted unit)
- ◇ annual household income (QUs only)
- ◇ monthly unit rent (QUs only)

- ◇ date of last income certification/recertification (QUs)

All of the information needed to complete a report should be readily available from the Tenant Income Certification (TIC) form. A copy of the AHP Compliance Report is provided in Appendix F.

Pre-Compliance Monthly Reporting

Owners of properties that have not reached initial full compliance must submit monthly compliance reports. This monthly reporting requirement continues until the property reaches full compliance with the Set-Asides.

Monitoring agencies may ask owners to report on a monthly basis at other times, such as when a property has fallen out of compliance, to assure continued compliance.

With each monthly report, owners must include copies of the TICs for each newly designated QU. For example, the April monthly compliance report for a property should include TICs for all units designated as QUs since the March report.

The monitoring agency will specify the start and end dates of the report, as well as the day the report is due (i.e., the date or number of days after the end of the reporting period).

Annual Reporting

Once a property reaches full compliance, and the owner has certified full compliance to the monitoring agency, the owner may submit compliance reports annually rather than monthly. Owners can continue to report annually as long as the property remains in full compliance with the occupancy and other provisions of the LURA.

However, recordkeeping on monthly turnover (as described above) continues as an obligation, and it is necessary for owners/managers to constantly monitor the property for compliance, so that the proper decision can be made when a unit is available.

Annual reports document the occupancy status of a property as of the end of each monitoring year. With each annual compliance report, owners must provide copies of the TICs for every initial certification or recertification during the year.

Monitoring agencies may ask owners to include additional materials with their annual reports to assist in evaluating a property's continued compliance with the LURA.

C. Owner Certifications

As evidence that a property is in compliance with the LURA, owners must provide monitoring agencies a written certification of their property's compliance. Owners must submit the certification when a property reaches initial compliance and then with each annual report.

A sample copy of an Owner Compliance Certification Form is included in Appendix G, and further guidance is in Chapter 6.

D. Cooperation During Agency On-Site Reviews

In addition to review of reports submitted by the owner, representatives of the monitoring agency will conduct periodic on-site reviews of AHP properties and their records to evaluate owner compliance with the LURA. During a review, owners and their property management staff must provide monitoring staff with access to all documents relevant to an evaluation the owner's continued compliance with the provisions of the LURA.

Monitoring agencies will give owners reasonable advance notice prior to conducting an on-site visit. The managing owner and key on-site staff should be present during the review whenever possible.

2.6 ADMINISTRATIVE FEES

A. Annual Administrative Fee

To offset the cost of monitoring owner compliance, the LURA establishes that owners must pay the monitoring agency an annual administrative fee. The base fee generally will be found in Section 4.6(a) of the LURA.

The fee is computed for the number of QUs the LURA requires the owner to hold available for occupancy by Low Income tenants. The required number of QUs is

multiplied by the base monitoring fee established in the LURA, but is never less than \$250 per property.

The annual administrative fee is due the day the LURA is signed and covers the subsequent 12-month period. The next annual fee is due on the anniversary date of the LURA. However, the monitoring agency, with proper notification to the owner, may establish a 12-month fee period that begins on a day other than the anniversary date of the LURA.

The monitoring agency will send each owner an invoice for the coming year's monitoring fee at least 30 days prior to the start of the upcoming fee period, and specify the due date of the fee.

B. Adjustment of Annual Fee

Each year, monitoring agencies may adjust the annual fee for increased costs due to inflation, based on the Consumer Price Index for All Urban Consumers (CPI-U).

C. Administrative Fees For Non-Compliance

If the monitoring agency determines that a property is out of compliance with the provisions of the LURA, the LURA permits it to require an owner to pay an additional administrative fee. This non-compliance fee, if charged, is in addition to the annual fee.

The State Monitoring Agency is entitled to be compensated for any additional monitoring and enforcement activities for a period of up to three years following the most recent finding of non-compliance with regard to the property.

In addition, the LURA requires owners to reimburse the monitoring agency for all costs and legal fees to which the agency may be entitled as a result of judicial enforcement action. These fees are payable regardless of whether the monitoring agency undertakes or succeeds in judicial enforcement action.

2.7 RESALE REQUIREMENTS

The requirements of the LURA run with the property, and are transferred to any new owners of the property during

the compliance period. Owners should notify their monitoring agency of any resale of the property at least 30 days prior to closing. This notification is necessary to give the monitoring agency sufficient time to prepare for the change in ownership and take actions necessary to assure continued compliance with the LURA.

2.8 CASE STUDIES & FREQUENTLY ASKED QUESTIONS

The following pages provide case studies of three AHP properties. The cases are designed to help owners manage the designation of QUs. Answer pages follow the case studies.

Following the case studies is a compilation of frequently asked questions and answers provided by FDIC.

THREE AHP CASE STUDIES

PROPERTY 1: Sunset Apartments

Sunset Apartments is a 100-unit apartment building overlooking Horizon Bay. All units have two bedrooms. It was purchased from FDIC three months ago by Make a Buck Inc. All the units are occupied. The LURA requires 35 units be set aside as Qualifying Units (QUs) -- 20 Very Low Income and 15 Low Income.

The FDIC rent limits and market rents for a two-bedroom unit in the community are:

| | |
|--|-------|
| LI Rent Limit (30 percent of 65 percent): | \$450 |
| VLI Rent Limit (30 percent of 50 percent): | \$400 |
| Market Rent: | \$500 |

The owner has designated no QUs. While it is likely that there are some tenants in the project who are Low Income (many of the tenants are elderly retirees), no tenant surveys have been conducted nor incomes certified. All the tenants are paying market rents.

What, if anything, must the owner do to assure compliance with the LURA and the requirements of the AHP?

PROPERTY 2: Mystery Market Village

Mystery Market Village is a 200-unit townhouse development in suburban Uptown. It is a beautiful project, well maintained, but far from the central business district and public transportation. 175 units are occupied.

The property's set-asides require 40 Very Low Income and 30 Low Income units. The rent limits for a two bedroom unit are as follows:

| | |
|--|-------|
| LI Rent Limit (30 percent of 65 percent): | \$370 |
| VLI Rent Limit (30 percent of 50 percent): | \$350 |
| Market Rent: | \$370 |

The owner/manager has designated all 30 LI QUs, but no VLI QUs. She has many people who have applied for the vacant units, but they all have incomes greater than 50 percent of median. In fact, most of the applications are from tenants with income over 80 percent of median. Very Low Income applicants have not filled out applications. She is very anxious to rent the vacant units since her cash flow is quite tight.

What, if anything, must the owner do to assure compliance with the LURA and the requirements of the AHP?

PROPERTY 3: FDIC Homes

FDIC Homes, a newly formed non-profit, has purchased a 100-unit AHP project in downtown Centerville. The project is 100 percent occupied. The LURA requires 25 Low Income and 40 Very Low Income units. The rent limits in the community for two-bedroom units are as follows:

| | |
|--|-------|
| LI Rent Limit (30 percent of 65 percent): | \$350 |
| VLI Rent Limit (30 percent of 50 percent): | \$330 |
| Market Rent: | \$350 |

FDIC Homes has designated the required number of both Low and Very Low Income tenants. They have just recertified tenant income and discovered that five of the previously Low Income tenants are now Very Low Income.

What, if anything, must the owner do concerning the rent and QU designation of the five tenants whose incomes have changed?

| |
|--------|
| ANSWER |
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PROPERTY 1: Sunset Apartments

What, if anything, must the owner do to assure compliance with the LURA and the requirements of the AHP?

The owner has a number of different options for assuring compliance.

Option 1. The owner may lease the Next Available Units (NAU) as they become vacant to income qualified tenants until the set-asides are met.

The owner must continue to lease to LI or VLI tenants (any tenants with income \leq 80 percent of median income) until the balance of the VLI and the Total Set-Aside has been met (15 units). Remember, rents for the VLI units may not exceed \$400/month and rents for the LI units \$450.

Option 2. The owner may survey the entire tenant population to determine if there are any Qualified Tenants in occupancy. If a survey is performed, the owner should establish a fair and equitable manner for assigning the QU designation. For example, the Qualified Tenants could be identified based on length of tenure, lowest tenant income, or by lottery.

If the survey did not identify sufficient tenants to meet the Total Set-Aside and VLI Set-Aside, the owner must rent the next available units to Qualified Tenants, giving priority to VLI tenants as in Option 1.

Option 3. The owner could use Option 1 and Option 2 together. The owner could survey the population and designate some units from among the existing tenants. The rest of the set-aside could be met by filling vacancies with Qualified Tenants, giving priority to VLI tenants.

ANSWER

PROPERTY 2: Mystery Market Village

What, if anything, must the owner do to assure compliance with the LURA and the requirements of the AHP?

Until the owners meet their VLI obligation, they must reserve enough vacant units to fill the VLI Set-Aside. In this case, all 25 vacancies would have to be held for VLI tenants.

The owners should consider surveying the entire resident population to determine if any existing tenants are VLI. Whenever an owner surveys the tenant population, they should establish a fair and equitable manner of designating QUs.

If none of the existing tenants are VLI, the owner is required to rent the 25 vacant units to VLI tenants. In addition, since the LURA requires a total of 40 VLI tenants to meet the VLI Set-Aside, the next 15 vacancies must be rented to VLI tenants.

Owners having difficulty in locating VLI tenants are advised to:

- Review their advertising and marketing material to see if it may be deterring applications from low income applicants. For example, words like "luxury," "prestige," "elegant" may suggest that units are not within the pocket-book of the applicants the owner needs to attract.
- Consult with local religious organizations, social service agencies, housing counseling groups, and housing authorities and community development agencies. Many of these groups maintain waiting lists of persons in need of affordable housing.
- Check with existing tenants. They may have friends or relatives who are looking for affordable units.
- Consult with the State Monitoring Agency.

ANSWER

PROPERTY 3: FDIC Homes

What, if anything, must the owner do concerning the rent and QU designation of the five tenants whose incomes have changed?

The LURA requires the owner to reduce the rents on the five QUs which used to be LI but as a result of re-examination are now occupied by VLI tenants. The rents must be reduced from \$350 to \$330. The unit designations in the next monitoring report change to VLI.

The owner remains in compliance since the number of QUs meets the Total Set-Aside. The next QUs can be filled by a VLI or LI household since this property has more than enough VLI tenants.

Common AHP Compliance Questions & Answers

Start-up and Pre-Compliance

1. ***I am preparing to take over ownership or management of an AHP property. What should I do first?*** There are five steps that an owner should take immediately:
 - review the LURA and the Owner's Compliance Manual to become familiar with your Set-Aside and AHP compliance procedures;
 - prepare a management plan that incorporates AHP compliance procedures and required AHP documents and forms;
 - train all persons who will be involved in applicant intake, property management and reporting;
 - develop a strategy for marketing and working with existing occupants and vacancies to achieve full compliance; and
 - establish contact with your monitoring agency.
2. ***How long does the Pre-Compliance Period last?*** Properties are expected to come into compliance as soon as possible. How long it takes a property to reach initial compliance depends on the number of in-place tenants who are income eligible, the number of vacancies, and unit turnover. Owners are expected to follow rules with regard to non-displacement of existing tenants and reservation of vacant units for qualifying tenants, and it is expected that properties will reach Full Compliance within two years.
3. ***Do I have to survey my existing tenants?*** No. AHP procedures only require owners/managers to lease vacant units to qualified tenants. However, if a property contains income eligible tenants, surveying tenants can considerably shorten the length of time needed to reach initial compliance. This will shorten the time owners are obligated to submit Pre-Compliance monthly reports, and could reduce the time units must be held vacant while finding Qualifying Tenants.
4. ***If I survey all my tenants and find several who do not qualify, are those tenants required to vacate the property?*** No! The LURA states that under no circumstances may an owner/manager terminate the occupancy of any in-place tenant solely for the purpose of meeting the property's low income set-asides.
5. ***During the pre-compliance period, can the vacant units held available for qualified tenants be counted toward the number of units needed to meet the property's set-asides?*** No, only Qualifying Units can be counted toward a property's Set-Asides, and units may not be designated as Qualifying Units until they are occupied by a qualified tenant.

6. **How long do I have to hold vacant units available for qualified tenants?** Until the project has met both the Total Set-Aside and Very Low Income Set-Aside requirements, vacant units must be leased or held available for Qualifying Tenants. If owners/managers have been unsuccessful in attracting income eligible tenants to fill vacant units, they should contact the monitoring agency for additional guidance about how to reach these households.

Income Eligibility

7. **If I have questions about the proper way to calculate a tenant's annual income, where can I go to find answers?** Under AHP, a tenant's annual income is calculated according to the method used to determine gross annual income for HUD's Section 8 Program. This method differs from the way a household's income is calculated for tax purposes. Owners/managers should refer to Chapter 4 and Appendix C. For additional information, contact your monitoring agency. Also, the local Section 8 Administrator or Public Housing Authority may be able to provide some guidance.
8. **What does anticipated annual income mean?** Owners/managers are required to anticipate the amount of income a household will receive during the coming 12-month period. Generally, this amount is calculated by estimating the family's annual income using current income and assets. However, if changes from current circumstances can be verified (e.g., an approved raise, an expected bonus, a change in the number of overtime hours to be worked) these should also be considered in anticipating annual income. Appendix C of the AHP Owner's Compliance Manual includes specific instructions for what sources to include and exclude as anticipated annual income.
9. **AHP also requires including income from assets in annual income. Can you give some examples of what is considered an asset and what is not?** Under AHP, there is no limitation on the amount of assets an eligible household can own. But, anticipated income from assets must be included in the calculation of annual income. Section 8 program rules specify the types of assets to be considered. Generally, assets held for investment purposes are included, while "personal use" assets are not. Common examples of assets that are counted include: savings accounts; checking accounts (including non-interest-bearing accounts); real estate; and personal property held as an investment (e.g., coin collections). Examples of assets that should not be counted included necessary personal use property such as vehicles, furniture, appliances, stereos, and VCRs. Business assets of tenants who are self-employed also should not be counted; income from those assets should be reflected in the net income statement for the business. Appendix C of the AHP Owner's Compliance Manual includes further information.
10. **I have students living in my property. Can I designate their units as Qualifying units? What do I count as income for students?** Units occupied by students may be designated as Qualifying Units as long as the student household is determined to be income eligible. Under AHP, you must include the portion of grants, scholarships or veteran's benefits that is available for subsistence. Whether you also include amounts used to cover the cost of tuition, fees, books, transportation, and miscellaneous personal expenses depends on the source of the payment. *Do not count* amounts used to cover the cost of tuition, fees, books, transportation and miscellaneous personal expenses (whether paid directly to the student or directly to the institution) which are provided

through student loans, grants, scholarships or veteran's benefits. *Do count* amounts used to cover tuition, fees, books, transportation and miscellaneous personal expenses *if they come from any other source*. Student loans, regardless of how they are spent, are not counted as income.

11. ***Is a telephone verification valid for purposes of verifying employment income?***
Third-party written verifications or first-hand documentation (e.g., paycheck stubs) are preferred. However, in cases where these methods are not feasible, telephone verifications may be used as long as management staff complete, sign, and date a form which identifies the third party oral source. Telephone verification of assets is almost never feasible. Chapter 4 of the AHP Owner's Compliance Manual contains an exhibit outlining acceptable verification procedures.
12. ***When verifying the income of tenants with a Section 8 Certificate or Voucher, is the income verification of the housing authority acceptable?*** Yes. Owners/managers can satisfy AHP verification requirements by obtaining copies of the housing authority's verification documents. Another option is to have the authority provide a letter stating that the household's verified annual gross income does not exceed an amount equal to the applicable AHP income limit. These tenants still must execute a proper AHP Tenant Income Certification (TIC) Form.
13. ***If Section 8 income eligibility guidelines change, do the AHP income guidelines also change automatically?*** Monitoring agencies are permitted to incorporate changes in Section 8 income eligibility guidelines into the AHP Program, except for changes in the definitions of student income, which are unique to the AHP Program and may be changed only by notice from FDIC. If you hear about Section 8 changes, contact your monitoring agency to determine whether you should implement those changes for AHP.
14. ***When do the income limits used to determine tenant eligibility change, and how do I obtain the new limits?*** AHP income and rent limits are updated each year when HUD publishes its revised figures for area median incomes. Generally, these are released in late Winter or Spring each year. Monitoring agencies will provide owners/managers with updated limits as they become available year to year from FDIC.
15. ***If a change in household status or household income occurs between annual re-certification, is the tenant required to advise the manager? Is the manager required to monitor these changes?*** No, unlike some HUD programs, tenants are only required to report changes in household income or composition at the time their eligibility is re-certified. Likewise, managers are not required to monitor household changes that occur between re-certifications.

Designating Qualifying Units and Meeting/Maintaining Set-Asides

16. ***What happens if a vacant unit is leased as a Qualifying Unit, and later it is found out that the tenant is not qualified?*** If the tenant provided improper information, he/she has violated the lease clauses in Chapter 5, and action may be taken to terminate the lease in consultation with the Monitoring Agency. If the owner wishes to not pursue lease termination, and instead replace the lost QU with the Next Available Unit, consult with the Monitoring Agency. On the other hand, if the owner/manager made a mistake in certifying eligibility, the tenant of the improperly designated unit may not be removed, and the

owner/manager must rent the Next Available Unit to a qualified tenant. To avoid this problem, it is important to verify a household's income and complete the TIC prior to granting occupancy.

17. ***If a property's VLI Set-Aside has been met, but not the Total Set-Aside, can the remaining units be rented to VLI-eligible tenants and designated as LI units?*** No. A Qualifying Unit's designation reflects the income level of the tenant. Qualifying Units occupied by tenants with incomes less than or equal to the VLI income limit must be designated as VLI units, even if the VLI Set-Aside has already been met. Owners/managers are not required to designate additional VLI units if VLI Set-Asides have been met and only LI units are needed. However, they may choose to designate additional VLI units to be counted toward the Total Set-Aside. If they do so, they must remember that all VLI units are restricted by the applicable VLI rent.
18. ***If I rent unrestricted units to low income and very low income tenants (after I have met my Total Set Aside), must I designate their units as Qualifying Units?*** No. Owners are only obligated to designate enough Qualifying Units to meet the set-asides. Tenants living in unrestricted units are not subject to AHP rent limits. Low income and very low income households may apply for and occupy unrestricted units just as any other households, subject to the same standard and lawful screening and selection criteria applied to all applicants. Furthermore, owners may find it advantageous to have low income and very low income tenants in unrestricted units in order to expedite the replacement of a unit that becomes available in the set-asides.
19. ***Does AHP have occupancy standards specifying the unit size (i.e., number of bedrooms) appropriate for a given household size?*** No. Owners/managers are expected to establish their own occupancy standards and apply them consistently throughout the property, and to comply with state or local law regarding occupancy standards, if applicable.
20. ***What does the statement in the LURA about "best efforts to achieve a comparable unit distribution among QUs" mean?*** AHP does not require that the unit size distribution precisely match the distribution for the total property (including all units). However, when owners have choices about which units will be designated as Qualifying Units (QUs), the LURA requires them to designate units so as to avoid an unbalanced distribution. For example, if half of the units are two bedroom units or larger, and significantly less than half of the QUs are such, then the owners/manager needs to make a good faith effort to designate some larger units as they become available and replacement QUs are needed to meet the set-aside.
21. ***When does a unit actually become a "qualifying unit"?*** When that unit is occupied by an income eligible tenant (who has completed a certification form and whose information has been verified) who has executed a lease with the required and prohibited provisions incorporated. The qualification is derived from the tenant's eligibility. The physical unit/s used as "qualifying units" may shift dependent upon the tenant being housed.

Rent Limits

22. **Are AHP rent limits based on the size of the unit or the size of the household occupying the unit?** AHP rent limits are established by unit size for both VLI and LI income levels. They do not vary by the size of the household in the unit.
23. **Must AHP rents be adjusted for tenant-paid utilities?** No. Unlike many other Federal programs (such as Section 8, Tax Credits and HOME), the rents charged to the tenant can be set up to the applicable AHP rent limits, without regard to, or adjustment for, tenant-paid utilities.
24. **If a property has fully met its VLI set-aside, but still needs units to meet the Total Set-Aside, can a new VLI tenant be designated as an LI unit and the tenant charged an LI rent?** No. Any Qualifying Unit rented to a VLI tenant must be designated as VLI and charged the VLI rent, even if the VLI Set-Aside has already been met.
25. **If the newly revised AHP rent limits are lower than the previous year's limits, do the rents for Qualifying Units have to be reduced immediately or at lease renewal?** Immediately. It is unusual for AHP rent limits to go down, but when they do, owners must revise rents for Qualifying Units that exceed the new limits immediately. However, rents are not required to be reduced below the initial approved rents in place at the time the building was sold by FDIC/FDIC under the AHP Program to the original owner. Conversely, if the rent limits go up, owners may revise Qualifying Unit rents to reflect the new limits, subject to state/local laws and the terms of the lease regarding interim rent adjustments.

Re-certification

26. **If a re-examination reveals that a LI tenant is now VLI, what rent level and unit designation must be applied?** A Qualifying Unit's designation must reflect the income level of the tenant. Therefore, if a tenant's status changes from LI to VLI on re-certification, the unit's designation must be changed to VLI, and the tenant charged no more than the VLI rent.
27. **On re-certification, a VLI tenant is over the VLI income limit, but not over the 140% LI limit. If I re-designate that unit as LI, this leaves me one unit short of the VLI Set-Aside. What do I have to do to be in compliance?** Because the re-certified tenant is designated as LI, you still have enough units for the Total Set-Aside, but are short of VLI units. You must follow the Next Available Qualifying Unit (NAQU) rule, so that the next available LI unit must be rented to a VLI tenant. You do not have to rent an unrestricted unit as VLI because that would cause you to exceed the Total Set-Aside requirement. Therefore, you only need to "re-balance" the portfolio by renting the first available LI unit to a VLI tenant.
28. **When a tenant is determined to be over income at time of re-certification, is the rent on that unit still restricted?** No. If a tenant exceeds 140% of the current Low Income limit (listed on the income limits sheet as "M-F Transition Income") on re-certification, the tenant is reported as "Over Income" and the rent may be adjusted to the market rent for unrestricted units (subject to state/local laws and the terms of the lease). Owners may not displace tenants on the grounds that they are no longer income eligible. Next Available Unit (NAU) rules must be followed, and the QU may be reported as Over Income until the Next Available Unit becomes available and committed to a qualifying tenant. Some early

versions of the LURA contain contradictory language requiring owners to maintain the restricted rent until the QU was replaced with the NAU, but adjustments to the unrestricted rent on determination of Over Income status will be permitted on all AHP properties. Owners/managers of AHP properties with Tax Credits should note that this provision differs from Tax Credit requirements, so Tax Credit rules (as the more restrictive rule) should be followed.

Unit Turnover

29. ***How should a Qualifying Unit be handled when a vacancy occurs?*** When a Qualifying Unit (QU) is vacated, it continues to be counted and reported as a QU until it is re-occupied or replaced with another QU. If the vacated unit is leased to an income-eligible tenant at an allowable rent, it remains a QU. If the vacated unit will be leased to a tenant that is not income eligible, the owner/manager must first designate a replacement Qualifying Unit so the property will continue to have enough units to meet its required Set - Aside.
30. ***If a Qualifying Tenant wishes to move in-house to a different unit, how should this be handled?*** If a tenant in a Qualifying Unit (QU) moves to another unit in the property and is still income eligible, the Owner/Manager must shift the QU designation to the newly occupied unit. If the unit involves a change in unit size, the applicable AHP rent limit changes to reflect the size of the newly occupied unit. If other public assistance is involved, be sure to check the procedures of the other programs.

Other Compliance and Enforcement Issues

31. ***Do I have to use the forms included in the AHP Owner's Compliance Manual?*** It is recommended that owners/managers use the forms, or facsimiles, in the Manual. Owners/managers may adapt their own forms to include all of the elements in the recommended form. It is recommended that any adapted forms be cleared with the monitoring agency.
32. ***When AHP units also have other Federal funds, such as Tax Credits or HOME, and the rent limits and occupancy rules of the overlapping programs differ, what rules should be followed?*** You must comply with all the rules for all programs. Generally speaking, you can accomplish this by following the most restrictive rule. For example, if HOME or Tax Credits set a lower maximum rent than AHP or requires a utility allowance adjustment, adhering to the more restrictive program rules will also yield compliance with AHP rent limits. There may be times when rules appear to conflict -- particularly in situations of over income tenants and unit turnover. In such cases, contact your monitoring agency for guidance.
33. ***When is a property considered to be out of compliance with AHP requirements?*** Properties that fail to meet the provisions of their LURA and the procedures in the AHP Owner's Compliance Manual may fall out of compliance with requirements primarily for any of the following violations:
- Improperly leasing vacant units during Pre-Compliance or whenever below the Set-Aside requirements;

- Failing to maintain a sufficient number of Qualifying Units;
- Failing to determine and verify Qualifying Tenant Income at least annually, or improperly determining eligibility;
- Charging rents for Qualifying Units in excess of applicable AHP rent limits;
- Failing to submit timely reports to the monitoring agency; and
- Failing to pay the required administrative fee.

34. ***What happens if I fail to follow AHP compliance procedures?*** Monitoring agencies will notify owners if they determine that compliance violations have occurred and indicate the necessary corrective action(s). Owners will be given a period of time to complete the corrective actions. Failure to take corrective can result in administrative and/or judicial sanctions against the owner.

Owner Data Entry Program

35. ***Am I required to run the Owner Data Entry Program (ODEP) system?***

Owners/managers are encouraged, but not required, to use the ODEP system. It is available for free from your monitoring agency, and

36. ***What kind of computer is needed?*** It runs on IBM compatible computers.....It does not run on Mac systems, and also does not run on Windows NT. If you are running it on another Windows environment and having problems, try running under DOS mode.

37. ***My computers are on a local area network. Will ODEP run in a network environment?*** ODEP was not designed to be network compatible, and therefore will not function as a multi-user program.

38. ***Where do I get the manual for ODEP?*** The Manual is attached as Appendix J to the AHP Owner's Compliance Manual. Additional copies can be obtained from your monitoring agency.