

CHAPTER 2

AHP MULTIFAMILY PROPERTY REQUIREMENTS

Upon acquiring an AHP property, purchasers agree to follow a set of requirements designed to ensure that the property provides affordable housing for Low Income households. The owner's obligation to meet these requirements is formally established when the LURA is signed at closing.

The primary 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.

To act as effective monitors, state agencies must understand the requirements that apply to AHP property owners. This chapter describes these requirements, which fall into eight basic areas:

- ◊ Occupancy Requirements
- ◊ Tenant Eligibility
- ◊ Maximum Rents
- ◊ Dwelling Lease Requirements
- ◊ Leasing Procedures for Properties with Insufficient Qualifying Units
- ◊ Record-Keeping and Reporting Requirements
- ◊ Monitoring Fees
- ◊ Resale Requirements

The first five areas consist of requirements designed to make units available to Low Income households at affordable rents. The last three areas reflect requirements to help state agencies monitor owner compliance in providing affordable units to eligible families.

2.1 OCCUPANCY REQUIREMENTS

The LURA requires that an owner lease a specified portion of the units in the property to Low Income tenants. The owner must maintain the required number of units over the life of the LURA.

A. Low Income Unit Requirements

An owner must meet two specific Low Income occupancy requirements:

- ◆ a **Total Set-Aside**; and
- ◆ a **Very Low Income (VLI) Set-Aside**.

Units that qualify for the VLI Set-Aside also count toward the Total Set-Aside obligation.

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. To qualify as a Low Income tenant in most areas, a household's annual gross income must not exceed 80 percent of the median income for that area after adjusting for family size. Section 2.2 discusses income eligibility and how annual income for a household is defined in greater detail.

Generally, the Total Set-Aside is set at 35 percent of the total units in the property. However, higher set-asides were negotiated as part of some AHP sales, 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.¹ The Total Set-Aside established for a given property can be found in Section 2.2 (a) of its LURA.

Very Low Income (VLI) Set-Aside

The VLI Set-Aside establishes the share of the total units in a property that the owner must designate for occupancy by Very Low Income tenants. In most areas, a Very Low Income household must have an annual income equal to or less than 50 percent of the area median income after adjusting for family size.

The VLI Set-Aside established for most properties requires that owners rent 20 percent of the total units in the property to Very Low Income tenants.² Using the example of an owner who purchased a 100-unit property, a 20 percent VLI Set-Aside would require the owner to rent at least 20 units to Very

¹ 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.

² 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. However, in some cases negotiated requirements resulted in VLI Set-Asides 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.

Low Income households. In cases where higher Total Set-Asides were negotiated, the VLI Set-Aside may have been raised as well. The VLI Set-Aside for a specific property can be found in the same paragraph of the LURA as the Total Set-Aside.

For purposes of this manual, all examples provided will use the minimum Program standards of 35 percent Total Set-Aside and 20 percent VLI Set-Aside.

B. Designating Qualifying Units (QUs)

Owners must designate the units within their property that will fulfill the two set-asides. As shown in Exhibit 2-1, 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 and designated as Low Income Qualifying Units (LI-QUs), the total number of QUs should equal the number of units required by the Total Set-Aside.³

Using the example mentioned above, an owner who purchased a 100-unit property with a standard Total Set-Aside of 35 percent and VLI Set-Aside of 20 percent would need to designate 20 VLI-QUs and 15 LI-QUs for a total of 35 QUs.

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

1. identify and certify existing tenants who are income eligible; and/or
2. reserve and lease a sufficient number of vacant units to income eligible tenants.

Chapter 3 of the AHP Owner's Compliance Manual describes each method in greater detail.

C. Vacated QUs

When a tenant moves out of a QU, the unit retains the same QU designation (VLI or LI) until the unit has been occupied by a new tenant for 31 days. After this time, the unit may remain a QU only if the new occupant qualifies as a Low or Very Low Income tenant. For example, if the tenant who moves into a vacated LI-QU has a household income that exceeds 80 percent of the area median income, the unit may no longer be designated as a QU after 31 days and cannot be counted toward the property's Total Set-Aside.

³ 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.

The type of QU designation may also change when a new tenant moves into a vacated QU. When the tenant of a VLI-QU is replaced by a Low Income resident who is not a VLI household, the unit's designation must be changed to a LI-QU if the owner continues to count the unit as a QU. (Owners should be cautioned to make certain they do not fall below the required VLI-QUs in such a situation.) Likewise, if a LI-QU is reoccupied by a Very Low Income resident and the unit remains a QU, the owner must change the unit's designation to a VLI-QU.

D. Shifting the QU Designation

The 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 occupied the unit remains eligible and continues to reside there. Section 2.2.G discusses the requirements for determining a tenant's continuing eligibility.

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

An exception to this requirement is made when the tenant of a QU moves to another unit within the property. In this case, as long as the tenant is eligible at the time of the unit change, the QU designation must be shifted to the new unit occupied by the tenant. Using the example above, if Household X is income eligible and moves to Unit 101, the LI-QU designation shifts to Unit 101 and the owner may rent Unit 201 to any tenant.

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 tenant's status (Low Income, Very Low Income, or other), the owner must calculate and compare the household's annual income to the AHP income eligibility limits for Low and Very Low Income households, which are published annually 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. 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.

A. Determine the AHP Income Limits

FDIC establishes the income limits owners must use in determining whether a household qualifies as a "Low Income" (LI) or "Very Low Income" (VLI) tenant. AHP relies on HUD's definitions of "Low Income" and "Very Low Income" respectively as the basis for these limits. The two income limits are determined as follows:

HUD Definitions of Income

Low Income Limit: Generally 80 percent of the area median income

Very Low Inc Limit: Generally 50 percent of area median income

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. AHP uses only HUD's published income limits. Census Bureau and other definitions of median income are not appropriate surrogates for HUD's published numbers.

The actual income limits are calculated by HUD and differ according to household size. HUD publishes the income limits by household size for all areas of the country on an annual basis. The current limits can be obtained from the HUD area offices. The table below shows how the 1992 income limits for Hometown, USA vary by household size.

SAMPLE INCOME LIMITS		
Hometown, USA - 1992		
<u>Household Size</u>	<u>VLI Limit</u>	<u>LI Limit</u>
1 person	\$10,700	\$17,150
2 persons	\$12,250	\$19,600
3 persons	\$13,750	\$22,050
4 persons	\$15,300	\$24,500
5 persons	\$16,500	\$26,450
6 persons	\$17,750	\$28,400
7 persons	\$18,950	\$30,350
8 persons	\$20,020	\$32,300

When determining eligibility, owners must use the income limits in effect on the date the tenant signs the lease for that unit.

Monitoring agencies should distribute copies of the new income limits to all owners upon receipt from FDIC, and verify as part of monitoring that owners are using the current limits.

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 tenant is income eligible. FDIC relies on the method used by HUD to establish family size under the Section 8 program as the basis for determining household size under AHP. Exhibit 2.2 shows who should be counted when determining household size.

EXHIBIT 2-2

ESTABLISHING HOUSEHOLD SIZE

Count These Persons	Do Not Count These Persons
<ul style="list-style-type: none">◊ Year-round occupants◊ Absent children in cases where the parent is pursuing legal custody of the child◊ Members temporarily away, such as students at school, children placed in foster care, Armed Forces personnel on temporary assignment, etc.	<ul style="list-style-type: none">◊ Live-in aides, attendants, or nurses◊ Absent children under 18◊ Unborn children

Like many federal housing programs, AHP does not specify who may or may not be considered a household.⁴ This determination is left to owners. For example, an owner may consider *any group of persons who choose to live together as a household.*

C. Determine Tenant Eligibility

To determine whether a tenant is income eligible, an owner must compare the tenant's anticipated annual (gross) income for the next 12 months to the income limits for the appropriate household size. The program uses the definition of annual income as defined in Section 3 (b)(4) of the United States Housing Act of 1937, which is used by HUD to determine annual (gross) income of families and individuals receiving housing assistance through the Section 8 program.

Under this definition, the eligible income from all adult members (over 18) of the household must be counted when determining the annual income for a household. Annual income includes not only income from employment and benefits, but also income from assets. There are very specific requirements regarding the sources of income that must be included and excluded when determining a tenant's annual income.⁵ The "Guide for Determining Annual

⁴ The AHP allows full- and part-time students to be recognized as households and eligible tenants as long as their income, as determined under the guidelines in Appendix E, falls within the program's income limits.

⁵ As HUD publishes updates to these requirements, monitoring agencies should inform owners of the changes.

Income," which is included in Appendix E of this manual, outlines these requirements and explains how to calculate annual income based on a household's current income and assets.

Any changes by HUD to the definition of annual income for the Section 8 Program may be incorporated automatically into AHP by the State Monitoring Agency to maintain consistency across programs, with the exception of student household income revisions, which may be changed only through direct issuance by the FDIC. As HUD publishes updates to these requirements, monitoring agencies should inform owners of the changes.

FDIC recommends that owners collect the information needed to calculate annual income at the time of application using a rental application form comparable to the sample application included in Appendix C of this manual. The Owner's Compliance Manual provides more detailed guidance on the steps owners need to follow when determining a tenant's annual income.

D. Execute the Tenant Release and Consent Form

The LURA specifies that owners require tenants to provide all documentation determined to be necessary to evaluate a household's eligibility as a tenant of a QU, or to verify information received from other sources.

For each QU, owners must require the household head and other appropriate members of the household to execute an FDIC/Monitoring Agency approved Release and Consent Form authorizing third parties to furnish or release information necessary to evaluate the household's eligibility, including:

- a) depository institutions;
- b) private sources of income; and
- c) any federal, state, or local agency.

An FDIC-approved Release and Consent Form is included in Appendix D.

Having a tenant sign this form enables an owner to check that the income information provided by tenant is accurate. When seeking Qualified Tenants, owners should have all prospective tenants who appear to be eligible sign this form.

Use or disclosure of information obtained from a household or from another source pursuant to the Release and Consent form must be limited to purposes directly connected with 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 within the appropriate income limits, the next step is to verify that the income information provided by the tenant is accurate.

The verification process is a very important step in establishing a tenant's eligibility. To assure that the steps for verifying tenant income provide reliable results, the verification procedures for AHP properties follow methods quite similar to those used in other affordable housing programs, such as tax credit, tax-exempt bond, and HUD-assisted housing programs.

Methods of Verification

There are three basic methods of verification:

- **Third-party written verifications** are preferred. The owner/manager must attempt to use this method wherever feasible. Tenants who are self-employed are one example where this method is not 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** is the least preferred method, but may be used when there is no response to the owners request for written verification. Oral verifications also may be used to update written verifications.

The Owner's Compliance Manual describes the procedures owners must follow when using each of these methods.

Documenting Income Verifications

All verifications must be properly documented. Sample third party written income verification forms are included in Appendix F of this document.

When a tenant provides firsthand documentation, staff receiving the materials must note the date they were provided and who supplied them.

When obtaining an oral verification, owners or managers must record all the information provided, as well as the name, title and phone number of the contact. Staff conducting an oral verification should sign and date the form containing the information. A sample format for documenting a telephone verification is also included in Appendix F.

Exhibit 2-3 shows the acceptable forms of documentation for verifying the principal sources of income.

Timing of Income Verifications

Income verifications remain valid for 90 days from the date they are completed. An oral update may be used to extend the life of a verification for 30 days up to a maximum of 120 days from the date of the original. After this time, a new verification must be processed.

Owners must verify the income of each household that will occupy a QU and the verification must be valid at the time the Tenant Income Certification is completed.

F. Execute Tenant Income Certifications

Owners must have Qualifying Tenants sign a written certification that the information they provided regarding their income and household composition is complete and accurate. This certification must be completed before a unit can be designated as a QU. For new tenants, the certification should be completed at the time the tenant signs the lease.

EXHIBIT 2-3
ACCEPTABLE FORMS OF INCOME VERIFICATION

SOURCE OF INCOME	THIRD-PARTY		FIRST-HAND DOCUMENTATION
	Written	Oral	
Employment	Verification Forms or letter from employer	Telephone/in-person contact with employer, specifying amount to be paid, by pay period, including anticipated raises, bonuses, etc.	W-2 forms or tax returns if other sources unavailable and employee has had same employer or pay can be forecasted accurately.
Self-Employment, Tips, etc.	N/A	N/A	Certified Form 1040/1040A showing amount earned and employment period
Income Maintenance Payments, Benefits, Income Other than Earnings (Incl. Welfare, Social Security, SSI, Unemployment, etc.)	Verification Forms or letter from source	Telephone or in-person contact with source, specifying amount of payments, deductions, if any (Medicare premiums, etc.)	Recent check with date, amount, and period involved, and deductions, if any (Medicare premiums, etc.)
Alimony or child support	N/A	N/A	A copy of a separation or settlement agreement or divorce decree stating the amount and type of payment schedule
Recurring contributions and gifts	Notarized statement/affidavit signed by donor, or a letter from administering bank, attorney, or trustee	N/A	N/A
Scholarships, Grants, and Education Benefits	Verification Form or letter from source	Telephone or in-person contact with source	Copies of latest benefit checks if amount is not expected to change over the next 12 months
Net Business Income	N/A	N/A	Certified Form 1040, Schedules C, E, or F, or audited financial statements, or a loan application with preceding 12 months business income
Dividends or Interest Income, including Savings Accounts	Verification Form or letter from source	Telephone or in-person contact with source (but banks are not likely to provide this orally)	Copies of current statements or Form 1099 from the institution, if amount is not expected to change over the next 12 months
Interest from Sale of Real Property	Verification Form or letter from an account, real estate agent, or other source including amortization table	Telephone or in-person contact with an accountant, real estate agent, or other source including amortization table	Copy of the amortization schedule, with information to determine the amount of interest to be earned during the next 12 months

In preparing a certification, owners must use the Tenant Income Certification (TIC) form included in Appendix G to this manual or a comparable form approved by the monitoring agency. Part I of the form provides a place to record all necessary information about household composition and tenant income. The owner or manager should complete this portion of the form with verified income figures for the tenant.

The tenant must sign Part II of the form certifying the accuracy of the information shown in Part I. The owner or manager completes and signs Part III indicating the appropriate designation (Low Income or Very Low Income) and establishing that the income shown in Part I does not exceed the applicable income limit for a household of that type and size.

The TIC must be effective on the date the tenant signs the lease for a QU.

G. Re-Examine Tenant Incomes

At least annually, owners need to 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 a re-examination, owners must have the tenant of each QU report any changes in the household size or annual income. If no changes have taken place, the tenant must still re-certify the household's income.

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 LI tenant is set at 140 percent of the applicable LI limit. Chapter 4 of the AHP Owner's Compliance Manual describes how to calculate the recertification limit.

When conducting a re-examination, owners must use the TIC form (see Appendix G) and mark the recertification box, or use a comparable form that contains the necessary information and has been approved by the monitoring agency. All income information entered onto the form must be verified in advance, even if no change occurred. The requirements for verifying initial certifications described above also apply when verifying tenant income for recertifications.

The re-examination must be completed no later than the recertification date for the unit. The anniversary of the effective date of the tenant's lease may be used as the standard recertification date. An owner may use a different recertification date as long as it occurs within 12 months of the last recertification.

Changes in QU Status

Once the re-examination is completed, 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:

POSSIBLE CHANGES IN QU STATUS

- VLI/LI-Qualifying Unit ⇒ Over-Income Qualifying Unit
- VLI-Qualifying Unit ⇒ LI-Qualifying Unit
- LI-Qualifying Unit ⇒ VLI-Qualifying Unit

- ◆ **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- or LI-QU (see Section 2.5-B).
- ◆ **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** redesignate the unit as a LI-QU.
- ◆ **LI-QU Becomes VLI-QU.** If the recertified income of a tenant in a LI-QU falls within the VLI limit, the owner **must** redesignate the unit as a VLI-QU.

If the re-examination reveals that a tenant's status has changed, the owner or manager must mark the designation (Very Low Income, Low Income, or over-income) that corresponds to this new status when completing Part III of the TIC form.

2.3 MAXIMUM RENTS

To assure that units made available to Low and Very Low Income tenants are affordable to these 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. Owners may charge rents up to the limit that applies to a QU.

A. Rent Limits for QUs

The rent limits for LI and VLI-QUs are determined as follows:

RENT LIMITS FOR QUS

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

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

NOTE: *The rent limits apply even if tenants are receiving Section 8 Existing Housing payments or other forms of rental assistance. The share of the unit rent paid by tenants receiving rental assistance (Section 8 or some other program) will vary depending on the level of subsidy provided to the tenant.*

The rents limits are set at 30 percent of the income of a family at the specified level (50 or 65 percent of area median) with an adjustment for family size. Rent limits vary by unit size. The table below shows how the 1992 rent limits for Hometown, USA differ by unit size.

SAMPLE RENT LIMITS Hometown, USA - 1992		
Unit Size	VLI Rent Limit	LI Rent Limit
Efficiency	\$248	\$328
1 - Bedroom	\$286	\$378
2 - Bedroom	\$322	\$426
3 - Bedroom	\$374	\$499
4 - Bedroom	\$435	\$577

The method used by HUD and FDIC to establish the rent limits that apply to AHP properties is set forth in Exhibit B of the LURA and is the same for all properties. The method relies on the most recent HUD figures for household income at 65 percent and 50 percent of the area median income, and makes assumptions about the number of persons who will occupy a unit of a given size. All calculations necessary to determine rent limits have already been performed by HUD and FDIC.

The monitoring agency does not need to do any further calculations. However, the agency must forward to owners the rent limits that apply to their property.

Every year, monitoring agencies must distribute the updated rent limits. FDIC or its successor will assist agencies by providing them with the updated income data necessary to notify all property owners and managers of the new rent limits within 30 days of its release.

B. Utility Costs

Utilities are not taken into account when determining the rent that may be charged for a unit. The rent limits only place a cap on the amount paid by the tenant for shelter. Unlike HUD-assisted housing programs, tenant-paid utilities do not reduce the maximum rent an owner can charge under AHP.

In accordance with local laws, owners may charge tenants of QUs for owner-paid utility costs. The types of utility costs that may be passed on to tenants will vary across localities. These costs may only be passed on to all tenants (not just the QUs) through assessments separate from the rent established for the unit, and these charges must be set forth in the dwelling lease.

When owners charge a tenant for owner-paid utilities, they must use an allocation method that equitably distributes the actual costs among all units in the property or rely on a system, such as readings from an approved sub-meter, that provides a reasonable estimate of the utility expenses for individual units. If an owner elects to pass on owner-paid utilities, assessments must be levied against all tenants in the property, not just tenants of QUs.

C. Changes in QU Status

When the status of a QU changes due to a change in the eligibility of the tenant in that unit, the rent limits for that unit must be revised accordingly.

If a VLI-QU is re-designated as a LI-QU due to a change in the income or household composition of the tenant, the rent for that unit is now restricted by the LI rent limit. For example, if a two-bedroom VLI-QU in a property located in

Hometown, USA becomes a LI-QU, the rent limit changes from \$322 to \$426 (see Hometown rent chart above).

Likewise, when a LI-QU is redesignated as a VLI-QU due to a decrease in the tenant's income, the rent for that unit is now restricted by the VLI rent limit. Using the example of a property in Hometown, USA, if a three-bedroom LI-QU is redesignated as a VLI-QU, the rent limit changes from \$499 to \$374 (see Hometown chart above).

If the tenant of a QU is determined to be over-income, the rent for that unit is no longer be subject to the rent limits for QUs, and may be adjusted to the unrestricted market rent.⁶ Any changes in the rent must conform to lease agreements and/or state and local laws.

If, upon recertification, a tenant's status changes from VLI to LI, owners may raise the actual rent for that unit up to the applicable LI rent limit. However, any increase in rent is subject to provisions of the lease, as well as state and local law. If a tenant's status upon recertification changes from LI to VLI, the owner must promptly adjust the rent for that unit to comply with the applicable VLI rent limit, unless prohibited by state or local law.

Likewise, if the rent limit for a QU rises during the middle of the lease period due to the annual adjustment of the limits, the owner may raise the unit rent up to the revised applicable rent limit. Again, however, any increase in rent is subject to provisions of the lease, as well as state and local law. If the rent limits for a QU decrease during the middle of the lease period, the owner must promptly adjust the unit rent to comply with the updated limit, unless prohibited by state or local law.

2.4 DWELLING LEASE REQUIREMENTS

Owners must execute a lease agreement with the tenant of each QU. There is no prescribed format or term for the lease. However, owners must incorporate the required language establishing the tenant's obligations and avoid using certain prohibited provisions. FDIC also expects that owners will comply with local tenant-landlord laws when executing the lease. Finally, as discussed above, if a tenant of a QU is being charged for owner-paid utilities, these charges must be set forth in the lease.

⁶ Some of the early LURAs (Version I) stipulate that the rent for an QI-QU to remain restricted at the previous LI or VLI level until the unit is replaced with another QU, while later LURAs (Version II) permit immediate adjustment of the rent to an unrestricted rent. In order to be consistent, FDIC will apply the more recent standard to all properties.

A. Required Tenant Lease Provisions

To assure that a tenant's eligibility can be readily determined and re-examined, 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. They are:

- (i) *The lessee certifies the accuracy of the information provided in connection with the examination or re-examination of the Annual Income of the household of the lessee.*
- (ii) *The lessee agrees that the Annual Income and other eligibility requirements shall be deemed substantial and material obligations of his or her tenancy, that he or she will comply promptly with all requests for information with respect thereto from the lessor, FDIC, or FDIC's monitoring agency. The lessee's failure to provide accurate information regarding such requirements (regardless of whether such inaccuracy is intentional or unintentional) or refusal to comply with a request for information thereto shall be deemed a violation of substantial obligation of his or her tenancy and constitute cause for immediate termination thereof.*

These provisions must appear in the lease or a lease addendum for each QU using the exact wording shown above unless prohibited by local law.

B. Prohibited Lease Provisions

Lease provisions prohibited under other federally-related affordable housing programs are also prohibited under AHP. The following provisions may not appear in the dwelling lease for any QU:

- **Agreement to be sued.** Agreement by the tenant to be sued, admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
- **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, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the unit after the tenant has moved out. The owner may dispose of this personal property in accordance with State law.
- **Excusing the owner from responsibility.** Agreement by the tenant not to hold the owner or the owner's agents legally

responsible for actions or failure to act, whether intentional or negligent.

- **Waiver of notice.** Agreement by the tenant that the owner may institute a lawsuit without notice to the tenant.
- **Waiver of legal proceedings.** Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense or before a court decision on the rights of the parties.
- **Waiver of a jury trial.** Agreement by the tenant to waive any right to a jury trial.
- **Waiver of right to appeal court decision.** Agreement by the tenant to waive the tenant's right to appeal or otherwise challenge in court a decision in connection with the lease.
- **Tenant chargeable with cost of legal actions regardless of outcome.** Agreement by the tenant to pay attorney fees or other legal costs even if the tenant wins the court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

Owners are not prohibited from taking the legal actions in these prohibited clauses, but they may not require tenant consent or waiver of rights in advance.

Owners are also expected to avoid using lease provisions prohibited by all applicable state and local laws.

2.5 LEASING PROCEDURES: PROPERTIES WITH INSUFFICIENT QUs

For properties where the number of designated QUs is not sufficient to meet the occupancy requirements established in the LURA, the owner must rent the next available unit (NAU) to an income eligible tenant. Properties that contain an insufficient number of QUs fall into three groups:

- a) new purchases;
- b) insufficient QUs due to income changes among QU tenants; or
- c) insufficient QUs due to improper leasing of QUs.

For each type of property, the owner must follow specific requirements for renting available units until the required number of QUs is reached.

A. New Purchases

Newly purchased properties do not meet the occupancy requirements established in the LURA because the owner needs time to collect and verify income information on the tenant for each QU. The time between final closing and the date the owner reaches full compliance with the occupancy requirements for the property is called the ***Pre-Compliance period***. During this period, an owner must follow specific rules for leasing available units in order to remain in compliance with the program requirements.

TREATMENT OF EXISTING TENANTS

The procedures for reaching the occupancy requirements for a property are designed to allow owners to lease QUs as existing units become available. **As set forth in the LURA, 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.**

Renting Vacant Units

Until a property contains enough QUs to meet the Total Set-Aside, owners must rent vacant units to Qualified Tenants. The procedures for renting vacant units during the pre-compliance period depend on whether the number of vacant units exceeds the number of additional QUs needed to meet the Total Set-Aside.

- ◊ **Vacancies Less Than QUs Needed:** Owners must hold all vacant units available for occupancy by Qualified Tenants and rent each new vacant unit to an income eligible tenant.
- ◊ **Vacancies Greater Than QUs Needed:** Owners must hold enough vacant units for Qualified Tenants to meet the additional number of QUs needed to reach the Total Set-Aside. Vacant units in excess of this number may be rented to any tenant.

For example, if a property has five QUs, two vacancies, and a Total Set-Aside of 10 units, the property's vacancies are less than the five additional QUs needed to meet the Total Set-Aside. The owner needs to reserve the two vacant units for Qualified Tenants and rent the next three vacancies to Qualified Tenants.

If the same property's vacancies jumped to seven next month, the number of vacancies would exceed the number of QUs needed. In this case, the owner would need to reserve five vacant units for Qualified Tenants.

NOTE: A vacant unit held available for occupancy by a Qualified Tenant may not be counted as a QU. A unit can be designated as a QU only after it has been leased to a Qualified Tenant.

Designating Units with Existing Tenants

Owners can also obtain QUs by designating units already occupied with Qualified Tenants. Owners can identify these eligible households by surveying the income of in-place tenants. Like new tenants, existing tenants who appear eligible based on the results of the survey must: a) have their income verified; b) sign a tenant certification; and c) execute an acceptable lease or lease amendment reflecting appropriate rents before their unit can be designated.

If owners choose to designate units with existing tenants, they should attempt to survey all in-place households and not limit their efforts to certain tenants or units in particular areas of the property.

Meeting the Total and VLI Set-Asides

The type of QU an owner must obtain depends upon the number of LI- and VLI-QUS in the property, and whether there is a sufficient number of each to meet both the Total and VLI Set-Asides.

A property has a sufficient number of VLI-QUS if the number of these units meets the number required under the VLI Set-Aside. A property has a sufficient number of LI-QUS when the number currently designated equals the difference between the Total Set-Aside and the VLI Set-Aside. For example, if a property has a Total Set-Aside of 35 units and a VLI Set-Aside of 20 units, when the number of LI-QUS reaches 15 the property will have a sufficient number of these units.

Because the VLI Set-Aside specifies a minimum number of QUs that must be occupied by VLI tenants, if a property contains a sufficient number of LI-QUS, but an insufficient number of VLI-QUS, an owner must lease QUs to VLI tenants until the VLI Set-Aside is met. Again, this applies to both the rental of vacant units and units with existing tenants that are designated as QUs.

Finally, if a property has a sufficient number of VLI-QUS but an insufficient number of LI-QUS, the owner may lease QUs to any Qualified Tenant (LI or VLI) because there is no required number of LI-QUS and additional VLI-QUS can be counted toward the Total Set-Aside. However, owners are not required to designate VLI-QUS above the minimum required by the Set-Asides.

Exhibit 2-4 summarizes the procedures owners must follow when leasing available units. It details the steps for owners of properties with insufficient QUs, noting the differences for properties with abundant and limited vacancies.

EXHIBIT 2-4

PROCEDURES FOR LEASING AVAILABLE UNITS

	PROPERTIES WITH INSUFFICIENT QUs			PROPERTY IN FULL COMPLIANCE
	VLI & LI SHORTAGE	VLI SHORTAGE	LI SHORTAGE	
	VLI <u>Not</u> Sufficient LI <u>Not</u> Sufficient	VLI <u>Not</u> Sufficient LI Sufficient	VLI Sufficient LI <u>Not</u> Sufficient	
Vacancies Greater than Number of Units Needed to Meet Total Set-Aside	<ul style="list-style-type: none"> Keep enough vacancies available to meet Total Set-Aside Lease reserved vacant units to QTs, giving preference to VLI tenants Option: Reduce number of vacancies held available by designating units with existing tenants who are QTs*, giving preference to VLI tenants 	<ul style="list-style-type: none"> Keep enough vacancies available to meet Total Set-Aside Lease reserved vacant units to VLI tenants Option: Reduce number of vacancies held available by designating units with existing tenants who are VLI tenants 	<ul style="list-style-type: none"> Keep enough vacancies available to meet Total Set-Aside Lease reserved vacant units to QTs (LI or VLI) Option: Reduce number of vacancies held available by designating units with existing tenants who are QTs* (LI or VLI) 	<ul style="list-style-type: none"> Available units may be rented to any tenant
Vacancies Less than Number of Units Needed to Meet Total Set-Aside	<ul style="list-style-type: none"> Lease NAU** to QT, giving preference to VLI tenants Option: Designate units with existing tenants who are QTs*, giving preference to VLI tenants 	<ul style="list-style-type: none"> Lease NAU** to VLI tenants Option: Designate units with existing tenants who are VLI tenants 	<ul style="list-style-type: none"> Lease NAU** to QTs* (LI or VLI) Option: Designate units with existing tenants who are QTs* (LI or VLI) 	

* QT = Qualified Tenant

** NAU = Next Available Unit

B. Insufficient QUs Due to Income Changes Among QU Tenants

Income changes among tenants in QUs may leave the owner with an insufficient number of VLI- and LI-QUs to meet the required set-asides. Owners must follow specific procedures for replacing these units to remain in compliance with the LURA. The two types of changes that can lead to an insufficient number of QUs are:

- QUs (VLI or LI) change to over-income units; or
- VLI-QUs become LI-QUs.

When a LI-QU becomes a VLI-QU due to a drop in the tenant's income, the property still contains a sufficient number of QUs to meet both the Total and VLI Set-Asides. In this case, no action is required of the owner, although the owner may rent a future vacant VLI unit as LI to restore the required balance of VLI and LI units.

QUs Change to Over-Income Units

When a QU (VLI or LI) becomes an over-income Qualifying Unit (OI-QU) unit because the tenant's income exceeds the applicable income limit (the 140 percent limit on recertification), the LURA allows the owner to continue to count the unit as a QU as long as the next available unit (NAU) requirement for over-income units is followed.

NAU Requirement for Over-Income Qualifying Units:

When a re-examination reveals that the tenant of a QU is now over-income, the NAU of comparable or smaller size must be held available or rented to a Low or Very Low Income tenant depending on the type of unit needed to meet the Set-Asides.

An owner also may satisfy this requirement by designating an unrestricted unit occupied by an income-eligible resident as a QU. Once an OI-QU has been properly replaced, the unit becomes an unrestricted unit.

As noted above, the rent for an OI-QU is unrestricted and may be adjusted to the applicable market rent, subject to any limitations in the lease and state and local law.

VLI-QU Becomes LI-QU

When a VLI-QU becomes a LI-QU due to a change in the eligibility of the tenant in that unit, the total number of VLI-QUs may no longer satisfy the VLI Set-Aside for the property.

Take as an example a 100-unit property where the Total Set-Aside is 35 units and the VLI Set-Aside is 20 units. If the property had 20 VLI-QUs and 15 LI-QUs but one of the VLI-QUs was redesignated as a LI-QU, the property no longer meets the VLI Set-Aside because the property now contains less than 20 VLI-QUs (19 VLI-QUs and 16 LI-QUs). *Note: The property still meets the Total Set-Aside because it still has 35 QUs.*

If the number of VLI-QUs is less than the VLI Set-Aside but the total number of QUs still satisfies the Total Set-Aside, the owner must use the following procedure when renting available LI units:

NAQU Requirement for Properties with Insufficient VLI-QUs: The owner must rent the next available Qualifying Unit (NAQU) to a VLI tenant until the number of VLI-QUs meets the VLI Set-Aside.

In the example above, every time a QU becomes available, the owner must rent the QU to a VLI household until the number of VLI-QUs reaches 20 units.

C. Insufficient QUs Due to Improper Leasing Practices

The number of QUs also may fall below the number required the Total Set-Aside or VLI Set-Aside if an owner fails to properly lease QUs. If this occurs, the property may be out of compliance with the LURA. Improper leasing practices include:

- making an incorrect determination of a tenant's eligibility; or
- failing to properly replace QUs when they are vacated or must be redesignated.

If a review of the tenant file for a QU reveals that the owner or manager made an incorrect eligibility determination and the tenant's income actually exceeds the applicable LI limit, the unit can no longer be considered a QU. In such a case, the number of QUs may no longer satisfy the Total Set-Aside and the property would be out of compliance.

If an owner fails to properly replace QUs, the property may no longer comply with the Total Set-Aside or the VLI Set-Aside. For example, if an owner

rents a vacated QU to an ineligible household without designating or holding available an unrestricted unit to replace the QU, the number of QUs will drop below the amount required by the Total Set-Aside.

When an owner fails to maintain the required number of QUs due to improper leasing practices, the property will be considered to 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 Exhibit 2-5.

EXHIBIT 2-5

PROPERTIES OUT OF COMPLIANCE WITH OCCUPANCY REQUIREMENTS

Required Procedures for Renting Available Units	
Property Status	Required Procedure
A. Out of Compliance with Total Set-Aside & VLI Set-Aside -- Number of QUs (VLI+LI) < Total Set-Aside -- Number of VLI-QUs < VLI Set-Aside	A. <i>Next available unit must be rented to LI or VLI household until the number of QUs meets the Total Set-Aside. Owners must give preference to VLI households when renting QUs. If Total Set-Aside is met, but VLI Set-Aside is not met, follow Procedure B.</i>
B. Out of Compliance with VLI Set-Aside -- Number of QUs (VLI+LI) meets Total Set-Aside -- Number of VLI-QUs < VLI Set-Aside	B. <i>Next Available QU must be rented to VLI household until the number of VLI-QUs meets VLI Set-Aside.</i>
C. Out of Compliance with Total Set-Aside -- Number of QUs (VLI+LI) < Total Set-Aside -- Number of VLI-QUs meets VLI Set-Aside	C. <i>Next available unit must be rented to LI or VLI household until the number of QUs meets Total Set-Aside.</i>

2.6 RECORD-KEEPING AND REPORTING REQUIREMENTS

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

- on-site record-keeping;
- 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 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 photocopy documents pertaining to the property during regular business hours.

There are two principal types of on-site records owners must maintain:

- tenant files; and
- monthly unit listings.

Tenant Files

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

- the tenant's rental application;
- a Release and Consent Form signed by all adult members of the household;
- proper income verification documents;
- a current TIC (initial certification or recertification); 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 must provide the following information for each unit:

- unit number
- number of bedrooms

- tenant name
- effective lease date
- monthly rent
- unit status (VLI-QU, LI-QU, OI-QU, or unrestricted unit)

Owners may meet this requirement by simply adapting their monthly rent rolls to provide the necessary 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 these listings for the past three years.

B. Compliance Reports

Owners also must submit regular reports documenting their compliance with program requirements. The compliance report summarizes the status of the property's QUs and includes a listing of each unit in the property. The types of information the owner must provide for each unit include:

- building identification
- unit number
- number of bedrooms
- tenant name
- number of persons in household
- 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 only)

All of the information needed to complete a report should be readily available from the property's monthly unit listing, tenant files, and the income and rent limits provided by the monitoring agency.

Monitoring agencies must have owners use the Compliance Report Form provided in Appendix H or a comparable form approved by the agency that provides the same information.

Monthly Reporting

Owners must submit monthly compliance reports for properties that have not reached full compliance, and when a property has fallen out of compliance.

Monitoring agencies may ask owners to report on a monthly basis at other times, if necessary, to assure continued compliance.

With each monthly report, owners also 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 starting and ending date of the report as well as the day the report is due to the agency. If an agency opts to have the reports correspond to calendar months, agency staff need only specify the day by which owners must submit reports to the agency.

Annual Reporting

Once a property reaches full compliance, 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 requirements and other provisions of the LURA.

The annual compliance report documents the occupancy status of the property as of the end of the monitoring year. With each report, owners must provide copies of the income certification or current recertification for each QU.

Monitoring agencies may require owners to include with their annual report any additional materials necessary to evaluate the property's continued compliance with provisions of the LURA.

C. Owner Certifications

To confirm that a property is in compliance with the provisions of its LURA, owners must provide monitoring agencies with a written certification of the property's compliance. Owners must submit a certification when a property reaches initial compliance (the end of the Pre-Compliance period) and then with each annual report.

D. Owner Obligations During Agency On-Site Reviews

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 necessary to complete an evaluation of the owner's continued compliance with the provisions of the LURA.

Monitoring agencies must give owners reasonable advance notice prior to conducting an on-site visit. Advance notice of which QU files will be selected for review is not required.

The managing owner and key on-site staff should be present during the review whenever possible. Entrance and exit interviews with the owner are recommended.

2.7 ADMINISTRATIVE FEES

A. Annual Administrative Fee

To offset the cost of monitoring owner compliance with the LURA, each owner must pay the monitoring agency (or FDIC) an annual administrative fee. The fee is based on the number of QUs the LURA requires the owner to hold available for occupancy by Qualified 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 base fee generally will be found in Section 4.6 (a) of the LURA for the property.

ANNUAL ADMINISTRATIVE FEE

Number of Required QUs x Base Fee = Annual Fee

The annual administrative fee is due the day the LURA is signed and covers the following 12-month period.⁷ The next annual fee is due on the anniversary date of the LURA.

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. In such a case, the monitoring fee is due at the beginning of the new fee period. If the change in start of the fee period shortens the length of the current period, the agency should prorate the current year's fee and apply the excess funds collected to the fee due at the beginning of the next monitoring year.

Example: If the LURA for a property was signed in April and the monitoring agency establishes a revised fee period that starts in January of the coming year, the agency should apply three months of the current years' fee toward the annual fee due in January for the coming year.

The monitoring agency should send invoices for the coming year's monitoring fee at least 30 days prior to the start of the upcoming fee period.

⁷ In cases where an owner purchased a property prior to the time an agency signed a compliance monitoring MOU with RTC, the annual fee is due once the MOU becomes effective and covers the following twelve month period.

B. Adjustment of Annual Fee

Each year the agency may adjust the annual fee for increased costs due to inflation. If adjusted, the agency should compute the adjustment by multiplying the base fee by the most recent increase in the Consumer Price Index for All Urban Consumers (CPI-U).

ANNUAL ADMINISTRATIVE FEE ADJUSTMENT

$$\text{New Base Fee} = \text{Old Base Fee} \times \frac{\text{(Current CPI-U Index)}}{\text{(Previous CPI-U Index)}}$$

C. Administrative Fees For Non-Compliance

If the monitoring agency determines that a property is out of compliance with the provisions of the LURA, it may require the owner to pay an additional fee up to an amount equal to the annual administrative fee or \$50 as stated in the applicable LURA.

This additional fee is distinct from and in addition to the annual fee.

The monitoring agency is entitled to be compensated for 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.

The owner also is required to reimburse the state monitoring agency for all costs and legal fees to which the agency may be entitled as a result of any judicial enforcement action. These fees are payable to the monitoring agency regardless of whether the agency undertakes or succeeds in judicial enforcement action.

2.8 RESALE REQUIREMENTS

The owner is required to notify the 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.

2.9 CONFLICTS BETWEEN AHP REQUIREMENTS AND LOCAL LAWS

AHP requirements and procedures are intended to work in harmony with local laws. Generally, local law will take precedence over the program's rules. If monitoring agencies find that elements of the program do conflict with local law and cannot resolve the conflict, agency staff should seek guidance from FDIC.