

## CHAPTER 4

### RESTORING COMPLIANCE

When owners fail to meet program requirements, monitoring agencies must compel them to take steps to restore compliance. Although enforcing program requirements can be a difficult and often frustrating task, it is vital to assuring the ongoing affordability of AHP properties.

This Chapter describes the procedures monitoring agency staff should follow when a property no longer meets the requirements established in the LURA. It:

- ◇ provides an overview of the process;
- ◇ describes the procedures for notifying owners of compliance violations;
- ◇ identifies the corrective actions necessary to restore compliance;
- ◇ discusses the follow-up measures agencies should take once a non-compliance notice has been issued; and
- ◇ outlines the enforcement actions available to agencies in cases of continued non-compliance.

#### 4.1 OVERVIEW

When monitoring staff have determined that an owner has failed to comply with AHP requirements and procedures, an agency must:

- ◇ notify the owner of the compliance violation and the actions necessary to restore compliance;
- ◇ take follow-up actions to monitor owner progress toward compliance and provide necessary technical support;
- ◇ re-evaluate owner compliance at the end of the corrective action period; and
- ◇ take additional enforcement actions in cases of continued non-compliance.

The procedures for handling serious compliance violations, such as failing to maintain the required number of set aside units or charging rents that exceed the appropriate limit, are quite specific. The procedures for less serious

infractions, such as late reports, give monitoring staff greater flexibility in addressing the violation.

**GOOD PRACTICES:**

- Identify problems early and work with owners to correct small infractions before they grow into serious violations.
- Provide prompt technical support to remedy procedural errors.
- Be consistent across owners and properties in citing problems.

If an owner still fails to comply after the agency has taken all reasonable enforcement measures, the monitoring staff may turn the case over to FDIC for further enforcement action. Monitoring agencies also may charge an additional administrative fee to cover the costs associated with monitoring non-complying properties (see Section 4.4).

## **4.2 NOTIFYING OWNERS OF COMPLIANCE VIOLATIONS**

Once monitoring staff have determined that a compliance violation has occurred, the agency must send a Notice of Non-Compliance to the owner. Timely notice will help ensure that owners address problems promptly.

### **A. Timing of Notices**

There are three ways monitoring staff will detect compliance violations. Most violations will be discovered when monitoring staff:

- ◇ review reports and other materials submitted by an owner;
- ◇ conduct on-site reviews; or
- ◇ receive occasional reports from informal sources (i.e., tenant complaints, information provided by other public officials, such as social service workers or local housing authority staff, etc.).

To ensure that owners are promptly informed of violations, monitoring staff should issue Notices of Non-Compliance within 30 days of receiving information leading to the non-compliance determination.

## **B. Preparing the Notice**

All Notices of Non-Compliance should be addressed directly to the owner and must contain the following items:

- ◇ the name and address of the property;
- ◇ the name of the owner;
- ◇ the monitoring number used to identify the property (if any);
- ◇ the date of the notice; and
- ◇ the type of violation.

Notices must not only inform the owner of the violation, but also advise the owner about what must be done to correct the problem. In preparing a Notice of Non-Compliance, monitoring staff must also:

- ◇ identify the corrective actions the owner must take to restore compliance;
- ◇ set a deadline for completing the corrective actions;
- ◇ state the additional administrative fee the owner must pay;
- ◇ indicate the consequences for failing to meet the corrective action deadline; and
- ◇ give the name and phone number of the monitoring person to contact with any questions regarding the notice.

### **GOOD PRACTICES:**

- Prepare notices on agency stationery.
- Have notices signed by senior staff (e.g., Director of Compliance Monitoring).
- The management agent for the property should also receive a copy of the notice.
- Transmit notices using delivery methods that provide a time and date stamp (e.g., express delivery, registered mail).
- Notices sent by facsimile are okay, but agency should send original by registered mail.

Specific information on the required corrective actions and corrective action deadlines for different types of violations can be found in the following section.

Notices of Non-Compliance should be placed in each property's monitoring file and in a central agency file. Maintaining a central file of owner violations will help monitoring staff quickly and accurately prepare the summary of owner violations for inclusion with the annual monitoring report to FDIC. The central file of violations must be maintained at all times and be kept available for review by staff of FDIC or other authorized federal agencies.

### **4.3 CORRECTIVE ACTIONS TO RESTORE COMPLIANCE**

As noted above, when an agency issues a Notice of Non-Compliance, it must specify the corrective actions the owner must take to restore the property compliance. The corrective actions and the corrective action deadline for most types of compliance violations are specified below. The information is presented by type of violation and grouped in four major categories.

<b>TYPES OF COMPLIANCE VIOLATIONS</b>
<ul style="list-style-type: none"><li>• Occupancy Violations</li><li>• Rent Limit Violations</li><li>• Reporting and Documentation Violations</li><li>• Administrative Fee Violations</li></ul>

If monitoring staff encounter a violation not specifically listed, they should attempt to identify a comparable violation listed below. Where a comparable violation exists, the agency is authorized to take the corrective actions for the violation listed and adapt them to correspond to the violation at hand.

If no comparable violation can be identified, monitoring staff should issue a Notice of Non-Compliance advising the owner to stop all actions causing the compliance violation. The agency should then request guidance from FDIC regarding the corrective actions that should be taken. If FDIC fails to provide guidance within 60 days, the agency may turn the case over to FDIC.

#### **A. Occupancy Violations**

Exhibit 4-2 provides guidance on the corrective actions and corrective action deadlines for violations where an owner has failed to follow the program's occupancy requirements. There are three types of occupancy violations.

### **OCCUPANCY VIOLATIONS**

- Owner Failed to Maintain Required Number of QUs
- Owner Failed to Rent VLI-QUs as Required
- QU Designation Removed from Eligible Tenant

**EXHIBIT 4-2**

**OCCUPANCY VIOLATIONS - CORRECTIVE ACTIONS**

<b>VIOLATION</b>	<b>CORRECTIVE ACTIONS</b>	<b>CORRECTIVE ACTION DEADLINE</b>
1. Owner Failed to Maintain the Required Number of QUs	<ul style="list-style-type: none"> <li>• Owner must follow the appropriate Next Available Unit (NAU) procedures described in Exhibit 2-5 of this manual until the required number of QUs is obtained.</li> <li>• Owner must submit monthly occupancy reports to monitoring agency until compliance is restored.</li> <li>• Owner must submit a completed certification of compliance form once the required number of QUs is obtained.</li> </ul>	Must implement corrective action until number of QUs meets the Total Set-Aside for the property.
2. Owner Failed to Rent Available QUs to VLI tenants to restore required number of VLI—QUs	<ul style="list-style-type: none"> <li>• Owner must follow the appropriate NAU procedures described in Exhibit 2-5 until the VLI Set Aside is obtained.</li> <li>• Owner must submit monthly occupancy reports to monitoring agency until compliance is restored.</li> <li>• Owner must submit a completed certification of compliance form once the required number of VLI—QUs is obtained.</li> </ul>	Must implement corrective action until number of QUs meets the VLI Set-Aside for the property.
3. QU Designation Removed from Eligible Tenant	<ul style="list-style-type: none"> <li>• Owner must restore QU designation to the original household. (Note: QUs may exceed the required number.)</li> <li>• If the rent for the affected unit was raised above the appropriate rent limit, the owner must return the excess rent by following Rent Limit Violation B.1.</li> <li>• Owner must submit a copy of the lease or current rental agreement for the affected unit showing that the rent complies with the appropriate rent limit.</li> </ul>	Within 30 days of the Notice of Non-Compliance.

**B. Rent Violations**

Exhibit 4-3 provides guidance on the corrective actions and corrective action deadline when an owner has failed to keep the rents charged for QUs within the applicable rent limits.

<p style="text-align: center;"><b>RENT VIOLATION</b></p> <ul style="list-style-type: none"><li>• QU Rent Exceeds Maximum Rent</li></ul>
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**EXHIBIT 4-3**

**RENT LIMIT VIOLATION - CORRECTIVE ACTIONS**

<b>VIOLATION</b>	<b>CORRECTIVE ACTIONS</b>	<b>CORRECTIVE ACTION DEADLINE</b>
1. Qualifying Unit Rent Exceeds Appropriate Limit	<ul style="list-style-type: none"><li>• Owner must reduce the rents for the affected units to the allowable rent limit.</li><li>• Owner must calculate the amount of excess rent received from the tenant.</li><li>• Owner must apply overpayment as a rent credit toward next month's rent for unit. If overpayment exceeds next month's rent, any excess must be repaid to tenant by check.</li><li>• If the tenant has moved out, the full amount of the overpayment must be mailed to the tenant. If the tenant cannot be located, the overpayment must be paid to the monitoring agency for use in providing housing assistance to lower-income families.</li><li>• Owner must send letter to tenant by registered mail announcing revised unit rent. The letter must also indicate the amount of the rent credit awarded and indicate any repayment to the tenant.</li><li>• Owner must send copy of tenant letter with the return receipt to monitoring agency prior to the compliance deadline.</li></ul>	Within 30 days of the date of the Notice of Non-Compliance



### **C. Reporting Violations**

Exhibit 4-4 provides guidance on the corrective actions and corrective action deadlines for violations where an owner has failed to follow the program's reporting requirements. There are five types of reporting violations.

#### **REPORTING VIOLATIONS**

- Owner Failed to Submit Monthly Compliance Report
- Owner Failed to Submit Annual Compliance Report
- Owner Failed to Obtain TIC
- Owner Failed to Obtain Tenant Recertification
- On-Site Tenant File Incomplete

**EXHIBIT 4-4**

**REPORTING VIOLATIONS - CORRECTIVE ACTIONS**

<b>VIOLATION</b>	<b>CORRECTIVE ACTIONS</b>	<b>CORRECTIVE ACTION DEADLINE</b>
1. Owner Failed to Submit Monthly Compliance Report	<ul style="list-style-type: none"> <li>• Owner must submit properly completed Monthly Compliance Report by corrective action deadline</li> </ul>	Within 10 days of the Notice of Non-Compliance.
2. Owner Failed to Submit Annual Compliance Report	<ul style="list-style-type: none"> <li>• Owner must submit properly completed Annual Compliance Report by corrective action deadline</li> </ul>	Within 30 days of the Notice of Non-Compliance.
3. Owner Failed to Obtain a Tenant Income Certification or Proper Income Verification Prior to Move-in	<ul style="list-style-type: none"> <li>• Owner must obtain a completed tenant income certification</li> <li>• Owner must submit copies of the outstanding documents to the monitoring agency by the corrective action deadline.</li> <li>• If the tenant is over-income and the property now lacks the required number of QUs, the owner must follow the corrective actions listed for Occupancy Violation No. 1.</li> </ul>	Within 30 days of the Notice of Non-Compliance.
4. Owner Failed to Obtain a Tenant Income Recertification by Required Date	<ul style="list-style-type: none"> <li>• Owner must obtain a completed tenant income recertification</li> <li>• Owner must submit copies of the outstanding documents to the monitoring agency by the corrective action deadline.</li> <li>• If the documents show that the tenant is over-income, the owner must follow the appropriate NAU procedures in section 2.5.B to obtain the required number of QUs.</li> </ul>	Within 30 days of the Notice of Non-Compliance
5. Owner Failed to Maintain Proper On-Site Tenant Files	<ul style="list-style-type: none"> <li>• Owner must obtain all documentation necessary to complete the tenant files.</li> <li>• Owner must submit copies of the outstanding documents to the monitoring agency by the corrective action deadline.</li> </ul>	Within 30 days of the Notice of Non-Compliance

**D. Monitoring Fee Violations**

Exhibit 4-5 provides guidance on the corrective action and corrective action deadline when an owner fails to pay the required annual monitoring fee to the monitoring agency by the start of the monitoring year.

<p style="text-align: center;"><b>FEE VIOLATION</b></p> <ul style="list-style-type: none"><li>• Owner Failed to Pay Monitoring Fee</li></ul>
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**EXHIBIT 4-5**

**MONITORING FEE VIOLATION - CORRECTIVE ACTIONS**

<b>VIOLATION</b>	<b>CORRECTIVE ACTIONS</b>	<b>CORRECTIVE ACTION DEADLINE</b>
1. Owner Fails to Pay Annual Monitoring Fee by the Required Date	<ul style="list-style-type: none"><li>• Owner must pay annual monitoring fee to agency</li></ul>	Within 30 days after the date of the Notice of Non-Compliance.

#### **4.4 ADMINISTRATIVE FEE FOR NON-COMPLIANCE**

As discussed in Chapter 2, if a property is determined to be out of compliance, the monitoring agency may charge the owner an additional administrative fee. This fee is in addition to, and distinct from, the annual monitoring fee.

The maximum fee for non-compliance is equal to the amount of the annual monitoring fee. During a given monitoring year, once the agency has assessed the maximum amount of the additional fee, no further fees for non-compliance can be charged until the next monitoring year. This limitation applies even if the owner commits another violation during that same monitoring year.

The agency may require the owner to pay some or all of the allowed fee for non-compliance. FDIC encourages agencies to consider charging an amount less than the maximum fee in cases where the violation will not require extensive additional monitoring. For example, an agency's on-site review may reveal that the owner has two recertifications that are three weeks overdue, but otherwise the property is in compliance. If the owner agrees not to rent any vacant units until the recertifications have been performed and submitted to the agency, monitoring staff should consider charging the owner only a small non-compliance fee.

The LURA allows the agency to charge the additional fee for up to three years after the most recent finding of non-compliance. This means that the agency may charge additional fees up to the maximum for three monitoring years -- the current year and two additional monitoring years (i.e., Year 1, Year 2, and Year 3). If the owner commits another violation the following year (Year 2), then the agency may charge the fee during an additional monitoring year (Year 4).

Finally, if judicial enforcement action is necessary to compel an owner to restore compliance, the provisions of the LURA allow the agency or FDIC to require the owner to pay for all costs and legal fees incurred as a result of these efforts. Owners may be required to pay these costs even if judicial enforcement action is not actually undertaken or is unsuccessful.

#### **4.5 AGENCY FOLLOW-UP**

To help ensure that owners work to restore compliance with program requirements, monitoring agencies should take several follow-up actions after a Notice of Non-Compliance has been issued. They are:

- ◇ confirm that the owner received the non-compliance notice;
- ◇ maintain regular contact during the corrective action period;
- ◇ provide any technical support necessary for owner to implement corrective actions;
- ◇ review reports of owner progress; and
- ◇ re-evaluate owner compliance at the end of the corrective action period.

In taking follow-up action, FDIC strongly encourages the agency to adopt the approach of working with owners and their staff to bring the property back into compliance so that it continues to serve families in need of affordable housing. By taking steps such as putting owners in touch with affordable housing organizations who can refer LI and VLI tenants, or making a technical assistance visit to work with on-site staff to find ways to prevent recurring errors, monitoring staff can help an owner work toward restoring compliance.

#### **A. Confirming Owner Receipt of Notice**

After a Notice of Non-Compliance has been issued, monitoring staff should attempt to contact the owner to confirm that he or she has received the notice and understands its contents. When contact is made, monitoring staff should:

- ◇ review the contents of the notice;
- ◇ confirm that the owner understands the violation and the corrective actions to be taken;
- ◇ highlight the corrective action deadline and make sure it is clear to the owner that compliance must be restored by this date;
- ◇ discuss whether there is a need for technical assistance or training in order to restore compliance;
- ◇ schedule a meeting or a follow-up call if the owner indicates that it will be impossible to restore compliance by the deadline;
- ◇ confirm the date the owner will submit the first corrective action report (if appropriate); and
- ◇ inform the owner that monitoring staff will be making periodic follow-up calls to check progress and answer questions.

Any problems or issues identified during the follow-up call must be documented in the property monitoring file and, if appropriate, brought to the attention of the staff person in charge of monitoring. For example, if the owner indicates that it will be impossible to meet the corrective action deadline, the staff person making the call should inform senior monitoring staff and discuss whether the reasons given by the owner may warrant extending the corrective action deadline.

FDIC recommends that all attempts and any contact be documented in the property's monitoring file.

**GOOD PRACTICE:** All contacts with the owner should be documented in the property's monitoring file.

## **B. Maintaining Regular Contact**

Experienced compliance monitors emphasize the importance of staying in regular contact with property owners and managers. Regular contact reminds owners that the monitoring agency is tracking progress in correcting the violation, and sends a clear message that the agency expects compliance to be restored.

**GOOD PRACTICE:** Placing a reminder call to the owner/manager as the end of the corrective action period nears can help ensure that all necessary actions are completed on time.

Regular contact provides a way for the agency to anticipate problems. When monitoring staff make periodic phone calls to check on progress, they give owners and their staff a ready opportunity to ask questions they might have hesitated to call the agency about. Answering these questions may help prevent errors because the owner or manager did not understand a particular procedure. For example, in areas where market rents have only recently risen above the rent limits, on-site staff may find it hard to adjust to using three rent levels (very low, low and unrestricted) for a given unit size.

### C. Providing Technical Assistance

In many cases, compliance violations occur because owners or their staff have insufficient knowledge of program requirements and procedures. Because high turnover is common among property management staff, violations may occur when the on-site personnel who attended the agency's most recent compliance training have been replaced by staff who are unfamiliar with the program. For example, new staff who have not been adequately introduced to the required procedures may have unknowingly rented QUs to over-income families.

During the follow-up call to confirm that the owner received the notice, monitoring staff should inquire about the circumstances that led to the violation and assess whether technical support will be needed for the owner to successfully implement the required corrective actions.

If the information provided by the owner suggests that assistance to clarify program requirements and procedures will be needed to assure successful implementation of the required corrective actions, monitoring staff should determine the type of technical support that is needed.

#### TYPES OF TECHNICAL SUPPORT

- Technical assistance over the phone
- AHP Video lending
- AHP Compliance Workshops
- A special training session
- On-site technical support
- Some combination of the above

The following examples illustrate when a particular type of assistance is most appropriate.

- ◆ **Technical Assistance by Phone.** If the case involves a small property run by a single manager who is new to the position, monitoring staff may be able to provide the necessary guidance regarding the program during several phone calls. In deciding whether technical assistance by telephone provides adequate support, monitoring staff should confirm that technical support by



phone, together with the written program materials for owners, will provide sufficient guidance to enable managers to operate their properties effectively until they can attend the next training session.

- ◆ **AHP Video.** FDIC has produced and will distribute a half-hour video that provides an overview of AHP Compliance requirements. While it does not provide the detail of a full training session, it is a good overview for new property management staff and owners who have not been able to attend a full training. Since a limited number of copies are being provided to the monitoring agencies, a video lending system is recommended.
- ◆ **AHP Compliance Workshops.** FDIC has designed and tested a one-day workshop in AHP compliance procedures for owners and managers. This workshop has been documented in a full course curriculum package -- complete with Instructor's Guide, overhead transparencies, practice activities, and handouts -- which is available to monitoring agencies for use by agency staff in general compliance workshops. It is recommended that this course be implemented on a regular basis (e.g., quarterly or annually) for new owners and managers and those who need refresher training.
- ◆ **Special Training Session.** In a case that involves a larger property with several new management staff, monitoring staff should schedule a special training session if:
  - ◇ the next training is several months away; and
  - ◇ current members of the management staff have insufficient experience with the program to provide effective guidance on how to comply with the requirements and procedures.
- ◆ **On-site Technical Support.** If the information provided by the owner indicates that the compliance problem is due to weaknesses in the management and reporting system used by on-site personnel, monitoring staff should visit the property, assess the problem, and recommend improvements.
- ◆ **Combined Activities.** If a property has new management staff and weaknesses in the on-site management and reporting system, monitoring staff may need to provide both training and on-site technical support. In such a case, monitoring staff might opt to schedule a visit to the property to perform both the training and management assessment.

## D. Reviewing Monthly Compliance Reports

When a property is out of compliance with the program's occupancy requirements, the corrective actions require that the owner submit monthly compliance reports to document that on-site staff are following the required procedures for restoring the number of QUs.

In reviewing the compliance reports, monitoring staff should ensure that owners are following the required procedures when renting the next available units. Again, the specific procedures owners must follow when renting available units will depend on whether the number of QUs:

- ◇ fails to meet the Total Set-Aside; or
- ◇ satisfies the Total Set-Aside, but the number of VLI-QUs fails to comply with the VLI Set-Aside.

#### ***Properties that Fail to Meet the Total Set Aside***

If an agency has determined that a property no longer meets the required number of QUs established in the LURA, owners must restore the number of QUs by renting each unit that becomes available for occupancy to a lower income tenant until the required number of QUs is reached.

If the number of VLI-QUs meets the required number, owners may rent available units to a lower or very low-income household. However, if the number of VLI-QUs is less than the required amount, owners must give preference to VLI households when renting available units.

#### ***Properties that Meet the Total Set Aside But not the VLI Set-Aside***

During the agency's ongoing compliance monitoring activities, monitoring staff may determine that a property meets the Total Set-Aside, but the owner has failed to follow the procedures for maintaining the number of VLI-QUs. To correct this violation, owners must rent the next available QU to a VLI household until the required number of VLI-QUs is reached.

### **E. Re-Evaluating Owner Compliance**

Owners must implement the required corrective actions by the deadline specified in the Notice of Non-Compliance or face additional penalties and enforcement actions. At the end of the corrective action period, monitoring agencies must assess whether an owner has taken the necessary actions to restore compliance and determine if further enforcement action is needed.

When the corrective action deadline is reached, monitoring staff must:

- ◇ check that the owner has submitted all required items (e.g., reports, letters, corrected tenant income documents);
- ◇ review owner submissions to assure that all corrective actions have been implemented; and
- ◇ confirm that the owner has provided a certification of compliance.

The results of the review must show that all corrective actions have been taken before monitoring staff can make a determination that compliance has been restored. If the owner has failed to take all required corrective actions, the property must still be considered out of compliance.

**GOOD PRACTICE:** In cases where the property was out of compliance with the program's occupancy requirements, monitoring staff should also conduct an on-site visit once the owner has restored compliance. This will allow the agency to confirm that the requirements have been met and that on-site staff are following proper procedures.

### ***Adequacy of Owner Submissions***

To confirm that all required materials have been received, monitoring staff should compare the items received to the items requested in the agency's Notice of Non-Compliance to the owner. If all the materials listed in the notice have been received, the owner has met this condition.

### ***Implementation of Corrective Actions***

After confirming that all the required documents have been received, monitoring staff must review each corrective action listed in the Notice of Non-Compliance and assess whether the owner has properly carried out each action. The documentation submitted by the owner during the corrective action period should enable monitoring staff to make this determination.

### ***Owner Certification of Compliance***

Owners must also submit a certification that the property once again complies with the program's requirements. Owners must use the form included in Appendix I or a comparable form approved by the agency. Monitoring staff must review the certification to confirm that it has been properly signed.

### ***Owners Who Successfully Restored Compliance***

If the results of the agency review show that the compliance violation has been corrected and all required actions have been taken, monitoring staff must send a letter informing the owner of the agency's determination that the property is now in compliance with program requirements.

For minor violations, such as an overdue report, the letter need only acknowledge that the problem was corrected. For violations involving more extensive corrective action measures, the letter must acknowledge the successful completion of the required corrective actions.

### ***Owners Who Failed to Restore Compliance***

If the results of the agency review show that the owner has failed to take all of the required corrective actions and therefore remains out of compliance, monitoring staff should assess whether the owner made a good faith effort to restore compliance. In some cases, circumstances beyond the owner's control may have made it impossible to correct the violation by the deadline.

The presence of these circumstances may warrant extending the corrective action deadline. Such an extension would give an owner additional time to complete the required corrective actions and postpone the enactment of additional penalties or enforcement actions.

If the owner failed to implement the required corrective actions and the monitoring agency determines that there are no circumstances that warrant an extension, then the agency must initiate the enforcement actions outlined in Section 4.6.

## **4.6 ENFORCING COMPLIANCE**

When an owner fails to address compliance violations during the corrective action period, monitoring agencies must take additional enforcement measures to compel owners to restore compliance.

### **A. Possible Enforcement Actions**

Once the corrective action deadline has passed, monitoring agencies may institute any of the following administrative actions.

- a) **Penalize Owner's Applications for Other Forms of Assistance.** The agency can institute a system of penalty points for owners who are out of compliance. If these owners apply for other forms of assistance through the agency, the agency could take a specified number of points off their application for failing to restore compliance. For example, the penalty points might count against an owner's application for tax credits or financing funded by mortgage revenue bonds.

- b) **Notify Other Agencies Administering Housing Assistance.** The agency can also take the step of advising other agencies of the owner's compliance violation. Notices could be sent to state community affairs agencies, bond issuers, or local governments.
- c) **Place a Notice in the State Register.** This action involves entering a notice in the state register of public actions and announcements that administrative and/or legal action is pending against the owner. Such a notice often makes an owner's compliance violation well known in the community.
- d) **Notify the Owner's Limited Partners or Parent Institution of the Compliance Violation.** The agency can inform an owner's partners or affiliated institution of the violation and recommend that they take steps to have the managing owner address the problem.
- e) **Notify the Owner's Lender of the Compliance Violation.** The agency could send a notice to the lender for the property, reporting the owner's compliance violation and lack of action to correct the problem.
- f) **Notify the Owner that the Agency/FDIC Plans to Initiate Judicial Action to Appoint a Receiver.** In this case, the agency would send a notice to the owner indicating that the agency or FDIC will begin steps to have a receiver appointed by the court if the owner does not take corrective action by a prescribed deadline.

## **B. Selecting Enforcement Measures**

The first three actions (a through c) listed above are considered moderate enforcement measures. The last three actions (d through f) should be viewed as severe measures.

In selecting the type of measure to use when an owner has failed to respond to a Notice of Non-Compliance, monitoring staff should consider the nature of the violation and the owner's response to the notice.

If the violation is not severe and the owner has made some effort to address the problem, a moderate enforcement measure may be appropriate. For example, if the owner's violation is repeated late reports and he or she has shown some improvement, an agency might consider instituting a penalty for applications for other types of assistance from the agency, or placing a notice in the state register.

If the violation is more severe or the owner has taken little or no action to correct the violation, the agency should use a severe measure. For example, if the owner has failed to pay the annual monitoring fee or has repeatedly counted

units occupied by over-income tenants as QUs, the agency might notify the lender of the violations and the owner's failure to take proper corrective action.

In selecting measures, agencies may choose to implement several administrative actions if necessary.

### **C. Continued Non-Compliance**

If an owner has failed to take the necessary steps to restore compliance within 60 days of the Notice of Non-Compliance, the agency may initiate judicial enforcement actions. These actions could include:

- ◇ filing suit to force the owner to take corrective action;
- ◇ filing suit for disgorgement of excess rent collected by owner;
- ◇ filing suit to appoint a receiver for the property; and
- ◇ filing suit to collect outstanding fees.

The monitoring agency should notify FDIC prior to initiating judicial action against an owner.

After 60 days of continued non-compliance, if an agency has issued a second notice to the owner and taken administrative action to compel the owner to take corrective action, the monitoring agency may, at its discretion, turn the case over to FDIC. If an agency chooses to pass a case to FDIC, monitoring staff must make available all agency files regarding the property to FDIC or its designated agent. FDIC, or its representatives, may also call on monitoring staff to answer questions about the case and testify during legal proceedings, if necessary.

