

CHAPTER 1

INTRODUCTION

1.1 PROGRAM BACKGROUND

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) required that the Resolution Trust Corporation (FDIC) develop a program for selling residential properties to provide affordable housing opportunities. In response to this provision, FDIC established the Affordable Housing Disposition Program (AHP), or herein referred to as the **Affordable Housing Program (AHP)**, to enhance its ability to sell single family and multifamily properties that will benefit Low Income families.

Pursuant to the Resolution Trust Corporation Completion Act, the FDIC terminated on December 31, 1995, and all of FDIC's rights and obligations were transferred to the FSLIC Resolution Fund, the successor in interest to the FDIC, which is managed by the Federal Deposit Insurance Corporation (FDIC). This transfer does not affect the terms and conditions of the Land Use Restriction Agreements (LURAs), as owners' responsibilities continue, and the FDIC, as manager of the FSLIC Resolution Fund, assumes the FDIC's obligations.

AHP encourages qualified for-profit and nonprofit housing developers, as well as public agencies, to purchase FDIC-held multifamily properties. Under the program, FDIC sells properties to eligible purchasers who make an acceptable offer at or above the property's net realizable market value established by FDIC. In return for purchasing a property at a price below the fair market value, purchasers agree to make units available to Low and Very Low Income households at affordable rents. The rent and income restrictions are designed to assure that, for the next 40 to 50 years, the property serves families in need of affordable housing.

This manual is designed to help owners who have purchased AHP properties meet their obligations. This guide will help owners and their managers to:

- ◇ meet occupancy requirements;
- ◇ appropriately evaluate tenant income and eligibility;
- ◇ determine maximum allowable rent for units;
- ◇ lease vacant units; and
- ◇ re-certify tenant income eligibility.

The appendices to the manual provide sample forms and documents that may assist owners in meeting their obligations. The manual also contains suggested practices and management tips gleaned from experienced owners and managers of affordable housing.

1.2 BASIC PROGRAM REQUIREMENTS

The program has four basic requirements to assure that AHP multifamily rental properties provide affordable housing to Low and Very Low Income tenants. They are:

- ◆ **Occupancy Requirements.** The owner agrees to set aside a specified number of units in the property for occupancy by Low and Very Low Income tenants. The AHP statute establishes that at least 35 percent of the total units must be available to these households. The proportion of Low and Very Low income units is specified in the Land Use Restriction for each property.
- ◆ **Rent Limits.** AHP owners also agree to keep the rents for these units affordable to Low and Very Low Income tenants. The program establishes maximum rent levels for localities based on area median income.
- ◆ **Resale Requirements.** The occupancy requirements and rent limits remain in effect over the life of the agreement signed at the time the property was purchased through the program. If the original AHP purchaser or subsequent owners sell the property, the new purchaser must be informed of the ongoing affordability requirements.

- ◆ **Compliance Period.** Under the Program, AHP property purchasers agree to comply with the affordability requirements for the useful life of the property.¹

1.3 KEY PROGRAM DOCUMENTS

Program compliance and monitoring responsibilities for AHP properties are set forth through three documents: a Land Use Restriction Agreement for each property, the AHP Owner's Compliance Manual and a Memorandum of Understanding between the FDIC and the State Monitoring Agency.

A. Land Use Restriction Agreement (LURA)

The LURA is a deed restriction which buyers sign and is recorded at the time they purchase a property through the Program. The LURA establishes the affordability requirements for the property and the owner's obligations to the FDIC and the State Monitoring Agency. In signing the LURA, the owner agrees to abide by the restrictions regarding the use of the property as set forth in the document.

The LURA binds the purchaser and all succeeding owners for the full term of the agreement. Its conditions remain in effect regardless of whether the document is formally re-executed at the time of resale.

B. AHP Owner's Compliance Manual

This manual describes the procedures AHP property owners must follow to comply with the provisions of their LURA and enable the designated monitoring agency (see Memorandum of Understanding below) to monitor their compliance with these procedures. Owners should receive copies of this Manual at the time of initial purchase. Additional or replacement copies can be obtained from the monitoring agencies.

¹ The useful life of the property is defined as 40 years from the date of the Land Use Restriction Agreement (LURA) or 50 years from the date the property was first occupied, whichever is longer.

C. Memorandum of Understanding (MOU)

The Memorandum of Understanding (MOU) is the Agreement between the FDIC and its designated monitoring agency (most commonly a State Housing Finance Agency). The monitoring agency agrees to monitor specified AHP properties on behalf of the FDIC in order to insure that the properties comply with all occupancy, eligibility, reporting and recordkeeping requirements. The monitoring agency is compensated for its service through an annual fee paid by each property in the program.

To aid state monitoring agencies and owners in reporting on their compliance with AHP program requirements, the FDIC provides an automated system known as the AHP Compliance Monitoring System (CMS). The component of CMS that helps owners to report information and monitor their compliance is known as the Owner Data Entry Program (ODEP). The system is more fully described in Chapter 6 (Reporting) and Appendix J. The software is available to owners at no charge from their state monitoring agency.

1.4 TYPES OF PURCHASES

Multifamily properties can be purchased either individually or in bulk. Owners who buy properties in bulk have flexibility in how the Low Income units are allocated among the properties in the purchase. While some properties in a bulk purchase may have a larger share of Low Income units than others, the basic program requirements and monitoring procedures for the two types of purchases are essentially the same.

Most condominium units and one-to-four unit properties sold through AHP are purchased individually by income eligible buyers. However, some of these two types of properties have been sold in bulk to qualified investors, public agencies and non-profit organizations for rental and/or sale. When renting these units, purchasers agree to follow the same basic occupancy requirements that apply to AHP multifamily property owners. However, if units are converted to owner-occupied units, a specified portion of the units must be sold to Low Income families. This manual includes guidance on the sale of these properties in Chapters 8 and 9.

1.5 PRINCIPAL PLAYERS AND RESPONSIBILITIES

There are three major players with responsibilities for assuring that AHP properties comply with the programs' affordability requirements. They are:



A. Owners/Property Managers

After purchasing a property through AHP, owners and their managers must fulfill the following responsibilities:

- ◇ Comply with occupancy and rent requirements specified in the property's LURA;
- ◇ Inform on-site management personnel of program requirements;
- ◇ Maintain appropriate records, certifications, and documentation;
- ◇ Report to the monitoring agency as required (monthly or annually);
- ◇ Certify property compliance annually or as required by monitoring agency;
- ◇ Pay monitoring fees to the monitoring agency as required;
- ◇ Cooperate with the monitoring agency during compliance reviews;
- ◇ Take required corrective actions if property is out of compliance; and
- ◇ Inform potential buyers of LURA restrictions.

B. Monitoring Agency

Once an owner has purchased a property through AHP, the monitoring agency with jurisdiction will:

- ◇ Provide guidance to owner/managers on program requirements;
- ◇ Monitor properties for compliance with program requirements;
- ◇ Collect monitoring fees from owners;
- ◇ Monitor and enforce corrective action in cases of non-compliance;
- ◇ Evaluate financial infeasibility exemption requests;
- ◇ Monitor bulk purchases of condominiums and single family properties, and sales of those properties to individual buyers; and
- ◇ Report to FDIC.

C. Federal Deposit Insurance Corporation

In addition to program oversight, FDIC has the following responsibilities:

- ◇ Provide monitoring agencies with guidance on program procedures;
- ◇ Provide monitoring agencies with data on new properties for sale;
- ◇ Notify monitoring agencies of new sales upon final closing;
- ◇ Provide monitoring agencies with LURAs and other necessary materials;
- ◇ Provide enforcement support to restore owner compliance upon request from a monitoring agency; and
- ◇ Review state monitoring agency performance.

1.6 GLOSSARY OF PROGRAM TERMS

In this Manual, the following Program terms and acronyms will be used and have meaning as described herein:

AHP or AHP -- The Affordable Housing Disposition Program (AHP) , referred to in this manual as the Affordable Housing Program (AHP).

AHP regulations -- The final rule for the Affordable Housing Disposition Program, codified at 12 C.F.R. S1609, as such rule may be modified or amended from time to time.

Annual Income -- Household income is defined by the Section 8 program administered by HUD, except as modified by this Manual in the definition of student household income.

Compliance Monitoring System (CMS) -- The computer software made available to state monitoring agencies to assist them in the monitoring of compliance by property owners and in compiling the semi-annual reports required by FDIC and Congress.

Compliance Period -- The longer of forty (40) years from the date of the Land Use Restriction Agreement or fifty (50) years from the date the property was initially occupied as multifamily housing, during which the property owner or successors must comply with the Occupancy Requirements of the applicable LURA.

Condominium Owners -- Nonprofit organizations, public agencies and for-profit entities that purchased Condominium Properties from the FDIC pursuant to Section 21A(c) of the FHLBA (12 U.S.C. S1441a(c)).

Condominium Property -- An eligible condominium property that is sold to a Condominium Owner subject to the Occupancy Requirements, the Rent Restrictions and the Condominium Resale Restrictions, under the terms of the applicable LURA.

FDIC -- The Federal Deposit Insurance Corporation, which, in acting in its capacity as manager of the FSLIC Resolution Fund, is successor in interest to the Resolution Trust Corporation in implementing the Affordable Housing Disposition Program.

Homebuyer Income Certification (HIC) -- The Certification Form (contained in Appendix I) executed by the selling owner and a low income homebuyer certifying total income and eligibility to purchase a specific Qualified Unit.

HUD -- The U.S. Department of Housing and Urban Development, which issues annual income eligibility limits and income qualification guidelines adopted for AHP.

Low Income Household -- Households and individuals whose Annual Incomes do not exceed 80 percent of area median income in the area in which the particular

Property is located, as determined by the Secretary of HUD under the Section 8 Program, with adjustment for family size. Also referred to as “Low Income”.

Low Income Restrictions -- The occupancy, rent, income and resale restriction set out in Section 21A(c) of the FHLBA (12 U.S.C. S1441a(c)), the Final Rule, and the applicable LURA.

LURA -- The Land Use Restriction Agreement entered into by the Owner at time of purchase, setting forth the Owner's obligation to comply with the applicable occupancy, rent and resale restrictions with respect to the Owner's Property.

MOU -- The Memorandum of Understanding for Monitoring and Enforcement between the FDIC, acting in its capacity as Manager of the FSLIC Resolution Fund, successor in interest to the Resolution Trust Corporation, and a State Monitoring Agency.

Occupancy Requirement -- The requirement to set aside a minimum number of units in a Property for occupancy by Low Income and Very Low Income Households, as specified in the applicable LURA.

Owner(s) -- The purchaser of a AHP Property, and any successors in title to such owners.

Owner Data Entry Program (ODEP) -- Computer software provided by FDIC, through its monitoring agencies, to owners/managers of AHP housing to assist them with determining tenant eligibility, monitoring for property compliance with set-asides, and making monthly and annual reports to the State Monitoring Agency.

Qualified Tenant (QT) -- A household or individual who has been certified as meeting the applicable income limits, has executed a Tenant Income Certification, and is occupying a Qualifying Unit.

Qualifying Unit (QU) -- The total units in a Property or Properties required to be set aside to meet the applicable Occupancy Requirement. A Qualifying Unit is a Unit that (i) is rented to either a Low Income Family or Very Low Income Family, (ii) has a rent that is at or below the applicable rent limit for the Program, and (iii) is used in complying with the Low Income occupancy requirements

of the Program. Any Unit rented to a Low Income Family or Very Low Income Family that is not needed to meet the Low Income occupancy requirements of Section 2.2(a) will not be deemed a Qualifying Unit and will not be subject to rent restrictions.

Rent Restrictions -- The applicable rent limits for Qualifying Units in a Property, as provided in the applicable LURA. The Program has two rent limits: one applicable to Very Low Income households that occupy units meeting the Very Low Income Set-Aside, and a Low Income limit applying to all other Set-Aside units. Rent limits are published annually by the FDIC based upon median income calculations by HUD.

Resale Restrictions -- The requirement that a Single Family or Condominium may be sold by an Owner only to a purchaser that is a Low Income Family (i) which agrees to occupy, and certifies in writing that it intends to occupy, such property as a principal residence for at least 12 months, and (ii) which enters into an agreement providing for the recapture of seventy-five percent (75%) of the profits from the resale of such property, if such resale takes place within 12 months after such purchase, all as more fully provided in the applicable LURA.

FDIC -- The former Resolution Trust Corporation, as established pursuant to Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which administered AHP through 1995.

Section 8 Program -- The Section 8 Program is the principal Federal rental assistance program administered by HUD, and is the source for the income qualification standards and procedures for AHP.

Single Family Property -- A one-to-four unit property purchased by a Single Family Owner, and subject to the Single Family Occupancy Requirement, the Rent Restrictions and the Single Family Resale Restrictions. See Chapter 9.

State Monitoring Agency -- The State Housing Finance Agency or other agency under a Memorandum of Understanding with the FDIC to monitor AHP properties and enforce compliance with AHP rules.

Tenant Income Certification (TIC) -- The Certification Form (contained in Appendix E) executed by the owner/manager and the tenant certifying total income and eligibility to occupy a specific Qualified Unit.

Unit -- A residential accommodation constituting a part of the Property and containing separate and complete living facilities, including single room occupancy (SRO) units.

Very Low Income Household -- A household, family, or individual whose Annual Income(s) do not exceed 50 percent of area median income in the area in which the Property is located, as determined by the Secretary under Section 3(b)(2) of the United States Housing Act of 1937 (42 U.S.C. S1437&(b)(2)), with adjustment for family size.

1.7 ORGANIZATION OF THIS MANUAL

This manual contains nine chapters, plus appendices. Each chapter is divided into several sections, using its chapter number as a prefix (e.g., this is Section 1.7). The Appendices follow the chapters, and contain many useful forms and other details of the Program.

Chapter 2 ("AHP Multifamily Property Requirements") defines important program terms and spells out the basic program requirements pertaining to restricted units, tenant eligibility, maximum rents, and annual tenant re-examinations. Several exercises involving sample AHP properties have been included at the end of this chapter to enable owners and their staff to practice the application of key program requirements.

Chapter 3 ("Achieving Compliance") describes what owners need to do in order to reach and maintain full compliance with AHP program requirements. Guidance also is provided regarding properties that fall out of compliance.

Chapter 4 ("Determining Income Eligibility") discusses the process of determining the eligibility of Low and Very Low Income households, including the determination of household size, the computation and verification of annual income, and the requirements for annual re-examination of income eligibility.

Chapter 5 ("Meeting Rent and Lease Requirements") describes AHP maximum rent provisions, and contains the provisions owners must include in dwelling leases as well as clauses that may not be included in the lease.

Chapter 6 ("Owner Record-Keeping, Reporting, and Administrative Requirements") provides procedures for keeping records, filing reports, and complying with any other requirements monitoring agencies may institute to assure compliance with the LURA.

Chapter 7 ("Financial Infeasibility Waivers") describes the provisions for temporary waiver of the occupancy requirements in cases where factors beyond the control of management are threatening the solvency of the property, and where a temporary reduction of set-asides would prevent foreclosure.

Chapter 8 ("Compliance Procedures for Condominium Bulk Purchases") provides guidance to owners who make bulk purchases of condominium units, and contains provisions governing the rental of such units as well as sales to individual low income homebuyers.

Chapter 9 ("Compliance Procedures for One-to-Four Unit Property Bulk Sales to Public Agencies and Nonprofits") outlines the compliance procedures for one-to-four-unit properties and describes the procedures for reselling them to individual homebuyers.

This manual also includes a set of appendices with program documents, sample forms and reports, and other information that may be helpful to owners and managers.

CHAPTER 2

MULTIFAMILY PROPERTY REQUIREMENTS

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

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

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

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

2.1 OCCUPANCY REQUIREMENTS

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

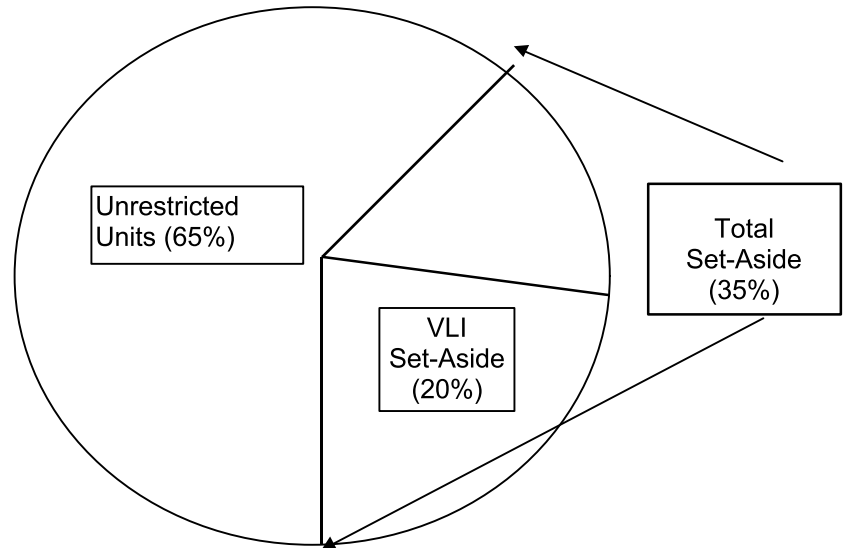
A. Low Income Unit Requirements

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

- ◆ a **Total Set-Aside**; and

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

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



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

Total Set-Aside

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

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

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

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

Very Low Income (VLI) Set-Aside

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

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

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

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

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

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

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

Proportionality

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

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

B. Designating Qualifying Units (QUs)

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

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

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

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

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

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

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

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

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

C. Vacated QUs

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

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

D. Shifting the QU Designation

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

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

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

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

E. Treatment of In-Place Tenants

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

2.2 TENANT ELIGIBILITY AND LEASE REQUIREMENTS

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

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

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

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

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

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

A. Establish the AHP Income Limits

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

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

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

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

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

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

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

B. Determine Household Size

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

C. Determine Income Eligibility

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

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

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

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

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

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

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

D. Execute Tenant Release and Consent Form

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

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

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

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

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

E. Verify Tenant Income

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

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

There are three acceptable methods of verifying household income:

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

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

Section 4.4 provides more detailed information on acceptable verification procedures.

F. Execute Tenant Income Certifications

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

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

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

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

G. Execute the Tenant Lease Provisions

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

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

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

H. Re-examine Tenant Income Annually

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

Conducting Re-Examinations

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

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

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

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

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

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

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

Changes in QU Status

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

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

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

2.3 MAXIMUM RENTS

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

The rent limits are determined as follows:

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

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

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

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

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

2.4 REACHING AND MAINTAINING THE SET-ASIDES

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

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

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

2.5 RECORD-KEEPING AND REPORTING REQUIREMENTS

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

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

- ◇ cooperation during agency on-site reviews.

A. On-Site Records

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

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

Tenant Files

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

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

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

Monthly Unit Listings

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

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

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

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

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

B. Compliance Reports

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

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

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

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

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

Pre-Compliance Monthly Reporting

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

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

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

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

Annual Reporting

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

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

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

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

C. Owner Certifications

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

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

D. Cooperation During Agency On-Site Reviews

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

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

2.6 ADMINISTRATIVE FEES

A. Annual Administrative Fee

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

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

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

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

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

B. Adjustment of Annual Fee

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

C. Administrative Fees For Non-Compliance

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

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

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

2.7 RESALE REQUIREMENTS

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

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

2.8 CASE STUDIES & FREQUENTLY ASKED QUESTIONS

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

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

THREE AHP CASE STUDIES

PROPERTY 1: Sunset Apartments

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

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

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

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

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

PROPERTY 2: Mystery Market Village

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

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

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

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

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

PROPERTY 3: FDIC Homes

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

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

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

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

ANSWER

PROPERTY 1: Sunset Apartments

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

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

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

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

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

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

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

ANSWER

PROPERTY 2: Mystery Market Village

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

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

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

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

Owners having difficulty in locating VLI tenants are advised to:

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

ANSWER

PROPERTY 3: FDIC Homes

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

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

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

Common AHP Compliance Questions & Answers

Start-up and Pre-Compliance

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

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

Income Eligibility

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

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

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

Designating Qualifying Units and Meeting/Maintaining Set-Asides

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

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

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

Rent Limits

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

Re-certification

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

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

Unit Turnover

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

Other Compliance and Enforcement Issues

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

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

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

Owner Data Entry Program

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

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

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

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

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

CHAPTER 3

ACHIEVING COMPLIANCE

3.1 OVERVIEW

When purchased, AHP rental properties may be fully occupied or vacant, turnover may be high or low, and market demand may be hot or cold. However, regardless of market and occupancy conditions, all owners are required to bring their properties into compliance with AHP occupancy and rent requirements.

Owners do have choices about how to meet the requirements. A sizable number of existing tenants may qualify under the program and help owners fulfill their obligations. Alternatively, new tenants who are income eligible may be selected to move into vacant units to reach the property's set-aside requirements. The procedures for designating QUs and reaching full compliance are discussed in this chapter.

Regardless of how the requirements are met, owners must assure that:

- ◇ No in-place tenants are forced to move out solely to obtain the required number of Low Income units;
- ◇ Both the Total and Very Low Income Set-Aside requirements are met; and

The designation as a Qualified Tenant in a QU is not removed from a tenant unless their income exceeds the published limits or they move from the property.

3.2 BASIC REQUIREMENTS FOR ALL QUs

For a unit to be designated as a QU, the following criteria must be met:

- ◇ Owners must establish that a tenant is a Low or Very Low Income household by comparing the documented income on the TIC form with appropriate income limits to determine designation.

- ◇ Owners must verify the household income and have the tenant certify its accuracy on a TIC form.
- ◇ The contract rent for designated units must be equal to, or less than, the FDIC published rent limits for Low Income and Very Low Income units.
- ◇ Owners must execute the required lease provisions using a lease or lease addendum.
- ◇ Owners must designate the units that count toward meeting the property's set-asides on the Compliance Reports for the property.

For a unit to continue to be counted as a QU, the owner must re-examine the income of tenants in QUs annually and maintain the rents at or below FDIC published limits.

3.3 KEY STAGES

Owner compliance can be separated into two distinct stages.

KEY STAGES OF COMPLIANCE

Pre-Compliance Stage -- begins when an owner closes a purchase with FDIC, and lasts until the owner certifies full compliance with the occupancy and rent requirements specified in the LURA for the property.

On-Going Compliance Stage -- begins once the monitoring agency acknowledges an owner's certification of compliance with the LURA, and lasts for the remaining life of the LURA.

The following sections explain the procedures owners need to follow during the two stages and the actions necessary to restore compliance in the event an owner fails to properly maintain the correct number of QUs in the property.

3.4 PRE-COMPLIANCE STAGE

Depending on a property's size, its occupancy, and turnover of units, the Pre-Compliance Stage may last a few weeks or many months. There are a number of activities that occur during this period.

PRE-COMPLIANCE STAGE

- ◇ Owners submit monthly compliance reports.
- ◇ Units occupied by existing tenants may be designated as QUs if they are qualified.
- ◇ Vacant units must be reserved and leased to eligible tenants until set-asides are met.
- ◇ Owners must submit a certification of compliance once the property's set-asides are met.

During this period, an owner strives to meet AHP occupancy requirements by designating existing tenants/units as QUs, or renting vacant units to eligible tenants. Monthly reports document progress toward reaching the required set-asides. Also, owners must follow strict rules for leasing vacant units until they obtain the required number of QUs.

A. Monthly Compliance Reports

During the Pre-Compliance Stage, owners are required to submit monthly compliance reports until the monitoring agency determines that the property contains the required number of VLI and LI QUs. Compliance reports identify the QUs that have been leased to eligible VLI or LI households at the appropriate rents. The compliance report is explained more fully in Chapter 6 and copies of the report forms are provided in Appendix F.

When reviewing monthly compliance reports, state monitoring staff will check to see that the correct income and rent limits have been used, the Tenant Income Certification (TIC) Forms have been prepared properly,

and the owner has followed AHP rules for leasing vacant units.

B. Designating Units with Existing Tenants

Owners are expected to reach full compliance as soon as possible; FDIC policy establishes that this should be accomplished within two years. Owners should consider ways to get to full compliance as quickly as possible, since Pre-Compliance imposes additional reporting and record-keeping burdens, and increases the chances of lost revenue from vacancies while owners look for qualified tenants to occupy units held for the Set-Aside. Owners of occupied properties may find it advantageous to designate units already occupied as their QUs. Owners can identify and designate eligible households by surveying the income of in-place tenants.

Inducing Tenants to Apply

Some tenants may be reluctant to respond to surveys and requests for such income. Owners should assure tenants that the information is for purposes of qualification for Set-Aside units only, and that privacy will be protected.

If the Set-Aside units offer a substantial rent discount to market rents, the rent savings should be a sufficient inducement to respond.

However, if the rents for the Set-Aside units are not significantly lower than market rents, then additional inducements may be needed. Property owners in the Program have used a variety of incentives such as:

- ◇ raffles for items such as free cable TV or a microwave oven to those tenants who respond; or
- ◇ a one-time rent credit of \$25 or \$50 credited the month a tenant completes QU certification.

Like new tenants, existing tenants who appear eligible based on the results of the survey must:

- ◇ submit detailed income information;

- ◇ sign a Release and Consent Form authorizing the release of information about their income;
- ◇ have their income verified;
- ◇ sign a Tenant Income Certification (TIC); and
- ◇ execute an acceptable lease or lease addendum reflecting appropriate rents and AHP provisions before their unit can be designated.

If owners choose to identify qualified tenants among the existing tenants, they must attempt to survey all in-place households and not just favored tenants or certain units in particular areas of the property. Access to the rent protections of the AHP Program must be available to all.

In cases where the number of surveyed tenants who are eligible exceed the required number of units needed to fulfill the Set-Asides, the owner should establish a fair and equitable manner for designating QUs. For example, owners could use a system based on income, length of tenure, or a lottery. Once owners have decided which existing tenants/units will be the QUs, they should identify these units on the monthly Compliance Report Form and attach a Tenant Income Certification (TIC) to show that the tenant's income has been reviewed.

Good Practice: Maintain Waiting Lists

If the survey of existing tenants reveals that there are more eligible tenants than QUs needed, owners may want to start a waiting list for those eligible tenants not selected for QUs. This can help alleviate tenant concerns about not being selected and provide the owner with a ready pool of tenants to replace QU residents that move out.

C. Renting Vacant Units

Some owners may not find it desirable or practical to designate existing tenants in order to meet required set-asides. This might occur when the units are largely vacant or occupied by over-income tenants, or the tenants generally refuse to provide the information necessary to determine eligibility. Owners of these properties must

hold and rent vacant units to Qualified Tenants until all set-asides are met.

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.

- ◆ ***If vacancies are fewer than or equal to the 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.
- ◆ ***If vacancies are greater than the 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 as unrestricted units to any tenant.

For example, if a property with 2 vacant units has five QUs out of a Total Set-Aside of 10 units, the owner/manager must reserve the 2 vacant units for Qualified Tenants plus rent the next 3 vacancies to Qualified Tenants. But, if the same property's vacancies jumped to 7 next month, the number of vacancies now would exceed the number of QUs needed. In this case, the owner would need to reserve only 5 of the vacant units for Qualified Tenants.

When vacancies exceed the number of Set-Aside units still needed, the owner may select the units to reserve for the Set-Aside. Selection should be done also in consideration of the ongoing Proportionality requirement (see Section 2.1).

D. Meeting the Total and VLI Set-Asides

Owners must have both enough VLI units to meet the VLI Set-Aside and a combination of VLI and LI units to meet the Total Set-Aside. Full compliance is based on 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 equals or exceeds the number required under the VLI Set-Aside. When this VLI number

is reached, any remaining units to be filled in the Total Set-Aside can be LI units.

Conversely, if a property has LI-QUs equal to the difference between the Total Set-Aside and the VLI Set-Aside, then no more Set-Aside units need to be rented to LI tenants, but instead they should be held for VLI tenants. 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.

Under the LURA, owners always must give preference to VLI tenants when leasing QUs, so long as the VLI Set-Aside is not met. This condition applies to both vacant units rented as QUs 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 the remaining QUs to any Qualified Tenant -- either LI or VLI. There is no required minimum number of LI-QUs within the Total Set-Aside, and additional VLI-QUs over and above the VLI Set-Aside are counted toward the Total Set-Aside. However, even if the VLI Set-Aside is met, owners who rent the remaining LI units to a VLI tenant may only charge that VLI tenant up to the VLI rent, not the LI rent. Owners are not required to rent LI units to VLI applicants, and may operate separate waiting lists for VLI and LI units.

Exhibit 3.1 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 3-1

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	
<p>Vacancies Greater than Number of Units Needed to Meet Total Set-Aside</p>	<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
	<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) 	
<p>Vacancies Less than Number of Units Needed to Meet Total Set-Aside</p>				

* QT = Qualified Tenant

** NAU = Next Available Unit

E. Documenting the Achievement of Full Compliance

When an owner believes a property has achieved full compliance with both its Total and VLI Set-Asides, the owner must prepare and submit an Owner Compliance Certification (see Appendix G) along with the latest monthly compliance report.

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

In submitting this document, the owner is certifying that the property is now in full compliance with the provisions of the LURA. Monitoring agencies will review the Owner Compliance Certification along with current and past monthly compliance reports. In addition, the agency will conduct an on-site visit to confirm that the property has met its occupancy requirements.

During the visit, agency staff will confirm that the property contains a sufficient number of VLI and LI QUs, check that the tenants of these units qualify under the applicable income limits, and review the rents for Qualifying Units. The reviewers also will look to see that units were properly leased during the Pre-Compliance period.

If the reports and visit confirm that the property has achieved full compliance, it will be classified as a property in the **On-Going Compliance** stage. If the agency's review determines the owner certification was made in error, the property will continue to be considered in the **Pre-Compliance** stage.

3.5 MAINTAINING COMPLIANCE

On-Going Compliance begins when a property has complied with the AHP requirements and continues for the term of the LURA.

ON-GOING COMPLIANCE STAGE

- ◇ Re-examine tenant eligibility annually
- ◇ Maintain the required number of QUs (VLI & LI)
- ◇ Avoid improperly shifting QU designations
- ◇ Submit annual compliance reports and Owner Compliance Certifications
- ◇ Cooperate with monitoring agency staff during on-site reviews
- ◇ Pay annual monitoring fee

A. Re-Examining Tenant Eligibility

To ensure that tenants continue to qualify as eligible households, owners must re-examine the income and household composition of tenants in QUs **at least annually**. The procedures for performing re-examinations can be found in Chapter 4.

Changes in household income may or may not change a unit's QU status. During a re-examination, owners may encounter any of the following situations:

- ◇ Household income changes, but remains within the applicable income limits -- no change to household status;
- ◇ Household income exceeds 140 percent of the latest LI income limits -- change in household status to OI-QU;
- ◇ VLI Household income rises above the latest VLI income limits, but below the LI 140% Limit -- change household status to LI; or
- ◇ LI Household income falls below the latest VLI income limits -- change household status to VLI.

B. Replacing QUs As Tenant Status Changes

Tenant status can change in three different ways:

- ◇ an LI tenant can change to VLI;
- ◇ a VLI or LI tenant can change to Over-Income; or
- ◇ a VLI tenant becomes LI.

In the last two cases, income changes among tenants in QUs may leave owners with an insufficient number of VLI- and LI-QUs to meet the required set-asides.

When an LI-QU Changes to VLI

When an LI Tenant becomes a VLI Tenant due to a drop in the Tenant's income, this does not cause a shortage of QUs. The QU is reclassified as VLI-QU, so the property still contains a sufficient number of QUs to meet both the Total and VLI Set-Asides. Remember, however, that the VLI rent limit now applies to the reclassified unit, so rent may need to be adjusted.

In addition, this re-designation of the unit may cause the number of VLI-QUs to exceed the VLI Set-Aside requirement. If that is so, the owner may choose to "rebalance" the Set-Asides when a VLI-QU becomes vacant by renting it to an LI tenant.

When QUs Change to Over-Income Units

When a QU (VLI or LI) becomes an OI-QU because the tenant's income exceeds the applicable income limit (see Section 2.2.H), the LURA allows the owner to continue to report the unit as a QU as long as the next available unit (NAU) requirement for over-income units is followed.

NAU Requirement For OI-QUs

When a Tenant of a QU is determined to be over-income (OI) upon re-examination, and the property has fallen below the Total Set-Aside, the Next Available Unit of Similar or Smaller Size must be held available or rented to a LI or VLI depending on the unit's previous designation.

To meet this requirement, owners have two additional choices beyond holding the Next Available Unit of Similar or Smaller Size (sometimes noted as NAU-SSS) requirement to “replenish” the Set-Aside:

1. While available larger units may be rented as unrestricted, they may be used to meet the Set-Aside at the owner’s discretion. The owner should consider the status of Set-Aside proportionality (see Section 2.1.A) when making this decision.
2. An owner also may satisfy this requirement by designating a formerly unrestricted unit which is occupied by an income eligible resident as a new QU (either VLI or LI as needed).

The rent for an OI-QU can be changed to the prevailing market, or unrestricted, rent as soon as the recertification is completed, subject to the provisions of the lease and any local laws.⁸

When a VLI-QU Becomes LI-QU

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

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 units:

NAQU Requirement For Properties With Insufficient VLI-QUs But Sufficient TSA-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.

For example, a 100-unit property has a Total Set-Aside of 35 units and a VLI Set-Aside of 20 units, and is in full

⁸ Some of the early LURAs require the rent for an OI-QU to remain restricted at the previous LI or VLI level until the unit is replaced with another QU, while later LURAs 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.

compliance. If one of the VLI-QUs is re-designated as a LI-QU, the property now contains 19 VLI-QUs and 16 LI-QUs). The property still meets the Total Set-Aside because it still has 35 QUs, but it is one short of the VLI Set-Aside. Every time a QU becomes available, the owner would have to rent the QU to a VLI household until the number of VLI-QUs reaches 20 units.

In this case, the NAU rule is not applied since it would cause the owner to exceed the Total Set-Aside if an unrestricted unit was converted into a VLI-QU. Since the Total Set-Aside is still met, and the VLI shortage was related to a tenant status change, owners are given the opportunity using NAQU to “rebalance” the Set-Asides as LI units become available to be converted to VLI units.

Exhibit 3.2 summarizes the steps owners will need to take when changes in tenant income lead to a change in the status of a QU.

EXHIBIT 3.2

**POSSIBLE CHANGES IN QU STATUS
DUE TO CHANGES IN TENANT INCOME**

Condition	Optional or Required Actions	Comments
Household Income Now Exceeds 140 percent of Latest LI Limit (The MF-Transition Income Limit)	<p>Step 1: Reclassify the household as OI on the TIC.</p> <p>Step 2: Change the unit's designation to Over-Income (OI) on the unit listing and compliance reports, but count as QU (until replaced).</p> <p>Step 3: Rent the next available unit of comparable or smaller size to an eligible household, <u>OR</u> Designate an eligible household in an unrestricted unit as a QU</p>	<p>Owners may continue to count an over-income QU toward their Total Set-Aside, as long as the action in Step 3 is properly completed.</p> <p>AHP rent limits no longer apply to the over-income unit.</p>
LI Household's Income Falls Below the Latest VLI Income Limits	<p>Step 1: Reclassify the household as VLI on the TIC.</p> <p>Step 2: Re-designate the unit as VLI on the unit listing and future compliance reports.</p>	<p>If excess VLI-QUs, owner may "rebalance" units by renting future vacant VLI unit as LI.</p> <p>VLI rent limits now apply.</p>
VLI Household's Income Rises Above the Latest VLI Income Limits (but below the 140 % LI Limit)	<p>Step 1: Reclassify the household as LI on the TIC.</p> <p>Step 2: Re-designate the unit as LI on the unit listing for the property and future compliance reports.</p> <p>Step 3: If VLI-QU shortage, follow NAQU rule.</p>	<p>LI rent limits now apply to re-designated unit.</p>

C. Vacated QUs

AHP rules provide that a QU which becomes vacant may continue to be reported as a QU throughout the period it is vacant. Once it has been reoccupied, the unit may be reported as a QU only if the new tenant is certified as an eligible household. To remain in compliance owners need to replace vacated QUs using the following options.

REPLACING A VACATED QU

- ◇ Hold and rent the vacated QU to an eligible household of the same category (e.g., VLI or LI);
- ◇ Designate an existing occupied unit as a QU of the same category if the tenant meets AHP eligibility standards and the rent does not exceed the maximum allowable; or
- ◇ Hold a vacant, unrestricted unit available to replace the vacated QU.

D. Avoid Improperly Shifting QU Designations Between Units

As discussed in Chapter 2, owners have flexibility in which units are designated as QUs. However, once the unit occupied by a eligible tenant has been designated as a QU, the designation must remain with that unit until the tenant moves, or is no longer income eligible. If the tenant of a QU moves to another unit within the property and continues to be eligible, the owner must shift the QU designation to the newly occupied unit.

This provision is designed to protect both owners and tenants. On the one hand, tenants know that they receive the benefit of restricted rent as long as they continue to provide detailed information about their family status and income. Owners, on the other hand, can require tenants to provide the information needed to certify to meeting AHP requirements, and consistent designation of qualifying tenants avoids potential law suits and

disagreements that could occur if rents were no longer restricted.

E. Annual Reporting

Once a property contains the required Set-Aside units and is in compliance with the LURA, the owner's obligations are reduced from monthly to annual reporting. Owners can use the same reporting form to complete their annual compliance report. Chapter 6 discusses compliance reports in greater detail.

Reports are due at the end of the monitoring year established by the monitoring agency. The reports must include copies of the TIC forms (new certifications and recertifications) for each unit in the property.

As with monthly reports, agencies review annual reports to check that the required occupancy is being maintained and that the contract rents are within published maximums.

F. Periodic On-Site Reviews

The owner and his or her management agent should anticipate periodic on-site reviews performed by the monitoring agency. The frequency of these reviews is at the discretion of the monitoring agency. Agencies must make on-site reviews at least once every three years, but may visit properties more frequently.⁹

The purpose of the review is to assure that owners and their managers understand and comply with the terms of their LURAs. The visits are designed to help monitoring staff assure that program procedures are well understood and documented. For owners and managers, the visits afford an opportunity for owners to ask questions and receive technical assistance.

In addition to answering questions and concerns of owners, state agency monitoring staff will:

⁹ Developments with less than 10 QUs are exempt from this on-site visit at the monitoring agency's discretion. If an on-site visit is not performed, the owner must cooperate with the monitoring agency by providing all the necessary supporting data for the agency's review.

- ◇ check compliance reports for accuracy by comparing them to the monthly unit listings (rent rolls) and tenant files;
- ◇ confirm that tenant files include the necessary documents, income data and verifications;
- ◇ assure that owners and managers have followed correct procedures for leasing units, including renting units under the Next Available Unit (NAU) and Next Available QU (NAQUs) rules, as appropriate;
- ◇ review leases to confirm rents and inclusion of required provisions; and
- ◇ visit a sample of units.

G. Paying Annual Administrative Fee

The LURA signed by all owners requires payment of an annual administrative fee. Like other affordable housing initiatives, such as tax credits and tax-exempt bond financing, the fee paid by owners helps offset a monitoring agency's costs of ensuring program compliance.

Each year, monitoring agencies will send owners an invoice covering the fee for the upcoming year. The fee is due to the agency by the start of the next annual monitoring period. Failure to pay the fee constitutes a compliance violation and can lead to additional fees and further action by the agency or FDIC against the owner.

3.6 PROPERTIES OUT OF COMPLIANCE

Once a property reaches full compliance, there are two types of improper leasing practices which could move a property out of compliance:

- ◇ making an incorrect determination of a tenant's eligibility; or
- ◇ failing to properly replace QUs when they are vacated or re-designated.

If a review of the tenant file for a QU reveals an incorrect eligibility determination by the owner/manager 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, causing the property to 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 Total Set-Aside. When an owner fails to maintain the required number of QUs due to improper leasing practices, the property will be out of compliance with the LURA, and the owner must restore compliance by following the procedures for renting available units presented in Exhibit 3.3.

EXHIBIT 3.3

PROPERTIES OUT OF COMPLIANCE WITH OCCUPANCY REQUIREMENTS REQUIRED PROCEDURES FOR RENTING AVAILABLE UNITS

Property Status	Required Procedure
<p>Out of Compliance with Total Set-Aside (TSA) & VLI Set-Aside (VLI-SA):</p> <ul style="list-style-type: none"> ◇ QUs (VLI+LI) < TSA ◇ VLI-QUs < VLI-SA 	<p>Next available unit must be rented to LI or VLI households until the QUs meets both Set-Asides. Owners must hold enough of the units out of the Total Set-Aside to meet the VLI Set-Aside, and may not rent these VLI units to LIs.</p>
<p>Out of Compliance with VLI Set-Aside:</p> <ul style="list-style-type: none"> ◇ QUs (VLI+LI) = TSA ◇ VLI-QUs < VLI-SA 	<p>Next Available QU must be rented to VLI household until number of VLI-QUs meets VLI Set-Aside.</p>
<p>Out of Compliance with Total Set-Aside:</p> <ul style="list-style-type: none"> ◇ QUs (VLI+LI) < TSA ◇ VLI-QUs = VLI-SA 	<p>Next available unit must be rented to LI or VLI household until number of QUs meets Total Set-Aside.</p>

DETERMINING INCOME ELIGIBILITY

4.1 BACKGROUND

One of the most critical activities in the AHP Program is determining and verifying income of tenants for Qualified Units.

The typical steps for determining income eligibility are as follows:

- ◇ Determine household size.
- ◇ Compute "annual income" (gross income plus income from assets) in accordance with the HUD Section 8 definition¹⁰.
- ◇ Verify income information obtained from each household.
- ◇ Certify the income information obtained from each household.
- ◇ Determine eligibility by comparing "annual income" to the applicable income limit for the household size.
- ◇ Designate units occupied by eligible households as QUs, if needed.
- ◇ Re-examine tenant eligibility at least annually as long as the tenant continues to reside and retains income eligibility.

¹⁰ HUD's Section 8 Program defines **annual income** to be anticipated income for the next 12 months. This principle may be unfamiliar to many owners, who more often are likely to confirm rent-paying capacity of market-rate tenants using current or past income. However, this approach is required by the FIRREA legislation, and is familiar to many government agencies and property managers who verify the income of tenants being assisted under other programs such as Tax Credits or Section 8.

These steps are described below, along with recommended practices.

**Tenant Screening and Selection Policy:
Fair Treatment of All Applicants**

Program rules require special procedures to qualify VLI and LI applicants for the Set-Aside units, but otherwise do not specify what additional screening can or must be done in routine tenant selection.

Owners may apply standard, lawful screening practices in the selection of all tenants -- AHP and market-rate. Such practices may include, for example, landlord checks, reference checks, and credit checks.

Owners are not required to accept a VLI or LI applicant just because the applicant is income eligible, if the applicant does not meet such lawful and common screening procedures that determine whether the applicant will be a good tenant.

However, VLI and LI applicants may not be subjected to any special qualifications or screening process, except as herein prescribed to determine income eligibility, not applied to all other applicants. For example, credit history and landlord reference checks may be done for VLI and LI applicants, provided it is a policy uniformly applied to all applicants, including those for unrestricted units.

4.2 DETERMINING HOUSEHOLD SIZE

Program income limits vary by the number of persons considered to be household members. Two issues are relevant to the determination of household size:

- ◇ what constitutes a "household"; and
- ◇ who may be counted, per AHP rules, as a member of a household.

The Program does not specify who may or may not be considered a household, and does not specify or limit

households to families. Any group of persons who choose to live together in a unit is the “household”, and the income guidelines below require the inclusion of income from all adult members of the household.

AHP recognizes full-time and part-time students as households and eligible tenants as long as their income, as defined in Appendix C, is within AHP income limits.¹¹

In determining household size, owners must follow the instructions in Exhibit 4.1 regarding who may or may not be counted as household members.

**EXHIBIT 4.1
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

AHP does not specify appropriate sizes of units (i.e. number of rooms or bedrooms) in relation to family size or composition. Owners may establish their own unit density standards, in accordance with local tenant-landlord laws, local housing or health and safety codes, and other state and local occupancy codes. For example, while unborn children are not counted for purposes of household size for income eligibility, they may be counted for determining the size of unit to rent to the household in order to avoid the need to relocate in the near future.

¹¹ Special rules have been developed for students. Scholarships or educational grants for tuition and school expenses may be excluded, as can student loans, but the portions of scholarships or grants for subsistence plus any payments from any other persons (such as parents or family members) must be included as income.

However, if a unit size standard is applied, the owner must apply it consistently to all units in the property.

4.3 COMPUTING ANNUAL INCOME

AHP uses the definition of "annual income" as defined in HUD's Section 8 Program. **Annual Income**, generally speaking, is the amount of gross income anticipated to be received during the 12-month period following certification (or recertification) of eligibility.¹² Generally, only earned income from household members ages **18 and over** is included.

Annual Income is derived from two basic categories -- regular income and asset income.

A. Regular Income

This category covers traditional earned income such as wages and salaries (including bonuses, overtime and other additional compensation), as well as assistance payments and benefits, such as Social Security, welfare, and pensions. It also includes payments in lieu of earnings, such as unemployment compensation, workers' compensation for injuries, and other periodic payments.

Excluded from regular income are any non-recurring payments and certain kinds of payments itemized in the "Guide for Determining Annual Income" contained in Appendix C to this manual.

B. Asset Income

The Program also requires income from assets to be included in annual income. Income which is generated from savings accounts, certificates of deposits, stocks and mutual funds, real estate, and other items held for investment purposes is considered **asset income**, and

¹² The specific definition can be found in Chapter 3 of the HUD Handbook 4350.3 ("Occupancy Requirements of Subsidized Multifamily Housing Programs"). Annual income is NOT the same as adjusted income. Annual income generally corresponds to gross income, with no adjustments (deductions) for child care, medical expenses, dependents, etc. Adjusted income is used in some federal housing programs, such as Section 8, to determine the level of benefit provided to a household, but is not used in AHP.

added to other income for purposes of determining household eligibility.

Actual income from assets (such as interest or dividend income) is included in annual income, but if the total value of assets is *\$5,000 or greater*, owners must use the **greater** of:

- ◇ the actual annual income to be derived from these assets; or
- ◇ the "imputed income" computed by multiplying total assets times the "passbook rate" supplied by the State Monitoring Agency.

This procedure is designed for situations when a large amount of assets are not producing current income.

Example: A household's assets are valued at \$10,000 and the actual annual income is expected to be \$250 in interest. Suppose the current passbook rate as of this writing is 4.2 percent. Multiply $\$10,000 \times 0.042 = \420 . Since \$420 is the greater of the two figures, this would be considered the amount of asset income in this instance.

A list of inclusions and exclusions from asset income are included in the "Guide for Determining Annual Income" contained in Appendix C.

C. Obtaining Tenant Information

Applications

Because the definitions of income and household are specific to the Program, standard commercial application forms may not collect all the required information to determine AHP eligibility.

A sample rental application form approved by FDIC is included in Appendix A. Owners may use this form, or modify an existing application form to include all required income information. It is recommended that forms other than the approved form be submitted to the monitoring agency for approval prior to use to ensure completeness.

Helpful Hints on Obtaining Information

- ◇ Some applicants will need help in completing application forms.
- ◇ Some managers find it useful to have the applicant complete the application in a face-to-face interview.
- ◇ Retain all applications for 3 years in case eligibility decisions are challenged by applicants.

Application forms should be used for incoming residents of QUs as well as in-place tenants who would like to qualify.

Helpful Hints For Income Eligibility Processing

- ◇ Owners may adopt the practice of making initial determinations of eligibility using the information supplied on the application form.
- ◇ If an initial assessment reveals a household's income to be above the AHP income limits, owners may want to inform the household at that time, and not continue with the verification and certification steps below.
- ◇ Owners should keep waiting lists to have ready applicants for any available units. Keep separate waiting lists for each of the three categories: unrestricted, VLI and LI. Follow chronological order.
- ◇ Owners may follow normal, lawful leasing procedures to rent unrestricted units to AHP-ineligible applicants.

If VLI or LI applicants also wish to apply or be placed on a waiting list for unrestricted units in addition to a VLI or LI unit, owners should not deny them access to the unrestricted units or waiting list, subject to all normal qualification criteria applied to all applicants.

Tenant Release and Consent Forms

Households seeking to become eligible under AHP must sign Release and Consent forms, which authorize property management staff to verify income and asset information. An FDIC-approved Release and Consent form is included in Appendix B.

4.4 VERIFYING INCOME INFORMATION

Owners must **verify** the annual income of each household that is to be determined income eligible. All income sources must be verified, with one exception: if a household's assets total less than \$5,000, verification of the assets is not required.

In verifying household income, owners must use one of three basic types of acceptable income verifications:

- ◆ **Third-party written verifications** are preferred. This usually involves a letter from the income source, or a form letter (on management agent letterhead) on which the source certifies the amount of income. Sample verification form letters are contained in Appendix D.
- ◆ **First-hand** verification is the most useful means of verification in some cases, such as applicants who are self-employed and banks that charge for verifying deposits. Documents such as certified copies of tax returns, bank statements, or copies of legal papers (e.g., payment of court awarded child care payments, etc.) are acceptable forms of firsthand verification.
- ◆ **Oral (telephone) verifications** may be used when other forms of verification are not feasible, such as when sources refuse to provide it, or where it would excessively delay a move-in or a re-examination. The owner/manager must put signed and dated notes in the file documenting the third-party oral information.

Owners may use different methods for different sources of income. Exhibit 4.2 summarizes acceptable types and sources of verification.

EXHIBIT 4.2

ACCEPTABLE FORMS OF INCOME VERIFICATION

SOURCE OF INCOME	THIRD-PARTY		FIRST-HAND DOCUMENTATION
	Written	Oral	
Employment	Verification Forms or letter from employer	Telephone or 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 (Including 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	Copy of separation agreement or divorce decree stating the schedule and amount of payment
Recurring contributions and gifts	Notarized statement or affidavit signed by donor, or a letter from bank, attorney, or trustee administering the contributions	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 listing business income from the preceding 12 months
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, CDs, etc., 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 accountant, 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 amortization schedule, with information to determine the amount of interest to be earned during the next 12 months

A. Documenting Income Verifications

All attempts to verify tenant information should be documented. This includes:

- ◇ keeping copies of all form letters sent to third-party sources;
- ◇ maintaining telephone logs for oral inquiries; and
- ◇ making appropriate notations in the tenant file.

Verification documents associated with the completed certification should be retained in the tenant file for inspection by the monitoring agency.

Some monitoring agencies may be more restrictive in the type of verification which they will accept. The agency has the right to impose further limitations on acceptable forms of verification. The Owner should confirm with the agency if there are additional restrictions.

B. Timing of Verifications

Owners must have valid verifications at the time the tenant signs a Tenant Income Certification form. Verified information is acceptable and valid for a 90 day period.

An oral update may be used to extend the life of the verification an additional 30 days up to a maximum of 120 days from the date the verification was performed. Once the life of a verification has expired, owners must obtain a new verification of the tenant's income.

Helpful Hints for Verification

- ◇ Remember that income is being estimated for the coming 12 months. Be sure to ask all verification sources to estimate the anticipated income for the next 12 month period. This should include expected raises, bonuses, cost of living adjustments, and other anticipated changes.
- ◇ Be sure to impress upon the verification sources that occupancy can be delayed by delays in verifications.

4.5 CERTIFYING HOUSEHOLD INFORMATION

Owners must use an FDIC or monitoring-agency-approved **Tenant Income Certification (TIC)** form to formally document tenant income and eligibility. The certification must be effective on the date the tenant signs the dwelling lease.

GOOD PRACTICE: Owners can avoid having to update the income certification by having tenants sign the TIC form at the same time they sign their lease.

The TIC form must be signed by the head of household, who thereby certifies that the income and household information provided is correct. The TIC form must also be signed by the property owner or designee, who certifies that the tenant has been classified properly as VLI or LI, based on the information provided.

The FDIC-approved TIC is contained in Appendix E. Use this or an approved facsimile.

4.6 DETERMINING ELIGIBILITY

Once income and household size have been established and verified, tenant income must be compared to the AHP **income limits**.

AHP uses HUD's published definitions of Very Low Income and Low Income, as adjusted for household size.

Monitoring agencies will provide owners with the income limits applicable to their properties. Remember, Census and other definitions of median income may not be substituted to determine income eligibility for AHP.

To determine if a particular household is eligible, an owner/manager should:

- ◇ obtain the most recent income limits for the area in which the property is located;
- ◇ determine the appropriate household size; and

- ◇ compare the verified income of the household to the applicable limits.

Example: Below is a hypothetical income limit chart Hometown, USA, containing the VLI and LI limits for various household sizes. Suppose a 3 person household has a verified annual income of \$21,500. This household is above the VLI limit (\$13,750) but is below the LI limit (\$22,050), and therefore would be eligible as a Low income (LI) household.

**Sample Income Limits
Hometown USA (1997)**

<i>Household Size</i>	<i>VLI Limit</i>	<i>LI Limit</i>
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	30,300

A. Income Eligible Households

If a household is determined to be income eligible according to the procedures outlined above, and passes all other standard and lawful screening, owners should:

- ◇ Decide whether to designate the unit as a QU, which would be appropriate any time the property is below its VLI Set-Aside or Total Set-Aside, and when a replacement is needed for an over-income (OI) or vacant unit;
- ◇ Set a rent that does not exceed program maximums (see Chapter 5);
- ◇ Execute a lease with the tenant that includes the two required provisions (see Chapter 5);

- ◇ Create a tenant file with complete documentation (see Chapter 6); and
- ◇ Reflect the status of the tenant in the appropriate Compliance Report (see Chapter 6).

B. Households Not Income Eligible

If a household is determined not to be income eligible after following the procedures outlined in this Manual, owners should:

- ◇ Consider offering the applicant an unrestricted unit if one is available (and the applicant passes all other standard and lawful screening), assuming that the available unit does not need to be held open as a Next Available Unit for an eligible household; or
- ◇ Inform the applicant that they are above the applicable income limits, that there are no vacancies other than for eligible households, and place the applicant on a waiting list if one is maintained.

4.7 ANNUAL RE-EXAMINATIONS

The annual income and household composition of the tenant in every QU must be re-examined at least annually.

A. Purpose

The purpose of a re-examination is to ensure that, as household income changes over time, households occupying QUs continue to be eligible under AHP program rules. Changes in household composition (e.g., babies born, members moving out, etc.) or changes in annual income need to be reported only at the time of the annual re-examination. It is not necessary for tenants to notify the property management staff in the interim, unless non-AHP provisions of the lease require it.

Previously-qualified tenants can maintain their LI status at re-examination as long as their income continues to be within 140 percent of the applicable (e.g., the most current limit for the appropriate household size) LI limit for

admission. This 140% LI recertification income limit is listed as the "M-F Transition" income on the HUD/FIDC Income Limit sheets you receive annually from your monitoring agency.

However, if a tenant's income exceeds 140 percent of the applicable LI limit, the unit must be re-designated as an over-income QU. Then, the next available unit of comparable or smaller size must be designated to replace this unit.

Once the unit is declared an over-income QU, the rent for that unit is no longer restricted by an AHP rent limit. Rent increases, if any, should comply with lease provisions and local tenant-landlord laws.

B. Timing of the Recertification

Re-examinations of tenant income eligibility are required at least annually. Owners may conduct them more frequently in order to have re-examinations correspond to lease periods of less than one year's duration. However, re-examinations must occur at least annually even if the lease is for a period longer than one year.

Owners must complete a tenant's re-examination by an established **recertification date**. Owners may set the recertification date at a time of their choice as long as the date falls within 12 months of the time of the most recent tenant certification. Thus, if the lease for a unit took effect during the middle of a month an owner might set the recertification date on the 1st of the same month in the succeeding year.

Example: If a Qualified Tenant was certified and moved in the QU on December 17, 1996, his or her recertification date could be set at December 1, 1997, but not January 1, 1998.

Each time a re-examination is conducted, owners must collect updated income information from the tenant following the procedures in Section 4.5. As was true for the initial certification, the income verification must be valid at the time the recertification is signed. Again, verifications are valid for 90 days and can be extended for 30 days with an oral update.

Good Practice: In planning re-examination, owners should begin early enough to allow sufficient time to complete the verification process, but not so far in advance that the verification (which are good for 90 days) will expire before the date the tenant will sign the recertification. Many owners begin the process 60 days before lease renewal and recertification.

C. Recertification Procedures

The procedures for re-examinations are virtually the same as determining initial income eligibility. Specifically, owners must:

1. **Contact the tenant**, and obtain: a) a list of current household members; b) a list of income sources, including assets, for the coming year; and c) the tenant's signature on the releases for verification, as necessary, for transmittal to all of the identified income sources.
2. **Verify tenant income information** using the appropriate method(s) described above.
3. **Compare household income to the latest available income limits, and determine household status.** Any changes in household size should be reflected at this time, as staff compares the new income figures to the latest income limits. Depending on the outcome of the re-examination, the household's status as an eligible household may change.
4. **Execute the Tenant Income Certification (TIC) form** and mark the space for recertifications. The tenant's signature is required. (See Appendix E for a sample TIC form). Changes in status become effective on the date the recertification form is executed.
5. **Assemble all documentation and place it in the tenant file.**

CHAPTER 5

RENT AND LEASE REQUIREMENTS

5.1 INTRODUCTION

AHP rent and lease requirements can be summarized in three key points:

1. There are two sets of rent limits, VLI and LI, which are applied to units occupied by VLI and LI tenants, respectively, and which vary by unit size.
2. Rent limits act as rent ceilings for shelter rent, along with prevailing market rents. Actual rents charged may be less than the maximums, depending on market conditions and the need to make units affordable to occupants.
3. Once owners determine income eligibility and set the rent for a QU, execute a lease containing two mandatory lease provisions with each eligible household. The lease also must conform with local, state, and federal laws pertaining to dwelling leases.

This chapter explains the application of AHP maximum rents. It also provides guidance regarding the contents of dwelling leases, and direction regarding federal statutes that pertain to property owners.

5.2 AHP RENT LIMITS

To assure that units made available to Low and Very Low Income tenants are affordable to these households, the LURA establishes maximum rents that owners can charge for these units.

The maximum rent limits are set at levels considered to be affordable to Low and Very Low Income households, and are based on annual HUD calculations of the median income for the area in which the property is located.

OBTAINING RENT LIMITS

Owners should obtain copies of the rent limits for their properties from their state monitoring agency. The agency will update and disseminate updated limits each year as area income figures are revised. Contact the monitoring agency to verify the date of the current limits.

The rent limits for each type of QU will vary by unit size. The table below is a hypothetical examples of the 1997 rent limits for Hometown, USA, 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 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 **VLI** rent limits are established at 30 percent of the adjusted monthly income¹ for a household at 50 percent of area median income, adjusting household size for different unit sizes; and

¹ As established under Section 3 of the United States Housing Act of 1937 and defined by HUD under the Section 8 program. See Chapter 3.

- ◆ The LI rent limits are similarly computed, but at 65 percent of area median income.

Rent limits are adjusted annually when HUD publishes its median income figures each year.

SPECIAL NOTE: *AHP rent limits apply to the total contract rent (including assistance payments) if tenants receive Section 8 Existing Housing payments or other rental assistance. The share of the unit rent paid by tenants receiving rental assistance will vary, depending on the level of subsidy provided to the tenant.*

If rent limits are increased 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, subject to the lease and state and local law.

If the rent limits for a QU decrease during the middle of the lease period, check with your State Monitoring Agency to determine how rents are to be adjusted.

Properties Receiving Other Public Assistance

Some properties may receive other forms of assistance such as Low Income Housing Tax Credits, HOME funds, or other types of financing that also impose rent limits. The rent limits for the programs may be different from AHP limits. In such cases, the most stringent (i.e., lowest) rent limit among the programs will prevail as the maximum rent that can be charged for those AHP units.

In other words, just because AHP rent limits might be higher than the limits of the other program, owners still must adhere to the other program limits. Similarly, even when other programs set higher maximum rents, the maximum unit rent permitted for AHP units may not exceed the applicable AHP rent limit.

5.3 CHANGES IN THE STATUS OF QUs

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 adjusted accordingly.²

If a VLI-QU is re-designated as a LI-QU due to a change in the income of the tenant, the applicable rent limit for that unit is now 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 chart above).

Likewise, if an owner must re-designate a LI-QU as a VLI-QU because the LI tenant's income has fallen beneath the latest VLI income limits, then the rent for that unit must now comply with the VLI rent limit. Using the example of a property in Hometown, USA, if a three-bedroom LI-QU is re-designated as a VLI-QU the rent limit changes from \$499 to \$374.

As discussed in Section 3.5, if a tenant of a QU is determined to be over the income limits (including the 140% LI limit for recertification) at time of recertification, the rent for that unit is no longer restricted by AHP rent limits. Owners must follow the NAU replacement rules to remain in compliance with AHP guidelines.

5.4 UTILITIES

Utilities are not taken into account in the calculation of maximum rents. The AHP rent limits apply only to "contract rent", i.e., the amount payable under the dwelling lease attributable to shelter. Unlike some other Federal housing assistance programs, the maximum permissible rent need not be adjusted for tenant-paid utilities.

In addition, if provided for in the lease, owners may pass along owner-paid utility costs under the following conditions:

² Any increases in rent resulting from these actions must conform with the dwelling lease and local tenant-landlord law.

- ◇ These costs must be passed on through separate assessments using an allocation method that equitably distributes these charges among all units, both restricted and unrestricted.
- ◇ These assessments must reflect customary charges and must be based on reliable estimates or actual costs.

At the discretion of the State Monitoring Agency, owners may be required to provide documentation of the above, including dwelling leases for unrestricted as well as restricted units. Such monitoring action in no way reduces a tenant's right to seek relief through regular legal channels if he or she suspects that utility assessments are not in compliance with this section.

5.5 DWELLING LEASE REQUIREMENTS

A. Background

AHP does not specify a model dwelling lease to be used by owners. Owners have flexibility in determining the format, duration, and most other aspects of their lease documents, subject of course to state and local laws.

Leases for QUs must specify the amount of rent being charged for shelter (e.g., the "contract" rent) and any additional charges, such as a surcharge for owner-paid utilities, as well as the two required provisions identified below.

B. Term of Lease

There is no prescribed term for dwelling leases, but each QU must have a lease at the time the unit is officially designated. Designation is "official" when a unit is noted as a VLI or LI QU on the property's unit listing and a TIC has been signed and dated by both parties.

In order to simplify record-keeping, owners may wish to place QU tenants on annual lease terms which correspond to their recertification dates. However, owners will need to weigh other considerations in setting lease terms, such as whether one-year leases affect their flexibility to raise

rents if the published rent limits are increased during the lease term.

C. Required Lease Provisions

As specified in the LURA, owners must execute a lease agreement or lease addendum with tenants occupying QUs that contain the following two provisions establishing the obligations of their tenancy:

- (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.***

The purpose of these clauses is to provide a legal basis for an owner to take action to terminate a tenancy for a tenant who refuses to comply in the future. Such actions must be in compliance with state and local laws.

Owners may incorporate these two clauses verbatim either in the lease or in an addendum to the lease which is initialed by the parties.

D. Prohibited Lease Provisions

Lease provisions not allowed 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.

The purpose of prohibiting these clauses is to ensure that tenants are not required to waive their rights in advance.

These clauses should be removed or stricken from the lease form used for all AHP Qualified Units. Removal of these clauses does not prohibit owners from pursuing such actions by legal means to enforce provisions of the lease when lease violations occur.

5.6 APPLICABLE FEDERAL STATUTES

This section is intended to inform owners of federal statutes which, although not AHP requirements, are nonetheless important. This information is provided in the spirit of ensuring that owners are aware of relevant (non-AHP) requirements.

Please note that this section is not a complete listing of all non-AHP requirements with which owners may need to comply, and is provided as illustration only. Further information should be obtained from the monitoring agency, the local HUD office and/or legal counsel.

State monitoring agencies are not required to monitor owners' degree of compliance with non-AHP requirements, such as those listed below:

Fair Housing Provisions

All owners of rental property in the U.S. must comply with applicable provisions of federal Fair Housing legislation. See Title VIII of the 1968 Civil Rights Act, commonly known as the Fair Housing Act (42 USC 3601). Monitoring agencies can provide basic information and referrals to other departments as appropriate.

Americans with Disabilities Act (ADA)

All owners of real property in the U.S. must comply with applicable provisions of the Americans with Disabilities Act (ADA), which went into effect on July 26, 1992. Monitoring agencies can provide basic information and referrals to other departments as appropriate.

5.7 CONFLICTS WITH STATE AND LOCAL STATUTES

FDIC anticipates that there will be few instances where the requirements of the LURA will conflict with state or local statutes. Should a conflict occur, the state or local

statutes generally will take precedence. However, owners should consult with the monitoring agency in order to confirm whether such a conflict actually exists, based on the agency's interpretation of the statutes and the property's LURA.

CHAPTER 6

REPORTING, RECORD-KEEPING, AND ADMINISTRATIVE REQUIREMENTS

6.1 INTRODUCTION

Owners of AHP properties are required to do the following:

- ◆ Owners are required to submit **regular Compliance Reports** to the monitoring agency. During Pre-Compliance, these reports are submitted monthly. Once a property has met its total set-aside requirements, Compliance Reports are submitted annually, and are accompanied by an Owner Compliance Certification.
- ◆ Owners must **maintain records**, such as tenant files and monthly rent rolls, in good condition and available for inspection by the monitoring agency or other authorized entities.
- ◆ Owners must pay an **annual fee** to the monitoring agency and are required to adhere to other administrative requirements, including cooperating with monitoring staff during annual on-site reviews.

6.2 AHP REPORTING REQUIREMENTS

There are two reporting forms owners must regularly submit to their monitoring agency:

- ◇ compliance reports; and
- ◇ owner compliance certifications.

A. Compliance Reports

Compliance reports are submitted either on a monthly or an annual basis, as directed by the monitoring agency.

The AHP Compliance Report Form, and instructions for completing the report. can be found in Appendix F.

Monthly Pre-Compliance Reports

Compliance reports are typically submitted on a monthly basis during the Pre-Compliance stage, which begins at property closing and lasts until the monitoring agency has determined that the property is in compliance with AHP occupancy requirements.

Tenant Income Certification (TIC) forms for new and recertified units completed during the month being reported must be attached to each monthly compliance report.

Annual Compliance Reports

Once the monitoring agency has confirmed that a property complies with its LURA, compliance reports are submitted annually. The compliance reports should be submitted to the monitoring agency by the date set by the agency.

Tenant Income Certification (TIC) forms for every QU must be attached to annual compliance reports. This would include all new certifications and recertifications of QUs since the time of the last report.

If a property falls out of compliance, monitoring agencies may require owners to resume submitting monthly compliance reports until compliance is re-established.

B. Owner Compliance Certification

The LURA requires owners to certify, at least annually, that they have complied with all the terms and provisions of the LURA. This certification must be prepared and sent to the monitoring agency when the property reaches full compliance and at the time annual reports are submitted.

The certification must be signed by the owner or a representative with full authority to legally bind the ownership entity. If the certification is signed by anyone other than the person who signed the LURA, evidence of signature authority must be provided.

A sample Owner Compliance Certification is included in Appendix G.

C. Owners Data Entry Program

To assist owners with the tracking and reporting of compliance, FDIC has developed and distributed a computerized data entry system, known as the Owners Data Entry Program (ODEP) for use by owners.

The primary purpose is to help owners compile the monthly or annual reports due to the monitoring agency, but it also offers many additional features which help the owner to determine eligibility, maintain records, and track ongoing compliance. ODEP can:

- ◇ calculate applicant/tenant income, compare annual income to eligibility limits, and determine eligibility based upon income information entered;
- ◇ compare rents to current rent limits;
- ◇ produce the TIC for tenant and owner signature;
- ◇ store the TIC information so that owners may produce the monthly rent roll and the monthly or annual compliance report without re-entering any data (assuming owners have entered all unit information); and
- ◇ allow owners to check their property for ongoing compliance with Set-Asides, proportionality, and (to a limited extent) NAU/NAQU rules, and for expired TICs.

The ODEP system can do all these things provided the owner/manager uses the system on an ongoing basis to process all certifications, recertifications, and unrestricted unit turnovers. It can speed up tenant processing by doing the calculations and the determination of eligibility without computation errors. If it is used to enter all information as units and tenants are processed, the production of the monthly rent roll and the monthly or annual compliance reports will be as simple as the push of a button. Moreover, the owner can use the software to

check for compliance and to correct errors as they occur.

State monitoring agencies may also chose to permit properties in full compliance to submit future reports and TICs in computerized rather than hard copy version, subject to continued AHP record-keeping requirements and access for on-site monitoring.

This software is available to owners at no charge from the monitoring agency. The software is self-contained, and runs on DOS or Windows-based systems. It requires a 386SX IBM PC or compatible computer, configured with:

- ◇ IBM or MS DOS, version 5.0 or higher;
- ◇ a minimum of 5 megabytes (MB) of memory;
- ◇ a minimum of 50 MB of hard disk space; and
- ◇ a 3 ½" floppy drive.

Contact the monitoring agency for a copy. The agency will have to set up the property in the software, so allow some time for production and shipping. The instructions for the ODEP system are included in this Manual at Appendix J.

6.3 AHP RECORD-KEEPING REQUIREMENTS

There are two important record-keeping requirements: **tenant files** and **monthly unit listings**.

A. Tenant Files

Tenant files must be maintained for a period of at least three (3) years after a tenant moves out. Tenant files must contain the following items:

Rental application: See Appendix A for a sample application form that requests all the information needed to assess tenant eligibility.

Release and Consent Form: Release and consent forms containing AHP-required language (see sample

Release and Consent form in Appendix B) must be obtained for each adult household member.

Verifications: Appropriate documents verifying the income information provided by the tenant must be included.

Tenant Income Certification (TIC): The original TIC or the most recent recertification must be included, and must contain signatures of the head of household and an authorized property management representative.

Dwelling Lease: The original must be included and should contain signatures of the head of household and an authorized property management representative.

***Good Practices:
Maintaining Tenant Files***

- ◇ Set up applicant files, containing the application form, verifications, and other relevant documentation which may be useful in answering inquiries or complaints on behalf of applicants who were rejected.
- ◇ Keep all files in separate folders, clearly marked with tenant or applicant name.
- ◇ Use file checklists to note everything in the file.
- ◇ Clip applications and Release-and-Consent forms to the left side of the opened folder. Clip TIC forms and all supporting verification documents to the right side of the opened folder.
- ◇ Use color coded folders or tabs to readily distinguish between VLI, LI, and unrestricted units.
- ◇ Maintain these files for at least three (3) years beyond the date of the rejection.

B. Monthly Unit Listings

Under the program, owners must keep monthly unit listings showing the occupancy of their property. Unit

listings must be kept for every month and maintained for a period of three years.

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

- ◇ Unit number
- ◇ Number of bedrooms
- ◇ Tenant name
- ◇ Household size
- ◇ Effective lease date
- ◇ Monthly rent
- ◇ Unit status (VLI-QU, LI-QU, OI-QU, or unrestricted unit)

For many properties, the monthly rent roll owners already keep provides most of this information. Owners must provide a copy of the most recent monthly unit listing upon request from the monitoring agency.

The ODEP computer system can provide owners with this monthly listing, if the owner keeps all unit turnover up to date in the system.

6.4 ADMINISTRATIVE FEES

A. Annual Fee

In signing the LURA, owners agreed to pay an annual administrative fee to their monitoring agency. This fee, based on the schedule established in the LURA, is computed by multiplying the base fee (see Section 4.6(a) of the LURA) by the required number of set-aside units in the LURA.

The annual administrative fee is due the day the LURA is signed and covers the following twelve month period. Each following year, owners will receive an invoice for the coming year's administrative fee prior to the start of the fee period. The agency may adjust the fee annually for increased costs due to inflation.

B. Fees for Non-Compliance

Owners whose properties fall out of compliance may be assessed an additional administrative fee up to an amount equal to the annual fee, including any adjustments for

inflation. This additional fee is distinct from and in addition to the annual fee. See Section 2.6.C of this Manual for further details.

6.5 RESALE PROCEDURES

Owners should notify the monitoring agency of the proposed 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.

In addition, as described in the LURA (generally Section 7.6), sellers must, at their expense, ensure that the LURA is duly recorded and filed in connection with resales. It should be noted that the LURA binds all subsequent owners of the property to the agreement for the full term, regardless of whether such successors acknowledge or execute the LURA.

6.6 USE OF THE PROPERTY

Typically, each LURA contains a brief provision pertaining to the use of the property. During the term of the agreement, the owner must maintain the property as multifamily rental housing or for resale of single family units to qualified purchasers. Rental units must be occupied or held available for rental on a continuous basis.

6.7 COMPLIANCE ENFORCEMENT

A. Background

Monitoring agencies will work closely with owners to assure compliance. If a compliance violation occurs because of misconceptions regarding program procedures or the limitations of the management system in place at the property, owners are encouraged to request additional training or assistance from their monitoring agency.

Sometimes it may be necessary for monitoring agencies to take action to compel owners to bring the property back into compliance. These actions fall into two categories:

◇ administrative remedies, and

- ◇ judicial sanctions.

Because a property that is out of compliance requires additional monitoring, agencies also have the authority under the LURA to assess the owner an additional administrative fee for non-compliance.

NOTE: Agencies will not categorize owners as being out of compliance with their LURA simply because they are still in the Pre-Compliance period. However, it is possible for a Pre-Compliance property to be declared in non-compliance if, for example, the owner fails to submit monthly compliance reports on a timely basis, continues to rent next available units to ineligible households or otherwise fails to make efforts to achieve full compliance.

B. Administrative Remedies

Agencies may take steps short of initiating legal action. They include:

- ◇ informing the property's lenders and other regulators of the non-compliance;
- ◇ informing agencies or divisions administering other forms of housing assistance, such as tax credits, of continuing non-compliance by an owner;
- ◇ barring the owner from further participation in other agency programs;
- ◇ providing notice to the limited partners or investors of a managing partner's non-compliance; or
- ◇ notifying the board of trustees, the parent organization, or sponsoring entity of a non-profit that is out of compliance.

Agencies can also demand return of excess rents resulting from non-compliance (see below). If owners fail to comply with disgorgement or other agency demands, agencies then may seek recourse through the judicial system, as described below.

C. Judicial Sanctions

The LURA authorizes the agencies to go to court as a means of forcing owners to correct conditions of non-compliance. Agencies will generally attempt administrative remedies before going to court, but owners must understand that agencies are not obligated to do so, and may begin legal action within sixty (60) days from issuance of a **Notice of Non-Compliance**. These actions could include:

- ◇ filing suit to force the owner to take corrective action;
- ◇ filing suit to appoint a receiver for the property; or
- ◇ filing suit to collect outstanding fees.

D. Additional Administrative Fee for Non-Compliance

The LURA authorizes agencies to collect an additional administrative fee when they have determined that a property has fallen out of compliance.

The LURA authorizes agencies to charge an additional fee, up to an amount equal to the annual administrative fee for up to three years following its most recent finding of non-compliance. This additional fee is distinct from and in addition to the annual fee.

E. Corrective Actions to Restore Compliance

Guidance on corrective actions and proposed corrective action deadlines for violations of occupancy is summarized in the following tables:

- Exhibit 6.1 Occupancy Violations
- Exhibit 6.2 Rent Limit Violations
- Exhibit 6.3 Reporting Violations
- Exhibit 6.4 Fee Violation

These exhibits are provided as illustration to owners of possible agency actions. Monitoring agencies have been granted considerable latitude in taking corrective actions to restore compliance.

EXHIBIT 6-1

OCCUPANCY VIOLATIONS - CORRECTIVE ACTIONS

VIOLATION	CORRECTIVE ACTIONS	CORRECTIVE ACTION DEADLINE
<p>1. Owner Failed to Maintain the Required Number of QUs</p>	<ul style="list-style-type: none"> • Follow Next Available Unit (NAU) procedures (Exhibit 3.3) until the required number of QUs is obtained. • Submit monthly occupancy reports to monitoring agency until compliance is restored. • Submit a certification of compliance form once the required number of QUs is obtained. 	<p>Must implement corrective action until number of QUs meets the Total Set-Aside for the property.</p>
<p>2. Owner Failed to Rent Available QUs to VLI tenants to restore required number of VLI—QUs</p>	<ul style="list-style-type: none"> • Follow NAU procedures (Exhibit 3.3) until the required number of VLI—QUs is obtained. • Submit monthly occupancy reports to monitoring agency until compliance is restored. • Submit a certification of compliance form once the required number of VLI—QUs is obtained. 	<p>Must implement corrective action until number of QUs meets the VLI Set-Aside for the property.</p>
<p>3. QU Designation Removed from Eligible Tenant</p>	<ul style="list-style-type: none"> • Restore QU designation to the original unit/ household. (Note: may exceed total QUs required.) • If the rent for the affected unit was raised above the appropriate rent limit, return the excess rent according to actions in Exhibit 6.2. • Submit a copy of the lease or rental agreement showing that the rent complies with the rent limit. 	<p>Within 30 days of the Notice of Non-Compliance.</p>

EXHIBIT 6-2

RENT LIMIT VIOLATION - CORRECTIVE ACTIONS

VIOLATION	CORRECTIVE ACTIONS	CORRECTIVE ACTION DEADLINE
<p>1. Qualifying Unit Rent Exceeds Appropriate Limit</p>	<ul style="list-style-type: none"> • Reduce the rents for the affected units _____ [list unit #s] to _____ [rent limit] • Calculate the amount of excess rent received from the tenant. • 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. • If the tenant has moved out, mail the full amount of the overpayment to the tenant. If the tenant cannot be located, pay the overpayment to the monitoring agency for use in providing housing assistance to Low Income families. • 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. • Send a copy of tenant letter with the return receipt to monitoring agency prior to the compliance deadline. 	<p>Within 30 days of the date of the Notice of Non-Compliance</p>

EXHIBIT 6-3

REPORTING VIOLATIONS - CORRECTIVE ACTIONS

VIOLATION	CORRECTIVE ACTIONS	CORRECTIVE ACTION DEADLINE
1. Owner Failed to Submit Monthly Compliance Report	<ul style="list-style-type: none"> • <i>Submit properly completed Monthly Compliance Report by corrective action deadline</i> 	<i>Within 10 days of the Notice of Non-Compliance.</i>
2. Owner Failed to Submit Annual Compliance Report	<ul style="list-style-type: none"> • <i>Submit properly completed Annual Compliance Report by corrective action deadline</i> 	<i>Within 30 days of the Notice of Non-Compliance.</i>
3. Owner Failed to Obtain a Tenant Income Certification or Proper Income Verification Prior to Move-in	<ul style="list-style-type: none"> • <i>Obtain a completed tenant income certification and submit copies of the outstanding documents to the monitoring agency by the corrective action deadline.</i> • <i>If over-income and insufficient QUs, follow corrective actions listed for Occupancy Violation No. 1.</i> 	<i>Within 30 days of the Notice of Non-Compliance.</i>
4. Owner Failed to Obtain a Tenant Income Recertification by Required Date	<ul style="list-style-type: none"> • <i>Obtain a completed tenant income recertification and submit copies of the outstanding documents to the monitoring agency by the corrective action deadline.</i> • <i>If the tenant is over-income, follow NAU procedures in section 3.5 to obtain the required number of QUs.</i> 	<i>Within 30 days of the Notice of Non-Compliance</i>
5. Owner Failed to Maintain Proper On-Site Tenant Files	<ul style="list-style-type: none"> • <i>Obtain documentation to complete the tenant files.</i> • <i>Submit copies of the outstanding documents to the monitoring agency by the corrective action deadline.</i> 	<i>Within 30 days of the Notice of Non-Compliance</i>

EXHIBIT 6-4

MONITORING FEE VIOLATION - CORRECTIVE ACTIONS

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

CHAPTER 7

FINANCIAL INFEASIBILITY WAIVERS

AHP properties were sold at a price discounted to reflect the restricted revenue to be generated by the Set-Aside unit requirements. Under most circumstances, owners should be able to maintain viability and full compliance, assuming proper management. However, circumstances beyond the control of the owner may arise under which continued full compliance with the Set-Aside requirements is not feasible or would jeopardize the financial viability of the property.

Under the provisions of a property's LURA, monitoring agencies have the authority to reduce temporarily the occupancy requirements for Low and Very Low Income tenants in cases where it is no longer financially feasible for an owner to meet these requirements.

To obtain such a reduction, owners must submit an application to the monitoring agency requesting temporary waiver of the occupancy requirements.

This Chapter addresses the process and conditions for financial feasibility waivers.

7.1 FINANCIAL INFEASIBILITY WAIVERS

When conditions arise that threaten the financial feasibility of the property, owners may request a waiver of the AHP occupancy requirements, enabling them to rent some or all of the units set-aside for VLI and LI households temporarily to tenants with higher incomes at rents above the AHP rent limits.

Owners should consider applying for such a waiver only as a measure of last resort to preserve the property. FDIC expects that owners will have taken all reasonable steps to address the source of the property's distress and

strengthen its financial position before applying for a waiver.

For some properties, the waiver alone will not provide sufficient relief to enable owners to generate the income needed to meet their financial obligations. In such a case, FDIC anticipates that a AHP waiver will serve as one component of a larger package of assistance to the property.

The remainder of this section describes:

- ◇ necessary conditions for receiving a waiver;
- ◇ types of waivers; and
- ◇ the extent of a waiver.

A. Necessary Conditions for Granting Waivers

FDIC has established the following items as necessary conditions for receiving a financial infeasibility waiver.

- ◆ **Serious Financial Distress.** A property should be experiencing serious financial problems to receive a waiver. Properties where profits are lower than anticipated or which encounter occasional monthly losses are not considered to be experiencing serious problems.
- ◆ **Conditions Are Beyond Control of Owner.** The conditions leading to the property's financial distress problems should be beyond the owner's control, such as market changes or catastrophic event.
- ◆ **The Owner Has Made Substantial Efforts to Strengthen Property's Condition.** The owner must have taken, and be able to demonstrate, all reasonable steps to address the source of the distress and improve the property's financial condition.
- ◆ **A Waiver Enables Owner to Address Problem.** The waiver must clearly provide

the increased income necessary to help preserve the property. If the waiver, together with the owner's existing efforts to strengthen the property's financial position, does not provide sufficient relief to overcome a property's distress, the waiver application must show that the owner is attempting to obtain the additional assistance necessary to preserve the property.

- ◆ **A Waiver Must Be Compatible with Other Assistance to the Property.** It may not be possible to unilaterally waive the occupancy requirements for the property if it also has Low Income housing tax credits, tax exempt bond financing, or other public financing with occupancy requirements.

B. Types of Waivers

Owners may apply for two types of waivers:

- ◆ **VLI Set-Aside Waiver:** Temporarily reduce the number of required VLI-QUs; or
- ◆ **LI-QU Set-Aside Waiver:** Temporarily reduce the number of required QUs (LI and VLI)

These waivers are temporary, not permanent, and must be reviewed annually by the monitoring agency. Agencies also may waive fees temporarily.

Agencies will not issue a waiver to change rent limits for QUs above the limits issued by FDIC.

VLI Set-Aside Waiver: Reduce Required VLI-QUs

A VLI Set-Aside waiver gives the owner a temporary reduction in the VLI Set-Aside, but not the Total Set-Aside of QUs.

For example, in a property with a Total Set-Aside of 35 units and a VLI Set-Aside of 20 units, an agency granting a VLI Set-Aside waiver may choose to reduce the required number of VLI

QUs from 20 units to ten units. However, the owner is still required to maintain a total of 35 QUs, with an increase in LI units offsetting the reduced number of VLI units.

Owners may not remove QU designation from any units as a result of the waiver. It will pertain only to the decisions regarding vacant units or the application of Next Available Unit (or NAQU) rules to change in tenant status.

Total Set-Aside Waiver: Reduce Required QUs

The second type of waiver gives owners a temporary reduction in the total number of required QUs. Under this type of waiver, owners will generally request to reduce both the Total Set-Aside and the VLI Set-Aside.

Using the same example presented above, a Total Set-Aside waiver might allow an owner to reduce the Total Set-Aside number of QUs from 35 units to 20 units and the required number of VLI Set-Aside units from 20 units to 10 units.

When a waiver is granted and the actual number of occupied QUs in the property exceeds the waiver-approved reduced number of QUs, owners who receive a Total Set-Aside waiver may not remove the QU designation from any occupied QUs. The owner may not raise the rent for a QU above the applicable rent limit until the qualifying tenant vacates the QU.

C. Size of a Waiver

Monitoring agencies will determine the type of waiver to be granted and the size and term of any reduction in the number of QUs. Agencies will avoid a complete waiver of the occupancy requirements wherever possible. Waivers will be reviewed annually to determine if there is a continuing need for the waiver.

7.2 BASIC CONTENTS OF WAIVER APPLICATIONS

Applications for waivers should be sent to the monitoring agency along with a processing fee as stipulated by the agency. Agencies will render their decision within 60 days from the date of application.

Applications for waivers should provide sufficient information to enable the monitoring agency to evaluate the property's financial condition, as well as a description of the relief the owner is requesting and how the relief will help strengthen the property's financial condition. The application should also include supporting materials that show what the owner has done to address the conditions contributing to the property's financial problems and the fee for processing the request.

Every application must include the items noted below.

Financial Infeasibility Application Contents

- ◇ Owner's description of the conditions that led to the financial deterioration of the property.
- ◇ Property's financial statements for the past three years.
- ◇ Income and expenses for the property broken down by month for the past year.
- ◇ Listing of other types of assistance received by property (e.g., tax credits, or bond financing) and any other financing.
- ◇ Amount of additional monthly income needed to address problems and for what period of time.
- ◇ The type of relief the owner is requesting (e.g., the type and number of units for which the waiver is requested) and a description of how it will be used to correct the problem.

- ◇ Documentation showing market rate rents for the area.
- ◇ Description of actions owner is taking to strengthen the property's financial position.
- ◇ Processing fee, as stipulated by the agency.

In addition, if vacancies are a significant problem contributing to the property's financial deterioration or distress, the application should also provide the following information:

- ◇ Documentation showing the property's vacancies for the past 12 months;
- ◇ Description of marketing efforts to attract LI and VLI tenants and documentation of these efforts; and
- ◇ The total number of rental applications received during the past six months, and the number of applications from potentially eligible tenants. An explanation of why potentially eligible applicants were turned down or decided not to accept units should be included.

Also, if increased operating expenses are a significant problem contributing to the financial deterioration of the property, a waiver application should also include the following information:

- ◇ Evidence that owner has taken steps to control operating expenses and has invested funds to correct the problem;
- ◇ Sufficient documentation to show that the property's expenses do not include excessive management fees or payments to the owner or related parties for non-essential services; and
- ◇ Documentation showing that increased expenses are consistent with properties in the area or beyond the control of the owner.

Waivers will not be granted for higher debt service costs that may result from additional improvements, equity-takeouts or other refinancing, or scheduled interest rate adjustments.

Owners are solely responsible for submitting all materials necessary to support their request for a waiver. Agencies may make determinations regarding waiver requests solely on the basis of the materials presented in the application. Applications with inadequate documentation may be denied on grounds of insufficient evidence.

7.3 WAIVER DETERMINATIONS

Monitoring agencies will act on waiver applications within 60 days of receipt.

If an agency determines that a waiver should be granted, monitoring staff will inform the owner of the decision within 60 days of the date of application and will send a written notice describing the conditions of the waiver.

Monitoring agencies may establish conditions for a waiver to ensure that the owner will make a good-faith effort to restore the financial health of the property. For example, agencies also may require an owner to submit monthly compliance reports, and additional management performance reports as needed, to document progress in implementing the waiver conditions.

If the monitoring agency decides to deny an owner's request for a waiver, the owners will receive a written notice indicating that the application was denied and stating the reasons the waiver was not granted. This notice will be sent to the owner within 60 days of the date of application. If a request failed to provide sufficient documentation to grant the waiver, the agency will indicate the deficiencies.

If rejected, owners may submit a revised application which addresses the deficiencies found in the original submission. Owners will be

expected to pay another processing fee when submitting revised applications.

7.4 ANNUAL WAIVER REVIEWS

Monitoring agencies will review waivers at least annually to determine if the need continues to exist for the waiver. Owners may be required to submit updated and additional documentation for this review.

**COMPLIANCE PROCEDURES FOR
CONDOMINIUM BULK PURCHASES**

8.1 OVERVIEW

This chapter applies only to owners who have purchased condominium units in a bulk sale.

The chapter outlines the requirements governing the rental of such units, describes the provisions governing sales of these units to individual homebuyers, and reviews the administrative fees applicable to these purchases.

8.2 RENTAL OF BULK SALE CONDOMINIUM UNITS

Condominium units sold in bulk may be rented as multifamily housing, either permanently or during an interim period until sold to Low Income buyers under the terms of the LURA. During such rental uses, owners essentially must treat the collection of condominium units in a bulk purchase as they would units in a multifamily rental property. When such units are rented or held for future sale, the units are subject to the occupancy, rent and lease provisions of the first six chapters of this manual.

Note: Many condominium bulk sales LURAs only have LI Set-Asides and not separate VLI Set-Asides. In such cases, the properties are not be subject to VLI Set-Aside requirements when renting.

**8.3 SALE OF CONDOMINIUMS TO INDIVIDUAL
HOMEBUYERS**

FDIC anticipates that owners eventually will sell the condominium units in these purchases to individual homebuyers. The LURA for bulk condominium purchases establishes a specific number of units in the purchase that must be set-aside for Low Income households, and when units are sold, the same number must go to Low Income homebuyers.

All of the units in a bulk condominium sale are encumbered by the Bulk LURA and must be released by the monitoring agency from that LURA prior to sale. Even unrestricted units not needed to meet the Set-Aside must be approved for release by the monitoring agency, which must determine that there are sufficient units remaining after release to meet Set-Aside obligations.

It is the owner's responsibility to notify the monitoring agency of any pending sales and obtain approvals as explained below. Sales without legal releases from the monitoring agency are subject to legal challenge.

When selling condominium units to individual homebuyers, a number of conditions apply.

- ◆ **Low Income (LI) Sales Requirement** -- Owners must reserve enough units for sale to LI (and VLI, as applicable) buyers to meet the Set-Aside in the LURA.¹ Units not needed to meet the Total Set-Aside may be sold to buyers of any income, although owners are encouraged to sell units to LI buyers before selling the remaining units in the purchase.
- ◆ **Homebuyer Income Certification** -- For any purchasers of units reserved to meet the Set-Aside, owners must obtain a written income certification from LI buyers documenting that their annual (gross) income as defined in Chapter 4 is within the applicable AHP income limit. The buyer's income must be verified by the owner using the procedures in Section 4.5. This verification is good for 90 days. Delays in completion of the sale may require updated HICs. Appendix I contains an FDIC-approved Homebuyer Income Certification (HIC) form and instructions.
- ◆ **Recapture LURA for LI Sales** -- For any units designated to meet the Set-Aside, owners must require LI (and VLI, if applicable) buyers to execute a LURA establishing the condition that the purchaser will retain ownership of the unit for a period of at least 12 months after the date of sale. The LURA also includes a provision allowing FDIC to recapture the profits from any resale of the unit by the homebuyer

¹ If the LURA for a bulk purchase also includes a VLI Set-Aside, unit sales also must include a sufficient number of VLI buyers or reserved units to meet this Set-Aside, and all conditions specified in this Chapter for LI sales also apply to the VLI sales.

before the end of this 12-month period. A copy of this Recapture LURA is included in Appendix H.

- ◆ **Price Not Restricted for LI Sales** There is no ceiling restricting the price an owner can charge a LI buyer for a unit, or establishing affordability standards. The unit need only be purchased by an income eligible buyer. It is recommended that owners take into account the amount which a LI buyer can realistically afford, and that the lender(s) will assess affordability in the course of underwriting.
- ◆ **Notice to Agency of Unit Sales** -- Owners must notify the monitoring agency of all pending unit sales, provide a copy of the sales contract for each unit to be sold (and other documentation as noted below), and submit a listing of the remaining units held by the owner to indicate those units that are QUs or held available for rental by LI (and VLI, if applicable) tenants.
- ◆ **Release from Condominium Bulk Sale LURA** -- For each restricted unit sold, the owner should request that the agency execute a release for that unit from the provisions of the Condominium Bulk Sale LURA.
- ◆ **Pay Processing Fee to Agency** -- Owners must pay the monitoring agency a fee specified by the agency to process requests for AHP Recapture LURAs and release unrestricted units from the Condominium Bulk Sale LURA.

Resale of condominium units must comply with all applicable state and local statutes, in addition to the requirements described in this chapter.

8.4 REQUIRED SUBMISSIONS PRIOR TO THE SALE OF INDIVIDUAL UNITS

Agencies will monitor owner compliance with the LI resale provisions of the Condominium Bulk Purchase LURA, as well as the affordability requirements governing the rental of these units. This assessment will occur at the time of each sale, as well as in the periodic monitoring described in Chapter 6. This section addresses the submission requirements at the time of sale of a unit and the seller is requesting a release from the Bulk LURA.

A. Sale of Low Income Units

When an owner requests the monitoring agency to release a unit for an anticipated sale of a unit to a LI (or VLI) household, the owner must provide the agency with:

- ◇ a completed Homebuyer Income Certification (HIC) establishing that the buyer is an income eligible household;
- ◇ a copy of the signed sales contract with the purchaser;
- ◇ a completed AHP Recapture LURA, signed by the owner and the buyer;
- ◇ payment of any processing fee required by the agency; and
- ◇ any other documentation required by the monitoring agency.

These are necessary to establish that the unit will be sold to an income eligible buyer according to the Bulk LURA.

GOOD PRACTICE: Owners should submit the four items above to their monitoring agency for review **no later than 14 days prior to final closing.**

If the items has been properly submitted and the proposed buyer meets the applicable LI limit, the agency will secure execution of the document by the FDIC, and will forward the executed document to the closing agent for the sale. The upon completion of the sale, as noted in C. below, the Bulk Sales LURA will be amended to remove the approved unit and reduce the Set-Aside to reflect the QU sale.

Properties sold to individual LI buyers will not be released from the requirements of the Condominium Bulk Sale LURA unless the AHP Recapture LURA has been

executed by the monitoring agency (or FDIC) and properly recorded at final closing.

B. Sales of Unrestricted Units

Before units can be sold to buyers who are not LI or VLI purchasers, owners must have a sufficient number of units to satisfy the occupancy requirements for the purchase. Owners can sell unrestricted units to buyers of any income as long as there are enough QUs and vacant rental units to meet the Total Set-Aside.

When selling unrestricted units, owners must submit a list of the remaining units under their control at the time they propose a sale, and request a release from the Condominium Bulk Sale LURA for that unit. If the owner has the necessary units to meet the property's occupancy requirements and has paid the processing fee to the state agency, the agency will prepare a release from the Condominium Bulk Sales LURA for the units to be sold. Removal of the unit from the Bulk Sales LURA will not reduce the Set-Aside requirement.

Precondition For Sale of Unrestricted Units			
Number of QUs Aside	+	Number of Vacant Units	≥ Total Set-Aside

If the owner is out of compliance with the occupancy requirements, the agency may not be compelled to execute a release until the owners restores the property to compliance.

C. Changes in the Rental Set-Aside

Units sold to qualified LI (and VLI) buyers reduce the number of units that must be held available for rental to Low Income households. When the agency receives a copy of the recorded Recapture LURA from the closing agent, the agency will amend the LURA to reduce the

required number of Low Income rental or sales units by the number of units sold to approved LI buyers.

8.5 ADMINISTRATIVE FEES

A. Monitoring Fees

The annual monitoring fee is determined by the same method used for multifamily rental properties, and is based on the number of QUs required by the LURA. Likewise, the additional administrative fee for non-compliance is set in the same way.

As the Set-Aside is reduced through the sale of units as noted above, the fee is also reduced for future years.

B. Processing Fee for Release from LURA

Agencies may also charge owners a reasonable fee for processing Recapture LURAs and requests to release unrestricted units from the provisions of the Condominium Bulk Sale LURA. Such a fee must be paid to the agency when the owner gives notice of a proposed sale and submits a Recapture LURA or request for a release.

Agencies will advise owners of the applicable fee for processing release requests.

COMPLIANCE PROCEDURES FOR SINGLE FAMILY BULK SALES TO PUBLIC AGENCIES AND NONPROFITS

9.1 OVERVIEW

This chapter applies only to owners who have purchased one-to-four unit AHP properties (hereafter referred to as “single family”) for rental or resale purposes under the LURA entitled "Sale of Single Family Properties to Public Agencies and Nonprofit Organizations," also referred to as the Single Family Bulk Sale LURA.

When operated as rental housing, these properties are subject to the provisions of the first six chapters of this manual, in accordance with Set-Aside provisions of the LURA.

This chapter summarizes the requirements governing the rental of such properties, the provisions governing the resale of such properties to individual homebuyers, and the administrative fees applicable to these purchases.

9.2 RENTAL OF ONE-TO-FOUR UNIT PROPERTIES

Leasing practices for one-to-four unit properties purchased under the Single Family Bulk Sale LURA are governed by occupancy requirements and rent restrictions comparable to those for AHP multifamily properties as described in previous chapters. Owners can follow the same basic AHP procedures used for leasing units in multifamily rental properties when renting units in these properties.

However, there are two important exceptions for one-to-four unit properties:

1. In contrast to the occupancy requirements for most AHP multifamily properties under which only a portion of the units are set aside for LI and VLI tenants, **100 percent** of these units are set aside for LI and VLI households.
2. There is **no VLI Set-Aside** applicable to these properties. Owners may rent all the units to LI tenants, or they may lease the units to a mix of LI and VLI households. However, even though there is no VLI Set-Aside requirement for single family properties,

QUs leased to VLI households are restricted to the AHP VLI rent limits. QUs leased to LI households must comply with the LI rent limits.

9.3 RESALE OF ONE-TO-FOUR UNIT PROPERTIES TO INDIVIDUAL HOMEBUYERS

FDIC anticipates that most units will eventually be sold to individual homebuyers. The Single Family LURA establishes that, when sold, all units must be purchased by LI or VLI homebuyers.

When selling such properties to individual homebuyers, a number of conditions apply.

- ◆ **Sales Requirement** -- All sales must be to eligible LI or VLI households. There is no requirement that owners have to sell some portion of the units to VLI buyers.
- ◆ **Homebuyer Income Certification** -- For any purchasers of units reserved to meet the Set-Aside, owners must obtain a written income certification from LI buyers documenting that their annual (gross) income as defined in Chapter 4 is within the applicable AHP income limit. The buyer's income must be verified by the owner using the procedures in Section 4.5. This verification is good for 90 days. Delays in completion of the sale may require updated HICs. Appendix I contains an FDIC-approved Homebuyer Income Certification (HIC) form and instructions.
- ◆ **Recapture LURA for Sales** -- For any units sold, owners must require the buyers to execute a LURA establishing the condition that the purchaser will retain ownership of the unit for a period of at least 12 months after the date of sale. The LURA also includes a provision allowing FDIC to recapture the profits from any resale of the unit by the homebuyer before the end of this 12-month period. A copy of this Recapture LURA is included in Appendix H.
- ◆ **Price Not Restricted for LI Sales** There is no ceiling restricting the price an owner can charge a LI buyer for a unit, or establishing affordability standards. The unit need only be purchased by an income eligible buyer. It is recommended that owners take into account the amount which a LI buyer can realistically afford, and that the lender(s) will assess affordability in the course of underwriting.

- ◆ **Notice to Agency of Property Sales** -- Owners must notify the monitoring agency of all pending sales and provide a copy of the sales contract and other items as described below for each property to be sold.
- ◆ **Pay Processing Fee to Agency** -- Owners must pay the monitoring agency a reasonable fee to process an AHP Recapture LURA and release the property from the Bulk LURA.

9.4 REQUIRED SUBMISSIONS PRIOR TO THE SALE OF INDIVIDUAL UNITS

Agencies will monitor owner compliance with the resale provisions of the Single Family Bulk Sale LURA, as well as the occupancy and rent requirements governing the rental of these units.

When an owner notifies an agency of the anticipated sale of a property to an eligible household (LI or VLI), the owner must provide the agency with:

- ◇ a completed Homebuyer Income Certification (HIC) verifying the buyer is an income eligible household;
- ◇ a copy of the signed sales contract with the purchaser;
- ◇ a completed AHP Recapture LURA, signed by the owner and the buyer;
- ◇ payment of any processing fee required by the agency; and
- ◇ any other documentation required by the monitoring agency.

These items are necessary to establish that the property will be sold to a qualified buyer.

GOOD PRACTICE: Owners should submit the four items above to their monitoring agency for review **no later than 14 days prior to final closing.**

If each of the items has been properly submitted and the proposed buyer meets the applicable income limits, the

agency will approve and forward the AHP Recapture LURA to FDIC for signature, and the executed document will be forwarded to the closing agent for the sale.

Properties sold to individual buyers will not be released from the requirements of the Single Family Bulk Sale LURA, unless the AHP Recapture LURA has been executed by the monitoring agency (or FDIC) and properly recorded at final closing.

9.5 ADMINISTRATIVE FEES

A. Monitoring Fees

The annual monitoring fee is charged for each property. The total fee is based on the number of properties that remain covered by the Single Family Bulk Sale LURA. The fee for future years is reduced for units sold in compliance with this chapter.

The additional administrative fee for non-compliance is also established based upon the number of units remaining in the Bulk Sale LURA.

B. Processing Fee for Release from LURA

Agencies may also charge owners a reasonable fee for processing Recapture LURAs to release properties sold to eligible buyers from the requirements of the bulk sale LURA. Such a fee must be paid to the agency when the owner gives notice of a proposed sale, and submits the Recapture LURA and other items for review.

Agencies will advise owners of the applicable processing fee.

[Management Company Letterhead]

RENTAL APPLICATION

The information collected below will be used to determine whether you qualify as a tenant. It will not be disclosed without your consent except to your employer(s) for verification of income and employment information to financial institutions for verification of assets, and as required and permitted by law. You do not have to provide the information, but if you fail to do so, your tenant application may be delayed or rejected.

1. Applicant's Name			Social Security No.	Home Phone ()
2. Present Street Address	City	State	Zip Code	No. of Years at Present Address
3. Former Street Address (If at present address for less than 2 yrs.)	City	State	Zip Code	No. of Years at Former Address
4. Names of Other Persons in Household				
5. Name and Address of Employer			Type of Business	Self employed? _Yes _No
Business Phone Number ()	Position/Title		No. of Yrs on Job	Years in this line of work
6. Name and Address of Previous Employer (if employed at present position less than 2 yrs.)			No. of Years With Previous Employer	Business Phone ()
<hr style="border: 2px solid black;"/>				
1. Co-Applicant's Name			Social Security No.	Home Phone ()
2. Present Street Address	City	State	Zip Code	No. of Years at Present Address
3. Former Street Address (If at present address for less than 2 yrs.)	City	State	Zip Code	No. of Years at Former Address
4. Name and Address of Employer			Type of business	Self-employed? _Yes _No
Business Phone Number ()	Position/Title		No. of Yrs on Job	Years in this line of work
5. Name and Address of Previous Employer (if employed at present position less than 2 yrs.)			No. of Years With Previous Employer	Business Phone ()

ANNUAL INCOME

Source	Applicant	Co-Applicant	Other Household Members 18 Years or Older	Total
Salary				
Overtime Pay				
Commissions				
Fees				
Tips				
Bonuses				
Interest and/or Dividends				
Net Income from Business				
Net Rental Income				
Social Security, Pensions, Retirement Funds etc., Received Periodically				
Unemployment Benefits				
Workers Compensation, etc.				
Alimony, Child Support				
Welfare Payments				
Other:				
TOTAL:				_____

Assets	Cash Value	Income from Assets	Name of Financial Institution	Account Number
Checking Account	\$	\$		
	\$	\$		
Savings	\$	\$		
	\$	\$		
Credit Union	\$	\$		
	\$	\$		
Mutual Funds	\$	\$		
Stocks/Bonds	\$	\$		
Other:	\$	\$		

(YOUR COMPANY LETTERHEAD)

TENANT RELEASE AND CONSENT

I/We _____, the undersigned hereby authorize

_____, to release without liability, information
(employer or other source)

regarding my/our employment, income, and/or assets to _____,
(owner or agent)

for purposes of verifying information provided as part of my/our apartment rental application.

INFORMATION COVERED

I/We understand that previous or current information regarding me/us may be needed. Verifications and inquiries that may be requested include, but are not limited to: personal identity; employment, income, and assets; medical or child care allowances. I/We understand that this authorization cannot be used to obtain any information about me/us that is not pertinent to my eligibility for and continued participation as a Qualified Tenant.

GROUPS OR INDIVIDUALS THAT MAY BE ASKED

The groups or individuals that may be asked to release the above information include, but are not limited to:

Past and Present Employers
Previous Landlords (including
Public Housing Agencies)
Support and Alimony Providers

Welfare Agencies
State Unemployment Agencies
Social Security Administration
Medical and Child Care Providers

Veterans Administration
Retirement Systems
Banks and other Financial
Institutions

CONDITIONS

I/We agree that a photocopy of this authorization may be used for the purposes stated above. The original of this authorization is on file and will stay in effect for a year and one month from the date signed. I/We understand I/we have a right to review this file and correct any information that I/we can prove is incorrect.

SIGNATURES

Head of Household	(Print Name)	Date
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Spouse	(Print Name)	Date
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Adult Member	(Print Name)	Date
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Adult Member	(Print Name)	Date
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NOTE: THIS GENERAL CONSENT MAY NOT BE USED TO REQUEST A COPY OF A TAX RETURN. IF A COPY OF A TAX RETURN IS NEEDED, IRS FORM 4506, "REQUEST FOR COPY OF TAX FORM" MUST BE PREPARED AND SIGNED SEPARATELY.

FDIC
AFFORDABLE HOUSING DISPOSITION PROGRAM (AHP)
GUIDE FOR DETERMINING ANNUAL INCOME

INTRODUCTION

Section 501(c) of the Financial Institutions Reform Recovery and Enforcement Act of 1989 (FIRREA), requires that owners of qualifying multifamily properties set aside a percentage of units in their property for lower income households, of which a portion must be held available for very low-income households. In addition, certain single family and condominium properties must be rented or sold to lower and, sometimes, very low-income households.

AHDP applies HUD's definition of "low" and "very low-income" to establish tenant eligibility as lower and very low-income households, respectively. Lower income households are those whose incomes do not exceed 80 percent of area median income as determined by the Secretary of HUD, with adjustments for family size. Very low-income households are defined as those whose incomes do not exceed 50 percent of area median income as determined by the Secretary of HUD, with adjustment for family size. AHDP uses the HUD-published figures for 80 percent and 50 percent of area median income.

This guide has been established to assist in calculating household income in order to determine eligibility under AHDP.

DEFINITION OF ANNUAL INCOME

Annual income is the anticipated gross income from all sources received by the head of household and each additional member of the household, including all net income derived from assets. Annual income is income that will be received during the 12 month period following the effective date of income certification/recertification.

DEFINITION OF HOUSEHOLD - The owner should define what constitutes a household. A commonly used definition is:

A household or family includes the applicant, co-applicant, and all other persons who will make the applicant's dwelling their primary residence for all or part of the next 12 months (excluding foster children or live-in aids).

HOW TO CONVERT INCOME TO ANNUAL AMOUNTS

1. To annualize full-time employment, multiply:
 - * hourly wages by 2,080 hours
 - * weekly wages by 52
 - * bi-weekly amounts by 26
 - * semi-monthly amounts by 24
 - * monthly payments by 12

2. To annualize income from other than full-time employment, multiply:
 - * hourly wages by the number of hours the family member expects to work annually
 - * average weekly amounts by the number of weeks the family member expects to work.

3. Use an annual wage without additional calculations. For example if a teacher is paid \$15,000, use this figure regardless of whether the payment is made in 12 monthly installments, 9 installments, or some other payment schedule.

GUIDELINES FOR DETERMINING ASSETS

ASSETS DISPOSED OF WITHIN TWO YEARS BEFORE DATE OF INCOME DETERMINATION - Use the following procedures in determining the value of disposed assets:

- (a) If the fair market value of the disposed assets exceeds the gross amount the family received by more than \$1,000, include the difference between the cash value and the amounts received. If the difference is less than \$1,000, ignore it.

Example: On 7/5/83, an elderly couple deeded their house to the daughter and the daughter paid them \$5,000 for it. Compute the cash value of the house as described under "valuing Assets" below, and count as an asset the difference between the cash value and \$5,000.

- (b) Do NOT consider assets disposed of for less than fair market value as a result of a foreclosure, bankruptcy, or a divorce or separation settlement.

VALUING ASSETS - In computing assets, owners must use the cash value of the asset -- the amount the family would receive if the asset were converted to cash. Cash value is the market value of the asset minus reasonable costs that were or would be incurred in selling or converting the asset to cash. Expenses which may be deducted include:

1. penalties for withdrawing funds before maturity;
2. broker/legal fees assessed to sell or convert the asset to cash; and
3. settlement costs for real estate transactions.

ASSETS OWNED JOINTLY - If assets are owned by more than one person, prorate the assets according to their percentage of ownership. If no percentage is specified or provided by State or local law, prorate the assets evenly among all owners.

ATTACHMENT A: INCOME INCLUSIONS

ATTACHMENT B: INCOME EXCLUSIONS

ATTACHMENT C: ASSET INCLUSIONS AND EXCLUSIONS

ATTACHMENT A
INCOME INCLUSIONS

Note: These definitions are based upon 1989 regulations. When future legislative changes are made to the definition of Annual Income, the change will be published in the Federal Register. Agencies will be given 60 days from the date of publication to implement the revised definition and advise owners of the changes.

- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- (2) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the Family;
- (3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as a deduction in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the Family. Where the Family has Net Family Assets in excess of \$5,000, Annual Income shall include the greater of the actual income derived from Net Family Assets or a percentage of the value of such Assets based on the current passbook savings rate, as determined by HUD; (See page F-5)
- (4) The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment;
- (5) Payments in lieu of earnings, such as unemployment, worker's compensation and severance pay (but see paragraph (3) under Income Exclusions);
- (6) Welfare Assistance. If the Welfare Assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the Welfare Assistance agency in accordance with the actual cost of shelter and utilities, the amount of Welfare Assistance income to be included as income shall consist of:
 - (i) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
 - (ii) The maximum amount that the Welfare Assistance agency could in fact allow the Family for shelter and utilities. If the Family's Welfare Assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage;

- (7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling;
- (8) All regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is head of the Family, spouse, or other person whose dependents are residing in the unit (but see paragraph (7) under Income Exclusions);
- (9) Special FDIC Inclusions: In the case of a full-time student living apart from his or her family, amounts paid directly to the student or to the educational institution by any other person (other than amounts excluded under paragraph 6 of the next section) for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of the student, plus amounts paid to or for the benefit of the student for rent and subsistence expenses.¹

¹ Item 9 is a Special RTC income inclusion and not a requirement of the HUD Section 8 Program.

ATTACHMENT B

INCOME EXCLUSIONS

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children;
- (3) Lump-sum additions to Family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (but see paragraph (5) of Income Inclusion);
- (4) Amounts received by the Family that are specifically for, or in reimbursement of, the cost of Medical Expenses for any Family member;
- (5) Income of a live-in aide;
- (6) Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran, for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of the student. Any amounts of such scholarships or payments to a veteran not used for the above purposes that is available for subsistence are to be included in income;
- (7) The special pay to a Family member serving in the Armed Forces who is exposed to hostile fire;
- (8)
 - (i) Amounts received under training programs funded by HUD;
 - (ii) Amounts received by a Disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS); or
 - (iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
- (9) Temporary, nonrecurring or sporadic income (including gifts); or
- (10) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the 1937 Act. The following is a list of types of income that qualify for that exclusion (9/27/89 regulations):
 - (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977;
 - (b) Payments to volunteers under the Domestic Volunteer Service Act of 1973 (employment through VISTA; Retired Senior Volunteer Program, Foster Grandparents Program, youthful offenders incarceration alternatives, senior companions);
 - (c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(a));
 - (d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 259e);
 - (e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));
 - (f) Payments received under programs funded in whole or in part under the Job Training Partnership Act;
 - (g) Income derived from the disposition of funds of the Grand River Band of Ottawa Indians;
 - (h) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims (25 U.S.C. 1407-1408) or from funds held in trust for an Indian tribe by the Secretary of Interior (25 U.S.C. 117);
 - (i) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965 including awards under the Federal work-study program or under the Bureau of Indian Affairs student assistance programs, that are made available to cover the costs of tuition fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of a student at an educational institution (20 U.S.C. 1087 uu); and
 - (j) Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(f)).
 - (k) Any earned income tax credit to the extent it exceeds income tax liability.
 - (l) Payments received after January 1, 1989 from the Agent Orange Settlement Fund or any other funds established pursuant to the settlement in the In Re Agent Orange product liability litigation, MDL No. 381 (E.D.N.Y)
 - (m) Payments received under the Maine Indian Claims Settlement Act of 1980.

ATTACHMENT C

ASSETS

A. ASSETS INCLUDE:

B. ASSETS DO NOT INCLUDE:

Amounts in savings and average six month balance in checking accounts.

2. Stocks, bonds, savings certificates, money market funds and other investment accounts.
3. Equity in real property or other capital investments. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and reasonable costs (such as broker fees) that would be incurred in selling the asset.
4. The cash value of trusts that are available to the household.
5. IRA, Keogh and similar retirement savings accounts, even though withdrawal would result in a penalty.
6. Contributions to company retirement/ pension funds that can be withdrawn without retiring or terminating employment.
7. Assets which, although owned by more than one person, allow unrestricted access by the applicant.
8. Lump sum receipts such as inheritances, capital gains, lottery winnings, insurance settlements, and other claims.
9. Personal property held as an investment such as gems, jewelry, coin collections antique cars, etc.
10. Assets disposed of for less than fair market value during two years preceding certification or recertification.

1. Necessary personal property, except as noted in A.9.
2. Interest in Indian trust lands.
3. Assets that are a part of an active business or farming operation.

NOTE: Rental properties are considered personal assets held as an investment rather than business assets unless real estate is the applicant's/tenant's main occupation.

4. Assets not accessible to the family and which provide no income for the family.
5. Vehicles especially equipped for the handicapped.
6. Equity in owner-occupied cooperatives and manufactured homes in which the family lives.

Count as income

1. Actual income from assets if total assets are \$5,000 or less;
2. If assets are more than \$5,000, the greater of
 - actual income from assets, or
 - total assets x passbook rate

[Management Agent Letterhead]

EMPLOYMENT VERIFICATION

To: _____

Date:

_____ has applied for residency/ is a resident at _____. As part of our processing, it is necessary that we obtain verification of his/her employment and anticipated GROSS annual income. The attached release and consent form authorizes the release of information regarding the applicant's employment and income.

Please complete the section below and return it in the enclosed self-addressed stamped envelope. (Please mail rather than have the above individual hand deliver.) Thank you in advance for your prompt attention.

Sincerely,

(Apartment Manager)

THE FOLLOWING TO BE COMPLETED BY EMPLOYER:

Anticipated Gross Income for the Next Twelve Months

Hourly	\$ _____	Weekly	\$ _____
No. of hours per week	_____		
Bi-weekly	\$ _____	Monthly	\$ _____
Overtime: Average per	\$ _____	\$ _____	
	\$ _____		
	Day	Week	Month

Tips, Commissions, Bonuses:
Average per \$ _____ Day \$ _____ Week \$ _____ Month \$ _____
Year

- or -

Total anticipated gross annual income for the next twelve months (including tips, bonuses or overtime if applicable) \$ _____.

Employer's Signature

Date

() _____
Title

Telephone

WARNING: Section 1001 of Title 18 of the U.S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction.

[Management Agent Letterhead]

ASSET VERIFICATION

Name and Address _____ of _____ Bank: _____

RE: _____ SSN: _____
Applicant/Tenant Name

Applicant/Tenant Address City, State Zip Code

The above person(s) has applied for tenancy/is a resident at _____ . As part of our processing we require verification of the household's income, expenses and other information related to eligibility. The individual has authorized below your release of the required information. The information you provide will be used only for the purpose of determining the household's eligibility for tenancy. We are required to complete our verification process in a short time period and would appreciate your prompt response. If you have any questions, please feel free to contact our office.

Permission _____ by: _____

(Applicant) (Date)

Please complete the section below and return it in the enclosed self-addressed stamped envelope. (Please mail rather than have the above individual hand deliver.) Thank you in advance for your prompt attention.

Sincerely,

(Apartment Manager)

TO BE COMPLETED BY INSTITUTION

CHECKING ACCOUNT

<u>Account Number(s)</u>	<u>Average 6 Month Balance(s)</u>	<u>Interest Rate, If Any</u>
_____ %	\$ _____	
_____ %	\$ _____	
_____ %	\$ _____	
_____ %		

SAVINGS ACCOUNT

<u>Account Number(s)</u>	<u>Present Account Balance(s)</u>	<u>Rate</u>	<u>Annual Interest Withdrawal Penalty</u>
_____	\$ _____	_____	% _____
_____	\$ _____	_____	% _____
_____	\$ _____	_____	% _____

CERTIFICATE OF DEPOSIT

<u>Account Number(s)</u>	<u>Present Account Balance(s)</u>	<u>Rate</u>	<u>Annual Interest Withdrawal Penalty</u>
_____	\$ _____	_____	% _____
_____	\$ _____	_____	% _____
_____	\$ _____	_____	% _____

TRUST

Value of Trust Fund Administered: \$ _____
 Anticipated Amount of Income to be earned by Trust over next 12 months: \$ _____

PROPERTY

Value of Equity in Real Property \$ _____

I certify that the above information is true and correct.

Name of Official

Title of Official

Name of Institution

Signature

Address

Date

City, State, Zip Code

Telephone Number

WARNING: Section 1001 of Title 18 of the U.S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction.

TENANT INCOME VERIFICATION FORM

Documentation of Telephone Verification

Tenant Name: _____ Date: _____
Address: _____

_____ has applied for residency/is a resident at
_____. This form documents employer's verification of his/her
employment and gross annual income.

INCOME REPORT BY:

Anticipated Gross Income for the Next Twelve Months

Hourly \$ _____ Weekly \$ _____
No. of hours per week _____

Bi-weekly \$ _____ Monthly \$ _____

Overtime: Average per \$ _____ \$ _____ \$ _____
Day Week Month

Tips, Commissions, Bonuses:
Average per \$ _____ \$ _____ \$ _____
\$ _____ Day Week Month
Year

- or -

Total anticipated gross annual income for the next twelve months (including tips, bonuses or overtime if applicable)

\$_____.

Name of Employer

Date and Time

Contact Person

(_____)_____
Telephone

Title

Management Staff (Signature)

WARNING: Section 1001 of Title 18 of the U.S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction.

**FDIC
AFFORDABLE HOUSING PROGRAM
TENANT INCOME CERTIFICATION**

PART I: SUMMARY OF HOUSEHOLD INCOME DATA

1. Name (Last, First) A. B. C. D.	2. Household A. Size B. VLI _ LI _ OI _	3. Check one: <input type="checkbox"/> Initial Certification <input type="checkbox"/> Recertification
---	---	---

A. Assets:

Household Member	Asset Description	Total Cash Value	Income from Assets
A.			
4. Total Net Value of Assets		4. \$.....	
5. Total Actual Asset Income			5. \$.....
6. If line 4 is greater than \$5,000, multiply line 4 by passbook savings rate and enter result here; otherwise, leave blank. Passbook savings rate = _____%			6. \$.....

B. Anticipated Annual Income:

Household Member	a. Wages/ Salaries	b. Benefits/ Pensions	c. Public Assistance	d. Other Income	e. Asset Income
A.					Enter the greater of lines 5 or 6 in box e.
B.					
C.					
D.					
7. Totals	a.	b.	c.	d.	e.

8. Enter total of items 7a. through 7e. This is <u>Annual Income</u>	8. \$.....
---	------------

PART II: TENANT CERTIFICATION

I/We certify that the information presented in Part I of this form is true and complete to the best of my/our knowledge and belief. I/We consent to the disclosure of such information to FDIC and/or the agency designated to monitor AHP program compliance. I/We understand that this certification is a part of the application process and does not guarantee occupancy.

 (SIGNATURE - HEAD OF HOUSEHOLD) DATE _____

 (SIGNATURE - SPOUSE/CO-HEAD OF HOUSEHOLD) DATE _____

PART III OWNER/AGENT CERTIFICATION

Based on the income information provided by the household and verified by me or my authorized agent, I certify that the household identified above is a(n):

- Very Low-Income (VLI) Household based on the current applicable definitions published by the U.S. Department of Housing and Urban Development.
- Lower Income (LI) Household based on the current applicable definitions of a low-income household published by the U.S. Department of Housing and Urban Development, OR qualifies as a LI household because the household income upon recertification is not greater than 140 percent of the current applicable lower income limit.
- Over-Income (OI) Household which exceeds the income standards for low-income households published by the U.S. Department of Housing and Urban Development, AND whose income is greater than 140 percent of the current applicable lower income limit.

 (OWNER/AUTHORIZED AGENT) DATE _____

PART IV: TO BE COMPLETED BY MANAGEMENT STAFF

Property:	Contract Rent: \$
Apt. #: # BR:	Prepared by:
Lease Date:	Applicable LI Limit:
Recertification Date:	Applicable VLI Limit:

WARNING: Section 1001 of Title 18 of the U.S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction.

**FDIC
TENANT INCOME CERTIFICATION**

Instructions

GENERAL. This form is to be completed for all initial certifications and recertification of households who are designated to meet the Total and VLI Set-Asides for AHDP properties (VLI and LI tenants)

PART I. SUMMARY OF HOUSEHOLD INCOME DATA

- | | | |
|-----------------|-----------------------------------|--|
| <u>Item 1.</u> | Name | List all household members who will be occupying this unit. |
| <u>Item 2A.</u> | Household Size | Identify the total number of persons occupying the unit. |
| <u>Item 2B.</u> | Household Designation | Indicate the income category as designated in Part III: Very Low-Income (VLI); Lower Income (LI); or Over-Income (OI). |
| <u>Item 3.</u> | Certification/
Recertification | Check whether the action being processed is an initial certification or an annual recertification. |

A. Assets:

As prescribed in the Compliance Manual, verify and list the assets owned by this household. Indicate who owns the asset by listing the corresponding family member letter used in Item #1. Describe the asset; indicate the current market value; and estimate the income from the asset.

If the number of assets exceed the lines available, use additional sheets. Reference the additional sheets and include the totals for Cash Value and Income from Assets from these sheets as a single line.

- | | | |
|----------------|-------------------------------|---|
| <u>Item 4.</u> | Total Net Family Assets | Enter the total cash value of all of the assets in this column. |
| <u>Item 5.</u> | Total Actual Asset
Income | Provide the total actual income anticipated from the assets listed. |
| <u>Item 6.</u> | Imputed Income From
Assets | If the total in item 4 exceeds \$5,000, multiply line 4 by the HUD approved passbook savings rate. To obtain up-to-date information on the passbook rate in use, contact the monitoring agency. |

B. Anticipated Annual Income

As prescribed in the Compliance Manual, verify and list the gross amount of income anticipated by this household. Indicate who will be receiving this income by listing the corresponding family member letter used in Item #1 and indicate the gross amount in the appropriate column.

If the number of household members with income exceeds the lines available, use additional sheets. Reference the additional sheets and include the totals for each type of income on the open line.

Item 7. Total income, a - e

Line 7, a - e, enter total income by source, including assets.

Item 8. Annual income

This is the total annual income of this household. Compare to the applicable AHP income limits to determine eligibility.

PART II TENANT CERTIFICATION

The adult family members must sign Part II certifying the accuracy and completeness of the information provided in Part I of this form.

PART III OWNER/AGENT CERTIFICATION

Indicate the appropriate income designation (e.g., Very Low-Income; Lower Income; or Over-Income (for recertified tenants only, income exceeding 140% of lower income limits). Agents must sign and date the certification.

PART IV ADDITIONAL INFORMATION

Fill in the appropriate information.

**FDIC
MULTIFAMILY AFFORDABLE HOUSING
COMPLIANCE REPORT (continued)**

**FDIC MULTIFAMILY AFFORDABLE HOUSING PROGRAM
COMPLIANCE REPORT**

PART A -- COMPLIANCE REPORT SUMMARY

Date: _____

Period: _____ / _____ to _____ / _____
mo. yr. mo. yr.

Property Name: _____ Property ID# _____

Street Address: _____

City, State, Zip: _____

Owner: _____ Phone: _____ - _____
(area)

Manager/Contact: _____ Phone: _____ - _____
(area)

PROPERTY SUMMARY						Agency Use Only
UNIT TYPE	Number of Units					Compliance Status (Total ≥ Req.)
	Occupied	Vacant	Over Income	Total	Required	
1. Lower Income - QUs						
2. Very Low-Income - QUs						<input type="checkbox"/> Yes <input type="checkbox"/> No
3. Total Qualifying Units						<input type="checkbox"/> Yes <input type="checkbox"/> No
4. Unrestricted Units						
5. TOTAL ALL UNITS						
Percent				100%		

FDIC
MULTIFAMILY AFFORDABLE HOUSING
COMPLIANCE REPORT (continued)

I/We (owner) relied in good faith upon information supplied by the occupants and verified the information provided. I/We certify that data presented in this report is accurate to the best of our knowledge.

Signature (Preparer)

Signature (Managing Owner)

Date

of pages attached

Attachments: Part B - Unit Status Report Forms

Tenant Income Certifications (TICs)

**FDIC
MULTIFAMILY AFFORDABLE HOUSING
COMPLIANCE REPORT (continued)**

**FDIC
MULTIFAMILY AFFORDABLE HOUSING
COMPLIANCE REPORT**

The Compliance Report includes two parts. Part A is a summary of tenant information and provides a picture of how the property is meeting its affordable housing set-aside requirements. Part B is a unit-by-unit listing of the project's occupancy and rent structure.

During the Pre-Compliance period the Compliance Report is submitted monthly. Once a development achieves compliance with the Total and Very Low-Income Set-Asides specified in the LURA, reports are submitted annually. Agencies may require more frequent submission of reports as indicated in the compliance manual.

Attach copies of all Tenant Income Certifications (TICs) executed during the period of this report. Please include initial certifications as well as recertifications.

**Part A - Compliance Report
Summary**

The Compliance Report Summary provides a snapshot picture of a project's occupancy and the extent to which the required set-asides have been met. The summary must reflect the same time period and the occupancy circumstances detailed in Part B - Unit Status Report.

INSTRUCTIONS

Date	Indicate the date this report was completed.
Reporting Period	Indicate the reporting period for this report. This period is prescribed by the monitoring agency.
Property Name	Identify the property's name. If there is no name, simply enter the street address.
Identification Number	If applicable, provide the identification number assigned by the monitoring agency.
Street Address and City	Provide the street address of the property as well as the city, state, and zip code.

**FDIC
MULTIFAMILY AFFORDABLE HOUSING
COMPLIANCE REPORT (continued)**

Owner	Indicate the owner as recorded in the LURA and provide the phone number.
Manager/contact	Indicate the person who has completed this report, or a contact person if clarification should be necessary. Include the phone number for this person.
Lower Income	From the Unit Status Report, provide the total number of qualified units occupied by eligible lower income tenants; the total number of units being held available for occupancy by lower income tenants; the total number of units occupied by tenants previously lower income but now recertified as over-income; and the total of the previous three items.
Very Low-Income	From the Unit Status Report, provide the total number of qualified units occupied by eligible very low-income tenants; the total number of units being held available for occupancy by very low-income tenants; the total number of units occupied by tenants previously very low-income but now recertified as over-income; the total of the previous three items. Enter the required number of VLI units as indicated in the LURA.
Total Qualifying Units	Total occupied QUs (LI plus VLI); total vacant QUs (LI plus VLI); total of previous two items; required total number of set-aside units as designated in the LURA.
Unrestricted Units	Enter the number of occupied and vacant units <u>not</u> restricted by any set-asides.
Total All Units	Provide the total of all occupied and vacant units.
Percent	Enter the percent of units occupied and vacant.

**FDIC
MULTIFAMILY AFFORDABLE HOUSING
COMPLIANCE REPORT (continued)**

Part B - Unit Status Report

Instructions

	Reporting Period	The Reporting Period for the Unit Status Report must match the period for the Summary Report.
<u>Item 1.</u>	Name of Property	Indicate the name of the property, or address if there is no name.
<u>Item 2.</u>	Property Identification Number	If applicable, indicate the number assigned by the monitoring agency.
A.	Building Address	Street and building address if project includes more than one building.
B.	Unit Number	Number of unit being reported.
C.	Tenant Name	Indicate name/names of head of household. Enter "0" if the unit is not under lease or otherwise vacant.
D.	The number of bedrooms	Indicate the total number of bedrooms in this unit. If it is an efficiency indicate "0".
E.	The number of persons	Indicate the total number of persons in this household. Write "0" if the unit is vacant.
F.	Date of Lease	Indicate the effective lease date for each occupied unit. For vacant units, list the move-out date for the most recent tenant.
G.	Unit designation	For each unit, indicate whether it is: 1 = Very Low-Income Qualified Unit. 2 = Lower Income Qualified Unit. 3 = Over Income - VLI Unit meaning the tenant's income formerly qualified as

**FDIC
MULTIFAMILY AFFORDABLE HOUSING
COMPLIANCE REPORT (continued)**

VLI, but now exceeds 140% of the LI limit.

4 = Over Income - LI Unit meaning the tenant's income formerly qualified as LI, but now exceeds 140% of the LI limit.

5 = Unrestricted unit, meaning the unit is not counted as a LI or VLI QU.

**Provide the following information
for Qualifying Units only.**

H. Annual (Gross) Income

Indicate the household's annual (gross) income as reported on the most recent TIC form.

**FDIC
MULTIFAMILY AFFORDABLE HOUSING
COMPLIANCE REPORT (continued)**

- | | | |
|----|-------------------------------------|---|
| I. | Maximum Annual Eligible Income | Indicate the maximum annual (gross) income that was permitted at the time of income certification/ recertification. |
| J. | Monthly Unit Rent | Indicate the monthly unit rent. |
| K. | Maximum AHP rent | Indicate the maximum allowable rent permitted at the time the lease was signed. |
| L. | Date of Last Income Recertification | Indicate the date of the last income certification, if applicable. In most instances the date will be the anniversary of the lease. |

OWNERS CERTIFICATION OF PROGRAM COMPLIANCE

TO: _____
Name of Monitoring Agency

Address

FROM: _____
Owner Name

Project Name

Address

FDIC /State Agency Identification Number

Certification due date

As the owner of the above referenced development, I am hereby certifying that I have met all terms and conditions of the Land Use Restriction Agreement (LURA) dated _____ for this property. This certification is due on the anniversary of the date the LURA was recorded, or upon another annual date as the FDIC or the Agency prescribes. Including but not limited to:

- Meeting the total set-aside and the minimum set-aside requirements of the LURA by leasing to qualified tenants.
- Determine and verify income of all qualified tenants.
- Lease units in accordance with all occupancy requirements.
- Comply with the FDIC rent limitations for all qualified units.
- Satisfy the lease provisions for the LURA.
- Submit accurate and timely reports to the monitoring agency.
- Compensate monitoring agency for all administrative fees allowed by the LURA.

This Certification is made under penalty of perjury.

OWNER

DATE

Should it be determined that the owner is in violation of this certification, the monitoring agency will promptly notify the FDIC or its successors.

OWNERS' MANUAL

APPENDIX H

EXHIBIT H

RESOLUTION TRUST CORPORATION
AFFORDABLE HOUSING DISPOSITION PROGRAM

LAND USE RESTRICTION AGREEMENT:
PURCHASE OF SINGLE-FAMILY RESIDENCE OR CONDOMINIUM
BY RESIDENT HOUSEHOLD

ATTENTION: THE DEED OF CONVEYANCE MUST STATE THAT THE PROPERTY IS SUBJECT TO THIS AGREEMENT, AND THIS DOCUMENT MUST BE RECORDED IMMEDIATELY FOLLOWING THE RECORDATION OF THE DEED IN THE LAND RECORDS OF THE JURISDICTION IN WHICH THE PROPERTY IS LOCATED.

This LAND USE RESTRICTION AGREEMENT (the "Agreement") is entered into as of the _____ day of _____, _____, by and among

_____, (the "Buyer"); _____ (the "Seller"); and the RESOLUTION TRUST CORPORATION, acting in its capacity as Receiver/Conservator of _____, (the "RTC"), and their respective successors and assigns, with respect to certain real property and the improvements thereon, located at _____, and having the legal description set forth on Exhibit A hereto ("Property").

The parties, intending to be lawfully bound, for good and valuable consideration, the receipt of which is hereby acknowledged, do hereby agree as follows:

1. **Termination.**

a. This Agreement shall terminate automatically, without further action by either the Buyer or the RTC, at 11:59 p.m. on the _____ day of _____, _____ (the "Termination Date"), which is the date one (1) year after the date the Buyer acquired title to the Property.

b. This Agreement shall terminate prior to the Termination Date, without further action by either the Buyer or the RTC, only on such date that (i) a termination statement or a release of this Agreement, executed by the RTC, is recorded by the Buyer in the land records of the jurisdiction in which the Property is located; (ii) the Property is transferred pursuant to a foreclosure proceeding instituted by a Mortgagee (as defined below) that extinguishes the right, title and interest of the Buyer in the Property; (iii) a deed

in lieu of foreclosure is executed by the Buyer to a Mortgagee and recorded in the land records of the jurisdiction in which the Property is located; or (iv) a mortgage insured by the U.S. Department of Housing and Urban Development ("HUD") is assigned to HUD.

c. For purposes of this Agreement, "Mortgagee" shall mean (i) a federally insured financial institution; or (ii) an agency or corporation in the business of making home mortgage loans that has made a loan to the Buyer, secured by a first or second lien on the Property, for the purpose of financing the acquisition of, or the making of improvements to, the Property.

2. **Buyer's Intention To Occupy the Property for Twelve (12) Months.**

The Buyer does hereby certify to the RTC that the Buyer intends to occupy the Property for at least twelve (12) months from the date of this Agreement.

3. **Recapture Requirement.**

a. If the Buyer, prior to the Termination Date, (i) enters into a contract with another party that results in the transfer or conveyance of his/her interest in the Property or (ii) transfers or conveys his/her interest in the Property, for payment of money, the RTC shall recapture seventy-five percent (75%) of the amount of any proceeds from the resale that exceeds the sum of (A) the original sales price for the acquisition of the Property by the Buyer, (B) the reasonable and customary closing costs incurred by the Buyer in connection with said acquisition (together, (A) and (B) total _____ Dollars (\$ _____)), plus (C) the actual cost of any improvements to the Property made after the date of the Buyer's acquisition of the Property.

b. For purposes of this Agreement, "actual cost of any improvements" shall mean such costs incurred and paid by the Buyer as a result of repairs or other physical improvements performed on the Property that are evidenced through invoices, receipts and like documents.

4. **Waiver of the Recapture Requirement.** The RTC, in its sole discretion, may waive said recapture requirement only for good cause shown, which may include any necessary relocation of the Buyer. In the event the Buyer desires to obtain a waiver of said recapture requirement, the Buyer must notify the RTC, in writing, at the address set forth below, setting forth the reasons for such waiver request. The Buyer shall include a release of this Agreement, in recordable form, prepared at the Buyer's sole expense, with his/her waiver request. After receipt of the Buyer's waiver request, the RTC shall have sixty (60) days to either grant or deny the request; in the event that the waiver request is granted, the RTC shall execute the release of this Agreement, return said release to the Buyer and, upon the

transfer of the Property, the Buyer shall record the release, at his/her sole expense, in the land records of the jurisdiction in which the Property is located.

5. **Sale Prior to Termination Date.** In the event that the Buyer intends to transfer or convey his/her interest in the Property prior to the Termination Date, without a waiver of said recapture requirement, the Buyer must notify the RTC, in writing and at least sixty (60) days prior to said transfer or conveyance, at the address set forth below, of his/her intention and include the name and address of the responsible closing agent, to be notified as described below. The Buyer shall include a copy of this Agreement, copies of invoices or other written evidence of the actual cost of any improvements (in accordance with Section 3 above), and a release of this Agreement, in recordable form, prepared at the Buyer's sole expense, with said notification. The RTC shall execute the release of this Agreement and send it to said closing agent with instructions as to the calculation and payment of the recapture amount set forth in Section 3a. above. The closing agent shall record the release, at the Buyer's sole expense, in the land records of the jurisdiction in which the Property is located.

6. **Notice.** All correspondence to the RTC shall be sent to the RTC at the following address: Resolution Trust Corporation, 801 Seventeenth Street, N.W., Washington, D.C. 20434-0001, Attention: Director, Affordable Housing Disposition Program.

7. **Release of Existing Land Use Restriction Agreement.** The Property is subject to that certain Land Use Restriction Agreement between the RTC and RTC recorded among the land records of _____ County, _____, in [Book] _____ at [Page] _____, (the "LURA"). The parties agree that, upon due execution and recordation of this Agreement, the LURA shall be terminated and released, solely with respect to the Property, without the necessity of further action by any party.

IN WITNESS WHEREOF, the parties hereto have executed this Land Use Restriction Agreement as of the date first above written.

BUYER

By: _____
Name (print): _____

SELLER

By: _____

Name (print): _____

Title: _____

RESOLUTION TRUST CORPORATION,
as Receiver/Conservator (strike one)

for: _____

By: _____

Name (print): _____

Title: _____

[ADD APPROPRIATE ACKNOWLEDGEMENTS FOR BUYER, SELLER, AND RTC]

EXHIBIT A TO
LAND USE RESTRICTION AGREEMENT:
PURCHASE OF SINGLE-FAMILY RESIDENCE OR CONDOMINIUM
BY RESIDENT HOUSEHOLD

LEGAL DESCRIPTION

EXHIBIT C

RESOLUTION TRUST CORPORATION
AFFORDABLE HOUSING DISPOSITION PROGRAM

LAND USE RESTRICTION AGREEMENT:
PURCHASE OF SINGLE-FAMILY RESIDENCE OR CONDOMINIUM
BY QUALIFYING HOUSEHOLD

ATTENTION: THE DEED OF CONVEYANCE MUST STATE THAT THE PROPERTY IS SUBJECT TO THIS AGREEMENT, AND THIS DOCUMENT MUST BE RECORDED IMMEDIATELY FOLLOWING THE RECORDATION OF THE DEED IN THE LAND RECORDS OF THE JURISDICTION IN WHICH THE PROPERTY IS LOCATED.

This LAND USE RESTRICTION AGREEMENT (the "Agreement") is entered into as of the _____ day of _____ by and among (the "Buyer"); _____ (the "Seller"); and the RESOLUTION TRUST CORPORATION, acting in its capacity as Receiver/Conservator of _____, (the "RTC"), and their respective successors and assigns, with respect to certain real property and the improvements thereon, located at

_____ and having the legal description set forth on Exhibit A hereto (the "Property").

The parties, intending to be lawfully bound, for good and valuable consideration, the receipt of which is hereby acknowledged, do hereby agree as follows:

1. **Termination.**

a. This Agreement shall terminate automatically, without further action by either the Buyer or the Seller, at 11:59 p.m. on the day of _____, _____ (the "Termination Date"), which is the date one (1) year after the date the Buyer acquired title to the Property.

b. This Agreement shall terminate prior to the Termination Date, without further action by either the Buyer or the RTC, only on such date that (i) a termination statement or a release of this Agreement, executed by the RTC, is recorded by the Buyer in the land records of the jurisdiction in which the Property is located; (ii) the Property is transferred pursuant to a foreclosure proceeding instituted by a Mortgagee (as defined below) that extinguishes the right, title and, interest of the Buyer in the Property; (iii) a deed

in lieu of foreclosure is executed by the Buyer to a Mortgagee and recorded in the land records of the jurisdiction in which the Property is located; or (iv) a mortgage insured by the U.S. Department of Housing and Urban Development ("HUD") is assigned to HUD.

c. For purposes of this Agreement, "Mortgagee" shall mean (i) a federally insured financial institution; or (ii) an agency or corporation in the business of making home mortgage loans that has made a loan to the Buyer, secured by a first or second lien on the Property, for the purpose of financing the acquisition of, or the making of improvements to, the Property.

2. **Buyer's Intention to Occupy the Property as its Principal Residence.** The Buyer does hereby certify to the Seller that the Buyer intends to occupy the Property as the Buyer's principal residence for at least twelve (12) months from the date of this Agreement.

3. **Recapture Requirement.**

a. If the Buyer, prior to the Termination Date, (i) enters into a contract with another party that results in the transfer or conveyance of his/her interest in the Property or (ii) transfers or conveys his/her interest in the Property, for payment of money, the RTC shall recapture seventy-five percent (75%) of the amount of any proceeds from the resale that exceeds the sum of (A) the original sales price for the acquisition of the Property by the Buyer, (B) the reasonable and customary closing costs incurred by the Buyer in connection with said acquisition (together, (A) and (B) total _____ Dollars (\$ _____)), plus (C) the actual cost of any improvements to the Property made after the date of the Buyer's acquisition of the Property.

b. For purposes of this Agreement, "actual cost of any improvements" shall mean such costs incurred and paid by the Buyer as a result of repairs or other physical improvements performed on the Property that are evidenced through invoices, receipts and like documents.

4. **Waiver of the Recapture Requirement.** The RTC, in its sole discretion, may waive said recapture requirement only for good cause shown, which may include any necessary relocation of the Buyer. In the event the Buyer desires to obtain a waiver of said recapture requirement, the Buyer must notify the RTC, in writing, at the address set forth below, setting forth the reasons for such waiver request. The Buyer shall include a release of this Agreement, in recordable form, prepared at the Buyer's sole expense, with his/her waiver request. After receipt of the Buyer's waiver request, the RTC shall have sixty (60) days to either grant or deny the request; in the event

that the waiver request is granted, the RTC shall execute the release of this Agreement, return said release to the Buyer, and, upon the transfer of the Property, the Buyer shall record the release, at his/her sole expense, in the land records of the jurisdiction in which the Property is located.

5. **Sale Prior to Termination Date.** In the event that the Buyer intends to transfer or convey his/her interest in the Property prior to the Termination Date, without a waiver of said recapture requirement, the Buyer must notify the RTC, in writing and at least sixty (60) days prior to said transfer or conveyance, at the address set forth below, of his/her intention and include the name and address of the responsible closing agent, to be notified as described below. The Buyer shall include a copy of this Agreement, copies of invoices or other written evidence of the actual cost of any improvements (in accordance with Section 3 above), and a release of this Agreement, in recordable form, prepared at the Buyer's sole expense, with said notification. The RTC shall execute the release of this Agreement and send it to said closing agent with instructions as to the calculation and payment of the recapture amount set forth in Section 3a. above. The closing agent shall record the release, at the Buyer's sole expense, in the land records of the jurisdiction in which the Property is located.

6. **Notice.** All correspondence to the RTC shall be sent to the RTC at the following address: Resolution Trust Corporation, 801 Seventeenth Street, N.W., Washington, D.C. 20434-0001, Attention: Director, Affordable Housing Disposition Program.

7. **Release of Existing Land Use Restriction Agreement.** The Property is subject to that certain Land Use Restriction Agreement between the RTC and Seller recorded among the land records of _____ County, _____, in [Book] _____ at [Page] _____, (the "LURA"). The parties agree that, upon due execution and recordation of this Agreement, the LURA shall be terminated and released, solely with respect to the Property, without the necessity of further action by any party.

IN WITNESS WHEREOF, the parties hereto have executed this Land Use Restriction Agreement as of the date first above written.

BUYER

By: _____
Name (print): _____

SELLER

By: _____
Name (print): _____
Title: _____

RESOLUTION TRUST CORPORATION,
as Receiver/Conservator (strike one)
for: _____

By: _____
Name (print): _____
Title: _____

[ADD APPROPRIATE ACKNOWLEDGEMENTS FOR BUYER, SELLER, AND RTC]

EXHIBIT A TO
LAND USE RESTRICTION AGREEMENT:
PURCHASE OF SINGLE-FAMILY RESIDENCE OR CONDOMINIUM
BY RESIDENT HOUSEHOLD

LEGAL DESCRIPTION

**FDIC
MULTIFAMILY AFFORDABLE HOUSING
COMPLIANCE REPORT (continued)**

**FDIC
HOMEBUYER INCOME CERTIFICATION**

Instructions

GENERAL. This form is to be completed by LI or VLI buyers of individual AHP condominium units or single family properties controlled by a bulk sale LURA.

PART I. SUMMARY OF HOUSEHOLD INCOME DATA

- | | | |
|----------------|------------------|--|
| <u>Item 1.</u> | Name | List the names of all household members who will be occupying this unit. |
| <u>Item 2.</u> | Household Size | Identify the total number of persons occupying the unit. |
| <u>Item 3.</u> | Household Income | Check the appropriate income category: Very Low-Income (VLI) or Lower Income (LI). |

A. Assets:

As prescribed in the Compliance Manual, verify and list the assets owned by this household. Indicate who owns the asset by listing the corresponding family member letter used in Item #1. Describe the asset; indicate the current market value; and estimate the income from the asset. Do not include as an asset the value of the unit being purchased.

If the number of assets exceed the lines available, use additional sheets. Reference the additional sheets and include the totals for Cash Value and Income from Assets from these sheets as a single line.

- | | | |
|----------------|----------------------------|--|
| <u>Item 4.</u> | Total Net Family Assets | Enter the total cash value of all of the assets in this column. |
| <u>Item 5.</u> | Total Actual Asset Income | Provide the total actual income anticipated from the assets listed. |
| <u>Item 6.</u> | Imputed Income From Assets | If the total in item 4 exceeds \$5,000, multiply line 4 by the HUD approved passbook savings rate. To obtain up-to-date information on the passbook rate in use contact the monitoring agency. |

**FDIC
MULTIFAMILY AFFORDABLE HOUSING
COMPLIANCE REPORT (continued)**

B. Anticipated Annual Income

As prescribed in the Compliance Manual, verify and list the gross amount of income anticipated by this household. Indicate who will be receiving this income by listing the corresponding family member letter used in Item #1 and indicate the gross amount in the appropriate column.

If the number of household members with income exceeds the lines available, use additional sheets. Reference the additional sheets and include the totals for each type of income on the open line.

Item 7. Total income, a - e

Line 7, a - e, enter total income by source, including assets.

Item 8. Annual income

This is the total annual income of this household. Compare to the applicable AHDP income limit to determine eligibility.

PART II HOMEBUYER CERTIFICATION

The adult family members must sign Part II certifying the accuracy and completeness of the information provided on Part I of this form.

PART III OWNER/AGENT CERTIFICATION

Check the appropriate income designation: Very Low-Income (VLI) or Lower Income (LI). Agents must sign and date the certification.

PART IV ADDITIONAL INFORMATION

Fill in the appropriate information, as needed.