

CHAPTER 3

MONITORING OWNER COMPLIANCE

This chapter describes procedures agencies should follow in monitoring owner compliance with the requirements for AHP properties. Four phases of monitoring agency activity for properties are introduced, along with additional responsibilities of monitoring agencies. As is discussed in 6.3, FDIC has developed and distributed the **AHP Compliance Monitoring System (CMS) software**. Although this Chapter does specifically refer to CMS, it is expected that agencies will utilize this tool wherever possible.

3.1 OVERVIEW

An owner's compliance responsibilities begin at final closing of an AHP purchase. Monitoring agency activities fall into four distinct phases (each described in later sections of this chapter):

1. Initial Agency/Owner Contact
2. Property Closing Activities
3. Pre-Compliance Activities
4. Ongoing Compliance and Monitoring Activities

As noted in Chapter 1, owners may purchase multifamily properties individually or in bulk. The procedures presented in the following sections apply to monitoring properties in rental use under either type of purchase.

Because most properties purchased in a bulk transaction have their own LURA with occupancy requirements specific to the property, agency staff can monitor these properties in the same way they monitor an individual sale.⁹ Additional instructions for monitoring condominium properties sold in bulk are found in Chapter 7, and guidance regarding bulk purchasers of single family properties is in Chapter 8.

3.2 INITIAL AGENCY/OWNER CONTACT

⁹ RTC made a very limited number of special bulk sales where a Master LURA allows flexibility in how the owner meets the occupancy requirements among the properties in the purchase. If FDIC has informed agency staff that they will need to monitor such a purchase, the special instructions in Appendix J should be followed.

A monitoring agency's first contact with a property owner and management agent generally occurs prior to final closing.¹⁰ During this period, monitoring agencies should provide assistance to help buyers become familiar with the compliance procedures for AHP properties and work with FDIC to make preparations for monitoring these properties. A monitoring agency's primary responsibilities during the period prior to property closing include:

Key Initial Contact Activities

- Distribute compliance information materials
- Offer compliance training
- Plan future monitoring activities

A. Distributing Compliance Information Materials

Approximately 30 days prior to final closing, FDIC will contact the agency and provide the names and addresses of anticipated purchasers of AHP properties. At this point, the agency should contact the prospective owners, provide a compliance information packet and schedule a time to review the program's compliance procedures with the owner.

The compliance packet given to owners should contain the following materials.

Compliance Materials

- ◇ Start-Up Instructions for New Owners
- ◇ AHP Owner's Compliance Manual
- ◇ Current income limits and maximum rents
- ◇ Monitoring Agency Fact Sheet

¹⁰ In some cases, property sales were completed before the date an agency signed its monitoring agreement with FDIC. Section 3.3.D below describes the procedures for establishing initial contact with these owners and preparing to monitor their properties.

The state monitoring agency may charge a nominal fee to cover the cost of printing and forwarding the materials.

Start-Up Instructions should highlight procedures owners must follow once they have closed on a property, identify program materials (e.g., Owner's Compliance Manual) where descriptions of these procedures can be found, and describe the administrative requirements owners will need to meet for compliance. For example, agencies may want to include the standard schedule owners will need to follow in submitting their monthly compliance reports.

The AHP Owner's Compliance Manual, together with the current income limits and maximum rents, will help owners familiarize themselves with program requirements and procedures they will need to know once the sale of the property is final. If the owner has access to a computer, he should be provided with a copy of ODEP software and encouraged to prepare all reports electronically. Monitoring agencies should develop and distribute a fact sheet that introduces the agency, describes its role as monitor of AHP properties, and provides important staff and telephone contacts for the agency.

B. Introducing AHP Compliance Procedures

After forwarding the compliance packet to prospective owners, agencies are encouraged to schedule and conduct an initial meeting to discuss the procedures AHP owners need to follow. This meeting is an excellent opportunity for the monitoring agency to open lines of communication with the owner and the management agent, as well as to facilitate a review of the requirements as outlined in the manual. Depending on the resources of the monitoring agency, this task might be performed as part of a group training session or, in states with a limited number of FDIC properties, this may be accomplished in a one-to-one meeting with the responsible parties.

C. Planning Future Monitoring Activities

As FDIC offers AHP properties for sale, it will provide monitoring agencies with basic property data given to prospective buyers, including:

- ◇ location;
- ◇ total number of units;
- ◇ number of units by bedroom size; and
- ◇ an FDIC contact person.

This information can help the agency plan its future monitoring activities.

3.3 PROPERTY CLOSING ACTIVITIES

A number of key activities need to take place at or after property closing:

Key Property Closing Activities

- ◇ Agency receives key items from property closing
- ◇ Agency initiates compliance reporting schedule
- ◇ Agency creates a property monitoring file

A. Key Items from Property Closing

FDIC will provide the monitoring agency with the following items assembled at property closing:

- ◇ a copy of the property's LURA;
- ◇ specific data on the buyer and property;
- ◇ the most recently available listing of occupied units; and
- ◇ the first year's monitoring fee from the owner.

FDIC will transmit these items to the agency within five business days after the date of closing.

B. Establish the Compliance Reporting Schedule

Once a monitoring agency has received notice that a property has closed, monitoring staff should establish the schedule for the owner to submit monthly compliance reports. The schedule should specify the starting and ending date of the reporting period, as well as the deadline for submitting the report to the agency.

For example, an agency might set a reporting period that runs from the 16th day of the current month to the 15th day of the next month, with the report due to the agency within 10 days after the end of the period (the 25th).

C. Create a Property Monitoring File

To assure that adequate records will be kept regarding a property and its compliance status, monitoring agencies should establish a monitoring file for all new properties. The completion of this task should occur in a timely manner. The basic monitoring file contents should include:

Property Monitoring File Contents

- ◇ Property LURA

- ◇ Property Data
- ◇ Owner and manager information
- ◇ Unit listings at closing
- ◇ Owner compliance reports
- ◇ Correspondence regarding the property
- ◇ Notices of non-compliance

The first four items will be provided by FDIC at or before closing. Copies of all owner compliance reports and the results of the agency's review should be added to the file as they are processed. Copies of all correspondence with the owner should be kept in the file for a period of at least three years. Finally, all notices of non-compliance should be recorded in the property's file.

These are recommended inclusions in the files. The agency may wish to expand this list to include items particular to this property.

D. Existing Sales

AHP properties that were acquired prior to the time an agency assumed its monitoring responsibilities are referred to as “existing sales”. The procedures for establishing contact with owners of these properties differ from new sales, because property closing occurred before the agency set up its monitoring operation. For these properties, most of the activities that fall under the Initial Contact and Property Closing phases for new sales will need to take place shortly after agencies assume their monitoring responsibilities. This section provides guidance to agencies on the steps to take in preparing to monitor existing sales.

FDIC Support

Once an agency signs the Compliance Monitoring MOU, FDIC staff will send a list of the existing sales under its jurisdiction and copies of the LURAs for these properties. FDIC will also send a letter to each owner of an existing sale

property indicating that the monitoring agency will be contacting them and reminding them that they need to pay the annual monitoring fee to the agency.

Preparing to Monitor Existing Sales

Once agencies receive the list of existing sales in their areas, they should:

- ◇ send each owner a letter introducing the agency, its role and the contact persons;
- ◇ include copies of the compliance information packet for owners (see Section 3.2-A);
- ◇ schedule an introductory meeting or orientation session with the new owners;
- ◇ request a copy of the current rent roll or unit listing and any additional information about the owner or the property needed to begin monitoring owner compliance;
- ◇ invoice owners for the first year's monitoring fee;
- ◇ inform the owners of the schedule for submitting the compliance reports; and
- ◇ set up a property monitoring file.

As with new sales, agencies with only a few owners may decide that the best way to introduce them to the program is through individual meetings, while agencies with a number of owners may prefer to hold a group orientation or training session.

When preparing to monitor existing sales, agencies will not need to gather information on an owner's past activities. Agency monitoring responsibilities for existing sales begin at the time the Compliance Monitoring MOU was signed. By obtaining a copy of the most recent rent roll, an agency can assess the current occupancy of the property and prepare to monitor the owner's efforts to bring the property into compliance.

To invoice owners for the first year's monitoring fee, agencies should use the calculation described in Section 2.7.A to determine the amount of the fee for

each property.¹¹ When sending the invoice, agencies should advise the owner of the annual fee period established for the property and the period covered by the fee on the invoice. If the current fee period is less than 12 months, the agency should prorate the fee accordingly. Section 3.7.C describes the procedures for invoicing and collecting the monitoring fee from owners after the first year.

3.4 PRE-COMPLIANCE MONITORING

Once a property sale is final, the agency begins monitoring owner efforts to obtain the required number of VLI and LI-QUs. The period between closing and the time the property reaches full compliance with the LURA is referred to as the **Pre-Compliance** period.

FDIC has established a goal for properties to reach full compliance within two years. However, the actual length of time may vary depending on the occupancy status and condition of the property at time of purchase, as well as the rate of turnover. Regardless of the circumstances, owners must follow the required procedures for renting available units until they have met fully the set-asides established in the LURA.

To encourage owners/managers to take action to minimize the Pre-Compliance period, the agency should stress the Program's reduced reporting requirements (annual rather than monthly) and increased flexibility in renting vacant units once the owners reach full compliance. Ultimately, the requirement to hold available units vacant, and the resulting lost revenue, should be sufficient incentive for owners to seek full compliance.

Agency monitoring activities during this Pre-Compliance phase include the following:

Key Pre-Compliance Activities	
◇	Review monthly compliance reports
◇	Verify property compliance

Once an owner fully complies with the property's occupancy requirements, the agency begins On-going Compliance monitoring (see Section 3.5 below).

A. Review of Monthly Compliance Reports

¹¹ If the LURA for a property was signed more than 12 months prior to the date the agency assumed its monitoring responsibilities, the agency may adjust the base fee for changes in inflation as presented in Section 2.7-B.

During the Pre-Compliance period, owners need to follow the program's procedures for leasing available units until they reach the required occupancy by LI and VLI tenants. To document their compliance with these procedures, owners must submit monthly reports to the monitoring agency showing the occupancy status of the property.

Monitoring agencies should review owners' monthly compliance reports to ensure that they are following the required procedures to designate the necessary number of QUs. The monthly reports must contain completed AHP Compliance Report forms (see Appendix H) and copies of the TICs for each newly designated QU and recertification of designated QUs performed since the last report. Monitoring staff must review these reports and check the following areas for compliance with occupancy procedures:

- ◇ the leasing of vacant units;
- ◇ the status of VLI and Total Set-Asides;
- ◇ the compliance of rents charged for QUs; and
- ◇ the accuracy and completeness of Tenant Income Certifications.

If a monthly report is not received by the deadline established by the agency, monitoring staff should immediately inform the owner that the report is late. If the report is not received within 10 days of the original deadline, the agency may consider the owner to be out of compliance and should follow the procedures in Chapter 4 to compel the owner to report in a timely manner. In cases where the owner has a history of late reporting, the agency does not need to wait 10 days to make the determination of non-compliance.

Monitor Vacant Units

As discussed in Section 2.5, the procedures owners must follow when leasing vacant units during the Pre-Compliance period depend on whether a property's vacancies exceed the additional number of QUs needed to meet the Total Set-Aside. If a compliance report shows that the property has not met the Total Set-Aside, monitoring staff should determine the number of additional QUs needed. This amount is the number of vacant units the owner should hold available for Qualified Tenants.

To assess whether an owner has properly leased vacant units during the past month, monitoring staff should refer to the previous compliance report and determine whether the number of vacancies met or exceeded the number of additional QUs needed.

- ◇ If the number of vacancies was less than or equal to the number of QUs needed, monitoring staff should examine the report to confirm that any vacant units rented during the past month were leased to Qualified Tenants.
- ◇ If the vacancies listed on the previous report exceeded the number of QUs needed, monitoring staff should compare the number of vacancies listed on the current report to the number of QUs needed and confirm that a sufficient

number of vacant units have been held available for Qualified Tenants. If the number of vacancies has fallen below the number of QUs needed, the owner has failed to follow proper leasing procedures.

If an owner did not lease vacant units as required, the property should be considered out of compliance, and the owner should be issued a Notice of Non-Compliance (see Chapter 4).

Monitor the Total and VLI Set-Asides

If an owner meets the occupancy target for LI-QUs (the Total Set-Aside minus the VLI Set-Aside) before reaching the required number of VLI-QUs, vacant units held available for occupancy by Qualified Tenants may only be rented to VLI households. For example, if an owner with a Total Set-Aside of 35 units and a VLI Set-Aside of 20 units has designated 15 LI-QUs, the owner has reached the target for LI-QUs and must rent reserved vacant units to VLI tenants until both Set-Asides are met.

When reviewing monthly compliance reports, monitoring staff should assess whether the number of designated LI-QUs meets the occupancy target for this type of QU. If no additional LI-QUs are needed monitoring staff should confirm that additional units held available for Qualified Tenants were rented only to VLI households. If an owner rents such a unit to a tenant who is not VLI (even to a LI household), the property is out of compliance. Monitoring staff should respond to the violation by issuing the owner a Notice of Non-Compliance (see Chapter 4).

REMINDER: Make sure to compare tenant income to the correct income limit when reviewing tenant eligibility. While the income limits may have changed since the tenant was last certified, the income limits in effect at the time of certification or recertification are the ones used to assess compliance.

Monitor QU Rents

To ensure that owners are charging acceptable rents for QUs, monitoring staff should check that the rent listed for each QU listed on the compliance report does not exceed the applicable rent limit for that unit. In reviewing unit rents, monitoring staff should determine that the rent is appropriate not only for the type of QU (VLI or LI), but also unit size (e.g., one bedroom vs. two bedroom).

If the rent charged for a QU exceeds the allowable amount, the owner is out of compliance and must repay the tenant the amount of the overcharge. Monitoring staff must respond to this violation by issuing the owner a Notice of Non-Compliance (see Chapter 4).

Review Income Documents for New Tenants

Monitoring staff should review each compliance report to confirm that the owner has submitted copies of the TIC for each new QU and any recertifications completed during the reporting period. If the owner did not submit the required TICs, monitoring staff should notify the owner that the report is incomplete and request the missing documents.

When reviewing monthly reports, monitoring staff should examine each of the TICs received to make sure they were prepared properly and contain all the required information. If errors or omissions are discovered, the agency must notify the owner of the discrepancy and provide guidance on what the owner must do to correct the problem.

When errors in determining a tenant's annual income are encountered, monitoring staff should assess whether the mistake could affect a unit's designation as a QU. The owner is to be notified to correct or confirm this finding. Until resolution, this unit may be considered a QU.

B. Pre-Compliance On-Site Review

Agencies are required to perform a Pre-Compliance on-site review of all properties whose LURA requires 10 or more QUs. This review should be performed within one year from the date the owner submits the written certification stating that the property is in compliance with the occupancy requirements of the LURA.

GOOD PRACTICE: Agency staff should attempt to perform the review near the time an owner reports that the set-asides have been met. If an agency waits several months before conducting the review, minor mistakes may become compliance violations.

If the Pre-Compliance period extends beyond the two-year time frame, the monitoring agency should perform an on-site review to ascertain the cause of the delay and to assure compliance with the LURA.

For developments with less than 10 QUs, the monitoring agency may perform an on-site review or may choose to perform a desk top review to assure owner compliance. Should the desk review be performed, the owner may be required to furnish the monitoring agency with copies of all requested supporting data necessary for this review.

During the on-site visit, monitoring staff should check the following items:

- ◇ compliance reports submitted to the agency should match the *unit listings* and tenant files kept at the site;
- ◇ on-site tenant files should contain the required documentation; and
- ◇ actual occupancy status of QUs should match project file documentation.

If the results of the review show that the two Set-Asides have been met and the owner has complied with all AHP requirements, the property will then be considered to be in **full compliance**.

Pre-Compliance Checklist	
Steps	Timing
Reviewing Monthly Compliance Reports - vacant units held available for occupancy as QUs rented only to eligible tenants - a sufficient number of vacant units must be held available to meet the Set-Asides - rents for QUs must not exceed the applicable rent limits - proper TICs must be obtained for each QU	Each month
On-Site Visits - compare report to on-site <i>unit listings</i> - check tenant files are accurate & complete - verify occupancy status of QUs	Within 1 year of date that property reaches full compliance <i>(properties with 10 or more QUs)</i>

Compare Compliance Reports to On-Site Records

When visiting the site, monitoring staff should compare the owner's most recent compliance report to the property's *unit listing* for the corresponding time period and confirm that the compliance report was accurately filled out.

If the status of one or more QUs has not been accurately reported, monitoring staff should gather the information necessary to accurately assess the status of the units in question and determine whether the property still contains the required number of QUs.

Review Tenant Files

Agency monitors also should examine a sample of tenant files for the property's QUs to make sure that these files contain the required documents. In sampling tenant files, monitors should review at least 15 percent of the QU files, or a minimum of 15 files.

Each file should include:

- ◇ a rental application;
- ◇ a signed lease containing the language specified in the LURA;
- ◇ signed release and consent forms from all household members with income;
- ◇ a current TIC (initial certification or recertification); and
- ◇ tenant income verification documents.

Monitors should review the TICs and verifications in the files to make sure they have been prepared properly. If mistakes are found, monitoring staff should examine additional QU files to determine whether the problem is unique or representative of a systemic problem.

After checking the extent of the errors, the monitors should assess whether the errors could affect the eligibility of QUs. For example, did the owner make an error in calculating income from assets that will understate the annual income of tenants in QUs, or did the owner simply forget to have all the necessary members of the household sign a Release and Consent Form? If the error will not reduce the number of QUs, monitoring staff need only instruct the owner how to correct the problem.

If correcting the error could reduce the number of QUs, monitoring staff must inform the owner of the error, describe what needs to be done to correct the problem, and instruct the owner to review the files of all QUs and make the necessary corrections. If the corrections reduce the number of QUs, the owner will need to continue to follow the Pre-Compliance unit leasing procedures until the occupancy targets have been properly met.

Verify Vacant QUs

To ensure that owners have not misrepresented the occupancy status of the property's QUs, monitoring staff should select a sample of vacant QUs to visit in person. Monitoring staff should confirm that these units are not occupied by unreported tenants.

3.5 ONGOING MONITORING

After a monitoring agency has determined that an owner has successfully reached the two set-asides specified in the LURA, the property is considered to be in **full compliance** and the agency begins the process of ongoing monitoring.

Agencies are expected to conduct a number of activities each year to monitor the continuing compliance of owners. These activities range from a desk top review of submitted compliance material to the performance of an on-site review. The agency is also expected to provide information and expertise, as needed, to facilitate compliance. In addition, each agency is responsible for the collection of its annual monitoring fees.

In reviewing a property's continuing compliance, monitoring agencies need to undertake the following activities:

Key On-Going Monitoring Activities

- Review annual compliance reports
- Conduct periodic on-site visits

In addition to monitoring properties, the agency has several other duties that need to be performed in conjunction with their monitoring activities, including:

- a) distributing updated income limits and maximum rent levels;
- b) offering training and technical support; and
- c) invoicing the owner for the annual monitoring fee.

These responsibilities are described in Section 3.6.

A. Reviewing Annual Compliance Reports

In reviewing the owner's annual compliance report, staff should examine:

- ◇ the total number of QUs;
- ◇ the number of designated VLI units;
- ◇ rents charged for QUs
- ◇ tenant income documentation; and
- ◇ the owner's certification.

The review should be completed within 30 days of the date the report was received.

Monitor Total Number of QUs

First, monitoring staff should confirm that the total number of QUs meets the Total Set-Aside established by the LURA. The Part A summary section of the compliance report shows the total number of QUs and the required number for the property. The figures reported by the owner should show that the total number of QUs (VLI and LI) is equal to the number required by the Total Set-Aside. The sample property shown below contains an adequate number of QUs to meet the Total Set-Aside .

Set-Asides: Affordable Gardens East	
Total Set-Aside = 35 QUs	
Occupied VLI-Qus	18
Vacant VLI-QUs	0
Over-Income VLI	2
Occupied LI-QUs	10
Vacant LI-QUs	5
TOTAL QUs	35

Reminder: *When a QU is vacated it continues to be counted as a QU until it is reoccupied for 31 days. If occupied by an eligible tenant, it may retain its QU status, otherwise it becomes an unrestricted unit. An Over-Income unit continues to be counted as a QU until it is replaced following NAU rules.*

Monitoring staff then should review the Unit Status Report form to confirm that the household income of the tenant in each QU falls within the appropriate

income range for the reported household size. If a unit is a LI-QU and the tenant's income has been recertified, the household's annual income must fall within 140 percent of the LI limit applicable to that household size.

A unit designated as Over Income -- that is, a QU where the tenant's annual income now exceeds 140 percent of the LI limit -- continues to be counted in the QU total until the owner rents the next available vacant unit of comparable or smaller size to households with incomes above the LI limit. If an owner counts an Over-Income unit toward the Total Set-Aside, monitoring staff should determine the date the tenant of the Over-Income unit was recertified, and compare the effective lease dates for each unrestricted unit in the property to the recertification date of the Over-Income unit. If any unrestricted unit was rented after the date the Over-Income unit was recertified, the over-income unit can not continue to be counted toward the Total Set-Aside.

If monitoring staff determine that the total number of QUs (VLI and LI, including vacancies and Over-Income units) is less than the Total Set-Aside established for the property, then the agency should consider the property out of compliance. In such a case, the agency should issue a Notice of Non-Compliance within 30 days of receiving the report.

Monitor the VLI Set-Aside

After reviewing the total number of QUs, monitoring staff should assess whether the property continues to meet the VLI Set-Aside established by the LURA. The total number of VLI-QUs shown in the report summary should equal or exceed the required number for the property. The sample property below contains a sufficient number of VLI-QUs to meet its VLI Set-Aside .

PROPERTY MEETS VLI SET-ASIDE	
<u>Affordable Gardens West</u>	
VLI Set-Aside = 20 VLI-QUs	
Occupied VLI-QUs	15
<u>Vacant VLI-QUs</u>	<u>5</u>
TOTAL VLI-QUs	20

If the property contains a sufficient number of QUs, but the number of VLI-QUs is less than the VLI Set-Aside, the property may not be out of compliance if the extra LI units were the result of tenant income changes. However, the owner must rent the next available QU to a VLI tenant until the VLI Set-Aside is met.

For example, if the number of VLI-QUs in Affordable Gardens West dropped to 18 because two VLI tenants became LI on recertification, the owner would need to rent LI-QUs that became available to a VLI tenant until the property reached 20 VLI-QUs.

If a property has a sufficient number of QUs but an insufficient number of VLI-QUs, the agency should inform the owner that vacated QUs must be rented to VLI tenants until the VLI Set-Aside is met. The agency should notify the owner within 30 days of receiving the report.

REMINDER: Make sure to compare tenant income to the correct income limit when reviewing tenant eligibility. While the income limits may have changed since the tenant was last certified, the income limits in effect at the time of certification/recertification are the ones used to assess compliance.

Review QU Rents

To ensure that owners are charging acceptable rents for QUs, monitoring staff must check that the rent listed for each QU does not exceed the maximum rent allowable for that size and type of unit.

If the rent charged for a QU exceeds the allowable amount, the property is out of compliance and the owner must return the amount overpaid to the tenant. Monitoring staff should respond to this violation by issuing the owner a Notice of Non-Compliance (see Chapter 4) within 30 days of receiving the report.

Review Tenant Income Documentation

Monitoring staff should review the Date of Recertification column to confirm that tenants in QUs have been re-examined within the past year. If a tenant living in a QU has not been recertified within the past 12 months, it is recommended that the agency notify the owner within 14 days after receiving the report. The notice should inform the owner that overdue recertifications must be submitted to the monitoring agency within 30 days or the units will no longer count as QUs and the agency may find the property to be out of compliance with the LURA.

Monitoring staff should also examine the tenant income documentation (TICs for initial occupancy and recertification) submitted with the compliance report to confirm that the owner provided copies for each tenant occupying a QU. If the owner did not submit documentation for all occupied QUs, the monitoring agency should notify the owner that the report was incomplete and request the missing items.

Staff should then review each TIC to make sure they were properly prepared and contain the required signatures. If errors or omissions are discovered, the agency must notify the owner of the discrepancy within 30 days of receiving the report and provide guidance on what the owner must do to correct the problem.

When monitoring staff encounter errors in determining a tenant's annual income, they should assess whether the mistake could affect a unit's designation as a QU. If the unit's designation is in question, monitoring staff should ask the owner to correct or confirm this finding. Until resolution, this unit may be considered a QU.

Review Owner's Annual Certification

Owners are required to submit written statements with their annual compliance reports certifying that the property complies with the provisions of their LURA. In reviewing the annual compliance report, monitoring staff should confirm that the owner has submitted a properly completed certification. The owner must use the certification form included in Appendix I of this manual. This form must be dated and signed by the owner or a representative with full authority to legally bind the ownership entity.

B. Periodic On-Site Reviews

Under the MOU, agencies have committed to visit each property with 10 or more QUs at least once every three years, or more frequently as warranted. In determining how frequently to visit a specific property, the agency should consider the following factors:

- ◇ high vacancy rate
- ◇ slow unit absorption
- ◇ repeated requests for exceptions
- ◇ delays in submission of reports
- ◇ errors in submission of reports
- ◇ requests from owner for assistance
- ◇ changes in management staff
- ◇ changes in ownership

Monitoring staff should contact the owner to schedule the visit and allow the owner sufficient time to plan to attend the visit and make sure the necessary staff are present.

During the on-site visit, monitoring staff should check the following items for compliance:

- ◇ compliance reports submitted to the agency should match the *unit listings* and tenant files kept at the site;
- ◇ on-site tenant files should contain the required documentation; and
- ◇ actual occupancy status of QUs should match the documentation in the project's files.

If the results of the review show that the Set-Asides continue to be met and the owner has complied with all AHP requirements, the property is considered to be in compliance.

On-Going Compliance Checklist	
<u>Steps</u>	<u>Timing</u>
Review Annual Compliance Reports <ul style="list-style-type: none"> – number of QUs meets Total Set-Aside – number of VLI-QUs meets VLI Set-Aside – rents for QUs do not exceed applicable rent limits – proper tenant income documents kept for each QU 	At end of monitoring year
On-Site Visits <ul style="list-style-type: none"> – compare compliance report to on-site records – check that tenant files are accurate and complete – verify occupancy status of QUs 	At least once every three years for properties with 10 or more QUs

Compare Compliance Reports to On-Site Records

When visiting the site, monitoring staff should compare the last compliance report from the owner to the property's *unit listing* for the corresponding time period to confirm that the compliance report was accurately filled out. If the status of one or more QUs has not been accurately reported, monitoring staff should gather the information necessary to accurately assess the status of the units in question and determine whether the property still meets the occupancy targets.

Review Tenant Files

Agency monitors should examine a sample of tenant files for the property's QUs to make sure the files contain the required documents. In sampling tenant files, monitors should examine at least 15 percent of the QU files, or a minimum of 15 files.

Each file should include:

- ◇ a rental application;
- ◇ a signed lease containing the language specified in the LURA;
- ◇ signed release and consent forms from the household members with income;

- ◇ a current TIC (initial certification or recertification); and
- ◇ tenant income verification documents.

Monitors should review the TICs and verification documents in the files to make sure they have been prepared properly. If monitoring staff find mistakes, they have the discretion to review more QU files determine whether the problem is limited to a few files or if a large number will be affected.

After checking the extent of the errors, the monitors should assess whether the errors could affect the eligibility of QUs. (For example, did the owner make an error in calculating income from assets that will understate the annual income of tenants in QUs, or did the owner simply forget to have all the necessary members of the household sign a release and consent form?)

- ◇ If correcting the error will not reduce the number of QUs, monitoring staff need only instruct the owner how to correct the problem.
- ◇ If correcting the error will reduce the number of QUs, inform the owner of the error, describe what needs to be done to correct the problem, and instruct the owner to review the files of all QUs and make the necessary corrections.
- ◇ If the corrections reduce the number of QUs for an owner just certifying full compliance, the owner will need to continue to follow the pre-compliance unit leasing procedures until the occupancy targets have been properly met.
- ◇ If errors in documenting tenant income reduce the number of eligible QUs, monitoring staff should reassess whether the property contains a sufficient number of QUs. If the number of eligible QUs is less than the Total Set-Aside established for the property, then the property is out of compliance. In such a case, the agency should respond to the violation by issuing the owner a Notice of Non-Compliance within 30 days of conducting the review.

Verify Vacant QUs

To ensure that owners have not misrepresented the occupancy status of the property's QUs, monitoring staff should select a sample of vacant QUs to visit

in person. Monitoring staff should confirm that these units are not occupied by unreported tenants.

Examine Physical Conditions of Property

AHP does not establish a specific set of property standards that owners must meet. Owners are expected to comply with local housing codes. While agencies are not required to monitor owner compliance with these local codes, if an agency discovers that an owner is not adequately maintaining the physical condition of a property, agency staff should ask the owner to make corrections or inform the local housing inspector of any identified code violations.

Moreover, monitoring agencies may deny QU status to a unit that is not habitable. A unit must be physically available for occupancy before an owner can count that unit as a QU or as a unit held available for an eligible tenant. If an agency discovers that an owner failed to maintain a unit in habitable condition according to local housing codes, agency staff should not allow that unit to be counted as a QU because it is not properly available for occupancy.

3.6 MONITORING PROPERTY RESALE

In the event a property is resold, the provisions of the LURA continue to apply until the term of the agreement expires. In signing the LURA, the owner assumes responsibility for taking all necessary actions to establish, preserve, and protect the ability of the monitoring agency and FDIC to enforce the provisions of the agreement when all or a portion of the property is resold. Future buyers of AHP properties are bound by the provisions of the LURA for the term of the agreement, even if the new owners do not acknowledge or execute the LURA at the time of resale.

Owners are expected to notify the monitoring agency of any resale of the property at least 30 days prior to closing the sale, providing the name, address, and telephone number of the prospective buyer.

After receiving notice of a resale, it is recommended that the agency confirm that the purchaser has been informed of the LURA and its provisions. Monitoring agencies should provide copies of program compliance materials and a schedule of upcoming compliance training sessions to potential buyers.

Once a new owner takes possession of an AHP property, the agency may, at its discretion, require monthly compliance reports for a period of up to six months after the sale to allow the agency to more closely track the new owner's performance in complying with the provisions of the LURA.

If an owner fails to notify a monitoring agency of a property's resale prior to final closing, the agency may turn the case over to FDIC if it is unable to locate and establish proper contact with the new owner.

3.7 OTHER AGENCY RESPONSIBILITIES

A. Distributing Income Limits and Maximum Rents

Monitoring agencies are responsible for providing owners with the income limits and maximum rents that apply to their properties. As discussed in Chapter 2, the AHP and income limits are the same as the HUD published annual (gross) income limits for low- and very low-income families and individuals under the Section 8 program.

The income limits and maximum rents will change each year as HUD changes its determination of area median incomes. Each year, FDIC will send all agencies the updated income limits from HUD within 30 days of the date they are released. Monitoring agencies should promptly distribute copies of the updated income limits and maximum rents applicable to each property.

The maximum rents for VLI-QUs and LI-QUs are prescribed by the LURA. There are three key components in establishing the rent limits for QUs:

- ◇ Anticipated household size per unit
- ◇ Income limits (50 percent of median as adjusted for family size and 65 percent of median as adjusted for family size)
- ◇ Income adjustments for allowances based on bedroom size

As discussed in Chapter 2, Appendix B includes a description of how maximum rents are calculated by HUD and FDIC, based on income limits. The monitoring agency has no responsibility for doing any further calculations.

B. Providing Training and Technical Support

While the Owner's Compliance Manual provides thorough guidance on the program's requirements and procedures, FDIC encourages monitoring agencies to offer some form of compliance training for owners and their property management staff. In-person training sessions will help assure that owners and their management staff develop an adequate understanding of the program's key concepts and practices.

To assist with training, the FDIC has prepared and distributed to the monitoring agency an AHP Compliance Video for introducing owners and managers to the Program, and a detailed curriculum for a one-day training of

owners and managers, complete with Instructor's Guide, overhead transparencies, practice activities, and handouts.

In addition, monitoring staff are encouraged to meet with owners either individually or in groups to discuss:

- ◇ Key program requirements
- ◇ Selecting tenants for QUs
- ◇ Setting rents for QUs
- ◇ Pre-Compliance occupancy procedures
- ◇ Ongoing occupancy procedures
- ◇ Reporting requirements
- ◇ Annual monitoring fee

Monitoring staff also should be available to answer questions or provide guidance regarding program procedures to owners and management staff. FDIC expects agencies will be able to provide most of this technical support by telephone.

C. Collecting the Annual Monitoring Fee

Monitoring agencies are responsible for collecting the annual monitoring fee from owners after the first year. To collect the monitoring fee, agencies should send each owner an invoice indicating the amount due for the coming year within a reasonable period (at least 30 days is recommended) before the start of the next monitoring year (see Exhibit 3-3 Ongoing Monitoring). As discussed in Section 2.7 of this Manual, the standard monitoring year begins on the anniversary date of the LURA, but agencies may establish a different starting date for the monitoring year if they give owners adequate notice and prorate the monitoring fee where necessary.

Each year, monitoring agencies may increase the monitoring fee to cover increased costs due to inflation. Agencies must use the formula presented in Section 2.7.B of this Manual when adjusting the annual fee. The result provides a revised base fee which must be multiplied by the number of QUs required by the LURA to obtain the updated annual fee for a specific property.

$$\text{Annual Fee} = \text{Revised Base Fee} \times \text{No. of Required QUs}$$

3.8 EXECUTING A RELEASE FROM LURA REQUIREMENTS

Under certain conditions, the term of the LURA may expire before the standard period of 40 (or 50) years. Section 1.1(o) of the AHP Multifamily LURA defines the "Term" of the LURA and provides for these conditions.¹²

Upon request from the property owner, monitoring agencies may recommend a release from the LURA when one of the conditions discussed below is documented. The release should set forth the particular condition giving rise to the end of the term.

An FDIC-approved release form and instructions are included in Appendix K. If this form conflicts with local law or practice, monitoring agencies may choose another format that is more appropriate.

A. Foreclosure

The term of the LURA expires when there is a loss of the property due to foreclosure or a deed-in-lieu of foreclosure. However, the LURA also establishes that the lower income occupancy requirements are revived if one of the owners or a related entity who held an interest in the property at the time of foreclosure, or immediately prior to foreclosure, reacquires an ownership interest in the property at anytime thereafter. If an agency has cause to believe that an owner or a related entity attempted to avoid the LURA's lower income requirements through foreclosure and again holds an interest in the property, the agency is encouraged to take the appropriate steps to activate the LURA's requirements.

The revival provision is intended to prevent an owner from escaping the LURA's occupancy requirements while retaining the effective control and use of the property. This provision should not be applied when a bona fide foreclosure has occurred and an owner later reacquires an interest on a reasonable commercial basis.

B. Other Factors Causing the Term of the LURA to Expire

The LURA identifies several other conditions that will cause its early termination. They include:

- ◇ involuntary loss of the property due to seizure or condemnation;
- ◇ total involuntary loss as a result of fire or other casualty; and
- ◇ obsolescence of the property, making it unusable for housing, with no financially feasible option for rehabilitation.

Before the FDIC will consider a release of a LURA for obsolescence the following procedures must be followed by:

¹² Note: The "Term" is defined in Section 1.1(q) of the AHP Condominium Bulk Sale LURA and will be found in slightly different locations in other types of LURAs.

The Owner will:

i) Provide to the monitoring agency a sworn certification indicating the following:

- That written notice indicating that the owner has requested a release of the LURA has been disseminated via first class mail or hand delivered to all tenants at the property and to any known tenant organization for the property.
- That notice has been posted in the complex's management office and by each set of tenant mailboxes .

ii) That the notice posted contained the following information:

- Name, address and telephone of the owner, or the owner's designated representative and the name, address and telephone number of a contact person at the monitoring agency.
- That the owner has requested the release of the LURA.
- An explanation indicating that the release is requested because of obsolescence suffered by the property making it unusable for housing and that it is not financially feasible to make the necessary repairs that would eliminate the obsolescence for all or a portion of the property. In addition, a statement that the release of the LURA would result in the demolition of the property and therefore, the loss of the rent restricted units at the property.
- An estimate of the new rent schedules in the event that it is anticipated that a new apartment complex will be built to replace the existing one.
- An explanation that the release of the LURA would result in the loss of all lower income and very low income units.
- A statement that interested parties have 60 days from the date of the notice to provide the monitoring agency with written comments and information on the request.
- A statement informing the tenants of their right to review and copy the documents presented for the release of the LURA and the address where these documents can be reviewed and copied.

iii) At their expense and through independent licensed professional(s) the owner will conduct an inspection of the property and a feasibility analysis of the repairs. The independent licensed professional(s) must be approved by the monitoring agency. Both reports must be in writing. The inspection report must address the physical condition of the property and the feasibility analysis must address the cost of

the repairs or modifications required to cure the obsolescence.

- iv) Submit to the monitoring agency a written formal request for release of the LURA. All documentation regarding the LURA release, including the inspection report and feasibility analysis must be submitted with the formal request.
- v) Make available to tenants all documentation and information submitted by the owner or its representative to the monitoring agency for review and copying (at tenant's expense) during normal business hours at the on-site management office.

The Monitoring Agency will:

- i) Provide a 60-day waiting period from the date of the receipt of the notice for written comments and information regarding the request prior to making a final recommendation to the FDIC.
- ii) Maintain a written record of all comments received.
- iii) Review and consider written comments, including those received from tenants or their representatives, in the determination of its recommendation to the FDIC.
- iv) Forward the inspection report, feasibility analysis and the final recommendation to the FDIC, with all written comments and other documentation received.

The FDIC before making its final determination will:

- i) Review and consider all the documentation and all written comments received either through the monitoring agency or directly at the FDIC.

Lower-Income Families and Very Low-Income Families, who are renting a unit at the property at the time that the owner requests a release of the LURA are third party beneficiaries of the foregoing rights and procedures. They shall be entitled to apply to any court having jurisdiction of the subject matter for specific performance of said rights and procedures, for an injunction, damages, attorney's fees, and any other relief as may be appropriate. Former tenants whose leases were terminated or not renewed by the owner in anticipation of submitting a request for release may also enforce these rights.

If a monitoring agency is satisfied that one of these conditions is present (foreclosure, condemnation, fire or other casualty or obsolescence), the FDIC may consider releasing the property from the LURA.