

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

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"> • <i>Reduce the rents for the affected units _____ [list unit #s] to _____ [rent limit]</i> • <i>Calculate the amount of excess rent received from the tenant.</i> • <i>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.</i> • <i>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.</i> • <i>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.</i> • <i>Send a copy of tenant letter with the return receipt to monitoring agency prior to the compliance deadline.</i> | <p><i>Within 30 days of the date of the Notice of Non-Compliance</i></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">• <i>Owner must pay annual monitoring fee to agency</i> | <i>Within 30 days after the date of the Notice of Non-Compliance.</i> |