

## CHAPTER 1

### INTRODUCTION

#### 1.1 PROGRAM BACKGROUND

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) required that the Resolution Trust Corporation (RTC) develop a program for selling residential properties to provide affordable housing opportunities. In response to this provision, RTC established the Affordable Housing Disposition Program (AHDP), 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 RTC terminated on December 31, 1995, and all of RTC's rights and obligations were transferred to the FSLIC Resolution Fund, the successor in interest to the RTC, which is managed by the Federal Deposit Insurance Corporation (FDIC). This 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 RTC's obligations.

AHP gives income eligible families and qualified housing developers first opportunity to purchase FDIC-held properties suitable for affordable housing. Under the Disposition program, FDIC will sell these properties to the first eligible purchaser who makes an acceptable offer at or above the property's net realizable market value established by FDIC. In purchasing a property through AHP, the buyer agrees to meet the affordability guidelines established by the program. These requirements are designed to assure the property serves families in need of affordable housing.

Under the program, FDIC enters into an agreement with state agencies to monitor multifamily properties for compliance with these affordability requirements.

This handbook is designed to serve as a guide for state monitoring agencies in carrying out their monitoring responsibilities. It describes the program requirements for multifamily rental properties and the procedures agencies should follow in monitoring compliance. It also outlines how agencies can assure that owners who make bulk purchases of condominium units and single family properties through the program meet their commitment to make units available to Low Income families.

## 1.2 BASIC PROGRAM REQUIREMENTS

The program incorporates four basic requirements to assure that AHP multifamily properties provide affordable housing to Low and Very Low Income tenants:

- ◆ **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 program's statute establishes that at least 35 percent of the total units must be made available to these households, however the actual percent may vary for an individual property. The number and proportion of Very Low Income and Low Income units is specified in the property's Land Use Restriction Agreement (LURA).
- ◆ **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 for the applicable compliance period. If the original AHP purchaser or subsequent owners sell the property during the compliance period, the new purchaser must be informed of the ongoing affordability requirements. Even if the new owner has not been properly informed, s/he is still obligated to meet affordability requirements as outlined in the LURA.
- ◆ **Compliance Period.** Under the program, AHP purchasers agree to comply with the affordability requirements for the useful life of the property.<sup>1</sup>

## 1.3 KEY PROGRAM DOCUMENTS

Program compliance and monitoring responsibilities for AHP properties are set forth in four documents:

- ◆ **Memorandum of Understanding (MOU)** -- The Compliance Monitoring MOU is the agreement between FDIC and a state agency that sets forth the terms under which the state agency will monitor AHP properties. The MOU establishes the agency's responsibility to monitor and enforce owner compliance with the occupancy requirements, rent limits, and resale restrictions placed on these properties. The MOU also describes the enforcement responsibilities of the state agency and FDIC, and the compensation an agency may collect for its services.

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<sup>1</sup> 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.

- ◆ **Land Use Restriction Agreement (LURA)** -- The LURA is a deed restriction which purchasers sign at the time they acquire a property through the program. The LURA establishes the affordability requirements for the property and the owner's obligations to FDIC and the monitoring agency. In signing the LURA, the owner agrees to the restrictions on the use of the property 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.
- ◆ **AHP Owner's Compliance Manual** -- The manual describes the procedures AHP property owners must follow to comply with the provisions of their LURA and program requirements. Agencies can obtain this manual from FDIC and should make copies available to owners upon request.
- ◆ **AHP Compliance Monitoring Manual For State Agencies** -- This manual presents the procedures state agencies should follow in monitoring and enforcing owner compliance with the provisions of the LURA. Copies of this manual are available from FDIC.

#### 1.4 TYPES OF PURCHASES

Multifamily properties can be purchased either individually or in bulk. Most have been purchased individually. Owners who buy properties in bulk have flexibility in how Low and Very 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, in several areas, FDIC has packaged and sold these two types of properties in bulk to qualified purchasers, including public agencies and nonprofits. When leasing these units, the purchasers agree to follow the same basic occupancy requirements that apply to AHP multifamily property owners. If the units are converted to owner-occupied units, a specified portion of the units must be sold to Low Income families. This manual includes guidance to agencies that will monitor these properties.

#### 1.5 PRINCIPAL PLAYERS AND RESPONSIBILITIES

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

**Key Players**

- ◆ FDIC
- ◆ Monitoring Agencies
- ◆ Owners/Property Managers

**A. 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 basic data on new properties at the time they are offered for sale;
- ◇ Notify monitoring agencies of new sales upon final closing;
- ◇ Provide monitoring agencies with LURA and other necessary materials;
- ◇ Provide enforcement support to restore owner compliance upon request from a monitoring agency; and
- ◇ Review monitoring agency performance.

**B. Monitoring Agency**

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

- ◇ Provide guidance to owner/managers on program procedures and requirements;
- ◇ Provide current rent and income and income limits to owner/managers;
- ◇ Provide information regarding program changes to owner/managers;
- ◇ Monitor properties for compliance with program requirements;
- ◇ Monitor and enforce corrective actions in cases of non-compliance;
- ◇ Evaluate financial infeasibility exemption requests;
- ◇ Monitor bulk purchases of condominiums and single family properties;
- ◇ Collect administrative fees from owners; and
- ◇ Report to FDIC.

**C. Property Owners/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;
- ◇ Pay monitoring fees to the monitoring agency as required;
- ◇ 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 administrative 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.

To assist state agencies in coordinating AHP monitoring responsibilities with their monitoring activities for other key affordable housing programs, Exhibit 1.1 highlights important similarities and differences between AHP, Tax Credits, Section 8 New Construction/Substantial Rehabilitation, and Tax Exempt Bond programs.

**EXHIBIT 1-1  
COMPARISON OF AFFORDABLE HOUSING PROGRAMS**

ITEM	AHP	SECTION 8 NEW CONST. & SUB. REHABILITATION	LOW INCOME HOUSING TAX CREDITS	TAX EXEMPT BOND (POST 1986)
Targeting Income	Depending on No. of Set-Aside units, usually 35% Low Income ( $\leq 80\%$ of median) and Very Low Income ( $\leq 50\%$ of median)	Pre-1981 contracts, program served both tenants @ 80% and 50% of median income; Post-81, served tenants with $\leq 50\%$ of median income only	20% of tenants must have income $\leq 50\%$ of median or 40% of tenants must have income $\leq 60\%$ of median income	20% of tenants must have income $\leq 50\%$ of median or 40% of tenants must have income $\leq 60\%$ of median income
Definitions of Income	Housing Act of 1937, as amended	Housing Act of 1937, as amended	Housing Act of 1937, as amended	Housing Act of 1937 (most states)
Income Verification Method	Based on HUD Handbook 4350.3	Based on HUD Handbook 4350.3	Based on HUD Handbook 4350.3	Left to States; most use Handbook 4350.3
Tenant Income Recertification	Annually	Annually and Interim	Annually	Annually
Use of Lease	Required, no model lease	Required, must use model lease	Required, no model lease*	Required, no model lease
Maximum Rents	<ul style="list-style-type: none"> <li>■ High rent: 30% of adjusted income at 65% of median;</li> <li>■ Low rents: 30% of adjusted inc. at 50% of median</li> </ul>	Initial rents based on Fair Market Rents; annual adjustment actors from HUD, special adjustments permitted	<ul style="list-style-type: none"> <li>■ 30% of LIHTC income limits for household at 50% of median; or</li> <li>■ 30% of LIHTC income limits for households at 60% of median;</li> </ul>	Rents restricted for qualified units
Number of Qualified Units	Varies based on terms of LURA; generally 20% of units set-aside for very low income; total set-aside is 35%	Varies by project; some projects are 100% low income and others are mixed	At a minimum, 20% of units must be occupied by tenants at 50% of median <u>or</u> 40% of units must be occupied by tenants at 60% of median	Minimum 20% of units must be occupied by tenants at 50% of median <u>or</u> 40% of units must be occupied by tenants at 60% of median
Owner Reporting Requirements	<ul style="list-style-type: none"> <li>■ Monthly reports until compliance is achieved</li> <li>■ Annual reports after compliance</li> <li>■ Must report income and rents for qualifying units</li> </ul>	<ul style="list-style-type: none"> <li>■ Monthly vouchers to obtain subsidy</li> <li>■ Submit tenant data upon move-in &amp; recertification</li> <li>■ Annual audited financial statements</li> <li>■ Report monthly until 95% utilized</li> </ul>	Varies by State: <ul style="list-style-type: none"> <li>■ 50% of projects report &amp; 20% of units reviewed;</li> <li>■ 20% of projects inspected; 20% of those units reviewed</li> <li>■ All units in all projects report; 20% send 20% of units for review</li> </ul>	Varies by State Agency

\* Program specific lease provisions must be included; certain provisions prohibited.

## 1.6 GLOSSARY OF PROGRAM TERMS

In this Manual, the following Program terms and acronyms will be used and have the following meanings:

**AHDP or AHP** -- The Affordable Housing Disposition Program, 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 the Congress.

**Compliance Period** -- The longer of forty (40) years from the date of execution of the LURA or fifty (50) years from the date the Property was initially occupied as multifamily housing, during which the property 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 RTC 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. See Chapter 7.

**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 via 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 which: (i) 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) 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.

**RTC** -- 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 8.

**State Monitoring Agency** -- The State Housing Finance Agency or other agency under a Memorandum of Understanding (MOU) 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 THE HANDBOOK

To guide state agencies in monitoring owner compliance with AHP requirements, this manual describes the procedures an agency should follow in performing its monitoring activities.

- ◆ **Chapter 2** describes the specific requirements for AHP multifamily properties.
- ◆ **Chapter 3** outlines the basic procedures agencies should follow in monitoring owner compliance.
- ◆ **Chapter 4** provides instructions on the actions monitoring agencies should take when they determine an owner is out of compliance.
- ◆ **Chapter 5** discusses financial infeasibility exemptions from program requirements and the guidelines agencies should use in assessing owner requests for an exemption.
- ◆ **Chapter 6** reviews a monitoring agency's administrative responsibilities and provides guidance on contracting for monitoring services.
- ◆ **Chapter 7** provides guidance for agencies that need to monitor bulk condominium purchases.
- ◆ **Chapter 8** describes the monitoring procedures for one-to-four unit properties purchased in bulk by public agencies and nonprofit organizations.

These chapters are followed by a set of appendices containing program documents, sample forms and reports.