

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.