

## CHAPTER 5

### RENT AND LEASE REQUIREMENTS

#### 5.1 INTRODUCTION

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

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

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

#### 5.2 AHP RENT LIMITS

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

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

### OBTAINING RENT LIMITS

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

The rent limits for each type of QU will vary by unit size. The table below is a hypothetical examples of the 1997 rent limits for Hometown, USA, by unit size.

<b>SAMPLE RENT LIMITS</b> Hometown, USA - 1992		
Unit Size	VLI Rent Limit	LI Rent Limit
Efficiency	\$248	\$328
1 - Bedroom	\$286	\$378
2 - Bedroom	\$322	\$426
3 - Bedroom	\$374	\$499
4 - Bedroom	\$435	\$577

The method used to establish the rent limits that apply to AHP properties is set forth in Exhibit B of the LURA and is the same for all properties:

- ◆ The **VLI** rent limits are established at 30 percent of the adjusted monthly income<sup>1</sup> for a household at 50 percent of area median income, adjusting household size for different unit sizes; and

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

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

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

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

If rent limits are increased during the middle of the lease period due to the annual adjustment of the limits, the owner may raise the unit rent up to the revised applicable rent limit, subject to the lease and state and local law.

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

#### **Properties Receiving Other Public Assistance**

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

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

### 5.3 CHANGES IN THE STATUS OF QUS

When the status of a QU changes due to a change in the eligibility of the tenant in that unit, the rent limits for that unit must be adjusted accordingly.<sup>2</sup>

If a VLI-QU is re-designated as a LI-QU due to a change in the income of the tenant, the applicable rent limit for that unit is now the LI rent limit. For example, if a two-bedroom VLI-QU in a property located in Hometown, USA becomes a LI-QU the rent limit changes from \$322 to \$426 (see chart above).

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

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

### 5.4 UTILITIES

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

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

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

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

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

## **5.5 DWELLING LEASE REQUIREMENTS**

### **A. Background**

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

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

### **B. Term of Lease**

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

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

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

### **C. Required Lease Provisions**

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

- (i) ***The lessee certifies the accuracy of the information provided in connection with the examination or re-examination of the Annual Income of the household of the lessee.***
  
- (ii) ***The lessee agrees that the Annual Income and other eligibility requirements shall be deemed substantial and material obligations of his or her tenancy, that he or she will comply promptly with all requests for information with respect thereto from the lessor, FDIC, or FDIC's monitoring agency. The lessee's failure to provide accurate information regarding such requirements (regardless of whether such inaccuracy is intentional or unintentional) or refusal to comply with a request for information thereto shall be deemed a violation of substantial obligation of his or her tenancy and constitute cause for immediate termination thereof.***

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

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

### **D. Prohibited Lease Provisions**

Lease provisions not allowed under other federally-related affordable housing programs are also prohibited under AHP. The following provisions may not appear in the dwelling lease for any QU:

- ◆ **Agreement to be sued.** Agreement by the tenant to be sued, admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
- ◆ **Treatment of property.** Agreement by the tenant that the owner may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the unit after the tenant has moved out. The owner may dispose of this personal property in accordance with State law.
- ◆ **Excusing the owner from responsibility.** Agreement by the tenant not to hold the owner or the owner's agents legally responsible for actions or failure to act, whether intentional or negligent.
- ◆ **Waiver of notice.** Agreement by the tenant that the owner may institute a lawsuit without notice to the tenant.
- ◆ **Waiver of legal proceedings.** Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense or before a court decision on the rights of the parties.
- ◆ **Waiver of a jury trial.** Agreement by the tenant to waive any right to a jury trial.
- ◆ **Waiver of right to appeal court decision.** Agreement by the tenant to waive the tenant's right to appeal or otherwise challenge in court a decision in connection with the lease.
- ◆ **Tenant chargeable with cost of legal actions regardless of outcome.** Agreement by the tenant to pay attorney fees or other legal costs even if the tenant wins the court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

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

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

## **5.6 APPLICABLE FEDERAL STATUTES**

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

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

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

### ***Fair Housing Provisions***

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

### ***Americans with Disabilities Act (ADA)***

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

## **5.7 CONFLICTS WITH STATE AND LOCAL STATUTES**

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

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