

North Dakota Law Enforcement Housing Pilot Program

Ongoing Compliance Monitoring Manual



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SECTION 1 - LAW ENFORCEMENT HOUSING PILOT PROGRAM INFORMATION AND REGULATIONS

INTRODUCTION

The Law Enforcement Housing Pilot Program (LEPP) provides financial assistance for the development of new multifamily rental housing targeted to law enforcement personnel in oil and gas impacted counties.

LEPP was made possible by the approximately \$3,000,000 in funds the State of North Dakota received from the National Mortgage Servicers Settlement Fund. The Industrial Commission, in coordination with the Office of the Attorney General directed the North Dakota Housing Finance Agency (NDHFA) to develop and administer a special program to use the settlement funds for the creation of affordable rental housing in areas experiencing difficulty recruiting and retaining law enforcement officers due to high housing costs and/or housing shortages.

This manual is a training and reference guide for the ongoing compliance monitoring of projects funded by NDHFA through the LEPP. It is intended to answer questions regarding the procedures, rules, and regulations that govern NDHFA's compliance monitoring of LEPP-funded projects. The manual should be used in conjunction with, and as a supplement to, the Law Enforcement Housing Pilot Program Request for Proposals document.

The NDHFA Planning and Housing Development Division is responsible for the performance of compliance monitoring which could include, but not be limited to: annual desk reviews; on-site reviews; tenant file reviews; health/safety/building code inspections; sending compliance notifications to owners/managers; monitoring follow up compliance; and updating the Compliance Manual and compliance forms. Questions regarding compliance monitoring should be directed to the Planning and Housing Development Division by calling (701) 328-8080. NDHFA's toll-free number is (800) 292-8621 or (800) 366-6888 (TTY).

COMPLIANCE PERIOD

NDHFA will ensure long term availability of affordable law enforcement housing units by requiring that a mortgage be placed on LEPP-assisted properties. The development owner and NDHFA will enter into a forgivable loan agreement dictating the number of units which must be set aside for law enforcement occupancy during the compliance period. Typically, the compliance period for the LEPP units will be 20 years.

RESPONSIBILITIES

Project Owner

The project owner is responsible for compliance. Each owner has chosen to utilize the LEPP to take advantage of flexible debt financing. In exchange for this benefit, certain requirements must be met. Any violation of the requirements of LEPP could result in corrective action, including the repayment of funds to NDHFA. Any and all financial consequences to the owner, as a result of noncompliance, will be the responsibility of the owner.

The owner is responsible for insuring that the development is properly administered. The owner must make certain that the on-site management team is familiar with, and complies with all appropriate LEPP rules, regulations and policies that govern the development.

The development owner agrees to maintain sufficient records in support of their ongoing compliance with LEPP regulations. The development owner will make such records available for review by NDHFA upon request. The development owner must allow full access of all files to NDHFA and must retain all

documents and records for a period of three (3) years or until any related review findings have been resolved, whichever is later.

The North Dakota Housing Finance Agency

NDHFA is responsible for monitoring compliance. Once LEPP funds are awarded to a development, NDHFA shall monitor compliance by reviewing certain records kept by the owners of the development.

NDHFA will accomplish this monitoring requirement by conducting desk and/or on-site reviews of the development annually during the compliance period. The review may include an examination of records for all or a sample of the units including, but not limited to, tenant files, rent rolls, approved and declined tenant applications, documentation supporting tenant employment verification, marketing materials and advertisements, and documentation of requests for reasonable accommodations. It may also include a review of any local health, safety, or building code violation reports or notices and an inspection of the property to determine if the buildings are suitable for occupancy, taking into account local health, safety, and building codes, and housing quality standards as prescribed by HUD. In addition, any reports made by state or local government units of violations, with documentation of correction, will be reviewed.

PROGRAM REQUIREMENTS

Eligible Tenant Employment

All LEPP-funded units must meet the objective of providing housing to households deriving primary income from employment as a law enforcement officer. For the purposes of LEPP, this includes officers of the North Dakota Highway Patrol, the sheriff’s department of an oil and gas impacted county, or the local police department of a city or town within an oil and gas impacted county. Tenant eligibility for LEPP units will be determined by the project owner at the time of occupancy and re-examined at least annually.

Maximum Tenant Income

LEPP does not impose any restrictions on income for law enforcement households.

Maximum Rent

The rent charged for LEPP units will be capped at the Federal Low Income Housing Tax Credit 60% Median Income rent levels for the county in which the project is located. Rents for all LEPP units must be at or below these published limits, which are based on HUD area median income (AMI) figures, and presumed unit occupancy of 1.5 persons per bedroom.

Maximum rent amounts, limited to 60% AMI levels and including tenant-paid utilities, for LEPP-assisted units can be found on the NDHFA website at www.ndhfa.org/Development/LEPP.html.

Utility Allowances

An allowance for the cost of any utilities paid by the tenant must be deducted from the maximum rents published by NDHFA. The source of utility allowance data shall be obtained from the local public housing authority or through an energy study.

Potential Chronic Vacancy of a LEPP Unit

If at any time during the compliance period the owner can demonstrate to NDHFA's satisfaction that the owner is unable to fill a LEPP unit with an eligible law enforcement household, and the unit is therefore at risk of remaining vacant for an extended period of time and becoming a financial burden upon the project, the owner may, at NDHFA's sole discretion and with NDHFA's express written consent, fill the LEPP unit with other qualified households with incomes below 60% of AMI. The units will be subject to maximum tenant-paid rents of 30% of 60% of the AMI, calculated based on an assumed 1.5 persons per bedroom. If any utilities are paid directly by the tenant, the maximum rent must be reduced by the applicable utility allowance amount as approved by NDHFA.

If the relief allowed for by this section is exercised, tenant household income must be calculated and verified by the owner using the policies and procedures outlined in the North Dakota Housing Incentive Fund Ongoing Compliance Monitoring Manual, which can be found on the NDHFA website at the following web address: <https://www.ndhfa.org/Development/HIFDevelopment.html>.

SECTION 2 - ELIGIBILITY COMPLIANCE PROCEDURES

OVERVIEW

LEPP units within a project must be occupied by eligible households. In order to determine whether a household is eligible, the project owner needs to verify tenant employment in one of the law enforcement agencies described in Section 1 of this manual.

Verifying Employment

LEPP requires that property managers determine eligibility for applicants of LEPP units by examining source documents, such as an employment verification letter or a recent paystub, as evidence of employment in law enforcement. Regardless of the source documentation used, the applicant's position must be indicated on the document.

Property managers may develop their own verification procedures provided that they collect source documentation and that this documentation is sufficient for NDHFA to monitor program compliance.

Verifying Employment at Annual Reverification

All households residing in LEPP units must be determined to be eligible at the time of initial occupancy. To ensure the household's continued eligibility, the property manager must reverify employment for tenants in LEPP units annually. Employment verification at the time of annual reverification may be performed in the same manner as allowed for at initial occupancy; by obtaining source documentation.

What if Tenant is No Longer Employed in Law Enforcement?

A household residing in a LEPP unit, and which was determined eligible at the time of initial occupancy, is not necessarily subject to automatic eviction from that unit solely due to a change of employment out of the law enforcement sector. However, because such a unit is no longer under LEPP restrictions, the rent cap associated with the LEPP program is no longer in effect.

In order for the project as a whole to remain in compliance with LEPP tenant eligibility requirements, the project owner must promptly fill an available unit with an eligible law enforcement household:

- If another unit in the project is available, it must be filled by an eligible law enforcement household so that the project as a whole remains in compliance with the occupancy restrictions agreed upon in the LEPP loan documents. This is referred to as the "next available unit rule."
- If the project has no other vacant units with which to employ the "next available unit rule", the owner should provide the tenant formerly employed by law-enforcement with 30-day written notice of the landlord's intent to not renew the lease. Upon lease expiration, the vacant unit must be filled with an eligible law-enforcement household.

It is recommended that LEPP unit leases detail the LEPP employment requirements and be periodic month-to-month leases so that any possible non-compliance caused by a change in tenant employment is kept to a minimum. The property owner is ultimately responsible for the project remaining in compliance with LEPP. Extended periods of non-compliance will result in the remedial actions detailed in Section 3 of this manual.

SECTION 3 - MONITORING REVIEW PROCESS

NDHFA shall perform annual monitoring reviews for all projects funded by NDHFA through LEPP. The monitoring review shall consist of one or both of a desk review of information provided by the project owner and a site visit and review of documentation at the project location. The following steps will be followed in the annual compliance monitoring process.

RECEIPT AND REVIEW OF PROJECT INFORMATION BY NDHFA

Each year of the compliance period, the project owner shall submit to NDHFA a completed "Annual Rental Compliance Report" (see Attachment). The report shall contain information about each LEPP unit in the project. NDHFA will perform a desk review of the information provided by the project owner in order to determine areas for further examination. NDHFA will also consult other written data during the monitoring review, such as the RFP, the LEPP application, financial award, loan documents, and documentation from previous monitoring.

Also required to be submitted to NDHFA within 120 days of the end of the project's fiscal year are the following, certified to be true and correct by the project owner:

- Proof of current hazard and loss insurance covering the project and listing NDHFA as a mortgagee/loss payee.
- Such other information and schedules as may be requested in writing by the Agency in its reasonable discretion.

SCHEDULING SITE VISITS

Site visits are scheduled in advance. A notification letter will be mailed to the project owner, as well as the property manager if different than the owner, detailing the date, time, location and scope of the monitoring visit. Other information in the notification letter includes the anticipated duration of the monitoring visit, and required preparation on the part of the project owner, such as staff members needing to be present and files and documents which must be available during the visit.

ENTRANCE CONFERENCE

Upon arriving on-site, NDHFA monitoring staff will hold an entrance conference with the property manager and any other project personnel deemed appropriate by the owner. The purpose of the entrance conference is to provide a clear understanding of the purpose, scope, and schedule of the monitoring visit.

MONITORING REVIEW DOCUMENTATION

Utilizing appropriate monitoring checklists, NDHFA staff will review documentation to determine if all requirements have been met. The primary areas being examined are consistency with the specific terms of the financial award and loan agreement. A written record will be created detailing the steps followed and information reviewed during the compliance monitoring visit.

If there are areas that are discovered during the review that indicate noncompliance with the laws, regulations or other requirements, this may result in a finding. A finding of noncompliance must be remedied. A finding can result in a sanction if corrective action is not taken in a specified manner and/or timeframe. For each finding, NDHFA will indicate a corrective action, either to correct a past problem or to avoid a future problem, which must be taken by the project owner. A response from the project owner is required on all findings. The project owner may concur with the finding and explain the corrective action which will be undertaken, or provide additional information in order to address the finding.

A deficiency in program performance not based on a statutory or regulatory or other program requirement is referred to as a concern. Corrective actions are not required for concerns, but NDHFA may recommend actions and provide or obtain technical assistance for the project owner in order to address concerns. Concerns do not require responses from the project owner, although they are welcome.

EXIT CONFERENCE

At the conclusion of the review, NDHFA staff will conduct an exit conference with the project owner and management, providing a summary of the preliminary results of the review. Any findings and concerns discovered will be discussed. The NDHFA reviewer should also indicate the timeframe in which a monitoring letter will be sent, the process for requiring the project to address any findings, and the consequences for not addressing compliance issues in a timely manner. Finally, the NDHFA reviewer should provide any further technical assistance that is requested or needed or, if there is not sufficient time, make arrangements for such technical assistance to be provided at a later date.

MONITORING LETTER

Within 30 days after the completion of monitoring, a monitoring letter will be sent to the project owner describing the results of the review, as well as the basis for the conclusions. The monitoring letter will also list corrective actions which must be taken to resolve any findings, as well as recommendations for improvement for any areas of concern. The timeframe for carrying out any corrective actions will also be stated in the monitoring letter.

MONITORING FOLLOW-UP

The project owner must respond in writing to any findings within the timeframe identified in the monitoring letter. The project owner response will:

- Describe all corrective actions taken or provide new information not reviewed during the visit. The corrective actions must be consistent with those required in the monitoring letter and be performed within the required timeframe.
- Certify that all regulations will be observed in the future and provide written assurance that no adverse effects occurred to the project for failure to observe said regulations.

NDHFA will perform follow-up monitoring in order to confirm the implementation of corrective measures. Findings will be closed upon satisfactory review of the corrective measures and notification of the closing of findings will be communicated to the project owner.

REMEDIAL ACTION

If issues are not resolved, NDHFA may impose a progressive level of sanctions that may include:

- Additional reporting requirements,
- Additional special conditions,
- Default of the LEPP loan and recapture of funding,
- Termination of future NDHFA funding, and/or
- Legal action

INSTRUCTIONS FOR ANNUAL RENTAL COMPLIANCE REPORT FORM

PROPERTY MANAGEMENT INFORMATION

Project Name: provide the full name of the housing project

Owner Name: provide the full name of the project's ownership entity

Reporting Date: provide the date the form is completed

Property Management Contact, Email Address and Telephone Number: provide contact information for the individual completing the form

RENTAL UNITS

Information provided in this section must include all activity since the last review period or issuance of the certificate of occupancy, whichever is more recent. Each change in unit status should represent a separate line on the list. For example, if Unit 1A was occupied for 6 months, vacant for the next 2 months, and then occupied again for the last 4 months, this information for Unit 1A should be listed on three separate lines on the list. Attach additional sheets if necessary.

Restricted Income Level: provide the income restriction for the unit. Also note if this is an Essential Service Worker Unit or ESW.

Unit Number: provide the number for the housing unit being disclosed on the line

Vacant or Occupied: indicate if the unit is/was vacant or occupied during the time period covered on the line

Head of Household Last Name: provide the Last name of the head of household as indicated on the lease

Number of Persons: provide the number of persons in the household

Number of Bedrooms: provide the number of bedrooms in the unit

Date Span of Occupancy or Vacancy: provide the time span being covered on this line

Income at Initial Occupancy: provide the total annual income for the household as verified by the owner or manager at the time of initial occupancy

Annual Recertification Income: provide the total annual income for the household as verified by the owner or manager at the time of most recent annual recertification.

Method of Income Verification for Most Recent Certification: provide the method(s) used to verify the tenant's total household income (paystubs, tax returns, benefits statements, etc.)

Verified ESW: tell us if you verified or re-verified the tenant is an Essential Service Worker. If not applicable put N/A.

Employer & Job Title if ESW or N/A: If this unit is an ESW unit, provide employer and job title of the ESW. If not applicable put N/A.

Amount of Tenant Paid Rent: provide the amount of the unit rent which is paid out of pocket by the tenant

Rent Subsidy Amount/Type P-Project, T-Tenant: Tell us type of rent subsidy the tenant receives if any. Project based used P and for Tenant based used T.

Tenant Paid Utility Portion: Provide the amount of the utilities not included in the rent and are being paid by the tenant.

Total Gross Rent: The total rent being charged to the tenant including tenant paid utilities and tenant-based rental assistance.

CERTIFICATION SIGNATURE

The form must be signed and dated by the preparer.