

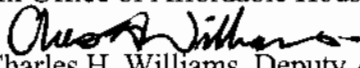


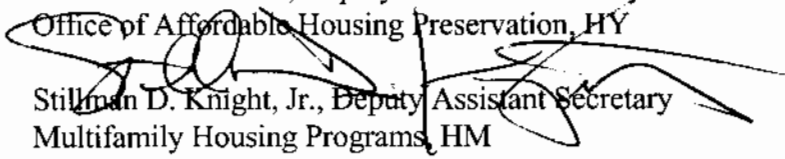
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

OFFICE OF HOUSING

April 28, 2005

MEMORANDUM FOR: All Multifamily Hub/Program Center Directors
All Multifamily Hub/Program Center Operations Officers
All HUD Project Managers with Closed M2M Properties
All Office of Affordable Housing Preservation Staff

FROM: 
Charles H. Williams, Deputy Assistant Secretary
Office of Affordable Housing Preservation, HY


Stillman D. Knight, Jr., Deputy Assistant Secretary
Multifamily Housing Programs, HM

SUBJECT: Mark-to-Market Rehabilitation Escrow Default Remedies
Process Outline

Prior guidance for addressing defaults in completion of M2M rehab escrows was distributed by Resource Desk broadcast of April 28, 2004, titled "Mark-to-Market (M2M) Rehabilitation Escrow Completion." This memo provides an outline for implementing the policy, and in particular, notes the responsibilities of the various parties.

- **REAC Inspection Reinstatement** - REAC inspections for restructured properties undergoing rehabilitation will no longer be deferred beyond twelve (12) months, except when extension of the Rehabilitation Escrow Deposit Agreement (REDA) has been approved by OAHP.
 - Owners with M2M Rehab Escrows will be informed in writing of the entire policy for late escrows.
 - Multifamily Offices will be informed via memo and Resource Desk broadcast.
 - Rehabilitation Escrow Administration Tracking (REAT) currently emails the status of each Rehab Escrow to the respective Project Manager each month (Start date, Original Escrow Amount, Current Balance).
 - Effective immediately, REAT will distribute its recommendations to issue "**No REAC Deferral**" to respective project managers each month, and will advise those project managers when the same escrows are closed.
 - The Multifamily Office can determine the rehab escrow status for any project at any time by downloading the Rehab Escrow database from:
"<http://hudweb.hud.gov/po/ya/reports.htm>".

This is a process change that will remove a gray area in which certain owners with late rehab escrows may be claiming exemption from REAC inspections due to ongoing rehabilitation.

- **2530 / Flag** - Late escrows may result in a management finding by HUD. After notice is provided to the Owner, a Flag may be placed on any owner and affiliated manager associated with a late escrow unless OAHP has approved an extension.¹
 - REAT Manager will provide a monthly list of 2530 Flag recommendations to the HUB/PC Directors. New recommendations will be clearly noted, as will removal recommendations (made when escrows are completed). Reasons for recommendations will be briefly noted; full documentation to be provided as needed.
 - REAT Manager will provide owner notification letters to respective HUB/PC Directors for their execution and transmittal to owners upon approval of recommendation.
 - HUB/PC Director will review and approve recommendations, notify REAT of decisions, and mail the notification letters to the owners, with copies to the REAT Manager.
 - After expiration of the notice period, and unless the REAT Manager notifies the HUB/PC Director that the default has been cured, the HUB/PC Director will ensure appropriate 2530 Flags are entered into the Active Partners Performance System (APPS).
 - Decisions **not** to enter a flag must be discussed with the REAT Manager (without delaying issuance of approved flags). When REAT Manager and HUB/PC Director cannot reach an agreement on the 2530 flag decision, the matter will be referred to the Office of the Director of Asset Management for final resolution.

This is a process change, better linking information regarding owner performance on rehabilitation escrows with previous participation records.

- **Suspension of CRP/IPF Payments** - Late escrows without an approved extension may result in suspension of Capital Recovery Payments (CRP) to the owner, and unless cleared before payable, forfeiture of an Incentive Performance Fee (IPF) payment.
 - REAT Manager will provide monthly list of Late Escrows with recommended CRP/IPF suspensions to HUB/PC Directors.
 - REAT Manager will provide owner notification letters for HUB/PC Director's execution.
 - HUB/PC Director will review and approve recommendations, sign and mail the notification letters to the owners, with copies to the REAT Manager.

¹ Extensions are typically only granted when circumstances causing delays are beyond an owners control. Refer to OMHAR Resource Desk Broadcast guidance dated 11/10/03 titled "Additional Guidance for Rehab Escrow Administration and Modification Requests" for further information on escrow extensions.

- After expiration of the notice period, and unless the REAT Manager notifies the HUB/PC Director that the default has been cured, the REAT Manager will send copies of the notification letters to the OAHP post-closing contractor and notify the HUB/PC Director of that action.
- Decisions **not** to suspend CRP/IPF must be discussed with the REAT Manager (without delaying issuance of approved suspensions). When the REAT Manager and HUB/PC Director cannot reach agreement on the CRP/IPF suspension decision, the matter will be referred to the Office of the Director of Asset Management for final resolution.

M2M has post-closing performance standards that must be met for owners to collect Incentive Performance Fees and Capital Recovery Payments. This process change would make clear to owners that timely rehab escrow completion is a mandatory performance requirement. The result would be additional incentive for owners to ensure timely escrow completion.

- ***Adjustment of Housing Assistance Payments (HAP) Contract Rent*** - HAP contract rent levels are subject to review and reduction to the extent the rents were based on anticipated completion of a specific repair or improvement, when that repair or improvement remains unfinished without an approved escrow extension.
 - REAT Team reviews Exhibit A, determines extent of unfinished work. Obvious rent-affecting improvements such as HVAC installation, Common Room or elevator additions will trigger referral with written recommendation to the HUB/PC Director.
 - Amount of rent adjustment in question will be quantified by REAT in its notification to the HUB/PC Director, based on OAHP's underwriting and appraisal information.
 - REAT Manager will provide owner notification letters for the HUB/PC Director's execution.
 - HUB/PC Director will review recommendations, obtain concurrence from HUB/PC counsel, approve recommendation, sign and mail the notification letters to the owners, with copies to the REAT Manager.
 - As soon as possible after expiration of the notice period, and unless the REAT Manager notifies the HUB/PC Director that the default has been cured, the HUB/PC Director will provide the owner with a revised HAP Contract that reflects the reduced rents.
 - Decisions **not** to reduce HAP contracts must be discussed with the REAT Manager (without delaying issuance of any approved contract adjustments). When REAT Manager and/or HUB/PC Director and/or DEC cannot reach agreement on the HAP adjustment decision, the matter will be referred to the Office of the Director of Asset Management for final resolution.

Reduction of rents is only appropriate where rent differentials can be linked to specific repair/improvements funded in the rehab escrow, but not completed. Even so, this is an important

option for those cases. This will require close coordination between OAHP, the Departmental Enforcement Center, and Multifamily, and may involve Section 8 Contract Administrators. Because these will be case-by-case analyses and decisions, no overall process will be laid out in advance.

- ***Referral To Departmental Enforcement Center*** - Late escrows may trigger an elective referral to the DEC for evaluation of more serious remedies.
 - REAT Manager makes specific analysis and findings, refers package outlining basic fact pattern and conclusions to HUB/PC Director.
 - HUB/PC Director evaluates package and determines whether elective referral is appropriate, if so refers package to Departmental Enforcement Center utilizing the existing process for elective physical referral through REMS.
 - HUB/PC Director notifies REAT Manager of decision and issues any necessary owner notification.
 - In cases where elective referral is made, REAT will supply any/all rehab escrow information necessary to the HUB/PC or DEC to assist in the evaluation.
 - DEC determination will be shared with HUB/PC Director and REAT Manager.
 - Decisions ***not*** to make the elective referral must be discussed with the REAT Manager (without delaying referral of any other appropriate cases). When REAT Manager and/or HUB/PC Director cannot reach agreement on the elective referral decision, the matter will be referred to the Office of the Director of Asset Management for final resolution.
 - DEC decisions to close out the referral ***with no action*** must be discussed with the HUB/PC Director and as appropriate, the REAT Manager. When mutual agreement cannot be reached on the decision to close out, the matter will be referred to the Office of the Director of Asset Management for final resolution.

Multifamily and the Departmental Enforcement Center have a body of expertise regarding strategies and remedies available to the Department for intractable cases. The REAT will utilize this process for extreme cases, working closely with the DEC and MF to determine what legal documentation, background and supporting material is necessary for DEC to provide assistance. Because these will be case-by-case analyses and decisions, no overall process will be laid out in advance.