

OMHAR RESOURCE DESK BROADCAST EMAIL ARCHIVE

Sent: Tuesday, June 8, 2004

Subject: Rehabilitation Account Tracking (REAT) Additional Guidance

**Attachment: Rehab Addl Guidance_060704_v5.doc
Form 9.10 9.11 Final v3.xls**

OMHAR's Rehabilitation Account Tracking (REAT) Team has issued additional guidance on the following topics:

- 1. Distributing Excess Funds After Completion of All Rehab Work**
- 2. Funding Shortfalls Encountered in Completing the Rehab Work**
- 3. Ensuring Escrow Funds are in Interest-Bearing Accounts, are Protected Against Loss, and are Properly Titled**
- 4. Closing Out Rehab Escrow Accounts**
- 5. Identifying Owners with Delinquent Escrows Who Also Have Properties in Restructuring**

In addition, the REAT Team has completed a list of Frequently Asked Questions that address recurring questions that are being addressed daily.

The Form 9.10/9.11 has also been revised as it is now required for closing out completed, fully disbursed rehab accounts. Please review the additional guidance memo, the FAQs attachment, and the revised form.

Contact Dao Vuong or Richard Daugherty with any questions.

**OMHAR Resource Desk
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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF MULTIFAMILY HOUSING ASSISTANCE RESTRUCTURING

DATE: June 7, 2004

TO: Rehabilitation Escrow Administrators (REAs)
Multifamily HUB/Program Center Directors
OMHAR Production Offices
PAEs

FROM: Richard P. Daugherty, Director
Rehabilitation Escrow Account Tracking (REAT) Team

SUBJECT: Rehab Escrow Operating Guidance Update

PURPOSE

Numerous policy and procedural matters have come to our attention recently in our administration of rehabilitation escrows. These matters have been addressed individually as they arose, but they do warrant notice to all REAs, POs, and PAEs. In addition, REA certification will now be required, using a modified Form 9.10 (attached) to document closed escrow accounts.

POLICY AND PROCEDURAL MATTERS

The matters discussed in this memorandum include:

1. Distributing Excess Funds After Completion of All Rehab Work
2. Funding Shortfalls Encountered in Completing the Rehab Work
3. Ensuring Escrow Funds are in Interest-Bearing Accounts, are Protected Against Loss, and are Properly Titled
4. Closing Out Rehab Escrow Accounts
5. Identifying Owners with Delinquent Escrows Who Also Have Properties in Restructuring

In addition, Frequently Asked Questions are addressed in the attachment to this memorandum.

Item 1: Distributing Excess Funds After Completion of All Rehab Work

Upon completion of all required rehab work, final inspection, and disbursement of funds in payment thereof, the REA should proceed to distribute any excess funds to HUD for payment to the Mortgage Restructuring Note (MRN); or if no MRN, to the Contingent Repayment Note (CRN); or if no CRN, to the FHA Fund.¹ While the owner may wish to complete additional repairs or deposit the funds in the

¹ See Resource Desk broadcast dated 03/22/04 titled "Remitting Funds to HUD."

property's Reserve For Replacements Account, these excess funds can be characterized as an over-payment of the FHA insurance claim and must be returned to HUD. There are occasions where the excess funds may be used at the property (requires REAT Director's approval). The rule of thumb is that funds may be used if the work is necessary to complete the identified repairs, or would have been included in the identified repairs if known at the time (e.g., once the wall was opened up, additional work was necessary). In such instances, the REA should follow prior instructions in detailing the request to the REAT Manager using Form 9.10.²

Item 2: Funding Shortfalls Encountered in Completing the Rehab Work

The Rehabilitation Escrow Deposit Agreement (REDA) requires the owner to complete the repairs detailed in Exhibit A and establishes a certain amount of funds for that purpose. It also states that in the event of any shortfall in funding, the owner must fund the shortfall from non-project sources.

Some owners have assumed they can use the Reserve For Replacements Account to cover the shortfall. This is **not** consistent with the contractual terms of the REDA and any such request should be declined.

Item 3: Ensuring Escrow Funds are in Interest-Bearing Accounts, are Protected Against Loss, and are Properly Titled

Prudent financial management dictates that Rehab Escrow funds be placed in individual, interest bearing accounts, with all interest accruing to the benefit of the account. REAs also have the obligation to ensure that in the event of a failure of the financial institution, or bankruptcy of the owner, that the Rehab Escrow funds are protected and are accessible by HUD, in order to complete the necessary repairs. REAs should seek counsel, as needed, in order to carry out their responsibilities.

Item 4: Closing out Rehab Escrow Accounts

The Form 9.10 OMHAR REAT Multi-Purpose Form has been revised to reflect the new requirement that it be completed to close out Rehab Escrow Accounts. For all accounts closed after the date of this guidance, REAs must provide summary financial highlights of the escrow, and complete the certification appearing on the attached Form 9.10 (see bottom of form) as part of the close-out process. Note that the Form 9.10 that is completed for closing out an escrow requires only the signature of the REA.

Item 5: Identifying Owners with Delinquent Escrows Who Also Have Properties in Restructuring

There are numerous owners with delinquent rehab escrow accounts who have

² Refer to the Resource Desk broadcast dated 11/10/03 titled "Additional Guidance for Rehab Escrow Administration and Modification Requests".

other properties currently undergoing M2M restructuring (properties under common control or have same or overlapping general partners). We intend to begin providing a report to the respective PAEs and POs where this is occurring, with a suggestion that they consider the performance of the owner in judging the acceptability of ownership and/or conditions of the new restructure.

In your discussions with owners, particularly those with delinquent escrows, OMHAR encourages you to apprise owners of such direction. We have also finalized a Default policy and are proceeding toward implementation.³ On the delinquent rehab escrows, HUD may issue 2530 flags, suspend CRP/IPF, reduce HAP contract rents (in those cases where rental increases were tied to completed rehab), and/or make an elective referral to the Departmental Enforcement Center.

CONTACTS

Questions and comments about this guidance update should be directed to the REAT Team, as follows:

Dao Vuong, Manager
Dao_Vuong@HUD.GOV
212-264-0903, ext. 3698

Richard Daugherty, Director
Richard_P._Daugherty@HUD.GOV
212-264-0903, ext. 3665

³ Refer to the Resource Desk broadcast dated 04/28/04 titled "Mark to Market (M2M) Rehabilitation Escrow Completion".



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
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FREQUENTLY ASKED QUESTIONS

- 1) Q: I am a HUD Project Manager who just received a list of active rehab escrows within my portfolio. What should I be doing with that list?**

A: In the M2M restructuring, the parties concluded that there were repairs so necessary and urgent to be completed that a Rehab Escrow account was established to fund their completion. HUD PMs play an important role throughout the REAT process. The REAT Team would encourage the HUD Project Manager stay abreast of the progress in completing the required repairs and ensure that owners' requests for withdrawals from the Reserve for Replacement Account do not duplicate what has already been funded in the Rehab Escrow Account. Most owners proceed to complete the repairs as agreed. For those that don't, the HUD Project Manager's urging may lead to a more favorable and timely completion.

- 2) Q: How can I determine the status of a rehab escrow project?**

A: OMHAR and HUD staff may access the information within the REAT Database, which can be downloaded from OMHAR's Report Web Page located at: <http://hudweb.hud.gov/po/ya/reports.htm>. Instructions for using the database can be found on the Resource Desk (the 11-20-2003 broadcast).

In addition, users of the Resource Desk may also go to: www.omhar.com for rehab information. The information available to the user includes: M2M closing date, original balance in Rehab Escrow Account, funds disbursed, Rehab Escrow Administrator (REA) contact information, Enforcement Center status, REAC physical score, and comments from the REAT Team's calls to ascertain status of the work and disbursements.

- 3) Q: Contractors want to be paid up front. The Owner does not have enough funds to commence work. Can s/he borrow funds from the Reserve for Replacement Account and then reimburse the reserves with a draw from the Rehab Escrow Account?**

A: The decision to lend reserve funds to the Project for rehab work must be made by the HUD HUB or Program Center, on a case by case basis. While there may be circumstances under which this practice is deemed acceptable, it is expected to be applied with great discretion. If Reserve for Replacement funds are borrowed, adequate measures should be established to ensure the funds are properly returned to the reserves when escrow disbursement is made.

4) Q: The owner has a likely shortfall in the escrow and has requested a withdrawal from the Reserve for Replacement Account to cover it. Is that allowed?

A: The Rehabilitation Escrow Deposit Agreement (REDA) contains language specifically addressing this circumstance (see Section 9A of the current REDA). In each case, the owner must use non-project resources to complete the repairs. Withdrawals from the Reserve for Replacement Account should not be allowed for this purpose.

5) Q: What if the required rehab work cannot be completed in 12 months, what must be provided to support a request for a time extension?

A: The reasons for the delay must be outside the owner's control. If so, the owner and REA can pursue an extension of time to complete the repairs. To do so, complete **all** parts of the Form 9.10 and have **all** signers of the original REDA sign off on it (or the Form 9.11). Please note that for extensions (as well as changes in scope), the Form 9.10 provides for comments and optional concurrence from the HUD Project Manager. Even though the Multifamily Field Office is not one of the signers of the original REDA, the HUD Project Manager has responsibility for the property and should have the option of commenting on the requested action. The justification area of the Form 9.10 **must** include:

- A. List of work items completed and work items remaining.
- B. Original escrow balance, current balance.
- C. Length of extension being requested, reasons for the delay, and justification for the amount of time requested.

Once the concurrence is obtained from the original signers, and the HUD Project Manager has been given the opportunity to comment and concur, the form should be forwarded to the REAT Manager. The REAT Director will consider the request and either approve or deny it.

6) Q: What happens when there are funds remaining in the escrow after work is complete, all necessary inspections have been made, and all reimbursements have been made?

A: The excess balance is an overpayment of the FHA claim from the closing, and as such, these funds are generally directed to be applied as follows: to the Mortgage Restructuring Note (MRN); if no MRN, to the Contingent Repayment Note (CRN); and if no CRN, directly to the FHA Fund. REAs should make the check payable to HUD and follow the instructions on the following page (do not send via wire transfer). Under no circumstances can the excess funds be returned to the owner.

Payment to the MRN or CRN	Payment to the FHA Fund
Attach a transmittal that includes: • REA contact name and phone number • FHA Project Name and number with the suffix appropriate to the MRN or CRN • Instruction to apply funds to the [MRN or CRN], as a principal payment, effective the date sent	Attach a transmittal that includes: • REA contact name and phone number • FHA Project Name and number • Instruction to apply funds to the FHA Fund, Miscellaneous Account, as rehab escrow excess funds
Mail check and supporting information to: HUD MF Payment Process Center P.O. Box 70764 Chicago, IL 60673	Mail check and supporting information to: HUD MF Claims P.O. Box 44003 Washington, DC 20026
Copy OMHAR on the transmittal as follows: Richard Daugherty REAT Director OMHAR – NY 26 Federal Plaza Room 32116 New York, NY 10278	Copy OMHAR on the transmittal as follows: Richard Daugherty REAT Director OMHAR – NY 26 Federal Plaza Room 32116 New York, NY 10278

In addition, for payments on the MRN or CRN, the REA should send a request for confirmation of receipt of the payment to DP Services. The request for confirmation of receipt should state the amount that was sent to HUD Multifamily Payment Processing Center and the date on which it was sent; it should also expressly state that the sum remitted represents excess funds remaining from the property's rehabilitation escrow account and that the payment should be applied to principal outstanding on the property's MRN. The request can be mailed to:

DP Services
P.O. Box 4308
Silver Spring MD 20914
Attention: Carol Hampton
Alternatively it can be faxed to DP Services at (301) 622-5606
(Attention: Carol Hampton).

7) Q: Can excess funds be used for additional repairs?

A: Excess funds may be used for additional repairs, only when:

- The repairs are a necessary complement to completing the required work, or
- The repairs revealed the need for additional work that must be completed, and
- The REAT Director has approved the additional repairs in writing.