



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
**OFFICE OF AFFORDABLE HOUSING PRESERVATION**

Date: October 29, 2004

To: OAHP  
Rehab Escrow Administrators

Through: Richard P. Daugherty, REAT Manager

From: Dao Vuong, REAT Specialist

Subject: Rehabilitation Escrow Administration Tracking (“REAT”)  
Comprehensive Guidance for Rehab Escrow Administrators

Over the course of the last year of REAT operations, we have provided a body of guidance to assist Rehabilitation Escrow Administrators (REAs) carry out their responsibilities. This guidance has been in the form of policy memoranda, procedural broadcasts, and REA conference calls. In response to many REAs’ request for a compilation of guidance on the most frequently encountered issues, we have developed this memorandum.

Please review this memorandum and contact your REAT Specialist with any follow-up questions. Thank you.

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## **I. SERVICING ACCOUNTS**

### **A. REPORTING**

#### **1. Monthly Online Reporting**

The REDA requires that the REA report to OAHP on the status of the repairs and of the escrow account. The online status reporting from REAs can be done using the OAHP Resource Desk, at [www.oahp.net](http://www.oahp.net).

Staff with new REAs and or first time REA users of the Resource Desk must first register and request an OAHP Resource Desk Account. This is accomplished at the Resource Desk, [www.oahp.net](http://www.oahp.net). All new subscribers to the Resource Desk tool must register as a Rehab Administrator when prompted to “Select User Type.” Once OAHP has received and verified your REA status, REAs should be able to login (with a user name and password) and go to “Update Rehab Information.” Each REA will be able to view and update only its own active portfolio of rehab escrow projects. If there are other open or active escrows that have been omitted from your active portfolio, or should you have any problems using the system, please notify Dao Vuong at [dao\\_vuong@hud.gov](mailto:dao_vuong@hud.gov).

Monthly reporting is required on all escrows open for three months or more, with input expected by the 30th of the month. If there has been no change in status since the last reporting period, please note this in the comment section and the reason(s) for the delay or why there has been no activity or progress. Please keep comments current, factual and concise. Of course, there may be occasions when you need to speak to your REAT Specialist immediately, to resolve a problem or answer a question. Contact information is located on the first page of this document.

The Resource Desk data and comments are subject to on-going REAT Team review and further follow-up (with REAs, Owners, Property Managers, HUD Field Office Project Managers, etc.), as needed, to ascertain an accurate, current status of the rehab escrow work. Provision of clear, comprehensive information will reduce the need for telephone follow-up by REAT Specialists.

#### **2. Reporting to the REAT Team**

REAs are expected to be proactive and take ownership of their rehab escrow accounts.

By “proactive,” we mean that REAs are expected to notify OAHP REAT as soon as they become aware of any issues delaying the progress of work, either via the Resource Desk or through contacting the REAT Team Specialist assigned to that account. It is further expected that REAs will be familiar enough with their rehab portfolio that at any time a REAT Team Specialist calls for further information, the REA can fill in the blanks.

In servicing the escrow accounts, we offer the following checklist of questions for REAs to consider:

##### (a) For New Accounts (<3 months)

- 1) Have bids and permits been received?
- 2) Have the contractors been selected?

- 3) Have repairs commenced? If not, are there any issues delaying the start of work, and when do you expect work to start?
- 4) Is the Owner aware of the status?
- 5) Is the Owner/primary property contact cooperating with the REA's efforts to stay abreast of the status of the repairs?

*(b) For Late Accounts (>12 months)*

- 6) What are the owner's reasons for the delay? Estimated date of completion?
- 7) In your opinion, should the project be subject to default remedies? Why/Why not?
- 8) If a default remedy is not justified, has/will the Owner file for an extension? If it is to be filed, when can the REAT Team expect submission of the Form 9.10 extension request?
- 9) Are there any issues REAT management should be aware of?

*(c) For ALL Accounts*

- 10) What work has been completed?
- 11) What work remains to be completed or is in progress?
- 12) What are the Owner's plans to complete the work by the REDA due date? Have a timeline for completion of work by the REDA due date, if appropriate.

In general, the larger the escrow and the later the escrow, the higher the profile, and hence, the more the REAT Team Specialist needs to know. REAs must be well-informed and keep the Resource Desk up to date.

It is important to note that the REAT Team's implementation of default remedies does not impact REA responsibilities. Unless the REAT Team instructs the REA otherwise (via formal notification), late projects with default remedies applied are still subject to servicing and monitoring by REAs. Therefore, REAs should proceed to disburse funds for completed and satisfactorily inspected work.

## **B. FORM 9.10 OAHP REAT MULTIPURPOSE FORM REQUESTS**

As part of a REA's servicing responsibilities, REAs will need to prepare the Form 9.10 OAHP REAT Multipurpose Form requests for time extension, scope of work modifications, additional repair or excess fund inquiries, and to close-out the escrow.

Refer to OAHP's website for the latest form:

<http://www.hud.gov/offices/hsg/omhar/readingrm/forms/frm9-10.xls>

All requests should be sent to Dao Vuong for processing at:

OAHP New York  
Jacob K. Javitz Building  
26 Federal Plaza, Suite 32-102  
New York, NY 10278-0068  
(email) dao\_vuong@hud.gov  
(office) 212.542.7698  
(office fax) 212.264.5080

Prior to submitting any Form 9.10 requests for processing:

- The Owners must sign off on all such requests or inquiries (except for close-out).
- REAs must also indicate whether or not the REA agrees or disagrees with the Owner's request. If the REA disagrees, the REA must provide its perspective and recommendation using Form 9.11. In making this decision, REAs should consider:
  - What is the likelihood that the Owner will complete the work by the new deadline?
  - Has the owner provided a compelling reason for the change(s)?
  - If there is no assurance that work will be completed by the new deadline or that the request is not otherwise in the best interest of HUD and the property, it is expected that the REA not support the request.
- The REA completes the financial summary as reported near the top of the form.
- As part of the justification requirement, please list: ***the work completed to date, work still in progress, and if applicable, amount of invoices currently in hand.***

Depending on the type of request submitted and as part of the justification, additional information will be required in addition to the above and as mentioned below:

**1. Time Extensions**

- In the area provided, state reasons for the delay and proposed new completion date.

**2. Modifications to the Scope of Work (SOW)**

- Specify what the original SOW called for.
- Explain the benefit of the deviation from the original SOW.
- Reasons for the SOW change.
- Benefits of the SOW change, and/or detriment resulting from denial.
- Assuming SOW changed, what is the timeframe for completion?
- The PAE must provide its signature and opinion on the SOW request on the Form 9.10 & 9.11 and address:
  - Impact of SOW change on tenants' quality of life.
  - Any health and safety issues that are being addressed, or conversely, that would result from the SOW change
  - Is the SOW change also addressed in the 20 year PCA analysis and if so, which years?

**3. Excess Funds/Additional Repairs**

- Applying funds to the MRN principal is the rule; exceptions must be supported by terms of the REDA.
- Additional repairs will be considered only if the original scope of work has been completed.
- The request must be submitted to OAHP no more than 5 days after the final inspection has taken place, verifying completion of all items in the original scope of work.
- Additional repairs should be completed within a specific timeframe like any other repair item. The Form 9.10 must contain a proposed new completion date.

- Inspection(s) must follow completion of the additional repair(s). The burden of obtaining the additional inspection rests with the REA because the inspector must be an independent agent in their employ. This is most commonly resolved with the Owner funding the cost of the additional inspection by making another deposit to the escrow using non-project funds. The inspection arrangements must be discussed in the form 9.10.

Note: It is NOT necessary to submit a Form 9.10 for cost changes between the original REDA line items and actual amount spent. See Section III on fund disbursements for additional information.

### **C. FUND DISBURSEMENTS**

All work must have been satisfactorily inspected prior to making reimbursement to the Owner.

Further, in accordance with the REDA, “The Funds shall be withdrawn from the Escrow Account based on the actual invoices of Contractors for materials and equipment or services actually provided, less a ten percent (10%) holdback (the "Holdback Amount", often called “retainage”).” The Holdback Amount will be held until all work has been completed and satisfactorily inspected, all liens have been released or waivers obtained, and title updates have been received, and the REA can confirm the HUD liens have not been jeopardized.

Note: The 10% contingency and 10% Holdback Amounts are not the same. Holdbacks are retained or held (not disbursed) until all work is completed, inspected, title updates are completed, and all liens released. Contingency is an amount collected at closing and added to the escrow balance. It is intended to be used in the event of cost overruns. If total repair costs exceed the total original escrow amount plus the contingency, payment of the shortfall is the responsibility of the Owner and must be funded with non-project resources. Conversely, any escrow balance (regardless of its origin) remaining after all M2M required rehab is complete is considered excess funds.

## **II. CLOSING ACCOUNTS**

After all M2M required rehab and any approved additional repairs have been completed and satisfactorily inspected, the REA has confirmed there are no liens on the property as a result of the rehab work, and the final payment due to the Owner has been paid, the REA must timely submit the final Form 9.10 with its certification and supporting documents, as described below, in order for the account to be closed.

### A. Form 9.10

1. Asset information and the financial information must be completed.
2. Comments or Justification:
  - a) For deficit of funds/shortfall accounts – amount of shortfall; brief statement that shortfall was covered by Owner from non-project sources.
  - b) For excess funds – amount of surplus; brief comment on disposition of the excess funds (applied to the MRN, for example).

3. REA certification of completion
  - a) If there are excess funds, the REA must remember to include the amount, date of distribution, and how it was distributed (e.g., as a principal payment on the MRN).
  - b) If no excess funds, please state “N/A” in the area provided in the certification for the excess funds amount and date of distribution.
4. Signature – The Form 9.10 that is completed for closing out an escrow requires only the signature of the REA, at the bottom of the form’s certification area.

#### B. Attachments to the Form 9.10

1. A copy of REA’s accounting ledger or final bank statement.
- 2) A copy of the respective project’s updated Resource Desk page showing:
  - **Status of Work:** select “Complete – Per Final Inspection”
  - **% Work Complete:** insert 100%
  - **Date Work Complete Per Final Inspection:** insert date (dd/mm/yy)
  - **Funds Disbursed to Date:** insert amount disbursed to Owner
  - **Date Account Closed:** insert date (dd/mm/yy)
  - **Comments:** insert comments that reflect the appropriate disposition as discussed in paragraphs B.1(c) and B.1(d) above
- 3) For excess funds - A copy of the transmittal letter that went to MF HUD Payment Processing Center and copy of the letter sent to DP Services requesting receipt of payment.

HUD’s lockbox address for excess funds is:

HUD Multifamily Payment Processing Center  
P.O. Box 70764  
Chicago, IL 60673.

ATTN: Project Name, City, State, REMS ID#, FHA#, MRN#

The transmittal letter should include instructions that the enclosed check represents excess funds from the M2M Rehab Escrow to be applied as a principal payment to the MRN [if no MRN, to the CRN; if no CRN, to the FHA Fund]. In addition, the REA’s contact information should also be provided.

Until the final Form 9.10 certification and the supporting documents are submitted to, and approved by, the REAT Team, projects will remain active and subject to monitoring.

### **III. FREQUENTLY ASKED QUESTIONS**

- 1) Do REAs need to update the Resource Desk online if there have been no changes to the status of the rehab escrow account since the last month’s update?

*Answer: Yes. For all accounts open for 90 days and more, the REAT Team looks for a monthly update. If there is no update, the REAT Team Specialist will have to call the REA. The REA can avoid this by going to the Resource Desk and noting there is no update and either what is expected to next occur, or why there is no update.*

- 2) When rehab work is not completed by the completion date in the REDA, should the REA freeze the escrow account and not make further reimbursements? What about once a default remedy is applied?

*Answer: No. The REA must continue to administer the escrow account, including completing inspections and making reimbursements, unless and until the REAT Team or other HUD department officially provides notification to do otherwise.*

- 3) When the REDA-required work has been completed and there are no excess funds in the escrow account, does the REA still have to complete the “close out” process?

*Answer: Yes. The REAT Team needs the Form 9.10 completed for the close-out, with the attachments including the accounting ledger or bank statement, and the copy of the Resource Desk update reflecting the account is closed out.*

- 4) Should the REA offer its opinion to the REAT Team on whether a Form 9.10 request for an extension of time, change in scope of work, or use of excess funds other than application to the MRN, should be approved?

*Answer: Yes. The REAT Team relies on the REA to evaluate the request and offer sufficient justification to support its recommendation to approve or decline.*

- 5) Once the last of the required rehab work has been completed, satisfactorily inspected, and payment has been made to the Owner, must the REA proceed to close out the account quickly?

*Answer: Yes. Until an escrow account is closed, it continues to be subject to active monitoring by the REAT Team. The REAT Team would expect that accounts will be routinely closed out within 30 days of making the final reimbursement to the Owner.*

- 6) Will the REAT Team approve the completion of additional repairs at the property with any excess funds?

*Answer: Not necessarily. The existence of excess funds can generally be construed as indicating that the FHA claim paid at the closing of the restructuring was too large, and those excess funds should be returned to HUD (generally by payment to the MRN). The M2M restructuring involves careful consideration of what repairs must be made in the initial 12 months following closing and the REAT Team is generally disinclined to second-guess that decision after the fact. However, reasonable, logical and necessary work items may be considered, provided the request:*

- *Is well supported and clearly demonstrates the necessity of the work*
- *Is not already provided for via other funding vehicles*
- *Would result in clear benefit to the property and tenancy*
- *Would otherwise be a rehab-eligible work item*

- 7) If interim completion dates are included as terms of the REDA, will the REAT Team monitor those?

*Answer: Yes. Interim completion dates in the REDA are contractual terms, as is the final completion date. Failure to complete the work within those interim timeframes could lead to the REAT Team applying default remedies and/or declaring a default.*