



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

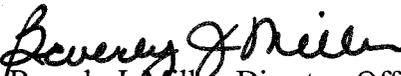
APR 27 2004

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

MEMORANDUM FOR: All Owners of Restructured M2M Project
All OMHAR Staff
All Rehab Escrow Administrators
All Multifamily Hub/Program Center Directors

FROM:


Charles H. Williams, Director of OMHAR, HY


Beverly J. Miller, Director, Office of Asset Management, HTG

SUBJECT: Mark to Market ("M2M") Rehabilitation Escrow Completion

Purpose:

Prior guidance announced the creation of a Rehab Escrow Administration Tracking program and emphasized the importance of timely escrow completion. This memorandum sets forth guiding principles under which HUD will act to ensure the timely completion of the physical repairs specified under each M2M Rehabilitation Escrow Deposit Agreement ("REDA"). OMHAR will continue to track Rehab Escrow performance and will administer this policy in coordination with Multifamily Asset Management and Enforcement Center support and assistance.

Background:

M2M closing documents require completion of repair items identified in the REDA within a specific timeframe, typically twelve (12) months or less. "Completion" means the **successful** installation, improvement, repair or replacement of the property elements listed in the Exhibit A of the REDA. While the majority of rehabilitation escrows are completed timely, a number of M2M rehabilitation escrows have not been completed within the allotted period, nor do they have an approved extension.

Typically, the REDA scope contains important property attributes that directly contribute to the quality of the tenants' living conditions. Failure to assure timely completion of the rehabilitation work deprives the tenants of needed amenities, and/or subjects tenants to conditions that are not decent, safe and sanitary.

In some cases, property owners receive increased rental subsidies based on promised rehabilitation improvements. Further, some property owners receive deferrals of REAC physical inspections. Owners must responsibly oversee rehabilitation progress to ensure timely completion of all work items. HUD will apply appropriate measures for failure to complete rehabilitation escrow work timely.

Potential Actions:

Effective immediately, HUD will implement any or all of the following corrective measures, as each circumstance requires for the failure to complete rehabilitation timely:

- *Place a non-compliance indicator in APPS (2530 flag)*
Failure to timely complete rehabilitation escrow work is a contractual breach. If rehabilitation is not completed timely, OMHAR must notify the Multifamily Asset Management Staff of the breach of contract. Multifamily should place an APPS Flag for the owner and/or management for failure to meet contractual obligations. Multifamily must also notify the owner/manager of the placement of the flag.
- *Resume REAC Inspections*
The deferral of REAC inspections for restructured properties undergoing rehabilitation will no longer extend beyond twelve (12) months, except when extension of the REDA has been approved by OMHAR.
- *Adjust HAP Contract Rent*
To the extent the rents were based on anticipated completion of a specific repair or improvement, HAP contract rent levels are subject to review and reduction when that repair or improvement remains unfinished without an approved extension.
- *Suspend CRP and IPF Payments*
Failure to timely complete rehabilitation escrow work will result in suspension of Capital Recovery Payments (CRP) and forfeiture of any Incentive Performance Fee (IPF) payments that would become payable before the escrow is completed.
- *Refer the owner to the Departmental Enforcement Center (DEC)*
Failure to timely complete rehabilitation escrow work may trigger an elective referral to the DEC for evaluation of more serious remedies. If rehabilitation is not completed timely, OMHAR must notify the Multifamily Asset Management Staff of the breach of contract. Multifamily may make an elective referral to the DEC for enforcement action.

Conclusion:

Congress mandated the rehabilitation escrow for M2M properties to ensure completion of required repairs at restructured properties. Funds are provided at closing for this purpose specifically, and owners are required to complete the required improvements timely. Owners must be prepared to begin work immediately after closing.

Further Reference:

- August 14, 2003 Resource Desk Broadcast entitled “Rehabilitation Escrow Administration Tracking (“REAT”)”
- November 12, 2003 Resource Desk Broadcast entitled “Additional Guidance for Rehab Escrow Administration and Modification Requests”