

## Ensuring NAHMA Members Receive the Latest News and Analysis of Breaking Issues in Affordable Housing

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## REAC Technical Review (TR) / Data Base Adjustment (DBA) Preparation

### Background

On Thursday, January 12, NAHMA participated in a conference call with REAC staff to discuss the information necessary to submit a successful TR/DBA appeal. This *NAHMAanalysis* summarizes the highlights of the discussion. Members should refer to official HUD documents, notices, handbooks and regulations for compliance guidance and/or specific instructions on filing REAC appeals.

After a REAC inspection, O/As may request a TR of a physical inspection score if, during the physical inspection, an objectively verifiable and material error occurred that, if corrected, would result in an improvement in the property's overall score. The three types of material errors are:

- Building data errors, where the inspection included the wrong building or a building that is not owned by the property;
- Unit count errors, where the total number of units considered in scoring is incorrect as reported at the time of the inspection; and
- Non-existent deficiency errors, where the inspection cites a deficiency that did not exist at the time of the inspection.

TRs for public housing agencies (PHA) and multifamily projects must be received by REAC within 30 days from the physical inspection report release date.

O/As may request a DBA in order to have REAC review a property's physical inspection score. A DBA request may be based on:

- Local conditions and exceptions, such as inconsistencies between state/local code requirements and the UPSC inspection protocol;
- Ownership Issues, such as items captured and scored during the inspection that are not owned or the responsibility of the project;

- Adverse conditions beyond the O/A's control, such as a natural disaster or a third-party private or public entity working near a property; and
- Modernization work-in-progress—for example, when properties undergo rehabilitation.

PHAs and Multifamily O/As may also request a DBA after a physical inspection. REAC must receive DBA requests from PHAs within 45 days of the physical inspection report release date to the local PIH field office. The local PIH field office will then review the database adjustment request and forward its recommendation to PIH/REAC. DBAs from Multifamily O/As must be received within 45 days of the physical inspection report release date.

DBAs may be made prior to a physical inspection by HUD for circumstances beyond the property's control, for modernization work in progress, or if a deficiency has been flagged in a "pre-database" list for the property.

Additional resources for TR/DBA appeals include:

- The REAC Physical Inspection webpage:  
[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/reac/products/prodpass](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/reac/products/prodpass); and
- The Technical Reviews and Data Base Adjustments Guidelines:  
<http://portal.hud.gov/hudportal/documents/huddoc?id=guidelines-adj.pdf>.

## Summary

REAC officials emphasized several important considerations that will greatly affect the success of TR/DBA appeals. These included:

- A successful appeal will require **objective and verifiable documentation to be submitted within the timeframe required in HUD regulations** (30 days for a TR and 45 days for a DBA).
- In general, make sure all necessary documents are signed.
- Independently verifiable information submitted by a third-party expert (such as a local code official or licensed engineer) must be signed by the expert and include a phone number so that the reviewer may contact him/her if necessary. The third party expert should submit the letter on letterhead.
- Make sure your third-party expert is qualified to make the determination you are seeking. A licensed professional's area of expertise must correspond to the appealed inspectable item. The licensed professional must inspect the appealed item, sign the letter and include his/her seal.
- O/As may also request a postponement or cancellation of a REAC inspection for "good cause."
  - Reasons for good cause may include but are not limited to:
    - The property is under an approved plan for a major rehabilitation;

- A Presidentially-Declared Disaster or emergency precludes the property from being inspected; and/or
  - Recent fire/water/other damage is so extensive that an inspector cannot inspect a representative sample of buildings/units.<sup>[1]</sup>
- If O/As would like to request the delay or cancellation of a REAC inspection, they must submit a formal written request to their local Field office providing:
    - A reasonable, detailed explanation of why the physical inspection should be cancelled;
    - The dates and scores of the last two physical inspections; and
    - An estimated date of when the physical inspection *should* take place.
    - These requests are reviewed by the Field Office, in conjunction with HUD's Office of Asset Management, on a case-by-case basis.
  - Additional information on requesting REAC inspection delays may be found in the October 14, 2010 letter to NAHMA from HUD's Office of Asset Management regarding Physical Inspection Postponement/ Cancellation Procedures, located here: <http://www.nahma.org/member/New%20HUD%20Docs/NAHMA-Physical%20Inspections%2010-14-2010.pdf>
- Make use of pre-database adjustments for deficiencies that were successfully appealed under previous DBAs due to ownership or local code allowances. This will help ensure that if the same deficiency is cited during the inspection, there will be no corresponding point loss.
  - REAC staff discussed some common deficiencies which included:
    - *Fire suppression systems.* When appealing point losses for painted sprinkler components—especially the escutcheon—the O/A must submit objective, verifiable documentation from a fire sprinkler company or local code official, dated on or immediately after the inspection, that clearly states the specific painted components do not affect the effectiveness of the fire suppression system;
    - *Erosion.* REAC staff noted that pictures sent on such appeals often zoom-in on the alleged erosion, but reviewers cannot tell where it is located on the property; and
    - *Bed Bugs.* REAC inspectors will not enter units where there are known bedbug infestations. Properties will not lose points for bed bug infestations unless the bedbugs are actually observed by the inspector.

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<sup>[1]</sup> If the extent of the damage will not prevent the inspector from inspecting a representative sample of the buildings and/or units, then the owner should contact the Hub or Program Center to request that the damaged units and/or buildings be taken off-line for the inspection, according to the October 14, 2010 letter to NAHMA from HUD's Office of Asset Management.

## **NAHMA Concerns**

The call provided a forum for participants to voice their concerns about TR and DBA appeals. Specific concerns raised by O/As included:

- *Strict timeframe to submit all documentation required for the appeal.* Per REAC staff, the timeframes are set in HUD regulations and are not flexible;
- *Difficulty of getting signed letters from local code officials.* On many occasions, NAHMA has urged REAC to accept excerpts from the local codes in lieu of letters from local code officials. Many state and local building codes are now available on the Internet. REAC continues to resist this idea at the staff level due to the difficulty of authenticating the code. However, REAC representatives did note that for certain appeals they are accepting objective, verifiable third-party documentation from licensed professionals who are qualified to make a judgment on the challenged deficiency; and
- *REAC will only approve appeals that change the property's score.* REAC won't accept appeals for items with no resulting point loss. However, it is far less obvious to an O/A whether it is worth the time and expense to appeal an item which did result in a point loss, but may not significantly affect the overall REAC score if the points are restored. REAC staff explained that in some cases, even if an O/A were to win back points on a successful appeal, the property may have lost too many points in the same category for the appeal to make a difference. This is a subject for which NAHMA and REAC may need further dialogue.

## **Positive Aspects**

The call provided a forum to discuss how O/As can increase the likelihood of a successful appeal. Most of the discussion covered common mistakes in the REAC appeal process and how to avoid them. REAC reviewers stressed the need for objective, verifiable documentation.

Per NAHMA's request, REAC is exploring options to address point losses caused by expired fire extinguishers which are owned by residents. In these cases, the property loses points even though the O/A has no knowledge of the fire extinguisher because it is the resident's property. No specific outcome was promised, but NAHMA is pleased that the issue is under consideration.

REAC officials expressed interest in hosting additional calls with NAHMA to address future areas of concern.

## **NAHMA Position**

NAHMA appreciates that REAC staff took the time to listen to NAHMA members' concerns about technical review and data base adjustment appeals. NAHMA is committed to keeping the lines of communication open with REAC officials. Likewise, we encourage members to share concerns and positive feedback about the REAC process with us so that NAHMA can effectively advocate on behalf of NAHMA's membership.