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# Section III Asset Management

## Chapter 6 Departmental Enforcement Center

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### 6.1 Introduction

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10 The Departmental Enforcement Center (DEC) is an office within HUD’s Office of General  
11 Counsel (OGC) that, ~~amongst~~among other responsibilities, ensures regulatory and statutory  
12 compliance with the business agreements and regulations pertinent to the Office of  
13 Residential Care Facilities (ORCF) Section 232 Program. In order to accomplish this  
14 mission, the DEC relies upon both financial and physical condition information, such as that  
15 which is submitted to, processed by and disseminated from the Real Estate Assessment  
16 Center (REAC).

17  
18 The DEC receives referrals for such enforcement review and action either through  
19 “automatic” referrals from REAC or through “elective referrals” from ORCF. ORCF  
20 ~~“elective referrals are made when ORCF determines that DEC involvement would be~~  
21 helpful in addressing Section 232 Program participant compliance with HUD Regulations and  
22 business agreements. By doing so, ORCF aims to help restore a ~~project~~Project to operational  
23 and financial long-term viability.  
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### 6.2 DEC-REAC-ORCF Enforcement Protocol Overview

26  
27 In summary review, after receiving financial or physical information, REAC has automated  
28 algorithms that identify potential compliance deficiencies (findings), that are then subject to  
29 review by REAC ~~Analysts~~analysts. The REAC ~~Analysts~~analysts, after further review,  
30 determine what compliance findings need to be referred to either ORCF or the DEC. For  
31 financial compliance findings, the REAC review will either downgrade a compliance  
32 finding to “none,” or determine whether to refer the compliance finding to ORCF or the  
33 DEC, based upon the type and magnitude of the finding. For physical compliance findings,  
34 the REAC ~~Physical Score~~physical inspection score drives the direction of the referral to  
35 either ORCF or the DEC with consideration of both the value of the most recent score and

36 the ~~occurrence~~ history of substandard REAC physical inspection scores being the  
37 determining factors. Complete information regarding this referral methodology is discussed  
38 with physical operations and financial operations in Asset Management, Chapter 3 and  
39 Asset Management, Chapter 4.

40  
41 The DEC can bring expertise and experience to bear in addressing performance issues that  
42 are inseparably intertwined with compliance issues. There are numerous circumstances in  
43 which DEC involvement (via an elective DEC referral) could be extremely helpful either in  
44 effectuating *changes in Borrower/Operator practices* to stabilize the asset or, alternatively,  
45 in bringing about a *change of Borrower and/or Operator themselves* when essential to bring  
46 the asset into stabilized performance.

## 6.3

### DEC and Physical Referrals

49  
50 In accordance with current governing protocols ([www.hud.gov/reac](http://www.hud.gov/reac)), REAC will  
51 automatically refer Section 232 ~~projects~~ Projects receiving ~~a defined certain physical~~  
52 inspection scores (i.e., from the Physical Assessment Subsystem (PASS) score to the  
53 DEC, and will also automatically refer any projects receiving a third consecutive score  
54 low score (as defined in current protocols or successor program) to the DEC. ~~Although~~  
55 ~~ORCF will have the lead responsibility for compliance assessment and enforcement of projects~~  
56 ~~having passing PASS inspection scores, ORCF may~~ ORCF may also make an elective referral  
57 to the DEC of any ~~projects~~ Projects it deems necessary for enforcement actions ~~based on any~~  
58 concerns ORCF may have relative to physical conditions. If such concerns arise from a  
59 physical inspection, ORCF will make such elective referrals once it has determined that the  
60 score is not a result of scoring irregularities related to the nature of the project. Before  
61 making the elective referral, ORCF will coordinate the referral with the DEC. Project and  
62 after any appeals are resolved by REAC.

63  
64 Upon receipt of a physical referral, the DEC will analyze the REAC physical inspection  
65 report(s) ~~or other determinations of physical conditions.~~ The DEC ~~will~~ may issue legally  
66 sufficient ~~notices (sometimes in collaboration with the Lender)~~ notice(s) of violation(s) to the  
67 ~~project participants~~ Project Owners and Operators to correct compliance deficiencies that are  
68 supported by the administrative record. Upon closing the referral, the DEC will recommend  
69 a course of action it deems appropriate to address any uncorrected compliance deficiencies.  
70 In addition, where appropriate, and after consultation with ORCF, the DEC may impose  
71 civil money penalties (CMPs) against Project Owners and Operators consistent with the  
72 applicable federal civil money penalty statute and in accordance with the DEC's delegated  
73 authority.

74  
75 The DEC may visit the ~~project~~ Project, if necessary:

- 76  
77 A. To validate the REAC inspection report(s) ~~or other physical condition~~  
78 concerns, and

- 79  
80 B. To obtain photographic evidence for the administrative record. Should the DEC  
81 determine that a site visit is necessary, the DEC will coordinate the visit with  
82 ORCF.  
83  
84

## 6.4

### DEC and Financial Referrals

85  
86 REAC ~~agrees to review the~~reviews financial ~~reports submitted by Borrowers, which may~~  
87 ~~or may not result in~~ referrals ~~that are currently automatically generated. REAC will~~  
88 ~~manually direct such automatic referrals to~~ either the DEC or ORCF ~~for action~~ based on  
89 ~~the agreed upon thresholds, automated referral criteria.~~ Although ~~the~~ ORCF will have the  
90 lead responsibility for compliance assessment and enforcement of ~~projects~~Projects not  
91 automatically referred to the DEC (see the financial operations sections of Asset  
92 Management, ~~Chapter 4~~), ~~the~~Chapter 4), ORCF may make an elective referral to the DEC of  
93 any ~~projects~~Projects that it deems necessary for enforcement actions (e.g., if quarterly  
94 interim Operator financial statements received by the Lenders suggest financial failings or  
95 compliance issues). ~~Before doing so, ORCF will coordinate the referral with the DEC.~~

96  
97 Upon receipt of a referral, the DEC will analyze the administrative record and the  
98 pertinent financial statements. If necessary, the DEC will request information and/or  
99 documentation from the ~~Borrower~~appropriate participant or its representative to  
100 determine if a compliance violation occurred. Should the ~~Borrower~~participant refuse to  
101 comply with the request for information, fail to resolve a compliance deficiency after having  
102 received a corrective action request from the DEC, or commit repeated violations of any of  
103 its business agreements with HUD, HUD ~~will~~may initiate appropriate administrative and/or  
104 enforcement action.  
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106

## 6.5

### DEC and Non-File or Late-File Referrals

107  
108 The Regulatory Agreements for Section 232 FHA-insured ~~projects~~Projects require  
109 Borrowers (with some exceptions as noted in Asset Management, ~~Chapter 4~~Chapter 4) to  
110 submit audited annual financial statements (AFS). HUD now requires the electronic  
111 submission of such statements to REAC. ORCF and REAC will work together to produce an  
112 e-mail reminder that will be issued to each Borrower who has not filed a required AFS  
113 within eleven days of the statement's due date. If the AFS is not received within 30 days  
114 from the date of the e-mail to the Borrower, REAC will then automatically refer ~~all first-time~~  
115 ~~non filers to ORCF. REAC will refer to the DEC those Borrowers who are overdue in~~  
116 ~~filing an AFS for a second or subsequent time.~~the Borrower to either the DEC or to ORCF,  
117 ~~based on internal protocol.~~  
118

119 ~~For all first-time non-filers, ORCF will review the administrative record to ensure that an AFS~~  
120 ~~is required and if so, contact the Borrower concerning any overdue AFS. If the Borrower fails to~~  
121 ~~respond to the ORCF's request for compliance, then the ORCF may make an elective referral~~  
122 ~~to the DEC.~~

123 The Regulatory Agreements for Section 232 FHA-insured Projects also place requirements on  
124 Operators for the submission of financial reports related to the operation of the project directly  
125 to HUD and the Lender outside of the REAC system. If HUD has reason to believe that  
126 particular Operator-certified statements may be unreliable (for example, indicate a likely  
127 prohibited use of funds of the Project), or are presented in a manner that is inconsistent  
128 with Program Obligations, on a case-by-case basis, HUD may also require Operators to  
129 submit audited annual financial statements in the form and manner as required, per  
130 Uniform Financial Reporting Standards at 24 CFR 5.801. Failure to provide these  
131 statements may result in the DEC and or ORCF pursuing administrative action(s). Further,  
132 ORCF may engage the DEC, through elective referrals, to enforce Operator requirements  
133 for the submission of financial reports to HUD.

## 6.6

### DEC and Other Referral Types

136  
137 Upon the DEC's own initiative, or at ORCF's request, the DEC may conduct a portfolio  
138 review, which is a review of ~~projects~~Projects based on a compliance issue that is common to  
139 one  
140 particular Management Agent, Operator, or Borrowers entity. ~~The ORCF or DEC Satellite~~  
141 ~~Office will confer with the DEC Operations Division Director concerning all potential~~  
142 ~~portfolio reviews. The Operations Division Director will coordinate with the requestor to~~  
143 ~~determine whether the DEC will accept the portfolio review, and if so, which DEC office~~  
144 ~~will handle it. The DEC Director or their designee will approve all requests for portfolio~~  
145 ~~reviews.~~

146  
147 ~~Should~~Additionally, should ORCF encounter violations of statutory, regulatory, or  
148 contractual issues that it considers to be significant in nature, but are not otherwise covered  
149 under this protocol, ORCF may request the enforcement assistance of the DEC by seeking  
150 an elective referral. ~~The DEC Operations Division Director will coordinate with ORCF to~~  
151 ~~decide whether to accept the referral, and if so, which DEC office will handle it. The DEC~~  
152 ~~Director or their designee will approve all requests for "other" elective reviews.~~

153  
154 ORCF, at its discretion, will electively refer to the DEC any serious regulatory agreement  
155 violation(s), including, but not limited to: unauthorized distributions, unauthorized use of funds  
156 or unauthorized loans, in which the resolution has neither (a) been achieved within 30 days of  
157 ORCF's identification of the violation or (b) been made a part of an ORCF-approved action plan  
158 within 30 days of ORCF's identification of the violation. ORCF may also consider elective  
159 referrals for review of equity-skimming liability in connection with Borrower's failure to pay

160 the mortgage and failure to pay the required deposit to the Reserve for Replacements. DEC  
161 leadership will coordinate with ORCF to determine if a referral should go forward.

## 6.7

### DEC and Suspension or Debarment Referrals

164  
165 Suspension and debarment actions are taken to protect the public interest, not for punitive  
166 purposes. The ORCF may opt to refer ~~eases~~Project owners, operators or other participants  
167 to the DEC for suspension or debarment where serious program violations are detected or  
168 there is evidence of improper conduct based on an investigation, inspection, audit or  
169 review. Such requests are directed to the DEC's Compliance Division Director for  
170 consideration and possible assignment. ~~However, program counsel may review the case~~  
171 ~~prior to submission to the DEC to ensure that the administrative record supports the~~  
172 ~~proposed sanction.~~

## 6.8

### DEC, REAC, ORCF and Lender Successful Collaboration

175  
176 While a ~~project~~Project is assigned to the DEC, ORCF will coordinate with the DEC on any  
177 significant servicing actions. The DEC will coordinate any significant enforcement activities  
178 with ORCF and ORCF will coordinate such efforts with the Lender.

179  
180 DEC, REAC, ORCF and the Lender cooperate with each other towards the common goal  
181 of attaining compliance with HUD's requirements while preserving residential care facilities  
182 for those served by the Section 232 Program.

183  
184 As a reminder, HUD notification requirements are outlined in this Handbook, Section III,  
185 Chapter 3.10. See also the Servicer's Notification to HUD of Risks to Healthcare Project (Form  
186 HUD-93334-ORCF), and the Operator's Notification to HUD of Threats to Permits and  
187 Approvals (Form HUD- 93335-ORCF). Referral of the Project to the DEC or by REAC does not  
188 exempt the Operator or the Borrower from these notification requirements.