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

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

In summary review, after receiving financial or physical information, REAC has automated algorithms that identify potential compliance deficiencies (findings), that are then subject to review by REAC Analysts. The REAC Analysts, after further review, determine what compliance findings need to be referred to either ORCF or the DEC. For financial compliance findings, the REAC review will either downgrade a compliance finding to “none,” or determine whether to refer the compliance finding to ORCF or the DEC, based upon the type and magnitude of the finding. For physical compliance findings, the REAC Physical Score drives the direction of the referral to either ORCF or the DEC with consideration of both the value of the most recent score and the occurrence of substandard scores being the determining factors. Complete information regarding this referral
37 methodology is discussed with physical operations and financial operations in Asset
38 Management, Chapter 3 and Asset Management, Chapter 4.
39
40 The DEC can bring expertise and experience to bear in addressing performance issues that
41 are inseparably intertwined with compliance issues. There are numerous circumstances in
42 which DEC involvement (via an elective DEC referral) could be extremely helpful either in
43 effectuating changes in Borrower/Operator practices to stabilize the asset or, alternatively,
44 in bringing about a change of Borrower and/or Operator themselves when essential to bring
45 the asset into stabilized performance.

6.3 DEC and Physical Referrals

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

Upon receipt of a physical referral, the DEC will analyze the REAC physical inspection
report(s) or other determinations of physical conditions. The DEC will issue legally
sufficient notices (sometimes in collaboration with the Lender) to the project participants to
correct compliance deficiencies that are supported by the administrative record. Upon
closing the referral, the DEC will recommend a course of action it deems appropriate to
address any uncorrected compliance deficiencies. In addition, where appropriate, and after
consultation with ORCF, the DEC may impose civil money penalties (CMPs) against
program participants consistent with the DEC’s delegated authorities.

The DEC may visit the project, if necessary:

A. To validate the REAC inspection report(s) or other physical condition
concerns, and

B. To obtain photographic evidence for the administrative record. Should the DEC
determine that a site visit is necessary, the DEC will coordinate the visit with
ORCF.
6.4 DEC and Financial Referrals

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

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

6.5 DEC and Non-Filer or Late-Filer Referrals

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

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

The Regulatory Agreements for Section 232 FHA-insured projects also place requirements on Operators for the submission of financial reports, related to the operation of the facility directly to HUD and the Lender outside of the REAC system. If HUD has reason to believe that particular Operator-certified statements may be unreliable (for example, indicate a likely prohibited use of funds of the Project), or are presented in a manner that is inconsistent
with Program Obligations, on a case-by-case basis, HUD may also require Operators to submit audited annual financial statements, per 24 CFR 5.801. Failure to provide these statements can result in administrative actions. Further, ORCF may engage the DEC, through elective referrals, to enforce operator requirements for the submission of financial reports to HUD.

6.6 DEC and Other Referral Types

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

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

ORCF, at its discretion, will electively refer to the DEC any serious regulatory agreement violations, including, but not limited to: unauthorized distributions, unauthorized use of funds or unauthorized loans, in which the resolution of has neither (a) been achieved within 30 days of ORCF’s identification of the violation or (b) been made a part of an ORCF-approved action plan within 30 days of ORCF’s identification of the violation. ORCF may also consider elective referrals for review of equity skimming liability in connection with borrower’s failure to pay the mortgage and failure to pay the required deposit to the Reserve for Replacements. DEC leadership will coordinate with ORCF to determine if a referral should go forward.

6.7 DEC and Suspension or Debarment Referrals

Suspension and debarment actions are taken to protect the public interest, not for punitive purposes. The ORCF may opt to refer cases to the DEC for suspension or debarment where serious program violations are detected or there is evidence of improper conduct based on an investigation, inspection, audit or review. Such requests are directed to the DEC’s Compliance Division Director for consideration and possible assignment. However,
program counsel may review the case prior to submission to the DEC to ensure that the administrative record supports the proposed sanction.

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

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

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

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