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Section I Handbook Introduction

Chapter 2

Lender Relations, Approvals and Monitoring Requirements

2.1

Introduction

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- A. The Office of Residential Care Facilities (ORCF) within the Office of Healthcare Programs (OHP) actively partners with Section 232 approved ~~lenders~~Lenders as an ongoing part of providing accessible and affordable housing in FHA-insured residential care facilities. In that regard, ORCF provides periodic training sessions and Kaizens, to promote effective dialogue between ORCF and the lending community in administering the Section 232 Program. In its review and monitoring, ORCF strives to provide feedback to ~~lenders~~Lenders on their performance in order to enhance the quality of Lender activity, from underwriting through servicing. Lender Relations is an integral part of ORCF's way of achieving continuous improvement and productivity while reducing risk to the FHA Insurance Fund.
- B. In order to participate in the Section 232 Program, Lenders are required to have staff skilled in underwriting, closing and servicing residential healthcare facility loans, and in preparing applications for Section 232 mortgage insurance. To that end, the Section 232 Program requires three levels of approval for participation.
1. Approval in accordance with 24 CFR Part 202 and HUD Handbook 4000.1 (FHA Single Family Housing Policy Handbook).
 2. Approval as a Multifamily Accelerated Processing (MAP) Lender in accordance with published MAP guidelines. See MAP Guide for the standards required for qualification. Traditional Application Processing will not be accepted.
 3. Approval by ORCF as a Section 232 Program Lender and approval of individual Section 232 underwriters in accordance with requirements set forth in the MAP Guide and prescribed in Section 2.2 below.
- C. Approval as a Section 232 Lender by ORCF is on a nationwide basis. Therefore, the Section 232 Program Lender may process Section 232 loans regardless of where the property is located.

2.2

Lender Approval Requirements

41
42 A. Once a Lender has met the MAP approval requirements under section 2.1.B.1 and B.2, the
43 Lender must submit the following information, in the following format to ORCF to obtain
44 Section 232 approval as described in section 2.1.B.3:

45
46 1. **Cover Letter.**

47
48 2. **Exhibit A.** Name of applicant, address, employer identification number, contact
49 person or persons, telephone and fax number, e-mail address, branch offices for
50 residential healthcare facility business with address, telephone and e-mail address,
51 and the FHA Mortgagee ID Number.

52
53 3. **Exhibit B.** Evidence of approval from FHA’s Multifamily Asset Counterparty
54 Oversight Division (MACOD) Counterparty Oversight Branch (COB) or appropriate
55 FHA-designated entity in accordance with 24 CFR Part 202 and the Single Family
56 Housing Policy Handbook (HUD Handbook 4000.1), including the most recent
57 recertification, if any.

58
59 4. **Exhibit C.** Evidence of MAP Approval

60
61 5. **Exhibit D.** A ~~lender~~Lender certification that the ~~lender~~Lender will only use
62 underwriters for Section 232 mortgages that have already been approved as Section
63 232 Healthcare Underwriters or who obtain approval as set forth in Section 2.3
64 below.

65
66 ~~B.~~—A Lender must submit two copies of its application to:

67
68 ~~the~~ Multifamily Asset Counterparty Oversight Division
69 ~~C.B.~~ ATTN: Counterparty Oversight Branch, Attention: OHP Section 232 Approvals.
70 Room 6158
71 HUD Building, 451 Seventh Street, SW
72 Washington, DC 20410

73
74 Review and approval or disapproval will take approximately 30 to 45 days from the date an
75 application is received. The applicant will be informed in writing of the decision.

2.3

Approval Requirements for Section 232 Healthcare Underwriters

78
79 A. **Approval of Lender Underwriters.** The Lender’s 232 Healthcare Underwriter(s) must be
80 approved according to this section. ~~Lender Underwriters heretofore have been approved by~~
81 ~~FHA’s Multifamily Asset and Counterparty Oversight Division with final review by the~~
82 ~~Office of Residential Healthcare Facilities.~~—The approval requirements are as follows, with

83 exceptions ~~to prior~~for Lean approval effective prior to the issuance of this Handbook and
84 Underwriter Approval Delegation as described in 2.3.C below:
85

86 1. **Cover Letter.**

87
88 2. **Exhibit A.** Include a resume for healthcare underwriter that supports experience in
89 underwriting residential healthcare facilities within the previous five years. The
90 resume should highlight(a) any experience that evidences satisfaction of training
91 requirements for MAP Approval, and (b) any emphasis or training provided in-house
92 or by industry experts in healthcare underwriting, finance and appraisals.
93

94 ~~3. **Exhibit B.** Evidence of approval as a MAP approved underwriter. In lieu of MAP
95 deals that have been approved, an applicant seeking Section 232 underwriter approval
96 can provide evidence of having completed ORCF's Section 232 Underwriter Training
97 and also having underwritten, as a trainee, three additional Section 232 (New
98 Construction/Substantial Rehabilitation, 223(f), or 241(a) loans) loans that have
99 closed beyond what is provided in response to item 4 immediately below.~~

100
101 ~~4.3. **Exhibit C.** Evidence that the healthcare underwriter: (a) has underwritten, as a
102 trainee, three Section 232 (New Construction/Substantial Rehabilitation, 223(f)) or
103 241(a)) loans that have closed and (b) unless at least two of those loans are Section
104 232 Lean loans that have closed, has also three Section 232 applications and
105 participated in ORCF's Underwriter training. For all healthcare deals, the
106 underwriter trainee must have clearly been involved in all aspects of the underwriting,
107 including but not limited to financial calculations, underwriting analysis, quality
108 completion of paperwork, readily communicating with and responsive to ORCF staff,
109 all under the mentorship and guidance of the lender's Section 232 approved chief or
110 lead underwriter and where appropriate, involved in responding to any issue arising in
111 closing the loan. While trainees are encouraged to work with ORCF approved
112 underwriters in underwriting 223(a)(7) loans, for purposes of underwriter approval as
113 described herein, Section 232/223(a)(7) loans do not count for underwriter approval
114 under this exhibit.~~

115 a. Provide evidence of having underwritten, as a trainee, three Section 232 (New
116 Construction/Substantial Rehabilitation, 223(f) or 241(a)) loans that have
117 closed.

118 b. Provide evidence that the proposed Section 232 underwriter has participated
119 in ORCF's Underwriter training or other ORCF-approved industry delivered
120 comprehensive residential care facility underwriting training.

121 a.c. The Lender requesting approval of an underwriter trainee as a Section 232
122 Underwriter shall have direct experience in working with the trainee on
123 healthcare deals.

124 b.d. The Lender is to provide to HUD the Lender Narrative and Maximum
125 Insurable Loan Calculation ("MILC") (Form HUD-92264A-ORCF) for the
126 transactions underwritten by the HealthcareSection 232 Underwriter. The
127 Lender is also to provide a copy of the HealthcareSection 232 Underwriter's

attendance letter from ORCF Underwriter training, if applicable.

Exhibit C. Evidence of approval as a MAP-approved underwriter.

~~B. Address for Submission of Applications. A lender must submit two copies of its application to:~~

4. In lieu of evidence of approval as MAP-approved underwriter, an applicant seeking Section 232 underwriter approval can alternatively meet the following conditions:

- a. Provide evidence of having underwritten, as a trainee, three additional Section 232 (New Construction/Substantial Rehabilitation, 223(f), or 241(a) loans) loans that have closed beyond what is provided in response to item A.3immediately above.
- b. Provide evidence that the proposed underwriter is a full-time salaried employee of the Section 232 Lender and not hired or retained only for a specific loan application. Provide evidence from the Lender that the underwriter compensation is not based solely on loan production volume, and that the underwriter is not compensated in a way that may be construed as a means of discouraging prudent risk management. Provide evidence from the Lender that the underwriter does not (or may not, in the future) hold a significant equity position in, or be a principal of, the Section 232 Lender or any of the Lender's affiliates (aside from any Employee Stock Ownership Plans or similar forms of compensation).
- c. Provide evidence of the underwriter's general experience in banking, accounting, finance, commercial lending and in commercial mortgage financing; the ability to analyze corporate and personal financial statements; and a broad knowledge of lending practices for permanent mortgages, construction loans, and of the financial structures of individuals, partnerships and other business entities.

Submission of Applications. A Lender must submit two copies of its application to the Multifamily Asset Counterparty Oversight Division

~~E.B. ATTN:, Counterparty Oversight Branch, Attention: OHP Section 232 Approvals, Room 6158 HUD Building, 451 Seventh Street, SW Washington, DC 20410~~

Review and approval or disapproval will take approximately 30 to 45 days from the date the application is received. The applicant will be informed in writing of the decision.

~~D.C. Underwriter Approval Delegation. In accordance with Housing Notice H-2015-08 and Mortgagee Letter 2015-16, and until such further notice, FHA's MACOD requires COB and the MAP Guide, Chapter 2, require eligible Section 232 Lenders to designate qualified individuals as "Chief Underwriter" and "Deputy Chief Underwriter." As ORCF requires MAP approval for Section 232 Lenders, per Section 2.1.B.2 above, these conditions apply to Section 232 Lenders.~~

173 ~~1. Through the Chief Underwriter the Lender designates and approves Section 232~~
174 ~~underwriters on their staff.~~

175
176 1. The designated Chief Underwriter will have responsibility for approving Section 232
177 Underwriters, provided they are in good standing with MAP and Section 232
178 requirements. If the Chief Underwriter is absent or is no longer employed by the
179 Section 232 Lender, and there is no Deputy Chief Underwriter available to perform
180 these functions, the Lender may not submit new applications until COB has approved
181 a new Chief Underwriter. In order for a Lender and Chief Underwriter to certify to
182 an Underwriter’s competency to submit loans under the Section 232 program, the
183 Section 232 Lender and Chief Underwriter will evaluate the prospective underwriter
184 to ensure and commit to the following (“Designation Criteria”):

- 185
186 a. Underwriter has completed and complied with HUD’s experience/training
187 requirements, as noted in 2.3.A. above, and the Lender’s approved training
188 plan.
189 b. Chief Underwriter/Deputy Chief Underwriter has extensively reviewed the
190 Underwriter trainee’s underwriting during the training period to ensure it
191 complies with the MAP Guide and/or Section 232 Handbook requirements,
192 as well as accurately represents the risk associated with the proposed loan.
193 c. The Chief Underwriter/Deputy Chief Underwriter has reviewed and ensured
194 loan documentation submitted to HUD during the training period was
195 complete, and that the submission did not require significant revision by
196 HUD staff to correct errors or omissions.
197 d. The Chief Underwriter/Deputy Chief Underwriter has reviewed feedback
198 from ORCF on the Underwriter trainee’s performance during the training
199 period. Significant issues noted during the training period shall inform the
200 approval process.

201
202 ~~4.2.~~ Depending on the volume of a Lender’s firm commitments, as prescribed by the
203 ~~above referenced notice and mortgagee letter~~ MAP Guide, Chapter 2, the Lender
204 either participates in Underwriter Approval Delegation or, for certain low volume
205 ~~lenders~~ Lenders, may opt to continue to obtain underwriter approval from HUD as
206 described in 2.3.A and B, above. All newly approved Section 232 Lenders must
207 comply with Underwriter Approval Delegation.

208
209
210 3. ~~AH~~Additional approval requirements for Section 232 Lenders, eligible for delegated
211 underwriter approval are as follows:

- 212
213 a. The Lender must be in good standing with the Department and in full MAP
214 and Section 232 compliance, defined as:
215 i. Compliance with all HUD and other applicable financial requirements
216 (liquidity, net worth, etc.).

217 ii. No MAP or Section 232 disciplinary actions (warning letter,
218 probation, suspension or termination) within the previous eighteen
219 months that have not been reviewed and excepted from this
220 prohibition by HUD.

221 b. The Lender has on staff a Chief Underwriter and Deputy Chief, approved in
222 writing by HUD.

223 a.c. The Lender has satisfactory procedures in place for training and approving
224 Underwriters are set forth by MACOD in accordance with the
225 aforementioned Notice and Mortgage Letter., detailed in the Lender’s
226 Quality Control Plan.

227
228 2.4.FHA’s MACOD COB will continue to review and approve underwriters with
229 suspension or termination enforcement actions within the previous 18 months.

230
231
232 5. If at any time a Lender no longer complies with the requirements for delegation of
233 Underwriter approval due to unforeseeable reasons, the Lender must immediately
234 contact HUD to discuss implementation of corrective action. The Lender must
235 expeditiously act to initiate the agreed upon corrective action within the time frame
236 agreed upon with HUD.

237
238 6. Section 232 Lenders shall promptly advise HUD of each change in their Section 232
239 underwriting staff, under delegated processing.

2.4

Electronic Capability and Internet Access

242
243 ORCF will post information on its web site website and will transmit messages to Lenders and to
244 the lending community by electronic mail, or alternative secure methods, often with attached
245 documents. This is the only format in which the lenders will receive this information. Much of
246 the information required by ORCF must be submitted electronically, in a format determined by
247 HUD to be acceptable.

2.5

Identity of Interest

250
251 A. **Section 232 Lenders.** An “Identity of Interest” is defined in Program Introduction,
252 Chapter 1.6. Any identity of interest (IOI) between:

- 253
254 1. An officer, director, partner or the principal staff of the Section 232 Lender, or any of
255 their family members, or contract employees of the Section 232 Lender working on a
256 particular application, and
257

- 258 2. An officer, director, partner or family member of the sponsor, the Borrower, the
259 principal of the Borrower, the general contractor, subcontractor, seller of the land or
260 seller of the property is not permitted.

261
262 Transactions that involve an IOI between any persons described in subsections 1 and 2,
263 above, are not allowed under the Section 232 program.

264
265 **B. Counsel to the Borrower.** An IOI shall be deemed to exist between the Section 232 Lender
266 and Counsel to the Borrower (whether a law firm or an individual attorney), if:

- 267
268 1. Counsel to the Borrower, or any attorney who is a partner, member or employee of
269 the law firm that is counsel to the Borrower, or any of their family members, is:
270 a. An owner of any direct or indirect ownership interest in the Section 232
271 Lender, or
272 b. An employee of the Section 232 Lender.
- 273
274 2. Any such identity of interest must be disclosed so that the relationship can be
275 analyzed for potential impermissible conflicts of interest.

276
277
278 3. In the Opinions of Borrower's and Operator's Counsel (Form HUD-91725-INST), an
279 attorney signing the Opinion cannot have any identity of interest with any party to the
280 transaction. If another member of the firm has an interest in any entity involved in the
281 transaction, such a relationship must be disclosed. Additionally, attorneys that
282 represent both the Borrower and the Operator must disclose to both parties the
283 inherent conflicts of interest involved. The Borrower and Operator must disclose any
284 such identity of interest to HUD in writing.

285
286 **C. Consultants.** It has long been common practice for lenders to use consultants, individuals
287 and companies, to increase market share. The term consultant, as used here, applies to a
288 mortgage broker, loan correspondent and packager. The consultant's sole purpose is to refer
289 new business to the Section 232 Lender including information supplied by a proposed
290 Borrower. HUD prohibits identities of interest between the consultant (as defined herein)
291 and the Section 232 ~~borrower, operator~~Borrower, Operator, or management
292 agentManagement Agent, or any principals of or entities affiliated with those participants.

293
294 [NOTE: See Production, Chapter 12.2.E for a discussion of how to treat identities of interest
295 between the Section 232 Lender and a tax credit equity syndicator or an investor.]
296
297

2.6

Limitation on Requirements

- 298
299 A. There are no additional capital requirements for Section 232 Lenders beyond HUD's
300 minimum net worth and liquidity requirements in 24 CFR Part 202.
301
302 B. There is no additional fee required by HUD for qualifying as a Section 232 Lender.

- 303
304 C. Section 232 Lenders must notify FHA’s MACOD COB, or designated entity, if there has
305 been a change of address of the home office for residential healthcare facility business,
306 electronic mail address, telephone number, ownership or if the Lender has a material change
307 in its way of doing business. Lenders must also notify MACOD COB, or designated entity,
308 if they withdraw as a Section 232 Lender, even if temporarily. These notification
309 requirements are in addition to the requirements of FHA’s MACOD COB, or designated
310 entity, and MAP.
311
312 D. Section 232 Lenders must notify ORCF if they lose their MAP or FHA approval. The loss of
313 either of those approvals also constitutes a loss of the Section 232 approval.
314
315 E. Section 232 Lenders are expected to maintain and improve the level of experience and the
316 number of experienced staff members. ORCF expects the Section 232 Lenders to be certain
317 that their staff meet the qualifications prescribed by the ORCF.
318
319

2.7

Agreement to Accept Monitoring

320
321 By accepting approval, the applicant for 232 Lender approval agrees that it will make its files,
322 records and offices available to HUD or HUD’s authorized contractors or agents for such
323 monitoring of 232 loans as HUD determines. The Lender shall retain the origination and
324 underwriting files for ten years from final closing even if the loan has been sold. The servicing
325 file shall be maintained for the life of the loan plus 34 years.
326
327

2.8

Monitoring by HUD

328
329 The 232 Lender collects, prepares, and reviews the documentation for a firm application
330 submission for mortgage insurance. Consequently, HUD will rely on the accuracy and validity
331 of the documentation and data the Lender collected or created in order to obtain HUD’s
332 approval. HUD further requires that Lenders exercise integrity and competence in the
333 origination of loans for FHA insurance. The 232 Lender will have the affirmative duty to report
334 underwriting risks and provide for mitigation. HUD and Section 232 Lenders have a mutual
335 interest in ensuring consistent Lender competence and compliance with this Section 232
336 Handbook and other relevant guidance and handbooks. If in the process of performing this
337 work, the Lender fails to maintain such compliance and/or thereby places HUD at a risk level not
338 fully disclosed, then HUD may pursue administrative action or other actions against the Lender.
339

- 340 A. Section 232 Lenders are subject to monitoring and periodic on-site reviews by HUD or its
341 designee to verify that:
342
343 1. The Lender’s underwriting, closing, servicing, loss mitigation and asset management
344 decisions are consistent with and adhere to any and all statutory requirements, regulatory

345 requirements, Section 232 Handbook requirements, Mortgagee Letters, Notices, and
346 other directives issued by HUD.

347
348 2. The Lender's technical processing is consistent with the requirements of the Section 232
349 Handbook.

350
351 3. Each of the Lender's loan applications is clear, complete, and organized in a manner that
352 facilitates efficient review and processing.

353
354 4. The Lender has complied with the conditions of the Firm Commitment and the
355 requirements for Initial or Final Closing.

356
357 5. The Lender has complied with the requirements for construction loan administration
358 in the Section 232 Handbook.

359
360
361 B. HUD will not begin reviews of origination and underwriting documentation until after the
362 Lender's first Section 232 Program Firm Commitment has been issued. However, significant
363 deficiencies identified by HUD, even if corrected prior to the issuance of the Firm
364 Commitment, may be included in the analysis of the Lender's performance. Any origination
365 loan may be reviewed by ORCF for up to ten years after Initial or Final Closing. Servicing
366 loans may be reviewed for as long as HUD's Contract of Insurance is in effect plus three
367 years.

368
369 C. If there has been fraud or misrepresentation by the Lender, HUD reserves its right to take
370 action against the Lender under the contract of mortgage insurance and/or Mortgagee Review
371 Board requirements. Instances of fraud are also referred to the Office of ~~the~~ Inspector
372 General.

373
374 D. This review by HUD is not a substitute for other periodic audits and reviews by HUD, or any
375 other authorized entity (e.g., Office of Inspector General or General Accounting Office)
376 including a financial management review and a review of the Lender's Quality Control Plan
377 as required by 24 CFR Part 202.5(h) and the Single Family Housing Policy Handbook.

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379

2.9

Quality Control Plans and Reviews

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381 A. **Quality Control Plans.**

382
383 1. As with Lenders under Multifamily Accelerated Processing (MAP), Lenders under
384 the Section 232 Healthcare Program must have and maintain a Quality Control Plan
385 (QC Plan) for underwriting and construction loan administration, if applicable, of
386 their FHA-insured mortgages. Objectives and guidance on overall requirements of
387 Quality Control Plans is are are located in Section V of the FHA Single Family
388 Housing Policy Handbook, HUD 4000.1, the Insured Multifamily Mortgage
389 Servicing and Field Office Handbook, HUD 4350.4 and are further promulgated by

390 ~~MACODMACOD's COB~~, which is responsible for the approval of the QC Plan ~~and~~
391 ~~for monitoring of the~~. Moreover, additional QC Plan requirements specific to Section
392 232 ~~Lender's performance in accordance with the QC Plan~~Lenders are set forth
393 below.

- 394
- 395 2. The QC Plan must clearly describe the requirements for the Section 232 loan
396 origination, underwriting ~~and~~ construction loan administration, loan servicing, and
397 portfolio/Master Lease monitoring, as applicable. The QC Plan must also state the
398 actions the Lender will take to assure acceptable management and comprehensive risk
399 reduction in the lending ~~process~~and servicing processes, as applicable.
- 400
- 401 a. For Servicing Lenders, the QC plan must address how quality control is integrated
402 into the asset management/loan servicing processes, including troubled loan
403 servicing and timely responsiveness to HUD requirements/inquiries.
- 404
- 405 b. For Servicing Lenders, the QC plan must address how the Lender will exercise
406 prudence and due diligence in assuring that the technical staff and/or contractor(s)
407 are knowledgeable of, and compliant with, HUD requirements.
- 408
- 409 c. For Servicing Lenders, the QC plan must address how the Lender will oversee
410 any functions completed by sub-servicers/service bureaus and how these
411 contractors will coordinate with the Lender's servicing department on asset
412 management functions.
- 413
- 414 d. For Servicing Lenders, the QC Plan must address oversight practices for:
- 415 i. Changes in Participants
- 416 ii. Changes in Collateral
- 417 iii. Prepayment/Termination requests
- 418 iv. 10-year Project Capital Needs Assessments
- 419 v. Operator Quarterly Financial Statements
- 420 vi. Action Plans to address Risks
- 421
- 422 e. For Lenders with Delegated Non-Critical Repair Escrow Administration and/or
423 Delegated Administration of Reserve for Replacement Account Disbursement
424 functions, the QC plan must provide assurances as to how they will address the
425 quality control of these activities.
- 426
- 427 3. The Lender may submit the Section 232 QC Plan as part of an overall QC Plan that
428 also incorporates the QC Plan for MAP activity, since by definition, a Section 232
429 Lender is also a MAP-Approved Lender. Regardless, the Section 232 QC Plan
430 follows the same format and requirements required of the MAP QC Plan and MAP
431 required QC Reviews, in accordance with ~~MACODMACOD's COB~~ requirements,
432 with the exception of the additional ORCF QC Plan requirements. Accordingly,
433 ~~MACODMACOD's COB~~ monitors and assesses ~~lender~~Lender compliance and risk
434 for Section 232 Lenders, consistent with the requirements for MAP Approved
435 Lenders.

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B. Quality Control Reviews.

Quality Control Reviews (QC Reviews) of the Lender's Section 232 operations are to be part of the overall QC Review performed annually, in accordance with and set forth by ~~MACOD~~MACOD's COB guidance consistent for MAP Approved Lenders- and the additional Section 232 requirements set forth in this section below. For ~~lenders~~Lenders participating in Underwriter Approval Delegation (see 2.3.C of this section), QC reviews must confirm that the Chief Underwriter and designated underwriters are approved and have satisfactorily completed all designation criteria including the Lender's approved training and approval requirements. The review will ~~insure~~ensure that each loan reviewed was underwritten by an approved and designated underwriter and if the underwriter was approved within the previous four years, the QC review should include a review of the underwriter's approval package. Additionally, Lenders opting to participate in Delegated Lender Processing for Reserve for Replacements and Non-critical Repair Escrows must address the appendix to the QC Plan reviewing the procedures, staff and recordkeeping for ~~lender~~Lender processing in accordance with Chapter 3 of the Asset Management portion of the Handbook.

1. In general, the Annual QC Review shall:
 - a. Track all Section 232 loans presented by individual loan originators and underwriters.
 - b. Evaluate the Lender's overall QC plan for adequacy (including an analysis of Section 232 specific program requirements) and the Lender's operation for compliance with the QC plan.
 - c. Perform audits of Section 232 Individual Loan Commitments. For Lenders with total commitments on 20 or more Section 232 loans in the applicable year of review, QC reviews will be completed for 5% of all closed loans. The maximum number of required reviews will be the lesser of 5% of all closed Section 232 loans or three reviews. Lenders with fewer than 20 commitments in the applicable year of review will be required to perform one QC review.
 - d. Determine the scope of deficiencies, if any, identified by the HUD review staff. Did the initially submitted firm commitment and/or closing package substantially meet HUD's requirements or were significant revisions required? Did any deficiencies identified significantly impact the overall processing?
 - e. Document whenever significant oversights and/or deficiencies in loan servicing are found as a result of problem loan reviews.
 - f. Evaluate the effectiveness of the Lender's policies and procedures for tracking and completing overdue Non-Critical Repairs and for Lenders who are Servicing Lenders, tracking and obtaining overdue Project Capital Needs Assessments (PCNAs).

C. Additional Reviews.

1. Audit Reviews of Problem Loans. The originating Section 232 Lender must also undertake a comprehensive review and reexamination of any loan it underwrote that

482 goes into claim either during construction or within *threefour* years after final
483 endorsement. This must be done in all cases including those in which the Lender no
484 longer has the loan in its portfolio.
485

486 2. Loans Purchased/Transferred from Another Section 232 Lender.
487

488 While not required, Section 232 Lenders are encouraged to perform a basic due diligence QC
489 Review on any loan purchased from another Section 232 Lender.
490

491 **D. Independent Third-Party Reviews.**
492

493 The Quality Control function, which must be independent of the origination and servicing
494 functions, may be conducted by either of the following:
495

- 496 1. **In-house staff.** Lenders may establish a unit that is dedicated solely to Quality
497 Control. Staff performing Quality Control must not be involved in the day-to-day
498 processes that they are reviewing.
499
- 500 2. **Outside firms.** Lenders may use knowledgeable outside independent firms to assist
501 in the performance of the QC Reviews. The outside source must use the Lender's QC
502 Plan in completion of the annual QC review. Lenders seeking to use an outside firm
503 should consult with **MACODMACOD's COB** on specific mandates pertaining to
504 qualifications and acceptability of outside sources.
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506

2.10

Other Monitoring Reviews

507
508 Generally, **lenders** and program participants are subject to several types of monitoring by
509 HUD staff or other entities designated by HUD, which are described below:
510

- 511 A. **Desk Reviews.** The purpose of a desk review is to determine the level of compliance with
512 HUD's loan origination, underwriting, closing, servicing, loss mitigation and/or asset
513 management requirements. The review examines the policies, procedures, and practices as
514 they relate to FHA-insured loans, to determine that they are timely, proper, and effective in
515 mitigating unnecessary losses to HUD's insurance fund. Desk reviews may also be used as a
516 tool to assess the effectiveness of training provided to Lenders.
517
- 518 B. **On-site Reviews.** These reviews, conducted at **mortgagees'Lenders'** offices, consist of an
519 opening conference; interviews with **mortgageeLender** officials and their employees; reviews
520 of individual case files, logs and computer records; reviews of the **mortgageesLenders'**
521 policies, procedures, and Quality Control Program; and an exit conference; followed, as
522 appropriate, by selected re-verifications, such as interviews with Borrowers. Generally,
523 Lenders are given 30 days' notice prior to a review and will be contacted in writing.
524 **MortgageesLenders** are expected to have files requested by FHA monitors available for their
525 review.
526

527 **C. Communication with Lenders regarding monitoring for Desk Reviews.**
528

- 529 1. **Initial Letter Following the Desk Review.** HUD will issue a letter to the Lender
530 based on the findings of the desk review(s). The letter will identify and describe
531 items of concern and require the Lender to reconcile with its Quality Control Plan to
532 assure compliance with HUD requirements. Within 30 days of the date of the letter,
533 the Lender is to provide HUD a full explanation for each finding with documentation,
534 and a statement of corrective actions taken to prevent recurrence of each violation and
535 cure the original finding.
536
- 537 2. **Final Letter.** After the Lender’s response letter is reviewed by HUD, a final letter
538 will be sent to the Lender. The final letter indicates that the Corrective Actions were
539 reviewed and states whether those Corrective Actions are considered appropriate to
540 satisfy the desk review findings. Lenders have a responsibility and an obligation to
541 use reasonable diligence in assuring that all requirements of the Section 232 Program
542 are followed. If the findings are major, the actions prescribed in Sections 2.13 and
543 2.15 – 2.18 below will be followed.
544

545 **D. Communication with Lenders for On-site Reviews.**
546

- 547 1. **Exit Conference.** Upon completion of the on-site review, an exit conference is held
548 to discuss problems and deficiencies in loan files and in the Lender’s operations.
549 Minor findings, which have been resolved by the Lender, may be closed out at the
550 exit conference.
551
- 552 2. **Initial Letter Following the On-site Review.** HUD will issue a letter to the
553 ~~lender~~Lender based on the findings of the on-site review(s). The letter will identify
554 and describe items of concern and encourage the ~~lender~~Lender to reconcile with its
555 Quality Control Plan to assure compliance with HUD requirements. Within 30 days
556 of the date of the letter, the ~~lender~~Lender is to provide HUD with the following:
557
- 558 a. Full explanation for each finding with documentation, and
 - 559 b. Statement of corrective actions taken to prevent recurrence of each violation.
560
- 561 3. **Final Letter.** After the Lender’s response letter is reviewed by HUD, a final letter
562 will be sent to the Lender. The final letter indicates that the Corrective Actions were
563 reviewed and states whether those Corrective Actions are considered appropriate to
564 satisfy the on-site review findings. Lenders have a responsibility and an obligation to
565 use reasonable diligence in assuring that all requirements of the 232 Program are
566 followed. If the findings are major, the actions prescribed in Sections 2.11 – 2.14
567 below will be followed.
568

569 **E. Communication with Lenders on Loan Servicing Performance Issues**
570

571 1. **Lender Points of Contact.** Section 232 Lenders shall notify ORCF of their primary
572 servicing point of contact, including any changes in contact information.

573
574 2. **Risk Surveillance Dashboard.** This report is compiled from certain CMS data (e.g., Star
575 Rating Report and Special Focus Facility Report for Skilled Nursing Facilities); certain
576 Borrower and Operator financial data; physical condition data from the Integrated Real
577 Estate Management System (iREMS); and other compliance factors as determined by the
578 AE. It rates each Section 232 project within ORCF's portfolio and provides a basis for
579 requiring Lenders to provide risk notifications and to request and monitor action plans for
580 correction from Borrowers and/or Operators.

2.11

Section 232 Program Authority to Issue Sanctions

A. General.

- 583
584
585
586 1. At any time, ~~the~~ ORCF ~~Director~~ leadership may initiate discussions with a Section
587 232 Lender regarding any concerns HUD has with respect to any of the Lender's
588 actions or personnel, or any changes the Lender should make in using its Section 232
589 Program authority.
590
591 2. If there are concerns about the Lender's underwriting, servicing and/or construction
592 loan administration, ~~the~~ ORCF ~~Director~~ may leadership may issue a letter of caution,
593 or take certain actions listed below without limitation. A letter of caution may be
594 issued for relatively minor violations which are of low severity that do not rise to the
595 level of a Warning Letter and do not require the imposition of Lender sanctions or
596 Targeted Enforcement Measures. Violations that may result in issuance of a letter of
597 caution are usually due to the Lender's failure to comply with its administrative or
598 reporting obligations to HUD or with Section 232 loan application processing
599 requirements, which the letter will direct the Lender to address.
600
601 3. Every ORCF employee must refer any possible instances of fraud or other criminal
602 violations to the Office of ~~the~~ Inspector General.

B. ~~The~~ ORCF ~~Director~~ Leadership may:

- 603
604
605
606 1. Issue a Warning Letter (see Section 2.11 below) to the Section 232 Section Lender.
607
608 2. Temporarily suspend a Section 232 Lender's approval status (see Section 2.12
609 below). (This action ~~must~~ shall only be taken in ~~conjunction~~ coordination with ~~steps 3,~~
610 ~~4, 5~~ the Departmental Enforcement Center and/or 6 immediately below Mortgagee
611 Review Board, as appropriate).
612
613 3. ~~Initiate the issuance of~~ Pursue a Limited Denial of Participation (LDP) ~~to~~ for an

614 individual or firm ~~involved in a “covered transaction” as defined in pursuant to 2 CFR~~
615 ~~180.220 and 2 CFR part 2424.220, subpart J.~~

616
617 4. Make a referral to the Department’s Mortgage Review Board in accordance with
618 procedures in Section 2.16 below.

619
620 5. Make a referral to FHA’s MACOD COB.

621
622
623 6. Coordinate with FHA’s MACOD COB on a Settlement Agreement.

624
625 ~~6-7.~~ 7. For non-Lenders, those program participants who are not FHA-approved
626 Mortgagees involved in the lending transaction, make a referral to the Departmental
627 Enforcement Center (DEC) for appropriate action.

628
629 ~~7-8.~~ 8. Make a referral to the HUD Office of Inspector General (OIG).

630
631 C. All referrals in Section 2.10 B above shall be in writing, and shall include an administrative
632 record described in Section 2.13 below.

633
634

2.12

Basis for Issuance of Warning Letter from ~~the ORFC Director~~ Leadership or Targeted Enforcement

635
636 A. A Section 232 Lender’s improper, inaccurate or inadequate origination, underwriting,
637 construction loan administration, servicing, loss mitigation or asset management may lead to
638 HUD issuing a Warning Letter or other sanction. Offenses that may be the basis for a
639 Warning Letter include, *but are not limited to*:

640
641 1. Failure to provide required exhibits ~~or,~~ the submission of incomplete or inaccurate
642 exhibits, or the inadequate disclosure of material facts affecting the loan application.
643 Although a Section 232 Lender will be permitted to correct minor errors or provide
644 additional information, substantial inaccuracies or lack of significant information will
645 result in the return of the application and retention of any fees collected. Moreover,
646 even minor errors or the initial failure to provide full and complete information lead
647 to loss of efficiency, avoidable delays and unnecessary use of staff time, and are thus
648 significant.

649
650 2. Preparation and submission of a Lender Narrative that is not supported by the
651 appropriate documentation and analysis.

652
653 3. Failure to notify the HUD processing office promptly of changes in the mortgage loan
654 application for a Firm Commitment that has been submitted, such as changes in rents,
655 numbers of units, unit configurations, or gross project area.

- 656
657 4. Failure to meet Section 232 closing requirements or construction loan administration
658 requirements.
- 659
660 5. Failure to meet the Section 232 servicing, loss mitigation, or asset management
661 requirements, including failure to provide any notice to ORCF as required per Asset
662 Management, Section III, Chapter 3.10.
- 663
664 6. Business practices that do not conform to those generally ~~adopted~~accepted by prudent
665 Lenders or those that are imposed by this Handbook, that that do not conform with
666 the approved Quality Control Plan.

667
668 **B. The Warning Letter.**

- 669
670 1. May require a meeting with the Director of ORCF or designee's office with principal
671 owners of, and/or officers of a Section 232 Lender to discuss the problem(s) and
672 possible corrective action(s).
- 673
674 2. Shall specify the violation(s) for which the Warning Letter is issued.
- 675
676 3. Shall direct the taking of a corrective action by Lender and the Warning Letter will
677 include the timeframe for corrective action.
- 678
679 4. The Warning Letter does not suspend a Lender's Section 232 privileges, but may impose
680 a higher level of review of the Lender's underwriting, closing, servicing, loss mitigation
681 or asset management. The Warning Letter must clearly state that it is a Warning Letter
682 issued pursuant to the Section 232 Program requirement violated. The letter will be
683 mailed to the Section 232 Lender's contact person as listed on the Section 232 Program
684 website. The website is maintained by HUD, but the Lender is responsible for notifying
685 HUD of any changes or updates to its contact information.

686
687 ~~C. The Lender must be sent, along with each Warning Letter, a copy of the administrative~~
688 ~~record prepared with respect to that letter.~~

689
690 **C. Targeted Enforcement.**

691
692 In accordance with the MAP Guide, Chapter 15, MACOD COB may impose targeted
693 enforcement measures concurrent with the issuance of a Warning Letter. As applicable, these
694 targeted enforcement measures will also apply to Section 232 loans, as determined by the COB.
695 Likewise, ORCF leadership may impose targeted enforcement measures as warranted.

696
697

2.13

**Basis for Suspending a Lender's 232
Program Approval**

698
699 ~~The ORCF Director leadership~~ may suspend the approval authority for a Section 232 Lender with

700 the simultaneous referral to any of the entities listed in Section 2.4516 below. Major offenses
701 that might be the basis for suspending Section 232 Program Approval authority include, *but are*
702 *not limited to*:

- 703
- 704 A. Receipt of two or more Warning Letters over any twelve consecutive month period. In
705 determining which sanctions to pursue as a result of prior warning letters, HUD will consider
706 the circumstances surrounding those warning letters and any corrective actions undertaken by
707 the Lender.
- 708
- 709 B. Fraud or material misrepresentation in the Lender's participation in the Section 232 program.
710
- 711 C. Lender collusion with or influence upon third-party contractors to modify reports prepared
712 by the contractor that cause the contractor's report to misrepresent a material fact to HUD,
713 cause the HUD loan amount to be improperly increased, or otherwise be misleading or
714 inaccurate.
- 715
- 716 D. A violation of Section 232 procedures by a third-party contractor, which the Section 232
717 Lender knew, or should have known, was occurring and which, if performed by the Section
718 232 Lender itself, would constitute a ground for a sanction under this chapter.
719
- 720 E. Adequate evidence that a Lender's improper, inadequate or inaccurate underwriting,
721 servicing, loss mitigation or asset management was a cause for assignment of an insured
722 mortgage.
- 723
- 724 F. Identity-of-interest violations under Section 2.5 above.
- 725
- 726 G. Payment by or receipt of a payment by a Section 232 Lender of any kickback or other
727 consideration, directly or indirectly, from the sponsor or from any other participant in the
728 transaction, which would affect the Lender's independent evaluation, or represent a conflict
729 of interest, in connection with any insured mortgage transaction.
- 730
- 731 H. Failure to comply with any agreement, certification, undertaking, or condition of approval
732 listed in a Section 232 Lender's application for approval.
- 733
- 734 I. Noncompliance with any written requirement or directive of the ORCF Director.
735
- 736 J. Violation of the requirements of any contract with HUD or violation of the requirements in
737 any statute, regulation, handbook, notice, mortgagee letter, or other written rule or instruction
738 including the Section 232 Handbook.
- 739
- 740 K. Submission of false information or a false certification to HUD in connection with any
741 Section 232 mortgage transaction.
- 742
- 743 L. Failure of a Section 232 Lender to respond in a timely manner to inquiries from the ORCF
744 Director.
- 745

- 746 M. Indictment or conviction of a Section 232 Lender or any of its officers, directors, principals
747 or employees for an offense that reflects on the responsibility, integrity or ability of the
748 Lender to participate in Section 232 Program.
749
- 750 N. Employing or retaining an officer, partner, director or principal at the time when the person
751 was suspended, debarred, ineligible or subject to a LDP, or otherwise prohibited from
752 participation in HUD Programs, when the Section 232 Lender knew or should have known of
753 the prohibition.
754
- 755 O. Employing or retaining an employee who is not an officer, partner, director or principal, and
756 who is or will be working on HUD-FHA Program matters, at a time when that person was
757 suspended, debarred, ineligible, or subject to a LDP or otherwise prohibited from
758 participation in HUD Programs, when the Section 232 Lender knew or should have known of
759 the prohibition.
760
- 761 P. Failure to cooperate with an audit or investigation by the HUD OIG or an inquiry by HUD
762 into the conduct of the Section 232 Lender.
763
- 764 Q. Failure to fund insured mortgage loans or any misuse of mortgage loan proceeds.
765
- 766 R. Failure to cooperate with a monitoring review.
767

768 S. Probation, Suspension or Termination under MAP.
769
770

2.14

Administrative Record

- 771
772 When any final action is taken against a Section 232 Lender, an administrative record must be
773 prepared, which includes all materials that were considered, reviewed and relied upon in the final
774 decision. Although not intended to be an exhaustive listing, examples of material that should be
775 included in the record are:
776
- 777 A. Correspondence between the Lender and HUD or the Lender and any third-party contractors
778 that was provided as documentation in support of the Firm Commitment application;
779
- 780 B. E-mails or other electronic transmissions (e.g., SMS text messages), if relied on in the
781 decision process;
782
- 783 C. Faxes including the FAX cover sheet and the FAX confirmation sheet;
784
- 785 D. Application and underwriting submissions;
786
- 787 E. Copies of appropriate sections of notices, guidance including Frequently Asked Questions
788 (FAQs) posted on the ORCF ~~web site~~website, handbooks, regulations and statutes;
789
- 790 F. Notes from meetings and telephone conversations; and

791
792 G. Work product and recommendations from subordinates.
793

794 [NOTE: Intra-agency memoranda and other such records should be included, but will not be
795 released if privileged. The administrative record in its final form as described in this Section
796 relates to and supports HUD's final action and is not to be released to any person outside of
797 HUD until it has been reviewed by HUD's Office of General Counsel.]
798
799

2.15

Appeals

800 801 A. Request for an Appeal Conference. 802

- 803 1. Whenever the ORCF ~~Director~~ leadership imposes a temporary sanction of suspension
804 against a Section 232 Lender, the Lender may request in writing within 10 business
805 days of receiving the sanction letter, an appeal conference before the Appeals
806 Official.
807
- 808 2. The appeal conference before the Appeals Official regarding the ~~ORCF~~
809 ~~Director's~~ ORCF's action will be held within 30 business days of HUD receiving the
810 Section 232 Lender's appeal request. A Section 232 Lender may voluntarily request,
811 and the Appeals Official may agree to have an appeal conference held more than 10
812 business days but not more than 30 business days after the date of the
813 ~~lender's~~ Lender's request for an appeal.
814

815 B. Appeals Official. 816

- 817 1. The Appeals Official must be an individual who was not previously involved with the
818 proceedings or settlement discussions up to this point. Generally, the appeal will be
819 made to the OHP Deputy Assistant Secretary or designee.
820
- 821 2. ~~The~~ ORCF ~~Director~~ leadership provides the administrative record to the Appeals
822 Official and points out the evidence on which the decision was made.
823

824 C. Appeal Conference. 825

- 826 1. The Section 232 Lender may provide oral arguments in support of its position and the
827 evidence previously submitted. No new evidence may be submitted to the Appeals
828 Official at this point.
829
- 830 2. Oral statements made by any participant at this meeting are not considered as
831 evidence on any matter under consideration, except that the Appeals Official may
832 consider voluntary admissions against interest as an admission by a representative of
833 the Lender of any element of the violation charged.
834

835 No transcript of the appeal conference will be made, unless the Lender elects to have
836 a transcript made by a certified court reporter at its own expense. If the Lender elects
837 to have a transcript made, it must provide three copies to the Appeals Official.
838
839
840

2.16

Results and Referrals

841
842 Major findings from any desk review ~~or~~, on-site review or other ORCF assessment may result in
843 a referral. Referrals may be made to:

- 844
845 A. Mortgagee Review Board;
846
847 B. FHA’s MACOD COB;
848
849 C. HUD’s DEC (suspension or debarment actions);
850
851 D. Office of Fair Housing and Equal Opportunity (FHEO) (fair lending issues; fair housing
852 issues including non-compliance with federal accessibility requirements and non-compliance
853 with Title VI requirements);
854
855 E. HUD Office of General Counsel Office of Program Enforcement;
856
857 F. HUD OIG; and
858
859 G. State licensing agencies (e.g., Secretary of State, Real Estate Commissioner, Appraisal
860 Review Board, Department of Banking, Bar Association).
861
862

2.17

~~Administrative Sanctions and Mortgage~~ ~~Review Board (MRB) and Other~~ Administrative Actions

863
864 HUD may take an administrative action against individuals, companies and ~~lenders~~Lenders for
865 actions or omissions in connection with FHA mortgage insurance programs, including but not
866 limited to:

- 867
868 A. **Limited Denial of Participation (LDP)**. Major isolated violations of FHA requirements
869 may lead to an LDP of an individual or company (other than an approved Lender) by the
870 Deputy Assistant Secretary. The LDP precludes the party from participating in the HUD
871 Programs specified, within the jurisdiction of the HUD official taking the action, for up to
872 one year (see 2 CFR 2424 Subpart J). An LDP may be issued for reasons that include (but are
873 not limited to):
874

- 875 1. Causing unsatisfactory risk to HUD.
- 876 2. Irregularities in the performance of professional duties.
- 877 3. Material failure to maintain prerequisites, such as required licenses and professional
- 878 certifications.
- 879 4. Material failure to honor contracts or contract violations.
- 880 5. False certifications or false statements made to HUD.
- 881 6. Construction, or construction administration and oversight, deficiencies.
- 882 7. Unlawful activities, pending criminal charges or indictment.

883
884 **B. Debarment or Suspension.** Violations of statutes or major or repeated violations of FHA
885 requirements may lead to a debarment or suspension of an individual, a company, or with
886 approval of the MRB, a ~~lender~~Lender, by the DEC or an Assistant Secretary. These actions
887 preclude the party from participating in most Federal Domestic Programs (see 2 CFR Parts
888 180 and 2424).

889
890 **C. Mortgagee Review Board (MRB) Action.** HUD's Mortgagee Review Board (MRB) is
891 authorized to impose civil money penalties on a Lender ~~or other party~~, and to take
892 administrative action against any approved Lender that does not comply with FHA
893 requirements or the non-discrimination requirements of the Equal Credit Opportunity Act,
894 the Fair Housing Act, or Executive Order 11063. The Department's regulations on the
895 Mortgagee Review Board and civil money penalties are in 24 CFR Parts 25 and 30.

- 896
897 1. **Administrative Actions.** The Board may issue a letter of reprimand, place a Lender
898 on probation, suspend or withdraw a Lender's approval, or enter into a Settlement
899 Agreement. The Board may also issue a cease and desist order where there is
900 reasonable cause to believe that a Lender is violating, or has violated, the
901 Department's requirements. The nature and extent of the violation(s) determine the
902 type of administrative action that the Board may take.
- 903
904 2. **Civil Money Penalties.** The Board is authorized to impose a civil money penalty
905 pursuant to 24 CFR Section 30.35, against a party that knowingly and materially
906 violates FHA Program regulations or requirements. A civil money penalty may be
907 imposed against a Lender in addition to any other administrative action taken by the
908 Board.

909
910 D. Examples of participants who may be sanctioned include (but are not limited to):

- 911 1. Lenders.
- 912 2. Underwriters, Chief Underwriters or loan analysts.
- 913 3. Borrowers and Sponsors.
- 914 4. Independent fee appraisers.
- 915 5. Third-party cost analysts.
- 916 6. Physical needs assessors.
- 917 7. Environmental analysts and engineers.
- 918 8. General Contractors.

919 9. Architects.

920
921 Once issued, a suspension, debarment or LDP may extend from an individual to an organization
922 or to the individual's or organization's affiliates. For example, a specific appraiser or an entire
923 appraisal firm may be issued a suspension, debarment or LDP, which may also apply to all its
924 affiliates.

925
2.18

Enforcement Authority

926 Lenders and program participants shall review the enforcement authority applicable below.
927
928

Action/Entity	Citation	Enforcement	Official	Applies to:
Mortgagee Review Board (MRB)	24 CFR Part 25	Letter of reprimand, probation, suspension, withdrawal	MRB	Lenders
Limited Denial of Participation (LDP)	2 CFR Part 2424 Subpart J	Limits participation in specific Program activity and within a specific jurisdiction	Official Designated by Secretary	All Parties to the transactions (excluding Lenders)
Civil Money Penalty	24 CFR Part 30	Civil Money Penalty	Departmental Enforcement Center (DEC)	All Parties to the transactions
Suspension	2 CFR Part 180 and 2424	Suspends participation	DEC	All Parties to the transactions
Debarment	2 CFR Part 180 and 2424	Bars participation	DEC	All Parties to the transactions
Program Fraud Civil Remedies Act	24 CFR Part 28	Civil Penalties and/or assessments	HUD OIG and Office of Program Enforcement	All Parties to the transactions

929
930 Notwithstanding any provisions contained in this Chapter or elsewhere in this Handbook, HUD
931 reserves the right to pursue remedies for any false claims or false statements, as authorized by
932 the False Claims Act, 31 U.S.C. §§ 3729-3733, the Program Fraud Civil Remedies Act, 31
933 U.S.C. §§ 3801-3812, and/or Civil Money Penalties under 12 U.S.C. § 1735f-14; and/or criminal
934 penalties under 18 USC §§ 287, 1001, 1010, 1012, and 1014.