**HUD’s Lean 232 Program**

**Office of Residential Care Facilities (ORCF)**

**Update as of November 13, 2017**

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**Environmental Guidance In Response to Florida’s Emergency Generator Requirements**

The Office of Residential Care Facilities (ORCF) is providing the following guidance pertaining to Florida’s Emergency Generator Rules (assisted living facilities ([here](http://www.flgov.com/wp-content/uploads/2017/09/EN_DEA.pdf)) and skilled nursing facilities ([here](https://www.ahca.myflorida.com/Executive/Communications/Press_Releases/pdf/59AER17.pdf))).  Although an Administrative Law Judge’s order ([here](https://www.doah.state.fl.us/ROS/2017/17005388.pdf)) has stated that the Emergency Generator Rules are invalid, the State of Florida’s Agency for Health Care Administration and Department of Elder Affairs have filed a Notice of Administrative Appeal ([here](https://edca.1dca.org/DCADocs/2017/4534/174534_24_10302017_08150176_i.pdf)).

Given the current circumstances at the Florida state level, ORCF is providing the following reminders regarding issues that may arise at facilities installing generators.

Consistent with ORCF’s Regulatory Agreements and the Section 232 Handbook (4232.1), installing aboveground storage tanks, generators and/or related components will generally not constitute “remodeling” or other modifications to the collateral securing a currently FHA-insured mortgage, and will therefore not trigger an environmental review.  However, ORCF offers the following to help borrowers and lenders ensure compliance with HUD Environmental Requirements related to installing storage tanks:

* **Aboveground Storage Tanks (ASTs)**: Projects adding ASTs must follow the Section 232 Handbook, Production Chapter 7.5.G.4 requirements.  Specifically, projects adding ASTs must:
  + Obtain documentation confirming that the AST conforms to all applicable state and local permit requirements;
  + Obtain and submit to HUD a permit, conformance letter or other form of assurance from a local authority that specifically addresses the safety of the AST:
    - **Projects with a permit, conformance letter or other assurance** may be asked to submit documentation of Acceptable Separation Distance (ASD) calculations between the tank and any buildings and outdoor areas of congregation;
    - **Projects unable to obtain a permit, conformance letter or other assurance** must submit documentation of Acceptable Separation Distance (ASD) calculations between the tank and any buildings and outdoor areas of congregation, and may need to complete remediation or mitigation acceptable to HUD.
* **Underground Storage Tanks (USTs):** The Office of Residential Care Facilities will perform an environmental review in accordance with 24 CFR Part 50 on projects contemplating the installation of an Underground Storage Tank (UST).

Lenders should immediately determine if any projects they service in Florida intend to install Underground Storage Tanks to comply with the emergency rule.  If so, they should contact their Account Executives to discuss the specific situation and to immediately begin the process for coordinating an Environmental Review (e.g. State Historic Preservation Office Letter and Phase I Report).

The circumstances in Florida regarding emergency generators are also very relevant in ORCF Production activities.  In that regard, and consistent with Section Handbook, Production, Chapter 7.2 B.1, Lenders with a submitted Florida ORCF application must evaluate their submission to assure compliance with any applicable Florida emergency generator requirements and must provide ORCF evidence of this compliance.  Lenders currently preparing applications must, before submission, confirm such compliance and include evidence of compliance in their application.  Facilities not in compliance with Florida’s law relating to emergency generators must include in the firm application – as critical repairs – any repairs needed to assure compliance.

***Keywords:***Generator, Environmental

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**Document Links Included In This Blast**

1. [58AER17-1 Procedures Regarding Emergency Environmental Control for Assisted Living Facilities](http://www.flgov.com/wp-content/uploads/2017/09/EN_DEA.pdf)
2. [59AER17-1 Nursing Home Emergency Power Plan](https://www.ahca.myflorida.com/Executive/Communications/Press_Releases/pdf/59AER17.pdf)
3. [Florida Administrative Law Judge Order](https://www.doah.state.fl.us/ROS/2017/17005388.pdf)
4. [Notice of Administrative Appeal](https://edca.1dca.org/DCADocs/2017/4534/174534_24_10302017_08150176_i.pdf)

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Past Lean 232 Updates are [available online](https://www.hud.gov/federal_housing_administration/healthcare_facilities/residential_care/mail_blast_index).

Have questions about the Lean 232 Program? Please contact [LeanThinking@hud.gov](mailto:LeanThinking@hud.gov).

For more information on the Lean 232 Program, check out: [https://www.hud.gov/federal\_housing\_administration/healthcare\_facilities/residential\_care](https://www.hud.gov/federal_housing_administration/healthcare_facilities/residential_care%20) .

Have your loan servicing colleagues joined our email list? The Email Blasts contain information relevant to them as well. You might suggest they [Join here](https/www.hud.gov/subscribe/signup?listname=Lean%20232%20Updates&list=LEAN-232-UPDATES-L).

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