

Section I Handbook Introduction

Chapter 2 Lender Relations, Approvals and Monitoring Requirements

2.1

Introduction

- A. The Office of Residential Care Facilities (ORCF) within the Office of Healthcare Programs (OHP) actively partners with Section 232 approved 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 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

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

1. **Cover Letter.**
2. **Exhibit A.** Name of applicant, address, employer identification number, contact person or persons, telephone and fax number, e-mail address, branch offices for residential healthcare facility business with address, telephone and e-mail address, and the FHA Mortgage ID Number.
3. **Exhibit B.** Evidence of approval from FHA's Multifamily Asset Counterparty Oversight Division (MACOD) or appropriate FHA-designated entity in accordance with 24 CFR Part 202 and the Single Family Housing Policy Handbook (HUD Handbook 4000.1), including the most recent recertification, if any.
4. **Exhibit C.** Evidence of MAP Approval
5. **Exhibit D.** A lender certification that the lender will only use underwriters for Section 232 mortgages that have already been approved as Section 232 Healthcare Underwriters or who obtain approval as set forth in Section 2.3 below.

B. A Lender must submit two copies of its application to:

Multifamily Asset Counterparty Oversight Division
ATTN: 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 an application is received. The applicant will be informed in writing of the decision.

2.3

Approval Requirements for Section 232 Healthcare Underwriters

A. **Approval of Lender Underwriters.** The Lender's 232 Healthcare Underwriter(s) must be approved according to this section. Lender Underwriters heretofore have been approved by FHA's Multifamily Asset and Counterparty Oversight Division with final review by the Office of Residential Healthcare Facilities. The approval requirements are as follows, with exceptions to prior Lean approval effective prior to the issuance of this Handbook and Underwriter Approval Delegation as described in 2.3.C below:

1. **Cover Letter.**
2. **Exhibit A.** Include a resume for healthcare underwriter that supports experience in underwriting residential healthcare facilities within the previous five years. The resume should highlight(a) any experience that evidences satisfaction of training requirements for MAP Approval, and (b) any emphasis or training provided in-house or by industry experts in healthcare underwriting, finance and appraisals.
3. **Exhibit B.** Evidence of approval as a MAP-approved underwriter. In lieu of MAP deals that have been approved, an applicant seeking Section 232 underwriter approval can provide evidence of having completed ORCF's Section 232 Underwriter Training and also 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 4 immediately below.
4. **Exhibit C.** Evidence that the healthcare underwriter: (a) has underwritten, as a trainee, three Section 232 (New Construction/Substantial Rehabilitation, 223(f)) or 241(a)) loans that have closed and (b) unless at least two of those loans are Section 232 Lean loans that have closed, has also participated in ORCF's Underwriter training. For all healthcare deals, the underwriter trainee must have clearly been involved in all aspects of the underwriting, including but not limited to financial calculations, underwriting analysis, quality completion of paperwork, readily communicating with and responsive to ORCF staff, all under the mentorship and guidance of the lender's Section 232 approved chief or lead underwriter and where appropriate, involved in responding to any issue arising in closing the loan. While trainees are encouraged work with ORCF approved underwriters in underwriting 223(a)(7) loans, for purposes of underwriter approval as described herein, Section 232/223(a)(7) loans do not count for underwriter approval under this exhibit.
 - a. The Lender requesting approval of an underwriter trainee as a Section 232 Underwriter shall have direct experience in working with the trainee on healthcare deals.
 - b. The Lender is to provide to HUD the Lender Narrative and Maximum Insurable Loan Calculation ("MILC") (Form HUD-92264A-ORCF) for the transactions underwritten by the Healthcare Underwriter. The Lender is also to provide a copy of the Healthcare Underwriter's attendance letter from ORCF Underwriter training, if applicable.

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

Multifamily Asset Counterparty Oversight Division
ATTN: 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.

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 eligible Section 232 Lenders to designate qualified individuals as “Chief Underwriter” and “Deputy Chief Underwriter.”

1. Through the Chief Underwriter the Lender designates and approves Section 232 underwriters on their staff.
2. Depending on the volume of a Lender’s firm commitments, as prescribed by the above referenced notice and mortgagee letter, the Lender either participates in Underwriter Approval Delegation or, for certain low volume lenders, may opt to continue to obtain underwriter approval from HUD as described in 2.3.A and B, above. All newly approved Section 232 Lenders must comply with Underwriter Approval Delegation.
3. All approval requirements for Section 232 Lenders, Chief Underwriter and Deputy Chief Underwriters are set forth by MACOD in accordance with the aforementioned Notice and Mortgagee Letter.
4. FHA’s MACOD will continue to review and approve underwriters with suspension or termination enforcement actions within the previous 18 months.

2.4

Electronic Capability and Internet Access

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

2.5

Identity of Interest

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

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

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

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

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

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

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

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

2.6

Limitation on Requirements

- A. There are no additional capital requirements for Section 232 Lenders beyond HUD's minimum net worth and liquidity requirements in 24 CFR Part 202.
- B. There is no additional fee required by HUD for qualifying as a Section 232 Lender.
- C. Section 232 Lenders must notify FHA's MACOD, or designated entity, if there has been a change of address of the home office for residential healthcare facility business, electronic mail address, telephone number, ownership or if the Lender has a material change in its way of doing business. Lenders must also notify MACOD, or designated entity, if they withdraw as a Section 232 Lender, even if temporarily. These notification requirements are in addition to the requirements of FHA's MACOD, or designated entity, and MAP.

- D. Section 232 Lenders must notify ORCF if they lose their MAP or FHA approval. The loss of either of those approvals also constitutes a loss of the Section 232 approval.
- E. Section 232 Lenders are expected to maintain and improve the level of experience and the number of experienced staff members. ORCF expects the Section 232 Lenders to be certain that their staff meet the qualifications prescribed by the ORCF.

2.7

Agreement to Accept Monitoring

By accepting approval, the applicant for 232 Lender approval agrees that it will make its files, records and offices available to HUD or HUD's authorized contractors or agents for such monitoring of 232 loans as HUD determines. The Lender shall retain the origination and underwriting files for ten years from final closing even if the loan has been sold. The servicing file shall be maintained for the life of the loan plus 3 years.

2.8

Monitoring by HUD

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

- A. Section 232 Lenders are subject to monitoring and periodic on-site reviews by HUD or its designee to verify that:
 - 1. The Lender's underwriting, closing, servicing, loss mitigation and asset management decisions are consistent with and adhere to any and all statutory requirements, regulatory requirements, Section 232 Handbook requirements, Mortgagee Letters, Notices, and other directives issued by HUD.
 - 2. The Lender's technical processing is consistent with the requirements of the Section 232 Handbook.
 - 3. Each of the Lender's loan applications is clear, complete, and organized in a manner that facilitates efficient review and processing.

4. The Lender has complied with the conditions of the Firm Commitment and the requirements for Initial or Final Closing.
 5. The Lender has complied with the requirements for construction loan administration in the Section 232 Handbook.
- B. HUD will not begin reviews of origination and underwriting documentation until after the Lender's first Section 232 Program Firm Commitment has been issued. Any origination loan may be reviewed by ORCF for up to ten years after Initial or Final Closing. Servicing loans may be reviewed for as long as HUD's Contract of Insurance is in effect plus three years.
- C. If there has been fraud or misrepresentation by the Lender, HUD reserves its right to take action against the Lender under the contract of mortgage insurance and/or Mortgagee Review Board requirements. Instances of fraud are also referred to the Office of the Inspector General.
- D. This review by HUD is not a substitute for other periodic audits and reviews by HUD, or any other authorized entity (e.g., Office of Inspector General or General Accounting Office) including a financial management review and a review of the Lender's Quality Control Plan as required by 24 CFR Part 202.5(h) and the Single Family Housing Policy Handbook.

2.9

Quality Control Plans and Reviews

A. Quality Control Plans.

1. As with Lenders under Multifamily Accelerated Processing (MAP), Lenders under the Section 232 Healthcare Program must have and maintain a Quality Control Plan (QC Plan) for underwriting and construction loan administration, if applicable, of their FHA-insured mortgages. Objectives and guidance on requirements of Quality Control Plans is promulgated by MACOD, which is responsible for the approval of the QC Plan and for monitoring of the Section 232 Lender's performance in accordance with the QC Plan.
2. The QC Plan must clearly describe the requirements for the Section 232 loan origination, underwriting and construction loan administration. The QC Plan must also state the actions the Lender will take to assure acceptable management and comprehensive risk reduction in the lending process.
3. The Lender may submit the Section 232 QC Plan as part of an overall QC Plan that also incorporates the QC Plan for MAP activity, since by definition, a Section 232 Lender is also a MAP-Approved Lender. Regardless, the Section 232 QC Plan follows the same format and requirements required of the MAP QC Plan and MAP required QC Reviews, in accordance with MACOD requirements. Accordingly,

MACOD monitors and assesses lender compliance and risk for Section 232 Lenders, consistent with the requirements for MAP Approved Lenders.

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 guidance consistent for MAP Approved Lenders. For 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 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 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 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.

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 goes into claim either during construction or within *three years* after final endorsement. This must be done in all cases including those in which the Lender no longer has the loan in its portfolio.
2. Loans Purchased/Transferred from Another Section 232 Lender.

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

D. Independent Third Party Reviews.

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

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

2.10

Other Monitoring Reviews

Generally, lenders and program participants are subject to several types of monitoring by HUD staff or other entities designated by HUD, which are described below.

- A. **Desk Reviews.** The purpose of a desk review is to determine the level of compliance with HUD's loan origination, underwriting, closing, servicing, loss mitigation and/or asset management requirements. The review examines the policies, procedures, and practices as they relate to FHA-insured loans, to determine that they are timely, proper, and effective in mitigating unnecessary losses to HUD's insurance fund. Desk reviews may also be used as a tool to assess the effectiveness of training provided to Lenders.
- B. **On-site Reviews.** These reviews, conducted at mortgagees' offices, consist of an opening conference; interviews with mortgagee officials and their employees; reviews of individual case files, logs and computer records; reviews of the mortgagees policies, procedures, and Quality Control Program; and an exit conference; followed, as appropriate, by selected re-verifications, such as interviews with Borrowers. Generally, Lenders are given 30 days' notice prior to a review and will be contacted in writing. Mortgagees are expected to have files requested by FHA monitors available for their review.
- C. **Communication with Lenders regarding monitoring for Desk Reviews.**
 1. **Initial Letter Following the Desk Review.** HUD will issue a letter to the Lender based on the findings of the desk review(s). The letter will identify and describe items of concern and require the Lender to reconcile with its Quality Control Plan to assure compliance with HUD requirements. Within 30 days of the date of the letter, the Lender is to provide HUD a full explanation for each finding with documentation, and a statement of corrective actions taken to prevent recurrence of each violation and cure the original finding.
 2. **Final Letter.** After the Lender's response letter is reviewed by HUD, a final letter

will be sent to the Lender. The final letter indicates that the Corrective Actions were reviewed and states whether those Corrective Actions are considered appropriate to satisfy the desk review findings. Lenders have a responsibility and an obligation to use reasonable diligence in assuring that all requirements of the Section 232 Program are followed. If the findings are major, the actions prescribed in Sections 2.13 and 2.15 – 2.18 below will be followed.

D. Communication with Lenders for On-site Reviews.

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

2.11

Section 232 Program Authority to Issue Sanctions

A. General.

1. At any time, the ORCF Director may initiate discussions with a Section 232 Lender regarding any concerns HUD has with respect to any of the Lender's actions or personnel, or any changes the Lender should make in using its Section 232 Program authority.
2. If there are concerns about the Lender's underwriting and/or construction loan administration, the ORCF Director may take certain actions listed below without limitation.

3. Every ORCF employee must refer any possible instances of fraud or other criminal violations to the Office of the Inspector General.

B. The ORCF Director may:

1. Issue a Warning Letter (see Section 2.11 below) to the Section 232 Section Lender.
 2. Temporarily suspend a Section 232 Lender's approval status (see Section 2.12 below). (This action must be taken in conjunction with steps 3, 4, 5 or 6 immediately below).
 3. Initiate the issuance of a Limited Denial of Participation (LDP) to an individual or firm involved in a "covered transaction" as defined in 2 CFR 180.220 and 2 CFR 2424.220.
 4. Make a referral to the Department's Mortgagee Review Board in accordance with procedures in Section 2.16 below.
 5. Make a referral to FHA's MACOD.
 6. For non-Lenders, those program participants who are not FHA-approved Mortgagees involved in the lending transaction, make a referral to the Departmental Enforcement Center (DEC) for appropriate action.
 7. Make a referral to the HUD Office of Inspector General (OIG).
- C. All referrals in Section 2.10 B above shall be in writing, and shall include an administrative record described in Section 2.13 below.

2.12

Basis for Issuance of Warning Letter from the ORFC Director

- A. A Section 232 Lender's improper, inaccurate or inadequate origination, underwriting, construction loan administration, servicing, loss mitigation or asset management may lead to HUD issuing a Warning Letter or other sanction. Offenses that may be the basis for a Warning Letter include, *but are not limited to*:
1. Failure to provide required exhibits or the submission of incomplete or inaccurate exhibits. Although a Section 232 Lender will be permitted to correct minor errors or provide additional information, substantial inaccuracies or lack of significant information will result in the return of the application and retention of any fees collected. Moreover, even minor errors or the initial failure to provide full and complete information lead to loss of efficiency, avoidable delays and unnecessary use of staff time, and are thus significant.

2. Preparation of a Lender Narrative that is not supported by the appropriate documentation and analysis.
3. Failure to notify the HUD processing office promptly of changes in the mortgage loan application for a Firm Commitment that has been submitted, such as changes in rents, numbers of units or gross project area.
4. Failure to meet Section 232 closing requirements or construction loan administration requirements.
5. Failure to meet the Section 232 servicing, loss mitigation, or asset management requirements.
6. Business practices that do not conform to those generally adopted by prudent Lenders.

B. The Warning Letter.

1. May require a meeting with the Director of ORCF or designee's office with principal owners of, and/or officers of a Section 232 Lender to discuss the problem(s) and possible corrective action(s).
2. Shall specify the violation(s) for which the Warning Letter is issued.
3. Shall direct the taking of a corrective action by Lender and the Warning Letter will include the timeframe for corrective action.

C. The Warning Letter does not suspend a Lender's Section 232 privileges, but may impose a higher level of review of the Lender's underwriting, closing, servicing, loss mitigation or asset management. The Warning Letter must clearly state that it is a Warning Letter issued pursuant to the Section 232 Program requirement violated. The letter will be mailed to the Section 232 Lender's contact person as listed on the Section 232 Program website. The website is maintained by HUD, but the Lender is responsible for notifying HUD of any changes or updates to its contact information.

D. The Lender must be sent, along with each Warning Letter, a copy of the administrative record prepared with respect to that letter.

2.13

Basis for Suspending a Lender's 232 Program Approval

The ORCF Director may suspend the approval authority for a Section 232 Lender with the simultaneous referral to any of the entities listed in Section 2.15 below. Major offenses that might be the basis for suspending Section 232 Program Approval authority include, *but are*

not limited to:

- A. Receipt of two or more Warning Letters over any twelve consecutive month period. In determining which sanctions to pursue as a result of prior warning letters, HUD will consider the circumstances surrounding those warning letters and any corrective actions undertaken by the Lender.
- B. Fraud or material misrepresentation in the Lender's participation in the Section 232 program.
- C. Lender collusion with or influence upon third party contractors to modify reports prepared by the contractor that cause the contractor's report to misrepresent a material fact to HUD, cause the HUD loan amount to be improperly increased, or otherwise be misleading or inaccurate.
- D. A violation of Section 232 procedures by a third party contractor, which the Section 232 Lender knew, or should have known, was occurring and which, if performed by the Section 232 Lender itself, would constitute a ground for a sanction under this chapter.
- E. Adequate evidence that a Lender's improper, inadequate or inaccurate underwriting, servicing, loss mitigation or asset management was a cause for assignment of an insured mortgage.
- F. Identity-of-interest violations under Section 2.5 above.
- G. Payment by or receipt of a payment by a Section 232 Lender of any kickback or other consideration, directly or indirectly, from the sponsor or from any other participant in the transaction, which would affect the Lender's independent evaluation, or represent a conflict of interest, in connection with any insured mortgage transaction.
- H. Failure to comply with any agreement, certification, undertaking, or condition of approval listed in a Section 232 Lender's application for approval.
- I. Noncompliance with any written requirement or directive of the ORCF Director.
- J. Violation of the requirements of any contract with HUD or violation of the requirements in any statute, regulation, handbook, notice, mortgagee letter, or other written rule or instruction including the Section 232 Handbook.
- K. Submission of false information or a false certification to HUD in connection with any Section 232 mortgage transaction.
- L. Failure of a Section 232 Lender to respond in a timely manner to inquiries from the ORCF Director.
- M. Indictment or conviction of a Section 232 Lender or any of its officers, directors, principals or employees for an offense that reflects on the responsibility, integrity or ability of the Lender to participate in Section 232 Program.

- N. Employing or retaining an officer, partner, director or principal at the time when the person was suspended, debarred, ineligible or subject to a LDP, or otherwise prohibited from participation in HUD Programs, when the Section 232 Lender knew or should have known of the prohibition.
- O. Employing or retaining an employee who is not an officer, partner, director or principal, and who is or will be working on HUD-FHA Program matters, at a time when that person was suspended, debarred, ineligible, or subject to a LDP or otherwise prohibited from participation in HUD Programs, when the Section 232 Lender knew or should have known of the prohibition.
- P. Failure to cooperate with an audit or investigation by the HUD OIG or an inquiry by HUD into the conduct of the Section 232 Lender.
- Q. Failure to fund insured mortgage loans or any misuse of mortgage loan proceeds.
- R. Failure to cooperate with a monitoring review.

2.14

Administrative Record

When any final action is taken against a Section 232 Lender, an administrative record must be prepared, which includes all materials that were considered, reviewed and relied upon in the final decision. Although not intended to be an exhaustive listing, examples of material that should be included in the record are:

- A. Correspondence between the Lender and HUD or the Lender and any third party contractors that was provided as documentation in support of the Firm Commitment application;
- B. E-mails or other electronic transmissions (e.g., SMS text messages), if relied on in the decision process;
- C. Faxes including the FAX cover sheet and the FAX confirmation sheet;
- D. Application and underwriting submissions;
- E. Copies of appropriate sections of notices, guidance including Frequently Asked Questions (FAQs) posted on the ORCF web site, handbooks, regulations and statutes;
- F. Notes from meetings and telephone conversations; and
- G. Work product and recommendations from subordinates.

[NOTE: Intra-agency memoranda and other such records should be included, but will not be released if privileged. The administrative record in its final form as described in this Section

relates to and supports HUD's final action and is not to be released to any person outside of HUD until it has been reviewed by HUD's Office of General Counsel.]

2.15

Appeals

A. Request for an Appeal Conference.

1. Whenever the ORCF Director imposes a sanction of suspension against a Section 232 Lender, the Lender may request in writing within 10 business days of receiving the sanction letter, an appeal conference before the Appeals Official.
2. The appeal conference before the Appeals Official regarding the ORCF Director's action will be held within 30 business days of HUD receiving the Section 232 Lender's appeal request. A Section 232 Lender may voluntarily request and the Appeals Official may agree to have an appeal conference held more than 10 business days but not more than 30 business days after the date of the lender's request for an appeal.

B. Appeals Official.

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

C. Appeal Conference.

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

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

2.16**Results and Referrals**

Major findings from any desk review or on-site review may result in a referral. Referrals may be made to:

- A. Mortgagee Review Board;
- B. FHA's MACOD;
- C. HUD's DEC (suspension or debarment actions);
- D. Office of Fair Housing and Equal Opportunity (FHEO) (fair lending issues);
- E. HUD Office of General Counsel Office of Program Enforcement;
- F. HUD OIG; and
- G. State licensing agencies (e.g., Secretary of State, Real Estate Commissioner, Appraisal Review Board, Department of Banking, Bar Association).

2.17**Administrative Sanctions and Mortgagee Review Board (MRB) Actions**

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

- A. **Limited Denial of Participation (LDP).** Major isolated violations of FHA requirements may lead to an LDP of an individual or company (other than an approved Lender) by the Deputy Assistant Secretary. The LDP precludes the party from participating in the HUD Programs specified, within the jurisdiction of the HUD official taking the action, for up to one year (see 2 CFR 2424 Subpart J).
- B. **Debarment or Suspension.** Violations of statutes or major or repeated violations of FHA requirements may lead to a debarment or suspension of an individual, a company, or with approval of the MRB, a lender, by the DEC or an Assistant Secretary. These actions preclude the party from participating in most Federal Domestic Programs (see 2 CFR Parts 180 and 2424).
- C. **Mortgagee Review Board (MRB) Action.** HUD's Mortgagee Review Board (MRB) is authorized to impose civil money penalties on a Lender or other party, and to take administrative action against any approved Lender that does not comply with FHA requirements or the non-discrimination requirements of the Equal Credit Opportunity Act, the Fair Housing Act, or Executive Order 11063. The Department's regulations on the Mortgagee Review Board and civil money penalties are in 24 CFR Parts 25 and 30.

1. **Administrative Actions.** The Board may issue a letter of reprimand, place a Lender on probation, suspend or withdraw a Lender’s approval, or enter into a Settlement Agreement. The Board may also issue a cease and desist order where there is reasonable cause to believe that a Lender is violating, or has violated, the Department’s requirements. The nature and extent of the violation(s) determine the type of administrative action that the Board may take.

2. **Civil Money Penalties.** The Board is authorized to impose a civil money penalty pursuant to 24 CFR Section 30.35, against a party that knowingly and materially violates FHA Program regulations or requirements. A civil money penalty may be imposed against a Lender in addition to any other administrative action taken by the Board.

2.18	Enforcement Authority
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Lenders and program participants shall review the enforcement authority applicable below.

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