

Section III Asset Management

Chapter 6

Departmental Enforcement Center

6.1

Introduction

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

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

6.2

DEC-REAC-ORCF Enforcement Protocol Overview

In summary review, after receiving financial or physical information, REAC has automated algorithms that identify potential compliance deficiencies (findings), that are then subject to review by REAC Analysts. The REAC Analysts, after further review, determine what compliance findings need to be referred to either ORCF or the DEC. For financial compliance findings, the REAC review will either downgrade a compliance finding to “none,” or determine whether to refer the compliance finding to ORCF or the DEC, based upon the type and magnitude of the finding. For physical compliance findings, the REAC Physical Score drives the direction of the referral to either ORCF or the DEC with consideration of both the value of the most recent score and the occurrence of substandard scores being the determining factors. Complete information regarding this referral

methodology is discussed with physical operations and financial operations in Asset Management, Chapter 3 and Asset Management, Chapter 4.

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

6.3

DEC and Physical Referrals

In accordance with current governing protocols (www.hud.gov/reac), REAC will automatically refer Section 232 projects receiving a defined Physical Assessment Sub-system (PASS) score to the DEC, and will also automatically refer any projects receiving a third consecutive score low score (as defined in current protocols) to the DEC.

Although ORCF will have the lead responsibility for compliance assessment and enforcement of projects having passing PASS inspection scores, ORCF may make an elective referral to the DEC of any projects it deems necessary for enforcement actions. ORCF will make such elective referrals once it has determined that the score is not a result of scoring irregularities related to the nature of the project. Before making the elective referral, ORCF will coordinate the referral with the DEC.

Upon receipt of a physical referral, the DEC will analyze the REAC physical inspection report(s). The DEC will issue legally sufficient notices (sometimes in collaboration with the Lender) to the project participants to correct compliance deficiencies that are supported by the administrative record. Upon closing the referral, the DEC will recommend a course of action it deems appropriate to address any uncorrected compliance deficiencies.

The DEC may visit the project, if necessary:

- A. To validate the REAC inspection report(s), and
- B. To obtain photographic evidence for the administrative record. Should the DEC determine that a site visit is necessary, the DEC will coordinate the visit with ORCF.

6.4

DEC and Financial Referrals

REAC agrees to review the financial referrals that are currently automatically generated. REAC will manually direct such automatic referrals to the DEC or ORCF for action based on the agreed upon thresholds. Although the ORCF will have the lead responsibility for compliance assessment and enforcement of projects not automatically referred to the DEC (see the financial operations sections of Asset Management, Chapter4), the ORCF may

make an elective referral to the DEC of any projects that it deems necessary for enforcement actions (e. g., if quarterly interim Operator financial statements received by the Lenders suggest financial failings or compliance issues). Before doing so, ORCF will coordinate the referral with the DEC.

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

6.5

DEC and Non-File or Late-File Referrals

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

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

6.6

DEC and Other Referral Types

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

Should ORCF encounter violations of statutory, regulatory, or contractual issues that it considers to be significant in nature, but are not otherwise covered under this protocol,

ORCF may request the enforcement assistance of the DEC by seeking an elective referral. The DEC Operations Division Director will coordinate with ORCF to decide whether to accept the referral, and if so, which DEC office will handle it. The DEC Director or their designee will approve all requests for "other" elective reviews.

6.7**DEC and Suspension or Debarment Referrals**

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

6.8**DEC, ORCF and Lender Successful Collaboration**

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

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