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## Section III Asset Management

### Chapter 6

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## Departmental Enforcement Center

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### 6.1 Introduction

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

17  
18 The DEC receives referrals for such enforcement review and action either through  
19 “automatic” referrals from REAC or through “elective referrals” from ORCF. ORCF  
20 “elective referrals are made when ORCF determines that DEC involvement would be  
21 helpful in addressing Section 232 Program participant compliance with HUD Regulations and  
22 business agreements. By doing so, ORCF aims to help restore a project to operational and  
23 financial long-term viability.  
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### 6.2 DEC-REAC-ORCF Enforcement Protocol Overview

26  
27 In summary review, after receiving financial or physical information, REAC has automated  
28 algorithms that identify potential compliance deficiencies (findings), that are then subject to  
29 review by REAC Analysts. The REAC Analysts, after further review, determine what  
30 compliance findings need to be referred to either ORCF or the DEC. For financial  
31 compliance findings, the REAC review will either downgrade a compliance finding to  
32 “none,” or determine whether to refer the compliance finding to ORCF or the DEC, based  
33 upon the type and magnitude of the finding. For physical compliance findings, the REAC  
34 Physical Score drives the direction of the referral to either ORCF or the DEC with  
35 consideration of both the value of the most recent score and the occurrence of substandard  
36 scores being the determining factors. Complete information regarding this referral

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

39  
40 The DEC can bring expertise and experience to bear in addressing performance issues that  
41 are inseparably intertwined with compliance issues. There are numerous circumstances in  
42 which DEC involvement (via an elective DEC referral) could be extremely helpful either in  
43 effectuating *changes in Borrower/Operator practices* to stabilize the asset or, alternatively,  
44 in bringing about a *change of Borrower and/or Operator themselves* when essential to bring  
45 the asset into stabilized performance.

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### 6.3

### DEC and Physical Referrals

48  
49 In accordance with current governing protocols ([www.hud.gov/reac](http://www.hud.gov/reac)), REAC will  
50 automatically refer Section 232 projects receiving ~~a defined certain physical inspection~~  
51 ~~scores (i.e. from the Physical Assessment Subsystem (PASS) score to the DEC, and will~~  
52 ~~also automatically refer any projects receiving a third consecutive score low score (as~~  
53 ~~defined in current protocols or successor program)~~ to the DEC. ~~Although ORCF will~~  
54 ~~have the lead responsibility for compliance assessment and enforcement of projects having~~  
55 ~~passing PASS inspection scores, ORCF may ORCF may also~~ make an elective referral to the  
56 DEC of any projects it deems necessary for enforcement actions ~~based on any concerns~~  
57 ~~ORCF may have relative to physical conditions. If such concerns arise from a REAC~~  
58 ~~inspection, ORCF will make such elective referrals once it has determined that the score is~~  
59 ~~not a result of scoring irregularities related to the nature of the project. Before making the~~  
60 ~~elective referral, ORCF will coordinate the referral with the DEC, and after any appeals are~~  
61 ~~resolved by REAC.~~

62  
63 Upon receipt of a physical referral, the DEC will analyze the REAC physical inspection  
64 report(s) ~~or other determinations of physical conditions.~~ The DEC ~~will~~may issue legally  
65 sufficient notices ~~(sometimes in collaboration with the Lender)~~ to the project participants to  
66 correct compliance deficiencies that are supported by the administrative record. Upon  
67 closing the referral, the DEC will recommend a course of action it deems appropriate to  
68 address any uncorrected compliance deficiencies. ~~In addition, where appropriate, and after~~  
69 ~~consultation with ORCF, the DEC may impose civil money penalties (CMPs) against~~  
70 ~~program participants consistent with the DEC's delegated authorities.~~

71  
72 The DEC may visit the project, if necessary:

- 73
- 74 A. To validate the REAC inspection report(s) ~~or other physical condition~~  
75 ~~concerns,~~ and
  - 76
  - 77 B. To obtain photographic evidence for the administrative record. Should the DEC  
78 determine that a site visit is necessary, the DEC will coordinate the visit with  
79 ORCF.
  - 80
  - 81

## 6.4

## DEC and Financial Referrals

82  
83 REAC ~~agrees to review the~~ reviews financial reports submitted by Borrowers, which may  
84 or may not result in referrals that are currently automatically generated. REAC will  
85 manually direct such automatic referrals to either the DEC or ORCF ~~for action~~ based on  
86 the agreed-upon thresholds automated referral criteria. Although the ORCF will have the  
87 lead responsibility for compliance assessment and enforcement of projects not  
88 automatically referred to the DEC (see the financial operations sections of Asset  
89 Management, ~~Chapter 4~~ Chapter 4), the ORCF may make an elective referral to the DEC of  
90 any projects that it deems necessary for enforcement actions (e. g., if quarterly interim  
91 Operator financial statements received by the Lenders suggest financial failings or  
92 compliance issues). ~~Before doing so, ORCF will coordinate the referral with the DEC.~~

93  
94 Upon receipt of a referral, the DEC will analyze the administrative record and the  
95 pertinent financial statements. If necessary, the DEC will request information and/or  
96 documentation from the ~~Borrower~~ appropriate participant or its representative to  
97 determine if a compliance violation occurred. Should the ~~Borrower~~ participant refuse to  
98 comply with the request for information, fail to resolve a compliance deficiency after having  
99 received a corrective action request from the DEC, or commit repeated violations of any of  
100 its business agreements with HUD, HUD ~~will~~ may initiate appropriate administrative and/or  
101 enforcement action.  
102  
103

## 6.5

## DEC and Non-File or Late-File Referrals

104  
105 The Regulatory Agreements for Section 232 FHA-insured projects require Borrowers (with  
106 some exceptions as noted in Asset Management, ~~Chapter 4~~ Chapter 4) to submit audited  
107 annual financial statements (AFS). HUD now requires the electronic submission of such  
108 statements to REAC. ORCF and REAC will work together to produce an e-mail reminder  
109 that will be issued to each Borrower who has not filed a required AFS within eleven days of  
110 the statement's due date. If the AFS is not received within 30 days from the date of the e-  
111 mail to the Borrower, REAC will then automatically refer ~~all first-time non-filers to ORCF.~~  
112 ~~REAC will refer to the DEC those Borrowers who are overdue in filing an AFS for a~~  
113 ~~second or subsequent time.~~ the Borrower to either the DEC or to ORCF, based on internal  
114 protocol.

115  
116 ~~For all first-time non-filers, ORCF will review the administrative record to ensure that an AFS~~  
117 ~~is required and if so, contact the Borrower concerning any overdue AFS. If the Borrower fails to~~  
118 ~~respond to the ORCF's request for compliance, then the ORCF may make an elective referral~~  
119 ~~to the DEC.~~

120 ~~The Regulatory Agreements for Section 232 FHA-insured projects also place requirements on~~  
121 ~~Operators for the submission of financial reports, related to the operation of the facility directly~~  
122 ~~to HUD and the Lender outside of the REAC system. If HUD has reason to believe that~~  
123 ~~particular Operator-certified statements may be unreliable (for example, indicate a likely~~  
124 ~~prohibited use of funds of the Project), or are presented in a manner that is inconsistent~~

125 with Program Obligations, on a case-by-case basis, HUD may also require Operators to  
126 submit audited annual financial statements, per 24 CFR 5.801. Failure to provide these  
127 statements can result in administrative actions. Further, ORCF may engage the DEC,  
128 through elective referrals, to enforce operator requirements for the submission of financial  
129 reports to HUD.

## 6.6

### DEC and Other Referral Types

132  
133 Upon the DEC's own initiative, or at ORCF's request, the DEC may conduct a portfolio  
134 review, which is a review of projects based on a compliance issue that is common to one  
135 particular Management Agent, Operator, or Borrowers entity. ~~The ORCF or DEC Satellite~~  
136 ~~Office will confer with the DEC Operations Division Director concerning all potential~~  
137 ~~portfolio reviews. The Operations Division Director will coordinate with the requestor to~~  
138 ~~determine whether the DEC will accept the portfolio review, and if so, which DEC office~~  
139 ~~will handle it. The DEC Director or their designee will approve all requests for portfolio~~  
140 ~~reviews.~~

141  
142 ~~Should~~Additionally, should ORCF encounter violations of statutory, regulatory, or  
143 contractual issues that it considers to be significant in nature, but are not otherwise covered  
144 under this protocol, ORCF may request the enforcement assistance of the DEC by seeking  
145 an elective referral. ~~The DEC Operations Division Director will coordinate with ORCF to~~  
146 ~~decide whether to accept the referral, and if so, which DEC office will handle it. The DEC~~  
147 ~~Director or their designee will approve all requests for "other" elective reviews.~~

148  
149 ORCF, at its discretion, will electively refer to the DEC any serious regulatory agreement  
150 violations, including, but not limited to: unauthorized distributions, unauthorized use of funds or  
151 unauthorized loans, in which the resolution of has neither (a) been achieved within 30 days of  
152 ORCF's identification of the violation or (b) been made a part of an ORCF-approved action plan  
153 within 30 days of ORCF's identification of the violation. ORCF may also consider elective  
154 referrals for review of equity skimming liability in connection with borrower's failure to pay  
155 the mortgage and failure to pay the required deposit to the Reserve for Replacements. DEC  
156 leadership will coordinate with ORCF to determine if a referral should go forward.

## 6.7

### DEC and Suspension or Debarment Referrals

159  
160 Suspension and debarment actions are taken to protect the public interest, not for punitive  
161 purposes. The ORCF may opt to refer cases to the DEC for suspension or debarment  
162 where serious program violations are detected or there is evidence of improper conduct  
163 based on an investigation, inspection, audit or review. Such requests are directed to the  
164 DEC's Compliance Division Director for consideration and possible assignment. ~~However,~~

165 ~~program counsel may review the case prior to submission to the DEC to ensure that the~~  
166 ~~administrative record supports the proposed sanction.~~

## 6.8

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

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

172  
173  
174 DEC, REAC, ORCF and the Lender cooperate with each other towards the common goal  
175 of attaining compliance with HUD's requirements while preserving residential care facilities  
176 for those served by the Section 232 Program.

177  
178 As a reminder, HUD notification requirements are outlined in this Handbook, Section III,  
179 Chapter 3.10. See also the Servicer's Notification to HUD of Risks to Healthcare Project (Form  
180 HUD-93334-ORCF), and the Operator's Notification to HUD of Threats to Permits and  
181 Approvals (Form HUD- 93335-ORCF). Referral of the project to the DEC or by REAC does not  
182 exempt the Operator or the Borrower from these notification requirements.