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Section I Handbook Introduction

Chapter 2

Lender Relations, Approvals and Monitoring Requirements

2.1

Introduction

- 9
- 10 A. The Office of Residential Care Facilities (ORCF) within the Office of Healthcare Programs
11 (OHP) actively partners with Section 232 approved ~~lenders~~Lenders as an ongoing part of
12 providing accessible and affordable housing in FHA-insured residential care facilities. In
13 that regard, ORCF provides periodic training sessions and Kaizens, to promote effective
14 dialogue between ORCF and the lending community in administering the Section 232
15 Program. In its review and monitoring, ORCF strives to provide feedback to ~~lenders~~Lenders
16 on their performance in order to enhance the quality of Lender activity, from underwriting
17 through servicing. Lender Relations is an integral part of ORCF's way of achieving
18 continuous improvement and productivity while reducing risk to the FHA Insurance Fund.
19
- 20 B. In order to participate in the Section 232 Program, Lenders are required to have staff skilled
21 in underwriting, closing and servicing residential healthcare facility loans, and in preparing
22 applications for Section 232 mortgage insurance. To that end, the Section 232 Program
23 requires three levels of approval for participation.
24
- 25 1. Approval in accordance with 24 CFR Part 202 and HUD Handbook 4000.1 (FHA
26 Single Family Housing Policy Handbook).
 - 27
 - 28 2. Approval as a Multifamily Accelerated Processing (MAP) Lender in accordance with
29 published MAP guidelines. See MAP Guide for the standards required for
30 qualification. Traditional Application Processing will not be accepted.
31
 - 32 3. Approval by ORCF as a Section 232 Program Lender and approval of individual
33 Section 232 underwriters in accordance with requirements set forth in the MAP Guide
34 and prescribed in Section 2.2 below.
35
- 36 C. Approval as a Section 232 Lender by ORCF is on a nationwide basis. Therefore, the Section
37 232 Program Lender may process Section 232 loans regardless of where the property is
38 located.
39
40

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

74
75 Review and approval or disapproval will take approximately 30 to 45 days from the date an
76 application is received. The applicant will be informed in writing of the decision.
77
78

2.3

Approval Requirements for Section 232 Healthcare Underwriters

- 79
80 A. **Approval of Lender Underwriters.** The Lender's 232 Healthcare Underwriter(s) must be
81 approved according to this section. ~~Lender Underwriters heretofore have been approved by~~
82 ~~FHA's Multifamily Asset and Counterparty Oversight Division with final review by the~~

83 ~~Office of Residential Healthcare Facilities.~~ The approval requirements are as follows, with
84 exceptions to prior Lean approval effective prior to the issuance of this Handbook and
85 Underwriter Approval Delegation as described in 2.3.C below:
86

87 1. **Cover Letter.**

88
89 2. **Exhibit A.** Include a resume for healthcare underwriter that supports experience in
90 underwriting residential healthcare facilities within the previous five years. The
91 resume should highlight(a) any experience that evidences satisfaction of training
92 requirements for MAP Approval, and (b) any emphasis or training provided in-house
93 or by industry experts in healthcare underwriting, finance and appraisals.
94

95 3. **Exhibit B.** Evidence of approval as a MAP-approved underwriter. In lieu of
96 ~~evidence of approval as MAP deals that have been~~ approved underwriter, an
97 applicant seeking Section 232 underwriter approval can provide evidence of having
98 ~~completed ORCF's Section 232 Underwriter Training and also having~~ underwritten,
99 as a trainee, three additional Section 232 (New Construction/Substantial
100 Rehabilitation, 223(f), or 241(a) loans) loans that have closed beyond what is
101 provided in response to item 4 immediately below.
102

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

117 a. The Lender requesting approval of an underwriter trainee as a Section 232
118 Underwriter shall have direct experience in working with the trainee on
119 healthcare deals.

120 b. The Lender is to provide to HUD the Lender Narrative and Maximum
121 Insurable Loan Calculation ("MILC") (Form HUD-92264A-ORCF) for the
122 transactions underwritten by the Healthcare Underwriter. The Lender is also
123 to provide a copy of the Healthcare Underwriter's attendance letter from
124 ORCF Underwriter training, if applicable.
125

126 ~~B. Address for~~ **Submission of Applications.** A ~~lender~~Lender must submit two copies of its
127 application to:
128

129 the Multifamily Asset Counterparty Oversight Division
130 C.B. ATTN: Counterparty Oversight Branch, Attention: OHP Section 232 Approvals.
131 Room 6158
132 HUD Building, 451 Seventh Street, SW
133 Washington, DC 20410
134

135 Review and approval or disapproval will take approximately 30 to 45 days from the date the
136 application is received. The applicant will be informed in writing of the decision.
137

138 D.C. Underwriter Approval Delegation. In accordance with Housing Notice H-2015-08 and
139 Mortgagee Letter 2015-16, and until such further notice, FHA's MACOD requires COB and
140 the MAP Guide, Chapter 2, require eligible Section 232 Lenders to designate qualified
141 individuals as "Chief Underwriter" and "Deputy Chief Underwriter." As ORCF requires
142 MAP approval for Section 232 Lenders, per Section 2.1.B.2 above, these conditions apply to
143 Section 232 Lenders.
144

145 1. Through the Chief Underwriter the Lender designates and approves Section 232
146 underwriters on their staff.
147

148 1. The designated Chief Underwriter will have responsibility for approving Section 232
149 Underwriters, provided they are in good standing with MAP and Section 232
150 requirements. If the Chief Underwriter is absent or is no longer employed by the
151 Section 232 Lender, and there is no Deputy Chief Underwriter available to perform
152 these functions, the Lender may not submit new applications until COB has approved
153 a new Chief Underwriter. In order for a Lender and Chief Underwriter to certify to
154 an Underwriter's competency to submit loans under the Section 232 program, the
155 Section 232 Lender and Chief Underwriter will evaluate the prospective underwriter
156 to ensure and commit to the following ("Designation Criteria"):
157

- 158 a. Underwriter has completed and complied with HUD's experience/training
159 requirements, as noted in 2.3.A. above, and the Lender's approved training
160 plan.
- 161 b. Chief Underwriter/Deputy Chief Underwriter has extensively reviewed the
162 Underwriter trainee's underwriting during the training period to ensure it
163 complies with the MAP Guide and/or Section 232 Handbook requirements,
164 as well as accurately represents the risk associated with the proposed loan.
- 165 c. The Chief Underwriter/Deputy Chief Underwriter has reviewed and ensured
166 loan documentation submitted to HUD during the training period was
167 complete, and that the submission did not require significant revision by
168 HUD staff to correct errors or omissions.
- 169 d. The Chief Underwriter/Deputy Chief Underwriter has reviewed feedback
170 from ORCF on the Underwriter trainee's performance during the training
171 period. Significant issues noted during the training period shall inform the
172 approval process.
173

174 2.2. Depending on the volume of a Lender's firm commitments, as prescribed by the
175 ~~above referenced notice and mortgagee letter~~ MAP Guide, Chapter 2, the Lender
176 either participates in Underwriter Approval Delegation or, for certain low volume
177 lenders, may opt to continue to obtain underwriter approval from HUD as described
178 in 2.3.A and B, above. All newly approved Section 232 Lenders must comply with
179 Underwriter Approval Delegation.

180
181
182 3. ~~AH~~Additional approval requirements for Section 232 Lenders, eligible for delegated
183 underwriter approval are as follows:

184
185 a. The Lender must be in good standing with the Department and in full MAP
186 and Section 232 compliance, defined as:

187 i. Compliance with all HUD and other applicable financial requirements
188 (liquidity, net worth, etc.).

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

193 b. The Lender has on staff a Chief Underwriter ~~and Deputy Chief~~, approved in
194 writing by HUD.

195 a.c. The Lender has satisfactory procedures in place for training and approving
196 Underwriters ~~are set forth by MACOD in accordance with the~~
197 aforementioned Notice and Mortgagee Letter., detailed in the Lender's
198 Quality Control Plan.

199
200 2.4. FHA's MACOD COB will continue to review and approve underwriters with
201 suspension or termination enforcement actions within the previous 18 months.

202
203 5. If at any time a Lender no longer complies with the requirements for delegation of
204 Underwriter approval due to unforeseeable reasons, the Lender must immediately
205 contact HUD to discuss implementation of corrective action. The Lender must
206 expeditiously act to initiate the agreed upon corrective action within the time frame
207 agreed upon with HUD.

208
209 6. Section 232 Lenders shall promptly advise HUD of each change in their Section 232
210 underwriting staff, under delegated processing.

2.4

Electronic Capability and Internet Access

215 ORCF will post information on its ~~web site~~website and will transmit messages to Lenders and to
216 the lending community by electronic mail, or alternative secure methods, often with attached
217 documents. This is the only format in which the lenders will receive this information. Much of
218 the information required by ORCF must be submitted electronically, in a format determined by
219 HUD to be acceptable.
220
221

2.5

Identity of Interest

222
223 A. **Section 232 Lenders.** An “Identity of Interest” is defined in Program Introduction,
224 Chapter 1.6. Any identity of interest (IOI) between:
225

- 226 1. An officer, director, partner or the principal staff of the Section 232 Lender, or any of
227 their family members, or contract employees of the Section 232 Lender working on a
228 particular application, and
229
- 230 2. An officer, director, partner or family member of the sponsor, the Borrower, the
231 principal of the Borrower, the general contractor, subcontractor, seller of the land or
232 seller of the property is not permitted.
233

234 Transactions that involve an IOI between any persons described in subsections 1 and 2,
235 above, are not allowed under the Section 232 program.
236

237 B. **Counsel to the Borrower.** An IOI shall be deemed to exist between the Section 232 Lender
238 and Counsel to the Borrower (whether a law firm or an individual attorney), if:
239

- 240 1. Counsel to the Borrower, or any attorney who is a partner, member or employee of
241 the law firm that is counsel to the Borrower, or any of their family members, is:
242 a. An owner of any direct or indirect ownership interest in the Section 232
243 Lender, or
244 b. An employee of the Section 232 Lender.
245

- 246 2. Any such identity of interest must be disclosed so that the relationship can be
247 analyzed for potential impermissible conflicts of interest.
248

- 249
- 250 3. In the Opinions of Borrower’s and Operator’s Counsel (Form HUD-91275-INST), an
251 attorney signing the Opinion cannot have any identity of interest with any party to the
252 transaction. If another member of the firm has an interest in any entity involved in the
253 transaction, such a relationship must be disclosed. Additionally, attorneys that
254 represent both the Borrower and the Operator must disclose to both parties the
255 inherent conflicts of interest involved. The Borrower and Operator must disclose any
256 such identity of interest to HUD in writing.
257

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

265
266 [NOTE: See Production, Chapter 12.2.E for a discussion of how to treat identities of interest
267 between the Section 232 Lender and a tax credit equity syndicator or an investor.]
268
269

2.6

Limitation on Requirements

- 270
271 A. There are no additional capital requirements for Section 232 Lenders beyond HUD's
272 minimum net worth and liquidity requirements in 24 CFR Part 202.
273
274 B. There is no additional fee required by HUD for qualifying as a Section 232 Lender.
275
276 C. Section 232 Lenders must notify FHA's MACOD COB, or designated entity, if there has
277 been a change of address of the home office for residential healthcare facility business,
278 electronic mail address, telephone number, ownership or if the Lender has a material change
279 in its way of doing business. Lenders must also notify MACOD COB, or designated entity,
280 if they withdraw as a Section 232 Lender, even if temporarily. These notification
281 requirements are in addition to the requirements of FHA's MACOD COB, or designated
282 entity, and MAP.
283
284 D. Section 232 Lenders must notify ORCF if they lose their MAP or FHA approval. The loss of
285 either of those approvals also constitutes a loss of the Section 232 approval.
286
287 E. Section 232 Lenders are expected to maintain and improve the level of experience and the
288 number of experienced staff members. ORCF expects the Section 232 Lenders to be certain
289 that their staff meet the qualifications prescribed by the ORCF.
290
291

2.7

Agreement to Accept Monitoring

292
293 By accepting approval, the applicant for 232 Lender approval agrees that it will make its files,
294 records and offices available to HUD or HUD's authorized contractors or agents for such
295 monitoring of 232 loans as HUD determines. The Lender shall retain the origination and
296 underwriting files for ten years from final closing even if the loan has been sold. The servicing
297 file shall be maintained for the life of the loan plus 3 years.
298
299

2.8

Monitoring by HUD

300
301 The 232 Lender collects, prepares, and reviews the documentation for a firm application
302 submission for mortgage insurance. Consequently, HUD will rely on the accuracy and validity
303 of the documentation and data the Lender collected or created in order to obtain HUD's
304 approval. HUD further requires that Lenders exercise integrity and competence in the
305 origination of loans for FHA insurance. The 232 Lender will have the affirmative duty to report
306 underwriting risks and provide for mitigation. HUD and Section 232 Lenders have a mutual
307 interest in ensuring consistent Lender competence and compliance with this Section 232
308 Handbook and other relevant guidance and handbooks. If in the process of performing this
309 work, the Lender fails to maintain such compliance and/or thereby places HUD at a risk level not
310 fully disclosed, then HUD may pursue administrative action or other actions against the Lender.

311
312 A. Section 232 Lenders are subject to monitoring and periodic on-site reviews by HUD or its
313 designee to verify that:

- 314
- 315 1. The Lender's underwriting, closing, servicing, loss mitigation and asset management
316 decisions are consistent with and adhere to any and all statutory requirements, regulatory
317 requirements, Section 232 Handbook requirements, Mortgagee Letters, Notices, and
318 other directives issued by HUD.
319
 - 320 2. The Lender's technical processing is consistent with the requirements of the Section 232
321 Handbook.
322
 - 323 3. Each of the Lender's loan applications is clear, complete, and organized in a manner that
324 facilitates efficient review and processing.
325
 - 326 4. The Lender has complied with the conditions of the Firm Commitment and the
327 requirements for Initial or Final Closing.
328
 - 329 5. The Lender has complied with the requirements for construction loan administration
330 in the Section 232 Handbook.
331

332
333 B. HUD will not begin reviews of origination and underwriting documentation until after the
334 Lender's first Section 232 Program Firm Commitment has been issued. However, significant
335 deficiencies identified by HUD, even if corrected prior to the issuance of the Firm
336 Commitment, may be included in the analysis of the Lender's performance. Any origination
337 loan may be reviewed by ORCF for up to ten years after Initial or Final Closing. Servicing
338 loans may be reviewed for as long as HUD's Contract of Insurance is in effect plus three
339 years.
340

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

345
346 D. This review by HUD is not a substitute for other periodic audits and reviews by HUD, or any
347 other authorized entity (e.g., Office of Inspector General or General Accounting Office)
348 including a financial management review and a review of the Lender's Quality Control Plan
349 as required by 24 CFR Part 202.5(h) and the Single Family Housing Policy Handbook.
350
351

2.9

Quality Control Plans and Reviews

A. Quality Control Plans.

- 352
353 1. As with Lenders under Multifamily Accelerated Processing (MAP), Lenders under
354 the Section 232 Healthcare Program must have and maintain a Quality Control Plan
355 (QC Plan) for underwriting and construction loan administration, if applicable, of
356 their FHA-insured mortgages. Objectives and guidance on requirements of Quality
357 Control Plans ~~is promulgated~~are promulgated by ~~MACOD~~MACOD's COB, which is
358 responsible for the approval of the QC Plan and for monitoring of the Section 232
359 Lender's performance in accordance with the QC Plan. However, additional QC Plan
360 requirements for Section 232 Lenders are set forth below.
361
362
- 363 2. The QC Plan must clearly describe the requirements for the Section 232 loan
364 origination, underwriting ~~and~~ construction loan administration, loan servicing, and
365 portfolio/Master Lease monitoring, as applicable. The QC Plan must also state the
366 actions the Lender will take to assure acceptable management and comprehensive risk
367 reduction in the lending ~~process~~. and servicing processes, as applicable.
368
369
 - 370 a. For Servicing Lenders, the QC plan must address how quality control is integrated
371 into the asset management/loan servicing processes, including troubled loan
372 servicing and timely responsiveness to HUD requirements/inquiries.
 - 373 b. For Servicing Lenders, the QC plan must address how the Lender will exercise
374 prudence and due diligence in assuring that the technical staff and/or contractor(s)
375 are knowledgeable of, and compliant with, HUD requirements.
 - 376 c. For Servicing Lenders, the QC plan must address how the Lender will oversee
377 any functions completed by sub-servicers/service bureaus and how these
378 contractors will coordinate with the servicing department on asset management
379 functions.
 - 380 d. For Servicing Lenders, the QC Plan must address oversight practices for:
 - 381 i. Changes in Participants
 - 382 ii. Changes in Collateral
 - 383 iii. Prepayment/Termination requests
 - 384 iv. 10-year Project Capital Needs Assessments
 - 385 v. Operator Quarterly Financial Statements

389 vi. Action Plans to address Risks

390
391 e. For Lenders with Delegated Non-Critical Repair Escrow Administration and/or
392 Delegated Administration of Reserve for Replacement Account Disbursement
393 functions, the QC plan must provide assurances as to how they will address the
394 quality control of these activities.

- 395
396 3. The Lender may submit the Section 232 QC Plan as part of an overall QC Plan that
397 also incorporates the QC Plan for MAP activity, since by definition, a Section 232
398 Lender is also a MAP-Approved Lender. Regardless, the Section 232 QC Plan
399 follows the same format and requirements required of the MAP QC Plan and MAP
400 required QC Reviews, in accordance with MACODMACOD's COB requirements,
401 with the exception of the additional ORCF QC Plan requirements. Accordingly,
402 MACODMACOD's COB monitors and assesses lender compliance and risk for
403 Section 232 Lenders, consistent with the requirements for MAP Approved Lenders.
404

405 **B. Quality Control Reviews.**

406
407 Quality Control Reviews (QC Reviews) of the Lender's Section 232 operations are to be
408 part of the overall QC Review performed annually, in accordance with and set forth by
409 MACODMACOD's COB guidance consistent for MAP Approved Lenders and the
410 additional Section 232 requirements set forth in this section below. For lenders
411 participating in Underwriter Approval Delegation (see 2.3.C of this section), QC reviews
412 must confirm that the Chief Underwriter and designated underwriters are approved and
413 have satisfactorily completed all designation criteria including the Lender's approved
414 training and approval requirements. The review will insure that each loan reviewed was
415 underwritten by an approved and designated underwriter and if the underwriter was
416 approved within the previous four years, the QC review should include a review of the
417 underwriter's approval package. Additionally, Lenders opting to participate in Delegated
418 Lender Processing for Reserve for Replacements and Non-critical Repair Escrows must
419 address the appendix to the QC Plan reviewing the procedures, staff and recordkeeping
420 for lender processing in accordance with Chapter 3 of the Asset Management portion of
421 the Handbook.
422

- 423 1. In general, the Annual QC Review shall:
- 424 a. Track all Section 232 loans presented by individual loan originators and
425 underwriters.
 - 426 b. Evaluate the Lender's overall QC plan for adequacy and the Lender's
427 operation for compliance with the QC plan.
 - 428 c. Perform audits of Section 232 Individual Loan Commitments. For Lenders
429 with total commitments on 20 or more Section 232 loans in the applicable
430 year of review, QC reviews will be completed for 5% of all closed loans. The
431 maximum number of required reviews will be the lesser of 5% of all closed
432 Section 232 loans or three reviews. Lenders with fewer than 20 commitments
433 in the applicable year of review will be required to perform one QC review.

- 434 d. Determine the scope of deficiencies, if any, identified by the HUD review
435 staff. Did the initially submitted firm commitment and/or closing package
436 substantially meet HUD's requirements or were significant revisions required?
437 Did any deficiencies identified significantly impact the overall processing?
438 e. Document whenever significant oversights and/or deficiencies in loan
439 servicing are found as a result of problem loan reviews.
440 f. Evaluate the effectiveness of the Lender's policies and procedures for tracking
441 and completing overdue Non-Critical Repairs and for Lenders who are
442 Servicing Lenders, tracking and obtaining overdue Project Capital Needs
443 Assessments (PCNAs).
444

445
446 **C. Additional Reviews.**
447

- 448 1. Audit Reviews of Problem Loans. The originating Section 232 Lender must also
449 undertake a comprehensive review and reexamination of any loan it underwrote that
450 goes into claim either during construction or within **threefour years** after final
451 endorsement. This must be done in all cases including those in which the Lender no
452 longer has the loan in its portfolio.
453
454 2. Loans Purchased/Transferred from Another Section 232 Lender.
455

456 While not required, Section 232 Lenders are encouraged to perform a basic due diligence QC
457 Review on any loan purchased from another Section 232 Lender.
458

459 **D. Independent Third-Party Reviews.**
460

461 The Quality Control function, which must be independent of the origination and servicing
462 functions, may be conducted by either of the following:
463

- 464 1. **In-house staff.** Lenders may establish a unit that is dedicated solely to Quality
465 Control. Staff performing Quality Control must not be involved in the day-to-day
466 processes that they are reviewing.
467
468 2. **Outside firms.** Lenders may use knowledgeable outside independent firms to assist
469 in the performance of the QC Reviews. The outside source must use the Lender's QC
470 Plan in completion of the annual QC review. Lenders seeking to use an outside firm
471 should consult with **MACODMACOD's COB** on specific mandates pertaining to
472 qualifications and acceptability of outside sources.
473
474

475 **2.10**

Other Monitoring Reviews

476 Generally, lenders and program participants are subject to several types of monitoring by HUD
477 staff or other entities designated by HUD, which are described below:
478

479 A. **Desk Reviews.** The purpose of a desk review is to determine the level of compliance with
480 HUD’s loan origination, underwriting, closing, servicing, loss mitigation and/or asset
481 management requirements. The review examines the policies, procedures, and practices as
482 they relate to FHA-insured loans, to determine that they are timely, proper, and effective in
483 mitigating unnecessary losses to HUD’s insurance fund. Desk reviews may also be used as a
484 tool to assess the effectiveness of training provided to Lenders.

485
486 B. **On-site Reviews.** These reviews, conducted at mortgagees’Lenders’ offices, consist of an
487 opening conference; interviews with mortgageeLender officials and their employees;
488 reviews of individual case files, logs and computer records; reviews of the
489 mortgageesLenders’ policies, procedures, and Quality Control Program; and an exit
490 conference; followed, as appropriate, by selected re-verifications, such as interviews with
491 Borrowers. Generally, Lenders are given 30 days’ notice prior to a review and will be
492 contacted in writing. MortgageesLenders are expected to have files requested by FHA
493 monitors available for their review.

494
495 C. **Communication with Lenders regarding monitoring for Desk Reviews.**

- 496
497 1. **Initial Letter Following the Desk Review.** HUD will issue a letter to the Lender
498 based on the findings of the desk review(s). The letter will identify and describe
499 items of concern and require the Lender to reconcile with its Quality Control Plan to
500 assure compliance with HUD requirements. Within 30 days of the date of the letter,
501 the Lender is to provide HUD a full explanation for each finding with documentation,
502 and a statement of corrective actions taken to prevent recurrence of each violation and
503 cure the original finding.
504
505 2. **Final Letter.** After the Lender’s response letter is reviewed by HUD, a final letter
506 will be sent to the Lender. The final letter indicates that the Corrective Actions were
507 reviewed and states whether those Corrective Actions are considered appropriate to
508 satisfy the desk review findings. Lenders have a responsibility and an obligation to
509 use reasonable diligence in assuring that all requirements of the Section 232 Program
510 are followed. If the findings are major, the actions prescribed in Sections 2.13 and
511 2.15 – 2.18 below will be followed.

512
513 D. **Communication with Lenders for On-site Reviews.**

- 514
515 1. **Exit Conference.** Upon completion of the on-site review, an exit conference is held
516 to discuss problems and deficiencies in loan files and in the Lender’s operations.
517 Minor findings, which have been resolved by the Lender, may be closed out at the
518 exit conference.
519
520 2. **Initial Letter Following the On-site Review.** HUD will issue a letter to the lender
521 based on the findings of the on-site review(s). The letter will identify and describe
522 items of concern and encourage the lender to reconcile with its Quality Control Plan
523 to assure compliance with HUD requirements. Within 30 days of the date of the
524 letter, the lender is to provide HUD with the following:

- 525
- 526 a. Full explanation for each finding with documentation, and
- 527 b. Statement of corrective actions taken to prevent recurrence of each violation.
- 528

- 529 3. **Final Letter.** After the Lender’s response letter is reviewed by HUD, a final letter
- 530 will be sent to the Lender. The final letter indicates that the Corrective Actions were
- 531 reviewed and states whether those Corrective Actions are considered appropriate to
- 532 satisfy the on-site review findings. Lenders have a responsibility and an obligation to
- 533 use reasonable diligence in assuring that all requirements of the 232 Program are
- 534 followed. If the findings are major, the actions prescribed in Sections 2.11 – 2.14
- 535 below will be followed.
- 536

537 **E. Communication with Lenders on Loan Servicing Performance Issues**

538

- 539 1. **Lender Points of Contact.** Section 232 Lenders shall notify ORCF of their primary
- 540 servicing point of contact, including any changes in contact information.
- 541
- 542 2. **Risk Surveillance Dashboard.** This report is compiled from certain CMS data (e.g. Star
- 543 Rating Report and Special Focus Facility Report for Skilled Nursing Facilities); certain
- 544 Borrower and Operator financial data; physical condition data from the Integrated Real
- 545 Estate Management System (iREMS); and other compliance factors as determined by the
- 546 AE. It rates each Section 232 project within ORCF's portfolio and provides a basis for
- 547 requiring Lenders to provide risk notifications and to request and monitor action plans for
- 548 correction from Borrowers and/or Operators.
- 549
- 550

551 **2.11**

Section 232 Program Authority to Issue Sanctions

552 **A. General.**

553

- 554 1. At any time, ~~the ORCF Director~~leadership may initiate discussions with a Section
- 555 232 Lender regarding any concerns HUD has with respect to any of the Lender’s
- 556 actions or personnel, or any changes the Lender should make in using its Section 232
- 557 Program authority.
- 558
- 559 2. If there are concerns about the Lender’s underwriting, servicing and/or construction
- 560 loan administration, ~~the ORCF Director may~~leadership may issue a letter of caution,
- 561 or take certain actions listed below without limitation. A letter of caution may be
- 562 issued for relatively minor violations which are of low severity that do not rise to the
- 563 level of a Warning Letter and do not require the imposition of Lender sanctions or
- 564 Targeted Enforcement Measures. Violations that may result in issuance of a letter of
- 565 caution are usually due to the Lender’s failure to comply with its administrative or
- 566 reporting obligations to HUD or with Section 232 loan application processing
- 567 requirements, which the letter will direct the Lender to address.
- 568

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

571
572 B. ~~The ORCF Director~~Leadership may:

- 573
574 1. Issue a Warning Letter (see Section 2.~~11~~12 below) to the Section 232 Section Lender.
575
576 2. Temporarily suspend a Section 232 Lender’s approval status (see Section 2.12
577 below). (This action ~~must be~~shall only be taken ~~in conjunction~~in coordination with
578 ~~steps 3, 4, 5~~the Departmental Enforcement Center and/or ~~6~~immediately
579 ~~below~~Mortgagee Review Board, as appropriate).
580
581 3. Initiate the issuance of a Limited Denial of Participation (LDP) to an individual or
582 firm involved in a “covered transaction” as defined in 2 CFR 180.220 and 2 CFR
583 2424.220.
584
585 4. Make a referral to the Department’s Mortgagee Review Board in accordance with
586 procedures in Section 2.16 below.
587
588 5. Make a referral to FHA’s MACOD COB.

589
590
591 6. Coordinate with FHA’s MACOD COB on a Settlement Agreement.

592
593 ~~6-7.~~ For non-Lenders, those program participants who are not FHA-approved
594 Mortgagees involved in the lending transaction, make a referral to the Departmental
595 Enforcement Center (DEC) for appropriate action.

596
597 ~~7-8.~~ Make a referral to the HUD Office of Inspector General (OIG).
598

- 599 C. All referrals in Section 2.10 B above shall be in writing, and shall include an administrative
600 record described in Section 2.13 below.
601
602

2.12

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

- 603
604 A. A Section 232 Lender’s improper, inaccurate or inadequate origination, underwriting,
605 construction loan administration, servicing, loss mitigation or asset management may lead to
606 HUD issuing a Warning Letter or other sanction. Offenses that may be the basis for a
607 Warning Letter include, *but are not limited to*:

- 608
609 1. Failure to provide required exhibits ~~or~~, the submission of incomplete or inaccurate
610 exhibits, or the inadequate disclosure of material facts affecting the loan application.

611 Although a Section 232 Lender will be permitted to correct minor errors or provide
612 additional information, substantial inaccuracies or lack of significant information will
613 result in the return of the application and retention of any fees collected. Moreover,
614 even minor errors or the initial failure to provide full and complete information lead
615 to loss of efficiency, avoidable delays and unnecessary use of staff time, and are thus
616 significant.

- 617
- 618 2. Preparation and submission of a Lender Narrative that is not supported by the
619 appropriate documentation and analysis.
- 620
- 621 3. Failure to notify the HUD processing office promptly of changes in the mortgage loan
622 application for a Firm Commitment that has been submitted, such as changes in rents,
623 numbers of units, unit configurations, or gross project area.
- 624
- 625 4. Failure to meet Section 232 closing requirements or construction loan administration
626 requirements.
- 627
- 628 5. Failure to meet the Section 232 servicing, loss mitigation, or asset management
629 requirements, including failure to proactively communicate to ORCF problems or issues
630 at a project before those problems or issues become critical to the continuing financial
631 viability of the project and its ability to continue paying debt service, per Asset
632 Management, Section III, Chapter 3.10.
- 633
- 634 6. Business practices that do not conform to those generally ~~adopted~~accepted by prudent
635 Lenders or those that are imposed by this Handbook, that show a lack of internal
636 controls, or that do not conform with the approved Quality Control Plan.

637

638 B. The Warning Letter.

- 639
- 640 1. May require a meeting with the Director of ORCF or designee's office with principal
641 owners of, and/or officers of a Section 232 Lender to discuss the problem(s) and
642 possible corrective action(s).
- 643
- 644 2. Shall specify the violation(s) for which the Warning Letter is issued.
- 645
- 646 3. Shall direct the taking of a corrective action by Lender and the Warning Letter will
647 include the timeframe for corrective action.
- 648
- 649 4. The Warning Letter does not suspend a Lender's Section 232 privileges, but may impose
650 a higher level of review of the Lender's underwriting, closing, servicing, loss mitigation
651 or asset management. The Warning Letter must clearly state that it is a Warning Letter
652 issued pursuant to the Section 232 Program requirement violated. The letter will be
653 mailed to the Section 232 Lender's contact person as listed on the Section 232 Program
654 website. The website is maintained by HUD, but the Lender is responsible for notifying
655 HUD of any changes or updates to its contact information.
- 656

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

659
660 **C. Targeted Enforcement.**

661 In accordance with the MAP Guide, Chapter 15, MACOD COB may impose targeted
662 enforcement measures concurrent with the issuance of a Warning Letter. As applicable, these
663 targeted enforcement measures will also apply to Section 232 loans, as determined by the COB.
664 Likewise, ORCF leadership may impose targeted enforcement measures as warranted.
665
666
667

668 **2.13**

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

669 ~~The ORCF Director~~leadership may suspend the approval authority for a Section 232 Lender with
670 the simultaneous referral to any of the entities listed in Section 2.1516 below. Major offenses
671 that might be the basis for suspending Section 232 Program Approval authority include, *but are*
672 *not limited to:*

- 673
674 A. Receipt of two or more Warning Letters over any twelve consecutive month period. In
675 determining which sanctions to pursue as a result of prior warning letters, HUD will consider
676 the circumstances surrounding those warning letters and any corrective actions undertaken by
677 the Lender.
678
679 B. Fraud or material misrepresentation in the Lender's participation in the Section 232 program.
680
681 C. Lender collusion with or influence upon third-party contractors to modify reports prepared
682 by the contractor that cause the contractor's report to misrepresent a material fact to HUD,
683 cause the HUD loan amount to be improperly increased, or otherwise be misleading or
684 inaccurate.
685
686 D. A violation of Section 232 procedures by a third-party contractor, which the Section 232
687 Lender knew, or should have known, was occurring and which, if performed by the Section
688 232 Lender itself, would constitute a ground for a sanction under this chapter.
689
690 E. Adequate evidence that a Lender's improper, inadequate or inaccurate underwriting,
691 servicing, loss mitigation or asset management was a cause for assignment of an insured
692 mortgage.
693
694 F. Identity-of-interest violations under Section 2.5 above.
695
696 G. Payment by or receipt of a payment by a Section 232 Lender of any kickback or other
697 consideration, directly or indirectly, from the sponsor or from any other participant in the
698 transaction, which would affect the Lender's independent evaluation, or represent a conflict
699 of interest, in connection with any insured mortgage transaction.
700

- 701 H. Failure to comply with any agreement, certification, undertaking, or condition of approval
702 listed in a Section 232 Lender's application for approval.
703
- 704 I. Noncompliance with any written requirement or directive of the ORCF Director.
705
- 706 J. Violation of the requirements of any contract with HUD or violation of the requirements in
707 any statute, regulation, handbook, notice, mortgagee letter, or other written rule or instruction
708 including the Section 232 Handbook.
709
- 710 K. Submission of false information or a false certification to HUD in connection with any
711 Section 232 mortgage transaction.
712
- 713 L. Failure of a Section 232 Lender to respond in a timely manner to inquiries from the ORCF
714 Director.
715
- 716 M. Indictment or conviction of a Section 232 Lender or any of its officers, directors, principals
717 or employees for an offense that reflects on the responsibility, integrity or ability of the
718 Lender to participate in Section 232 Program.
719
- 720 N. Employing or retaining an officer, partner, director or principal at the time when the person
721 was suspended, debarred, ineligible or subject to a LDP, or otherwise prohibited from
722 participation in HUD Programs, when the Section 232 Lender knew or should have known of
723 the prohibition.
724
- 725 O. Employing or retaining an employee who is not an officer, partner, director or principal, and
726 who is or will be working on HUD-FHA Program matters, at a time when that person was
727 suspended, debarred, ineligible, or subject to a LDP or otherwise prohibited from
728 participation in HUD Programs, when the Section 232 Lender knew or should have known of
729 the prohibition.
730
- 731 P. Failure to cooperate with an audit or investigation by the HUD OIG or an inquiry by HUD
732 into the conduct of the Section 232 Lender.
733
- 734 Q. Failure to fund insured mortgage loans or any misuse of mortgage loan proceeds.
735
- 736 R. Failure to cooperate with a monitoring review.
737

738
739 S. Probation, Suspension or Termination under MAP.
740

2.14

Administrative Record

741
742 When any final action is taken against a Section 232 Lender, an administrative record must be
743 prepared, which includes all materials that were considered, reviewed and relied upon in the final
744 decision. Although not intended to be an exhaustive listing, examples of material that should be
745 included in the record are:

- 746
747 A. Correspondence between the Lender and HUD or the Lender and any third-party contractors
748 that was provided as documentation in support of the Firm Commitment application;
749
750 B. E-mails or other electronic transmissions (e.g., SMS text messages), if relied on in the
751 decision process;
752
753 C. Faxes including the FAX cover sheet and the FAX confirmation sheet;
754
755 D. Application and underwriting submissions;
756
757 E. Copies of appropriate sections of notices, guidance including Frequently Asked Questions
758 (FAQs) posted on the ORCF ~~web site~~website, handbooks, regulations and statutes;
759
760 F. Notes from meetings and telephone conversations; and
761
762 G. Work product and recommendations from subordinates.

763
764 [NOTE: Intra-agency memoranda and other such records should be included, but will not be
765 released if privileged. The administrative record in its final form as described in this Section
766 relates to and supports HUD's final action and is not to be released to any person outside of
767 HUD until it has been reviewed by HUD's Office of General Counsel.]
768
769

2.15

Appeals

- 770
771 A. **Request for an Appeal Conference.**
772
773 1. Whenever the ORCF ~~Director~~leadership imposes a temporary sanction of suspension
774 against a Section 232 Lender, the Lender may request in writing within 10 business
775 days of receiving the sanction letter, an appeal conference before the Appeals
776 Official.
777
778 2. The appeal conference before the Appeals Official regarding the ~~ORCF~~
779 ~~Director's~~ORCF's action will be held within 30 business days of HUD receiving the
780 Section 232 Lender's appeal request. A Section 232 Lender may voluntarily request
781 and the Appeals Official may agree to have an appeal conference held more than 10
782 business days but not more than 30 business days after the date of the lender's request
783 for an appeal.
784
785 B. **Appeals Official.**
786
787 1. The Appeals Official must be an individual who was not previously involved with the
788 proceedings or settlement discussions up to this point. Generally, the appeal will be
789 made to the OHP Deputy Assistant Secretary or designee.
790

- 791 2. ~~The~~ORCF ~~Director~~leadership provides the administrative record to the Appeals
792 Official and points out the evidence on which the decision was made.
793

794 **C. Appeal Conference.**
795

- 796 1. The Section 232 Lender may provide oral arguments in support of its position and the
797 evidence previously submitted. No new evidence may be submitted to the Appeals
798 Official at this point.
799
- 800 2. Oral statements made by any participant at this meeting are not considered as
801 evidence on any matter under consideration, except that the Appeals Official may
802 consider voluntary admissions against interest as an admission by a representative of
803 the Lender of any element of the violation charged.
804

805 No transcript of the appeal conference will be made, unless the Lender elects to have
806 a transcript made by a certified court reporter at its own expense. If the Lender elects
807 to have a transcript made, it must provide three copies to the Appeals Official.
808
809
810

811 **2.16**

Results and Referrals

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

- 814 A. Mortgagee Review Board;
815
816 B. FHA's MACOD COB;
817
818 C. HUD's DEC (suspension or debarment actions);
819
820 D. Office of Fair Housing and Equal Opportunity (FHEO) (fair lending issues; fair housing
821 issues including non-compliance with federal accessibility requirements and non-compliance
822 with Title VI requirements);
823
824 E. HUD Office of General Counsel Office of Program Enforcement;
825
826 F. HUD OIG; and
827
828 G. State licensing agencies (e.g., Secretary of State, Real Estate Commissioner, Appraisal
829 Review Board, Department of Banking, Bar Association).
830
831
832

Administrative Sanctions and Mortgagee Review Board (MRB) and Other Administrative Actions

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

835
836
837 A. **Limited Denial of Participation (LDP).** Major isolated violations of FHA requirements
838 may lead to an LDP of an individual or company (other than an approved Lender) by the
839 Deputy Assistant Secretary. The LDP precludes the party from participating in the HUD
840 Programs specified, within the jurisdiction of the HUD official taking the action, for up to
841 one year (see 2 CFR 2424 Subpart J). An LDP may be issued for reasons that include (but are
842 not limited to):

- 843 1. Causing unsatisfactory risk to HUD.
- 844 2. Irregularities in the performance of professional duties.
- 845 3. Material failure to maintain prerequisites, such as required licenses and professional
846 certifications.
- 847 4. Material failure to honor contracts or contract violations.
- 848 5. False certifications or false statements made to HUD.
- 849 6. Construction, or construction administration and oversight, deficiencies.
- 850 7. Unlawful activities, pending criminal charges or indictment.

851
852
853 B. **Debarment or Suspension.** Violations of statutes or major or repeated violations of FHA
854 requirements may lead to a debarment or suspension of an individual, a company, or with
855 approval of the MRB, a lender, by the DEC or an Assistant Secretary. These actions
856 preclude the party from participating in most Federal Domestic Programs (see 2 CFR Parts
857 180 and 2424).

858
859 C. **Mortgagee Review Board (MRB) Action.** HUD's Mortgagee Review Board (MRB) is
860 authorized to impose civil money penalties on a Lender ~~or other party~~, and to take
861 administrative action against any approved Lender that does not comply with FHA
862 requirements or the non-discrimination requirements of the Equal Credit Opportunity Act,
863 the Fair Housing Act, or Executive Order 11063. The Department's regulations on the
864 Mortgagee Review Board and civil money penalties are in 24 CFR Parts 25 and 30.

- 865
866 1. **Administrative Actions.** The Board may issue a letter of reprimand, place a Lender
867 on probation, suspend or withdraw a Lender's approval, or enter into a Settlement
868 Agreement. The Board may also issue a cease and desist order where there is
869 reasonable cause to believe that a Lender is violating, or has violated, the
870 Department's requirements. The nature and extent of the violation(s) determine the
871 type of administrative action that the Board may take.

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

878
879

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

- 881 1. Lenders.
- 882 2. Underwriters, Chief Underwriters or loan analysts.
- 883 3. Borrowers and Sponsors.
- 884 4. Independent fee appraisers.
- 885 5. Third-party cost analysts.
- 886 6. Physical needs assessors.
- 887 7. Environmental analysts and engineers.
- 888 8. General Contractors.
- 889 9. Architects.

891 Once issued, a suspension, debarment or LDP may extend from an individual to an organization
 892 or to the individual's or organization's affiliates. For example, a specific appraiser or an entire
 893 appraisal firm may be issued a suspension, debarment or LDP, which may also apply to all its
 894 affiliates.

2.18 Enforcement Authority

895
896 Lenders and program participants shall review the enforcement authority applicable below.
897

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

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Notwithstanding any provisions contained in this Chapter or elsewhere in this Handbook, HUD reserves the right to pursue remedies for any false claims or false statements, as authorized by the False Claims Act, 31 U.S.C. §§ 3729-3731, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, and/or Civil Money Penalties under 12 U.S.C. § 1735f-14.

DRAFT