



# Regulatory Agreement & Risk Notification Requirements

Presented by:  
Linda Monger  
Office of Residential Care Facilities  
Asset Management

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# Introduction

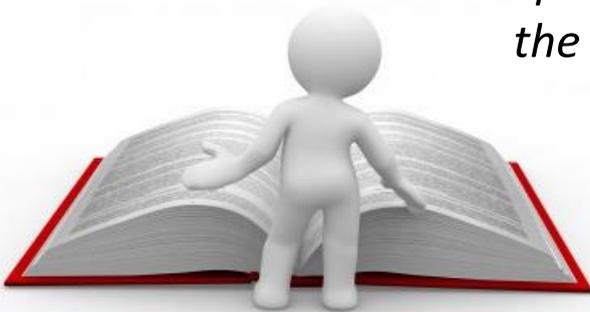
ORCF is responsible for asset and risk management of all Section 232 insured projects. Lenders/Servicers also provide routine reviews of these projects that include analyses of quarterly and annual financial performance and reporting when a project's performance is at risk to the assigned AE.



# What's in the Handbook?

The *Section 232 Handbook* provides indicators that require a Borrower/Operator to notify the Lender/Servicer and AE concurrently or to notify only the Lender/Servicer, who then notifies the AE, of a project's risk.

*(See Section III, Asset Management, Chapter 3.10 Special Circumstances Requiring the Notification of the Servicer and/or AE and Chapter 4.1 through 4.5 Financial Operations of the Handbook for further details. Clarifications or other servicing notifications/requirements have also been provided in ORCF Email Blasts.)*



# Servicing Guidance

- In the Handbook, *Section III - Asset Management* provides guidance and performance benchmarks for each project and portfolio of projects. In addition, it contains guidance and necessary actions to be taken by the Mortgagee/Servicer during the life of the FHA-insured mortgages.
- *Section I - Introduction* and *Section II - Production* from the Handbook are incorporated by reference in the Asset Management Section.

# Project Actions Requiring HUD Approval

The various Healthcare Regulatory Agreements—Borrower, Lessee/Operator, and Master Tenant (as applicable)—require participants to obtain prior written approval from HUD to:

- Sell the property/change ownership
- Change Operators and/or Operator lease terms
- Change Management Agents
- Convey, transfer, or encumber any portion of the mortgaged property
- Put a lien on the property (add promissory notes)
- Modify bed authority (i.e., reduction, addition, or sale of beds/units)

**B**UT WAIT! THERE'S MORE!

# Project Actions Requiring HUD Approval (continued)

- Remodel, add to, subtract from, reconstruct, or demolish portions of the mortgaged property
- Disturb the ground significantly (i.e., utilizing mechanical equipment to dig)
  - Permits and Approval changes (i.e., convey, assign, encumber, transfer or alienate, or relinquish to any licensing or certification authority). Borrowers shall ensure that the project is always operated in accordance with the requirements of the Permits and Approvals.
  - New or modifications to the existing Master Lease structure
  - New or material changes to Accounts Receivable (AR) financing
- Telecommunications towers and commercial space (new or modifications to existing leases)



A reminder and additional clarification was provided by Roger A. Lewis, Director, Office of Residential Care Facilities, in a letter dated May 31, 2018.

# Risk Notification Requirements



## **24 CFR Section 232.1015**

Requires prompt notification to HUD and mortgagee of circumstances placing the value of the security at risk.

# Special Circumstances Requiring Notification

## ➤ Failure to Make Lease Payment

- Borrower must immediately notify the **Mortgagee/ Servicer** and AE.
- The **Mortgagee/Servicer** and ORCF AE work together with the Borrower and Operator to understand the financial or business circumstances that have resulted in the non-payment and try to facilitate an action plan.
- The **Mortgagee/Servicer** will continue to monitor the situation, to ensure timely payments continue in the future.
- Borrowers and Operators are strongly encouraged to work together with the **Mortgagee/Servicer** to facilitate remedies.
- If nonpayment is a result of a Borrower/Operator dispute, the **Mortgagee/Servicer** must contact the ORCF AE to discuss the severity of the situation and decide whether servicing should be transferred to the Risk Mitigation Branch.



# Special Circumstances Requiring Notification (continued)

## ➤ Default of Master Lease

- Borrower must notify the **Mortgagee/Servicer** within 2 days of receiving a Notification of Default of a master lease.
- The **Mortgagee/Servicer** will evaluate other projects within the master lease to determine cash flows and ability to cover the failing project(s) and collaborate with HUD.
- Default on a master lease will impact the Project, legal documents, and potentially default on the mortgage. The project(s) may need to be serviced by the Risk Mitigation Branch.

## ➤ Special Focus Facility

- Borrower must notify **Mortgagee/Servicer** and HUD within 2 business days after receipt of the notice.
- The **Mortgagee/Servicer** and ORCF AE will work with the Operator (and, as applicable the Borrower and Management Agent) to establish an action plan
- The ORCF will reassign the project to the Risk Mitigation Branch for servicing.

# Special Circumstances Requiring Notification (continued)

- **State Inspections.** Problematic surveys or actions threatening licensure (i.e., threats to Permits and Approvals, civil money penalties, or any governmental investigation or inquiry involving fraud)
  - Operator must report any notice, report, survey or other correspondence (regardless of form) from any governmental entity that includes any statement, finding, or assertion that:
    - Violation of or default under any of the Permits and Approvals or any governmental requirement applicable to the operation of the Project
    - Any Permits and Approvals are terminated, limited in any way, or not renewed
    - Any civil money penalty (other than a de minimus amount) is being imposed
    - Operator (or any principal, officer, director or employee of Operator), any Management Agent, the Project or any portion of the Project is subject to any governmental investigation or inquiry involving fraud
    - SNF surveys reporting is only required for findings higher than a “G” level or any repetitive “G” level or higher from prior surveys

# Special Circumstances Requiring Notification (continued)

## ➤ State Inspections (continued)

- The initial communication from the Operator is to the **Mortgage/Servicer** within 2 business days of receipt of the notice. The next communication from the Operator shall be notification to the **Mortgage/Servicer** that the issue(s) have been addressed to the satisfaction of the regulatory agency. **Mortgage/Servicer** must notify HUD immediately of threats to terminate permits, or civil money penalty (other than a de minimis amount) or other governmental investigation or inquiry involving fraud.



**INSPECTIONS**

- ORCF reminds **Mortgage/Servicers** of required reporting of state survey findings in an Email Blast dated April 27, 2016. [Email Blasts](#)

# Special Circumstances Requiring Notification (continued)

## ➤ Legal Judgements

- Borrower and the Operator must notify their **Mortgage/Servicer** within 2 business days for judgments, penalty, or fine in excess of \$50,000.
- The **Mortgage/Servicer** will work with the Project to discuss reasons for the judgment and impact. They must work with the **Mortgage/Servicer** with an action plan and to analyze the impact of the judgement providing information to the ORCF AE on the status.

## ➤ Professional Liability Insurance

- On an annual basis, the **Mortgage/Servicer** must verify PLI coverage approved during underwriting. Operator must notify servicer within 2 business days of any filing of claim at or greater than \$1 million.
- If the review of loss history indicates a negative trend in claims, the **Mortgage/Servicer** must evaluate the situation, and discuss with the Operator any financial or operational changes that may be warranted, discern the Projects financial ability to absorb any ramifications imposed by the claim

# Special Circumstances Requiring Notification (continued)

## ➤ Fidelity Bond Coverage

- On an annual basis the **Mortgage/Servicer** must verify Fidelity Bond Coverage. **Mortgage/Servicer** will notify AE if issues discovered are not readily resolved. If coverage amount is less than required the **Mortgage/Servicer** must work directly with the project to resolve the deficiency.
- If the coverage deficiency is not readily resolved, then the **Mortgage/Servicer** must notify the ORCF AE.
- The **Mortgage/Servicer** must monitor the Project until the coverage is adequately provided.

## ➤ Notification of Termination of Insurance

- Borrower must notify the **Mortgage/Servicer** and HUD within 2 business days of receiving notification of any termination of insurance.
- The **Mortgage/Servicer** must work directly with the project to resolve the deficiency.
- If the coverage deficiency is not readily resolved, then the **Mortgage/Servicer** must notify the ORCF AE.
- The **Mortgage/Servicer** must monitor the Project until the coverage is adequately provided.
- The ORCF AE will identify the project as “Troubled and will transfer to the Risk Mitigation Branch.



# Special Circumstances Requiring Notification (continued)

## ➤ Threat to Abandon Project

- Borrower must notify the **Mortgage/Servicer** within 2 business days .
- The **Mortgage/Servicer** must investigate the threat and attempt to mediate a resolution and must escalate the threat to the ORCF AE if it become more imminent and/or cannot be resolved quickly.

## ➤ REAC Inspections

- Borrower must notify their **Mortgage/Servicer** within 2 business days of a REAC score of 30 or below or a second REAC inspection score below 60.
  - A score of 30 and below creates an automatic referral to the HUD DEC.
  - A second consecutive score of below 60 may warrant a referral to the DEC.
  - The **Mortgage/Servicer** must assist the Project in determining if an appeal of the inspection is appropriate and provide assistance in preparing the appeal.
  - The **Mortgage/Servicer** must review the inspection report to ensure repetitive findings are being addressed and physical plant items are taken care of.
  - Clarifications and technical assistance links were provided in the Email Blast dated May 1, 2018. [Email Blasts](#)

# Special Circumstances Requiring Notification (continued)

## ➤ Accounts Receivable Loans

- Borrower/Operator must notify the **Mortgagee/Servicer** within 2 business days of any notification of default.
- The **Mortgagee/Servicer** must evaluate why the AR Loan has defaulted, review cash flows, the ability to cover the failing loan, and work with the project to create an action plan.
- **Mortgagee/Servicer** must collaborate with ORCF AE as necessary until the remedies are put in place. The **Mortgagee/Servicer** must also monitor the Project closely to ensure financial and operation viability are restored.
- The addition or amendment of an AR Loan must be reviewed with the same scrutiny as in underwriting of the loan. Documentation must be submitted to the **Mortgagee/Servicer** who will review the information for completeness, accuracy and eligibility. And then forward to ORCF.



# Special Circumstances Requiring Notification (continued)

## ➤ Unauthorized Distributions

- Borrower must notify the servicer within 2 business days of receiving a REAC FASS notice of unauthorized distributions
- The notification is to include a designated cure period
- The ORCF AE must immediately notify the **Mortgagee/Servicer** of the violation.
- The Borrower, and where applicable the Operator must provide the **Mortgagee/Servicer** with an action plan (seeking the **Mortgagee/Servicer's** guidance, as necessary and appropriate) and must work with the **Mortgagee/Servicer** to ensure the cure period will resolve the violation.
- The **Mortgagee/Servicer** must notify the ORCF AE if there are extenuating circumstances that are preventing the immediate submission of a action plan.

# Special Circumstances Requiring Notification (continued)

## ➤ Bankruptcy

- Borrower and Operator must notify the **Mortgagee/Servicer** within 2 business days of any bankruptcy petition.
- The **Mortgagee/Servicer** must notify ORCF AE within 2 business days .
- The **Mortgagee/Servicer** must review the bankruptcy status and circumstances, and within 2 business days of being notified by the Project must provide the ORCF Ae with the specific of those circumstances.
- Until an FHA insurance claim is filed, HUD expects the **Mortgagee/Servicer** to fully participate in the bankruptcy proceedings. Unless, and until HUD intervenes in the proceedings, the **Mortgagee/Servicer** is expected to guard HUD's interests and keep HUD fully informed.



# Special Circumstances Requiring Notification (continued)

## ➤ Delinquent Mortgage Payments

- The Borrower is required to notify the **Mortgagee/Servicer** if the mortgage payment is delinquent as of the 16<sup>th</sup> of the month.
- The **Mortgagee/Servicer** must notify HUD via MDDR as of the 16<sup>th</sup> day of the month.
- The **Mortgagee/Servicer** must work with the Borrower (and Operator, if applicable) to ascertain the financial, operational and/or other circumstances leading to the non-payment.
- The Operator must provide the **Mortgagee/Servicer** with an action plan. The **Mortgagee/Servicer** must then notify the AE of the situation and provide the ORCF AE with an action plan to remedy the delinquency.
- The **Mortgagee/Servicer** and AE may request a review of financial reports from the project.



# Special Circumstances Requiring Notification (continued)

## ➤ Delinquent Mortgage Payments (continued)

- The Borrower is required to notify the **Mortgagee/Servicer** if the mortgage payment is delinquent as of the 16<sup>th</sup> of the month.
- The **Mortgagee/Servicer** must notify HUD via MDDR as of the 16<sup>th</sup> day of the month.
- The **Mortgagee/Servicer** must work with the Borrower (and Operator, if applicable) to ascertain the financial, operational and/or other circumstances leading to the non-payment.
- The Operator must provide the **Mortgagee/Servicer** with an action plan. The Mortgagee/Servicer must then notify the AE of the situation and provide the ORCF AE with an action plan to remedy the delinquency.
- The **Mortgagee/Servicer** and AE may request a review of financial reports from the project.



# Standard Work

ORCF created sample formats that both Lenders/Servicers and Borrowers/Operators may use to comply with the notification requirements set forth in both the CFR and the 232 Handbook. These documents can be found on the Loan Servicing Guidance Home Page at HUD.gov.

- ▶ Sample Documents for Notifying ORCF of Action Plans
  - ▶ **Operator's Notification to HUD of Threats to Permits and Approvals**
  - ▶ **Servicer's Notification to HUD of Risks to Healthcare Project and Action Plan for Remedy**

# Sample Operator's Notification

**Operator's Notification to HUD of  
Threats to Permits and Approvals**  
Section 232

**U.S. Department of Housing and  
Urban Development**  
Office of Residential Care Facilities

**Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

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## **Section 232 – Threats to Permits and Approvals**

All Operators are required by 24 CFR Section 232.1015 to provide prompt notification to HUD and the Lender/Service of circumstances placing the value of security at risk (e.g., threats to any Permits and Approvals), as fully delineated in that CFR provision. Although that provision applies to Operators of any Section 232 facility (regardless of which regulatory agreement the Operator has executed), the requirement is further set forth in the Borrower Regulatory Agreement (92466-ORCF) published June, 2014.

To assist Operators in providing timely and appropriate notification consistent with their obligations (i.e., electronic submission within the two-business day time limitation), HUD is providing this sample document. The Operator may (but is not required to) use this particular form when complying with its regulatory obligation, attaching additional information as necessary, and emailing it to the Lender.



# Sample Operator's Notification

*(continued)*

LOAN INFORMATION	
<b>Servicer Name:</b>	█
<b>Servicer Contact:</b>	█ <b>Phone no.:</b> █
<b>Borrower Name:</b>	█
<b>Operator Name:</b>	█
<b>Property Name:</b>	█
<b>Property Address:</b>	█
<b>Project FHA Number:</b>	█
<b>IMPORTANT – Date lender/servicer notified of threat:</b> █	



# Sample Operator's Notification

## *(continued)*

### Key Questions

	Yes	No
1. Is the Operator (or any principal, officer, director, or employee of the Operator), the Management Agent, the Project, or any portion of the Project in violation of or in default under permits, approvals, or any governmental requirements applicable to the operation of the healthcare facility or in jeopardy of violation or default? .....	<input type="checkbox"/>	<input type="checkbox"/>
2. Are any of the permits and approvals to be terminated, limited in any way, or not renewed? .....	<input type="checkbox"/>	<input type="checkbox"/>
3. Is any civil money penalty being imposed with respect to the healthcare facility? .....	<input type="checkbox"/>	<input type="checkbox"/>
4. Is the Operator (or any principal, officer, director, or employee of Operator), any Management Agent, the Project, or any portion of the Project subject to any governmental investigation or inquiry involving fraud? .....	<input type="checkbox"/>	<input type="checkbox"/>
5. Do current Licensed Facility survey results involve a rating higher/more severe than a "G" level or its equivalent? .....	<input type="checkbox"/>	<input type="checkbox"/>
6. Do current Licensed Facility survey results involve a rating less severe than a "G" level that is either (a) unresolved from the two most recent consecutive prior surveys, or (b) is a repeat violation having the same citation number? .....	<input type="checkbox"/>	<input type="checkbox"/>
7. Has HUD or the Servicer requested any financial or operational reports, or other information relating to the performance of the Project, including without limitation any Medicare or Medicaid cost reports, due to potential risk to the Permits or Approvals? .....	<input type="checkbox"/>	<input type="checkbox"/>

# Sample Servicer's Notification

**Servicer's Notification to HUD of  
Risks to Healthcare Project and  
Action Plan for Remedy**  
Section 232

**U.S. Department of Housing and  
Urban Development**  
Office of Residential Care Facilities

**Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

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## **Section 232 – Project Risk Notifications**

The Office of Residential Care Facilities (ORCF) is responsible for asset and risk management of all Section 232 insured projects. Lenders/Servicers also provide routine reviews of these projects that include analyses of quarterly and annual financial performance and reporting when a project's performance is at risk to the assigned ORCF Account Executive (AE).

This document provides a sample format that Lenders/Servicers may use to notify the assigned AE of missed performance benchmarks and/or risk trigger indicators and to document the actions to be taken to mitigate those risks (including documenting actions plans, as required by the Section 232 Handbook 4232.1). This form may also be used to notify the AE of other specific circumstances that may occur during the life of the FHA-insured mortgage.



# Sample Servicer's Notification

*(continued)*

LOAN INFORMATION	
<b>Servicer Name:</b>	█
<b>Servicer Contact:</b>	█ <b>Phone no.:</b> █
<b>Borrower Name:</b>	█
<b>Operator Name:</b>	█
<b>Property Name:</b>	█
<b>Property Address:</b>	█
<b>Project FHA Number:</b>	█

**Type of notification** (check all that apply; then click on hyperlink next to checkbox to immediately jump to that section of the narrative):

- |   |  |
|---|--|
| <input type="checkbox"/> <a href="#">Failure to File Financial Statements</a> | <input type="checkbox"/> <a href="#">Accounts Receivable (AR) Loans</a>                |
| <input type="checkbox"/> <a href="#">Financial Risk Metrics of Operator</a>   | <input type="checkbox"/> <a href="#">Unauthorized Distributions</a>                    |
| <input type="checkbox"/> <a href="#">Failure to Make Lease Payment</a>        | <input type="checkbox"/> <a href="#">Bankruptcy</a>                                    |
| <input type="checkbox"/> <a href="#">Default of Master Lease</a>              | <input type="checkbox"/> <a href="#">Professional Liability Insurance (PLI)</a>        |
| <input type="checkbox"/> <a href="#">Special Focus Facility (SFF)</a>         | <input type="checkbox"/> <a href="#">Fidelity Bond Coverage</a>                        |
| <input type="checkbox"/> <a href="#">State Inspections</a>                    | <input type="checkbox"/> <a href="#">Termination of Insurance</a>                      |
| <input type="checkbox"/> <a href="#">Legal Judgments</a>                      | <input type="checkbox"/> <a href="#">Delinquent Mortgage Payments (after 29th day)</a> |
| <input type="checkbox"/> <a href="#">Threat to Abandon Project</a>            | <input type="checkbox"/> <a href="#">Other Circumstances</a>                           |
| <input type="checkbox"/> <a href="#">REAC Inspections</a>                     |  |

**IMPORTANT – Date lender/servicer notified of risk:** █

# Sample Servicer's Notification

## *(continued)*

### **Financial Risk Metrics of Operator**

Key indicators of the Operator financial statements will be used to monitor performance and to measure against future routine reviews. Typically the annual and quarterly reviews are all that are necessary for monitoring the financial operations of a project; however, HUD does reserve the right to require monthly financial reports (of the Operator, the Borrower, or both) to be submitted (to HUD, the Servicer or both) if financial indicators suggest this level of monitoring is needed or if noncompliance with HUD business agreements (by the Borrower, Operator or Management Agent) is suspected.

#### **Key Questions**

	<b>Yes</b>	<b>No</b>
1. Does the quarterly analysis of Operator financials indicate a debt service coverage ratio (DSCR) below 1.20? .....	<input type="checkbox"/>	<input type="checkbox"/>
a. If yes, has the DSCR dropped below 1.20 for two or more consecutive quarters? .....	<input type="checkbox"/>	<input type="checkbox"/>
N/A <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Has an action plan been established by the Operator? .....	<input type="checkbox"/>	<input type="checkbox"/>
N/A <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Has the Borrower been notified of the low DSCR? .....	<input type="checkbox"/>	<input type="checkbox"/>
N/A <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Has the DSCR dropped below 1.00 for two or more consecutive quarters? ..	<input type="checkbox"/>	<input type="checkbox"/>



# Sample Notification Documents

The sample notification documents listed below may be found on the Section 232 Program Website (link [here](#)).

- Operator’s Notification to HUD of Threats to Permits and Approvals
- Servicer’s Notification to HUD of Risks to Healthcare Project and Action Plan for Remedy
  - The “*Loan Information*” section and applicable section for the “*Type of Notification*” needs to be filled out.
  - If you opt to use an alternate method for notification, you must provide similar information to address the “*Key Questions*” that the form identifies.
  - Use of the provided sample document typically reduces the amount of back-and-forth conversations and requests for additional information with your assigned ORCF AE.

# Why should Servicer's use this document?

Lenders tend to avoid using the document because they falsely assume they must complete all 15 pages in the document. However, they are only required to complete the sections of the document that are relevant to the project. A response to relevant questions provides the AE with the necessary information to assess the risk and understand the project's plan for improvement.

# Questions?

