



# Park View Care Center, Fort Worth, TX

## Section 232 Loan Program



**To:** Roger Lewis, Director, Office of Residential Care Facilities

*//signed//*

**From:** Tracey Carney, Acting Regional Inspector General for Audit, 6AGA

**Subject:** Park View Care Center, Fort Worth, TX, Did Not Always Comply With Its Regulatory Agreement and HUD Requirements

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of Park View Care Center's compliance with HUD requirements.

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, Title 5 United States Code, section 8M, requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call me at 817-978-9309.



**Audit Report Number: 2016-FW-1009**  
**Date: September 29, 2016**

**Park View Care Center, Fort Worth, TX, Did Not Always Comply With Its Regulatory Agreement and HUD Requirements**

## Highlights

---

### What We Audited and Why

---

We audited Park View Care Center's owner based on a referral from the U.S. Department of Housing and Urban Development's (HUD) Departmental Enforcement Center. Our objective was to determine whether the property owner complied with the owner's regulatory agreement and HUD requirements for the Section 232 program.

### What We Found

---

Park View's owner did not comply with all the terms of its regulatory agreement and HUD requirements. Specifically, the owner withdrew ineligible distributions and charged the property for fees without a written contract or HUD approval of the fees. This condition occurred because the owner disregarded or misunderstood its regulatory agreement and HUD requirements. As a result, Park View's owner received \$220,282 in an ineligible distribution and fee reimbursements.

### What We Recommend

---

We recommend that the Director, Office of Residential Care Facilities, require that Park View's owner repay \$220,282 for ineligible distributions and fees.

# Table of Contents

---

<b>Background and Objective.....</b>	<b>3</b>
<b>Results of Audit .....</b>	<b>4</b>
<b>Finding 1: Park View’s Owner Did Not Comply With Its Regulatory Agreement     and HUD Requirements .....</b>	<b>4</b>
<b>Scope and Methodology.....</b>	<b>7</b>
<b>Internal Controls.....</b>	<b>8</b>
<b>Appendixes.....</b>	<b>9</b>
<b>A. Schedule of Questioned Costs .....</b>	<b>9</b>
<b>B. Auditee Comments and OIG’s Evaluation.....</b>	<b>10</b>

# Background and Objective

---

Park View Care Center, located at 3301 View Street, Fort Worth, TX, is a 179-bed facility licensed by the Texas Department of Aging and Disability Services. Park View's owner is 3301 View Street LLC.<sup>1</sup> It is a single-member LLC located at 2071 Flatbush Avenue, Suite 22, Brooklyn, NY. Park View's owner organized on November 30, 2009, to purchase Park View, a 46-year-old facility, with an \$8.1 million non-Federal Housing Administration (FHA)-insured loan. On March 16, 2011, the owner<sup>2</sup> refinanced the mortgage with KeyCorp Real Estate Capital Market for \$8.56 million under section 232(f) of the National Housing Act as amended. The Section 232 program is a FHA mortgage insurance program that insures HUD-approved lenders against financial loss from mortgage defaults. HUD administers and regulates the Section 232 program.

Section 232 mortgage insurance is available on mortgages that finance residential healthcare facilities, such as nursing homes, assisted living facilities, and board and care facilities. Eligible mortgages can be for the purchase, refinance, new construction, or substantial rehabilitation—or a combination of these. HUD's Office of Healthcare Programs, specifically the Office of Residential Care Facilities within Office of Healthcare Programs, has responsibility for administering the Section 232 mortgage insurance program.

The 232 program requires participants to follow certain HUD requirements, including entering into a regulatory agreement with HUD. One of the regulatory agreement stipulations is that the owner calculates surplus cash as of June 30 and December 31 and may take the surplus cash as a distribution up to the amount of the calculation at the established times of the properties fiscal year. Distributions outside these parameters are a violation of the regulatory agreement.

Park View SNF<sup>3</sup> LLC leased and operated the nursing home until October 1, 2014. At that time, because of changes to Medicaid payments in the State of Texas, Jack County Hospital District began leasing Park View. These changes require that a Texas governmental entity be the operator for Medicaid payment reimbursement purposes. Jack County Hospital is the current operator of the property.

Our objective was to determine whether the property owner complied with the regulatory agreement and HUD requirements for the Section 232 program.

---

<sup>1</sup> LLC is defined as limited liability company.

<sup>2</sup> The owner executed the regulatory agreement on March 11, 2011.

<sup>3</sup> SNF is defined as skilled nursing facility.

# Results of Audit

---

## **Finding 1: Park View's Owner Did Not Comply With Its Regulatory Agreement and HUD Requirements**

---

Park View's owner did not comply with the terms of its regulatory agreement and HUD requirements. Specifically, the owner took an ineligible distribution and charged the property for fees without a written contract or HUD approval of the fees. This condition occurred because Park View's owner disregarded or misunderstood its regulatory agreement and HUD requirements. As a result, the owner received \$220,282 in an ineligible distribution and fee reimbursements.

### **Ineligible Distribution**

In March 2011, HUD insured the refinanced loan on Park View and executed a regulatory agreement with the owner. Park View's owner took an ineligible \$178,900 distribution on April 5, 2011, 20 days after closing and before allowable distribution dates of June 30 and December 31. Park View's bank balance on April 5, 2011, was \$947. On that day, four identity-of-interest entities<sup>4</sup> advanced \$135,200 to Park View resulting in a \$136,147 bank balance. According to the owner's accountant, the \$135,200 was for positive equity and cash flow for Park View. However, on the day of the \$135,200 advance, the owner distributed \$178,900 to a different identity-of-interest entity, resulting in a negative bank balance. To correct the negative balance, on April 5, 2011, the owner deposited \$42,800 into the account from one of the identity-of-interest entities that contributed a portion of the \$135,200. The accountant stated that the \$42,800 deposit should not be considered project funds because those funds came from another entity. On July 1, 2011, Park View's owner reimbursed the identity-of-interest entity for the \$42,800 it advanced to Park View when it took its allowed owner's surplus cash distribution. See figure 1 for the April 5, 2011, bank account transactions.

---

<sup>4</sup> Identity-of-interest entities 200 SW 25<sup>th</sup> Ave LLC (Palo Pinto Nursing Home) provided \$37,100, 4200 Shepard Lane LLC (Balch Springs Nursing Home) provided \$35,100, 424 N Tarpley Road LLC (Bay Oaks Health Care Center) provided \$21,200, and 6621 Dan Dancigier Road LLC (Wedgewood Nursing Home) provided \$41,800 for a total of \$135,200.

Figure 1 Account Transactions



The regulatory agreement stated that all distributions would be made only after the end of the semiannual or annual fiscal period and after the calculation of surplus cash.<sup>5</sup> The owner disregarded its regulatory agreement's surplus cash distribution requirement. As a result, the owner gave the ineligible \$178,900 distribution to an identity-of-interest entity on April 5, 2011, 20 days after closing and before allowable surplus cash distribution dates of June 30 and December 31, 2011.

### **Fees Paid With No Written Agreement or HUD Approval**

Park View's owner paid an identity-of-interest company \$41,382 in ineligible fees from June 27, 2013, through December 31, 2015 to make the mortgage payments. The owner did not have an agreement with the identity-of-interest company or obtain the required HUD approval. HUD regulations required agreements to be in writing.<sup>6</sup> It also required HUD approval of fees.<sup>7</sup> According to Park View's owner, it did not execute an agreement as required by HUD because it did not believe it had to put the agreement in writing since it was an identity-of-interest arrangement and all parties understood what was required of them. Specifically, it makes the mortgage payments. Because of its incorrect understanding of requirements, the owner paid an identity-of-interest entity \$41,382<sup>8</sup> in ineligible fees.

### **Conclusion**

Park View's owner did not comply with all of the terms of the regulatory agreement and HUD requirements because the owner disregarded or misunderstood the requirements. As a result, it withdrew \$178,900 in ineligible distributions and charged \$41,382 for fees without a written contract or HUD approval.

<sup>5</sup> Regulatory agreement (form HUD-92466), section 6(e)(1)

<sup>6</sup> HUD Handbook 4370.2, REV-1, paragraph 2-13(C)

<sup>7</sup> HUD Handbook 4232.1, paragraph 8-7(A)(5)

<sup>8</sup> Park View's owner paid \$1,310 monthly to an identity-of-interest entity for 27 months. In November 2015, the fee amount increased to \$3,006  $((\$1,310 \times 27) + (\$3,006 \times 2) = \$41,382)$ .

## **Recommendations**

We recommend that the Director, Office of Residential Care Facilities, require the owner to

- 1A. Develop policies and procedures to ensure compliance with the regulatory agreement and HUD requirements.
- 1B. Repay Park View from non-project funds \$178,900 for ineligible distributions.
- 1C. Repay Park View from non-project funds \$41,382 for ineligible fees.



# Scope and Methodology

---

We conducted the audit of Park View in Fort Worth, TX, from January through July 2016. The audit scope generally covered March 11, 2011, through December 31, 2015.

To accomplish our objective, we

- Reviewed owner and operator regulatory agreements;
- Reviewed relevant regulations and program guidance;
- Reviewed background information, including news articles and HUD reports;
- Reviewed Park View's owner's policies and procedures;
- Reviewed audited financial statements for years 2011 through 2015;
- Reviewed accounting records;
- Reviewed Park View and Jack County leases; and
- Interviewed 3301 View Street LLC staff, the accountants for 3301 View Street LLC, and staff of Jack County Hospital and its oversight entity.

We reviewed 100 percent of payments totaling \$1,465,582 for the surplus cash payments and fees paid to an identity-of-interest to make the mortgage payments.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective(s). We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

# Internal Controls

---

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

## **Relevant Internal Controls**

We determined that the following internal controls were relevant to our audit objective:

- Compliance with the Section 232 program and HUD handbook requirements.
- Compliance with regulatory agreement requirements.
- Policies and procedures to implement regulatory agreement requirements.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

## **Significant Deficiency**

Based on our review, we believe that the following item is a significant deficiency:

- Park View owners did not follow applicable regulatory agreement or HUD handbook requirements regarding surplus cash distributions and management agreements (finding).

# Appendixes

---

## Appendix A

---

**Schedule of Questioned Costs**

<b>Recommendation number</b>	<b>Ineligible 1/</b>
1B	\$178,900
1C	41,382
<b>Total</b>	<b>220,282</b>

- 1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or Federal, State, or local policies or regulations.

# Appendix B

## Auditee Comments and OIG's Evaluation

### Ref to OIG Evaluation

### Auditee Comments

### Comment 1

3301 View Street LLC  
2071 Flatbush Avenue – Suite 22  
Brooklyn NY 11234

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF INSPECTOR GENERAL

Attention: Tracey Carney  
Acting Regional Inspector General for Audit  
Office of Audit (Region 6)  
819 Taylor Street, Suite 13A09  
Fort Worth, TX 76102

Dear Tracey,


Please find our comments in the following two paragraphs, in response to your Discussion Draft Report Audit and Findings Report entitled "Park View Care Center, Fort Worth, TX Did Not Always Comply With Its Regulatory Agreement and HUD Requirements", to incorporate into the final report per your direction.

In response to the finding regarding an ineligible distribution for the amount of \$178,900, we accept the recommendation of the Office of the Inspector General to require the owner to repay Park View from Non-project funds the amount of \$178,900. Park View and Owner maintain that the various in-flow and outflow of cash to Park View of such total amounts during 2011 were not intended to represent a distribution, and were intended to be permitted payments within the framework of HUD regulations, as like amounts were deposited in Park View's account during such period to counterbalance the cash outflow. Notwithstanding this assertion, we accept the recommendation to repay such funds and Owner has sent the amount of \$178,900 (along with the amount in the succeeding paragraph) back to the account of 3301 View Street LLC on September 16, 2016.

In response to the finding regarding an ineligible distribution for the amount of \$41,382 in ineligible fees from June 27, 2013, through December 31, 2015, we accept the recommendation of the Office of the Inspector General to require the owner to repay Park View from Non-project funds the amount of \$41,382. Park View and Owner maintain that all fees paid represented an adequate and reasonable market rate for the services provided to Park View by the identity-of-interest company, and were intended to be permitted payments within the framework of HUD regulations. Notwithstanding this assertion, (i) 3301 View Street LLC accepts the recommendation to repay such funds and Owner has sent the amount of \$41,382 (along with the amount in the preceding paragraph) back to the account of 3301 View Street LLC on September 16, 2016 and (ii) 3301 View Street LLC shall not send any more fees to such service entity without a written contract in place which has been approved by HUD in advance.

We value and appreciate our relationship with HUD and strive to maintain our properties within all the HUD guidelines and regulations. We would like to thank the whole OIG team for making this process a very informative and transparent one, and for keeping an open line of communication throughout.

Sincerely yours,

  
Zevik Kahn, CFO

## OIG Evaluation of Auditee Comments

Comment 1 3301 View Street LLC's response did not address what actions it will take to resolve Recommendation 1A. It will need to work with HUD to develop the policies and procedures to ensure compliance with its regulatory agreement and to prevent future instances of noncompliance.

We appreciate 3301 View Street LLC's acceptance of Recommendations 1B and 1C to repay the ineligible distribution and fees. However, it will need to provide HUD with supporting documents, such as bank statements, showing that the funds went into the Park View account to resolve the two recommendations.