Section II
Production

Chapter 15
Accounts Receivable Financing

15.1 Introduction

It has become customary for some Operators of healthcare facilities to use a financial mechanism known as Accounts Receivable (“ARA/R”) financing to ensure that there is adequate funding available to meet the daily cash flow needs of their projects. Typically, an Operator provides a bed and medical services to residents and is reimbursed for the services to eligible residents by Medicaid and Medicare sometime after the services are provided. The timing of Medicaid and Medicare reimbursements varies from state to state and can be subject to significant delays. Other patients either pay for such services with their own resources (private-pay) or have long-term care or other commercial insurance.

ARA/R Financing usually takes the form of revolving credit for a working capital loan secured by Medicare, Medicaid, and other governmental healthcare insurance program receivables (collectively “Governmental Receivables”), and private pay and commercial insurance receivables (collectively, “Non-Governmental Receivables”). The loan is provided by a qualified bank or other financial institutions or firms (the “ARA/R Lender”) to or for the benefit of one or more healthcare facilities. Without ARA/R Financing in place, an Operator may not be able to meet its immediate and short-term financial obligations. With ARA/R Financing, Operators have a financial mechanism that can provide funds to finance ongoing operations until Medicare, Medicaid or other third-party payments are received. ARA/R Lenders have developed sophisticated day-to-day monitoring systems that track the financial activities of an Operator. These systems provide comprehensive daily and weekly financial reports designed to immediately identify unusual financial patterns that adversely impact the financial condition of a healthcare facility. Most ARA/R Lenders have immediate response systems in place to identify, correct, and/or manage financial problems as they begin to develop.

*In November 2008, HUD issued H08-09 Accounts Receivable Financing. The guidance in this chapter supersedes this notice.*
15.2 Applicable Programs

ORCF will evaluate ARA/R Financing loan requests utilizing the guidance provided in this chapter and Chapter 16 (Cash Flow Structures/DACA’s and DAISA’s) for the programs covered by this handbook.

1. Section 232 for new construction or substantial rehabilitation,
2. Section 232 pursuant to Section 223(f)\(^1\) for purchase or refinance,
3. Section 232 pursuant to Section 223(a)(7) for refinancing,
4. Section 241(a) Supplemental Loans in connection with a Section 232 loan under one of the categories described above, and
5. Section 223(d) Operating Loss Loans in connection with a Section 232 loan under one of the categories described above.

HUD approval must be obtained for any ARA/R Loan or any material modification of an existing ARA/R Loan, and the ARA/R Lender must execute an Intercreditor Agreement for ARA/R Financing Projects (Form HUD-92322-ORCF) (“Intercreditor”) with the FHA Lender, the Operator and the Borrower. A proposed cash flow chart must be included with all submissions. See Production, Chapter 16 for guidance on cash flow charts.

A. Review of Accounts Receivable Financing. An A/R Loan request may be submitted at any time during the life of an FHA insured mortgage, including with a request to refinance a loan. If the A/R Loan is being put in place in conjunction with an FHA-insured loan closing, review of the A/R approval request takes place as part of the firm commitment process and loan closing. If the A/R Loan is being put in place in conjunction with a Change of Operator, review of the A/R approval request will be conducted by the Asset Management Account Executive. In all instances, including post-closing requests, the request must be submitted by the FHA Lender, not the Operator or Borrower.

B. Portfolios. In all instances, it should be determined if a portfolio review acceptance letter applies and whether the proposed ARA/R financing is consistent with the portfolio review acceptance letter and any flow charts or documents approved in connection therewith. See Production, Chapter 16 and Production, Chapter 17.

C. Pre-approvals and Intercreditor Insertions. The parties may seek HUD pre-approval of certain future modifications or that HUD permit certain additional, unique terms, the parties must propose these as part of their A/R Loan review request (see below, in Section 15.4). Such requests include, but are not limited to, that HUD pre-approve certain future modifications or that HUD permit certain additional types of obligations to be secured.

\(^1\) Negative working capital (accounts payable exceeding accounts receivable) must not be included as existing indebtedness in proposed Section 232 refinance transactions.
by an ARA/R Lender first lien on Operator project collateral, which if approved, Any specific approvals will be set forth in the Terms Memo, which may be attached to the firm commitment and inserted into the Intercreditor. ARA/R Lender and Operator are also required to disclose all proposed cross-defaults, which if approved, are set forth in the Terms Memo and inserted into the Intercreditor. (see below, in Section 15.4).

D. Exceptions. ORCF understands that some borrowers Compliance. When Borrowers or operators have existing AR loans that were put in place prior to applicable ORCF guidance have not been reviewed by ORCF. If any such Borrower or Operator submits A/R Loans and they submit a TPA Change of Participant (CHOP) request, an application to refinance existing debt application for an FHA-insured loan, or any other request that requires ORCF approval, ORCF will review the existing ARA/R loan documents to determine if any of the documents require revision, and/or if additional documents, which incorporate ORCF requirements, have to must be executed by the applicable parties. Additionally, if an AR loan was obtained in violation of a Borrower or Operator regulatory agreement, administrative or enforcement action may be taken.

When ORCF receives an application for an (a)(7) refinance where the original application was endorsed prior to various policy directives (e.g., Notices, Mortgagee Letters or Handbooks), HUD requires the project to come into compliance with all current policies. However, there may be justification in certain lease structures where the Borrower is a lessor and Operator (lessee) is a third-party, arms-length Operator for ORCF to waive strict adherence to its current policies:

1. Borrower/Operator, Identity-of-Interest or Related Party Operators must comply with current accounts receivable financing policies when applying for a refinance under 223(a)(7)

2. If feasible at the time of the (a)(7) transaction, third party Operators must comply with current accounts receivable financing policies. Otherwise, the Lender must request a waiver. ORCF may grant the waiver subject to the following conditions:
   a. A special condition will be added to the firm commitment requiring a mortgage debt service reserve (amount to be determined by ORCF) to be in place until the accounts receivable financing can be brought into compliance with current policy;
   b. At lease renegotiation (excluding renewals that do not involve the modification of a Material Term, as defined below) or termination, the accounts receivable financing must be brought into compliance with current policy;
   c. These two provisions will be added to the Borrower and Operator’s Regulatory Agreements.

HUD requires the Project to come into compliance with all current policies.

15.3 Accounts Receivable Financing Application Considerations

Section 232 Handbook, Section II, Production, Chapter 15

This is a DRAFT document for posting on the Drafting Table to collect voluntary industry feedback.
ORCF reviews requests to consent to ARA/R Financing for existing and new projects that are approved by FHA for mortgage insurance under the Section 232 programs. ORCF’s primary consideration in reviewing a request to consent to ARA/R Financing, is the impact that the terms and conditions of the financing will have on the financial viability of the healthcare project. A well-structured ARA/R Financing agreement will support the financial viability of a project by providing funding at a cost and with terms and conditions that facilitate, rather than jeopardize, the ability of the Operator to meet its financial obligations. Accordingly, prior to submitting a request for ORCF to consent to an AR loan, ORCF suggests that the Borrower, Operator, AR Lender, and FHA Lender meet with ORCF to discuss a request for consent to AR Financing.

A. In General. The principles set forth in this Section are programmatic considerations applicable to all proposed ARA/R arrangements. However, all arrangements will be evaluated as a whole and variances that do not conflict with HUD Program Obligations may be permitted provided that they do not materially and adversely affect FHA Lender’s or HUD’s interests in the discretion of ORCF.

B. Revolving Loan. As the function of the ARA/R Loan is to address liquidity shortfalls for ongoing operating expenses, ORCF expects that the ARA/R Loan will be a revolving loan; i.e. that the Operator can borrow, repay, and re-borrow without any penalty or premium, provided the outstanding balance stays within the agreed Credit Limit (see below in Section 15.3.C). The proposed loan should support a minimum DSCR of 1.45 inclusive of all projects on the loan.

C. Borrowing Base/Maximum Commitment. ORCF generally expects that the ARA/R Loan will limit the maximum amount that may be outstanding at any time to the lower of:

1. A specific dollar amount (the “Maximum Commitment”), or
2. A borrowing base (the “Credit Availability Limit”). The Credit Availability Limit formulation must be acceptable to ORCF.

ARA/R Loans involving multiple HUD projects are often based on an aggregate borrowing base with each Borrower liable to the ARA/R Lender for the entire amount of the loan. HUD generally permits such arrangements, provided that each Operator has access to the full line of credit. If the ARA/R Loan Documents are structured so that each Operator’s access to the line is limited, then the extent of the ARA/R Lender’s cross-collateralization may also need to be limited.

D. Borrowing Base Percentages, Aging and Receivables Mix. ORCF will accept for review an ARA/R Financing loan with a borrowing base that is consistent with prudent business practices for such loans. Generally, the percentage of state, local and/or federal governmental healthcare insurance program receivables (collectively, the “Governmental Receivables”) included in the borrowing base should not exceed 85%, and the Governmental Receivables should not be aged greater than 120 days. Governmental Receivables aged between 120 days and up to 180 days may be accepted by
ORCF if: there are extenuating circumstances that cause an excessive delay in the governmental payor’s payment of reimbursements, and ORCF determines that the delay in the payment does not jeopardize the financial viability of the project. A request for aging between 120 days and up to 180 days must be supported by an analysis of the historical (not less than six months) and projected data on the timing of the reimbursements found acceptable to ORCF.

The proposed borrowing base may also include prudent percentages of Non-Governmental Receivables that do not exceed prudent aging limits; however, the aging, types and percentages included (i.e., Commercial), that do not exceed prudent aging limits. The proposed borrowing base may also include prudent percentages (i.e., aged not more than 90 days) of Private Pay Receivables to be reviewed on a case-by-case basis, particularly where warranted to help mitigate Medicaid Pending processing delays. The entire eligible borrowing base must not exceed 85% advance rate, net of any Letters of Credit. The Non-Government Receivables must not be aged more than 120 days. The aging, types and percentages must be acceptable to ORCF. Generally, prudent aging limits on these types of receivables will be shorter than those for Governmental Receivables. The inclusion of any Medicaid Pending (i.e., receivables related to residents that have not yet been certified as eligible by Medicaid but have submitted their documentation) in the borrowing base must be justified; and must be subject to aging limits. Eligible receivables must not include receivables that are generated outside the ordinary course of business; and must be limited to those generated by the FHA-insured projects subject to the A/R line; for example, they cannot include other receivables generated by a non-single asset Operator with respect to projects not approved by HUD for inclusion in the A/R Loan.

E. Parties. The Operators of those FHA-insured projects approved by ORCF for inclusion in the A/R Loan may be generally the Borrowers under the A/R Loan. The Operators are customarily the lessee entities. Occasionally, there is no lease and the HUD Borrower is also the Operator; in which event the HUD Borrower must sign the Healthcare Regulatory Agreement – Operator (Form HUD-92466A) (“Operator’s Regulatory Agreement”) and Operator Security Agreement (Form HUD-92323-ORCF), in addition to the Healthcare Regulatory Agreement – Borrower (Form HUD-92466-ORCF) (“Borrower’s Regulatory Agreement”) and Security Instrument/Mortgage/Deed of Trust (Form HUD-94000-ORCF) (“Security Instrument”).

If there is a management agent or service provider involved, a determination must be made as to whether such entity is the licensee or party to the Medicaid/Medicare or other provider agreements, and/or resident contracts. In such event, such party is in effect an Operator in its own right; and must sign and provide all the documents (and meet all the requirements) required of an Operator.

Production, Chapter 16 provides guidance regarding other parties that may be required to execute or join into the deposit account agreements, the FHA Lender security documents, the Healthcare Regulatory Agreement – Master Tenant (Form HUD-92337-ORCF) (“Master Tenant’s Regulatory Agreement”), the Borrower’s Regulatory Agreement and/or the
Operator’s Regulatory Agreement. Production, Chapter 16 also provides guidance on
Borrower Representatives.

The FHA Lender, the ARA/R Lender, the Borrower and the Operator are parties to the
Intercreditor; HUD is not a party. If a Master Lease is involved, the Master Tenant will
generally also be a signatory to the Intercreditor. Occasionally, other parties (such as a
Borrower Representative) may will be required to sign the Intercreditor Agreement, as well as
an agreement with the FHA-Lender.

F. Use of Proceeds. ARA/R Loan proceeds are used for working capital purposes related to the
operation of the FHA-insured projects. A/R Loans may include letter of
credit sub-limits if disclosed to and approved by ORCF, but Letters of Credit issued must
always be subtracted from the Availability as defined in the Intercreditor Agreement.

AR loan draws based on a facility’s receivables are project assets of such facility,
regardless of whether they are held in commingled or in Borrower representative accounts.
The Intercreditor requires that ARA/R loan proceeds be used only for ARA/R debt service,
then the operating expenses of the project (including lease payments), and only then,
subject to any restrictions in the ARA/R Loan Documents and all applicable Regulatory
Agreements, for distributions. HUD regulations and the Operator’s Regulatory Agreement
restrict the ability of an Operator to use any funds derived from the operation of the
project (which would include loan draws based on such project’s borrowing base) for distributions or non-project purposes in the following instances:

1. Upon receipt of a Notice of Violation under the Operator’s Regulatory Agreement.

2. If a quarterly/year to date financial statement demonstrates negative Healthcare
Facility Working Capital, (as defined by HUD, in the Operator’s Regulatory
Agreement), or if the Operator fails to timely submit such statement, until such time
as a current quarterly, year-to date financial statement demonstrates positive
Healthcare Facility Working Capital or until otherwise authorized by HUD.

In the above instances, loan draws based on a project’s receivables (as well as any
other funds derived from or in connection with the operation of the Project) cannot be used
for any purpose other than the Operator making payments on its lease (or other Borrower-
Operator agreements), making payments under the HUD Loan Documents (including any
cross-guaranty assigned to FHA Lender under a Master Lease structure) and under any
approved A/R Loan, and making payments for goods and services of the project, provided
such payments for goods and services satisfy for benefit of the FHA-insured Project, such as
lease payments, debt service and payment for goods and services within the limitations in the
Operator’s Regulatory Agreement.

If the HUD Borrower is the Operator, the Borrower’s Regulatory Agreement provides that
distributions or other payments other than project expenses cannot be made from
borrowed funds except to the extent permitted by the Operator’s Regulatory Agreement and
other HUD Program Obligations.
Particularly in instances where AR-loan draws are being made on an aggregate basis, the Operators included in such an A/R line, and any Borrower Representative approved by HUD that may be receiving such aggregate draws for further distribution, must ensure that AR-loan proceeds are allocated among the projects subject to the ARA/R line in a manner consistent with the foregoing restrictions.

G. Single ARA/R Loan. HUD permits only a single ARA/R Loan for a project. However, as provided in the Operator Security Agreement, HUD will deem a syndicated or participated loan as a single ARA/R Loan provided that HUD is provided satisfactory assurances that the lead/administrative agent has authority to bind all such Lenders to the Intercreditor, and will be the sole party entitled to enforce the Intercreditor and the rights in project collateral.

H. Projects included in the ARA/R Loan. Only FHA-insured projects that HUD approves for inclusion in the ARA/R Loan may be included as Borrowers in the ARA/R Loan. No additional projects or Borrowers can be added without prior HUD approval. ARA/R Loans range from single stand-alone loans including only one FHA project to large, syndicated AR-loans including many HUD projects and multiple FHA Lenders. If a portfolio review is required or has already occurred, the portfolio approval letter (and any cash flow charts or documents approved in connection therewith) must always be reviewed.

While only FHA-insured projects approved by ORCF may be included as Borrowers on the A/R line, the ARA/R Lender may also secure the ARA/R Loan with non-project collateral or non-HUD projects and guarantees, provided that, the costs of administering or enforcing such non-HUD project collateral documents cannot be charged to AR loan or Borrower(s) on the HUD projects (see below, in Section 15.4.D). While the A/R Loan may be secured by non-Project collateral, other non-Project (non-FHA-insured) loans may not be secured with the A/R Loan collateral.

I. Lien Priority and Intercreditor. ORCF requires that the FHA-insured loan be secured by a first lien and security interest on the project, and requires the Operator to execute a security agreement and assignment of rents in favor of the FHA Lender which covers all of the Operator’s property related assets to project, including but not limited to all of the Operator’s Governmental and Non-Governmental account receivables arising from or related to the FHA-insured project or projects. However, ORCF will allow ARA/R Lender to take a first priority interest in the project’s accounts, including Governmental and Non-Government account receivables, as set forth in the Intercreditor, provided that the ARA/R Lender executes an Intercreditor.

Under the Intercreditor, the FHA Lender subordinates its security interest in the Operator’s account receivables related to the projects, to the security interests of the ARA/R Lender. Those items of Operator project-related collateral upon which the ARA/R Lender is permitted to have a first lien are known as the ARA/R Lender Priority Collateral.
ORCF may also permit the ARA/R Lender to secure its loan with a subordinate security interest on other assets of the Operator related to the project provided that the ARA/R Lender agrees not to exercise its remedies as to non-ARA/R Lender Priority Collateral of the project (i.e., the Intercreditor Agreement). However, A/R Lenders must not secure AR loans with liens on the real estate or fixtures or on any rent account dedicated solely to lease payments or on the Operator’s interest under the lease. Generally, a lien on fixtures or real estate is perfected by filing in the property jurisdiction. A lien on accounts is perfected by control.

The parties to the Intercreditor are required to set forth all disclosures in, schedules and exhibits as dictated by the Intercreditor Agreement. Submitting the A/R loan documents to HUD does not constitute a disclosure to and approval by HUD.

J. Cross-Collateralization. Provided that each Borrower has access to the ARA/R Loan, and subject to the Intercreditor, HUD permits the ARA/R Lender to cross-collateralize its HUD-approved ARA/R Loan with Operator collateral related to all the FHA-insured projects approved by HUD for inclusion in the ARA/R line. The ARA/R Lender cannot use the accounts receivable or any other collateral related to the included FHA-insured projects to secure or pay loans to non-FHA projects. The ARA/R Lender cannot use the accounts receivable or any other collateral related to the included FHA-insured projects to secure or pay debts of FHA-insured projects not approved for inclusion in the ARA/R line.

An ARA/R Loan that involves both FHA-insured facilities and non-FHA Insured facilities is not acceptable. It must be restructured to HUD’s satisfaction so as to separate the non-HUD projects/parties and the HUD projects/parties into separate loans. This is often arrangement may be encountered:

1. Where an Operator is not a single asset entity and it operates both FHA-insured and non-FHA Insured projects, or
2. Where an Operator’s control group operates both FHA-insured and non-FHA Insured projects.

The non-HUD ARA/R line/projects are permitted to also secure the HUD-approved ARA/R Loan; but the FHA-insured projects cannot secure the non-FHA Insured projects obligations. HUD permits, though does not encourage, the A/R Lender to included in the Intercreditor Agreement)

K. Cross-Defaults. In limited circumstances, HUD will approve a cross-default provision. All HUD approved cross-default provisions must be disclosed during underwriting and must be set forth on Exhibit B.

As a non-recourse insured lender, ORCF’s policy is to limit cross-defaults so that defaults on obligations to which HUD has no means to address risk for will not cause a default on an A/R line consisting of FHA Insured Projects. Cross-defaults related to obligations to
which HUD has no means to address the risk for can cause a liquidity crisis jeopardizing
the FHA-insured projects to facilities on the occurrence of an Event of Default on A/R
line. As such, ORCF has created the non-FHA Insured line—guidance set forth below to
help evaluate whether a cross-default constitutes an acceptable underwriting risk and will,
therefore, be approved by HUD:

a. A cross-default must be targeted at one or more monetary obligations.
b. Any proposed cross-defaults must be disclosed to and approved listed on Exhibit
   B and must be specific. It is not acceptable to reproduce, incorporate by ORCF
   with approved reference, or otherwise restate the default provisions set forth in
   other A/R financing documents.
c. All cross-defaults being set forth in the Intercreditor. These include any
   proposals listed in Exhibit B must reasonable describe the principal transactional
   documents outlining the obligation, parties to the documents and the dates of the
   documents.
d. It is generally acceptable for a HUD-insured only A/R line to have a cross-
   default with another HUD only A/R line.
e. It is not generally acceptable for a HUD-insured only A/R line to have a cross-
   default with another non-HUD insured A/R line.
f. Any cross-defaults related to a guarantor (or principal) on the A/R Line must be
   limited to obligations directly related to the A/R Borrowers and/or directly related
   to other HUD insured facilities/obligations.
g. Cross-defaults listed on Exhibit B should not include the shared or parallel
   obligations owed by the joint A/R Borrowers to the A/R Lender as established in
   the A/R Loan Agreement. Such matters are not cross-defaults for purposes of
   Exhibit B because they are part of the A/R Loan for the FHA-insured projects to
   Events of Default on the non-HUD line, as well.

a-h. It is generally not acceptable for Material Adverse Change Clauses (MAC
   Clauses) to be approved as any other proposed cross-defaults. Unapproved cross-
   defaults will not be permitted. Such clauses permit the A/R Lender to declare a default under the A/R line based on a material adverse change
   suffered by a guarantor, principal, affiliate or other non-A/R Borrower on the A/R
   line. Such clauses commonly refer to a decline in net worth, insolvency,
   bankruptcy, or a loss of security.

K-L. **ARA/R Loan Obligations Secured by Project Collateral.** ARA/R Loan
Documents frequently contain expansive definitions of the obligations secured
by the collateral. Notwithstanding any such definition, the Intercreditor limits the types of
obligations that may be secured by project collateral to: the Revolving ARA/R
Loan up to the Maximum Commitment Amount approved by HUD and other obligations
directly related to the benefit of the Healthcare Facility, with some disallowable
obligations explicitly excluded in the Intercreditor Agreement. The Maximum
Commitment Amount is inserted into the Intercreditor. The Intercreditor Agreement
limits what obligations the project collateral secures. Non-qualifying obligations
may be unsecured and/or secured by non-project collateral or guarantees.
HUD recognizes that there may be instances where other obligations are of a nature that may be appropriate to secure with project collateral. Accordingly, the definition of ARA/R Loan Obligations in the Intercreditor permits additional specific obligations to be added that are not inconsistent with HUD Program Obligations if approved by ORCF. The parties should submit such a request and provide justification for it at the time the request for approval of the ARA/R Loan is made. Such request must specify whether the additional obligation will be constrained by the Borrowing Base. If approved by ORCF, and subject to any conditions to such the approval, such specific additional obligations will be inserted into documented in the Intercreditor in the space provided for such that purpose.

If the AR Lender is not required to use the new form of Intercreditor under applicable guidance or waivers, then the definition of the Obligations secured in the AR Loan Documents must be appropriately limited.

L.M. Cash Flow Structures. The proposed cash flow structure must be acceptable to HUD (including any commingled account features, which accounts will be subject to deposit agreements, the existence of multiple projects, identity of FHA Lender, name of depository bank, account number, FHA project number, etc.). The two primary types of ARA/R Loan structures, together with guidance on acceptable structures and deposit account agreements, are set forth in Production, Chapter 16.

15.4 Document Requirements and Reviews

Set forth below is a list of the key documents that ORCF/HUD reviews when considering a request for consent to ARA/R Financing. Checklists or punchlists may from time to time be posted on the Section 232 Program website. The HUD closing attorney must also review the proposed ARA/R Loan Documents and they must find them to be acceptable. Certain documents are required HUD forms, which must be used where applicable. Such HUD forms can be found on HUDCLIPS (see Appendix 15.1). Certain samples of non-mandatory forms may be posted from time to time on the Lean closing documents website.

A. Lender Narrative, Section 232/223(f) Refinance (Form HUD-9002-ORCF), Addendum to Underwriting Narrative—Accounts Receivable (AR)). If A/R Financing, Section 232/223(a)(7), 223(d), 241(a) (HUD-90011-ORCF). If the AR financing is proposed as part of an FHA-insured Loan Closing, or as a post-closing item, the appropriate Accounts Receivable Financing Certification, Form HUD-90020-ORCF, the Intercreditor Agreement, Form HUD form of-92322-ORCF, and the Lender Narrative with AR Loan Addendum—Accounts Receivable (A/R) Financing (New or Modified) Form HUD 90031-ORCF must be submitted.

B. Requests for Pre-Approval of Certain ARA/R Loan Modifications and of Proposed Cross-Defaults. Both the Operator and the ARA/R Lender must agree not to alter the
ARA/R Loan terms in certain material ways without the FHA Lender’s and/or HUD’s ORCF’s consent. Although the Operator’s Regulatory Agreement and Intercreditor set forth the specific material terms requiring consent prior to modification, and specific allowable modifications that do not need HUD and/or FHA Lender consent, as a general matter, HUD considers modifications to the ARA/R Lender Loan Documents to be material if Material and ORCF must consent to such modification:

1. Adds or releases guarantors to the ARA/R Lender Loan,
2. Adds an interest reserve to the ARA/R Lender Loan,
3. Amends the interest rate payable on the outstanding principal balance of the ARA/R Lender Loan (other than, and in addition to, increases in the interest rate pursuant to variable interest rate provisions thereof),
4. Increases or decreases the previously HUD-approved principal amount of the ARA/R Lender Loan,
5. Grants any non-HUD-approved loan term extension,
6. Amends or expands the type of obligations secured by the ARA/R Lender Loan, and/or
7. Modifies any term or condition that may be deemed material at the sole discretion of HUD,
8. Increases the Maximum Commitment Amount, or
9. Alters the borrowing base formula, or
10. Occurs after a payment default is declared by the A/R Lender.

HUD recognizes that, due to the customary short-term nature of ARA/R Loans, the parties may desire flexibility to extend on the same terms and conditions (or with solely a rate change within defined parameters) without having to come back to HUD for approval. ORCF will consider pre-approving ARA/R Loan extensions up to a pre-determined date on the same terms and conditions and/or solely with interest rate changes subject to certain parameters that do not involve a Material Term.

If such flexibility is desired, the initial ARA/R Loan request must include a proposal that outlines the parameters of any proposed loan extension and/or interest rate change. ORCF will generally only agree to one renewal of the A/R line of credit, and only so long as there are not changes to any of the Material terms. The proposal must include a justification for the request and a financial analysis that demonstrates the effect of the loan extension and/or rate change on the financial viability of the project. ORCF will review the request and the approval of said request will be in the sole discretion of ORCF. If the request for the loan extension and/or rate change is approved, it is inserted into the Intercreditor, and the Operator will be required to: notify ORCF when any such pre-approved extensions and/or rate changes occur; timely provide ORCF with complete copies of the revised AR Loan Documents; and provide a certification that only changes pre-approved by ORCF were made to the AR Loan Documents. Proposed cross-defaults must be disclosed and if approved by ORCF, will be documented in the Intercreditor, and the Operator will be required to: Please see 15.3.J above.
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- Notify ORCF when any such pre-approved extensions and/or rate changes occur.
- Timely provide OCRF with complete copies of the revised A/R Loan Documents; and
- Provide a certification that only changes pre-approved by HUD were made to the A/R Loan Documents.

Proposed cross-defaults must be disclosed and if approved by HUD, will be documented in the Intercreditor. Please see 15.3.J above.

C. The A/R Loan Documents. The ARA/R Financing Loan Agreement between the Operator(s) and the ARA/R Lender, including the fee letter, and all material documents evidencing or securing such ARA/R Loan, that establish the terms and conditions and fees associated with the ARA/R Financing loan, must be submitted.

D. ARA/R Loan Guarantees and Equity Pledges. The ARA/R Lender’s first priority lien in ARA/R Lender Priority collateral may only secure the approved revolving loan. The A/R Lender Priority Collateral may not secure term loan facilities(s), equipment loan facilities(s) or any indebtedness, liability or obligations arising under a guarantee, except for guaranteed obligations to the extent the obligations guaranteed consist solely of approved ARA/R Loan Obligations. The guarantors must waive any subrogation, contribution, reimbursement, or similar rights until the FHA-insured loan has been paid in full; and the guaranties must be otherwise acceptable to ORCF–HUD. All pledges and guarantees must be disclosed in the Intercreditor Agreement to be enforceable.

Any guarantee or equity pledge by a principal of an FHA-insured project, as determined under applicable HUD guidance, must not include provisions inconsistent with HUD Program Obligations, and must likewise require the prior written approval of HUD prior to any transfer of such ownership interests or the exercise of control (such as through the exercise of voting rights) and previous participation clearance.

The HUD Borrower entity cannot pledge collateral (including, but not limited to membership interests, fixtures, accounts or real estate) to secure an A/R Loan to the Borrower-Operator(s), or to any other party.

E. Organizational Narrative and Chart. The Organizational Narrative is a narrative that describes the legal structure of the Borrower entity and the operating entity and discloses all tiers of ownership. If the Borrower or Operator has multiple tiers of ownership, the narrative shall include an organization chart identifying all parties and their relationship to one another.

If the parties to the ARA/R Financing loan have closely related interests, there may be a prohibited Identity of Interest (IOI). Upon review, if ORCF determines that the ARA/R Financing loan arrangement benefits closely related interests at the expense of the financial viability of the project, a Conflict of Interest will in fact exist (see Introduction, Chapter 1.6.D). If ORCF determines that there is in fact a conflict of interest, the Operator and all affected parties will be asked to submit a proposal of how the conflict...
will be mitigated. In consultation with HUD OGC, ORCF reserves the right to determine if the proposed mitigation plan is acceptable. Therefore, it is important that all relationships among the parties to the ARA/R Financing loan submission be identified, including, but not limited to, the following parties:

1. All principals of the Borrower,
2. All principals of the Operator,
3. FHA Lender,
4. All parties to the ARA/R Financing loan,
5. Depository banks,
6. General contractor, if applicable,
7. Management agent, if applicable,
8. Consultants, if applicable, and
9. If the law firms rendering the opinions have an identity of interest with any of the above, and/or if any of the attorneys therein are guarantors of, or otherwise involved with, the AAR Loan.

F. Flow of Funds Chart. An accounts receivable cash flow of funds chart (see Production, Chapter 16 for guidance and samples) is a chart that describes the collection and flow of funds from the Operator’s initial deposit of its receivables through disbursement and the Operator’s uses of the ARA/R Financing loan proceeds. Once the cash flow chart is approved by HUD and FHA Lender, it is attached as Exhibit C-1 to the Operator Security Agreement.

G. Healthcare Regulatory Agreement – Operator. Document that outlines the requirements for professional liability insurance, the submission of ARA/R Financing, financial reports, and compliance with HUD Program Obligations.

H. UCC Termination Statements. In the event an existing ARA/R Lender (or any existing non-compliant line) is being replaced or restructured, the forms of releases, UCC terminations statements or similar documents acceptable to the HUD closing attorney must be submitted in advance of closing, and the plan for addressing such termination must be acceptable to ORCF and the HUD closing attorney.

I. Intercreditor Agreement. Document that sets forth the respective priorities and agreements of the FHA Lender and the ARA/R Lender with respect to the Operator collateral. This agreement includes provisions that require special coordination with ORCF and are generally documented in the A/R Terms Memo.

L-J. Deposit Account Instructions and Service Agreement (DAISA-Governmental Receivables). Agreement on each deposit account identified in the approved cash flow chart into which governmental receivables will be initially deposited. See Production, Chapter 16 for guidance and the Section 232 Program website for a sample format.
**J.K. Deposit Account Control Agreement(s) (DACA-Non-Governmental Receivables).**

Agreement: The DACA is an agreement for each deposit account identified in the approved flow chart for which a DACA is required, which also may be referred to as a Blocked Account Agreement. See Production, Chapter 16 for guidance and the Section 232 Program website for a sample format.

**K.L. Subordination Agreement/SNDA (Form HUD-92333-ORCF)/ Subordination, Non-Disturbance and Attornment Agreement of Operating Lease (SNDA) (Form HUD-91110-ORCF).** Agreement: These agreements provide for the subordination of the Master Lease or Operator’s Lease (the “Lease”) to the FHA-insured mortgage and, if a SNDA is approved, provides for non-disturbance of a third-party Operator under certain conditions. The SNDA provides protection to the Operator only if the Operator is not in default under the terms and conditions of the Lease.

**L.M. Operator Legal Opinion.** Operator’s counsel provides this opinion to the Operator using the Guide for Opinion of Operator’s Counsel and Certification (Form HUD-92325-ORCF). It provides that counsel has reviewed executed copies of the Intercreditor, ARA/R Loan Documents and affiliated credit documents.

**M.N. Operator Security Agreement.** (Form HUD-92323-ORCF). Paragraph 20 of this document is entitled, “Provisions Regarding Accounts Receivable Loan.”

### 15.5 Important Safeguards and Conditions

In addition to looking for documents such as those listed above, ORCF’s consent to a typical ARA/R Financing loan is also based on evidence that important safeguards and conditions are established and agreed upon by the parties. The particular terms that should be included depend on an evaluation of the proposed transaction as a whole; however, set forth below are some of the important safeguards and conditions that should be considered.

A. Whether funds advanced under the ARA/R Financing loan are used as provided in the ORCF-approved Intercreditor and applicable ORCF Program Obligations.

B. Whether cross-collateralization of ARA/R Financing is permitted only for those healthcare projects subject to FHA mortgages that are identified in the request for ORCF’s consent to the ARA/R Financing loan.

C. Whether any cross-defaults (but not cross-collateralization) are consistent with ORCF policy and are acceptable risks for the project. The AR Financing request submission must identify the cross-defaults that the AR Lender is seeking.

D. The FHA Lender and AR Lender have entered into an Intercreditor or in those instances where an alternate format is permissible, an agreement between creditors that contains terms.
and conditions acceptable to HUD and materiallyconsistent with the programmatic
A/R
E.C. Whether the A/R Lender has sufficient experience (generally, at least three years) in
providing A/R Financing and the necessary experience and financial controls in place to
monitor the financial operations of the Operator.

D. Whether A/R Financing which involves multiple FHA lenders has been adequately structured
to designate a lead FHA lender.

E. Whether the aggregate cost(s) and risk of particular A/R Financing and particular A/R
Lenders exceeds acceptable risk to the Fund.