



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Date: July 11, 2022

Housing Notice 22-03

To: All FHA Section 232 Approved Mortgagees
All FHA Section 232 Operators utilizing Accounts Receivable Financing

Subject: Additional Operator and FHA Lender Notice Requirement for Account
Receivables Availability Reduction

Purpose

This Housing Notice implements an additional notice requirement for FHA Lenders and Operators of Section 232 projects that receive accounts receivable financing from an Accounts Receivable (AR) Lender. The notice requirement will allow FHA Lenders and HUD to better monitor the financial health of such projects and position FHA Lenders and HUD to take timely action when necessary.

Effective Date

This Housing Notice is effective immediately upon issuance.

Affected Projects

Section 232 insured facilities where the Operator has or is obtaining an AR line of credit with an AR Lender.

Background

HUD regularly requests that Operators provide certain financial information in order to monitor the ongoing viability of Section 232 insured facilities. Section 20(g) of the HUD-92466A-ORCF Healthcare Regulatory Agreement – Operator (“Operator Regulatory Agreement”) provides that “At [the] request of HUD, Operator shall give specific answers, satisfactory to HUD, to questions posed from time to time relating to income, assets, liabilities, contracts, operation, and condition of the Healthcare Facility, and shall provide to HUD copies of all books, contracts, records, documents and other papers relating to the Healthcare Facility from time to time as HUD may request.” Section 20(h) further provides that HUD may direct that any financial or operational reports required by the Operator Regulatory Agreement also be submitted to the FHA Lender.

For projects that receive AR financing, a key indicator of financial health is availability, i.e. the amount of debt available to the Operator. In the normal course of business, an AR Lender may make changes that significantly impact AR availability. These changes are typically presented in the AR Loan Agreement as “Lender Permitted Discretions” and act to adjust the revolving loan borrowing base terms and ultimately reduce the amount of debt available to the Operator(s). While some availability changes are common practice in accounts receivable lending and are anticipated, significant reductions in revolving debt availability increases credit risk by reducing Operator liquidity and, potentially, an Operator’s ability to service the FHA loan via lease payments to the Owner. Additionally, significant reductions in availability are often a sign that a facility or facilities are in financial distress. The current form of the Intercreditor Agreement does not provide for notice of significant reductions in availability for changes which do not require formal loan amendment and which may be initiated in the normal course of business by the AR Lender. Notwithstanding, HUD has determined that notice of such reductions in availability serves as a valuable additional metric for HUD and the FHA Lender to be able to quickly identify and address potentially troubled projects.

Notice of Availability Reduction

To address the above gap in financial reporting and to facilitate the FHA Lender’s and HUD’s ability to address potential problems at the facility in a timely manner, as of the Effective Date, HUD will require, pursuant to Section 20 of the Regulatory Agreement, Operators to provide notice to the FHA Lender and HUD when the following occurs: AR Lender takes any action permitted under the AR Loan Documents (including, without limitation, establishing one or more reserves against the Borrowing Base or adjusting any liquidity factors, existing reserves, advance rates or similar factors used in calculating the Borrowing Base) (an “Availability Reduction”) that, when combined with any other Availability Reduction(s), results in a total reduction by greater than twenty percent (20%) of the Maximum Commitment Amount stated in the Intercreditor Agreement. The failure of the Operator to provide such required notice shall, after issuance of a Notice of Violation and failure to timely cure such violation, and upon HUD’s written notice, constitute an event of default under the Operator Security Agreement and Operator Regulatory Agreement, pursuant to Sections 8(d) and 8(a) of those documents, respectively.

Method of Providing Notice

The Operator will within 24 hours of the occurrence of an Availability Reduction meeting the above criteria notify both the FHA Lender and HUD via electronic mail. Contact HUD via the ORCF Account Executive, contact information found here: https://www.hud.gov/sites/dfiles/Housing/documents/20211116_HUD_232_Portfolio_AE_Assignments.xlsx. The FHA Lender will subsequently fill out Form HUD-93334-ORCF Servicer’s Notification to HUD of Risks to Healthcare Project and Action Plan for Remedy - Section 232 (https://www.hud.gov/sites/dfiles/OCHCO/documents/93334_orcf.docx) and within 2 business days of receipt of the notice from the Operator submit the form to the Section 232 Portal at: <https://www.hud232portal.com>.

Instructions on use of the portal can be found on the Office of Residential Healthcare's website at: https://www.hud.gov/federal_housing_administration/healthcare_facilities/residential_care.

Paperwork Reduction Act

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Number 2502-0605. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB Control Number.

Questions

Any questions regarding this Housing Notice may be directed to the Office of Residential Care Facilities by email at: LeanThinking@hud.gov. For additional information on the Section 232 Program addressed in this Housing Notice, please visit: https://www.hud.gov/federal_housing_administration/healthcare_facilities/residential_care.

Signature

Julia R. Gordon
Assistant Secretary for Housing –
FHA Commissioner