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**Section II
Production**

Chapter 15

Accounts Receivable Financing

15.1

Introduction

8
9 It has become customary for Operators of healthcare facilities to use a financial mechanism
10 known as Accounts Receivable (“AR”) financing to ensure that there is adequate funding
11 available to meet the daily cash flow needs of their projects. Typically, an Operator provides a
12 bed and medical services to residents and is reimbursed for the services to eligible residents by
13 Medicaid and Medicare sometime after the services are provided. The timing of Medicaid and
14 Medicare reimbursements varies from state to state and can be subject to significant delays.
15 Other patients either pay for such services with their own resources (private-pay) or have long-
16 term care or other commercial insurance.

17
18 AR Financing usually takes the form of a working capital loan secured by Medicare, Medicaid,
19 and other governmental healthcare insurance program receivables (collectively “Governmental
20 Receivables”), and private pay and commercial insurance receivables (collectively, “Non-
21 Governmental Receivables”). The loan is provided by a qualified bank or other financial
22 institutions or firms (the “AR Lender”) to or for the benefit of one or more healthcare facilities.
23 Without AR Financing in place an Operator may not be able to meet its immediate and short-
24 term financial obligations. With AR Financing, Operators have a financial mechanism that can
25 provide funds to finance ongoing operations until Medicare, Medicaid or other third-party
26 payments are received. AR Lenders have developed sophisticated day-to-day monitoring
27 systems that track the financial activities of an Operator. These systems provide comprehensive
28 daily and weekly financial reports designed to immediately identify unusual financial patterns
29 that adversely impact the financial condition of a healthcare facility. Most AR Lenders have
30 immediate response systems in place to identify, correct, and/or manage financial problems as
31 they begin to develop.

32
33 **In November 2008, HUD issued H08-09 Accounts Receivable Financing. The guidance in this*
34 *chapter supersedes this notice.*

ORCF will evaluate AR 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 232 loan under one of the categories described above, and
5. Section 223(d) Operating Loss Loans in connection with a 232 loan under one of the categories described above .

~~Generally,~~ HUD approval must be obtained for any AR Loan or any material modification of an existing AR Loan, and the AR Lender must execute an Intercreditor Agreement for AR Financing Projects (Form HUD-92322-ORCF) ("Intercreditor") with the FHA Lender. 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 AR 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 AR loan is being put in place in conjunction with an FHA-insured loan closing, [review of the AR approval request takes place as part of the firm commitment process and loan closing.](#) ~~(If the AR loan is being put in place in conjunction with a Transfer of Physical Assets, or TPA, Change of Operator, that is being processed concurrently with an FHA-insured loan closing)~~ [review of the AR approval request will be conducted by the Asset Management Account Executive, review of the AR approval request takes place as part of the firm commitment process and loan closing.](#) 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 of the above instances, it should be determined if a portfolio review acceptance letter applies and whether the proposed AR financing is consistent with such 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 propose as part of ~~its~~ [their](#) AR loan review request that HUD pre-approve certain future modifications or that HUD permit certain additional types of obligations to be secured by [an AR Lender first lien](#)

¹ Negative working capital (accounts payable exceeding accounts receivable) must not be included as existing indebtedness in proposed Section 232 refinance transactions.

75 Operator project collateral, which if approved, are set forth in the Terms Memo attached to
76 the firm and inserted into the Intercreditor. AR Lender and Operator are also required to
77 disclose all proposed cross-defaults, which if approved, are set forth in the Terms Memo and
78 inserted into the Intercreditor. (see below, in Section 15.4).
79

- 80 D. **Exceptions.** ORCF understands that ~~prior to the existence of the ORCF,~~ some borrowers or
81 operators ~~have existing~~ AR loans that were put in place prior to applicable ORCF
82 guidance have not been reviewed by ORCF. ~~However, if~~ any such Borrower or Operator
83 submits a TPA request, an application to refinance existing debt or any other request that
84 requires ORCF approval, ORCF will review the existing AR ~~Loan-loan Documents~~
85 documents to determine if any of the documents require revision, and/or if additional
86 documents, which incorporate ORCF requirements, have to be executed by the applicable
87 parties. ~~Additionally~~Additionally, if an AR loan was obtained in violation of a Borrower or
88 Operator regulatory agreement, administrative or enforcement action may ~~still~~ be taken.
89

90 When ORCF receives an application for an (a)(7) refinance where the original application
91 was endorsed prior to various policies directives (e. g. Notices, Mortgage Letters or
92 Handbooks), HUD requires the project to come into compliance with all current policies.
93 However, there may be justification in certain lease structures where the Borrower is a lessor
94 and Operator (lessee) is a third-party, arms-length Operator for ORCF to waive strict
95 adherence to its current policies:
96

- 97 1. Borrower/Operator, Identity-of-Interest or Related Party Operators must comply with
98 current accounts receivable financing policies when applying for a refinance under
99 223(a)(7)
- 100
- 101 2. If feasible at the time of the (a)(7) transaction, third party Operators must comply
102 with current accounts receivable financing policies. Otherwise, the Lender must
103 request a waiver. ORCF may grant the waiver subject to the following conditions:
 - 104 a. A special condition will be added to the firm commitment requiring a
105 mortgage debt service reserve (amount to be determined by ORCF) to be in
106 place until the accounts receivable financing can be brought into compliance
107 with current policy;
 - 108 b. At lease renegotiation (excluding renewals that do not involve the
109 modification of a Material Term, as defined below) or termination, the
110 accounts receivable financing must be brought into compliance with current
111 policy.
 - 112 c. These two provisions will be added to the Borrower and Operator's
113 Regulatory Agreements.
- 114
- 115

15.3

Accounts Receivable Financing Application Considerations

ORCF reviews requests to consent to AR 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 AR 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 AR 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 AR arrangements. However, all arrangements will be evaluated as a whole and variances that do not conflict with HUD Program Obligations may be permitted that 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 AR Loan is to address liquidity shortfalls for ongoing operating expenses, ORCF expects that the AR 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).
- C. **Borrowing Base/Maximum Commitment.** ORCF generally expects that the AR 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 Limit"). The Credit Limit formulation must be acceptable to ORCF.

AR Loans involving multiple HUD projects are often based on an aggregate borrowing base with each Borrower liable to the AR 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 AR Loan Documents are structured so that each Operator's access to the line is limited, then the extent of the AR Lender's cross-collateralization may also need to be limited.

- D. **Borrowing Base Percentages, Aging and Receivables Mix.** ORCF will accept for review an AR 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

156 governmental healthcare insurance program receivables (collectively, the “Governmental
157 Receivables”) included in the borrowing base should not exceed 85%, and the Governmental
158 Receivables should not be aged greater than 120 days. Governmental Receivables aged
159 between 120 days and up to 180 days may be accepted by ORCF if: there are extenuating
160 circumstances that cause an excessive delay in the governmental payor’s payment of
161 reimbursements, and ORCF determines that the delay in the payment does not jeopardize the
162 financial viability of the project. A request for aging between 120 days and up to 180 days
163 must be supported by an analysis of the historical and projected data on the timing of the
164 reimbursements found acceptable to ORCF.

165
166 The proposed borrowing base may also include prudent percentages of Non-Governmental
167 Receivables that do not exceed prudent aging limits; however, the aging, types and
168 percentages included must be acceptable to ORCF. Generally, prudent aging limits on these
169 types of receivables will be shorter than those for Governmental Receivables. The inclusion
170 of any Medicaid Pending (i.e. receivables related to residents that have not yet been certified
171 as eligible by Medicaid but have submitted their documentation) in the borrowing base must
172 be justified, and must be subject to aging limits. Eligible receivables must not include
173 receivables that are generated outside the ordinary course of business, and must be limited to
174 those generated by the FHA-insured project subject to the A/R line; for example, they cannot
175 include other receivables generated by a non-single asset Operator with respect to projects
176 not approved by HUD for inclusion in the AR loan.

- 177
178 E. **Parties.** The Operators of those FHA-insured projects approved by ORCF for inclusion in
179 the AR Loan may be Borrowers under the AR Loan. The Operators are customarily the
180 lessee entities. Occasionally, there is no lease and the HUD Borrower is also the Operator;
181 in which event the HUD Borrower must sign the Healthcare Regulatory Agreement –
182 Operator (Form HUD-92466A) (“Operator’s Regulatory Agreement”) and Operator Security
183 Agreement (Form HUD-92323-ORCF), in addition to the Healthcare Regulatory Agreement
184 – Borrower (Form HUD-92466-ORCF) (“Borrower’s Regulatory Agreement”) and Security
185 Instrument/Mortgage/Deed of Trust (Form HUD-94000-ORCF) (“Security Instrument”).

186
187 If there is a management agent or service provider involved, a determination must be made as
188 to whether such entity is the licensee or party to the Medicaid/Medicare or other provider
189 agreements, and/or resident contracts. In such event, such party is in effect an Operator in its
190 own right, and must sign and provide all the documents (and meet all the requirements)
191 required of an Operator.

192
193 Production, Chapter 16 provides guidance regarding other parties that may be required to
194 execute or join into the deposit account agreements, the FHA Lender security documents, the
195 Healthcare Regulatory Agreement – Master Tenant (Form HUD-92337-ORCF) (“Master
196 Tenant’s Regulatory Agreement”), the Borrower’s Regulatory Agreement and/or the
197 Operator’s Regulatory Agreement. Production, Chapter 16 also provides guidance on
198 Borrower Representatives.

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The FHA Lender, the AR 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 be required to sign as well.

- F. **Use of Proceeds.** AR Loan proceeds are used for working capital purposes related to the operation of the FHA-insured projects. AR loans may include letter of credit sub-limits if disclosed to and approved by ORCF.

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 AR loan proceeds be used only for AR debt service, then the operating expenses of the project (including lease payments), and only then, subject to any restrictions in the AR 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, or if the Operator fails to timely submit such statement, until such time as a current quarterly, year-to date financial 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 AR Loan, and making payments for goods and services of the project, provided such payments for goods and services satisfy 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.

241 Particularly in instances where AR loan draws are being made on an aggregate basis, the
242 Operators included in such line, and any Borrower Representative approved by HUD that
243 may be receiving such aggregate draws for further distribution, must ensure that AR loan
244 proceeds are allocated among the projects subject to the AR line in a manner consistent with
245 the foregoing restrictions.

246
247 **G. Single AR Loan.** HUD permits only a single AR Loan for a project. However, as provided
248 in the Operator Security Agreement, HUD will deem a syndicated or participated loan as a
249 single AR Loan provided that HUD is provided satisfactory assurances that the
250 lead/administrative agent has authority to bind all such Lenders to the Intercreditor, and will
251 be the sole party entitled to enforce the Intercreditor and the rights in project collateral.

252
253 **H. Projects included in the AR Loan.** Only FHA-insured projects that HUD approves for
254 inclusion in the AR Loan may be included as Borrowers in the AR Loan. No additional
255 projects or Borrowers can be added without prior HUD approval. AR Loans range from
256 single stand-alone loans including only one FHA project to large syndicated AR loans
257 including many HUD projects and multiple FHA Lenders. If a portfolio review is required or
258 has already occurred, the portfolio approval letter (and any cash flow charts or documents
259 approved in connection therewith) must always be reviewed.

260
261 While only FHA-insured projects approved by ORCF may be included as Borrowers on the
262 AR line, the AR Lender may also secure the AR Loan with non-project collateral or non-
263 HUD projects and guarantees, [provided that, the costs of administering or enforcing such](#)
264 [non-HUD project collateral documents cannot be charged to AR loan or Borrower\(s\) on the](#)
265 [HUD projects](#) (see below, in Section 15.4.D).

266
267 **I. Lien Priority and Intercreditor.** ORCF requires that the FHA-insured loan be secured by a
268 first lien and security interest on the project, and requires the Operator to execute a security
269 agreement and assignment of rents in favor of the FHA Lender which covers all of the
270 Operator's property related to project, including but not limited to all of the Operator's
271 Governmental and Non-Governmental account receivables arising from or related to the
272 FHA-insured project or projects. However, ORCF will allow AR Lender to take a first
273 priority interest in the project's accounts, including Governmental and Non-Government
274 account receivables, as set forth in the Intercreditor, provided that the AR Lender executes an
275 Intercreditor.

276 ~~I.~~

277
278 Under the Intercreditor, the FHA Lender subordinates its security interest in the Operator's
279 account receivables [Operator](#) related to the projects, to the security interests of the AR
280 Lender. Those items of Operator project-related collateral upon which the AR Lender is
281 permitted to have a first lien are known as the AR Lender Priority Collateral.

282

283 ORCF may also permit the AR Lender to secure its loan with a subordinate security interest
284 on other assets of the Operator related to the project provided that the AR Lender agrees not
285 to exercise its remedies as to non-AR Lender Priority Collateral of the project ~~without the~~
286 ~~consent of the FHA Lender~~. AR Lenders must not secure AR loans with liens on the project
287 real estate or fixtures or on any rent account dedicated solely to lease payments or on the
288 Operator's interest under the lease.

289
290 -The parties to the Intercreditor are required to set forth all disclosures in the ICA.
291 Submitting the AR loan documents to HUD does not constitute a disclosure to and approval
292 by HUD.

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

301
302 An AR Loan that involves both FHA-insured facilities and non-FHA Insured facilities is not
303 acceptable. It must be restructured to HUD's satisfaction so as to separate the non-HUD
304 projects/parties and the HUD projects/parties into separate loans. This is often encountered:

- 305
306 1. Where an Operator is not a single asset entity and it operates both FHA-insured and
307 non-FHA Insured projects, or
308 2. Where an Operator's control group operates both FHA and non-FHA Insured
309 projects.

310
311 The non-HUD AR line/projects are permitted to also secure the HUD-approved AR Loan;
312 but the FHA-insured projects cannot secure the non-FHA Insured project's obligations.
313 HUD permits, though does not require or encourage, the AR Lender to cross-default the AR
314 Loan for the FHA-insured projects to the occurrence of an Event of Default on the non-FHA
315 Insured line. Any proposed cross-defaults must be disclosed to and approved by ORCF with
316 approved cross-defaults being set forth in the Intercreditor. These include any proposal to
317 cross-default the AR Loan for the FHA-insured projects to Events of Default on the non-
318 HUD line, as well as any other proposed cross-defaults. Unapproved cross-defaults will not
319 be permitted.

- 320
321 K. **AR Loan Obligations Secured by Project Collateral.** AR Loan Documents frequently
322 contain expansive definitions of the obligations secured by the collateral. Notwithstanding
323 any such definition, the Intercreditor limits the types of obligations that may be secured by
324 project collateral to: the Revolving AR Loan up to the Maximum Commitment Amount
325 approved by HUD and other obligations directly related to the benefit of the Facility, with

326 some disallowable obligations explicitly excluded. The Maximum Commitment Amount is
327 inserted into the Intercreditor. The Intercreditor Agreement limits what obligations the
328 project collateral secures. Non-qualifying obligations may be unsecured and/or secured by
329 non-project collateral or guarantees.

330
331 HUD recognizes that there may be instances where other obligations are of a nature that may
332 be appropriate to secure with project collateral. Accordingly, the definition of AR Loan
333 Obligations in the Intercreditor permits additional specific obligations to be added that are
334 not inconsistent with HUD Program Obligations if approved by ORCF. The parties should
335 submit such a request and provide justification for it at the time the request for approval of
336 the AR Loan is made. Such request must specify whether the additional obligation will be
337 constrained by the Borrowing Base. If approved by ORCF, and subject to any conditions to
338 such approval, such specific additional obligations will be inserted into the Intercreditor in
339 the space provided for such a purpose.

340
341 If the AR Lender is not required to use the new form of Intercreditor under applicable
342 guidance or waivers, then the definition of the Obligations secured in the AR Loan
343 Documents must be appropriately limited.

- 344
345 L. **Cash Flow Structures.** The proposed cash flow structure must be acceptable to HUD
346 (including any commingled account features, which accounts will be subject to deposit
347 agreements, etc.). The two primary types of AR Loan structures, together with guidance on
348 acceptable structures and deposit account agreements, are set forth in Production, Chapter 16.

350 15.4

Document Requirements and Reviews

351
352 Set forth below is a list of the key documents that ORCF reviews when considering a request for
353 consent to AR Financing. Checklists or punch lists may from time to time be posted on the
354 Section 232 Program website. The HUD closing attorney must also review the proposed AR
355 Loan Documents and they must be acceptable. Certain documents are required HUD forms,
356 which must be used where applicable. Such HUD forms can be found on HUDCLIPS (see
357 Appendix 15.1). Certain samples of non-mandatory forms may be posted from time to time on
358 the Lean closing documents website.

- 359
360 A. **Lender Narrative, Section 232/223(f) Refinance (Form HUD-9002-ORCF), Addendum**
361 **to Underwriting Narrative—Accounts Receivable (AR) Financing, Section**
362 **232/223(a)(7), 223(d), 241(a) (HUD-9001i-ORCF).** If the AR financing is proposed as part
363 of an FHA-insured Loan Closing, [or as a post-closing item](#), the appropriate HUD form of
364 Lender Narrative with AR Loan Addendum must be submitted.

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

- 373
- 374 1. Adds or releases guarantors to the AR Lender Loan,
- 375 2. Adds an interest reserve to the AR Lender Loan,
- 376 3. Amends the interest rate payable on the outstanding principal balance of the AR
377 Lender Loan (other than, and in addition to, increases in the interest rate pursuant to
378 variable interest rate provisions thereof),
- 379 4. Increases or decreases the previously HUD-approved principal amount of the AR
380 Lender Loan,
- 381 5. Grants any non-HUD-approved loan term extension,
- 382 6. Amends or expands the type of obligations secured by the AR Lender Loan, and/or
- 383 7. Any term or condition that may be deemed material at the sole discretion of HUD,
- 384 8. Increases the Maximum Commitment Amount, or
- 385 9. Alters the borrowing base formula.
- 386

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

393

394 If such flexibility is desired, the initial AR Loan request must include a proposal that outlines
395 the parameters of any proposed loan extension and/or interest rate change. The proposal must
396 include a justification for the request and a financial analysis that demonstrates the effect of
397 the loan extension and/or rate change on the financial viability of the project. ORCF will
398 review the request and the approval of said request will be in the sole discretion of ORCF. If
399 the request for the loan extension and/or rate change is approved, it is inserted into the
400 Intercreditor, and, the Operator will be required to: notify ORCF when any such pre-
401 approved extensions and/or rate changes occur; timely provide ORCF with complete copies
402 of the revised AR Loan Documents; and provide a certification that only changes pre-
403 approved by ORCF were made to the AR Loan Documents. Proposed cross-defaults must
404 be disclosed and if approved by ORCF, will be inserted into the Intercreditor. Please see
405 15.3.J above.

406

407 C. **The AR Loan Documents.** The AR Financing Loan Agreement between the Operator(s)
408 and the AR Lender, and all material documents evidencing or securing such AR Loan, that

409 establish the terms and conditions and fees associated with the AR Financing loan, must be
410 submitted.

411
412 **D. AR Loan Guarantees and Equity Pledges.** The AR Lender’s first priority lien in AR
413 Lender Priority collateral may not secure term loan facilities, equipment loan facilities or any
414 indebtedness, liability or obligations arising under a guarantee, except for guaranteed
415 obligations to the extent the obligations guaranteed consist solely of approved AR Loan
416 Obligations. The guarantors must waive any subrogation, contribution, reimbursement or
417 similar rights until the FHA-insured loan has been paid in full; and the guaranties must be
418 otherwise acceptable to ORCF.

419
420 Any guarantee or equity pledge by a principal of an FHA-insured project, as determined
421 under applicable HUD guidance, must not include provisions inconsistent with HUD
422 Program Obligations, and must likewise require the prior written approval of HUD prior to
423 any transfer of such ownership interests or the exercise of control (such as through the
424 exercise of voting rights) and previous participation clearance.

425
426 The HUD Borrower entity cannot pledge collateral to secure an AR loan to the Borrower-
427 Operator(s).

428
429 **E. Organizational Narrative and Chart.** A narrative that describes the legal structure of the
430 Borrower entity and the operating entity and discloses all tiers of ownership. If the Borrower
431 or Operator has multiple tiers of ownership, the narrative shall include an organization chart
432 identifying all parties and their relationship to one another.

433
434 If the parties to the AR Financing loan have closely related interests, there may be a
435 prohibited Identity of Interest (IOI). Upon review, if ORCF determines that the AR
436 Financing loan arrangement benefits closely related interests at the expense of the financial
437 viability of the project, a Conflict of Interest will in fact exist (see Introduction, Chapter
438 1.6.D). If ORCF determines that there is in fact a conflict of interest, the Operator and all
439 affected parties will be asked to submit a proposal of how the conflict will be mitigated. In
440 consultation with HUD OGC, ORCF reserves the right to determine if the proposed
441 mitigation plan is acceptable. Therefore, it is important that all relationships among the
442 parties to the AR Financing loan submission be identified, including, but not limited to, the
443 following parties:

- 444
445 1. All principals of the Borrower,
446 2. All principals of the Operator,
447 3. FHA Lender,
448 4. All parties to the AR Financing loan,
449 5. Depository banks,
450 6. General contractor, if applicable,
451 7. Management agent, if applicable,

- 452 8. Consultants, if applicable, and
453 9. If the law firms rendering the opinions have an identity of interest with any of the
454 above, and/or if any of the attorneys therein are guarantors of, or otherwise involved
455 with, the AR loan.
456
- 457 F. **Flow of Funds Chart.** An accounts receivable cash flow of funds chart (see Production,
458 Chapter 16 for guidance and samples) that describes the collection and flow of funds from
459 the Operator’s initial deposit of its receivables through disbursement and the Operator’s uses
460 of the AR Financing loan proceeds. Once the cash flow chart is approved by HUD and FHA
461 Lender, it is attached as Exhibit C to the Operator Security Agreement.
462
- 463 G. **Healthcare Regulatory Agreement – Operator.** Document that outlines the requirement
464 for professional liability insurance, ~~and~~ the submission of AR Financing, ~~and~~ financial
465 reports and compliance with HUD Program Obligations.
466
- 467 H. **UCC Termination Statements.** In the event an existing AR Lender (or any existing non-
468 compliant line) is being replaced or restructured, the forms of releases, UCC terminations
469 statements or similar documents acceptable to the HUD closing attorney must be submitted
470 in advance of closing, and the plan for addressing such termination must be acceptable to
471 ORCF and the HUD closing attorney.
472
- 473 I. **Intercreditor Agreement.** Document that sets forth the respective priorities and agreements
474 of the FHA Lender and the AR Lender with respect to the Operator collateral.
475
- 476 J. **Deposit Account Instructions and Service Agreement (DAISA-Governmental**
477 **Receivables).** Agreement on each deposit account identified in the approved cash flow chart
478 into which governmental receivables will be initially deposited. See Production, Chapter 16
479 for guidance and the Section 232 Program website for a sample format.
480
- 481 K. **Deposit Account Control Agreement(s) (DACA-Non-Governmental Receivables).**
482 Agreement for each deposit account identified in the approved flow chart for which a DACA
483 is required, which also may be referred to as a Blocked Account Agreement. See Production,
484 Chapter 16 for guidance and the Section 232 Program website for a sample format.
485
- 486 L. **Subordination Agreement/SNDA(Form HUD-92333-ORCF)/ Subordination, Non-**
487 **Disturbance and Attornment Agreement of Operating Lease (SNDA) (Form HUD-**
488 **91110-ORCF).** Agreement which provides for the subordination of the Master Lease or
489 Operator’s Lease (the “Lease”) to the FHA-insured mortgage and, if a SNDA is approved,
490 provides for non-disturbance of a third party Operator under certain conditions. The SNDA
491 provides protection to the Operator only if the Operator is not in default under the terms and
492 conditions of the Lease.
493

494 M. **Operator Legal Opinion.** Operator’s counsel provides this to the Operator using the Guide
495 for Opinion of Operator’s Counsel and Certification (Form HUD-92325-ORCF). It provides
496 that counsel has reviewed executed copies of the Intercreditor, AR Loan Documents and
497 affiliated credit documents.
498

499 N. **Operator Security Agreement.** (Form HUD-92323-ORCF). Paragraph 20 of this
500 document is entitled, “Provisions Regarding Accounts Receivable Loan.”
501
502

15.5

Important Safeguards and Conditions

503
504 In addition to looking for documents such as those listed above, ORCF’s consent to a typical AR
505 Financing loan is also based on evidence that important safeguards and conditions are
506 established and agreed upon by the parties. The particular terms that should be included depend
507 on an evaluation of the proposed transaction as a whole; however, set forth below are some of
508 the important safeguards and conditions that should be considered.
509

- 510 A. Whether funds advanced under the AR Financing loan are used as provided in the ORCF-
511 approved Intercreditor and applicable ORCF Program Obligations.
512
- 513 B. Whether cross-collateralization of AR Financing is permitted only for those healthcare
514 projects subject to FHA mortgages that are identified in the request for ORCF’s consent to
515 the AR Financing loan.
516
- 517 C. Whether any cross-defaults (but not cross-collateralization) are consistent with ORCF policy
518 and are acceptable risks for the project. The AR Financing request submission must identify
519 the cross-defaults that the AR Lender is seeking.
520
- 521 D. The FHA Lender and AR Lender have entered into an Intercreditor or in those instances
522 where an alternate format is permissible, an agreement between creditors that contains terms
523 and conditions acceptable to HUD and materially consistent with the programmatic
524 considerations.
525
- 526 E. Whether the AR Lender has sufficient experience (generally, at least three years) in
527 providing AR Financing and the necessary experience and financial controls in place to
528 monitor the financial operations of the Operator.
529