Master Leases, Portfolios, Accounts Receivable Financing, DACAs & DAISAs

Chapter 13 Master Lease
Chapter 17 Portfolios
Chapter 15 AR Financing
Chapter 16 DACA/DAISA

Master Lease

- Ties together the operating leases from each healthcare facility in a portfolio into one master lease
- Purpose of the master lease
  - Reallocate cash flow
  - Bankruptcy protection (indivisible lease)

When is a Master Lease Applicable?

- ❑ 223(f)
- ❑ 223(a)(7)
- ❑ NC/SR/BR
- ❑ TPA

AND

- ❑ **3 or more and/or $15 million or more in aggregate mortgage amount**
- ❑ Borrowers with same ownership or a majority ownership with control
- ❑ Operators are lessee with the same ownership
- ❑ Applications submitted in 18-month window

Master Lease

- Alternative master lease structures need to protect HUD equivalently
  - Multiple minority owners
  - Multiple operators
  - Multiple lenders
  - Legal restrictions
  - Contractual restriction

Terms of Master Lease & Subleases

- FHA-insured properties only
- Initial term of master lease = maturity date of mortgage or longer
- If long-term lease not feasible, propose alternative structure:
  1. Sublease coterminous with one another
  2. Addendum to Regulatory Agreement: borrower to enter into new master lease prior to expiration

Master Lease: Lender Requirements

Lender Narrative:

- ✓ Terms and conditions of master lease
- ✓ Waiver requests
- ✓ Proposed payments to or from master tenant
- ✓ Lease agreements between Borrower and Master Tenant & lease agreements between Master Tenant and Subtenants;
- ✓ Description of the collection and flow of funds from subtenants to master tenant and from master tenant to borrower (include AR flow of funds, if applicable).

Master Lease: Lender Requirements
(continued)

***Lender Narrative** (continued):*

- ✓ Description of the collection and flow of funds from subtenants to master tenant and from master tenant to borrower (include AR flow of funds, if applicable).
- ✓ Diagram showing flow of funds from each operator to the master tenant to the borrower. Specify the depositories for each individual project funds, as well as for the master tenant as applicable
- ✓ Description of legal structure of borrower or master landlord entity, the master entity, and operating entity/subtenant, including all tiers of ownership.

Master Lease: Lender Requirements
(continued)

Spreadsheet:

- ✓ Names of facilities
- ✓ Proposed mortgage amount for each facility
- ✓ Recommended appraised value of each facility
- ✓ Proposed debt service coverage ratio for each facility, including the mortgage insurance payment

Master Lease: Lender Requirements (continued)

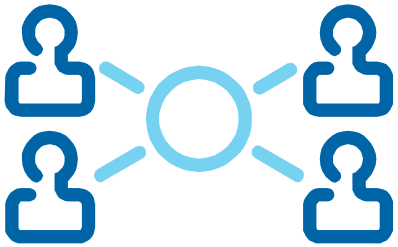
Spreadsheet *(continued)*:

- ✓ # of beds at each facility
- ✓ CMS Star Rating at each facility, if applicable;
- ✓ Current balance of each facility's replacement reserve account; and
- ✓ Any other reserve funds that will be available to the Owner/operator to fund project costs.

ORCF/OGC Review

- ✓ Master Lease and Subleases
- ✓ Base rent amount
- ✓ Escrow amounts *(e.g., taxes, MIP, property insurance, etc.)*
- ✓ Term of the master lease
- ✓ HUD mandated immediate and/or critical repairs
- ✓ HUD required replacement reserves
- ✓ Any other required reserves

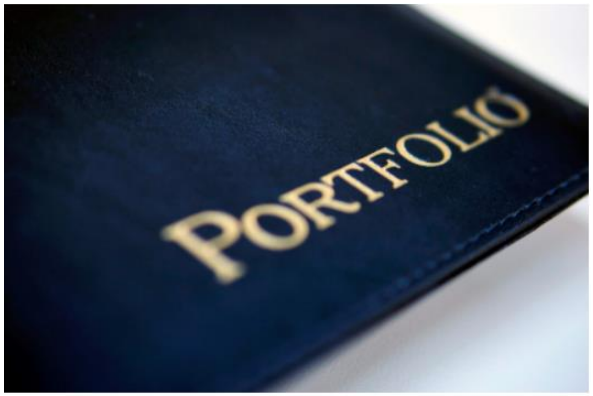
Other Master Lease Issues



- **Small portfolio:** Master lease still required even though portfolio credit review not required

- **Certification of Multiple Projects (Consolidated Certification-Borrower):** Lender must obtain Borrower current & proposed project applications within 18-month window.

Portfolios – Midsize and Large



- Handbook Chapter 17
- Mortgagee letter 2014-06, published April 2014
- Updated old Notice H01-03 for portfolio guidance

Portfolios – Midsize and Large

- Threshold for midsize portfolio is $90 million *(triggers corporate credit review)*

- Limits size of a single portfolio to no more than 5% unpaid principal balance of Section 232 portfolio

Portfolios – Midsize and Large

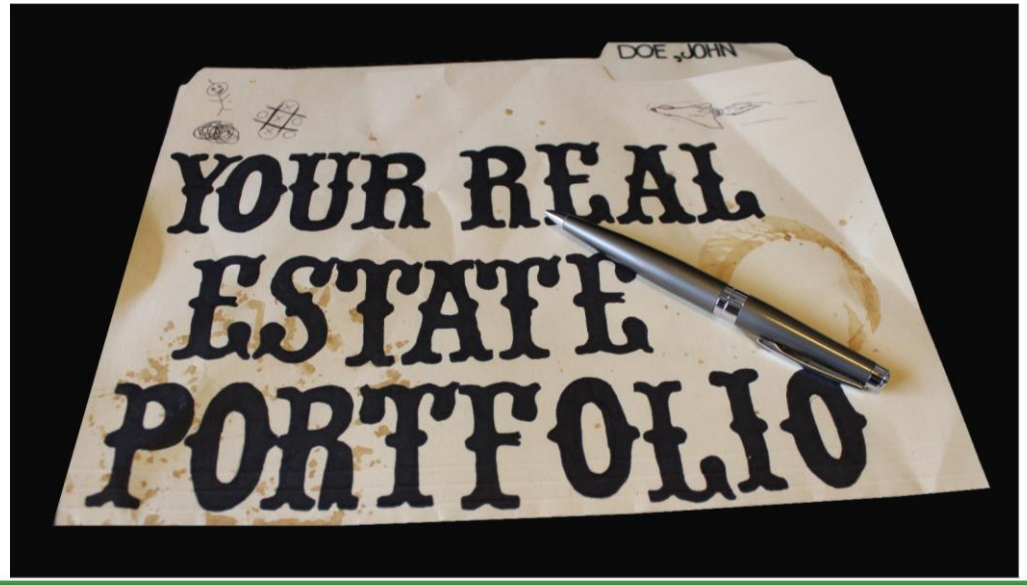
- List of corporate credit review submission materials
- 18-month rolling window
- Debt service reserve requirement
- Master lease requirement

Portfolios – Midsize and Large Mechanics of Review

- Lender contacts ORCF for concept call/intro meeting
- Understand nature of transaction, corporate structure, etc.
- Make sure review focuses on biggest risk areas

Portfolios – Midsize and Large Mechanics of Review (continued)

- Financial strength of the participants
- Quality of care
- Current debt
- Legal issues



Top Ten Largest Nursing Facility Companies

	Company	# of Facilities	HUD Corp Credit Review
1	Genesis Healthcare	380	✓
2	HCR Manor Care	280	
3	Golden Living	295	✓
4	Life Care Centers of America	223	✓
5	Sava Senior Care	200	✓
6	Consulate Health Care	202	✓
7	Signature Healthcare	113	
8	The Ensign Group	124	
9	Extendicare	90	✓
10	Kindred Healthcare	90	

Ranked by number of beds as of 12/31/2014 – Provider Magazine

Accounts Receivable Financing

- AR provides funding any daily cash flow shortfalls in long-term care facilities (usually SNF)
- Timing of Medicaid and Medicare reimbursements can be subject to significant delays and varies from state to state
- An “AR line” is a working capital loan secured by Medicare, Medicaid, and private pay and commercial insurance receivables

AR Financing – Intercreditor Agreement

- form **HUD-92322-ORCF** (06/2014)
- Puts in the AR lender in front of HUD to be paid with any available cash
- Definition of AR Loan Obligations
- Cut-Off Time & Ceased Funding
- Notices and Consent Rights
- Standstill provision
  - Clarifies that no changes are permitted to the remittance instructions until AR lender is paid in full.

AR Financing – New Intercreditor Agreement

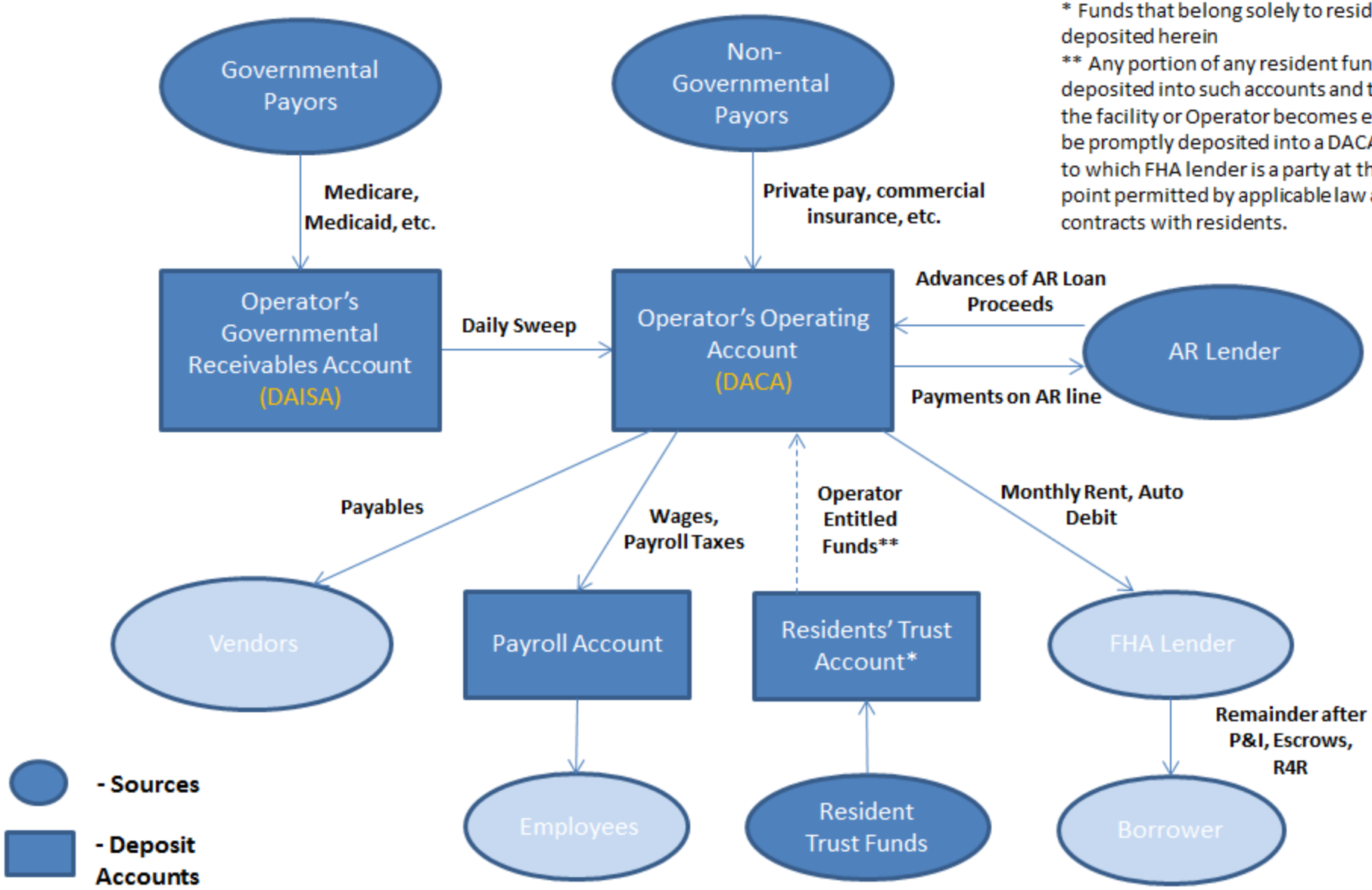
- No cross-collateralization between HUD and non-HUD facilities in one line
- Cross-default may be permitted between HUD AR line and non-HUD AR lines – needs review

Cash Flow Charts

- Lender must submit a cash flow chart
  - §16.3 describes Cash Flow Charts
  - §16.4 describes Cash Flow Structures
  - See also the Legal Punchlist for required elements

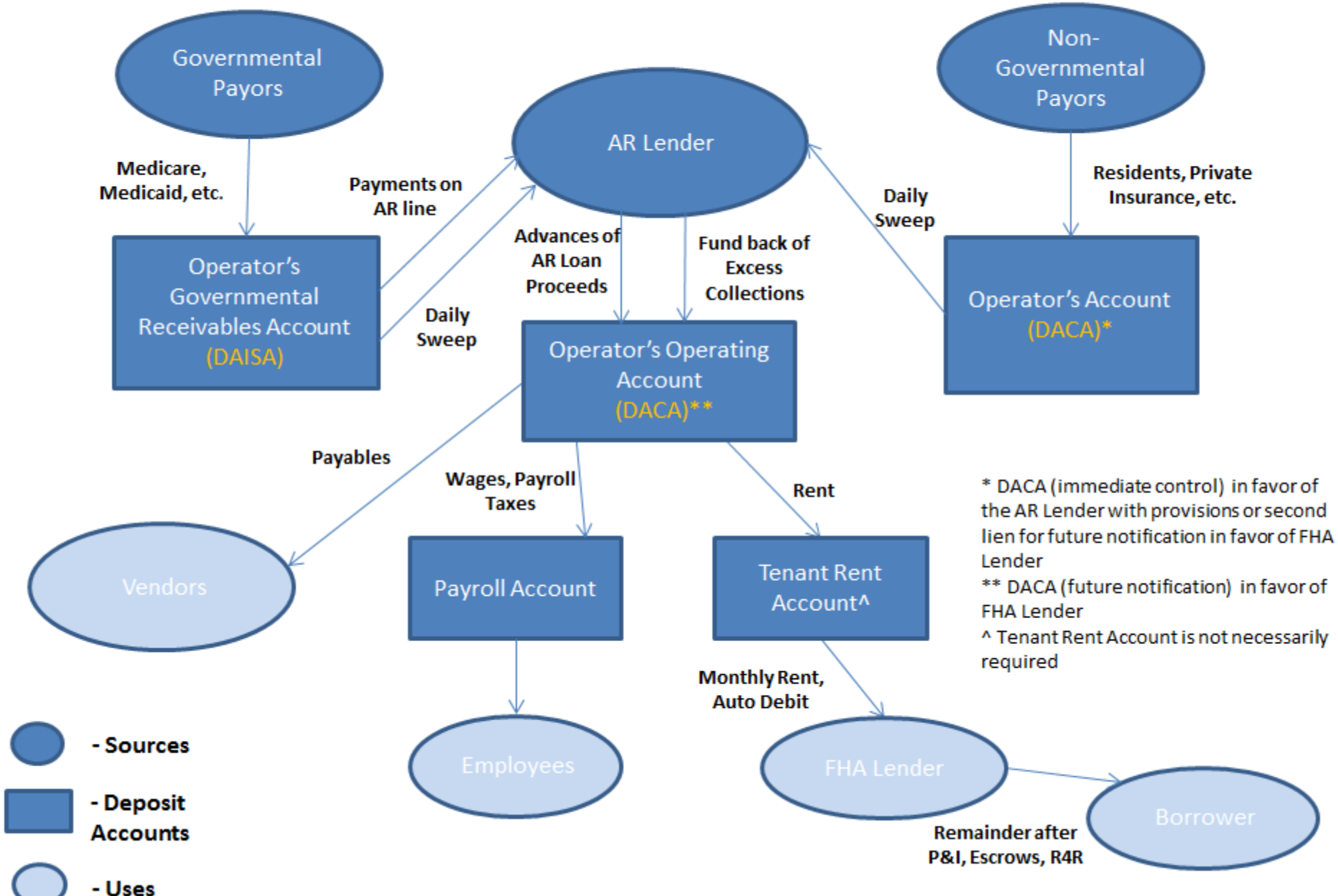
- Appendix 16—sample Cash Flow Charts.

Single "stand alone" Project
AR line used to protect against minor cash flow shortfalls



* Funds that belong solely to residents a
deposited herein
** Any portion of any resident funds tha
deposited into such accounts and to whi
the facility or Operator becomes entitle
be promptly deposited into a DACA acco
to which FHA lender is a party at the earl
point permitted by applicable law and its
contracts with residents.

All Funds Flow Through AR Lender, Operator routinely makes draws

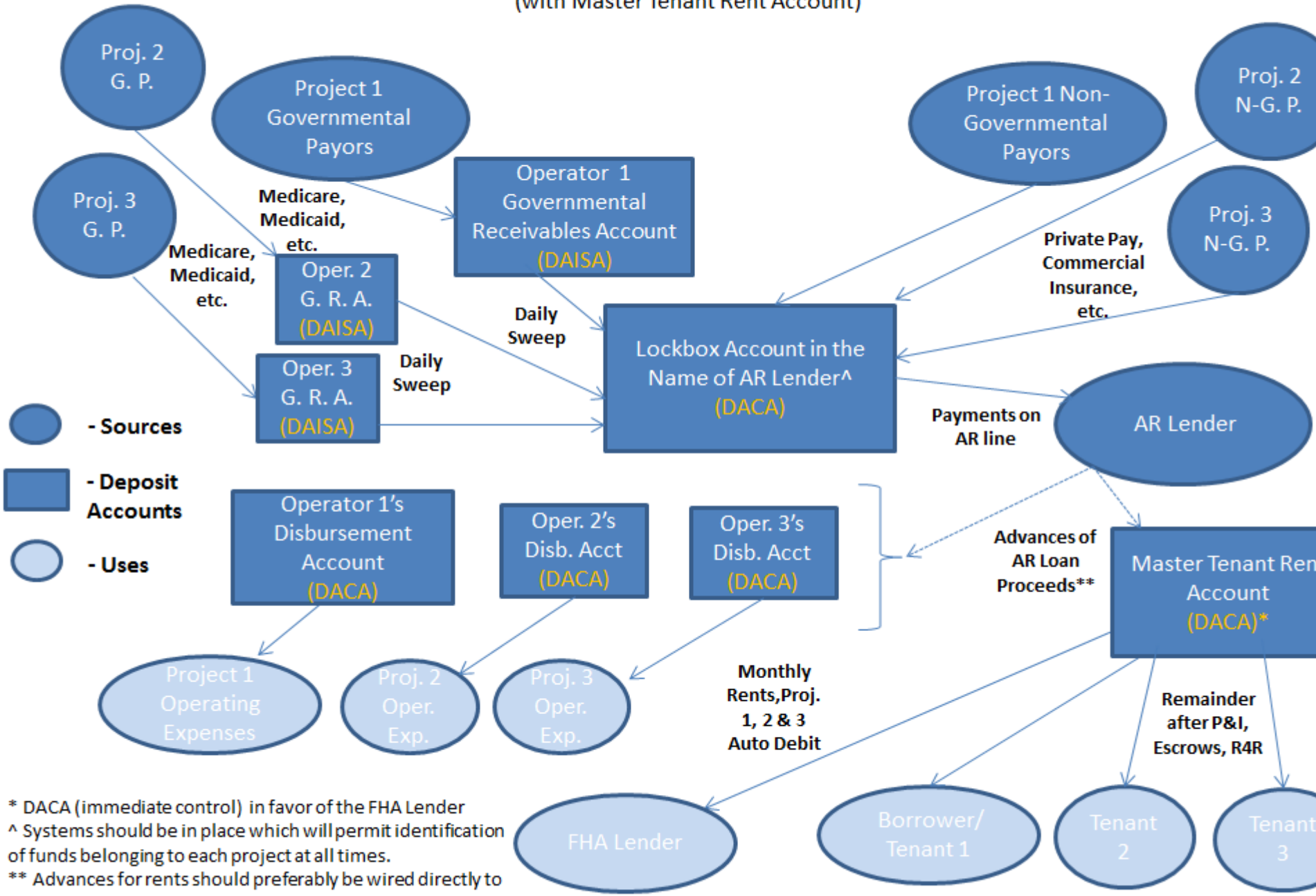


* DACA (immediate control) in favor of the AR Lender with provisions or second lien for future notification in favor of FHA Lender

** DACA (future notification) in favor of FHA Lender

^ Tenant Rent Account is not necessarily required

Master Lease (3+ Borrowers)
(with Master Tenant Rent Account)



* DACA (immediate control) in favor of the FHA Lender
^ Systems should be in place which will permit identification of funds belonging to each project at all times.
** Advances for rents should preferably be wired directly to Master Tenant Rent Account.

DACAs and DAISAs

- Deposit Account Control Agreements (DACA)
  - Non-government receivables
  - Control agreement

- Deposit Account Instruction Service Agreements (DAISA)
  - Government receivables
  - Sweep instructions
    - See §16.1

DACAs and DAISAs

- There is no standard HUD form DACA or DAISA, but certain key terms must be included in both documents:
  - ✓ §16.6(C)—DACA's;
  - ✓ §16.7(A)—DAISA's;
  - ✓ Legal Punchlists

Commingled Accounts

- If a commingled account is proposed, the parties must demonstrate the following:
  - Systems in place that identify all funds;
  - Operator financial reporting as required by 24 CFR 5.801;
  - Not permitted to commingle FHA-insured with non-FHA-insured projects
  - Subject to HUD's written approval
    - See §16.4(G) and Appendix 16.4.

DACA Detail

- General parameters – §16.6(A)
- Types of DACAs – §16.6(B):
  1. Future notification
  2. Immediate control
- Key elements – §16.6(C)
  - ❑ Parties
  - ❑ Notification of security interest
  - ❑ No other DACAs
  - ❑ Accounts covered
  - ❑ UCC language
  - ❑ Giving notice of control
  - ❑ Implementing control notice
  - ❑ Set-off, recoupment
  - ❑ Terminating a DACA

DAISA Detail

- Key elements – §16.7(A)
  - ❑Parties to a DAISA
  - ❑Notification of security interest
  - ❑No DACAs
  - ❑Accounts covered
  - ❑Sweep instructions
  - ❑Set-off, recoupment
  - ❑Termination of a DAISA

Key Elements for Both DACA and DAISA

- ❑Access to account
- ❑Account maintenance requirements
- ❑Minimum balance requirements
- ❑Conflicts
- ❑Bank fees
- ❑Indemnification
- ❑Boilerplate
- ❑Assignment (See §16.8)