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Section II Production

Chapter 15 Accounts Receivable Financing

15.1

Introduction

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

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

35
36 **In November 2008, HUD issued H08-09 Accounts Receivable Financing. The guidance in this*
37 *chapter supersedes this notice.*

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~~Material (as defined below) modification of an existing ARA/R Loan, ~~and the AR.~~, The A/R Lender must execute an Intercreditor Agreement for ARA/R Financing Projects (Form HUD-92322-ORCF) (“Intercreditor²) ~~with the FHA Lender.”~~). A proposed cash flow chart must be included with all submissions. See Production, Chapter 16 and Asset Management Chapter 10 for guidance on cash flow charts.

- A. **Review of Accounts Receivable Financing.** An ~~AR loan~~A/R Loan request may be submitted at any time during the life of an FHA ~~insured mortgage~~Insured Mortgage, including with a request to refinance a loan. If the ~~AR loan~~A/R Loan is being put in place in conjunction with an FHA-insured loan closing, review of the ARA/R approval request takes place as part of the firm commitment process and loan closing. ~~If the AR loan~~Otherwise, such as when an A/R Loan is being put in place in conjunction with a Change of Operator, review of the ARA/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 of the above instances, it should be determined if Before a request for an A/R Loan is submitted for any medium or large portfolio review acceptance letter applies and whether (as defined in Production Chapter 17), the FHA Lender must determine if the proposed ARA/R financing is consistent with such the Portfolio Corporate Credit Review approval~~ 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 their AR loan review request~~If the parties seek HUD pre-approval of certain future modifications to the terms of the A/R loan documents or request that HUD permit certain additional, unique terms, then the parties must propose these as part of their A/R Loan review (see below, in

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

82 Section 15.4). Such requests include, but are not limited to, that HUD pre-approve certain
83 future modifications or that HUD permit certain additional types of obligations to be secured
84 by an ARA/R Lender first lien on ~~Operator project~~Project collateral, which if approved,
85 Any specific approvals will be set forth in the A/R Terms Memo, which may be attached to
86 the ~~firm and~~Firm Commitment, attached to a Preliminary Approval Letter, or otherwise
87 issued by HUD. Only then may these terms be inserted into the Intercreditor. ARA/R
88 Lender and Operator are also required to disclose all proposed cross-defaults, which if
89 approved, are set forth in the Terms Memo and inserted into the Intercreditor. (see below, in
90 Section 15.4).

- 91
- 92 D. ~~Exceptions. ORCF understands that some borrowers~~Compliance. When Borrowers or
93 ~~operators~~Operators have existing ~~AR loans that were put in place prior to applicable ORCF~~
94 ~~guidance have not been reviewed by ORCF. If any such Borrower or Operator submits~~A/R
95 ~~Loans and they submit a TPA~~Change of Participant (CHOP) request, an application to
96 ~~refinance existing debt for an FHA-insured loan,~~ or any other request that requires ORCF
97 approval, ORCF will review the existing ARA/R loan documents to determine if any of the
98 documents require revision, and/or if additional documents, which incorporate ORCF
99 requirements, ~~have to~~must be executed by the applicable parties. Additionally, if an ~~AR~~
100 ~~loan~~A/R Loan was obtained in violation of a Borrower or Operator regulatory agreement,
101 administrative or enforcement action may be taken.

102

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

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

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

15.3

Accounts Receivable Financing Application Considerations

ORCF reviews requests to consent to ARA/R Financing for existing and new projectsProjects 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 projectProject. A well-structured ARA/R Financing agreement will support the financial viability of a projectProject 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 ~~that, at the discretion of ORCF, 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~~requires 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~~Maximum Availability Limit"). The ~~Credit~~Maximum Availability Limit formulation must be acceptable to ORCF.

ARA/R Loans involving multiple HUD projectsProjects 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~~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~~will 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

171 practices for such loans. Generally, the percentage of state, local and/or federal
172 governmental healthcare insurance program receivables (collectively, the “Governmental
173 Receivables”) included in the borrowing base ~~should~~must not exceed an 85% advance
174 rate, and the Governmental Receivables ~~should~~must not be aged greater than 120 days.
175 Governmental Receivables aged between 120 days and up to 180 days may be accepted by
176 ORCF if: there are extenuating circumstances that cause an excessive delay in the
177 governmental payor’s payment of reimbursements, and ORCF determines that the delay in
178 the payment does not jeopardize the financial viability of the ~~project~~Project. A request for
179 aging between 120 days and up to 180 days must be supported by an analysis of the historical
180 (not less than six months) and projected data on the timing of the reimbursements found
181 acceptable to ORCF.

182
183 The proposed borrowing base may also include prudent percentages of Non-Governmental
184 Receivables ~~that do not exceed prudent aging limits; however, the aging, types and~~
185 ~~percentages included~~(i.e., Commercial), that do not exceed prudent aging limits. The
186 proposed borrowing base may also include prudent percentages (i.e., aged not more than 90
187 days) of Private Pay Receivables to be reviewed on a case-by-case basis, particularly where
188 warranted to help mitigate Medicaid Pending processing delays. The entire eligible
189 borrowing base must not exceed 85% advance rate, net of any Letters of Credit. The Non-
190 Governmental Receivables must not be aged more than 120 days. The aging, types and
191 percentages must be acceptable to ORCF. Generally, prudent aging limits on these types of
192 receivables will be shorter than those for Governmental Receivables. The inclusion of any
193 Medicaid Pending (i.e., receivables related to residents that have not yet been certified as
194 eligible by Medicaid but have submitted their documentation) in the borrowing base must be
195 justified, and must be subject to aging limits. Eligible receivables must not include
196 receivables that are generated outside the ordinary course of an operator’s business, and must
197 be limited to those generated by the FHA-insured ~~project~~Project subject to the A/R line; for
198 example, they cannot include other receivables generated by a non-single asset Operator with
199 respect to ~~projects~~Projects not approved by HUD for inclusion in the ~~AR loan~~A/R Loan.

- 200
201 E. **Parties.** The Operators of ~~those~~ FHA-insured ~~projects~~Projects approved by ORCF for
202 inclusion in the ~~ARA/R~~ Loan ~~may be Borrowers are generally the borrowing entity~~ under the
203 ~~ARA/R~~ Loan. The Operators are customarily the lessee entities. ~~Occasionally, there is no~~
204 ~~lease and the HUD Borrower is also the Operator; in which event the HUD Borrower must~~
205 ~~sign the Healthcare Regulatory Agreement—Operator (Form HUD-92466A) (“Operator’s~~
206 ~~Regulatory Agreement”)~~ and Operator Security Agreement (Form HUD-92323-ORCF), in
207 addition to the Healthcare Regulatory Agreement—Borrower (Form HUD-92466-ORCF)
208 (“Borrower’s Regulatory Agreement”) and Security Instrument/Mortgage/Deed of Trust
209 (Form HUD-94000-ORCF) (“Security Instrument”).

210
211 If there is a management agent or service provider involved as a party to the A/R Loan, a
212 determination must be made as to whether such entity is the licensee ~~or~~; a party to the
213 Medicaid/Medicare or other provider agreements, and/or resident contracts; or a party to
214 deposit account agreements. In such event, such party is in effect an Operator in its own
215 right, and must sign and provide all the documents (and meet all the requirements) required
216 of an Operator.

217
218 Production, Chapter 16 provides guidance regarding other parties that may be required to
219 execute or join into the deposit account agreements, the FHA Lender security documents, the
220 Healthcare Regulatory Agreement – Master Tenant (Form HUD-92337-ORCF) (“Master
221 Tenant’s Regulatory Agreement”), the Borrower’s Regulatory Agreement and/or the
222 Operator’s Regulatory Agreement. Production, Chapter 16 also provides guidance on
223 Borrower Representatives.
224

225 The FHA Lender, the ARA/R Lender, the Borrower and the Operator are parties to the
226 Intercreditor; HUD is not a party. If a Master Lease is involved, the Master Tenant ~~will~~
227 generally may also be a signatory to the Intercreditor. Occasionally, other parties (such as a
228 Borrower Representative) ~~may will~~ be required to sign the Intercreditor Agreement, as well as
229 an agreement with the FHA-Lender to create a security interest for the funds handled by
230 other parties.
231

- 232 F. **Use of Proceeds.** ARA/R Loan proceeds are used for working capital purposes related to the
233 operation of the FHA-insured ~~projects. AR loans~~ Projects. A/R Loans may include letter of
234 credit sub-limits if disclosed ~~to~~ and approved by ORCF, but Letters of Credit issued must
235 always be subtracted from the Availability as defined in the Intercreditor Agreement.
236

237 AR loan A/R Loan draws based on a facility’s receivables are ~~project~~ assets of such facility,
238 regardless of whether they are held in commingled or in Borrower representative accounts.
239 The Intercreditor requires that ARA/R loan proceeds be used only for ARA/R debt service,
240 then the operating expenses of the ~~project~~ Project (including lease payments), and only then,
241 subject to any restrictions in the ARA/R Loan Documents and all applicable Regulatory
242 Agreements, for distributions. HUD regulations (see 24 CFR 232.1013(b)) and the
243 Operator’s Regulatory Agreement restrict the ability of an Operator to use any funds derived
244 from the operation of the ~~project~~ Project (which would include loan draws based on such
245 ~~project’s~~ Project’s borrowing base) for distributions or non-~~project~~ Project purposes in the
246 following instances:
247

- 248 1. Upon receipt of a Notice of Violation under the Operator’s Regulatory Agreement;
249
250 2. If a quarterly/year to date financial statement demonstrates negative Healthcare
251 Facility Working Capital, (as defined by HUD in the Operator’s Regulatory
252 Agreement), or if the Operator fails to timely submit such statement, until such time
253 as a current quarterly, year-to date financial statement demonstrates positive
254 Healthcare Facility Working Capital or until otherwise authorized by HUD.
255

256 In the above instances, loan draws based on a ~~project’s~~ Project’s receivables (as well as any
257 other funds derived from or in connection with the operation of the Project) cannot be used
258 for any purpose other than ~~the Operator making payments on its lease (or other Borrower-~~
259 ~~Operator agreements), making payments under the HUD Loan Documents (including any~~
260 ~~cross guaranty assigned to FHA Lender under a Master Lease structure) and under any~~
261 ~~approved AR Loan, and making payments for goods and services of the project, provided~~
262 ~~such payments for goods and services satisfy~~ for the benefit of the FHA-insured Project, such

263 as lease payments, debt service and payment for goods and services within the limitations in
264 the Operator's Regulatory Agreement.

265
266 If the HUD Borrower is also the Operator, the Borrower's Regulatory Agreement provides
267 that distributions or other payments other than projectProject expenses cannot be made from
268 borrowed funds except to the extent permitted by the Operator's Regulatory Agreement and
269 other HUD Program Obligations.

270
271 Particularly in instances where AR loanA/R Loan draws are being made on an aggregate
272 basis, the Operators included in such an A/R line, and any Borrower Representative approved
273 by HUD that may be receiving such aggregate draws for further distribution, must ensure that
274 AR loanA/R Loan proceeds are allocated among the projectsProjects subject to the ARA/R
275 line in a manner consistent with the foregoing restrictions.

276
277 G. **Single ARA/R Loan.** HUD permits only a single ARA/R Loan for a projectProject.
278 However, as provided in the Operator Security Agreement, HUD will deem a syndicated or
279 participated loan as a single ARA/R Loan provided that HUD is provided satisfactory
280 assurances that the lead/administrative agent has authority to bind all such Lenders to the
281 Intercreditor, and will be the sole party entitled to enforce the Intercreditor and the rights in
282 projectProject collateral.

283
284 H. **Projects included in the ARA/R Loan.** Only FHA-insured projectsProjects that HUD
285 approves for inclusion in the ARA/R Loan may can be included as BorrowersProjects in the
286 ARA/R Loan. No additional projectsProjects or Borrowers can be added without prior HUD
287 approval. AR. A/R Loans range from single stand-alone loans including only one FHA
288 projectProject to large, syndicated AR loansA/R Loans including many HUD
289 projectsProjects and multiple FHA Lenders. If a portfolio review is required or has already
290 occurred, the portfolio approval letter (and any cash flow charts, or documents approved in
291 connection therewith) must always be reviewed.

292
293 While only FHA-insured projectsProjects approved by ORCF may can be included as
294 BorrowersProjects on the ARA/R line, the ARA/R Lender may also secure the ARA/R Loan
295 with non-projectProject collateral or non-HUD projectsProjects and guarantees, provided
296 that, the costs of administering or enforcing such non-HUD projectProject collateral
297 documents cannot be charged to AR loanA/R Loan or Borrower(s) on the HUD
298 projectsProjects (see below, in Section 15.4.D). While the A/R Loan may be secured by non-
299 Project collateral, other non-Project (non-FHA-insured) loans cannot be secured with FHA
300 Loan collateral.

301
302 I. **Lien Priority and Intercreditor.** ORCF requires that the FHA-insured loanLoan be secured
303 by a first lien and security interest on the project,Project and requires the Operator to execute
304 a security agreement and assignment of rents in favor of the FHA Lender whichthat covers
305 all of the Operator's property related to projectassets in the Project, including but not limited
306 to all of the Operator's Governmental and Non-Governmental account receivables arising
307 from or related to the FHA-insured project or projects. However, ORCF will allow ARA/R
308 Lender to take a first priority security interest in the project'sProject's accounts, including

309 Governmental and Non-Government account receivables, as set forth in the Intercreditor,
310 provided that the ARA/R Lender executes ~~an~~the Intercreditor.

311
312 Under the Intercreditor, the FHA Lender subordinates its security interest in the Operator's
313 account receivables related to the ~~projects,Projects~~ to the security interests of the ARA/R
314 Lender. Those items of Operator ~~projectProject~~-related collateral upon which the ARA/R
315 Lender is permitted to have a first lien are known as the ARA/R Lender Priority Collateral.

316
317 ORCF may also permit the ARA/R Lender to secure its loan with a subordinate security
318 interest on other assets of the Operator related to the ~~projectProject~~ provided that the ARA/R
319 Lender agrees not to exercise its remedies as to non-ARA/R Lender Priority Collateral of the
320 ~~project-ARProject~~, as set forth in the Intercreditor Agreement. However, A/R Lenders
321 must not secure ~~AR loans~~A/R Loans with liens on the ~~projectProject~~ real estate or fixtures or
322 on any rent account dedicated solely to lease payments or on the Operator's interest under the
323 lease. Generally, a lien on fixtures or real estate is perfected by filing in the property
324 jurisdiction. A lien on deposit accounts is perfected by control.

325
326 The parties to the Intercreditor are required to set forth all disclosures ~~in~~, schedules and
327 exhibits as dictated by the Intercreditor Agreement. Submitting the ~~AR loan documents~~A/R
328 Loan Documents to HUD does not constitute a disclosure to and approval by HUD.

- 329
330 J. **Cross-Collateralization.** Provided that each Borrower has access to the ARA/R Loan, and
331 subject to the Intercreditor, HUD permits the ARA/R Lender to cross-collateralize its HUD-
332 approved ARA/R Loan with Operator collateral related to all the FHA-insured
333 ~~projectsProjects~~ approved by HUD for inclusion in the ARA/R line. The ARA/R Lender
334 cannot use the accounts receivable, or any other collateral related to the included FHA-
335 insured ~~projectsProjects~~ to secure or pay loans to non-FHA ~~projectsProjects~~/Operators, or to
336 secure or pay debts of FHA-insured ~~projectsProjects~~ not approved for inclusion in the
337 ARA/R line.

338
339 An ARA/R Loan that involves both FHA-insured ~~facilities~~Healthcare Facilities and non-FHA
340 Insured facilities is not acceptable. It must be restructured to HUD's satisfaction so as to
341 separate the non-HUD projects/parties and the HUD ~~projectsProjects~~/parties into separate
342 loans. This ~~is often~~arrangement may be encountered:

- 343
344 1. Where an Operator is not a single asset entity and it operates both FHA-insured and
345 non-FHA Insured ~~projectsProjects~~, or
346 2. Where an Operator's control group operates both FHA ~~insured~~ and non-FHA
347 ~~insured- insured~~ projects.

348
349 ~~The non HUD AR line/Non-FHA-insured~~ projects are permitted to also secure the HUD-
350 approved AR~~FHA-insured loans included in an A/R~~ Loan; but the FHA-insured
351 ~~projectsProjects~~ cannot secure the non-FHA ~~Insured projects-insured project's~~ obligations.
352 ~~HUD permits, though does not require or encourage, the AR Lender to cross-default the AR~~
353 ~~Loan for the FHA-insured projects to the occurrence of an Event of Default on the non-FHA~~
354 ~~Insured line. Any proposed~~

355 K. Cross-Defaults. HUD acknowledges that certain cross-defaults ~~must be disclosed to~~ may be
356 included in A/R loan agreements in order for A/R Lenders to address borrower relationships in a
357 global way and ~~approved by ORCF to allow A/R Lenders to address problems with approved~~
358 ~~cross-defaults being set forth in its borrowers promptly, rather than waiting for the borrowers'~~
359 ~~financial condition to worsen. As such, HUD will approve certain cross-default provisions. All~~
360 ~~cross-default provisions must be disclosed during underwriting and must be set forth on Exhibit B of~~
361 ~~the Intercreditor. These include any proposal to cross default the AR Loan for the FHA-~~
362 ~~insured projects Agreement.~~

363
364 As an insurer of non-recourse loans, HUD's policy is to ~~Events~~ approve cross-defaults in HUD
365 Facility A/R Loan Agreements on a case-by-case basis and to limit its approval of ~~Default on the~~
366 ~~non-any A/R loan cross-defaults to defaults on obligations to which HUD line, as well as can~~
367 ~~reasonably quantify and address the risk. ORCF will review the cross-defaults disclosed in Exhibit B~~
368 ~~of the Intercreditor Agreement to ensure they meet programmatic requirements. Cross-defaults~~
369 ~~related to obligations to which HUD has no means to quantify and/or address the risk can cause a~~
370 ~~liquidity crisis jeopardizing the FHA insured facilities on the A/R line. All cross-defaults listed in~~
371 ~~Exhibit B must reasonably describe the obligation which could cause a cross-default, the maximum~~
372 ~~dollar amount of such obligation, the principal transactional document(s) outlining such obligation,~~
373 ~~the parties to such transactional document(s), the dates of such transactional document and the~~
374 ~~anticipated maturity date of such obligations. It is not acceptable to only incorporate by reference the~~
375 ~~cross-default provisions, or otherwise restate the general default provisions, set forth in other A/R~~
376 ~~financing documents.~~

377 ORCF has created the following guidance to help evaluate whether a cross-default constitutes an
378 acceptable underwriting risk and will, therefore, be approved by HUD:

- 379
380 a) A monetary or covenant default on a debt that exceeds \$150,000 which is the obligation of
381 a borrower, guarantor, affiliate, or other related party on the proposed FHA-insured projects
382 A/R loan may cross default the proposed FHA-insured projects A/R loan.
383
384 b) A monetary or covenant default under a separate FHA-insured or a non-FHA-insured
385 projects A/R loan may cross default the proposed FHA-insured projects A/R loan.
386
387 c) HUD will consider any other proposed cross-defaults. ~~Unapproved cross defaults on a~~
388 case-by-case basis; however, a detailed justification must be provided to HUD as to why
389 any additional cross-default is necessary.
390
391 a)d) Material Adverse Change Clauses ("MAC Clauses" and other material / adverse change
392 clauses) that permit the A/R Lender to declare a default under the A/R loan based on a
393 material adverse change suffered by an A/R loan borrower, guarantor, affiliate, or other
394 related party will not be ~~permitted.~~ approved by HUD and may not be included in Exhibit
395 B of the Intercreditor.

396
397 ~~K.L.~~ K. — ARA/R Loan Obligations Secured by Project Collateral. ARA/R Loan
398 Documents documents frequently contain expansive definitions of the obligations secured
399 by the collateral. Notwithstanding any such definition, the Intercreditor limits the types of
400 obligations that may be secured by ~~project~~ Project collateral to: the Revolving ARA/R
401 Loan up to the Maximum Commitment Amount approved by HUD and other obligations
402 directly related to the benefit of the Healthcare Facility, with some disallowable
403 obligations explicitly excluded in the Intercreditor Agreement. The Maximum

404 Commitment Amount is inserted into the Intercreditor. The Intercreditor Agreement
405 limits what obligations the ~~project~~Project collateral secures. Non-qualifying obligations
406 may be unsecured and/or secured by non-~~project~~Project collateral or guarantees.
407

408 HUD recognizes that there may be instances where other obligations are of a nature that
409 may be appropriate to secure with ~~project~~Project collateral. Accordingly, the definition
410 of ARA/R Loan Obligations in the Intercreditor Agreement permits additional specific
411 obligations (generally referenced here as bank products) to be added that are not
412 inconsistent with HUD Program Obligations, if approved by ORCF. The parties should
413 submit such a request and provide justification for it at the time of the request ~~for, before~~
414 approval of the ARA/R Loan is made. Such request must specify whether the additional
415 obligation will be constrained by the Borrowing Base. If approved by ORCF, and subject
416 to any conditions to ~~such~~the approval, such specific additional obligations will be
417 ~~inserted into~~documented in the Intercreditor in the space provided for ~~such~~that purpose.
418

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

422
423 L.M. **Cash Flow Structures.** The proposed cash flow structure must be acceptable to
424 HUD (including any commingled account features, which accounts will be subject to
425 deposit agreements, the existence of multiple projects, identity of FHA Lender, name of
426 depository bank, account number, FHA project number, etc.). The two primary types of
427 ARA/R Loan structures, together with guidance on acceptable structures and deposit
428 account agreements, are set forth in Production, Chapter 16.
429
430
431
432

15.4

Document Requirements and Reviews

433
434 Set forth below is a list of the key documents that ~~ORCF~~HUD reviews when considering a
435 request for consent to ARA/R Financing. Checklists or ~~punch-lists~~Punch Lists may from time to
436 time be posted on the Section 232 Program website. The HUD closing attorney must also review
437 the proposed ARA/R Loan Documents and ~~they must find them to~~ be acceptable. Certain
438 documents are required HUD forms, which must be used where applicable. Such HUD forms
439 can be found on HUDCLIPS (see Appendix 15.1). Certain samples of non-mandatory forms
440 may be posted from time to time on the Lean ~~closing documents~~Closing Documents website.
441

442 A. **Lender Narrative, Section 232/223(f) Refinance (Form HUD-9002-ORCF), ~~Addendum~~**
443 **~~to Underwriting Narrative—Accounts Receivable (AR).~~ If A/R Financing, ~~Section~~**
444 **~~232/223(a)(7), 223(d), 241(a) (HUD-9001i-ORCF).~~ If the AR financing is proposed as part**
445 **of an FHA-insured Loan Closing, or as a post-closing item, the appropriateAccounts**
446 **Receivable Financing Certification, Form HUD-90020-ORCF, the Intercreditor Agreement,**
447 **Form HUD-~~form of -92322-ORCF,~~ and the Lender Narrative ~~with AR Loan Addendum~~**

448 Accounts Receivable (A/R) Financing (New or Modified) Form HUD 90031-ORCF must be
449 submitted.

451 **B. Requests for Pre-Approval of Certain ARA/R Loan Modifications and of Proposed**

452 **Cross-Defaults.** Both the Operator and the ARA/R Lender must agree not to alter the
453 ARA/R Loan terms in certain material ways without the FHA Lender's and/or
454 HUD's ORCF's consent. ~~Although the~~The Operator's Regulatory Agreement and
455 Intercreditor Agreement set forth the specific material terms requiring consent prior to
456 modification, and specific allowable modifications that do not need HUD and/or FHA
457 Lender consent, ~~as~~. As a general matter, however, HUD considers the following
458 modifications to the ~~AR Lender~~ARA/R Loan Documents to be ~~material if~~ "Material" and ORCF
459 must consent to such modification:

- 461 1. Adds or releases guarantors to the ~~AR Lender~~ARA/R Loan,
- 462 2. Adds an interest reserve to the ~~AR Lender~~ARA/R Loan,
- 463 3. Amends the interest rate payable on the outstanding principal balance of the ~~AR~~
464 ~~Lender~~ARA/R Loan (other than, and in addition to, increases in the interest rate pursuant
465 to variable interest rate provisions thereof),
- 466 4. Increases or decreases the ~~previously HUD approved~~ principal amount of the ~~AR~~
467 ~~Lender~~ARA/R Loan,
- 468 5. Grants any ~~non HUD approved~~ loan term extension, (i.e., extends maturity rate),
- 469 6. Amends or expands the type of obligations secured by the ~~AR Lender~~ARA/R Loan,
470 ~~and/or~~
- 471 7. Any Adds or removes a borrower or borrower principal to the loan,
- 472 8. Adds collateral as additional security for the loan,
- 473 7-9. Modifies any term or condition that may be deemed material at the sole discretion of
474 HUD,
- 475 8-10. Increases the Maximum Commitment Amount, or
- 476 9-11. Alters the borrowing base formula, or
- 477 12. Occurs after a payment default is declared by the A/R Lender.

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

485
486 If such flexibility is desired, the initial ARA/R Loan request must include a proposal that
487 outlines the parameters of any proposed loan extension and/or interest rate change. ORCF
488 will generally only agree to extensions for up to six years for committed lines of credit and
489 up to three years for uncommitted lines of credit in the aggregate, so long as there are no
490 changes to any other Material terms. The proposal must include a justification for the request
491 and a financial analysis that demonstrates the effect of the loan extension and/or rate change
492 on the financial viability of the ~~project~~Project. ORCF will review the request and the
493 approval of said request will be in the sole discretion of ORCF. If the request for the loan

494 extension and/or rate change is approved, it is ~~inserted into the Intercreditor, and the Operator~~
495 ~~will be required to: notify ORCF when any such pre-approved extensions and/or rate changes~~
496 ~~occur; timely provide ORCF with complete copies of the revised AR Loan Documents; and~~
497 ~~provide a certification that only changes pre-approved by ORCF were made to the AR Loan~~
498 ~~Documents. Proposed cross-defaults must be disclosed and if approved by ORCF, will be~~
499 ~~inserted into the Intercreditor. Please see 15.3.J above.~~

500 documented in the Intercreditor Agreement, and the Operator will be required to:

501 **The AR**

- 502 • Notify ORCF when any such pre-approved extensions and/or rate/index changes occur.
- 503 • Timely provide ORCF with complete copies of the revised A/R Loan Documents; and
- 504 • Provide a Borrower and/or Operator certification that only changes pre-approved by
505 HUD were made to the A/R Loan Documents.

506
507 Any proposed new, amended or deleted cross-defaults in the A/R loan documents must be
508 disclosed to, and approved by, HUD, and if approved by HUD, the Intercreditor Agreement
509 will need to be amended to update Exhibit B of that agreement. Please see 15.3.J. above.
510

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

515
516 D. **ARA/R Loan Guarantees and Equity Pledges.** -The ARA/R Lender's first priority lien in
517 ARA/R Lender Priority collateral may secure only the approved revolving loan. The A/R
518 Lender Priority Collateral may not secure term loan ~~facilities,(s)~~, equipment loan ~~facilities(s)~~
519 or any indebtedness, liability or obligations arising under a guarantee, except for guaranteed
520 obligations to the extent the obligations guaranteed consist solely of approved ARA/R Loan
521 Obligations. The guarantors must waive any subrogation, contribution, reimbursement, or
522 similar rights until the FHA-insured loan has been paid in full; and the guaranties must be
523 otherwise acceptable to ~~ORCF.~~ HUD. All pledges, guarantees, waivers, fee letters and any
524 other agreements must be disclosed in the Intercreditor Agreement.
525

526 Any guarantee or equity pledge by a principal of an FHA-insured ~~project~~ Project, as
527 ~~determined~~ approved under applicable HUD guidance, must not include provisions
528 inconsistent with HUD Program Obligations; and must likewise require the prior written
529 approval of HUD prior to any transfer of such ownership interests or the exercise of control
530 (such as through the exercise of voting rights) and previous participation clearance.
531

532 The HUD Borrower entity cannot pledge collateral (including, but not limited to membership
533 interests, fixtures, accounts or real estate) to secure an ~~AR loan~~ A/R Loan to the Borrower-
534 Operator(s) or to any other party.
535

536 E. **Organizational Narrative and Chart.** ~~A~~ The Organizational Narrative is a narrative that
537 describes the legal structure of the HUD Borrower entity and the operating entity and
538 discloses all tiers of ownership. If the Borrower or Operator has multiple tiers of ownership,

539 the narrative shall include an organization chart identifying all parties and their relationship
540 to one another.

541
542 If the parties to the ARA/R Financing loan have closely related interests, there may be a
543 prohibited Identity of Interest (IOI). Upon review, if ORCF determines that the ARA/R
544 Financing loan arrangement benefits closely related interests at the expense of the financial
545 viability of the ~~project~~Project, a Conflict of Interest will in fact exist (see Introduction,
546 Chapter 1.6.D). If ORCF determines that there is in fact a ~~conflict~~Conflict of ~~interest~~Interest,
547 the Operator and all affected parties will be asked to submit a proposal of how the conflict
548 will be mitigated. In consultation with HUD OGC, ORCF reserves the right to determine if
549 the proposed mitigation plan is acceptable. Therefore, it is important that all relationships
550 among the parties to the ARA/R Financing loan submission be ~~identified~~disclosed, including,
551 but not limited to, the following parties:

- 552
- 553 1. All principals of the Borrower,
- 554 2. All principals of the Operator,
- 555 3. FHA Lender,
- 556 4. All parties to the ARA/R Financing loan,
- 557 5. Depository banks,
- 558 6. General contractor, if applicable,
- 559 7. Management agent, if applicable,
- 560 8. Consultants, if applicable, and
- 561 9. If the law firms rendering the opinions have an identity of interest with any of the
562 above, and/or if any of the attorneys therein are guarantors of, or otherwise involved
563 with, the ~~AR loan~~A/R Loan.
- 564

565 F. **Flow of Funds Chart.** An accounts receivable cash flow of funds chart (see Production,
566 Chapter 16 for guidance and samples) is a chart that describes the collection and flow of
567 funds from the Operator's initial deposit of its receivables through disbursement ~~and the~~
568 ~~Operator's uses~~ of the ARA/R Financing loan proceeds. Once the cash flow chart is
569 approved by HUD and FHA Lender, it is attached as Exhibit C-1 to the Operator Security
570 Agreement. A new cash flow chart must be submitted if the cash flow chart, including
571 deposit accounts and/or deposit bank(s) is/are ever modified, and Exhibit C-1 of the
572 Operator Security Agreement will require an update upon HUD's approval of the
573 modified cash flow chart. A new cash flow chart must be submitted if the cash flow chart,
574 including deposit accounts and/or deposit bank(s), is/are ever modified, and Exhibit C-1
575 of the Operator Security Agreement will require an update upon HUD's approval of the
576 modified cash flow chart.

- 577 1. Wherever the A/R Lender has a control agreement on an account or is the
578 depository bank, the FHA Lender must also have a control agreement in place
579 to perfect its security interest in the account.
- 580 2. If an account co-mingles funds from multiple FHA-insured Projects, this must
581 be indicated on the cash flow chart. Where A/R Financing involves more than
582 one FHA lender, there must be a written agreement between the FHA lenders
583 on which lender will manage the relationship with the depository bank.

584 3. When an existing A/R Lender is being replaced, the parties must make
585 arrangements acceptable to HUD for the termination of any existing DAISAs
586 or DACAs in favor of such exiting A/R lender.
587

588 G. **Healthcare Regulatory Agreement – Operator.** ~~Document that~~This document outlines the
589 ~~requirement~~requirements for professional liability insurance, the ~~submission~~restrictions of
590 ~~ARA/R~~ Financing, financial reports, and compliance with HUD Program Obligations.
591

592 H. **UCC Termination Statements.** In the event an existing ~~ARA/R~~ Lender (or any existing
593 non-compliant line) is being replaced or restructured, the forms of releases, UCC
594 terminations statements or similar documents acceptable to the HUD closing attorney must
595 be submitted in advance of closing, and the plan for addressing such termination must be
596 acceptable to ORCF and the HUD closing attorney.
597

598 I. **Intercreditor Agreement.** ~~Document that~~This document sets forth the respective priorities
599 and agreements of the FHA Lender and the ~~ARA/R~~ Lender with respect to the Operator
600 collateral. This agreement includes provisions that require special coordination with ORCF
601 and are generally documented in the A/R Terms Memo.
602

603 J. **Deposit Account Instructions and Service Agreement (DAISA-Governmental**
604 **Receivables).** ~~Agreement~~The DAISA is an agreement on each deposit account identified in
605 the approved cash flow chart into which governmental receivables will be initially deposited.
606 Funds in this deposit account cannot be pledged as collateral so they must be swept in
607 another bank account which can be pledged as collateral. See Production, Chapter 16 for
608 guidance and the Section 232 Program website for a sample format.
609

610 K. **Deposit Account Control Agreement(s) (DACA-Non-Governmental Receivables).**
611 ~~Agreement for each~~The DACA is a control agreement on a deposit account ~~identified in~~
612 ~~the~~into which non-government receivables are deposited. The approved cash flow chart ~~for~~
613 ~~which a DACA is required,~~will show which deposit accounts will be covered by a DACA.
614 A DACA may also ~~may~~ be referred to as a Blocked Account Agreement. See Production,
615 Chapter 16 for guidance and the Section 232 Program website for a sample format.
616

617 ~~L. Subordination Agreement/SNDA (Form HUD-92333-ORCF)/ Subordination, Non-~~
618 ~~Disturbance and Attornment Agreement of Operating Lease (SNDA) (Form HUD-~~
619 ~~91110-ORCF).~~ Agreement which provides for the subordination of the Master Lease ~~or~~
620 ~~Operator's Lease (the "Lease") to the FHA insured mortgage and, if a SNDA is approved,~~
621 ~~provides for non-disturbance of a third party Operator under certain conditions. The SNDA~~
622 ~~provides protection to the Operator only if the Operator is not in default under the terms and~~
623 ~~conditions of the Lease.~~
624

625 **M.L. Operator Legal Opinion.** As part of a closing, Operator's counsel provides this ~~to the~~
626 ~~Operator~~opinion using the Guide for Opinion of Operator's Counsel and Certification
627 (Form HUD-92325-ORCF). ~~It provides that counsel has reviewed executed copies~~
628 ~~of~~Counsel must opine to the legal sufficiency of various documents, including the
629 Intercreditor, ~~ARA/R~~ Loan Documents and affiliated credit documents.

630
631 N.M. Operator Security Agreement. (Form HUD-92323-ORCF). Paragraph 20 of this
632 document is entitled, “Provisions Regarding Accounts Receivable Loan.” Exhibit C and C-1
633 to the Operator Security Agreement may need to be updated as part of a new A/R loan.
634
635

15.5

Important Safeguards and Conditions

636
637 In addition to looking for documents such as those listed above, ORCF’s consent to a typical
638 ARA/R Financing loan is also based on evidence that important safeguards and conditions
639 are established and agreed upon by the parties. The ~~particular~~ terms that should be included
640 depend on an evaluation of the proposed transaction as a whole; however, set forth below are
641 some of the important safeguards and conditions that should be considered.

642
643 A. Whether funds advanced under the ARA/R Financing loan are used as provided in the
644 ORCF-approved Intercreditor Agreement and applicable ORCF Program Obligations.

645
646 ~~B. Whether cross-collateralization of AR Financing is permitted only for those healthcare~~
647 ~~projects subject to FHA mortgages that are identified in the request for ORCF’s consent to~~
648 ~~the AR Financing loan.~~

649 A/R

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

653
654 ~~D. The FHA Lender and AR Lender have entered into an Intercreditor or in those instances~~
655 ~~where an alternate format is permissible, an agreement between creditors that contains terms~~
656 ~~and conditions acceptable to HUD and materially consistent with the programmatic~~
657 ~~considerations.~~

658
659 E.B. Whether the AR Lender has sufficient experience (generally, at least three years) in
660 providing ARA/R Financing and the necessary experience and financial controls in place to
661 monitor the financial operations of the Operator.

662
663 C. Whether A/R Financing that involves multiple FHA lenders has been adequately structured
664 to designate a lead FHA Lender. The Lead FHA Lender will be defined as the FHA Lender
665 submitting a new joinder/request to add projects to an existing line. This Lender will be
666 responsible for submitting the AR Lender Narrative, all supporting documents, and analysis
667 for ALL projects on the AR line. The FHA Lender of the facility or facilities currently on
668 that line do not need to consent.

669
670 D. Whether the aggregate cost(s) and risk of particular A/R Financing and particular A/R
671 Lender exceeds acceptable risk to the Fund.
672
673