Section III
Asset Management

Chapter 10
Accounts Receivable Financing and Cash Flow Structures

10.1 Introduction

Please refer to Production, Chapter 15 for guidance related to Accounts Receivable Financing as it relates to Asset Management concerns, except as outlined below.

~~*In November 2008, HUD issued H08-09 Accounts Receivable Financing. The guidance in this chapter supersedes this Notice.*~~

10.2 Applicable Programs

The Office of Residential Healthcare Facilities ("ORCF") will evaluate ~~AR~~A/R Financing loan requests utilizing the guidance provided in this chapter and Production, Chapters 15 (Accounts Receivable Financing) and 16 (Cash Flow Structures/DACAs and DAISAs) for the following programs:

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) and Section 232 pursuant to Section 223(f) pursuant to Section 223(a)(7) for refinancing
4. Section 241(a) for supplemental loans in connection with a Section 232 insured mortgage under one of the categories described above
5. Section 223(d) operating loss loans in connection with a Section 232 insured mortgage loan under one of the categories described above

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

10.3 Accounts Receivable Financing Application Considerations

~~Generally,~~ HUD approval must be obtained for any ~~AR~~A/R Loan or any material modification of an existing ~~AR~~A/R Loan, and the ~~AR~~A/R Lender must execute an Intercreditor Agreement with the FHA Lender, the Operator and the Borrower. A proposed cash flow chart must be included with all submissions. (See Production, Chapter 16 Cash Flow Structures, DACAs and DAISAs for guidance on cash flow charts). Please refer to Production, Chapter 15 for general guidance on A/R Financing.

A. ~~Review of Accounts Receivable Financing: An AR loan~~ A request to review A/R loan financing may be submitted at any time during the life of an FHA-insured mortgage. For example, an ~~AR~~A/R loan request may be submitted: along with a ~~Transfer~~Change of ~~Physical Assets (TPA~~Participants (CHOP); included in a submission for a new and/or change of Operator; or with a request to approve a new ~~AR~~A/R loan or modification of an existing ~~AR~~A/R loan. If the ~~AR~~A/R loan is being put in place in conjunction with an FHA-insured loan closing (or with a ~~TPA~~CHOP that is being processed concurrently with an FHA-insured loan closing), review of the ~~AR~~A/R approval request takes place as part of the firm commitment process and loan closing. Production will consult with the Account Executive(s) for the subject Projects. Otherwise, requests to approve ~~AR~~A/R financing are directed to the ORCF Account Executive (AE) assigned to the project. In all instances, including post-closing requests, the submission must be by the FHA Lender~~,~~ and Lender's Counsel, not the Operator or Borrower.

B. ~~In all of the above instances, it will be determined if~~If a portfolio review acceptance letter applies and whether the proposed ~~AR~~A/R financing is consistent with such letter and any flow charts or documents approved in connection therewith. See Production, Chapter 16.2 (Cash Flow Structures, DACA's and DAISA's), and Production, Chapter 17 (Portfolios).

~~C. The parties may propose as part of the AR loan review request that HUD pre-approve certain future modifications or that HUD permit certain additional types of obligations to be secured by Operator project collateral.~~

~~D.~~C. ~~All existing HUD loans entering into a new accounts receivable line of credit~~New A/R Financing must comply with current policies pertaining to Accounts Receivable Financing.

~~E. Projects being added~~When requesting approval to an existing ~~HUD~~, ORCF-approved ~~accounts receivable lines of credit~~A/R loan, the existing A/R Financing must also be amended to comply with the ~~current ORCF mortgage insurance documents.~~

~~10.3 Accounts Receivable Financing Application Considerations~~

~~F.~~D. ~~Please refer~~pertaining to ~~Production, Chapter 15.3.~~Accounts Receivable Financing (i.e., no legacy courtesy).

10.4 Document Requirements and Reviews

Please see Production, Chapter 15~~.4~~ for a list of the key documents~~ that ORCF reviews when considering a request for AR Financing, except as included below.~~

~~If the AR financing is proposed as part of an FHA-insured loan closing, the appropriate HUD form of Lender Narrative must be submitted. If proposed post-closing, the AR portion of the same template shall be submitted.~~

. The particular terms that must be included depend on an evaluation of the proposed transaction as a whole. However, for existing FHA-insured mortgages, ORCF will consider not only the important safeguards and conditions outlined in Production, Chapter 15.5, but also whether the Borrower and Operator are in compliance with all business agreements with the Department (i.e., not in default on those business agreements, current on financial statement submissions, passing scores on physical inspections and the like).

10.5 Accounts Receivable Financing Work Outs

An AE is aware that the ~~AR~~A/R Financing is a tool to ensure that an Operator continues to have cash advances for operations. If applicable, the AE will partner with the assigned HUD field counsel when dealing with the ~~AR~~A/R Lender and the FHA Lender to restructure the ~~AR~~A/R loan to encourage the ~~AR~~A/R Lender to continue making advances while issues with the Operator are being worked out between the FHA Lender and the ~~AR~~A/R Lender. If the AE becomes aware that an Operator is having significant difficulties, including but not be limited to the occurrence of a Triggering Event (as defined in the applicable agreement), ~~an AE shall~~theAE should:

1. Review financials
2. Review state surveys
3. Discuss and assess with the Turnaround Team (Risk Mitigation Branch).
4. Seek assistance of the Office of General Counsel (OGC)
5. Discuss the possibilities of bringing in a consultant
6. Hold a meeting with all parties involved
7. Discuss an action plan by Operator (if applicable)
8. Update iREMS

A. Lender Servicing

Please see Asset Management, Chapter 3 (General Loan Servicing) for a discussion of HUD's expectations regarding the FHA Lender's servicing of loans as it pertains to Accounts Receivable Financing generally. The FHA Lender is a party to the Intercreditor Agreement and charged with its administration, as well as the administration of any deposit account control agreements (and other security documents, such as assigned cross-guaranties in a master lease structure, etc~~.)~~.), even where the FHA lender is party to a multi-lender agreement relating to multi-project A/R Financing.

B. Portfolios and Account Receivable Financing.

1. Releasing a project from ~~the AR~~a multi-project A/R Line of Credit – In the event that the AE receives a request from the ~~Borrower~~Operator to release a ~~property~~Project from the ~~AR~~A/R Line of Credit ~~collateral base~~which includes other FHA-insured projects, the AE must receive a detailed analysis from the FHA Lender outlining the terms and conditions of said release. The details must include (and are not limited to) the following; the payoff date of the property mortgage balance, the ~~AR~~A/R Lender's concurrence and agreement with said release, any changes to the terms and conditions of the ~~AR line~~A/R Line of ~~credit~~Credit, and an analysis of the impact of the release on the borrowing base going forward. The AE must consult with OGC on any such release, especially regarding changes to the AR loan documents.

2. Adding a project to the ~~AR~~A/R Line of Credit – When a new project is being added to an existing ~~AR~~A/R Line of Credit, the same process that is used in underwriting a new project must be utilized. See Production, Chapter 6 Participant Credit and Financial Review.

C. HUD Asset Management

1. Occurrence of a Triggering Event – When there occurs a payment default or event of default under the Security Instrument or Regulatory Agreement which are determined to be a "Triggering Event" pursuant to the Intercreditor Agreement, the ~~AE will work with the~~ FHA Lender ~~to~~should notify HUD and may in its discretion issue a Triggering Event Notice to the ~~AR~~A/R Lender and work with the parties involved to put in place an action plan to resolve the default. Any such action plan must be acknowledged by HUD.

2. Cut Off Notice – If an action plan ~~in place~~ fails and/or concerns as stated above cannot be corrected, the AE shall have a call with the assigned ~~OGC~~HUD field counsel; it may also be necessary and appropriate for the AE to include an assigned AE of the Turnaround Team (Risk Mitigation Branch). Please see Asset Management, Chapter 3 (General Loan Servicing).

3. Default or Cut Off Time Notice by AR Lender. When there occurs a "Triggering Event" pursuant to the Intercreditor Agreement, the FHA Lender and ORCF may work with the A/R Lender to put in place an action plan to resolve the default. Any such action plan must be acknowledged by HUD. Once a Cut-Off Time occurs, FHA Lender can require the establishment of separate deposit accounts into which payments with respect to Accounts arising after the Cut-Off Time are to be deposited. A revised Cash Flow Chart should also be provided and is subject to HUD approval.

10.6 Cash Flow Charts, DACAs and DAISAs

Please refer to Production, Chapter 16 Cash Flow Structures, DACAs and DAISAs for guidance related to these issues as they relate to FHA-insured projects that have closed and are serviced by the AE~~, except as outlined below~~.

Wherever the A/R Lender has a control agreement on an account or is the depository bank, the FHA-Lender must also have a control agreement in place to perfect its security interest in the account.

If an account co-mingles funds from multiple FHA-insured Projects, this must be indicated on the cash flow chart. Where A/R Financing involves more than one FHA lender, there must be a written agreement between the FHA lenders on which lender will manage the relationship with the depository bank.

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

10.7 Submission and Review of Cash Flow Charts, DACAs and DAISAs

~~The ORCF will evaluate cash flow structures, DACAs and DAISAs pursuant to the guidance provided in this chapter for the following programs:~~

1. ~~Section 232 for new construction or substantial rehabilitation~~
2. ~~Section 232 pursuant to Section 223(f)[2] for purchase or refinance~~
3. ~~Section 232 pursuant to Section 223(a)(7) or Section 232 pursuant to Section 223(f) pursuant to Section 223(a)(7) for refinancing~~
4. ~~Section 241(a) for supplemental loans in connection with a Section 232 insured mortgage loan under one of the categories described above~~

~~[2] The amount by which accounts payable exceed accounts receivable is *not* a sum that may be included as existing indebtedness in proposed Section 232 refinance transactions.~~

~~5. Section 223(d) operating loss loans in connection with a Section 232 insured mortgage loan under one of the categories described~~

HUD Review of cash flow structures, DACAs and DAISAs may take place at various times:

A. Post-closing. Unless stated otherwise, post-closing submissions are to be directed to the AE assigned to the project.

1. **Accounts Receivable – New line or modification of an existing line** – Reviews are required any time a request for approval of a new ~~AR~~A/R line is submitted, or any request to approve a modification of an existing ~~AR~~A/R line that will result in a change in the previously approved cash flow chart.

2. **Change to approved cash flow chart** – Reviews are required when a change to the approved flow chart (opening new accounts, changing depositories, replacing or closing an existing DACA or DAISA account) is proposed.

3. **~~Transfers of Physical Assets or~~ Change ~~in Operator~~of Participants (CHOP) involving ~~AR~~A/R Financing** – Reviews are required in connection with a ~~transfer of physical assets (TPA) or change in Operator~~CHOP that involves ~~AR~~A/R financing. ~~TPAs~~CHOPs not occurring in conjunction with an FHA-insured loan closing shall be directed to the AE assigned to the project.

4. **After a Cut-Off Time has occurred –** Once a Cut-Off Time occurs, FHA Lender can require the establishment of separate deposit accounts into which payments with respect to Accounts arising after the Cut-Off Time are to be deposited.

B. In all the above instances, it will be determined if a portfolio acceptance letter applies and whether an overall cash flow chart was approved during portfolio review, so that it can be determined:

1. If the proposed structure is consistent therewith; and

2. If a DACA and/or DAISA form has been previously approved in conjunction with the portfolio.

C. In all of the above instances, if an existing ~~AR~~A/R Lender is being replaced, the parties must make arrangements acceptable to HUD for termination of any existing DAISAs or DACAs in favor of such Lender.