

15.1

Introduction

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

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

*~~\*In November 2008, HUD issued H08-09 Accounts Receivable Financing. The guidance in this 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)<sup>1</sup> 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 modification of an existing ARA/R Loan, and the ARA/R Lender must execute an Intercreditor Agreement for ARA/R Financing Projects (Form HUD-92322-ORCF) ("Intercreditor") with the FHA Lender, the Operator and the Borrower. 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~~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~~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~~Before a request for an A/R Loan is submitted for any medium or large portfolio (as defined in Production Chapter 17), the above instances, it should be determinedLender must determine if ~~a portfolio review acceptance letter applies and whether~~ the proposed ARA/R financing is consistent with ~~such~~the portfolio review acceptance 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~~If the parties may seek HUD pre-approval of certain future modifications or that HUD permit certain additional, unique terms, the parties must propose these as part of their ~~AR loan~~A/R Loan review ~~request~~(see below, in Section 15.4). Such requests include, but are not limited to, that HUD pre-approve certain future modifications or that HUD permit certain additional types of obligations to be secured

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

79 by an ARA/R Lender first lien on Operator projectProject collateral, ~~which if approved,~~  
80 Any specific approvals will be set forth in the Terms Memo, which may be attached to the  
81 firm commitment and inserted into the Intercreditor. ARA/R Lender and Operator are also  
82 required to disclose all proposed cross-defaults, which if approved, are ~~set forth in the Terms~~  
83 Memo and inserted into the Intercreditor. (see below, in Section 15.4).

- 84
- 85 D. ~~Exceptions.~~ ORCF understands that some borrowers **Compliance.** When Borrowers or  
86 operatorsOperators have existing AR loans that were put in place prior to applicable ORCF  
87 guidance have not been reviewed by ORCF. If any such Borrower or Operator submits A/R  
88 Loans and they submit a TPAChange of Participant (CHOP) request, an application to  
89 refinance existing debtapplication for an FHA-insured loan, or any other request that requires  
90 ORCF approval, ORCF will review the existing ARA/R loan documents to determine if any  
91 of the documents require revision, and/or if additional documents, which incorporate ORCF  
92 requirements, ~~have to~~ must be executed by the applicable parties. Additionally, if an AR  
93 loanA/R Loan was obtained in violation of a Borrower or Operator regulatory agreement,  
94 administrative or enforcement action may be taken.

95

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

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

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

121

122

## 15.3

## Accounts Receivable Financing Application Considerations

123  
124 ORCF reviews requests to consent to ARA/R Financing for existing and new projects~~Projects~~  
125 that are approved by FHA for mortgage insurance under the Section 232 programs. ORCF's  
126 primary consideration in reviewing a request to consent to ARA/R Financing, is the impact that  
127 the terms and conditions of the financing will have on the financial viability of the healthcare  
128 ~~project~~Project. A well-structured ARA/R Financing agreement will support the financial  
129 viability of a projectProject by providing funding at a cost and with terms and conditions that  
130 facilitate, rather than jeopardize, the ability of the Operator to meet its financial obligations.  
131 ~~Accordingly, prior to submitting a request for ORCF to consent to an AR loan, ORCF suggests~~  
132 ~~that the Borrower, Operator, AR Lender, and FHA Lender meet with ORCF to discuss a request~~  
133 ~~for consent to AR Financing.~~

134  
135 A. **In General.** The principles set forth in this Section are programmatic considerations  
136 applicable to all proposed ARA/R arrangements. However, all arrangements will be  
137 evaluated as a whole and variances that do not conflict with HUD Program Obligations may  
138 be permitted provided that they do not materially and adversely affect FHA Lender's or  
139 HUD's interests ~~in~~at the discretion of ORCF.

140  
141 B. **Revolving Loan.** As the function of the ARA/R Loan is to address liquidity shortfalls for  
142 ongoing operating expenses, ORCF expects that the ARA/R Loan will be a revolving loan;  
143 i.e. that the Operator can borrow, repay, and re-borrow without any penalty or premium,  
144 provided the outstanding balance stays within the agreed Credit Limit (see below in Section  
145 15.3.C). The proposed loan should support a minimum DSCR of 1.45 inclusive of all  
146 projects on the loan.

147  
148 C. **Borrowing Base/Maximum Commitment.** ORCF generally expects that the ARA/R Loan  
149 will limit the maximum amount that may be outstanding at any time to the lower of:

- 150  
151 1. A specific dollar amount (the "Maximum Commitment"), or  
152 2. A borrowing base (the "CreditMaximum Availability Limit"). The CreditMaximum  
153 Availability Limit formulation must be acceptable to ORCF.

154  
155 ARA/R Loans involving multiple HUD projectsProjects are often based on an aggregate  
156 borrowing base with each Borrower liable to the ARA/R Lender for the entire amount of the  
157 loan. HUD generally permits such arrangements, provided that each Operator has access to  
158 the full line of credit. If the ARA/R Loan Documentsdocuments are structured so that each  
159 Operator's access to the line is limited, then the extent of the ARA/R Lender's cross-  
160 collateralization maywill also need to be limited.

161  
162 D. **Borrowing Base Percentages, Aging and Receivables Mix.** ORCF will accept for review  
163 an ARA/R Financing loan with a borrowing base that is consistent with prudent business  
164 practices for such loans. Generally, the percentage of state, local and/or federal  
165 governmental healthcare insurance program receivables (collectively, the "Governmental  
166 Receivables") included in the borrowing base ~~should~~must not exceed an 85%, % advance  
167 rate, and the Governmental Receivables ~~should~~must not be aged greater than 120 days.  
168 Governmental Receivables aged between 120 days and up to 180 days may be accepted by

ORCF if there are extenuating circumstances that cause an excessive delay in the governmental payor's payment of reimbursements, and ORCF determines that the delay in the payment does not jeopardize the financial viability of the ~~project~~Project. A request for aging between 120 days and up to 180 days must be supported by an analysis of the historical (not less than six months) and projected data on the timing of the reimbursements found acceptable to ORCF.

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

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

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

Production, Chapter 16 provides guidance regarding other parties that may be required to execute or join into the deposit account agreements, the FHA Lender security documents, the Healthcare Regulatory Agreement – Master Tenant (Form HUD-92337-ORCF) (“Master Tenant’s Regulatory Agreement”), the Borrower’s Regulatory Agreement and/or the

214 Operator's Regulatory Agreement. Production, Chapter 16 also provides guidance on  
215 Borrower Representatives.

216  
217 The FHA Lender, the ARA/R Lender, the Borrower and the Operator are parties to the  
218 Intercreditor; HUD is not a party. If a Master Lease is involved, the Master Tenant will  
219 generally also be a signatory to the Intercreditor. Occasionally, other parties (such as a  
220 Borrower Representative) may be required to sign the Intercreditor Agreement, as well as  
221 an agreement with the FHA-Lender.

- 222  
223 F. **Use of Proceeds.** ARA/R Loan proceeds are used for working capital purposes related to the  
224 operation of the FHA-insured ~~projects.~~ Projects. A/R Loans may include letter of  
225 credit sub-limits if disclosed ~~to~~ and approved by ORCF, but Letters of Credit issued must  
226 always be subtracted from the Availability as defined in the Intercreditor Agreement.

227  
228 AR loan A/R Loan draws based on a facility's receivables are ~~project~~ assets of such facility,  
229 regardless of whether they are held in commingled or in Borrower representative accounts.  
230 The Intercreditor requires that ARA/R loan proceeds be used only for ARA/R debt service,  
231 then the operating expenses of the ~~project~~ Project (including lease payments), and only then,  
232 subject to any restrictions in the ARA/R Loan Documents and all applicable Regulatory  
233 Agreements, for distributions. HUD regulations and the Operator's Regulatory Agreement  
234 restrict the ability of an Operator to use any funds derived from the operation of the  
235 ~~project~~ Project (which would include loan draws based on such ~~project's~~ Project's borrowing  
236 base) for distributions or non-~~project~~ Project purposes in the following instances:

- 237  
238 1. Upon receipt of a Notice of Violation under the Operator's Regulatory Agreement;  
239  
240 2. If a quarterly/year to date financial statement demonstrates negative Healthcare  
241 Facility Working Capital, (as defined ~~by HUD,~~ in the Operator's Regulatory  
242 Agreement), or if the Operator fails to timely submit such statement, until such time  
243 as a current quarterly, year-to date financial statement demonstrates positive  
244 Healthcare Facility Working Capital or until otherwise authorized by HUD.

245  
246 In the above instances, loan draws based on a ~~project's~~ Project's receivables (as well as any  
247 other funds derived from or in connection with the operation of the Project) cannot be used  
248 for any purpose other than ~~the Operator making payments on its lease (or other Borrower-~~  
249 ~~Operator agreements), making payments under the HUD Loan Documents (including any~~  
250 ~~cross-guaranty assigned to FHA Lender under a Master Lease structure) and under any~~  
251 ~~approved AR Loan, and making payments for goods and services of the project, provided~~  
252 ~~such payments for goods and services satisfy~~ for benefit of the FHA-insured Project, such as  
253 lease payments, debt service and payment for goods and services within the limitations in the  
254 Operator's Regulatory Agreement.

255  
256 If the HUD Borrower is the Operator, the Borrower's Regulatory Agreement provides that  
257 distributions or other payments other than ~~project~~ Project expenses cannot be made from  
258 borrowed funds except to the extent permitted by the Operator's Regulatory Agreement and  
259 other HUD Program Obligations.

260  
261 Particularly in instances where AR loanA/R Loan draws are being made on an aggregate  
262 basis, the Operators included in such an A/R line, and any Borrower Representative approved  
263 by HUD that may be receiving such aggregate draws for further distribution, must ensure that  
264 AR loanA/R Loan proceeds are allocated among the projectsProjects subject to the ARA/R  
265 line in a manner consistent with the foregoing restrictions.

266  
267 G. **Single ARA/R Loan.** HUD permits only a single ARA/R Loan for a projectProject.  
268 However, as provided in the Operator Security Agreement, HUD will deem a syndicated or  
269 participated loan as a single ARA/R Loan provided that HUD is provided satisfactory  
270 assurances that the lead/administrative agent has authority to bind all such Lenders to the  
271 Intercreditor, and will be the sole party entitled to enforce the Intercreditor and the rights in  
272 projectProject collateral.

273  
274 H. **Projects included in the ARA/R Loan.** Only FHA-insured projectsProjects that HUD  
275 approves for inclusion in the ARA/R Loan may be included as BorrowersProjects in the  
276 ARA/R Loan. No additional projectsProjects or Borrowers can be added without prior HUD  
277 approval. ARA/R Loans range from single stand-alone loans including only one FHA  
278 projectProject to large, syndicated AR loansA/R Loans including many HUD  
279 projectsProjects and multiple FHA Lenders. If a portfolio review is required or has already  
280 occurred, the portfolio approval letter (and any cash flow charts, or documents approved in  
281 connection therewith) must always be reviewed.

282  
283 While only FHA-insured projectsProjects approved by ORCF may be included as  
284 BorrowersProjects on the ARA/R line, the ARA/R Lender may also secure the ARA/R Loan  
285 with non-projectProject collateral or non-HUD projectsProjects and guarantees, provided  
286 that, the costs of administering or enforcing such non-HUD projectProject collateral  
287 documents cannot be charged to AR loanA/R Loan or Borrower(s) on the HUD  
288 projectsProjects (see below, in Section 15.4.D). While the A/R Loan may be secured by non-  
289 Project collateral, other non-Project (non-FHA-insured) loans may not be secured with the  
290 A/R Loan collateral.

291  
292 I. **Lien Priority and Intercreditor.** ORCF requires that the FHA-insured loanLoan be secured  
293 by a first lien and security interest on the projectProject, and requires the Operator to execute  
294 a security agreement and assignment of rents in favor of the FHA Lender whichthat covers  
295 all of the Operator's property relatedassets to projectProject, including but not limited to all  
296 of the Operator's Governmental and Non-Governmental account receivables arising from or  
297 related to the FHA-insured project or projects. However, ORCF will allow ARA/R Lender  
298 to take a first priority interest in the project'sProject's accounts, including Governmental and  
299 Non-Government account receivables, as set forth in the Intercreditor, provided that the  
300 ARA/R Lender executes anthe Intercreditor.

301  
302 Under the Intercreditor, the FHA Lender subordinates its security interest in the Operator's  
303 account receivables related to the projectsProjects, to the security interests of the ARA/R  
304 Lender. Those items of Operator projectProject-related collateral upon which the ARA/R  
305 Lender is permitted to have a first lien are known as the ARA/R Lender Priority Collateral.

306  
307 ORCF may also permit the ARA/R Lender to secure its loan with a subordinate security  
308 interest on other assets of the Operator related to the ~~project~~Project provided that the ARA/R  
309 Lender agrees not to exercise its remedies as to non-ARA/R Lender Priority Collateral of the  
310 ~~project.~~ARProject (i.e., the Intercreditor Agreement). However, A/R Lenders must not  
311 secure ~~AR loans~~A/R Loans with liens on the ~~project~~Project real estate or fixtures or on any  
312 rent account dedicated solely to lease payments or on the Operator's interest under the lease.  
313 Generally, a lien on fixtures or real estate is perfected by filing in the property jurisdiction.  
314 A lien on accounts is perfected by control.

315  
316 The parties to the Intercreditor are required to set forth all disclosures ~~in~~, schedules and  
317 exhibits as dictated by the Intercreditor Agreement. Submitting the ~~AR loan documents~~A/R  
318 Loan Documents to HUD does not constitute a disclosure to and approval by HUD.

319  
320 J. **Cross-Collateralization.** Provided that each Borrower has access to the ARA/R Loan, and  
321 subject to the Intercreditor, HUD permits the ARA/R Lender to cross-collateralize its HUD-  
322 approved ARA/R Loan with Operator collateral related to all the FHA-insured  
323 ~~projects~~Projects approved by HUD for inclusion in the ARA/R line. The ARA/R Lender  
324 cannot use the accounts receivable or any other collateral related to the included FHA-  
325 insured ~~projects~~Projects to secure or pay loans to non-FHA ~~projects~~Projects/Operators, or to  
326 secure or pay debts of FHA-insured ~~projects~~Projects not approved for inclusion in the  
327 ARA/R line.

328  
329 An ARA/R Loan that involves both FHA-insured ~~facilities~~Healthcare Facilities and non-FHA  
330 Insured facilities is not acceptable. It must be restructured to HUD's satisfaction so as to  
331 separate the non-HUD projects/parties and the HUD ~~projects~~Projects/parties into separate  
332 loans. This ~~is often~~arrangement may be encountered:

- 333  
334 1. Where an Operator is not a single asset entity and it operates both FHA-insured and  
335 non-FHA Insured ~~projects~~Projects, or  
336 2. Where an Operator's control group operates both FHA ~~insured~~ and non-FHA  
337 ~~Insured-~~ insured projects.

338  
339 ~~The~~A non-HUD ARA/R line/projects are permitted to also secure the HUD-approved  
340 ARA/R Loan; but the FHA-insured ~~projects~~Projects cannot secure the non-FHA Insured  
341 projects obligations.

342 ~~HUD permits, though does~~ Unapproved cross-defaults (i.e., cross-defaults not require or  
343 encourage, the AR Lender to included in the Intercreditor Agreement) are enforceable.

344  
345 **K. Cross-Defaults.** In limited circumstances, HUD will approve a cross-default the AR  
346 Loan provision. All HUD approved cross-default provisions must be disclosed during  
347 underwriting and must be set forth on Exhibit B.

348  
349 As a non-recourse insured lender, ORCF's policy is to limit cross-defaults so that defaults  
350 on obligations to which HUD has no means to address risk for will not cause a default on  
351 an A/R line consisting of FHA Insured Projects. Cross-defaults related to obligations to



352 which HUD has no means to address the risk for can cause a liquidity crisis jeopardizing  
353 the FHA-insured projects to facilities on the occurrence of an Event of Default on A/R  
354 line. As such, ORCF has created the non-FHA Insured line. guidance set forth below to  
355 help evaluate whether a cross-default constitutes an acceptable underwriting risk and will,  
356 therefore, be approved by HUD:

- 357
- 358 a. A cross-default must be targeted at one or more monetary obligations.
- 359 b. Any proposed cross-defaults must be disclosed to and approved listed on Exhibit  
360 B and must be specific. It is not acceptable to reproduce, incorporate by ORCF  
361 with approved reference, or otherwise restate the default provisions set forth in  
362 other A/R financing documents.
- 363 c. All cross-defaults being set forth in the Intercreditor. These include any  
364 proposal listed in Exhibit B must reasonable describe the principal transactional  
365 documents outlining the obligation, parties to the documents and the dates of the  
366 documents.
- 367 d. It is generally acceptable for a HUD-insured only A/R line to have a cross-default  
368 the AR with another HUD only A/R line.
- 369 e. It is not generally acceptable for a HUD-insured only A/R line to have a cross-  
370 default with another non-HUD insured A/R line.
- 371 f. Any cross-defaults related to a guarantor (or principal) on the A/R Line must be  
372 limited to obligations directly related to the A/R Borrowers and/or directly related  
373 to other HUD insured facilities/obligations.
- 374 g. Cross-defaults listed on Exhibit B should not include the shared or parallel  
375 obligations owed by the joint A/R Borrowers to the A/R Lender as established in  
376 the A/R Loan Agreement. Such matters are not cross-defaults for purposes of  
377 Exhibit B because they are part of the A/R Loan for the FHA-insured projects to  
378 Events of Default on the non-HUD line, as well.
- 379 a.h. It is generally not acceptable for Material Adverse Change Clauses (MAC  
380 Clauses) to be approved as any other proposed cross-defaults. Unapproved cross-  
381 defaults will not be permitted. cross-defaults. Such clauses permit the A/R  
382 Lender to declare a default under the A/R line based on a material adverse change  
383 suffered by a guarantor, principal, affiliate or other non-A/R Borrower on the A/R  
384 line. Such clauses commonly refer to a decline in net worth, insolvency,  
385 bankruptcy, or a loss of security.

386

387 K.L. K. — ARA/R Loan Obligations Secured by Project Collateral. ARA/R Loan  
388 Documents documents frequently contain expansive definitions of the obligations secured  
389 by the collateral. Notwithstanding any such definition, the Intercreditor limits the types of  
390 obligations that may be secured by projectProject collateral to: the Revolving ARA/R  
391 Loan up to the Maximum Commitment Amount approved by HUD and other obligations  
392 directly related to the benefit of the Healthcare Facility, with some disallowable  
393 obligations explicitly excluded in the Intercreditor Agreement. The Maximum  
394 Commitment Amount is inserted into the Intercreditor. The Intercreditor Agreement  
395 limits what obligations the projectProject collateral secures. Non-qualifying obligations  
396 may be unsecured and/or secured by non-projectProject collateral or guarantees.

398 HUD recognizes that there may be instances where other obligations are of a nature that may  
399 be appropriate to secure with ~~project~~Project collateral. Accordingly, the definition of ARA/R  
400 Loan Obligations in the Intercreditor permits additional specific obligations to be added that  
401 are not inconsistent with HUD Program Obligations if approved by ORCF. The parties  
402 should submit such a request and provide justification for it at the time the request for  
403 approval of the ARA/R Loan is made. Such request must specify whether the additional  
404 obligation will be constrained by the Borrowing Base. If approved by ORCF, and subject to  
405 any conditions to ~~such~~the approval, such specific additional obligations will be ~~inserted~~  
406 ~~into~~documented in the Intercreditor in the space provided for ~~such~~that purpose.

407  
408 ~~If the AR Lender is not required to use the new form of Intercreditor under applicable~~  
409 ~~guidance or waivers, then the definition of the Obligations secured in the AR Loan~~  
410 ~~Documents must be appropriately limited.~~

411  
412 L.M. **Cash Flow Structures.** The proposed cash flow structure must be acceptable to  
413 HUD (including any commingled account features, which accounts will be subject to  
414 deposit agreements, the existence of multiple projects, identity of FHA Lender, name of  
415 depository bank, account number, FHA project number, etc.). The two primary types of  
416 ARA/R Loan structures, together with guidance on acceptable structures and deposit  
417 account agreements, are set forth in Production, Chapter 16.

## 15.4

## Document Requirements and Reviews

422  
423 Set forth below is a list of the key documents that ~~ORCF~~HUD reviews when considering a  
424 request for consent to ARA/R Financing. Checklists or ~~punch lists~~Punchlists may from time to  
425 time be posted on the Section 232 Program website. The HUD closing attorney must also review  
426 the proposed ARA/R Loan Documents and ~~they must find them to~~ be acceptable. Certain  
427 documents are required HUD forms, which must be used where applicable. Such HUD forms  
428 can be found on HUDCLIPS (see Appendix 15.1). Certain samples of non-mandatory forms  
429 may be posted from time to time on the Loan closing documents website.

- 430  
431 A. **Lender Narrative, Section 232/223(f) Refinance (Form HUD-9002-ORCF), ~~Addendum~~**  
432 **~~to Underwriting Narrative—Accounts Receivable (AR).~~ If A/R Financing, ~~Section~~**  
433 **~~232/223(a)(7), 223(d), 241(a) (HUD-9001i-ORCF).~~ If the AR financing is proposed as part**  
434 **of an FHA-insured Loan Closing, or as a post-closing item, the ~~appropriate~~Accounts**  
435 **Receivable Financing Certification, Form HUD-90020-ORCF, the Intercreditor Agreement,**  
436 **Form HUD-~~form of~~92322-ORCF, and the Lender Narrative with AR Loan Addendum-**  
437 **Accounts Receivable (A/R) Financing (New or Modified) Form HUD 90031-ORCF must be**  
438 **submitted.**  
439  
440 B. **Requests for Pre-Approval of Certain ARA/R Loan Modifications and of Proposed**  
441 **Cross-Defaults.** Both the Operator and the ARA/R Lender must agree not to alter the

442 ARA/R Loan terms in certain material ways without the FHA Lender's and/or  
443 HUD's ORCF's consent. ~~Although the~~ The Operator's Regulatory Agreement and  
444 Intercreditor set forth the specific material terms requiring consent prior to modification, and  
445 specific allowable modifications that do not need HUD and/or FHA Lender consent, ~~as.~~ As a  
446 general matter, however, HUD considers modifications to the ARA/R Lender Loan  
447 Documents to be ~~material if:~~ Material and ORCF must consent to such modification:

- 448
- 449 1. Adds or releases guarantors to the ARA/R Lender Loan,
- 450 2. Adds an interest reserve to the ARA/R Lender Loan,
- 451 3. Amends the interest rate payable on the outstanding principal balance of the ARA/R  
452 Lender Loan (other than, and in addition to, increases in the interest rate pursuant to  
453 variable interest rate provisions thereof),
- 454 4. Increases or decreases the previously HUD-approved principal amount of the ARA/R  
455 Lender Loan,
- 456 5. Grants any non-HUD-approved loan term extension,
- 457 6. Amends or expands the type of obligations secured by the ARA/R Lender Loan,  
458 and/or
- 459 7. Any Modifies any term or condition that may be deemed material at the sole  
460 discretion of HUD,
- 461 8. Increases the Maximum Commitment Amount, ~~or~~
- 462 9. Alters the borrowing base formula, ~~or~~
- 463 10. Occurs after a payment default is declared by the A/R Lender.
- 464
- 465

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

472

473 If such flexibility is desired, the initial ARA/R Loan request must include a proposal that  
474 outlines the parameters of any proposed loan extension and/or interest rate change. ORCF  
475 will generally only agree to one renewal of the A/R line of credit, and only so long as there  
476 are not changes to any of the Material terms. The proposal must include a justification for  
477 the request and a financial analysis that demonstrates the effect of the loan extension and/or  
478 rate change on the financial viability of the ~~project~~ Project. ORCF will review the request and  
479 the approval of said request will be in the sole discretion of ORCF. If the request for the loan  
480 extension and/or rate change is approved, it is ~~inserted into the Intercreditor, and the Operator~~  
481 ~~will be required to: notify ORCF when any such pre-approved extensions and/or rate changes~~  
482 ~~occur; timely provide ORCF with complete copies of the revised AR Loan Documents; and~~  
483 ~~provide a certification that only changes pre-approved by ORCF were made to the AR Loan~~  
484 ~~Documents. Proposed cross-defaults must be disclosed and if approved by ORCF, will be~~  
485 ~~inserted into the Intercreditor, documented in the Intercreditor, and the Operator will be~~  
486 ~~required to: Please see 15.3.J above.~~

488 **The AR**

- 489 • Notify ORCF when any such pre-approved extensions and/or rate changes occur.
- 490 • Timely provide ORCF with complete copies of the revised A/R Loan Documents; and
- 491 • Provide a certification that only changes pre-approved by HUD were made to the A/R
- 492 Loan Documents.

493

494 Proposed cross-defaults must be disclosed and if approved by HUD, will be documented in

495 the Intercreditor. Please see 15.3.J above.

496 -

497 C. **The A/R Loan Documents.** The ARA/R Financing Loan Agreement between the

498 Operator(s) and the ARA/R Lender, including the fee letter, and all material documents

499 evidencing or securing such ARA/R Loan, that establish the terms and conditions and fees

500 associated with the ARA/R Financing loan, must be submitted.

501

502 D. **ARA/R Loan Guarantees and Equity Pledges.** -The ARA/R Lender's first priority lien in

503 ARA/R Lender Priority collateral may only secure the approved revolving loan. The A/R

504 Lender Priority Collateral may not secure term loan ~~facilities,(s)~~, equipment loan ~~facilities(s)~~

505 or any indebtedness, liability or obligations arising under a guarantee, except for guaranteed

506 obligations to the extent the obligations guaranteed consist solely of approved ARA/R Loan

507 Obligations. The guarantors must waive any subrogation, contribution, reimbursement, or

508 similar rights until the FHA-insured loan has been paid in full; and the guaranties must be

509 otherwise acceptable to ~~ORCF.~~ HUD. All pledges and guarantees must be disclosed in the

510 Intercreditor Agreement to be enforceable.

511

512 Any guarantee or equity pledge by a principal of an FHA-insured ~~project~~Project, as

513 ~~determined~~approved under applicable HUD guidance, must not include provisions

514 inconsistent with HUD Program Obligations, and must likewise require the prior written

515 approval of HUD prior to any transfer of such ownership interests or the exercise of control

516 (such as through the exercise of voting rights) and previous participation clearance.

517

518 The HUD Borrower entity cannot pledge collateral (including, but not limited to membership

519 interests, fixtures, accounts or real estate) to secure an ~~AR loan~~A/R Loan to the Borrower-

520 Operator(s-) or to any other party.

521

522 E. **Organizational Narrative and Chart.** ~~A~~The Organizational Narrative is a narrative that

523 describes the legal structure of the Borrower entity and the operating entity and discloses all

524 tiers of ownership. If the Borrower or Operator has multiple tiers of ownership, the narrative

525 shall include an organization chart identifying all parties and their relationship to one

526 another.

527

528 If the parties to the ARA/R Financing loan have closely related interests, there may be a

529 prohibited Identity of Interest (IOI). Upon review, if ORCF determines that the ARA/R

530 Financing loan arrangement benefits closely related interests at the expense of the financial

531 viability of the ~~project~~Project, a Conflict of Interest will in fact exist (see Introduction,

532 Chapter 1.6.D). If ORCF determines that there is in fact a ~~conflict~~Conflict of ~~interest~~Interest,

533 the Operator and all affected parties will be asked to submit a proposal of how the conflict

will be mitigated. In consultation with HUD OGC, ORCF reserves the right to determine if the proposed mitigation plan is acceptable. Therefore, it is important that all relationships among the parties to the ARA/R Financing loan submission be identified, including, but not limited to, the following parties:

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

F. **Flow of Funds Chart.** An accounts receivable cash flow of funds chart (see Production, Chapter 16 for guidance and samples) is a chart that describes the collection and flow of funds from the Operator's initial deposit of its receivables through disbursement ~~and the Operator's uses~~ of the ARA/R Financing loan proceeds. Once the cash flow chart is approved by HUD and FHA Lender, it is attached as Exhibit C-1 to the Operator Security Agreement.

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

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

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

J. **Deposit Account Instructions and Service Agreement (DAISA-Governmental Receivables).** ~~Agreement~~ The DAISA is an agreement on each deposit account identified in the approved cash flow chart into which governmental receivables will be initially deposited. See Production, Chapter 16 for guidance and the Section 232 Program website for a sample format.

580 **J.K. Deposit Account Control Agreement(s) (DACA-Non-Governmental Receivables).**  
581 ~~Agreement~~The DACA is an agreement for each deposit account identified in the approved  
582 flow chart for which a DACA is required, which also may be referred to as a Blocked  
583 Account Agreement. See Production, Chapter 16 for guidance and the Section 232 Program  
584 website for a sample format.

585  
586 **K.L. Subordination Agreement/SNDA (Form HUD-92333-ORCF)/ Subordination, Non-**  
587 **Disturbance and Attornment Agreement of Operating Lease (SNDA) (Form HUD-**  
588 **91110-ORCF).** ~~Agreement which provides~~These agreements provide for the subordination  
589 of the Master Lease or Operator’s Lease (the “Lease”) to the FHA-insured  
590 ~~mortgage~~Mortgage and, if a SNDA is approved, provides for non-disturbance of a third-  
591 party Operator under certain conditions. The SNDA provides protection to the Operator only  
592 if the Operator is not in default under the terms and conditions of the Lease.

593  
594 **L.M. Operator Legal Opinion.** Operator’s counsel provides this ~~opinion~~ to the Operator  
595 using the Guide for Opinion of Operator’s Counsel and Certification (Form HUD-92325-  
596 ORCF). It provides that counsel has reviewed executed copies of the Intercreditor, ~~ARA/R~~  
597 Loan Documents and affiliated credit documents.

598  
599 **M.N. Operator Security Agreement.** (Form HUD-92323-ORCF). Paragraph 20 of this  
600 document is entitled, “Provisions Regarding Accounts Receivable Loan.”

601  
602

## 15.5

## Important Safeguards and Conditions

603  
604 In addition to looking for documents such as those listed above, ORCF’s consent to a typical  
605 ~~ARA/R~~ Financing ~~loan~~Loan is also based on evidence that important safeguards and conditions  
606 are established and agreed upon by the parties. The ~~particular~~ terms that should be included  
607 depend on an evaluation of the proposed transaction as a whole; however, set forth below are  
608 some of the important safeguards and conditions that should be considered.

609  
610 A. Whether funds advanced under the ~~ARA/R~~ Financing ~~loan~~Loan are used as provided in the  
611 ORCF-approved Intercreditor and applicable ORCF Program Obligations.  
612  
613 B. Whether cross-collateralization of ~~ARA/R~~ Financing is permitted only for those healthcare  
614 ~~projects~~Projects subject to FHA mortgages that are identified in the request for ORCF’s  
615 consent to the ~~ARA/R~~ Financing loan.

616  
617  
618 ~~C.—Whether any cross-defaults (but not cross-collateralization) are consistent with ORCF policy~~  
619 ~~and are acceptable risks for the project. The AR Financing request submission must identify~~  
620 ~~the cross-defaults that the AR Lender is seeking.~~

621  
622 ~~D.—The FHA Lender and AR Lender have entered into an Intercreditor or in those instances~~  
623 ~~where an alternate format is permissible, an agreement between creditors that contains terms~~

624 and conditions acceptable to HUD and materially consistent with the programmatic  
625 considerations.

626 A/R

627 E.C. ~~Whether the A/R~~ Lender has sufficient experience (generally, at least three years) in  
628 providing ARA/R Financing and the necessary experience and financial controls in place to  
629 monitor the financial operations of the Operator.

630

631 D. Whether A/R Financing which involves multiple FHA lenders has been adequately structured  
632 to designate a lead FHA lender.

633

634 E. Whether the aggregate cost(s) and risk of particular A/R Financing and particular A/R  
635 Lenders exceeds acceptable risk to the Fund.

636

637

DRAFT