

CHAPTER 7: TRANSFERS OF PROJECT OWNERSHIP [7 CFR 3560.406]

7.1 INTRODUCTION

During the term of an Agency loan, borrowers may determine that it is in their best interest to transfer a project to another owner. Changes in a borrower's circumstances or changes in the local market are common factors that may lead a borrower to seek a transfer. The Agency may approve a transfer of ownership of the property if the transferee and the project meet certain criteria, and if the transaction is in the best interest of the Agency and the tenants.

In many ways, transfers are similar to approving a new loan. The Agency must ensure that the transferee meets the same eligibility criteria and has the financial capacity and management experience to be a project borrower. In addition, the Agency must verify that the project and the use of the property continue to meet the program's purpose of providing adequate, affordable, decent, safe, and sanitary rental units for very low-, low-, and moderate-income households in rural areas. To protect the Agency's security interests in transfer, the Loan Servicer must perform the same underwriting evaluations that are outlined in Chapters 4 and 5 of HB-1-3560.

However, transfers are also different than approving a new loan. In a transfer, the Agency must also consider the impact on the tenants. While transfers offer an opportunity to improve the quality of housing through improved maintenance, rehabilitation, or better management, a transfer may also increase the risk of loan default or poorer housing conditions unless the Agency carefully evaluates the transfer and the transferee.

This chapter presents the requirements regarding project transfers and Agency procedures for reviewing and approving such actions. For purposes of the chapter, the term "applicant" or "transferee" is used to refer to the entity that wishes to acquire the property and "borrower" or "transferor" refers to the current borrower or the entity transferring the property. For additional guidance on transfers, assumptions and other servicing authorities, see **Attachment A** of this chapter and Chapter 11 of this Handbook.

SECTION 1: OVERVIEW

7.2 AGENCY OBJECTIVE

The fundamental question the Loan Servicer should ask when evaluating a transfer request is:

Will the project and the Agency be better, or at least no worse, off as a result of the transfer?

In answering this question, the Loan Servicer tries to ensure that the transfer meets two Agency objectives:

1. Improve or maintain the likelihood of loan repayment; and
2. Improve or maintain the quality of housing for the tenants.

It is essential that the Loan Servicer can justify that the transfer meets both of these conditions without incurring unreasonable costs to the Agency before recommending to the State Office that the transfer be approved. If a transfer is inadequate in meeting one of the objectives, the Loan Servicer should work with the transferee and the borrower to resolve issues of concern.

7.3 KEY ANALYTICAL CONCEPTS

In evaluating all the components of a transfer request, the Loan Servicer should ask and answer several basic questions to determine if the transfer meets the Agency's objectives. Answering these questions will form the analytical foundation for the assessment that would enable the Loan Servicer to identify potential problems or issues so the Agency, the transferee, and the borrower can address these problems or issues before completing the transfer.

Different steps in the transfer process will answer or begin to answer different questions. By the end of the analytical process, the Loan Servicer should be able to answer and document the answers to these questions, which can serve as the basis for making a recommendation to approve a transfer.

A. Eligibility

The same questions and documentation concerning eligibility that a borrower must answer during the Loan Origination process, the transferee, too, must satisfy. These requirements set the basic standards all borrowers and projects must meet to ensure that the Agency provides Government funds in accordance with the program's statutory requirements. The project's eligibility was documented during the loan origination process; however, the Loan Servicer does need to confirm that the project will remain eligible after the transfer.

- Does the transfer meet program eligibility requirements?
- Is the transferee eligible?
- Will the project remain eligible?

B. Feasibility

The questions of feasibility require more in-depth analysis by the Loan Servicer. Feasibility is also a concept used for Loan Origination and is used to gain a better understanding of the transferee and the transferee's plans for the project. The Loan Servicer needs enough information to determine that the transferee and the project can be successful if the transfer is approved.

- Is the transfer feasible?
- Does the transferee demonstrate adequate project management capability?

- Are the property and any proposed repairs in compliance with program requirements?
- Are the financial arrangements, budgets, and rents feasible?

C. Improve or Maintain Risk Levels

These questions build on the concept of feasibility to include a comparison with the existing borrower. Because a transfer involves existing tenants and an existing property, the Agency must go beyond the questions of feasibility to ensure that the tenants and the Agency will not face increased risks due to the transfer.

- Does the transfer improve or do no harm?
- Will the tenants be better or at least no worse off?
- Will the Agency be better, or at least no worse, off?

7.4 DEFINITION OF TRANSFER

The Agency defines transfers to include projects for which 100 percent of the ownership interest in a borrower entity is sold or transferred to new individuals or a new entity within a 12-month period. Thus, a transfer occurs whenever there is a change in a project's ownership through:

- A change in the legal entity, such that the transferee is considered to be a distinct and separate legal entity from the original borrower; or
- The title is transferred to a new owner, and the new owner assumes all liability for the debt.

Borrowers can request to transfer their project to another separate and distinct entity where the members are involved in both the transferring and the assuming entities, as long as the new entity is legally organized, meets applicable Agency requirements as outlined in Section 7.5 and in accordance with Paragraph 7.11.E.

7.5 CONDITIONS WHEN A TRANSFER MAY OCCUR

To ensure that projects continue to further the objectives of the program and that the Agency's security is protected, Agency consent is required for all project transfers [7 CFR part 3560.406 (b)].

The Agency will consider transfers only when the transferee documents in their initial written transfer request that at least one of the following conditions are met:

- The transfer is needed to remove a hardship to the current borrower that was caused by circumstances beyond the borrower's control;
- The transfer is a result of a court order requiring the division of security property;

- The transfer is being requested as an alternative to prepayment;
- The transfer will do no harm to the Agency or tenants; or
- Other circumstances exist which make the transfer in the best interest of the Government and the tenants of the project.

If the State Director determines that hardship is present, the transfer may occur without penalty to the borrower. When hardship is not present and the loan is less than five years old, the current borrower is ineligible for further loans for the remainder of the five years, unless a waiver is granted under the Administrator’s exception authority. Hardship may result from:

- Illness or death of the borrower;
- Serious financial difficulties beyond a borrower’s control that cause the borrower to shut down their business operation; or
- Inability of the borrower to obtain necessary credit on terms that would facilitate refinancing the debt and allow for operation of the project at affordable rents.

Some transfers, made for the purpose of revitalizing or preserving the existing program portfolio, may involve extensive rehabilitation and the commitment of new resources from the Agency and/or third parties. For these revitalization transfers, Loan Servicers must follow the supplemental guidance provided by the National Office for this type of transfer. This guidance will address existing Agency servicing authorities and ways to effectively utilize third party financial resources. This guidance must be followed whenever the Agency seeks to find solutions to extend and enhance the use of any multi-family housing property that continues to serve the affordable housing needs in its community.

7.6 KEY STEPS TO COMPLETING A TRANSFER

The Loan Servicer completes six steps to move through the process of receiving a transfer application, evaluating the offer, and closing the transfer. These steps are listed in Exhibit 7-1.

<p style="text-align: center;">Exhibit 7-1</p> <p style="text-align: center;">Key Steps to Conduct a Transfer</p> <ol style="list-style-type: none">1. Preliminary Assessment2. Processing Transfer Application and Determining Eligibility3. Evaluating the Transferee4. Evaluating the Project5. Making the Decision6. Processing and Closing the Transfer

The Loan Servicer must complete all of the steps in Exhibit 7-1 for each transfer; however, the Loan Servicer may find that some steps in the process may be completed more quickly for some borrowers than others. When a transfer involves a transferee with a record as a

good borrower and there are no compliance violations or other issues associated with the transfer, the Loan Servicer will be able to move through the transfer process more rapidly. The Loan Servicer may determine that specific elements of a transfer may allow for a limited review process, while other components call for more in-depth analysis.

This chapter presents the regular transfer review process and does not present a separate limited transfer review process. The Loan Servicer must demonstrate in the case file that the transfer application addresses the issues of eligibility, feasibility, and risk. These will be documented through the same forms, reports and other documents, but the level of supporting information and review in verifying that these documents meet the Agency's objectives may differ.

SECTION 2: PRELIMINARY ASSESSMENT

Prior to requesting a full transfer application and conducting a regular review, the Agency requires a preliminary assessment of the proposed transfer. The Agency has developed requirements governing the review of initial project transfer requests to:

- Prevent ineligible transfers or applications;
- Identify potential issues or concerns early in the process so they may be adequately addressed;
- Establish a working relationship with the transferee to ensure an efficient review process; and
- Determine whether to pursue a regular or limited transfer review process.

7.7 REQUIRED DOCUMENTATION FOR THE INITIAL TRANSFER REQUEST

Prior to submitting an initial transfer request, either the borrower or transferee will likely contact the Loan Servicer to discuss what documentation is required as part of a transfer. The Loan Servicer should provide the transferee with the list of required documents to submit an initial request (Exhibit 7-2) and should explain that additional information will be required after the preliminary assessment. In addition, the Loan Servicer should explain and provide any documentation necessary to assist the transferee in understanding the Agency's eligibility requirements and the basis on which a transfer application is evaluated.

The initial request to the Agency for a transfer should come from the transferee, although the borrower will probably participate in developing the request by making available relevant information.

Exhibit 7-2

Information/Documents for an Initial Transfer Request

1. A copy of the transfer agreement between the parties, *Form RD 3560-20, Multi-Family Housing Transfer and Assumption Review and Recommendation* which should include the following elements:
 - Description of the transaction (i.e., purchase or sales agreement); and
 - Description of the new entity structure.
2. Identification of any identity-of-interest between the current borrower and the transferee.
3. Description of any other Agency assistance currently or previously received by the transferee, *Form HUD 2530/Form RD 1944-37, Previous Participation Certification*.
4. Financial statement from the parties.
5. Organizational documents.
6. Identification of any additional funds that will be allocated to the project and the planned purpose for the funds.
7. Project operating budgets covering the first year of operation following the transfer or sale.
8. Description of the transferee’s experience (i.e., résumé).
9. Identification of all immediate and long-term repair and rehabilitation needs.

7.8 INITIAL AGENCY DETERMINATION

The Loan Servicer will evaluate the transferee’s submission to make a preliminary determination whether the transfer can meet the objectives of the Agency. Upon receipt of the initial request, the Loan Servicer should arrange a meeting with the transferee and borrower to discuss the initial application and the transferee’s plans for the property in more detail.

A. Application Meeting

The Loan Servicer should meet with the transferee and the borrower after submission of the initial transfer request. The transferee and borrower may choose to hold this meeting after submission of the formal application, but it is recommended that the meeting be held as early in the transfer process as possible. At this meeting the Loan Servicer will discuss the following issues so that the aspiring owner and management agent can demonstrate that they have the background and experience necessary to successfully manage the property:

- The transferee must have the ability and intention to operate the housing project for the purposes for which the original loan was made;
- The transferee must meet Agency eligibility criteria and the Loan Servicer should raise any eligibility issues based on the initial application;
- Whether other credit is available to the borrower or transferee;
- The transferee must show proper organization before transfer of ownership;
- Whether an appraisal is needed;

- Amount of indebtedness to be assumed;
- The transferee's capital needs/development plan;
- Whether the original owner can receive an equity payment;
- The amount of a subsequent loan, if applicable;
- Requirements of existing loan agreements/resolutions and mortgage; and
- Whether the transfer will be on the same terms or new terms.

At this time, the Loan Servicer should inform the transferee that the transferee's initial investment and return on investment will remain the same as what had been provided to the borrower unless:

1. The transferee is a non-profit entity, which is not eligible to receive a return on investment; or
2. The transferee contributes additional funds for repair or rehabilitation, and the Agency agrees to recognize a higher initial investment.

B. Review Eligibility

Prior to the meeting, the Loan Servicer should review the transferee's submission to identify any potential eligibility issues. The Loan Servicer uses the same eligibility requirements as described in Chapter 4 of HB-1-3560. The Loan Servicer should note what additional documentation is needed to verify eligibility when the transferee submits the full application. If any potential problems or eligibility issues are noted, such as a change in project use, the Loan Servicer should raise these concerns with the transferees as soon as possible. Any eligibility issues should be addressed before proceeding to a full application.

C. Consider Feasibility

It will not be possible for the Loan Servicer to make a final determination on the questions of feasibility based on the initial request. However, by reviewing the documents submitted and meeting with the transferee and borrower, the Loan Servicer can begin to assess the feasibility of a transfer. At this initial stage the Loan Servicer should begin considering the following issues:

- Will the transfer fully satisfy the borrower's existing loan or will there be a shortfall? If there may be a shortfall, what are the borrower's intentions to address any outstanding balance?
- Is the transferee planning to make substantial repairs or undertake rehabilitation of the property, and do the transferee's initial plans seem reasonable?

- Does the transfer call for equity distributions to the existing owner?
- Is the transferee going to request a subsequent loan? Does the proposed amount of the subsequent loan seem reasonable and sufficient based on the Loan Servicer's expertise and knowledge of the project?
- Will a writedown be required as part of the transfer? See Chapter 11 for more information on writedowns.
- Are there any other conditions in the transfer agreement or the proposed budget the Agency or the project's tenants may find objectionable?

D. Consider Market Conditions

Depending on the circumstances surrounding the project, the Loan Servicer may want to consider and discuss with the transferee the local market conditions and their potential impact on the project. If the project is in an area experiencing economic changes, the Loan Servicer should discuss the transferee's thoughts and plans for ensuring that the project remains viable or improves its occupancy rates.

E. Analyze Project Suitability

The Loan Servicer should refer to Chapter 6 to determine if additional analysis is required to verify that there is still a need for the project and the project is not obsolete. If the Loan Servicer determines to further analyze the project's suitability, a full application from the transferee should not be requested until the suitability analysis indicates that the property should remain a program property.

7.9 INITIAL DETERMINATION

A. Decision to Proceed

If the Loan Servicer establishes that there are no eligibility issues identified in the initial application, that the transferee can overcome potential market factors, and that there are no suitability issues, the transferee will be invited to submit a full application for the transfer. If the Loan Servicer identifies issues of concern during the initial review, the Loan Servicer should present these concerns to the transferee and/or borrower. The Loan Servicer should require the issue to be addressed either prior to requesting a full application, or as part of the full application.

B. Regular vs. Limited Review

Based on the preliminary analysis, the Loan Servicer should be able to determine if specific components of the transfer can be completed through a limited review process or if a regular review is needed. A Loan Servicer may be able to use the limited review process:

- For a transferee who is an existing borrower with an approved record-keeping system, the Loan Servicer may only need to have it confirmed that the transferee will use the approved system at the transferred project;
- For a project with no maintenance violations and when the transferee is not proposing any repairs or rehabilitation, the Loan Servicer must still conduct the physical inspection, but there will be no repair and rehabilitation plans to review and approve; and
- If the transferee is not requesting a rent increase, the reserve fund is fully funded, and the project has no violations, the Loan Servicer may not need a market study or need to consider whether rents are within CRCU.

C. Inviting the Complete Application

On determining to invite a formal application for transfer, the Loan Servicer will send a letter to the transferee informing them of the Agency’s decisions. The letter to the transferee must include the following information:

- A list of the information that must be submitted to complete the application from Exhibit 7-3; and
- A request that the information be provided within 60 days and at least 45 days prior to the proposed ownership transfer or sale date.

Exhibit 7-3

Information to Be Submitted to Complete Transfer Application

1. Credit report
2. Establishment of citizenship with social security or tax identification number
3. *Form HUD 935.2 Affirmative Fair Housing Marketing Plan*
4. Management plan
5. Management profile*
6. Management certification*
7. Evidence of insurance coverage*
8. Transferee attorney’s opinion regarding legal sufficiency and compliance of lease with State/local laws, ordinances and Agency regulations*
9. Narrative statement of proposed record-keeping system*
10. Assurance agreement
11. Letter from transferee’s attorney as to legal sufficiency of organizational documents*
12. Current preliminary title report
13. *Form RD 440-34 Option to Purchase Real Estate Property* or other forms of purchase agreement

14. *Form RD 400-1 Equal Opportunity Agreement*
15. Identification of all immediate and long-term repair and rehabilitation needs.
16. Cost estimate and statement of work (specifications) if rehabilitation required *Form RD 1924-13 Estimate and Certificate of Actual Cost*, and
17. Written description from transferee regarding physical condition of the property

* When conducting a limited review, these items may already be on file and may only need reverification or updating, as deemed appropriate by the Loan Servicer.

SECTION 3: PROCESSING TRANSFER APPLICATION AND DETERMINING ELIGIBILITY

7.10 RECEIVING A COMPLETE APPLICATION [7 CFR 3560.406(c) and (d)]

For the application to be considered complete and therefore eligible for further review, the application must include all of the information listed in Exhibit 7-3 and all the information requested in the letter to the transferee inviting them to submit a formal application. The Loan Servicer must inform the transferee promptly if the application is incomplete, and give the transferee a 15-day deadline to furnish the missing information. Once the application is complete, the Loan Servicer will conduct the evaluation of the transfer request within 30 days.

7.11 DETERMINE TRANSFEREE ELIGIBILITY

The Loan Servicer will evaluate the transferee's eligibility based on the items submitted as part of the initial request and the completed application. The Agency's evaluation will verify that the transferee and the property satisfy the general eligibility, identify-of-interest, legal capability, and insurance requirements. If there are any deficiencies, the transferee and borrower must develop a plan, approved by the Agency, before the Agency will consider approving the transfer.

The Loan Servicer must verify the transferee's and the project's eligibility before the Agency can approve the transfer. The Loan Servicer should refer to HB-1-3560, Chapters 4 and Chapter 5, for detailed information on verifying eligibility.

A. Citizenship Requirements

Refer to HB-1-3560, Paragraph 4.16 A for a detailed discussion on establishing citizenship.

B. Organizational Requirements

Refer to HB-1-3560, Paragraph 4.16 B for a detailed discussion on reviewing organizational documents and for specific requirements for limited partnerships, nonprofit organizations, and limited liability corporations.

C. Legal Capability

The Loan Servicer must make a determination of the transferee's legal capability to successfully assume and operate the project for the life of the Agency loan. This determination will be based on the attorney's letter and organizational documents submitted as part of the application. The Loan Servicer should obtain the Office of General Counsel (OGC) concurrence as needed to make such a determination. If there are any deficiencies, the transferee must take appropriate corrective action.

D. Requirements for Existing Borrowers

If the transferee is an existing borrower, refer to HB-1-3560, Paragraph 4.16 D, for a detailed discussion on further eligibility requirements for existing or previous borrowers. The transferee must:

- Be in compliance with all program requirements, or have been in compliance with an approved workout agreement for a minimum of six months for all other projects owned by members of the assuming entity;
- Have documented evidence that the conditions that resulted in the workout agreement were beyond the borrower's control and were not due to inappropriate actions by the borrower; and
- Be free of any adverse audit or investigation findings conducted by the Office of the Inspector General (OIG), with any audit or investigation closed or disposed of to the satisfaction of OIG. If there is an open audit or an investigation is underway, the Loan Servicer will contact OIG to determine if there are potential eligibility issues that may affect the transfer.

E. Identity-of-Interest

During the preliminary assessment the Loan Servicer should have determined if the transfer involves an identity-of-interest. Loan Servicers must not approve identity-of-interest transfers until the State Office can certify that the following conditions are met:

- The account is current;
- The reserve account is on schedule, less any authorized withdrawals;
- The taxes and insurance account is on schedule, and all outstanding bills are paid;
- The tenant security deposit account is fully funded;
- All unacceptable maintenance items outstanding have been completed;
- Management is satisfactory and there is an approved management plan and management agreement, if applicable; and
- The transferee is in compliance with equal opportunity and fair housing requirements.

Completion of this step ensures that identity-of-interest transferees receive appropriate Agency assistance in restoring security properties to compliance through transfers.

F. Insurance

The Loan Servicer must review the evidence of insurance coverage submitted in the

application to verify that the transferee has obtained all required types of coverage and in the proper amounts. If there is any deficiency, the transferee must be required to take appropriate corrective action.

Completion of this step ensures that the Agency's security properties will be protected from all damage and loss following transfers.

G. Site Control

The transferee's documentation must show control of the land. Control can be in the form of a deed (ownership), an option to purchase from the borrower, or purchase contract. Refer to HB-1-3560, Paragraph 4.12 F, for detailed information on verifying site control.

7.12 PROJECT ELIGIBILITY

The Loan Servicer should refer to HB-1-3560, Paragraphs 4.17 and 5.8 for detailed information on verifying project eligibility. The major components of project eligibility were verified during the loan origination process and are not affected by a transfer. However, the Loan Servicer should take the necessary steps to ensure that the project remains an eligible property.

The Loan Servicer must review the transferee's certification that the project will continue to be used to advance program goals and objectives (i.e., providing housing for low- and moderate-income tenants) and, if necessary, a restrictive-use agreement [7 CFR part 3560.406 (g)]. The Loan Servicer must document in writing that the site is residential in character and the property location enhances the value of the asset. If there are any questions or deficiencies, the Loan Servicer must instruct the transferee to provide the needed clarification.

Completion of this step ensures that properties will continue to advance Agency objectives following transfers.

7.13 NON-PROGRAM TRANSFERS [7 CFR 3560.406 (l)]

Housing projects may be transferred or sold to entities that do not meet borrower eligibility requirements for the type of loans being assumed. However, such a transfer or sale will only be considered when it is determined by the Agency to be in the best interest of the Federal Government and the objectives of the original loan can no longer be met. The following special rates, terms, and conditions will apply to such situations:

- The transferee makes a down payment of at least 10 percent of the remaining loan balance to be assumed;
- The transferee has the ability to pay the Agency debt; and
- Monthly or annual installments will be amortized over the term of the loan and the interest rate will be at a rate of interest at least one percent higher than the interest rate offered to eligible borrowers.

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SECTION 4: EVALUATING THE TRANSFEREE

After the Loan Servicer has established that the transferee is eligible, the Loan Servicer must determine if the transferee has the financial and management capacity to successfully operate the project. For a transferee that is an existing borrower with a record of few, if any, compliance violations and missed payments, the eligibility verification process will answer many of the questions about the transferee's capacity. However, for new borrowers, or those with limited experience with the program, the evaluation of the transferee is critical to determine that the transferee has the necessary financial capacity, and management skills and experience to operate a property successfully.

7.14 FINANCIAL REQUIREMENTS

Refer to HB-1-3560, Paragraph 4.18 C, for a detailed discussion on reviewing the transferee's financial capability. The credit report and financial statement are the two primary documents the Loan Servicer uses to determine financial capacity. As part of this financial review, the Loan Servicer must verify that:

- The transferee possesses the financial capacity to carry out the obligations required for the loan;
- The transferee is unable to obtain sufficient credit elsewhere at rates that would allow for project rents within the payment ability of eligible residents, if applying for a subsequent loan; and
- The transferee has the financial ability to meet the program's requirements.

7.15 MANAGEMENT CAPACITY

The transferee must demonstrate that it will provide professional management to ensure successful operation of the project. The Loan Servicer should refer to HB-1-3560, Paragraph 5.9 E, for guidance on analyzing overall management capacity, or Chapter 3 of HB-2-3560 for detailed information on analyzing the management plan and the management certification.

7.16 ANALYSIS

In reviewing and evaluating the transferee's financial capability and property management experience, if the Loan Servicer identifies any problems or issues of concern, the Loan Servicer should request the transferee to respond to the problem or concern. The transferee's response must be sufficient for the Loan Servicer to determine that the property will be managed in accordance with program standards, and the transferee can meet all financial responsibilities.

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SECTION 5: EVALUATING THE PROJECT

7.17 PROJECT COMPLIANCE AND FINANCIAL FEASIBILITY

Two key elements of the Loan Servicer's review are to determine that (1) the project is, or will be; in compliance with program requirements and (2) the financial aspects of the transaction are feasible after the transfer. This issue of compliance applies to the physical property and feasibility to the financial components of the project, including budgets, rents, and loan structure. The level of review and key analytical questions the Loan Servicer should focus upon will vary from transfer to transfer and will depend on the existence of compliance issues, necessary repairs, and rehabilitation, or whether a subsequent loan is being requested. After the existing conditions of the property and the transferee's plans for resolving any issues and financing the project are understood, the Loan Servicer must determine if the project will be feasible and meets the objectives of the program.

7.18 PHYSICAL INSPECTION

The transferee's application should include a detailed plan outlining the transferee's repair and rehabilitation plans and their expected costs based on an identification of all immediate and long-term repair and rehabilitation needs. The Loan Servicer will make an on-site inspection of each vacant unit and 10 percent of the remaining units in the project being transferred. When substantial rehabilitation issues are involved, the Loan Servicer will inspect all units. The State Architect and Civil Rights Coordinator are encouraged to participate in the on-site inspections. The inspection is to ensure that the transferee's plans are adequate to ensure that the Agency's decent, safe, and sanitary criteria are met. The inspection will also help the Agency assess compliance with applicable civil rights, disability, and environmental requirements. The Loan Servicer will conduct a compliance review if one had not been completed in the past 12 months prior to the physical inspection. Pictures of any deficiencies will be made part of the applicant's file.

A. Finalize Detailed Repair and Rehabilitation Plans and Costs *[7 CFR 3560.406 (d)(7)]*

The Agency and the transferee must agree to and document all necessary repairs to make the housing decent, safe, and sanitary. If all needed repairs cannot be made prior to the transfer, the funds needed for the repairs will be escrowed and a plan for such repairs developed. The plan will identify each repair, the time frame for completion, an estimate of costs for each item, who will do the work, and any identity-of-interest between the transferee and the parties doing the work or providing materials or services. The Agency must concur with the plan as part of the approval of the transfer.

If the transferee is proposing to rehabilitate either some or all of the units in the project, the Agency and the transferee must agree on the rehabilitation plan, time lines, an estimate of costs for each item, who will do the work, and any identity-of-interest between the transferee and the parties doing the work or providing materials or services. If any tenants will be temporarily relocated during the rehabilitation, the transferee must have a detailed plan, acceptable to the Agency, for providing housing and services to

these tenants. The Agency must concur with the plan as part of the approval of the transfer.

The level of review and documentation of a transferee's repair and rehabilitation plans must be adequate based on the level of repairs and rehabilitation required for the property. The objectives of the analysis are to ensure that the property is in full compliance with program requirements, the plans meet the best interest of the tenants, and the transferee has the financial and management capacity to fulfill the plans.

Improvements or repairs are paid from the sources listed in Exhibit 7-4.

The Agency will review the reserve requirements for the housing project and may adjust them, if necessary, to adequately cover the cost of addressing the project's capital needs. If current levels of reserve contributions are inadequate to meet the property's capital needs, Loan Servicers must follow the supplemental guidance provided by the National Office for procedures in reviewing these cases and determining the amount of any change in the reserve contribution while ensuring the continued feasibility of the project.

<p style="text-align: center;">Exhibit 7-4</p> <p style="text-align: center;">Funding Sources for Repairs</p> <ul style="list-style-type: none">• Transferee's cash contribution;• Syndication proceeds (as negotiated);• Reserve amount being transferred (if the amount remaining will be adequate to meet near-term repair and expense needs);• Transferor funds;• Third-party funding sources;• Junior liens;• Subordination; and• Agency loan funds (as a last resort and only to the extent needed for essential repairs to ensure that the housing is decent, safe, and sanitary).
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B. Civil Rights and Disability Compliance

The Civil Rights Coordinator, or designee, will conduct a civil rights and disability compliance review, provided one has not been completed in the past 12 months. This review is conducted during the physical inspection. This review must be conducted to ensure that the project complies with the Americans with Disability Act, Section 504(c), which covers accessibility requirements, and the Title VI of the Fair Housing Act of 1968.

The transferee must take action to mitigate any civil rights and disability concerns identified. Any project where civil rights and disability concerns have been identified will not be approved for transfer without review by the Civil Rights Coordinator.

The transfer file must include the civil rights and disability review by the Civil Rights Coordinator. Examples of civil rights deficiencies include, but are not limited to, the following:

- Failure to market units in accordance with *Form HUD 935-2*;
- Inconsistent treatment of applicants when screening for occupancy;
- Inconsistent treatment of tenants when assigning units;
- Borrower failure to have documented the self-assessment review of civil rights and disability practices;
- Improper waiting lists and tenant selection routines; and
- Handicapped accessibility concerns.

C. Environmental Review [7 CFR 3560.406 (d)(4)]

1. Environmental Review under the National Environmental Policy Act (NEPA)

Agency approval of a transfer will normally qualify as a categorical exclusion and will not require preparation of any environmental review document, provided the proposed transfer will not alter the purpose, operation, location, or design of the project as originally approved. If the transfer includes additional financial assistance, the appropriate level of environmental review will be completed in accordance with RD Instruction 1940-G and Chapter 3, Section 3 of HB-1-3560.

2. Due Diligence

When additional financial assistance is involved, due diligence will be performed for a transfer in accordance with the procedures identified in Chapter 3, Section 3 of HB-1-3560. Normally, due diligence will be completed in conjunction with the appraisal, if one is being done.

3. Form FEMA 81-93, Standard Flood Hazard Determination

Form FEMA 81-93 will be completed for all transfers.

4. Correction of Deficiencies and Documentation

Both the NEPA review and the due diligence report, as appropriate, will be made a part of the transfer file. Any outstanding concerns noted in either document must be

resolved prior to approval of the requested action. The State Environmental Coordinator should be consulted for further evaluation and guidance on any such problems.

7.19 FINANCIAL FEASIBILITY

A. Budget/Reasonable Rents [7 CFR 3560.406 (d)(2)]

The Loan Servicer must review the budget submitted by the transferee to determine whether the budget provides for reasonable rents that the persons eligible for the units in question can afford. The submission from the transferee should include information on market rents for comparable units in the area, if the transferee is proposing a rent increase. The proposed basic rents for the project upon completion of the transfer must satisfy the CRCU standard [7 CFR 3560.406(d)(2)] as discussed in Chapter 4 of HB-2-3560.

The Loan Servicer should be particularly diligent in analyzing the budget and proposed rents when the transferee will also receive a subsequent loan or other third-party financing, or there are significant repairs or rehabilitation plans. The Loan Servicer must consider both the short-term impact of whether the transferee can make loan payments immediately following the transfer and the long-term feasibility of the budget and rents to allow for a successful project. If there is any deficiency in the budget or rent structure, the transferee must take appropriate corrective action.

In addition, the Loan Servicer should review the budget to determine if the project life-cycle costs and reserve levels are adequate to allow for the necessary maintenance of the property over the remaining life of the project. If there are any deficiencies, the borrower must take appropriate corrective action.

B. Loan Structure

The Loan Servicer and the transferee should agree on the structure of the transferee's loan and take the necessary steps to ensure a smooth closing process.

1. New Term or Same Terms [7 CFR 3560.406 (j)]

Loan Servicers will review the account to determine which type of transfer needs to occur. The Agency generally completes transfers on new terms. Even if the transferee is just "stepping into the shoes" of the borrower, in most cases the Agency will change the term of the loan from 50 years to 30 years. The loan may be re-amortized over a period not to exceed 50 years or the remaining economic life of the property as determined by the appraisal report of the property, whichever is less. The Agency does allow transfers at same rates and terms even if the transfer does involve an increase in rents. In order for this type of transfer to take place, it is incumbent upon the borrower to demonstrate how a transfer under same rates and terms is in the best interest of the government. For example, if the new owner under a transfer has applied for tax credits and to qualify for 9 percent credits it is necessary to retain same rates and terms, it could be justified to allow a same rates and terms transfer. Before making a recommendation on the transfer, the

Loan Servicer should determine if the transfer will be on new terms or the same terms and address any issues or obstacles that this may present.

2. Subsequent Loan [7 CFR 3560.406 (h)]

The Agency may provide a subsequent loan or approve one from a third-party source in conjunction with an ownership transfer or sale of a housing project. The subsequent loan may be in the form of a senior, junior, or parity lien, or a soft second. In any case, the Government must be in a secure position. If the transferee is requesting a subsequent loan, the Loan Servicer should refer to Chapter 10 of HB-1-3560 to ensure that the transferee's application is complete and being processed. The Loan Servicer should verify:

- The subsequent loan process will be completed to coincide with the transfer closing to ensure a smooth closing process, and
- The subsequent loan and its impact are accurately reflected in the transferee's budget and repair and rehabilitation plans.

3. Closing the Existing Loan

The Loan Servicer and the existing borrower must agree on the close-out of the existing loan before making a recommendation on the transfer. This is particularly important if the transfer will result in a loan shortfall or the borrower is requesting an equity payment.

Equity may be provided in cash or through a loan. If a full equity payment to the transferor is not paid at the time of the ownership transfer or sale or has not been paid through an Agency equity loan or third-party equity loan to the borrower that is approved by the Agency, the transferee must certify that equity payments due to the borrower will be paid from source other than project fund. These sources must be identified.

The Loan Servicer should ensure that the agreed-upon resolution of a shortfall maximizes the borrower's repayment ability and avoids or minimizes loss to the Government, unless it is in the Agency's best interest to accept an option that is less than the lowest-cost option. The Loan Servicer should ensure that the necessary actions to resolve any issues with the existing borrower are completed, or far enough along in the process, to allow for the completion of the transfer. The Loan Servicer should:

- Determine if the transfer will result in a shortfall on the existing loan. If a writedown is needed, see Chapter 11 for more information;
- Initiate the debt settlement process, in accordance with Chapter 12, if appropriate; and
- Determine if the Agency should pursue legal remedies against the borrow HR-3-3560

For equity payments, the Loan Servicer must determine if the borrower is entitled to equity payment [7 CFR 3560.40 (e) and (f)]. No compensation, equity, or syndication

proceeds will be paid to the transferor by the transferee in connection with any transfer unless all of the following conditions are met:

- The account is current;
- The reserve account is on schedule, less any authorized withdrawals;
- The taxes and insurance account is funded and all outstanding bills paid;
- The security deposit account is fully funded;
- There are no outstanding serious maintenance items uncompleted, or an approved plan of action has been developed;
- Management is satisfactory, and there is an approved management plan and management agreement, if applicable;
- The project has been operated in compliance with equal opportunity and fair housing requirements;
- No project funds have been misappropriated; and
- The account will be classified as an “A” project in the MFIS system or if an acceptable workout agreement has been developed, classified as a “B” project.

7.20 ANALYSIS

In reviewing and evaluating the physical and financial plans for the property, the Loan Servicer must determine that the transferee’s plans are feasible. This means the property must be able to meet and maintain the Agency’s standards for decent, safe, and sanitary housing and continue to meet all of the program’s budget, rent, and other financial requirements. If during the analysis of the property, the Loan Servicer determines the transferee’s plans or proposals are not feasible, the transferee must either resolve the issue or agree to a resolution that is approved by the Agency before the transfer can be completed.

SECTION 6: MAKING THE DECISION

7.21 ASSESS THE OVERALL RISK AND THE IMPACT ON THE AGENCY AND TENANTS

The Loan Servicer compiles the evaluation of the eligibility, transferee, and the property and decides whether to recommend the transfer. Regardless of the level of detail the Loan Servicer went into in evaluating the transfer, the questions and process that the Loan Servicer must follow remain the same. Based on the transferee's application, and the Loan Servicer's knowledge of the existing borrower and property condition, the Loan Servicer should ask two questions:

- Is the potential for financial loss to the Agency better or no worse than with the existing borrower?
- Will housing conditions be better or no worse than under the current borrower?

The Loan Servicer must be able to answer these questions and explain the answers through the transfer application and case file documentation. The Loan Servicer must answer "yes" to both questions in order to recommend the transfer. If the Loan Servicer answers "no" to one or both questions, they must continue to work with the transferee to resolve any outstanding issues before recommending the transfer. The information the Loan Servicer receives as part of the application and documentation completed during the review process will account for most of the documentation required. However, the Loan Servicer should include a narrative statement in the case file explaining how the Loan Servicer reached the conclusion that the transfer meets the objectives of the Agency.

7.22 COMPLETE AND VERIFY APPLICABLE FORMS

Throughout the review process, the Loan Servicer must prepare relevant forms to facilitate the transfer and ensure that each form is prepared correctly. The forms listed below must be filled out to complete a transfer:

- To transfer multiple housing loans to borrowers assuming the obligations, Loan Servicers must prepare *Form RD 3560-21*. They should give a signed copy of this form to the transferee, keep another signed copy in the Field Office case file, and retain the original form in the Field Office.
- To transfer rental assistance, Loan Servicers need to prepare *Form RD 3560-55, MFH Transfer of RA*.
- To record borrower eligibility to receive interest credit or rental assistance, Loan Servicers need to prepare *Form RD 3560-9*.

When the transfer docket forms are completed, the Loan Servicer must determine that:

- The proposed transfer conforms to the applicable procedural requirements and that determinations of hardship status, eligibility, etc., are clearly documented in the case file;
- Each form is prepared correctly according to the Forms Manual Insert (FMI) or other appropriate regulations; and
- Items such as names, addresses, and the amount of the indebtedness to be assumed are the same on all forms in which those items appear.

7.23 TRANSMIT THE DOCUMENT TO STATE OFFICE AND OGC FOR REVIEW

When the Loan Servicer determines that all conditions have been met and is ready to recommend approval of the transfer, the Loan Servicer forwards the application docket and the official case file, with comments and recommendations to the State Office.

A. State Office Review

The State Office reviews the documents. If the State Director agrees that all applicable conditions are met, the State Director forwards the docket to OGC for review and for closing instructions. All materials related to the case may be forwarded to the National Office for review and approval authorization if necessary.

B. Decision to Approve the Transfer

If the transfer is approved, OGC will issue closing instructions. The State Office forwards any comments and conditions to the Field Office and gives them authority to issue *Handbook Letter 102 (3560)*, *Letter of Conditions*, *Loan Approval*, or *Obligation of Funds* to the transferee. The transferee will return the executed Notice of Intent to Meet Conditions within 10 days of receipt. After receipt, the Field Office will schedule a meeting with the transferee to execute the obligating documents.

C. Issue Letter of Conditions/Closing Instructions

Upon a determination that the transfer is allowable and meets all applicable criteria, the Agency will submit to the transferee a letter of conditions and closing instructions from OGC that will put the transfer into effect.

7.24 AGENCY APPROVAL

If the Agency decides to grant approval to a transfer request, it will proceed directly to the processing steps described in Section 7 of this chapter.

7.25 AGENCY DISAPPROVAL/REJECTION

If the Agency denies a request for a transfer, the Agency must send a formal letter to the transferee indicating the reasons for the decision and informing the transferee of appeal rights. A copy of this letter must be placed in the case file.

SECTION 7: PROCESSING AND CLOSING THE TRANSFER

Once the Agency has made the decision to approve a transfer and issue closing instructions, it must undertake a number of steps to implement the transfer. The steps the Agency takes to process and close a transfer on new terms and same terms are similar to each other.

7.26 CONDUCT APPRAISAL OF SECURITY PROPERTY [7 CFR 3560.406 (d)(3)]

An appraisal is often necessary to ensure that the Agency's security requirements will be met under the new loan. The appraisal must be conducted in accordance with Chapter 8 of HB-1-3560.

When the total value of the loans as part of a transfer is \$100,000 or less, the Agency may determine the value of the security through either:

- An Agency review of monitoring reports; or
- An appraisal paid for by the borrower, conducted in accordance with Chapter 7 of HB-1-3560.

When the total value of the loans as part of a transfer is greater than \$100,000, the Agency must determine the value of the security through an appraisal obtained by the Agency and conducted in accordance with Chapter 7 of HB-1-3560.

The value of the project covered by the Agency loans to be assumed by the transferee must be sufficient to ensure that all Agency loans being assumed and all subsequent loans offered as a part of the transfer can be secured to a level that fully protects the Agency. Soft second loans that are not dependent on project revenue for payment are not included in this determination.

7.27 DETERMINE THE APPROPRIATE INTEREST RATE

Transfers on new terms are subject to the interest rate conditions described below. If rents are increased due to the transfer, the transfer will be done under new rates and terms if the Agency determines that this is in the best interest of the Government.

A. General

The interest rate charged for all loans, except Labor Housing loans, will be the current rate being charged for those loans at the time of loan closing or the interest rate at the

time of approval (i.e., the date *Form RD 3560-51 Obligation – Fund Analysis*, is approved), whichever is less.

B. Labor Housing Loans

The interest rate on Labor Housing loans will be the rate specified in the note, generally 1 percent, except those on farm loans at the exception rate when credit elsewhere is available.

7.28 PROCESSING REQUIREMENTS [7 CFR 3560.406 (k)]

The Agency has established specific requirements for processing project transfers to assure that the obligations and responsibilities of the transferor are formally passed to the transferee and that the Agency’s security interests are protected. Specifically, these requirements ensure that:

- All accounts, property, and subsidy are properly assigned to the transferee;
- A proper loan agreement or loan resolution for the type of transferee is in effect and secured in the mortgage and deed of trust;
- The transferor is released from liability when all Agency security is transferred and the total outstanding debt is assumed; and
- Applicable restrictive-use provisions are attached to the transferred loans.

Loan Servicers should take the steps summarized in Exhibit 7-5 when processing transfers.

<p>Exhibit 7-5</p> <p>Basic Steps for Processing Transfers</p> <ol style="list-style-type: none"> 1. Determine current loan balances for transfer; 2. Verify that the application docket is complete; 3. Review applicable requirements with the transferee; 4. Write the transfer agreement; 5. Obligate the subsequent loan, if applicable; 6. Approve the transfer; 7. Close the transfer; 8. Assign lease to transferee; 9. Shift accounts, funds, and assets to transferee; 10. Provide copies of documents to transferee; 11. Inform new borrower of administrative responsibilities; 12. Schedule a follow-up servicing visit; and 13. Address special circumstances as needed.

7.29 PROCEDURES FOR PROCESSING TRANSFERS

A. Determine Current Loan Balances for Transfer

1. Determine the Loan Balance

To determine the current loan balance for transfer, the Loan Servicer must execute *Form RD 3560-21* according to the FMI. The unpaid principal balance and accrued interest to be shown on *Form RD 3560-21* is determined by accessing the project account recorded via field terminal. The Loan Servicer will advise the transferee of:

- The total amount paid as of the closing date that has not been credited to the account;
- The payment required to place the account on schedule as of the previous installment due date;
- Any payment required to bring any monthly or annual payment current; and
- The amount needed to bring the reserve account current less any authorized withdrawals.

The Loan Servicer must base the amount of indebtedness to be assumed on current appraisal regulations. In the case of a transfer with assumption of less than the full debt, the Loan Servicer will attach the *Form RD 3560-52, Promissory Note* to the transfer agreement and place it in the transferee's file.

2. Adjustments to the Account

Same terms transfers, when the transferor has been converted to Predetermined Amortization Schedule System (PASS), must take place in a current loan status on the date of transfer. Thus, transferors must bring any delinquent principal and interest current prior to the transfer.

Overpayments and advance regular payments made on PASS accounts result in the creation of a "future paid" status account under Automated Multi-Family Housing Accounting System (AMAS). These advance payments must be reversed off and applied to the transferor's principal balance by the Loan Servicer prior to determining the loan balance to be transferred. If the future payments have been made through rental assistance, they must be refunded to the transferor and reapplied in the form of cash on the loan balance.

B. Verify that the Application Docket is Complete

1. Basic Components of the Docket

The Loan Servicer should use the Application Checklist and supporting documentation (**Attachment 7-B**), to determine if all the items have been submitted by the transferee.

2. Other Supplemental Documentation

Other transfer docket items may include:

- Mortgagee title policy;
- Title evidence or report of lien search;
- Foreclosure notice agreement;
- Original or certified copy of deed to any property;
- Purchase contract or other instrument of ownership;
- Assignment of HUD Section 8 Housing Assistance Payments contract; and
- Information on prior or junior mortgage(s).

Completion of this step ensures that the entire history of the transfer, from initial request through final approval, is adequately and legally documented. Maintenance of this history allows the Agency to hold transferees accountable for compliance with all agreements signed during the transfer process.

C. Review Applicable Requirements with Transferee

After closing instructions have been issued but before the transfer is closed, the Loan Servicer carefully reviews with the transferee the applicable loan program regulations and loan agreement or resolution, if this was not fully completed during the preliminary request meeting in accordance with Paragraph 7.8.

D. Write the Transfer Agreement

The Loan Servicer will use *Form RD 3560-20* to record the agreements between the transferor and transferee. The agreement will show all agreements involved relating to equity, including:

- Disposition of syndication proceeds between the transferee and transferor;
- Method and source of payment;
- Payment of recoverable cost items;
- Disposition of future paid payments
- Assignment of project accounts and leases; and
- Disposition of any equipment purchased with loan or project funds.

The agreement should include any agreements to correct any compliance problems, such as delinquent payments, underfunded reserves, or deferred maintenance. If health and safety, civil rights, disability, or environmental deficiencies were identified in the inspection, the transferee must include an action plan for immediate corrective measures. These agreements should state which party would be responsible for taking corrective action, and indicate the source of funds. Additional information may be attached to *Form RD 3560-20* as needed to ensure that all agreements are documented.

E. Prepare to Close the Transfer and Obligate the Subsequent Loan, if Applicable

To prepare to close the transfer and obligate any subsequent loan that is part of the transfer, the Loan Servicer must prepare *Form RD 3560-51*, and *Forms RD 3560-33, Loan Agreement, 3560-34, Loan Agreement, or 3560-35, Loan Resolution* if changes must be made to the existing loan agreement, or the transfer is a new terms transfer.

The Loan Servicer enters the required data on borrower and project characteristics into the appropriate AMAS screens, although they should not enter the data to establish the borrower/project until the project receives final approval. The numbers generated by AMAS are used to identify the transferee when completing the transfer closing documents.

In addition, the Loan Servicer must ensure that the proper type of loan agreement or loan resolution is in effect and secured in the mortgage or deed of trust at the time of transfer. The balance of debt assumed must be scheduled for repayment in two years or less for RHS accounts and usually ten years or less for other types of multiple family loan account. The State Director may approve longer terms.

F. Close the Transfer

The Agency will close the transfer according to the closing instructions received from OGC. After the transfer is approved, the Loan servicer enters the transfer into AMAS and calculates the transfer balance using the Servicing Balance Worksheet. The transferee has now become the new borrower.

Upon completion of the transfer, there must be no liens, judgments, or other claims against the security being transferred other than those by the Agency and those to which the Agency has previously agreed, unless prior written approval is obtained from the National Office.

The parties to the transfer are responsible for obtaining legal services necessary to accomplish the transfer. A profit or limited profit organization transferee may use any designated attorney or title insurance company to close the transfer according to the applicable closing instructions from OGC. The attorney or title insurance company and their principals or employees must not be members, officers, directors, trustees, stockholders or partners of the transferee or transferor entity. Nonprofit organization transferees may use a designated attorney who is a member of their organization if the cost is reasonable, typical for the area, and is earned.

G. Release from Liability

The Agency may release the borrower from liability from any debts owed to the Agency when the housing project, and all equipment, related facilities, and housing project financial accounts have been transferred or sold to the transferee and the transferor's outstanding Agency debts have been assumed or satisfied.

If all of a transferor's outstanding Agency debt is not assumed or paid off at the time of the transfer or sale, the Agency will not release a borrower from liability unless the Agency determines that the borrower is unable to pay the remaining debt from assets taken as security through the debt settlement procedures. Refer to Chapter 12 for debt settlement procedures.

H. Assign Leases to Transferee

All leases must be assigned to the transferee no later than the date of closing.

I. Shift Accounts, Funds, and Assets to Transferee

1. General

Following the assignment of leases, responsibility for the accounts, funds, and assets listed below is shifted from the transferor to the transferee:

- Project operating accounts;
- Reserve account;
- Tenant security deposits;
- Supervised bank accounts;
- Any funds remaining in rental assistance contract; and
- Equipment purchased with project funds.

During a project transfer, the transferor may retain the project's reserve if the transferee funds the reserve account in an amount sufficient to meet the project's immediate needs.

2. Rental Assistance Agreement

When a transferee assumes a rental assistance agreement, the Loan Servicer will complete *Form RD 3560-55* and attach it to *Form RD 3560-27, Rental Assistance Agreement*. In addition, they will attach a copy of *Form RD 3560-55* and forward it to the St. Louis Office. If the transferee does not assume an existing agreement, Loan Servicers will suspend the agreement by memorandum to the St. Louis Office.

3. Other Agreements

If a project operates under the HUD Section 8 program, the Housing Assistance Payment contract must also be assigned to the transferee with prior HUD approval.

When the full amount of the debt is being assumed and an amount has been advanced for insurance premiums or any other purpose, the transfer will not be completed until the Finance Office has charged the advance to the transferor's account.

J. Provide Copies of Documents to Transferee

At a time no later than the transfer closing, the Agency will provide to the transferee copies of the security instruments executed by the transferor or previous borrower to originally secure the loan.

K. Inform Borrower of Administrative Responsibilities

Following completion of a transfer, the transferee has several reporting and other administrative responsibilities that need to be satisfied. The Loan Servicer must inform the transferee of these requirements shortly after the transfer is closed.

1. Reporting

Following the transfer, transferees must submit quarterly project financial reports to the Agency to demonstrate the financial viability of the project.

2. Tenant Certifications

Transferees must ensure that current executed tenant certifications are on file with the Agency or provided for each tenant following the transfer.

3. Identification of All Creditors

At completion of the transfer, transferees must establish that there are no liens, judgments, or other claims against the security being transferred other than those by the Agency and those to which the Agency has previously agreed.

L. Schedule a Follow-up Servicing Visit

The Loan Servicer should schedule a servicing visit within 90 days of closing to verify the transferee's compliance with all applicable program requirements.

M. Address Special Circumstances as Needed

1. Deceased Borrower

When the spouse of a deceased individual borrower is not currently liable for the debt, the Loan Servicer can complete a transfer and assumption to the spouse using *Form RD 3560-21*, on the same rates and terms if the account is current, or on new terms if it is

not current. The Loan Servicer should obtain OGC advice and instructions before completing such a transfer.

2. Nonequity Compensation

In some cases, compensation may be paid to the transferor by the transferee when there is no equity in the project, in order to bring about the transfer. The State Director may ask the National Office to authorize nonequity compensation. Transferors will receive no payment for regular equity or equity in conjunction with a prepayment action unless all Agency loans against the project are assumed in full or the payment to the transferor is applied in total against non-Agency prior liens. This situation is most appropriate when it is in the Agency's best interest to get a project away from a "bad" borrower and nonequity compensation is less expensive than liquidating the property.

3. Payments Received while Transfer Pending

During the period that a transfer is pending in the Field Office, the St. Louis Office will continue to apply to the transferor's account any payments received. Such payments include any down payments made in connection with the transfer for reducing the amount of the debt to be assumed. Any payment on the account not included in the latest transaction record should be deducted from the total amount of principal and interest calculated from the latest information available before the assumption agreement is completed and signed.

- **Identification.** Payments received on the date of the transfer will be remitted as regular payments. The payments will be credited to the transferor's borrower and the project number when the payment should be credited prior to the transfer. The payments will be credited to the transferee's borrower and project number when the payment should be credited after the transfer.
- **Payment.** When a payment is due on the assumption agreement shortly after the transfer is completed, the payment should, if possible, be collected at the time of the transfer and remitted in the transferee's name.

4. Uncompleted Transfer

If for any reason a transfer will not be completed after approval, the Loan Servicer will immediately notify the State Office of the reason.

7.30 MONITORING REHABILITATION WORK

The Agency will monitor all repairs and approve payments using the procedures outlined in Chapter 9 of HB-1-3560. Completing this step allows the Agency to verify that the property will be restored to a decent, safe, and sanitary condition.

ATTACHMENT 7-A: REVITALIZATION GUIDANCE

This Attachment provides guidance on using the Agency's regulatory authorities to revitalize and preserve the existing MFH portfolio through transfers and assumptions. Prolonged reduced program funding, the portfolio's increasing age, and existing owners seeking viable program exit strategies are key reasons why exceptional efforts are now needed to revitalize the portfolio. It will take extensive cooperation by existing owners, potential purchasers, non-Agency housing financiers and the Agency to help preserve this irreplaceable affordable rental housing option in rural America.

The Agency will seek to find solutions to extend and enhance the use of each MFH property that continues to serve the affordable housing needs in its community. This Attachment establishes guidance for revitalizing MFH projects using the transfer authority of this Instruction.

Revitalization principles. The goal of revitalization is to refocus resources on existing properties so they can meet affordable rental housing needs well into the future. Basic revitalization principles are summarized below:

1. There is a need for the property in the community.
2. When the transaction is complete the property will be in the hands of eligible owners.
3. The transaction will address the physical needs of the property.
4. Existing tenants will not be displaced because of increased post transaction rents.
5. Post transaction basic rents will not exceed comparable market rents.
6. Any equity loan amount will be supported by a market value appraisal.
7. The Office of Rental Housing Preservation (ORHP) concurs with equity loan amounts or increased return to owner (RTO) and coordinates the approval of waivers, National Office approvals or revitalization related policy issues.

Use effective processing strategies. The Agency must work effectively to help purchasers to meet timeframes and other requirements of third party funding sources. Key methods to foster cooperation and efficiencies within State Office jurisdictions are described later in this attachment. These methods include:

1. The State MFH Preservation Contact coordinates State revitalization activity.
2. Develop and maintain standard transfer processing guidance and checklists.
3. For each transaction, establish an up-front understanding for assessing capital needs, establishing the scope of rehabilitation and determining the appraised value.
4. Develop a good working relationship with third party funding sources.
5. Understand processing timeframes and requirements for third party funding sources.
6. Process and approve transactions to assist owners to meet timeframes and other requirements of third party funding sources.

Fully use servicing authorities. The Agency must creatively consider and use when practicable other servicing authorities to facilitate revitalization. These authorities include:

1. Subordination for third party equity or rehabilitation loans.
2. Accept parity or junior liens for equity or rehabilitation purposes.
3. Accept pre or post transaction consolidations to facilitate efficient management.
4. Reamortization of existing Agency debt to reduce debt service.
5. Reallocate unused rental assistance (RA) units to assure affordability by existing tenants.
6. Allow for a post-transaction asset management fee to a nonprofit or public body.
7. Other waivers and National Office approvals as necessary.

REVITALIZATION PRINCIPLES

1. **There is a need for the property in the community.** Prior to entering into a revitalization process, the Agency must be satisfied that favorable patterns in housing and population statistics indicate the property will be needed to provide affordable rental housing to eligible tenants in the community.
 - (a) The determination of need will be documented in the case file. More complete documentation will be required if vacancy exceeds 10 percent during the most recent 12 months.
 - (b) 7 CFR part 3560, subpart N may also be used during the transfer process for guidance in making this determination.

2. **When the transaction is complete the property will be in the hands of eligible owners.** The post transaction owner must be capable and willing to operate the revitalized property in accordance with the purpose and intent of the Rural Rental Housing (RRH) program and be considered eligible within program requirements.
 - (a) An applicant will be considered to be ineligible if the applicant or any member of the applicant entity is currently in noncompliance with existing Rural Development regulations including equal opportunity, fair housing and accessibility requirements, has an outstanding finding of non-compliance issued by the Agency, or an unclosed Office of Inspector General (OIG) audit or investigation.
 - (b) The State Director may waive this requirement if the outstanding finding or unclosed OIG audit or investigation is being addressed through a workout or transition plan in effect for at least 6 months, or if the State Director determines that the existing default is due to circumstances beyond the applicant or any member of the applicant entity's control. State Directors are to consult with other State Directors when the default has occurred in another state.

3. **The transaction will address the physical needs of the property.** All physical needs of the property must be identified and addressed during a revitalization transfer regardless of the source of funding.
 - (a) Identifying the property's physical needs.
 - If a full physical inspection or a compliance review has not been conducted within the last 12 months, then the Agency will conduct one. Pictures of any finding of deficiencies or non-compliance will be included in the applicant's file.
 - When repair and rehabilitation issues are anticipated, an independent Comprehensive Needs Assessment (CNA) is to be obtained to determine both the immediate needed repairs and any necessary adjustments to the reserve account for long-term project viability. The cost of a CNA may be funded from the project's reserve or operating account if funds are available and the cost and quality of the CNA are deemed acceptable by the Agency prior to execution of any contractual agreement by the borrower. While a CNA may also be referred to as a "life cycle cost analysis or "physical needs assessment," at a minimum to be considered acceptable, a CNA must include:

- A physical inspection of the site, architectural features, common areas and all electrical and mechanical systems.
- A unit-by-unit inspection.
- Identify repair or replacement needs.
- Provide a cost estimate of the repair and replacement expenses.
- Provide at least a 10-year analysis of the timing and funding for identified needs which includes reasonable assumptions regarding inflation.
- If the cost or availability of qualified independent contractors prevents or delays the completion of a CNA, the Agency may perform this function.
 - A contracted CNA should be financially feasible for any project over 20 units.
 - When the Agency performs the CNA it will be done with the participation of the State Architect or if unavailable a contract Architect or State Architect from a neighboring state.
 - A CNA should generally be completed within 12 months prior to the revitalization transaction.
- When substantial repair rehabilitation issues are anticipated, the State Architect and Civil Rights Coordinator are to participate in the CNA or other on-site inspection.
- All necessary repairs to assure that the housing will be decent, safe and sanitary, and other improvements proposed by the applicant to enhance long-term viability of the housing must be identified and agreed to by the Agency. Any needed property improvement to bring the property into conformance with Fair Housing, Americans with Disabilities Act (ADA), or Section 504 requirements must be included in the rehabilitation plan.
 - 7 CFR part 3560.59 may be used as a guide in determining what Rural Development considers maintenance and rehabilitation of MFH project. This is a guide; flexibility should be used to protect the Government's interest to enhance the long-term viability of the housing and handicapped accessibility.
 - The requirements of RD Instruction 1940-G must be met.

(b) Addressing identified need.

- The transferee must provide a plan for any repairs or enhancements as part of the application package. The plan must identify each repair or enhancement item, the timeframe for completion, estimate of costs for each item, funding source for each phase of completion, who will do the work, and any Identity of Interest between the transferee and the party doing the work or providing materials and services.

- A preliminary plan may be presented to the Agency prior to the final determination of physical needs as outlined above to help assess the feasibility of the proposal. After a final identification and agreement on needs, Rural Development must concur with the final plan as part of the approval of the transfer. Costs in the final plan will be evaluated by the Agency using a cost data sources recognized by the housing industry. When Low Income Housing Tax Credits (LIHTC) are a part of the transaction the Agency may accept a sources and uses analysis prepared by the LIHTC issuer or perform a SAUCE analysis to review the sources and uses of transaction funding. A SAUCE analysis is not required for transfers that do not include LIHTC sources.
- A plan must be developed to address how tenants will be relocated if necessary to rehabilitate the project.

(c) Funding for repair and rehabilitation needs when equity is part of the transaction.

- When equity is paid in cash or on terms in accordance with the provisions of 7 CFR part 3560, subpart N the priority sources for all repairs or enhancements are as follows:
 - Transferor's equity payment, including any syndication proceeds the transferee pays to the transferor.
 - Contributions by the transferee.
 - Reserve account funds being transferred, provided post transaction reserve account levels and funding is adjusted in accordance with a CNA.
 - Agency or third party loan funds.
- When equity is paid via the prepayment incentive provision of 7 CFR part 3560, subpart N, or when an equity loan is allowed through 7 CFR part 3560, subpart I, funding for deferred maintenance will be from the first two sources identified above. Funding for repair and rehab other than deferred maintenance may be from any of the sources identified above, but may not be required to be from the transferor's equity payment.
 - Deferred maintenance for the purposes of conditioning the receipt of equity loans is limited to specific items identified in previous Agency inspections where the borrower has had the opportunity and resources available to take corrective actions and did not.
 - Deferred maintenance does not include routine repair and replacement that results from normal wear and tear on the physical asset.

- Any amount of deferred maintenance to be part of an incentive or equity offer will be identified and considered during the ORHP concurrence process.

(d) During all revitalization transfers, post transaction project feasibility must be considered and documented through an Agency approved budget.

- The three basic principles are that basic rents do not exceed comparable market rents, all physical needs must be addressed, and there must be adequate security for all debt secured by the property.
 - When rehabilitation and repairs are not immediately needed at the time of the transaction, funding to the reserve account may be increased in accordance with CNA determined requirements to meet those needs. Increases to reserve account funding will be included in the estimation of post transaction rents and may affect the revitalization transaction's feasibility. 7 CFR part 3560.309 (k) provides guidance to any change to reserve account requirements.
4. **Existing tenants will not be displaced because of increased post transaction rents.** For any revitalization transfer, if transaction costs cause rents to increase, the Agency will review the transaction's impact on tenants not receiving RA to minimize the possibility of displacement caused by rent overburden.
- (a) If a project is being processed as a prepayment request or a sale to a non-profit or public body within 7 CFR part 3560, subpart N process, the Agency will provide RA to all affected tenants. RA will pay the difference between the tenant contribution and higher post transaction rents. Once incentive RA is provided, 7 CFR part 3560, subpart N anticipates that RA will remain available for eligible tenants to meet increased rents. Before transferring these units under the unused RA authority of 7 CFR part 3560.259, the State MFH Preservation Contact will obtain concurrence from ORHP.
- (b) If a project is being processed under the transfer authority of 7 CFR part 3560, subpart I, the Agency is not obligated to provide RA as under a prepayment incentive. Agency approval of non-prepayment transfers may be provided only when the Agency determines that the potential for tenant displacement is minimal based on a review of the potential impact of post transaction rents on existing tenants.
- If unused RA is available the State Director using the authority of 7 CFR part 3560.259 may provide it.
 - To help protect tenants from rent overburden, borrowers should contact local public housing authorities to determine if Section 8 vouchers from the Department of Housing and Urban Development (HUD) are available to protect tenants who face higher rents.
 - Borrowers also may fund temporary rental incentives from non-project to ease the transition to post transaction rents.
5. **Post transaction basic rents will not exceed comparable market rents.** Comparable rents will be established using the results of the Agency approved market value appraisal. All project equity, rehabilitation, Agency or non-Agency debt service, reserve deposits, operating costs and return on investment (ROI) must be reflected in project basic rents which may not

exceed comparable market rents. When an equity loan is provided, ORHP concurrence will include a review to assure that comparable rents are not exceeded.

6. **Any equity loan amount will be identified by a market value appraisal.** Chapter 7 of HB-1-3560 provides guidance on appraisal preparation. When determining the equity loan amount, funds available in the reserve account will be added to the appraised market value of the project.
- The Agency may accept a third party appraisal if after Agency review it is determined to meet Agency standards.
 - If a repair or rehabilitation loan is contemplated as part of a revitalization transaction, the appraisal should be ordered to also provide an opinion on the property's prospective market value subject to restricted rents plus the value of favorable financing.
- (a) For all equity payments at the time of transfer, 7 CFR part 3560, subpart I establishes guidelines for the payment of equity as part of a transfer when the following conditions exists:
- All unpaid Agency project debt is assumed.
 - The taxes and insurance account is funded on schedule and all outstanding bills have been paid.
 - All Agency loan payments are current.
 - The reserve account is on schedule, less any authorized withdrawal.
 - When these conditions cannot be met, the State Director may request an Administrator's waiver to authorize an equity payment only when all other alternatives, including liquidation, would not be in the best interests of the Government and tenants. Requests for an Administrator's exception must conform to the provisions found in 7 CFR part 3560.8.
- (b) For all equity payments at the time of transfer that meet the conditions of 7 CFR part 3560, subpart I, the State Director may approve the payment with no further approval from the National Office.
- (c) For all equity **loans** at the time of transfer, to facilitate the revitalization of existing MFH projects, the Agency may consider allowing for an equity payment to be in the form of a loan to be funded from project income.
- ORHP will concur with any equity loan amount.
 - The loan may be up to 100 percent of equity for nonprofit entities that agree to restrictive-use provisions for the remaining useful life of the project or limited profit entities that agree to 30 years restrictive-use provisions. The loan may be up to 90% for limited profit entities that agree to 20 year restrictive use provisions.

- 7. ORHP will concur with any equity loan amount or increased RTO and coordinate the approval of any waivers, National Office approvals or policy issues.**
- (a) When submitting information for ORHP approval of a revitalization transfers involving an equity loan, or increased return to owner (RTO) the request must provide a copy of the ORHP incentive calculation worksheet, and other information sufficient to describe the financial terms and impact of the transaction. Updating PRE-TRAC is required only for revitalization transactions that are a result of a prepayment request.
 - (b) The amount of the borrower's initial investment may be adjusted to reflect cash contributions by the new borrower for the "hard costs" of repair and rehabilitation. Cash contributions do not include loan funds, regardless of the source or expectation of repayment. ORHP concurrence will be obtained when the RTO increased as part of a revitalization transaction.

EFFECTIVE PROCESSING STRATEGIES

1. **The State Multi-Family Housing (MFH) Preservation Contact coordinates State revitalization activity.** Individuals previously identified by their State Director as the designated MFH Preservation Contact will also coordinate revitalization efforts. Any change in designation or identification information should be sent to ORHP.
2. **Develop and maintain standard transfer processing guidance and checklists.** State Directors and housing staff should familiarize themselves with transfer and assumption authorities covered by 7 CFR part 3560, subpart I and the guidance outlined in this Attachment.

(a) Transfer and Assumption Policies.

- 7 CFR part 3560, subpart I describes the policies for approving all transfers of real estate security and the assumption of loans. The requirements of this section allow borrowers to transfer their project to another separate and distinct entity in which members are participants in both the transferring and the assuming entities. The transferee must be legally organized and meet the requirements of 7 CFR part 3560.55 and the guidance of this Attachment.
- Caution should be used in distinguishing a transfer from a change in membership. Changes involving 100 percent membership changes or changes in the entity, such that the new entity is considered a separate and distinct legal entity from the original borrower, must be treated as a transfer and processed in accordance with 7 CFR part 3560, subpart I. For example, when a borrower entity receives a new Tax ID number from the Internal Revenue Service (IRS), the entity change would be considered a transfer.
- Changes to membership including substitution of General Partners are to be conducted in accordance with 7 CFR part 3560.55 and may be approved when it can be demonstrated that the change will not adversely affect the operations of the project. The incoming partner should be able to further prove that the transaction will be in the best interest of the Government.

(b) Structuring a Transfer Agreement.

- *Form RD 3560-20, "Transfer of Real Estate Security,"* will be used to record the agreements between the transferor and transferee. The purchase contract between the buyer and seller should be attached as an addendum if necessary to fully disclose the transaction.
- The agreement will be prepared to show all transactions involved relating to equity including disposition of syndication proceeds between the transferee and transferor, method and source of payment, payment of recoverable costs items, disposition of future paid payments, assignment of project accounts, leases and disposition of any

equipment purchased with loan or project funds. The Agency expects the transfer to result in post transaction balances in the project's operating, reserve, taxes and insurance and tenant security deposit accounts to at least equal pre-transaction levels.

- The agreement must document any necessary actions to bring the project into compliance with regulations and loan instruments, such as delinquent payments, under funded reserves, accessibility issues and deferred maintenance. If there are health and safety deficiencies identified, an action plan for immediate steps to take corrective measures must be included. These agreements must state which party will be responsible and the source of funds. Additional information may be attached to *Form RD 3560-20* as needed to ensure that all agreements are documented.
- The proposed debt (existing debt being assumed and any additional debt) shall be counted for determining the security value limitations set out in 7 CFR part 3560.63. Soft second mortgages secured only by proceeds from a future sale of the property may be excluded from the debt ceiling and security value calculations.
- In all cases, appraisals will be required when new debt is added or when the transfer will be using new rates and terms. The amount of indebtedness to be assumed will be based on an appraisal that complies with the Uniform Standards of Professional Appraisal Practices (USPAP). In no instances will appraisals be inflated to defer loan losses and write-offs, avoid adverse tax consequences, or support a higher tax credit basis.
- The account will be classified as an "A" project in the Multi-Family Housing Information System (MFIS) or if an acceptable workout plan has been developed, classified as a "B" project. When the provisions of the transfer agreement will correct all outstanding findings, the agreement may be considered to be an acceptable workout plan for MFIS entry and reclassification after the transaction.

(c) Develop and provide a transfer processing checklist.

- The checklist should be consistent with the requirements of 7 CFR part 3560.405 but also include any additional requirements in accordance with State Law.
- **Attachment B-1** may be used as a guide for a transfer processing checklist.

(d) The State MFH Preservation Coordinator is to provide a completed **Attachment B-2** for each transfer completed in his or her State.

3. For each transaction, establish an up-front understanding for assessing capital needs, establishing the scope of rehabilitation and determining the appraised value.

- (a) An initial meeting should be held with the borrower, potential purchaser and all interested parties, including third party financiers to determine the most effective means to bring about the conclusion of the revitalization transfer.

- (b) An agreement should be reached on how all parties will reach a preliminary understanding of the feasibility of the anticipated transaction. This includes how the borrower or purchaser will obtain initial estimates of operating expenses, needed repairs, and market rents. A goal should be to establish a process where only one formal CNA, description of the scope of work and appraisal is necessary.

4. Develop a good working relationship with third party funding sources. The State MFH Preservation Coordinator should meet with third party funding sources active within their jurisdiction on a regular basis to exchange ideas and information related to MFH portfolio revitalization efforts. When possible, a memorandum of understanding should be in place with the providers of LIHTC.

- (a) The National Office is working closely with Government Sponsored Entities (GSE) such as Fannie Mae and Freddie Mac to open up access to the secondary market to obtain funding for equity and rehabilitation for RRH projects. Both GSE's are developing guidance to lenders that can be used when working with the Agency. Borrowers are encouraged to participate with these programs.
- (b) The State MFH Preservation Coordinator will be the main contact point in each State and should be familiar with GSE processing requirements. They should also be prepared to meet with designated lenders to explain our processing requirements and develop plans to efficiently coordinate actions and resources.

5. Understand processing timeframes and requirements for third party funding sources. The State MFH Preservation Coordinator should be assured that they possess the latest rules surrounding the operations of LIHTC and other processing requirements of third party funding sources or GSE's.

6. Process and approve transactions to assist owners to meet timeframes and other requirements of third party funding sources. Internal processing by the State and Servicing Offices should be conducted to meet this goal. ORHP should be notified if any waivers or additional or new authority is needed to help obtain third party housing resources.

ATTACHMENT 7-B-1

APPLICATION CHECKLIST

Part 1. Critical items needed

Please submit each of the following immediately once they become available. The buyer/transferee must submit one (1) original to the local AGENCY servicing office and one (1) copy of all of the “critical” documents to the State Office.

1. Forms SF 424 Application for Federal Assistance, *SF 424C Budget Information – Construction Programs*, and *SF 424D Assurances – Construction Programs*.

These forms can be obtained on line at: <http://www.gsa.gov/>

2. “MFH Transfer & Assumption Application Supplement” including the “Preservation Transfer Development Budget” (See Attachment B-3)

3. Copy of executed purchase agreement, including any and all amendments.

4. Physical Needs Assessment.

5. *Optional, but strongly encouraged.* A professional market study, documenting comparable market rents is encouraged when an appraisal is not required

6. Appraisal. Please note, a *third* copy of the appraisal should be sent to your State Appraiser.

7. Copy of associated applications filed with any other financing source (and, if the financing is committed, a copy of the commitment letter – e.g., a preliminary reservation letter).

8. Preliminary title report.

9. Project budget. This budget form should set forth the project’s current AGENCY-approved budget in the “Current Budget” columns and the project’s proposed budget after acquisition in the Proposed Budget columns.

a) Form RD 3560-7. This form is available upon request from AGENCY in an Excel format or it may be obtained in a pdf format on line at: <http://rdinit.usda.gov/regs/forms/3560-07.pdf>

b) Narrative justification of changes in budget. *It is important that any and all differences between the current and proposed budget be fully explained and justified.*

10. Rehabilitation plan. The rehab work should be developed in light of the Comprehensive Needs Assessment (above). The rehab work should be categorized as follows: (i) all necessary repairs to address any deferred maintenance and assure that the housing will be decent, safe, & sanitary; (ii) any needed property improvement to bring the property into conformance with Fair Housing, Americans with Disabilities Act, or Section 504 requirements; (iii) other rehabilitation proposed to enhance long-term viability of the housing; and (iv) any other feasible upgrades that will increase its marketability. The plan must include tenant relocation costs if necessary to rehabilitate the project. The agency must concur with the plan as part of the approval of the transfer.

- a) A detailed plan and timeline of all rehab work to be accomplished. The plan must identify each repair or enhancement item, the timeframe for completion, estimate of costs for each item, who will do the work, and any Identity of Interest between the transferee and the party doing the work or providing materials and services.
- b) Form RD 1924-13. Complete the estimated cost columns. This form can be obtained on line at: <http://rdinit.usda.gov/regs/forms/1924-13.pdf>
11. Contact list. (See Attachment B-4.)

Part 2. Additional application materials needed as soon as possible

These “additional” documents should be submitted to the local AGENCY servicing office only. Copies do not need to be sent to the State Office.

From the seller:

12. Form RD 3560-1 – signed by the *seller*. This form can be obtained on line at: <http://rdinit.usda.gov/regs/forms/3560-01.pdf>

From the buyer/transferee:

13. Brief narrative or resume of applicant’s experience in multi-family housing.
14. Current financial statements of the applicant and of all general partners and owners with a >10% ownership interest. An example of an appropriate certification is Attachment B-5. The certification should be attached to each financial statement. (Note: If the applicant is an entity that has not yet been formed, financial statements should be a *pro forma* financial statement of the applicant along with financial statements of the proposed principals.)
15. *If the buyer is a nonprofit or has a nonprofit general partner:* Most recent IRS Form 990, “Return of Organization Exempt from Income Tax” (with Schedules A & B).
16. Organizational documents as appropriate for applicant entity type – e.g., partnership agreement, articles of incorporation, by-laws, certificate of good standing, resolution to apply for this loan – along with a letter from the applicant’s attorney certifying their legal sufficiency. (Note: If the applicant is an entity that has not yet been formed, drafts documents may be submitted instead.) If the borrower is a nonprofit, also provide:
- a) Tax-exempt ruling from the IRS conferring 501(c)(3) or 501(c)(4) status.
- b) List of members on Board of Directors.
17. Form HUD 9832, Management Entity Profile – signed by the applicant. This form can be obtained online at: http://www.hudclips.org/sub_nonhud/cgi/pdfforms/9832.pdf
18. Form HUD 2530/RD 1944-37 – signed by the applicant. This form can be obtained online at: http://www.hudclips.org/sub_nonhud/html/pdfforms/2530.pdf (fillable pdf format)
19. Form RD 3560-30, – signed by the applicant. This form can be obtained online at: <http://rdinit.usda.gov/regs/forms/3560-30.pdf>

20. *If there is any Identity of Interest: Form RD 3560-31*, – signed by the applicant. This form can be obtained online at: <http://rdinit.usda.gov/regs/forms/3560-31.pdf>

21. *Form RD 1910-11, Applicant Certification Federal Collection Policies for Consumer or Commercial Debts* – signed by the applicant. This form can be obtained online at: <http://rdinit.usda.gov/regs/forms/1910-11.pdf>

22. *Form AD 1047, Certification Regarding Debarment, Suspension and other Responsibility Matters* – signed by the applicant. This form can be obtained online at http://www.ocio.usda.gov/forms/ocio_forms.html

23. *Form RD 400-1*. This form can be obtained on line at: <http://rdinit.usda.gov/regs/forms/0400-01.pdf> (fillable pdf format)

24. *Form RD 400-4, Assurance Agreement*. This form can be obtained on line at: <http://rdinit.usda.gov/regs/forms/0400-01.pdf> (fillable pdf format)

25. RD Instruction 1940-Q, Exhibit A-1. This form is attached as Attachment B-6.

Information on other funding sources:

26. If the project will be receiving funding from other sources besides the requested AGENCY loan, for each source, attach a copy of any draft regulatory/loan agreements associated with the financing.

Project management information:

27. *Form HUD 935.2* – signed by the applicant. This form can be obtained online at: http://www.hudclips.org/sub_nonhud/cgi/pdfforms/935-2.pdf (fillable pdf format)

28. Proposed Management Agreement

29. Proposed Management Plan

30. Proposed lease & occupancy rules to be used at the project (with letter from attorney indicating legal sufficiency).

**ATTACHMENT 7-B-2
MFH TRANSFER & ASSUMPTION
REVIEW & RECOMMENDATION**

USDA has received an application for a preservation transfer and assumption outlined below:

Name of Project:	_____
Street Address of Project (w/zip code):	_____
Name of Project's Current Owner:	_____
Name of Project's Proposed Transferee:	_____
Name of Project's Management Agent	_____

The following information is verified correct:

USDA loan information:

As of: _____

Promissory Note dated	Original Loan Amount	Current Balance	Current? (yes/no)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Is project eligible to prepay? _____

Project's restrictive-use agreement expires/expired? _____

Project information:

[] Family [] Elderly [] Congregate

Rent information:

Bedroom size	# non-income units	# income units	Current Basic Rent	Post-Transfer Basic Rent	Estimated Market Rent in Area
0 bedroom	_____	_____	_____	_____	_____
1 bedroom	_____	_____	_____	_____	_____
2 bedroom	_____	_____	_____	_____	_____
3 bedroom	_____	_____	_____	_____	_____
4 bedroom	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
Total units	_____	_____	_____	_____	_____

If HUD subsidized, is project under Plan II? _____

Tenant Subsidy at project:

	Current	Post-Transfer
USDA Rental Assistance (RA)	_____	_____
HUD project-based Section 8	_____	_____
Other: _____	_____	_____
Other: _____	_____	_____
Total subsidized units:	_____	_____

Reserve account information

Current annual reserve transfer requirement: _____ (= _____ per unit)

As of: _____

Current reserve account balance	_____
Required reserve account balance	_____
Underfunded reserve	_____

Project condition & compliance information

MFIS classification: _____

Date of last supervisory visit: _____

Date of last walk-about physical inspection: _____

Date of last compliance review: _____

Note any accessibility issues unresolved at the project.

Estimated cost to correct: _____

Note any deferred maintenance issues unresolved at the project.

Estimated cost to correct: _____

[] The loan account is current.

[] The reserve account is on schedule, less authorized withdrawals.

[] The taxes and insurance account is on schedule and all outstanding bills paid.

[] The security deposit account is fully funded.

[] There are no outstanding maintenance items.

[] Management is satisfactory.

[] There are no open OIG audit findings or investigations against the borrower or related entities.

[] The borrower and members of the borrower entity are in compliance on all other projects or complying with an approved workout plan for a minimum of 6 months.

[] All necessary repairs to ensure that the housing will be decent, safe and sanitary, and other improvements proposed by the applicant to enhance long-term viability of the housing agreed to by USDA.

Last appraised value of project: _____ as of _____

1. The proposed transaction:

[] WILL [] WILL NOT prevent or make more difficult the successful operation of this property.

[] WILL [] WILL NOT reduce the efficiency of the property.

2. The proposed transaction will affect the value of this property as security of the loan as follows:

3. The following [] damages [] benefits will result to this property from the transaction:

Note any special transfer & assumption approval conditions recommended:

SOURCES AND USES OF FUNDS

Example Apartments transfer to Preservation Associates, LP

USE OF FUNDS		PERMANENT SOURCES OF FUNDS:					
		Tax Credits	USDA Assumption	Lender Name	Other	Other	Other
Total Acquisition Cost							
Total Rehab Costs							
Total Relocation Expenses							
Total New Construction Costs							
Total Architectural Costs							
Total Survey & Engineering							
Total Construction Interest & Fees							
Total Permanent Financing Costs							
Total Attorney Costs							
Total Reserve Costs							
Total Appraisal Costs							
Total Contingency							
Total Other Costs							
Total Developer Costs							
TOTAL PROJECT COST							

Balanced

Permanent Financing Detail (for all sources other than USDA & tax credits)

Funding Source	Loan Amount	Interest Rate	Amortization (yrs)	Term (yrs)	Monthly payment	indicate if residual receipts, deferred, etc.
Lender name						
Other						
Other						
Other						

Interim Financing Detail (for all sources other than USDA)

Funding Source	Loan Amount	Interest Rate	Amortization (yrs)	Term (yrs)	Monthly payment	indicate if residual receipts, deferred, etc.
Community Bank						
Other						

I hereby recommend that this application be approved.

Date _____ Recommended by: _____

(Title)

Date _____ Approved by: _____

(Title)

UNITED STATES DEPARTMENT OF AGRICULTURE

ATTACHMENT 7-B-3

MFH TRANSFER & ASSUMPTION APPLICATION SUPPLEMENT

Name of Project: _____
Street Address of Project (w/zip code): _____
Name of Project's Current Owner: _____

The following information supplements Form SF-424. This information is submitted along with an application to assume the USDA debt associated with the above-mentioned security property. A complete application is or will be submitted promptly.

The undersigned in accordance with the terms of the security instruments held by USDA Rural Development (hereafter referred to as "USDA") on their property applies for release or subordination of the liens of said security instruments and consent to the following transaction:

1. Transfer of the USDA security property in full as outlined below.
2. Assumption of the full balance of all USDA loans associated with the security property on new rates and terms,
3. Subordination of the USDA security instruments as outlined below.
4. Other (*explain*). _____

1. Applicant/Buyer/Transferee information

The following information is supplied about the applicant (i.e., the legal entity to acquire title to the property, *not* the developer/sponsor):

Applicant Legal Name: _____

Provide exact legal name of the entity that will take title to the real property and be USDA's borrower at the conclusion of the transaction – e.g., "Happy Valley Associates, LP, a Maryland limited partnership".

Type of organization: _____

e.g. limited partnership, general partnership, nonprofit, corporation, LLC, tribe, public body, cooperative, individual

Tax ID #: _____

Date of formation: _____

Official Mailing

Address: _____

Developer/Sponsor _____

Name:

(If there is a developer sponsoring the applicant entity.)

Primary contact person for this transaction: _____

Capacity: _____

Organization: _____

Address: _____

Phone: _____ Fax: _____ E-mail: _____

Disclose any identity of interest relationship between borrower/seller and transferee/buyer (if none, indicate this):

2. Member/Owner information (complete one):

a. If applicant is a limited partnership: *(Please provide exact legal names)*

Role	Exact Legal Name	Tax ID #	Non-profit?	% Share	Mailing Address	Authorized signer & title
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

b. If applicant is not a limited partnership: *(Please provide exact legal names)*

Role	Exact Legal Name	Tax ID #	Non-profit ?	% Share	Mailing Address	Authorized signer & title
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

3. Transaction information

USDA Rural Development's approval is requested for the following preservation transfer & assumption:

Negotiated purchase price: \$ _____ *(Please attach copy of purchase agreement.)*

Purchase agreement expires: _____ *(USDA typically needs 120 days to complete such transactions.)*

Proposed disposition of project & project assets:

RRH PROJECT ASSETS	Transferred to buyer? (yes/no, explain)*
Real property	_____
Furnishing, fixtures & equipment	_____
Replacement reserve account	_____
Tax & insurance escrow account	_____
General operating account	_____
Security deposit account	_____
Other: _____	_____

* Note: If any project assets are not transferred in their entirety, the buyer will be responsible for funding their full replacement value from equity funds.

Timetable

Estimated timetable for acquisition, with key deadlines for funding commitments:

_____ This transfer must close by no later than _____ because _____

4. Sources & Uses of Funds

<i>Funding Uses *</i>	Amount
Total acquisitions costs	\$ _____
Total rehab costs	\$ _____
Total all other costs	\$ _____
TOTAL PROJECT FUNDING	\$ _____

<i>Permanent Funding Sources *</i>	Amount	Status? Date Committed or Pending	Anticipated rates & terms	Lien position proposed
Assumption of USDA loan	\$ _____	Pending	1%, 50-year amortization, 30-year term	_____
Borrower contribution	_____	_____	_____	n/a
9% Low-Income Housing Tax Credits	_____	_____	_____	n/a
4% Low-Income Housing Tax Credits	_____	_____	_____	n/a
Loan from: _____	_____	_____	_____	_____
Loan from: _____	_____	_____	_____	_____
Other: _____	_____	_____	_____	_____
Other: _____	_____	_____	_____	_____
Other: _____	_____	_____	_____	_____
Other: _____	_____	_____	_____	_____

TOTAL PROJECT FUNDING	\$ _____			
------------------------------	----------	--	--	--

* See attached "Preservation Transfer Development Budget (Sources & Uses of Funds)" for details.

5. Effect of transfer on affordability, rents, and tenant subsidy

Applicant/transferee/buyer will enter into a new restrictive use agreement with USDA for:

30 years 20 years remaining useful life of project Other: _____

Rent information:

Bedroom size	# units	Current Basic Rent	Post-Transfer Basic Rent	Estimated Market Rent in Area
0 bedroom	_____	_____	_____	_____
1 bedroom	_____	_____	_____	_____
2 bedroom	_____	_____	_____	_____
3 bedroom	_____	_____	_____	_____
4 bedroom	_____	_____	_____	_____
_____	_____	_____	_____	_____
Manager unit(s)	_____			
Total units:	_____			

Tenant Subsidy at project:

	Current	Post-Transfer
USDA Rental Assistance (RA)	_____	_____
HUD project-based Section 8	_____	_____
RHCP	_____	_____
Other: _____	_____	_____
Other: _____	_____	_____
Total subsidized units:	_____	_____

If project currently lacks 100% subsidy coverage on income-producing units, explain plan to maintain affordability, obtain additional subsidy and avoid adverse impact on tenants. _____

6. Planned method of management and operation

Management services to be provided by:

Contract manager (*identify*) _____ Borrower Other: _____

General discussion of management plan: _____

7. Certifications

Have you or any member, stockholder, partner or joint operator of the entity borrower been convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance since December 23 ,1985? (yes/no) _____

If this application is approved, the undersigned applicant(s) agree to comply with such terms as may be prescribed by USDA and to disposition of the proceeds as required by USDA pursuant to its regulations, including the method of applying payment to the applicant(s)' loan accounts. It is expressly understood that unless a separate written instrument of subordination is executed and delivered by USDA pursuant to this application, approval by USDA of this application will merely constitute and evidence its consent, as lienholder, to the proposed transaction without in any way subordinating its lien, releasing any of its security, modifying the payment terms of the loan, or otherwise affecting any rights of USDA.

The applicant(s) agrees that none of the funds obtained as a result of any subordination covered by this application will be used for a purpose that will contribute to excessive erosion of highly erodible land or the conversion of wetlands to produce an agricultural commodities, as explained in Exhibit M of subpart G of part 1940 of title 7 of the Code of Federal Regulations.

CERTIFICATION

I hereby certify that the information given above concerning agreements between us and the transferor/seller is correct and fully understood by us.

I/we certify the information is a true and accurate reflection of proposed transfer & assumption project. This information is given for the purpose of inducing the United States of America to make a loan or to enable the United States of America to make a determination of continued eligibility of the applicant for a loan as requested in the loan application of which this statement is a part.

Neither the applicant nor its principals are delinquent on any Federal debt nor barred from participating in Federal housing programs.

Date

Signed: _____
Applicant/Transferee

MFH Transfer Development Budget (Sources & Uses of Funds)

Project: **Sample Apartments preservation transfer to Preservation Associates, LP**

USE OF FUNDS:	TOTAL	PERMANENT SOURCES OF FUNDS:					
		Tax Credits	USDA assumption	Ruraltown Bank	City	Other	Other
Total Acquisition Cost	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Rehab Costs	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Relocation Expenses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total New Construction Costs	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Architectural Costs	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Survey & Engineering	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Construction Interest & Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Permanent Financing Costs	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Attorney Costs	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Reserve Costs	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Appraisal Costs	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Contingency	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Other Costs	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Developer Costs	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL PROJECT COST	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

Balanced

Permanent Financing Detail (for all sources other than USDA & tax credits)

Funding Source	Loan Amount	Interest Rate	Amortization (yrs)	Term (yrs)	Monthly payment	indicate if residual receipts, deferred, etc.
Ruraltown Bank	\$ -	0.0000%	30	30	\$ -	
City	\$ -	0.0000%	30	30	\$ -	residual receipts only
Other	\$ -	0.0000%	30	30	\$ -	
Other	\$ -	0.0000%	30	30	\$ -	

Interim Financing Detail (for all sources other than USDA)

Funding Source	Loan Amount	Interest Rate	Amortization (yrs)	Term (yrs)	Monthly payment	indicate if residual receipts, deferred, etc.
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**ATTACHMENT 7-B-4
MFH TRANSFER & ASSUMPTION CONTACTS LIST**

Applicant's Representatives:

(Please indicate with "*" who is to be the applicant's primary contact person for this transaction.)

Applicant:

<u>Name:</u>	_____				
<u>Organization:</u>	_____				
<u>Mailing Address:</u>	_____				
<u>Phone:</u>	_____	<u>Fax:</u>	_____	<u>E-mail:</u>	_____

Developer:

<u>Name:</u>	_____				
<u>Organization:</u>	_____				
<u>Mailing Address:</u>	_____				
<u>Phone:</u>	_____	<u>Fax:</u>	_____	<u>E-mail:</u>	_____

Applicant's Consultant:

<u>Name:</u>	_____				
<u>Organization:</u>	_____				
<u>Mailing Address:</u>	_____				
<u>Phone:</u>	_____	<u>Fax:</u>	_____	<u>E-mail:</u>	_____

Applicant's Attorney:

<u>Name:</u>	_____				
<u>Organization:</u>	_____				
<u>Mailing Address:</u>	_____				
<u>Phone:</u>	_____	<u>Fax:</u>	_____	<u>E-mail:</u>	_____

Other:

<u>Name:</u>	_____				
<u>Organization:</u>	_____				
<u>Mailing Address:</u>	_____				
<u>Phone:</u>	_____	<u>Fax:</u>	_____	<u>E-mail:</u>	_____

Financing & Underwriting:

Interim Lender:

<u>Name:</u>	_____				
<u>Organization:</u>	_____				
<u>Mailing Address:</u>	_____				
<u>Phone:</u>	_____	<u>Fax:</u>	_____	<u>E-mail:</u>	_____

Permanent Lender:

Name:	_____				
Organization:	_____				
Mailing Address:	_____				
Phone:	_____	Fax:	_____	E-mail:	_____

Lender's Counsel:

Name:	_____				
Organization:	_____				
Mailing Address:	_____				
Phone:	_____	Fax:	_____	E-mail:	_____

Bond Issuer:

Name:	_____				
Organization:	_____				
Mailing Address:	_____				
Phone:	_____	Fax:	_____	E-mail:	_____

Bond Counsel:

Name:	_____				
Organization:	_____				
Mailing Address:	_____				
Phone:	_____	Fax:	_____	E-mail:	_____

Bond Underwriter:

Name:	_____				
Organization:	_____				
Mailing Address:	_____				
Phone:	_____	Fax:	_____	E-mail:	_____

Tax Credit Investor:

Name:	_____				
Organization:	_____				
Mailing Address:	_____				
Phone:	_____	Fax:	_____	E-mail:	_____

Tax Credit Investor's Counsel:

<u>Name:</u>	_____
<u>Organization:</u>	_____
<u>Mailing Address:</u>	_____

Phone: _____ Fax: _____ E-mail: _____

Other:

<u>Name:</u>	_____
<u>Organization:</u>	_____
<u>Mailing Address:</u>	_____

Phone: _____ Fax: _____ E-mail: _____

Other:

<u>Name:</u>	_____
<u>Organization:</u>	_____
<u>Mailing Address:</u>	_____

Phone: _____ Fax: _____ E-mail: _____

Professional Services:

Comprehensive Needs Assessment analyst:

<u>Name:</u>	_____
<u>Organization:</u>	_____
<u>Mailing Address:</u>	_____

Phone: _____ Fax: _____ E-mail: _____

Appraiser:

<u>Name:</u>	_____
<u>Organization:</u>	_____
<u>Mailing Address:</u>	_____

Phone: _____ Fax: _____ E-mail: _____

Market Study analyst:

<u>Name:</u>	_____
<u>Organization:</u>	_____
<u>Mailing Address:</u>	_____

Phone: _____ Fax: _____ E-mail: _____

Escrow:

Title Company to handle the transfer:

<u>Escrow #:</u>	_____
<u>Name:</u>	_____
<u>Organization:</u>	_____
<u>Mailing Address:</u>	_____
<u>Phone:</u>	_____
<u>Fax:</u>	_____
<u>E-mail:</u>	_____

Other:

<u>Escrow #:</u>	_____
<u>Name:</u>	_____
<u>Organization:</u>	_____
<u>Mailing Address:</u>	_____
<u>Phone:</u>	_____
<u>Fax:</u>	_____
<u>E-mail:</u>	_____

Construction:

Architect:

<u>Name:</u>	_____
<u>Organization:</u>	_____
<u>Mailing Address:</u>	_____
<u>Phone:</u>	_____
<u>Fax:</u>	_____
<u>E-mail:</u>	_____

General Contractor:

<u>Name:</u>	_____
<u>Organization:</u>	_____
<u>Mailing Address:</u>	_____
<u>Phone:</u>	_____
<u>Fax:</u>	_____
<u>E-mail:</u>	_____

Other:

<u>Name:</u>	_____
<u>Organization:</u>	_____
<u>Mailing Address:</u>	_____
<u>Phone:</u>	_____
<u>Fax:</u>	_____
<u>E-mail:</u>	_____

Operation & Management:

Current Property Manager:

<u>Name:</u>	_____
<u>Organization:</u>	_____
<u>Mailing Address:</u>	_____
<u>Phone:</u>	_____
<u>Fax:</u>	_____
<u>E-mail:</u>	_____

Proposed New Property Manager:

<u>Name:</u>	_____
<u>Organization:</u>	_____
<u>Mailing Address:</u>	_____
<u>Phone:</u>	_____
<u>Fax:</u>	_____
<u>E-mail:</u>	_____

ATTACHMENT 7-B-5
MFH TRANSFER & ASSUMPTION FINANCIAL STATEMENT CERTIFICATION
Financial Statement Certification

(This certification is to be attached to all financial statements submitted to the Agency.)

Financial Statement of: _____

Date of Financial Statement: _____

I/we certify the attached is a true and accurate reflection of my/our financial condition as of the date stated herein.
This statement is given for the purpose of inducing the United States of America to make a loan or to enable the United States of America to make a determination of continued eligibility of the applicant for a loan as requested in the loan application of which this statement is a part.

Signature

Date

Name

Title

ATTACHMENT 7-B-6
MFH TRANSFER & ASSUMPTION CERTIFICATION FOR CONTRACTS

CERTIFICATION FOR CONTRACTS, GRANTS AND LOANS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or Federal loan, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant or loan.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant or loan, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including contracts, subcontracts, and subgrants under grants and loans) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

_____ (signed)	_____ (date)
_____ (name)	
_____ (title)	
_____ (name of certifying entity)	