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§ 3560.405 Borrower organizational structure or ownership interest changes.

(a) *General.* The requirements of this section apply to changes in a borrower entity's organizational structure or to a change in a borrower entity's controlling interest. If 100 percent of a borrower entity's ownership interest is transferred, within a 12-month period, the change will be considered a housing project transfer and the provisions of § 3560.406, which covers transfers or sales of housing projects, will apply.

(b) *Agency requirements.* Borrowers must notify the Agency prior to the implementation of any changes in a borrower entity's organizational structure. The Agency must give its consent prior to the implementation of changes in a borrower entity's controlling interest.

(1) Borrowers must submit written requests for Agency consent to the Agency at least 45 days prior to the anticipated effective date of the proposed organizational change. The request must document that the proposed changes will not adversely affect the program purposes or security interest of the Agency and will not adversely affect tenants.

(2) If the controlling interest change involves a transfer of interest to an entity not previously holding an ownership interest in the borrower entity, the request for consent must include a written certification, executed by the party receiving the ownership interest, certifying that the recipient of the ownership interest agrees to assume responsibilities and obligations required of a borrower as established in Agency program requirements including requirements in the promissory note, loan agreement, or other document related to Agency loans held by the borrower entity.

(3) The Agency will not take a consent request for a controlling interest change under consideration if the borrower's request fails to meet the requirements specified in paragraph (b)(2) of this section.

(c) *Documentation of organizational structures and ownership interest.* Borrowers must annually document their organizational structure and ownership.

(1) Documentation must be submitted with the annual financial reports required by § 3560.308 and must reflect any changes made during the 12-month period preceding the submission of the annual financial reports.

(2) If no changes in a borrower entity's organizational structure or ownership were made during the 12-month period prior to submission of the annual financial reports, borrowers are not required to submit documentation, but must submit a statement certifying that no changes have been made in the documents on file with the Agency.

(3) Organizational structure and ownership documentation must include the following items:

(i) A current organization description reflecting all approved changes in the organizational structure of the borrower entity and listing the names, addresses, and tax identification numbers of all parties with an ownership interest in the borrower entity; and

(ii) A written statement by the borrower certifying that the changes in the borrower entity's organizational structure or ownership interests were completed in compliance with state and local laws and in accordance with organizational requirements of the borrower entity.

§ 3560.406 MFH ownership transfers or sales.

(a) *General.* The provisions of this section apply to ownership transfers or sales (e.g., title transfers) involving an Agency financed housing project. The provisions cover situations where Agency loans are being assumed as a part of a housing project transfer or sale.

(b) *Agency consent requirements.* Agency consent must be obtained prior to an ownership transfer or sale and Agency consent will only be given when the transfer or sale is in the best interest of the Federal Government. Any ownership transfer or sale without the consent of the Agency will be considered a default and will be handled in accordance with subpart J of this part.

(1) Priority consideration will be given to ownership transfers or sales needed to remove a hardship to the

borrower that was caused by circumstances beyond the borrower's control.

(2) Ownership transfers or sales with an assumption of debt at an amount less than the borrower's debt amount will only be approved by the Agency when all persons in the borrower entity who are transferring their ownership interest or are involved in the selling of the property are not part of the transferee organization.

(c) *Consent request requirements.* Borrowers must submit written requests for Agency consent to an ownership transfer or sale of a housing project to the Agency at least 45 days prior to proposed ownership transfer or sale date. The consent request must document that the proposed transfer or sale meets the requirements of paragraph (d) of this section and must include the following items:

(1) A statement disclosing any identity-of-interest between the borrower and the party to which the housing project ownership is being transferred or sold.

(2) A statement certifying that the housing project's financial accounts are funded at required levels, less authorized withdrawals, and that payments due for operation and maintenance expenses, tax assessments, insurance premiums, any required tenant security deposit accounts, and other obligations incurred as a part of the housing project operations are paid in full with no overdue balances or a statement explaining the housing project's financial situation and the reasons for overdue payments or under funded accounts.

(3) A proposed housing project budget covering the partial year, if applicable, and first full year operation following the ownership transfer or housing project sale.

(4) A written statement, signed by the proposed transferee or buyer, certifying that the transferee or buyer will assume the borrower responsibilities and obligations specified in Agency program requirements including requirements in a promissory note, loan agreement or other documents related to Agency loans held by the borrower entity.

(5) A certification from the borrower and the proposed transferee or buyer that the borrower does not and will not have a reversionary interest in the housing project.

(d) *Requirements for ownership transfers or sales.* An ownership transfer or sale of a housing project with an assumption of Agency loans by the transferee or buyer must comply with the following conditions:

(1) The transferee or buyer must be an eligible borrower under the requirements established by subpart B of this part;

(2) The transferee or buyer must agree to set basic rents at the housing project covered by the assumed loans at levels that do no exceed conventional rents for comparable units in the area, except that when determined necessary by the Agency to allow for decent, safe and sanitary housing to be provided in market areas where conventional rents are not sufficient to cover necessary operating, maintenance, and reserve costs. Basic rents may be allowed to exceed comparable rents for conventional units, but in no case by more than 150% of the comparable rent for conventional unit rent level; and

(3) The value of the housing project covered by the loans to be assumed, at the time of an ownership transfer or sale, must be sufficient to ensure that all Agency loans being assumed and all subsequent loans being offered as a part of the transfer or sale can be secured to a level that fully protects the Agency's interest. Loans from third-party sources that are not dependent on project revenue for payment will not be included in this determination.

(i) If the total value of the loans being offered as a part of an ownership transfer or sale is $100,000 or less, the security value of the housing project may be determined through either: An Agency review of monitoring reports conducted in accordance with the requirements in subpart H of this part or an appraisal paid for by the borrower and conducted in accordance with subpart P of this part.

(ii) If the total value of the loans being offered as a part of an ownership transfer or sale exceeds $100,000, the security value of the housing project

must be determined through an appraisal obtained by the Agency and conducted in accordance with subpart P of this part.

(iii) The Agency may approve a loan write-down, in accordance with § 3560.455, prior to an ownership transfer or sale to reduce the amount of debt being assumed by the transferee or buyer.

(4) Prior to Agency approval of an ownership transfer or sale, the appropriate level of environmental review in accordance with 7 CFR part 1970 must be completed by the Agency on all property related to the ownership transfer or sale. If releases of or contamination from hazardous substances or petroleum products is found on the property, the finding must be disclosed to the Agency and the transferee or buyer and must be taken into consideration in the determination of the housing project's value.

(5) All immediate and long-term repair and rehabilitation needs must be identified by a capital needs assessment. The reserve requirements for the housing project will be reviewed by the Agency and adjusted, if necessary, to adequately cover the cost of addressing the property's capital needs. The Agency may approve the release of the current reserve amount to the transferor provided the transferee agrees to deposit the amount to cover the project's immediate needs into the reserve account at closing.

(6) The borrower and transferee must disclose to the Agency all terms, conditions, or other considerations related to the ownership transfer or sale. All side or other agreements must be disclosed and all sources and uses of funds related to the ownership transfer or sale must be disclosed.

(7) An agreement must be signed between the borrower and the transferee listing all repairs known by the borrower to be necessary to bring the housing project into compliance with Agency requirements for decent, safe, and sanitary housing as listed in subpart C of this part.

(i) The agreement must include repairs required to correct compliance violations cited in a compliance violation notice issued by the Agency.

(ii) The agreement must specify whether each repair listed will be completed by the borrower prior to the ownership transfer or by the transferee in accordance with a workout agreement developed in accordance with the requirements of § 3560.453 and executed between the transferee or buyer and the Agency.

(8) A civil rights compliance review, as required by 7 CFR part 1901, subpart E, will be conducted by the Agency prior to the ownership transfer or sale.

(9) During or immediately after the transfer, a review of the property must be conducted to ensure that it complies with or will comply with section 504(c) of the Americans with Disabilities Act (ADA), which covers accessibility requirements, and the Title VI of the Fair Housing Act of 1968.

(10) A transferee must ensure that tenant certifications in compliance with subpart D of this part for all occupied rental units are on file with the Agency.

(11) A transferee must comply with insurance and bonding requirements established in subpart C of this part at the time of the transfer.

(12) A transferee must agree to submit financial reports to the Agency according to subpart G of this part.

(13) A transferee must establish that there are no liens, judgments, or other claims against the housing project other than those by the Agency and those to which the Agency has previously agreed.

(14) A limited profit Rural Rental Housing transferee's initial investment and return on investment will remain the same as that originally provided to the transferor unless:

(i) The property is transferred to a non-profit entity and the return on investment is eliminated; or

(ii) The transferee contributes additional funds for repair or rehabilitation and the Agency agrees to recognize a higher initial investment.

(e) *Equity payments.* The Agency will withhold any equity payment due to the borrower, as part of an ownership transfer or sale, if any of the following conditions exist:

(1) The borrower's indebtedness to the Agency has not been paid in full or is not being assumed by the transferee.

The Agency will require that all or part of an equity payment be applied against other Agency loans owed by the borrower if payments on the other loans are not current.

(2) Any non-Agency prior liens against a housing project are not paid in full.

(3) Any housing project financial accounts are not funded at required levels, less authorized withdrawals, or any payments due for operation and maintenance expenses, tax assessments, insurance premiums, tenant security deposits or other obligations incurred as a part of housing project operations are not paid in full.

(4) Any management deficiencies cited in a compliance violation notice issued by the Agency to the borrower have not been corrected or the housing project is not operating under an approved management plan or, if applicable, an approved management agreement.

(5) Any operation and maintenance deficiencies cited in compliance violation notices issued by the Agency have not been corrected or are not scheduled for correction in a workout agreement developed in accordance with the requirements of § 3560.453.

(6) The borrower entity is, at the time of the ownership transfer or sale, cited by the Agency or other Federal, state, or local agencies for violations of Fair Housing or Equal Opportunity requirements.

(7) The borrower entity is, at the time of the ownership transfer or sale, cited by the Agency or any other entity involved in the financing of the housing project for misappropriation of funds.

(f) *Equity payment funding sources.* 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 approved by the Agency to the borrower, the transferee must certify that equity payments due to the borrower will be paid from sources other than housing project's funds and must identify the sources of such payments.

(g) *Restrictive-use requirement.* Transferees assuming Agency loans, including loans approved prior to December 21, 1979, will be required to execute a restrictive-use agreement that contains the language specified in § 3560.662. The restrictive-use agreement will require the housing project to be used for program purposes for a specified period of time beyond the date that the ownership transfer or sale is closed. When an equity loan is involved at the time of transfer, the restrictions will be for 30 years.

(h) *Subsequent loans.* The Agency may approve a subsequent loan or permit a loan 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 junior or parity lien.

(1) Subsequent loans on a housing project proposed in conjunction with an ownership transfer or sale must be requested and processed in accordance with the Agency loan origination requirements in subpart B of this part.

(2) The Agency may amortize the subsequent loan over a period not to exceed the remaining economic life of the housing or 50 years, whichever is less.

(3) The Agency may extend the term of the existing loan to a period not to exceed 30 years or the remaining economic life of the housing, whichever is less.

(i) *Loan assumption interest rates.* The interest rate for Agency loans assumed in conjunction with an ownership transfer or sale will be determined as follows:

(1) The interest rate for all loans, except farm labor housing loans, will be set at the lower of:

(i) The note rate of the existing Agency loan;

(ii) The Agency note rate on the day the transfer is approved;

(iii) The Agency note rate on the day the transfer is closed; or

(iv) If the rents are increased due to a transfer, the transfer will be done under new rates and terms when the Agency determines that it is in the best interest of the government. Subsequent loan may be in the form of a senior, junior or parity lien or soft second.

(2) The interest rate on farm labor housing loans will be the rate specified in the note, except that loans transferred to public bodies, nonprofit organizations of farm workers, and broadly-based nonprofit corporations for farm labor housing purposes may be at a one percent interest rate regardless of the rate specified in the note if the Agency determines that such a reduction is necessary to maintain affordable rental rates for tenants.

(j) *Loan assumption terms.* The amount of the loan balance that may be assumed through an ownership transfer or sale must not exceed the security value of the housing project determined according to § 3560.406(d)(3)(i).

(1) The Agency may reamortize a loan assumed through an ownership transfer or sale over a period not to exceed the remaining economic life of the housing or 50 years, whichever is less.

(2) The Agency may extend the term of the loan to a period not to exceed 30 years or the remaining economic life of the housing, whichever is less.

(3) When loans assumed through an ownership transfer or sale are amortized on an annual payment basis, the loans will be converted, at the time of the transfer or sale, to a monthly payment amortization and will be made subject to PASS. When on- or off-farm labor housing projects are involved in an ownership transfer or sale, the related loans may be transferred on a DIAS basis or converted to PASS if the Agency determines that such a conversion will not be detrimental to the operation of the farm labor housing.

(k) *Processing ownership transfers or sales.* (1) At the time of the transfer, the Agency will require the borrower to transfer all equipment, related facilities, and housing project financial accounts to the transferee including the operation and maintenance account, reserve account, tenant security deposit account, tax and insurance escrow accounts.

(i) Any funds remaining in a rental assistance contract not dispersed by the transferor will be assigned to the transferee unless the rental assistance is not needed for tenants or another form of rental subsidy is to be used.

(ii) Any rental assistance determined to be unnecessary will be reassigned to other housing projects in accordance with the provisions of subpart F of this part.

(2) The Agency will require that appropriate loan documents are executed by the transferee. The Agency may require such documents to be referenced in security instruments (e.g., mortgage or deed of trust).

(3) If all of a borrower'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 procedure in accordance with § 3560.457.

(l) *Ownership transfers or sales under special rates, terms, and conditions.* 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.

(1) The transferee makes a down payment of at least 10 percent of the remaining loan balance to be assumed.

(2) The transferee has the ability to pay the Agency debt.

(3) 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 as specified in paragraphs (i)(1) or (2) of this section.

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§ 3560.407 Sales or other disposition of security property.

(a) *General.* Borrowers must obtain Agency approval prior to selling or exchanging all or a part of, or an interest in, property serving as security for Agency loans. Agency approval also must be requested and received prior to the granting or conveyance of rights-of-way through property serving as security property. Agency approvals of