

<p style="text-align: center;">CHAPTER 5: OWNERSHIP AND ORGANIZATION CHANGES [7 CFR 3560.405]</p>
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5.1 INTRODUCTION

During the term of an Agency loan, changing circumstances may lead borrowers to seek Agency approval of a change in the structure of the ownership entity. For instance, partnerships may dissolve, or substitute individuals or entities may obtain an ownership interest in a property due to business reorganizations, retirements, or other reasons. To address these situations, the Agency has developed requirements and procedures for receiving notification of and reviewing proposed changes, as well as granting approval for such changes to ensure that the Agency's security interest is protected.

This chapter covers the Agency's requirements regarding changes in a borrower's ownership structure and Agency procedures for reviewing and accepting such changes.

5.2 OVERVIEW OF CHANGES REQUIRING PRIOR AGENCY CONSENT

The Agency imposes specific requirements on certain proposed changes in the structure of the borrower entity to ensure the adequacy of the new or substitute interests and thus protect the interests of tenants and the Government.

The Agency requires that borrowers obtain prior Agency consent to organizational changes involving the controlling interests of the borrower entity to ensure that such changes will continue to serve the needs of tenants and protect the interest of the Government. For example, if one partner in a borrower entity decides to sell their interest to a new individual from outside the existing organizational structure, the Agency needs to review that individual's prior history and qualifications to ensure that the person is eligible to participate in the program (i.e., is not under suspension, debarred, under Office of the Inspector General (OIG) review, or known to be in default on any Agency loan[s]). The purpose of this review is to evaluate that the borrower entity will continue to be eligible under program requirements and that any changes in the organizational structure do not adversely affect the Agency's security interests.

5.3 REQUIREMENTS FOR OBTAINING AGENCY CONSENT

A. Overview

Certain changes in the structure and ownership interests in the borrower entity require Agency consent before they become effective. These include:

- Any changes in the controlling interests of the borrower entity;
- Changes in the ownership interests of the borrower entity that involve the transfer of stock to any individual or organization not previously listed in the ownership documents submitted to the Agency; or

- A 100 percent change in membership interest where the tax ID remains the same and the organizational entity remains the same during any 12-month period.

Examples of such changes include changes in general partners, addition of new general partners, proprietorship as a result of death, divorce, or other applicable ownership changes.

B. Written Request

Requests for Agency consent to organizational changes must be submitted in writing, along with *Form RD 3560-1, Application for Partial Release, Subordination, or Consent*, to the Servicing Office. Each request must describe the proposed changes in the organizational structure of the borrower entity and provide the information shown in Exhibit 5-1 for each new or substitute ownership interest or member in the borrower entity.

The information included with the written request must demonstrate that the proposed change will not adversely affect the Agency's security interest in the property by illustrating that all key individuals would meet loan approval requirements.

Exhibit 5-1

Required Content of Requests for Agency Consent to Changes in Borrower Entity

- *Form RD 3560-1, Application for Partial Release, Subordination, or Consent*;
- The names, addresses, and taxpayer identification numbers of individuals with controlling interests in the new or substitute entity;
- Certification that the new interests and/or members are not suspended, debarred, or in default on Agency loan(s);
- The organizational role of the new interest/member or changes in roles of existing individuals;
- Résumé, including experience managing real estate, business experience, and education;
- Identity-of-interest (*Forms RD 3560-30, Certification of No Identity of Interest (IOI), and 3560-31, Identity of Interest Disclosure/Qualification Certificate*);
- Personal financial statement;
- Percentage of ownership of the new interest/members in the borrower entity;
- Proposed amendments to organizational documents;
- Previous participation certification;
- Opinion of the borrower's attorney stating that the changes are in accordance with reapproved organizational documents, are permitted by law, and comply with Agency regulations; and
- Credit report fee, if applicable.

C. Assumption of All Applicable Responsibilities by New Interests

If any portion of the controlling interest in the borrower entity is transferred to an individual or organization not previously holding a controlling interest, the new individual or organization must agree to assume the responsibilities and obligations established under the terms of the *Form RD 3560-52, Promissory Note* with the Agency, the mortgage, the loan agreement/resolution, and any applicable partnership documents for the entity.

D. Assumption of Liability by Substitute General Partner

In the case of substitution of any general partner, the substitute general partner must agree to assume the responsibilities and obligations of the original general partner under the terms of the Agency *Form RD 3560-52*, mortgage, and the borrower's partnership agreement.

In consultation with the Office of General Counsel (OGC), the State Director may require the substitute partner to sign an agreement to assume all applicable responsibilities. This agreement is placed in the case file.

E. Satisfaction of Eligibility Requirements

All proposed new individuals in the ownership entity must meet applicable eligibility requirements for borrowers under 7 CFR 3560.55. For further information on eligibility requirements, see Chapter 4 of HB-1-3560.

5.4 BORROWER REQUESTS FOR CONSENT

Borrowers must submit their written requests for Agency consent to organizational changes at least 45 days prior to the desired effective date of the change. Borrower requests must contain the information listed in Exhibit 5-1.

5.5 AGENCY REVIEW OF BORROWER REQUESTS

A. Overview

To ensure that all changes to borrower entities protect the interests of tenants and the Government, the Agency has developed procedures for review and approval of proposed changes. By preventing changes that do not further program objectives, the review process ensures that program implementation is consistent with Agency mandates.

Loan Servicers need to take all actions necessary to determine that the changes will have no adverse impact on the loan or property. These actions will vary based on the nature of the changes to the borrower entity.

The Agency may reject such requests if the borrower fails to adequately demonstrate that the proposed change will not adversely affect the interests of the Agency or the tenants of the property.

B. Loan Servicer and State Director Actions

Loan Servicers first review borrower submissions for completeness. Next, they perform a review to determine whether the new individuals or organizations proposed meet eligibility criteria (i.e., the same criteria required to qualify for a new Agency loan as set forth in the HB-1-3560). To determine that approval of the transaction will not adversely affect the objectives of the loan or the property, the State Director must consider past performance, experience, qualifications, and abilities of any individual or organization obtaining an interest in the borrower organization. Finally, Loan Servicers review all documentation to determine if the substitute general partners propose to assume all liability that had been assumed by the withdrawing entity.

When the initial review has been completed, Loan Servicers process and submit *Form RD 3560-1* to the State Director, who either approves or rejects the proposed transfers or changes. In cases where proposed membership changes are not covered in the organizational documents or appear to be in conflict with applicable regulatory requirements, Loan Servicers may submit case files to OGC for review and concurrence regarding a borrower's legal sufficiency to assume the proposed role in the new organization. OGC does not override the decisions made by Loan Servicers with regard to organizational changes.

5.6 DOCUMENTATION OF CHANGES

To ensure that there is a running history of all changes made to the organization of a borrower entity, the Agency requires that all changes be adequately documented through both written notification to borrowers and maintenance of case files. Loan Servicers must respond to all requests for Agency consent to changes in a formal letter, a copy of which is placed in the borrower's case file. Documentation allows the Agency to track the legality of the changes and the suitability of any new individuals or organizations added to the borrower entity over time. All changes must be entered into the MFIS so that the automated system is always up to date.