

## CHAPTER 7: TRANSFER OF OWNERSHIP

### 7 CFR 3560.406

#### 7.1 INTRODUCTION

**This chapter applies to ownership transfers or sales [7 CFR 3560.406] of all or a controlling interest in the project ownership.**

During the term of a Rural Development (RD) loan, borrowers may determine that it is in their best interest to transfer a project to another owner. Transfer of any RD project requires RD's prior approval. RD may approve a project transfer [7 CFR 3560.406 (b)] if that project continues to further the objectives of the program, if the transaction is in the best interest of Government and the tenants, and if RD's security is protected.

The Agency's Transfer Application Process (TAP) strives to balance the needs of RD and its customers. This chapter elaborates on Agency policies and defines thresholds to accomplish this goal. The Agency review process relies on accurate information being timely provided from all parties. This chapter outlines the requirements for project transfers and RD's procedures for reviewing and approving those transfers.

The programs covered by this Chapter and authorized by Title V of the Housing Act of 1949 are as follows:

1. Section 515 Rural Rental Housing (RRH) that includes congregate housing, group homes, and Rural Cooperative Housing as defined in §3560.11; and
2. Section 514 Farm Labor Housing (FLH) loans and Section 516 FLH grants for farm-worker housing.

A transferee must meet the eligibility requirements found in HB-1-3560 for the respective loan program type (RRH or FLH) as defined in 7 CFR§3560.55 and §3560.555, including possessing the financial capacity and management experience to successfully own and manage the project. After a transfer is authorized, the property should be financially and operationally sustainable for the remaining term of the RD funding. The property should provide adequate, affordable, decent, safe, and sanitary rental units for very low-, low-, and moderate-income households in rural areas.

To protect RD's security interests in a transfer, the RD underwriter must perform the evaluations outlined in this chapter, taking into account the requirements in Chapters 4 and 5 of HB-1-3560 and considering the impact of the transaction on the tenants. While transfers offer an opportunity to improve the quality of housing through improved maintenance, rehabilitation, and/or better management, if not properly scrutinized, a transfer may increase the risk of loan default or poorer housing conditions.

For purposes of this chapter, the term applicant, transferee, or purchaser is used to refer to the entity that wishes to acquire the property, and borrower, transferor, or seller refers to the current borrower, or the entity transferring the property.

For additional guidance on loan restructuring, see Chapter 11 of this Handbook. For a list of documents to be submitted when requesting RD approval of a transfer, see Attachment 7-B-1, Transfer Application Documents.

*This page is intentionally left blank*

## SECTION 1: OVERVIEW

### 7.2 RD OBJECTIVES AND GUIDING PRINCIPLES

#### A. Objectives

The key objective of this chapter is to ensure RD Multi-Family Housing (MFH) projects continue to meet long-term program goals stated below by maintaining the affordability of needed rental housing in rural areas. This chapter guides the Loan Servicer/underwriter and the applicant in evaluating transfer requests to ensure the transaction meets the best interests of the Government and the tenants by:

1. Improving and maintaining the long-term physical and financial viability of the property;
2. Improving or maintaining the affordability of the property for RD-eligible tenants and applicants;
3. Completing the transaction in a timely and efficient manner; and
4. Providing a framework for the timely and consistent review of the applicant's submission subject to the applicable program and statutory requirements.

#### B. Responsibilities

RD relies on the ability of underwriter and loan originator (hereinafter used interchangeably and in those cases they may be designated as a MFH specialist and may further serve as the loan servicer) to complete the basic eligibility determinations concerning both the applicant/borrower and the project to ensure the transaction complies with the respective MFH program authorities described in current RD Handbooks, Code of Federal Regulations (CFR), and statutory authorities. It is RD's responsibility to fully evaluate the proposal and determine when the transaction meets applicable Agency administrative and program requirements. In those cases where the RD underwriter and RD loan servicer are two different individuals, they will jointly be involved in processing the loan transfer and share accountability for successfully completing the transfer by fulfilling the actions described in this Chapter. All transfers and Multi-Family Housing Preservation and Revitalization (MPR) Transactions must be in the best interests of the Government and tenants. These transactions must demonstrate the extended viability/sustainability of the project, the likelihood of full repayment under the terms being offered, and the probability of providing and maintaining quality affordable housing over the long-term.

The Applicant is responsible for providing complete, timely and accurate information and documentation throughout the transfer process to comply with all of the applicable program policies, procedures, and regulations. The Loan Servicer is typically the initial point of contract when a borrower decides to transfer their property and will determine if the transfer meets these objectives subject to the applicable program and statutory requirements. If a transfer does not meet each of these objectives, the Loan Servicer should work with the purchaser and the seller in an effort to resolve issues of concern within the respective program limitations. If the applicant contacts the RD underwriter who is not also the designated loan servicer, the underwriter will inform the servicer and initiate the cooperative effort necessary to comply

with the process described in this Chapter. It is not RD's role to assume any responsibility for the individual business decisions of the borrower or applicant in ultimately determining the course of action they propose. RD does not negotiate the terms of the transaction that are between the buyer and seller.

### C. Guiding Principles

Agency underwriters will use the currently available underwriting analysis and guides available at the RD intranet (SharePoint) <https://mfhdemoteam.sc.egov.usda.gov/ProgTracking/default.aspx> to document their MFH transfer and MPR decisions. Applicants and borrowers may access these forms through the appropriate RD public websites (<http://www.rd.usda.gov/programs-services/multi-family-housing-direct-loans> or <http://www.rd.usda.gov/programs-services/housing-preservation-revitalization-demonstration-loans-grants>).

The key parties to the transfer include the Seller, the Purchaser, the Agency (on behalf of the tenants and as mortgagor), and any third-party funders (other lenders, tax credit agencies, syndicators/investors, etc.). The different parties may have competing or conflicting requirements, needs, and/or objectives and goals that must be recognized and addressed early in the transfer process. RD is not responsible for reconciling conflicts between buyers, seller or any other interested third parties. RD may, within its policy constraints and to protect the interest of the Government and the tenants, offer alternatives for conflict resolution.

An initial or preliminary conceptual meeting with the RD loan servicer, Seller, and Purchaser should be arranged as early in the process as possible to evaluate the potential suitability of the proposed transfer and formulate a mutually acceptable schedule for RD's internal program analysis. This meeting can also identify potential problems or issues early in the process that will need to be addressed before completing the transfer application.

When initiating the conceptual discussion, RD should recommend to applicants the use of RD's optional Preliminary Assessment Tool (PAT) or a suitable preliminary assessment tool alternative offered by other parties, as a starting point to explore the feasibility of the transaction. Using the PAT encourages all interested parties to contact the RD servicing office as early as possible to discuss program requirements and conditions. The PAT contains general instructions, basic underwriting thresholds and pertinent tips for RD customers and staff to assist in preparing and evaluating proposals. The tool incorporates the detailed instructions found in the applicable RD Handbooks, CFR, and other applicable Agency and Departmental regulations. Additional instructions and suggestions are available internally for Agency underwriters through the Agency SharePoint by drilling down to their specific needs.

The RD website (<http://www.rd.usda.gov/programs-services/multi-family-housing-direct-loans>) includes the PAT along with many of the other tools and additional program information.

Using the information provided by the applicant, Loan Servicers should assess whether the transfer request is consistent with the following guiding principles:

1. There is a continuing need for the property in the community. This should be considered in lieu of prepayment of any existing RD direct loan MFH properties.
2. When the transaction is complete, the property will be in the hands of eligible owners.

3. The transaction will address the immediate and long-term physical needs, including accessibility issues identified in a Transition Plan as well as any other fair housing requirements, and other needs of the property.
4. Any increased post-transaction rents will not displace existing tenants otherwise meeting the RD eligibility requirements for continued occupancy.
5. Post-transaction basic rents will not exceed the lesser of conventional rents for comparable units (CRCU), or the restricted rents as defined below in Paragraph D 1, unless an exception is allowed by the Agency. Low Income Housing Tax Credits (LIHTC) rents are differentiated from CRCU and other restricted rents that may be imposed by the applicant's participation in other funding sources such as HOME or individual State Housing Assistance programs. See Paragraph 7.7 B.
6. Any equity amount recognized by RD will be supported by a market value appraisal meeting RD appraisal acceptability and underwriting requirements.
7. The RD-recognized Seller's Equity will consider the Market Value reflected in the RD-approved appraisal (See Paragraph 7.7 B) less the unpaid balance of the outstanding RD Loans on the Property and any other amortizing debt or other real estate secured liens outstanding at the time of transfer as determined appropriate by the Agency. If any new loans will be placed on the property at the time of transfer that will cause the total real estate debt to exceed the RD security value, an exception may be made for payment of a Seller's Equity on a case-by-case basis with RD Headquarters (HQ) Multi-Family Housing Preservation and Direct Loan Division (PDL) approval.
8. An Exit Incentive (EI) can be paid to the Seller if the following tests are met:
  - a. The present RD-accepted market value appraisal does not indicate any equity exists in the property as is;
  - b. All threshold items in Paragraph 7.2 C of this handbook are met;
  - c. The total amount paid as EI is available from tax credits or other soft dollars (*RD funds will not be used to fund EI*);
  - d. All New Loans are used for eligible RD MFH program purposes; and
  - e. All RD Direct Loans together with any RD authorized senior or superior debt, such as may be incurred when the RD direct loans have been subordinated or were previously issued in a junior lien position, post transfer will be less than the Security Value determined by RD.
9. The Seller's Equity and any EI may not both be paid on the same transfer. When an EI is proposed, the RD HQ must review the PAT before RD issues a letter of support for the buyer to obtain tax credits. RD must also review the settlement statement pre- and post-closing to verify the amounts that may ultimately be released at closing, and confirm no more than the amount authorized has been allowed.
10. The PDL concurs with the equity loan amounts and the new Return-To-Owner (RTO) being authorized when it exceeds the seller's originally authorized return, and coordinates the approval of all waivers for unique and non-recurring

circumstances that fall outside of the normal transaction principles, RD HQ approvals, or revitalization-related policy issues.

11. RD encourages the use of third-party resources to secure adequate funding to successfully complete transfers and associated revitalization efforts. Such resources include Low Income Housing Tax Credits (LIHTC), grants, and participating lenders adhering to established RD MFH policies and programs, including Section 538, Guaranteed Rural Rental Housing (GRRH) loans. Lenders include Federally-regulated and insured institutions; State-regulated, chartered, and insured institutions; and other national, state, regional, or local governmental agencies specifically authorized to make loans and/or grants for multi-family housing purposes authorized under the authorities accorded to USDA.
12. Post-transaction basic rents will not exceed the lesser of Conventional Rents for Conventional Units (CRCU) or the restricted rents as defined below in Paragraph C 1, unless an exception is allowable or the rents are 100 percent Project-Based Section 8 with evidence from HUD that the current rents will be carried forward to the new borrower without anticipating any reduction for the remaining term of the Housing Assistance Payments Contract (HAP) contract. See Paragraph 7.7 B.
13. Each transfer will result in computation of a new Return-to-Owner (RTO) for the new owner. Currently the RD RRH program allows the project owner to potentially earn its maximum return based on original loan terms and/or prior modification authorized by the Agency. A new RTO will replace the previous owner's return amount in underwriting and future operating budgets for the longest remaining term of any RD direct MFH loan on the property assumed, incurred or modified as part of the transfer transaction.

For transfers, the following conditions are considered in determining when any tax-credit equity, projected-deferred developer fees, or other program adjustments will be used to establish the maximum total RTO the new owner may be allowed:

- a. Rehabilitation costs eligible for the RD Section 515 Program purposes less all outstanding and new RD direct loans, together with any RD authorized senior or superior debt such as may be incurred when the RD direct loans have been subordinated or were previously issued in a junior lien position must not exceed the RD-determined Security Value;
- b. The new maximum projected RTO at the time of transfer approval based on the Agency underwriting analysis of Net Operating Income (NOI) less debt service for all loans (without agency debt deferral);
- c. NOI for payment of RTO should provide for the Debt Service Coverage Ratio (DSCR) of 1.15 (when RD-recognized new equity has been provided), and will be based upon the projected post-rehabilitation operating budget with rents not exceeding the lesser of CRCU or, if applicable, the LIHTC rents required by the tax credit application process or any other restricted rents as approved during RD underwriting;

- d. The budget must reflect the lesser of the Agency's 5 percent of O&M and historical vacancy plus 2 percent (not to exceed maximum of 10 percent for 16 or more units, or 15 percent for fewer than 16 units), or the industry standard of 5 percent vacancy;
- e. There must be a demonstrated ability to repay any deferred developer's fee from the NOI proposed by the applicant at the time of RD underwriting approval for the remaining term of the RD loan using the rents approved for the transaction (See Paragraph 7.2 B); and
- f. Each transfer request received by RD will be tracked by Agency underwriters and loan servicers throughout the transfer process in the electronic monitoring and tracking system prescribed by RD HQ.

#### D. Preliminary Transfer Thresholds

RD adopted the following thresholds and policies for evaluating MFH transfer feasibility to promote consistency in RD underwriting for MFH transfer transactions; and balance the needs of the Agency, customers, and the project to maintain affordability for eligible tenants under the RD programs. The transferee should complete a preliminary assessment using these standards early in the transfer process and discuss it with the RD office responsible for servicing the account. Careful analysis by all parties involved can identify the general issues that will need to be resolved as the transfer application is completed and submitted for formal review. Acceptance of the preliminary analysis by RD does not constitute final approval of any transfer proposal by RD or any other third-party funder. Thresholds RD considers include:

1. **Post-Transfer Rents.** Post-transfer rents should not exceed the restricted rents of the LIHTC, HOME Program (if applicable), or CRCU (as defined in existing RD regulations), whichever is less. The term Restricted Rents for the purpose of this review will be the rent restrictions of LIHTC, HOME, or other Rent Restricting Program(s) that will be placed on the property upon completion of the transfer. Post-transfer rents on properties with 100 percent Project-Based Section 8 will not exceed the maximum rents authorized under the HAP contract. No rent increase beyond the current basic rents is authorized prior to completion of the planned rehabilitation.
2. **Rents Cash Flow in Proposed Operations.** Proposed rents must be sufficient to meet all projected expenses including a reasonable allowance for operations and incidentals, and are typically included in the estimated individual operating expense line items. The allowance may be expressed as a percentage of total operating expenses and the resulting planned amount is reflected in the amount shown as net cash on the RD operating budget, Form RD 3560-7, Part I, Line 30. The **minimum** combined allowance for operating expenses and vacancy/bad debt loss must not fall below the equivalent industry standard of 5 percent vacancy loss or the applicable amount specified in #3 below. Net operating income (NOI) must also be sufficient to meet the general industry minimum standard of 1.15 Debt Service Coverage Ratio (DSCR) for all amortizing debt being placed on the property in the initial underwriting review and authorization determination based on the first year of typical operations (rents, O&M, etc.). If third-party lenders

specifically require DSCR in excess of the minimum, such rate should be used for RD underwriting analysis during the initial three operating years. See also # 9 below.

3. **Vacancy/Bad Debt Loss.** The maximum allowance for vacancy and bad debt is 10 percent (for 16 or more units) and 15 percent (for fewer than 16 units) unless otherwise specified by terms of any supplemental Notice of Solicitation of Applications (NOSA) for which the transaction has been submitted. The minimum allowance is the lesser of the historical average of collected rents for the most recent three years plus 2 percent for bad debt, or the Restricted Rent Program/Lender requirement when specified. If the budgeted allowance is less than historical average plus 2 percent, it will be considered a failure to meet the required threshold unless extenuating circumstances can be supported and documented to RD's satisfaction.
4. **Operating Expenses.** The minimum amount of operating expenses required per unit is the greater of any specified by the Restricted Rent Program (LIHTC, HOME, etc.) or the third-party lender (if applicable). Generally, project maintenance costs are reduced as a result of the proposed rehab and generate a net reduction. However, any reduction must be reasonable. No more than a 10 percent change or variance in total project post-transfer closing operating expenses based on historical actual averages will be accepted for underwriting without an adequate justification acceptable to RD.
5. **General Operating Account Minimum Requirement.** The project's General Operating Account (GOA) must be equal to 20 percent total operating expense as underwritten at the time of transfer (excluding the required prorated tax and insurance escrow), and there must not be any outstanding accounts payable exceeding 30 days. If this requirement cannot be achieved through normal project operations as reflected in the underwritten typical year budget, the transfer development budget must include an additional cash deposit to the GOA from non-debt, LIHTC or the applicant's non-project resources. Any additional required deposit (not from normal operations) made by the applicant must be documented to the Agency at the time of transfer. The applicant may recoup the additional required cash deposit to the GOA between the second and seventh year of operation in accordance with HB-2-3560 Chapter 4, Section 1, 4.3.
6. **Tenant Protection.** RD does not permit the intentional displacement of any existing RD-eligible tenant because of the planned transfer, as long as the tenant remains eligible under RD regulations and the terms of the RD-approved lease. For projects not having full Rental Assistance (RA) and for all non-RA assisted revenue units where the transfer results in a rent increase, the applicant must agree to protect currently eligible tenants affected by the rent increase as long as the tenant resides in the project. All tenant protection costs must be included in the Sources and Uses analysis used in RD underwriting for the full amount needed to fund the initial two-year minimum period following the transfer closing for transfer underwriting purposes. NOTE: This does not limit the total cost of tenant protections the transferee may ultimately be responsible for and is solely to aid in completing the initial transfer underwriting analysis using the PAT. The applicant will establish a specific cash escrow set-aside for this purpose at the time of closing, and is responsible for providing, from non-project resources, any future



- tenant subsidy or protections necessary to maintain cash flows if the project does not have or fails to secure 100 percent RA, or other tenant subsidy necessary to meet LIHTC or other third-party tenant rent restrictions.
7. Capital Needs Assessment (CNA) Funding & Reserve Deposit. The minimum requirement per unit is the greater of any Restricted Rent Program (LIHTC, HOME, etc.) requirement, or third-party lender (if applicable) requirement that will be placed on the property upon completion of the transfer. The Reserve Account ending balance forecast must be positive for all 20 years of CNA.
  8. New Loans for RD Section 515 Eligible Purposes. Any new loans placed on the property must be for Section 515 RRH-eligible loan purposes only, as defined in 7 CFR 3560.53. The Agency will analyze Federal Government and other assistance provided to any MFH project to establish the maximum loan amount and to assure that the assistance is not more than the minimum necessary to make the housing affordable, decent, safe, and sanitary to potential tenants [7 CFR 3560.63(d)]. Any prohibited uses of loan funds as defined in 7 CFR 3560.54 must be paid from non-debt sources. However, projects using a RD Section 538 Guaranteed Rural Rental Housing (GRRH) loan may be allowed additional debt for purposes eligible under the GRRH regulations.
  9. Debt Service Coverage Ratio (DSCR). RD underwriting will include annual trending increases of revenue at 2 percent and expenses at 3 percent (including reserve) for each of the first 15 years. For transfer underwriting and analysis, the project at a minimum must meet an initial DSCR of 1.15 through year 3, and may project subsequent DSCRs of 1.1 in years 4 and 5, and 1.0 for the remaining years solely for the purposes of the RD initial transfer analysis. Third-party lenders may require higher DSCR for their individual underwriting approval requirements. If so, the DSCR required by the third-party lenders should be used in the RD underwriting analysis during the initial 3 operating years.
  10. Loan-to-Value. Upon completion of all planned rehabilitation/repairs and approved development, all Debts must be secured within the Prospective As-Improved Security Value as defined by RD in 7 CFR 3560, §3560.63. RD determines Security Value and includes the intangible benefits afforded by the interest credit subsidy of the RD loans, and the benefits of other favorable financing resulting from other Federal, state or local government instrumentality direct or authorized intermediary lending programs such as HOME, Preservation Revolving Loan Fund (PRLF), and Section 538 GRRH loans being made at below-market rates and terms, as permitted by RD regulations. Security Value does not include any non-amortizing or deferred loans or grants regardless of the source; or any federal, state or local LIHTC and Historic tax credits or the investment value thereof.
  11. Loan Terms of Third-Party Debt. No balloon payment from any third-party debt is allowed prior to the expiration of the minimum RD Loan Term (30 years for RRH transfers and 33 years for FLH transfers), unless the Lender provides a written agreement, acceptable to the Agency, to extend the scheduled maturity on terms that do not require rents above comparable rents for comparable units (CRCU) through the term of the RD loan.

12. Sources and Uses Must Balance. Sufficient funds must be available for all proposed rehabilitation, acquisition costs, and uses to meet the terms of the proposed transaction. Funds must be adequate to address repairs needed immediately, including all health and safety, fair housing and accessibility issues.
13. These may be included as part of the up-front rehabilitation that is being paid by third-party funds. Applicants must be able to fund any projected shortfalls from resources other than the project or project income.

### 7.3 KEY ANALYTICAL CONCEPTS

In evaluating all the components of a transfer request, the Loan Servicer and the Applicant need to determine if the transfer meets RD's objectives by collecting the information necessary to form the analytical foundation for Agency processing and authorization of the proposal.

Using a preliminary analytical process and the processes provided in this Handbook, the Loan Servicer and underwriter should be able to answer, and document the proposed terms and conditions that will ultimately serve as part of the basis for approving the transfer request. Formal final approval will only be granted upon submission and acceptance of all required documentation in its totality, and the Agency's completion of the internal analytical analysis tools as prescribed. RD underwriting considers the applicant's capacity to pay the loan, provide sufficient capital to meet the transfer requirements, demonstrate the character necessary to meet operational ownership and management requirements, provide and maintain the project collateral, and meet the anticipated conditions necessary to close the transaction and complete any required construction needs.

Applicants must have both sufficient experience and the financial capacity for the development and ownership of the proposed property transfer. Applicants are required to submit appropriate documentation to assist RD underwriters and approval officials evaluate and establish reasonable expectations to assure the terms and conditions of the respective assistance can be followed and carried in meeting the purposes intended. Applicants, including any affiliated entities sharing an identity of interest with the applicant (i.e., management, contractors, etc.), must be in compliance on all or any other Agency-financed projects that they may own or provide decision-making and operational authority over. Any noncompliance issues must have been cured or be in compliance with a workout agreement approved by the RD for at least 6 consecutive months as of the date that the initial application is due unless an exception is authorized by HQ.

Newly formed applicant entities, may not have the ability to demonstrate creditworthiness and financial capacity to meet basic program eligibility determinations. RD underwriters and approval officials may then look at the individual key principals the applicant identifies with the organization, decision making and operational authority controlling the applicant organization or entity as necessary.

All Principals will be identified and analyzed with respect to their capacity of credit, experience and financial histories. Regulatory standards established in the Code of Federal Regulations (24 C.F.R.) Part 200 Subpart H Participation and Compliance requirements determine the appropriate review of previous participation in multifamily insured programs based upon their past performance as well as other aspects of their records. 42 U.S. Code § 1441

These considerations are generally categorized in each of the following areas:

### **A. Eligibility**

The Loan Servicer must establish applicant eligibility in the same manner as during the loan origination process, including an in depth evaluation of the applicant and the individual principals of the applicant entity and any sub-entity. These requirements set the basic standards for all borrowers including:

1. Analysis of financial capacity (such as balance sheets for all principals, including the individual key principals involved in the organization, decision-making and operational authority that may control the applicant and any sub-applicant entities involved);
2. Credit worthiness of all principals (such as credit reports, contingent obligations, payment history, etc.);
3. Experience (such as previous participation certificates, CAIVRs, SAMs, etc.);
4. Incidence of ongoing or chronic adverse actions in other projects or business transactions;
5. Satisfactory explanation of all insufficient, incomplete, or negative factors identified in the eligibility review; and,
6. Simultaneously, completion of the planned transfer must sufficiently determine a continued need for affordable housing with adequate demand for continued use of the project by tenants meeting the RD eligibility requirements. When necessary to establish the continued need for a property, the loan underwriter may require additional documentation acceptable to RD that there is an actual need for the project considering any other existing or planned affordable housing in the market area.

Note: RD needs and LIHTC needs may not always serve the same market, and may have different demands and concerns as affordable housing. Reviewers must ensure that RD funds will be used in accordance with the program's statutory requirements. The project's eligibility as documented during the loan transfer process requires the loan servicer to confirm that the project will remain eligible after the transfer.

### **B. Feasibility**

The Loan Servicer must determine if the proposed transfer is feasible. This feasibility determination requires an in-depth financial analysis of project operations, sources and uses of funds, and potential for future success. See Paragraph 7.23.

### **C. Improve or Maintain Risk Levels**

The Loan Servicer must consider any financial and operational risk factors in the transfer that conflict with the respective MFH loan program origination and servicing principles.

## 7.4 DEFINITIONS

As used in this chapter, the following definitions apply to ownership transfers or sales of all or a controlling interest in the project ownership as addressed in 7 CFR 3560.406.

### A. Transfer

A transfer occurs whenever there is a change in a project's ownership that:

1. Places title to the property in the hands of a new owner;
2. A new owner assumes all liability for the debt; or
3. There is a change in the legal entity owning the project, such that the transferee is commonly considered a distinct and separate legal entity from the original borrower (including, without limitation, a change resulting in a new Internal Revenue Service Tax ID number), or 100 percent of a borrower entity's ownership interests will be transferred within a 12-month period (7 CFR 3560.405 (a)).

Changes in membership within the ownership entity such as the admission of non-controlling members do not constitute a transfer, but do require RD involvement as discussed in Chapter 5 of this Handbook. A change in ownership due to the death or involuntary incapacitation of a joint owner, beneficiary of a trust owner, or in membership within the ownership entity such as a general partner interest being sold or bequeathed may not constitute a transfer as long as the incoming member meets RD eligibility requirements, and the State Director requests authorization on a case-by-case basis from RD HQ. The change must be appropriately documented without any change in the currently authorized RTO for the project; additional debt, liability, or encumbrance of the RD loan security; or change of project type or purpose. RD HQ will review the status of the project's current physical and operational condition and may waive any other provision of this chapter for these cases only when the RD approval official determines that such ownership change is in the best interests of the government and the tenants. Borrowers may request to transfer their project to another entity in which the members are involved in both the transferring and the assuming entities, provided the new entity be legally organized, discloses all Identity-of-Interest situations, and meets applicable RD eligibility requirements. (See also Paragraphs 7.5 and 7.16 E.)

A proposed transfer to an IRS-approved intermediary for purposes of a Section 1031 exchange is a transfer for purposes of this chapter.

If the transfer being proposed is part of an Agency incentive offer as described in Chapter 15 of this Handbook as part of a prepayment incentive offer, a complete transfer application package must be submitted as described herein unless all of the following conditions are being met:

1. No additional sources of funding are being brought into the transaction and the new owner does not request any RTO consideration other than those approved as part of the Agency incentive offer;
2. There are also no existing physical, operational or financial needs, or deficiencies that must be addressed to ensure the continued success of the project in meeting the MFH program mission; and

3. The State Office has consulted with PDL and determines an exception to this Chapter is in the best interests of the government and the tenants.

### **B. Non-Program Transfers [7 CFR 3560.406 (I)]**

This chapter does not apply to non-program transfers, as discussed in Chapter 5 of this Handbook. However, such a transfer or sale will only be considered when it is determined by RD to be in the best interest of the Federal Government and the objectives of the original loan can no longer be met.

### **C. Underwriting**

Underwriting as used in this Chapter refers to the process of determining the financial and operational feasibility of the project, applicant eligibility, environmental compliance, and fair housing compliance of a proposed transaction based on the specific requirements specified in this Chapter, Agency Handbooks and guidance, and/or applicable Notice of Funding Availability (NOFA), and/or Notice of Solicitation of Applications (NOSA). The specific aspects of the transaction process such as determining applicant eligibility, assessing environmental compliance, or evaluating fair housing compliance are more fully addressed in the current RD Handbooks and Regulations, and supplemented from time to time with other published guidance available on the RD website.

### **D. Related Definitions**

The following are definitions for certain related terms used in this Chapter.

- **Acceptable Appraisal.** The Agency will use appraisals to determine whether the security offered by an applicant or borrower is adequate to secure a loan, or determine appropriate servicing or preservation decisions. Appraisals used for Agency decision-making must be current unless the Agency and the applicant or borrower mutually agree to the use of an appraisal that is not current. A current appraisal is an appraisal with an effective date that is not more than one year old per §3560.752. All MFH appraisals that were not written by an Agency appraiser will be reviewed by an Agency appraiser who will write and file a technical review report that complies with the Uniform Standards of Professional Appraisal Practice (USPAP) Standard 3, and Agency requirements as prescribed in Handbook 1, 3560.
- **Corporation.** A corporation is any entity that has filed Articles of Incorporation in one of the 50 States, the District of Columbia, or the various territories of the United States including American Samoa, Federated States of Micronesia, Guam, Midway Islands, Northern Mariana Islands, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, or the U.S. Virgin Islands. Corporations include for both profit and non-profit entities.
- **Debt Deferral.** A deferral of an existing RD debt. Agency debt deferral is subject to appropriations and may be offered to a transfer applicant selected for participation under the terms of an outstanding MPR Program NOSA. This deferral includes the deferment of the monthly principal and interest payments with a balloon payment at the end of the deferral period. A debt deferral agreement will be required for the debts assumed eligible for deferral at the time of closing.

- **Equity.** Equity is the amount of the RD-accepted market value that exceeds the total of all currently outstanding RD direct loans and any other parity, or senior debts approved by RD, or to which RD has an outstanding subordination.
- **Exit Incentive.** An Exit Incentive is an amount of incentive compensation determined by RD that may be paid to the selling borrower to facilitate transferring the property to an eligible buyer when there is no equity as determined by the RD-accepted market value used in the underwriting analysis. See also 7.2 C 8 for mandatory applicable Guiding Principles.
- **Identity-of-Interest.** A relationship between applicants, borrowers, grantees, management agents, or suppliers of materials or services described under, but not limited to, any of the following conditions (7CFR 3560.102 (g)):
  1. There is a financial interest between the applicant, borrower, grantee and a management agent or the supplying entity;
  2. One or more of the officers, directors, stockholders, or partners of the applicant, borrower, or management agent is also an officer, director, stockholder, or partner of the supplying entity;
  3. An officer, director, stockholder, or partner of the applicant, borrower, or management agent has a 10 percent or more financial interest in the supplying entity;
  4. The supplying entity has or will advance funds to an applicant, borrower, or management agent;
  5. The supplying entity provides or pays on behalf of the applicant, borrower, or management agent the cost of any materials or services in connection with obligations under the management plan or management agreement;
  6. The supplying entity takes stock or a financial interest in the applicant, borrower, or management agent as part of the consideration to be paid them; or
  7. There exists or come into being any side deals, agreements, contracts or understandings entered into thereby altering, amending, or canceling any of the management plan, management agreement documents, organization documents, or other legal documents pertaining to the property by the Agency. See 7 CFR 3560.11.
- **Key Principle.** A key principle is the party or parties involved in the organization, decision-making and operational authority that may control the applicant and any sub-applicant entities involved and includes the actual individual(s) of any sub-entity (i.e., other organizations, partnerships, etc.) which cannot demonstrate financial ability, creditworthiness or experience in the name of the transferee or identified sub-entity, to mitigate any creditworthiness, financial capacity and/or experience in the transferee's own right or may not have equal strength with respect to all of the eligibility criteria.
- **Non-Equity Compensation.** Non-equity compensation is a payment to the Seller, from the buyer when no equity exists in the property. This payment should come from non-loan funds and must not affect project rents at any time during the term of the RD direct loan or any modification thereof. See Paragraph 7.8 D.
- **Portfolio Transaction.** A portfolio transfer transaction is a transaction involving multiple projects within one State being acquired by a single purchaser.
- **RD Funds.** RD funds include, for example, a subsequent Section 515 loan or a Section 538 loan.

- **Security Value.** The security value is the property value established by RD which is the lesser of the total development cost [exclusive of any developer's fee as provided by §3560.63 (d)(2)] or the housing project's security value as determined by an appraisal conducted in accordance with Subpart P of this part, minus any prior or parity liens on the housing project.
- **Third-Party Funding.** Third-party funding involves sources of funds other than RD funds and the purchaser's personal funds. The third-party funding is provided by other recognized third-party funding sources as described in 7 CFR 3565.102. Tax credit equity, HOME funds, and Community Development Block Grant (CDBG) funds are a few examples of third-party funding.
- **Transferee.** The transferee is the person or entity acquiring the RD-financed property. In this Chapter, the term is used interchangeably with the terms purchaser or buyer.
- **Transferor.** The transferor is the person or entity selling the RD-financed property. In this chapter, the term is used interchangeably with the terms borrower or seller.

## 7.5 CONDITIONS FOR TRANSFERS

### A. Conditions When a Transfer May Occur

Transfer applications, documenting in writing one of more of the following conditions, will generally be considered for further processing:

- The transfer facilitates the physical and financial revitalization of the property;
- The transfer is needed to remove a hardship to the current borrower that was caused by circumstances beyond the borrower's control (circumstances constituting 'hardship' are discussed below);
- 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 RD or the current and future eligible tenants; or
- Other circumstances exist which make the transfer in the best interest of the Government.

Typically, RD will not consider a transfer if the borrower has owned the property for fewer than five years. However, if the State Director determines that a hardship is present, the transfer may occur without prejudice to the borrower.

Examples of hardship include, but are not limited to:

- **Serious Illness or death of the borrower;**

- Serious financial difficulties beyond a borrower's control that cause the borrower to shut down the 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, if the outstanding loans are eligible for prepayment.

NOTE: RD will pursue appropriate administrative and/or civil remedies with respect to transfers that occur without prior RD approval. RD considers these transfers to be unauthorized sales. An unauthorized sale also constitutes a default on the RD loan [7 CFR 3560, subpart J].

## **B. Types of Transfers**

There are many different characteristics and circumstances that may be present in a transfer. All transfer applications, unless otherwise specifically exempted in RD Regulations, will comply with the eligibility requirements based on the type of project and the nature of the transferee for the respective RD MFH program. These requirements are more fully described in the applicable sections of HB 1-3560.

If any project being transferred is currently subject to an RD-approved Workout Plan and an Identity-of-Interest as defined by RD regulations, the transferee must be in compliance with the workout plan in place and on schedule. In addition, the purchaser (transferee) must be in compliance with RD regulations or have a RD-approved workout plan in place and on schedule with respect to any other RD properties owned.

For a list of documents to be submitted when requesting RD approval of a transfer, see Attachment 7-B-1, Transfer Application Documents.

## **C. Coordination between RD Headquarters and State Offices**

Some transfers raise complex issues and require close coordination between the borrower, the purchaser, and the Agency. However, simple transfers can be quickly and easily addressed between the borrower, purchaser, and the Agency. For example, a simple transfer of title to a purchaser with proven capacity, or transfer of a project without regulatory compliance issues that does not require a rent increase or new funding from RD, would proceed rapidly from application to approval to closing under the authority of the Loan Servicer, with a final approval from the State Director as permitted by this Chapter up to the amounts specified in RD Instruction 1901-A. Compliance issues could include issues with the physical or financial condition of the property, poor management, or noncompliance with civil rights and accessibility laws.

In transfers where the State Director's approval limit is exceeded or requires additional concurrence (e.g. where a rent increase or a policy waiver is necessary) and authorization by RD HQ, the State Director will submit the request together with their recommendation, appropriate documentation and sufficient underwriting documentation as specified by Agency policy and procedures to MPDL prior to approval. Upon completion of the HQ review, the State Director will be provided with the appropriate concurrence and guidance memorandum authorizing the terms/conditions for the continued final processing, formal approval or denial of the transaction at the State Director level.



MFH Transfer and MPR underwriting is used to authorize the transaction and approve the terms leading to approval. Often underwriting transactions becomes intertwined among the aspects and requirements crossing multiple interdisciplinary divisions within the Rural Housing Service (RHS). To minimize potential confusion for borrowers and applicants, and to ensure consistent application of pertinent RHS requirements, underwriters must coordinate loan making (direct and guaranteed when applicable) and servicing expectations when evaluating the proposed MFH transaction. Responsibility for successfully completing any MFH underwriting requires ongoing coordination of Preservation and Direct Loan Division (PDL) loan making; Guaranteed Loan Division (GLD) guaranteed loan participation, and Portfolio Management Division (PMD) loan servicing efforts.

## **7.6 PROCESSING A TRANSFER REQUEST**

The Loan Servicer will coordinate the review process to meet the processing guidelines by completing all of the steps below to move through the process of receiving a transfer application, evaluating the transaction, and closing the transfer. These steps are listed in Exhibit 7-1, Key Steps to Conduct a Transfer, and may be used to as a preliminary checklist for discussion with the applicant.

**Exhibit 7-1  
Key Steps to Conduct a Transfer**

<b>Step</b>	<b>Action</b>
1	Applicant completes Preliminary Analysis and schedules Initial Consultation with designated RD Loan Servicer
2	Initial Consultation with Applicant, Seller, and other key participants having significant roles in the transaction such as other lenders, grantors, etc.
3	Application Provided by Applicant preliminary review starts; RD completeness review of application completed within 14 business days. Incomplete applications will be returned to applicant and processing does not begin until the complete application is received.
4	Request Underwriter Review - Detailed review by Underwriter commences and processing starts. Status updates provided to applicant within every 30 business days the application is in process at RD. If additional clarification or other materials are needed, the application will be considered incomplete and it will be returned to the applicant for resolution. Unsatisfactory submissions will be returned as incomplete or rejected.
5	Submit application to RD HQ for Authorization. Upon completion of the Underwriter’s detailed review, the application will be submitted to HQ. Within 10 business days, HQ determines if the transfer may be authorized. If the transfer requires additional information from the applicant, the application is returned to the state office for continued processing.
6	Agency Decision - Communicate to Applicant within 45 business days (single property) / 75 days (multiple properties) - Processing for approval is limited to the periods shown and does not include delays beyond the underwriter’s immediate control.
7	Prepare Approval Conditions for Signature of Applicant - Within 15 business days of Agency Decision written approval conditions sent to applicant for acceptance
8	Coordinate Closing Instructions and OGC Loan Document Approval.
9	Schedule and Close Transfer.
10	Complete post-closing review and verification that approval and closing conditions have been met.

**A. Key Steps to Process a Transfer**

1. Applicant completes Preliminary Analysis and schedules Initial Consultation with designated RD Loan Servicer.

The applicant will complete the preliminary feasibility analysis and submit it to the Loan servicer or other designated State Office reviewer for the Agency's consideration within five business days of its receipt. If this preliminary

feasibility analysis has used the RD Preliminary Assessment Tool (PAT) and the analysis appears to meet Agency thresholds or provides sufficient explanation to indicate preliminary feasibility, an initial consultation will be scheduled with the applicant, seller, and other participants as appropriate.

## 2. Initial Consultation with Applicant and Interested Parties.

The initial consultation will establish a common understanding of the transfer process, timelines, terms, limitations, responsibilities, and conditions all parties will be required to agree to that will affect the transfer being proposed. In addition to the specific transfer requirements contained in the respective MFH program authorities, additional discussion will further clarify the minimum acceptable requirements for each of the following topics. Items to be discussed include:

- a. Identification of the transfer applicant and its principal entities or individuals
  - Type of entity must be legally recognized and authorized to conduct business operations for the proposed transaction under applicable state governing laws, rules, regulations, licensing, etc.;
  - List of all individual sponsors, registered agents, key principals, controlling members, and any board members and officers based on the type of entity; and
  - Identification of the applicant's principal ownership interests and all Identity-of-Interests among participants including buyer, seller, contractor, management, lender, etc.
- b. Eligibility requirements ( 7CFR 3560.55), including
  - Creditworthiness of the sponsors, the borrower entity if formed, and its principals should be verified with an appropriate commercial credit report,
  - Applicant's experience record must be documented for the principals, controlling members, officers, etc.
  - Project limitations and restrictions to include discussion of any outstanding or potential use restrictions that currently exist or will be imposed based on the terms, financing, or other participants in the proposed transaction; this includes existing LIHTC and any other restrictions outstanding on the property.
  - Financing plans, participants, roles, amounts, terms, and conditions necessary to secure funding will be discussed.
  - See HB1-3560, Chapters 2 and 4 for additional specific program eligibility requirements.
- c. Site control
  - Applicant must have enforceable site control throughout the transfer process. Adequately describe real estate and any other personal property, chattels, equipment, movable property and business property that is not real property, money or investments belonging to the project being

acquired in compliance with state laws and practices. Applicant should consult with his or her own appropriate legal counsel as necessary to ensure adequacy and proper enforceability of the purchase agreement.

- Price and terms must be clearly defined
- See also Handbook 1-3560, Chapter 7 for additional eligibility requirements.

d. Appraisal requirements

- Only appraisals acceptable to RD will be used for transfer underwriting. Third-party appraisals may not be sufficient for RD use unless they comply with Agency requirements in form, timeliness, and sufficiency. See HB1-3560, Chapter 7.
- Applicants should discuss RD appraisal requirements including the statement of work prior to engaging an appraiser.
- Appraisals prepared for any other participants or lenders may not satisfy RD Statement of Work requirements, and may require the applicant to incur additional appraisal costs.

e. Capital Needs Assessment requirements

- RD requires a current CNA meeting Agency requirement for all transfers.
- CNA guidelines are available on the RD public website at:  
<http://www.rd.usda.gov/programs-services/multi-family-housing-direct-loans>

f. Scope of Work

- All planned repairs, replacements, and other development must comply with RD requirements as required in RD Instruction 1924-A, regardless of funding source.
- To coordinate construction and satisfy transfer requirements, applicants, their contractors, and any technical staff should discuss the details of the Scope of Work being planned to ensure the requirements of each participating funder is addressed.

g. Applicant's Feasibility Analysis

- Verify that all parties to the transaction have been identified, and that lines of communication can be extended to ensure that full disclosure of the planned transaction will be forthcoming.
- Remind the applicant that it is his or her responsibility to provide adequate and accurate information in a timely manner to move forward with the transfer request.
- Be available to discuss deficiencies in the application, and demonstrate a willingness to consider appropriate compromise with the participants and lenders when evaluating the best interests of the Government and the tenants.

- Remember a transfer request is a business and financial decision being made by the buyer and seller to request RD permission to effect the transfer under the rules, regulations, and policies that have been prescribed.
- h. Provide a general Letter of Support based upon agreements being proposed.
- The applicant's delivery of a completed self-analysis of their transfer proposal using the PAT, does not guarantee final approval of the transfer request.
  - However, this analysis should present a reasonable approximation that a final transfer application adhering to the fundamental assumptions that have been presented would, upon the completion of the full transfer process, likely lead to an RD transfer authorization subject to the regulations then in effect.
3. Application Provided by Applicant.

The Loan Servicer will record all transfer applications into the MFH Transfer Tracking System in SharePoint at: <https://mfh.usda.net/Admin/Lists/Transfer%20Tracking/AllItems.aspx> and annotate Multi-family Information System (MFIS) with an appropriate servicing action as designated by RD HQ upon receipt from the applicant. The Servicing Office receiving the application will establish a transferee account in MFH records based on the information provided by entering the M1AA, M5A and M5B into AMAS to establish the transferee.

All transfer applications received will be reviewed within 14 business days of receipt for completeness, and provide appropriate notification to applicant. Applicants established in the tracking and servicing monitoring system will also be updated to include appropriate comments and follow up actions so long as the transfer application remains active. If the application is incomplete, it will immediately be returned to applicant. However, minor errors or administrative omissions should not prevent determination of application's eligibility or feasibility.

Internal Agency reviews will commence upon determining the application is sufficiently complete to begin processing the PAT. To ensure that the processing guideline goals can be met, the Loan Servicer will typically schedule simultaneous reviews by one or more staff members:

- The State Office review of the CNA;
- The required on-site inspection, and completion of the analytical template; and
- Coordinate all other requests for reviews.

The goal is to complete the full evaluation of the complete application(s) is:

- 45 business days if one property is involved, or
- 75 business days if two or more properties are involved.

The complete application submitted by the applicant will be evaluated based on the application materials provided by the applicant and a review of Agency records, including AMAS and MFIS information for the project being

transferred, the applicant, and the other key principals involved in the transaction. The Loan Servicer must demonstrate in the case file that the transfer application sufficiently addresses the issues of eligibility, compliance, feasibility, and risk as discussed in this chapter in each of the following broad categories.

a. Evaluate the Transferee

Transferees must meet the basic applicant eligibility for the respective loan program (RRH or FLH) currently financing the property. These requirements are presented in more detail in HB 1-3560.

- Analyze creditworthiness of the sponsors, the borrower entity if formed, and its principles; order a commercial credit report for the applicant entity, any parent organization, affiliate, subsidiary, and all principals. A comprehensive commercial credit report will be order by RD for all transferees, including any key principles as defined in 7.4 C of this handbook.
- Analyze program organization requirements for all applicant entities' ability to meet the organizational formation and operating requirements/restrictions within the state in which the project is located, including representations regarding felony conviction and tax delinquency status for a corporation. Use Form AD-3030, for corporations to verify the corporation does not that have felony convictions within the past 24 months, or have unpaid Federal tax delinquencies.
- Require current financial statements from all entities and principals.
- Analyze the applicant's experience record and resumes from principals.
- Review *Form RD 1944-37*, Previous Participation Certification(s) for all principles.
- Order CAIVRS, SAM, and Credit Reports.
- Request initial Organizational Document review from OGC.

b. Evaluate the Property

Each property being transferred must be evaluated to determine if, upon closing the transaction, the property will continue to meet the respective loan program purposes, including:

- Evidence of continuing project need;
- Rents and occupancy; CRCU and other rent limitations;
- Property feasibility/adequacy of repair and rehabilitation, and method of construction; and,
- Reasonableness of costs for planned development.

## c. Evaluate the Project

The transfer further encompasses a number of other Agency requirements and conditions that become the complete project. This includes the following items necessary to satisfy the commitments imposed by other applicable Federal laws and regulations.

- Environmental Review (typically categorical exclusion);
  - Evidence of third-party funding availability, including rates and terms;
  - Coordination with other third-party participants in place;
  - Request of Reviews by PSS and OGC; and,
  - Civil Rights Impact Analysis.
- d. Compile all information necessary to complete underwriting analytical analysis using the RD PAT.
- e. Notify the applicant of any deficiencies, and require corrections before considering the application to be complete for processing. Applications not corrected within 30 days will be withdrawn and returned to the applicant for resubmission when the outstanding issues are resolved.

PAT contains general instructions, basic underwriting thresholds, and pertinent tips for RD customers and staff to assist in preparing and evaluating proposals. The tool supplements the more detailed instructions found in the applicable RD Handbooks, CFR, and regulations. Additional instructions and suggestions are available internally for Agency underwriters through the Agency SharePoint.

## 4. Request Underwriter Review.

MFH Transfer underwriting is used to authorize the transaction and the future servicing requirements upon closing. Responsibility for successfully completing any MFH underwriting relies on the ongoing coordination of loan making and loan servicing efforts. The underwriting review relies on the expertise of the RD staff currently servicing the loan, and the invaluable input and insights each can offer on the project, the market, the borrower, and the applicant. An on-going RD team effort involving both the underwriting staff and servicing is required to deliver a project that will be sustainable for eligible tenants over the life of the RD loan.

The underwriter must have the ability to complete the basic eligibility determinations concerning both the applicant/borrower and the project to

ensure the transaction complies with the respective MFH program authorities described in current RD Handbooks, CFR, and statutory authorities.

The Underwriter will import the CNA, appraisal information, and all other third-party sources and uses into the PAT (available at the RD intranet SharePoint <https://mfh.usda.net/default.aspx>) to document the MFH transfer.

All transfers, including those utilizing any MPR tools, must be in the best interests of the Government and tenants. These transactions must demonstrate the extended viability and sustainability of the project, the likelihood of full repayment under the terms being offered, and the potential to succeed in providing and maintaining quality housing over the long-term. It is not the Agency's role to assume any responsibility for the individual business decisions of the borrower or applicant in ultimately determining the course of action they propose.

Each component in every transaction will be evaluated and analyzed on its individual merits. Common sense consideration of pertinent present and historical conditions, as well as recognition of justifiable future impacts, must all be used to judge the project's potential to succeed over the term of financing being proposed.

Key considerations may include questions such as:

- Is the project needed?
- Is the applicant eligible?
- Is the project eligible? Is there a present and continuing need for the project in its market area?
- Is the project economically feasible? Does the transaction cash flow use a reasonable operating budget comparable to other similar affordable properties in the market area?
- Will the project be and remain affordable upon completion of the transaction?
- Are the RD-eligible project construction and operating costs reasonable?
- Are the Agency's interests secure?
- Is the transaction in the best interests of the Government and the tenants?
- Does the proposal offer adequate property and asset management to meet RD requirements into the future based on the information presented?

The terms and conditions of the transaction presented by the applicant must reasonably address the issues that determine the potential for success. This includes substantiating any future tenant subsidies that may be necessary to ensure success of planned operations. All parties need to recognize that the transactional costs and fees proposed may adversely limit the amount of funds needed for repairs, replacements, and improvements and become detrimental to



the Agency transfer requirements and thresholds. Ultimately, any allowable costs will pass to the tenants through rent increases, but tenant subsidies such as Rental Assistance (RA) are not guaranteed beyond their current expiration. Tenants who do not receive RA will be impacted directly by any rent increase, which they may not be able to afford.

Agency underwriters must use the most current underwriting tools and guidance such as those in the PAT available at the RD intranet (SharePoint) <https://mfh.usda.net/ProgTracking/default.aspx> to document the MFH transfer and MPR decisions.

Applicants and borrowers may access these forms through the appropriate RD public websites (<http://www.rd.usda.gov/programs-services/multi-family-housing-direct-loans> or <http://www.rd.usda.gov/programs-services/housing-preservation-revitalization-demonstration-loans-grants>).

At this point, the Underwriter will complete the final underwriting analysis to determine full feasibility and terms for the transaction. The Underwriter will normally conclude this analysis within 45 days (for a single property) or 75 days (for multiple properties) from the date that the complete application(s) has (have) been received. The Underwriter will evaluate the application for overall compliance, risk to the Agency, and impact to the tenants.

If the terms of the transfer do not meet Agency requirements, the Underwriter will communicate to the Loan Servicer that the assumptions used in the application are not reasonable and the application will be rejected. The Loan Servicer will communicate to the applicant the Agency's decision and follow the applicable requirements of RD Instruction 2033-A for file retention.

If the terms of the transfer meet the Agency's requirements, the Underwriter will communicate to the Loan Servicer that the assumptions used in the application are reasonable and the application will proceed. The Loan Servicer will communicate to the applicant the Agency's decision to continue processing the transfer application.

The Loan Servicer will provide the applicant with a status update within 30 business days of receipt of the application.

5. Submit to RD HQ for Concurrence and Authorization for approval by the State Director.

When the underwriter has completed the underwriting analysis using the information and materials supplied by the Loan Servicer, the transfer underwriting analytical tool or PAT, and appropriate supporting information, the application will be signed by the State Director and submitted for authorization by the RD HQ Office. The submission will include the underwriter's recommended conditions and estimated closing date.

6. Agency Decision.

RD HQ will review the underwriter's package and recommendations. Upon acceptance of the information, a letter authorizing the State Director to formally approve the specific transfer pursuant to program regulations, funding, etc. will be provided to the State Director within 15 business days.

7. Prepare Approval Conditions for Signature of Applicant.

Within 15 business days of the date the authorization is signed by the RD HQ Office designate, the State Director will notify the applicant of the specific approval conditions. The Applicant will signify acceptance of approval conditions by endorsing and returning the duplicate set of the State Director's approval letter.

8. Coordinate Closing Instructions and Loan Document Approval from OGC.

The Loan Servicer will coordinate closing instructions and any necessary loan document approval with OGC and the closing agent within the closing timeframe authorized in the transfer approval letter. The Loan Servicer will also establish the new buyer's account in AMAS and MFIS within the timeframes established in the accounting system, and input necessary budgets, worksheets, etc. as required by the AMAS tips.

9. Schedule and Close Transfer.

The designated closing agent will coordinate the delivery of the RD closing documents, complete the scheduled closing as directed and deliver the necessary documentation to RD to properly evidence closing, recording, etc.

10. Complete post-closing review and verification.

The Loan Servicer will finalize the buyer's account in AMAS and MFIS to ensure the transaction complies with all of the applicable loan and operational conditions authorized for the transaction.

**B. Procedure for Incomplete Transfer Requests**

If at any point, the Loan Servicer determines that additional information is required from the purchaser in order to complete processing, the Loan Servicer will notify the purchaser in writing as follows:

- Explain the deficiency and describe what additional information is needed and the timeframe for submitting the additional information.
- RD's timeframe for processing the transfer request may be extended for not more than 30 business days beginning with the date of the notice to the applicant.
- If the information is not submitted within the extension period, RD will consider the transfer request to have been withdrawn and return the application.

### C. Denial of Transfer Request

The Loan Servicer may issue a denial of the transfer request at any point during the process. Appeal rights should be given for denials as submitted. Grounds for denial include, without limitation:

1. Eligibility issues as determined by the specific program regulations for RRH and LH, and this Handbook:
  - Ineligible transferee; or
  - Ineligible project.
2. Feasibility issues, such as:
  - CNA does not meet RD requirements;
  - The proposed transfer does not address the property's physical needs;
  - The appraisal submitted does not meet RD requirements;
  - The proposed transfer does not address all compliance issues;
  - Proposed Operations and Maintenance (O&M) expenses are not adequate for the project's long-term viability;
  - Proposed net operating income (NOI) is not sufficient to meet the general industry standard of 1.15 debt service coverage ratio (DSCR) through year three for all amortizing debt that is being placed on the property with the proposed transfer transaction;
  - Proposed rents exceed the lesser of CRCU or restricted rents unless an exception is allowable under the regulation; or
  - Proposed rents are not adequate to support the property's long-term viability.
3. Financial issues, such as:
  - The proposed transfer would not bring all loan accounts current;
  - The taxes and insurance account will not be adequately funded, with all outstanding bills paid; and
  - The security deposit account will not be fully funded.
4. The proposed management is not acceptable as required in 7 CFR 3560.102 and further described in RD HB 2-3560.
5. The proposed transfer will not correct all outstanding findings sufficiently to allow re-classification of the property to an acceptable level. In some cases

the agreement to transfer ownership may be considered part of an acceptable workout plan for MFIS entry together when any further servicing actions determined appropriate to meet the best interests of the government and the tenants. Some transfer requests may be unacceptable as submitted but could be acceptable with specific modifications. At any point during the process, the Loan Servicer may inform the applicant accordingly, using the procedure in paragraph 7.6 B. Incomplete transfer requests not corrected within 30 business days will be withdrawn or rejected, as appropriate.

6. Proposed sales price and/or equity payout exceeds the allowable maximum, but the transfer request would be acceptable if the sales price and/or equity payout were reduced, or the buyer demonstrates the ability to provide sufficient other resources not otherwise impacting proposed project rents, RTO or eligible cash flows, security or other RD requirements. See Section 7.4 definition for Non-Equity Compensation in this Handbook. Applications without sufficient resources to fully fund all proposed project costs, needs and uses will be rejected for lack of financial feasibility. All sources and uses must balance.
7. Proposed rents exceed the lesser of CRCU or rent restricted rents, but the transfer request would be acceptable when the applicant provides sufficient justification and RD agrees with the rents necessary to operate the property.
8. Proposed RTO exceeds the allowable maximum, but the transfer request would be acceptable when the proposed RTO is reduced.
9. The proposed management and/or management documents are not acceptable under the requirements of 7 CFR 3560.102, but the transfer request would be acceptable when acceptable management/management documents are substituted. See Paragraph 7.18 for a further explanation of what is acceptable.
10. The transfer request would be acceptable when an acceptable tenant protection plan is included. See Paragraph 7.27 for a further explanation of what is acceptable.

#### **D. Payments Received While Transfer Pending**

During the period in which a transfer is pending in the Field Office, Deputy Chief, National Financial and Accounting Operations Center (NFAOCS) will continue to apply any payments received to the transferor's account. Such payments include any down payments made in connection with the transfer for reducing the amount of the debt to be assumed.

- **Identification.** Project Worksheets must be submitted by the transferor at least seven days prior to transfer closing. Project Worksheets must reflect the prior month's activity that will be credited to the transferor's account. This will ensure the transferor receives the RA check and has time to deposit it into the project account. Refer to MFIS Tip #2 (January 2008, revised August 2012) for additional guidance on processing transfers in AMAS.
- **Payment.** An interest-only installment payment may be required from the transferor. Refer to the AMAS Manual for further guidance on when this would be collected and how it is to be processed. Refer to MFIS Tip #2 (March 2008) for additional guidance on processing transfers in AMAS.

**E. Uncompleted Transfer**

If for any reason a transfer will not be completed after approval, the Loan Servicer will immediately notify the State Office Loan Underwriter of the reason with a request to withdraw the application and resume normal servicing of the project account.

*This page is intentionally left blank*

## SECTION 2: POLICY CONSIDERATIONS

### 7.7 RENTS

#### 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. If the transferee is proposing a rent increase, the submission from the transferee should include information on market rents for comparable units in the area, and documentation that the units will be marketable at the proposed higher rents. In addition, the proposed basic rents for the project upon completion of the transfer must be the lesser of CRCU or the restricted rents. This standard is a benchmark meant to maintain the affordability of program units and avoid increasing RD Rents above local conventional rents, a situation which could lead to non-competitive rents, excessive vacancies, or demand for new or increased rental assistance to remedy any underutilization of units by inappropriate occupancy standards.

With the case-by-case approval of the RD HQ the rent standard may be exceeded in a transfer, but only if the buyer agrees to fund a cash escrow from non-project and non-amortizing funding sources such as grants, soft loans, etc. sufficient to cover necessary operating, maintenance, and reserve costs at the property being transferred for the term of the RD loan for any amount exceeding the CRCU rents. This might occur in areas experiencing an economic decline that has led to rents in conventional properties being set below break-even levels. While an increase in RTO or financing equity payout to a seller may sometimes be an appropriate servicing action, neither will be authorized. These are not valid factors to consider in assessing whether property viability creates a need to exceed CRCU.

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 loan payments the transferee must make 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 as part of the transfer actions.

Third-party debt-service increases can be built into the rent only if the new debt is designated for, and actually disbursed for, eligible Section 515 loan purposes unless otherwise used for necessary eligible purposes as prescribed when using a Section 538 GRRH loan. If the transaction includes a GRRH loan as part of the final underwritten transaction, a portion of the maximum total allowable development fee may be included as part of the GRRH loan provided there is sufficient cash flow at the rents determined appropriate for the specific transaction and which do not exceed the lesser of CRCU or the allowable LIHTC rents in effect at the time of transfer approval. Loan Servicers will ensure the developer fee is reasonable, and does not exceed the maximum allowable by their state tax-credit allocating agency.

Eligible Section 515 loan purposes include costs that are RD-approved repairs and improvements, and eligible soft costs which include legal, technical, environmental, and professional services [7 CFR 3560.53]. For additional guidance on eligible loan purposes, see Paragraph 12.6 of RD Handbook 3560-3, Attachment 4-B of HB-1-3560, and 7 CFR

3565.205 if a GRRH loan is also authorized for the transaction. If additional debt is being allowed for projects using a RD Section 538 GRRH loan, eligible purposes may also include those defined in 7 CFR 3565.205.

The effective date of any rent increase resulting from a repair/rehabilitation loan is following the completion of the approved repairs and/or improvements.

In addition, the Loan Servicer should review the budget:

- To determine if the project reserve levels are sufficient to allow for the necessary maintenance of the property over a 20-year CNA period. If there are any deficiencies, the borrower must take appropriate corrective action; and,
- To ensure a minimum combined operating allowance and vacancy loss is provided that does not fall below the industry standards outlined previously in Chapter 7.2 D 2.

**B. Conventional Rents for Comparable Units (CRCU) Limitation [7 CFR 3560.406 (d) (2)]**

In addition to RD's contractual requirements and any HUD Section 8 requirements, rents in RD-transfer properties are further limited by Federal regulations. Program regulations [7 CFR 3560.406(d)(2)] require the buyer to agree to set Basic Rents at the housing project, covered by the assumed loans, at levels that do not exceed CRCU rents in the area.

Attachment 7-A, Revitalization Guidance, under Revitalization principles number (5) states that post- transaction Basic Rents will not exceed the lesser of CRCU or restricted rents. All the following must be reflected in project Basic Rents except as provided below:

- project equity;
- rehabilitation;
- RD or non-RD debt service;
- reserve deposits;
- operating costs; and,
- RTO.

Before determining the amount of equity pay out or the amount of the new RTO, RD will first establish a new reserve deposit level that is adequate to fund all reserve-eligible needs according to the CNA, and will establish a new O&M expense level that is adequate to support the project.

The CRCU rents used for transfer underwriting are established using information from one of the following:

1. An appraisal meeting RD requirements (See HB-1-3560, Chapter 7 and Attachment 7-C of HB-1-3560); or



2. An Area Market Rent Survey (AMRS) meeting RD requirements. If an AMRS is used, RD's Statement of Work (SOW) should be used. RD's guidelines for an AMRS are available in any RD office.
3. When no appraisal is required, i.e., no new RD funds are provided, the transfer is on same rates and terms, no additional senior debt or subordination is being requested, and there is no change in the currently authorized RTO, and a current AMRS has not been provided, one of the following alternative methods may be used to establish CRCU rents:
  - a. Determinations by third parties:
    - Paragraph 4.18 of HB-1-3560 discusses a market study to establish the project need which may be conducted by an appraiser, and a market survey by a non-appraiser to establish the market need for the units. These are two different types of analysis used for different purposes. The market study by an appraiser to establish a possible rent for valuation purposes does not establish CRCU rents; however a market survey by a non-appraiser would be acceptable to establish CRCU rents.
    - If the third-party is an appraiser, an AMRS would be appropriate as discussed above. There is no need to order a market study.
    - If the third party is not an appraiser, a market survey may be used to establish CRCU rents.
  - b. Determinations by State Office staff:
    - State office review of advertised rents for comparable conventional properties.
    - State Office knowledge of rents being charged in the area.

Basic Rents used in RD underwriting are capped at 100 percent of the lesser of CRCU or the restricted rents if the proposed transfer includes any increased RTO or an equity payout to the seller. Non-equity compensation cannot have an impact on rents.

In other situations when the proposed post-transfer rent increase is solely to support operations, including increased annual reserve deposits based on the approved CNA, Basic Rents may exceed CRCU, but may not exceed 150 percent of CRCU [7 CFR 3560.406(d)(2)]. RD HQ prior concurrence is required when Basic Rents exceed CRCU.

**NOTE:** Loan Servicers should note that field office authority is capped at 100 percent of CRCU for transfer transactions. RD HQ Multi-family Preservation and Direct Loan (PDL) concurrence is required for any situation in which CRCU will be exceeded for any transfer transactions.

A rent increase may be justified when it is solely to support operations for increased O&M expenses and/or an increased reserve deposit. Annual rent increases should be limited to not more than 10% per year. If a larger rent increase is necessary to meet required third party underwriting requirements, the rent increase may be phased in to meet such requirements.

If the rent increase includes debt service on a new loan, Basic Rents must be at or below CRCU. RD may consider an exception if the rent increase is solely to support operations if all of the following are true:

- No equity is being paid out;
- No increase in RTO;
- 100 percent of loan proceeds are used for the hard cost of repairs and other eligible purposes; and
- The rents are phased in by the transferee at not more than 10% per operating year. Shortfalls must be offset by the transferee from non-project sources or funded with additional third party debt.

In cases in which the existing Basic Rents exceed CRCU, the Loan Servicer must document to the approval official that the above-CRCU rents were needed solely to meet operational requirements. No increased RTO or equity pay out was built into the pre-transfer rents. If this documentation cannot be provided, a violation of [7 CFR 3560.406(d) (2)] has occurred, and the State Office and PDLA must appropriately service the account to restore program compliance. This may impact the proposed transfer transaction.

### **C. Increased Basic Rents Because of New Debt Service**

If rehabilitation will be performed, Basic Rents should not increase until after completion of construction/repairs and RD acceptance. Debt service on new debt (not construction permanent, bridge or interim/temporary) resulting from construction, improvements and repairs should not be included in Basic Rents until all eligible costs, funded with the proceeds of the new debt, have been expended. Interim rent increases may be considered for payment of that portion of the new permanent debt used to pay acquisition equity only if not otherwise funded with interim or bridge financing included with interim construction financing.

Loan Servicers may begin the rent increase and tenant notification processes prior to completion of repairs so that Basic Rents can be increased as soon as possible following completion of repairs. Depending on the nature of the repairs and the length of the tenant notification period, processing of the rent increase may need to begin when repairs are no less than 50 percent complete so that rents can increase soon after completion of repairs.

If debt service is included in the Basic Rents, the proceeds of the loan must be used for eligible Section 515 loan purposes or allowable Section 538 loan purposes as underwritten for the transfer. See [7 CFR 3560.53], Attachment 4-B of HB-1-3560, and 7CFR 3565.205.

Often, new third-party debt is proposed to have a first-lien security position, and existing USDA loans are proposed to be subordinated and be in a second lien position. Subordination will not be allowed unless all proceeds of the new debt are for eligible RD uses.

## **7.8 SALES PRICE**

### **A. Limitations**

There is no limitation on the sales price that is paid solely from assumption of existing debt plus non-RD funds that do not affect Basic Rents, e.g. LIHTC equity, and the purchaser's personal equity.

In all other situations, the sales price should not exceed the lower of two limitations:

1. The first limitation is the total of:
  - a. The appraised present market value of the real estate; and

- b. The balance of the Reserve for Replacements account. The balance itself must pass to the purchaser, but the amount can be included in the sales price when the approved transfer-underwriting Sources and Uses includes other sufficient non-permanent debt sources of equivalent amounts.
2. The second limitation is the amount of sales price that can be supported within CRCU rents. For example, if the cash portion of the sales price is paid with third-party debt, the new debt service plus all other costs of operation including adequate O&M expenses and an adequate Reserve deposit must be supportable at Basic Rents that do not exceed CRCU.

### **B. Equity Payout (General)**

The intended purpose of this section is to clarify RD's position as it pertains to paying out equity depending on different loan situations. Generally, an equity payout pertains to transfers in which the seller desires an equity payment and the transfer will avert prepayment of the existing RD loan(s) and removal of needed affordable rental housing units.

#### 1. Equity Sources Not Affecting Basic Rents.

As long as the requirements of 7 CFR 3560.406(e) are met, RD generally does not place any restrictions on payments of equity funded with the purchaser's cash, grants, tax credit equity, or third-party loans that do not depend on rental income for repayment. Such equity payments do not result in any increased RTO or in any adjustment to the Basic Rents. RD will not subordinate its first lien position to any such third-party loan. Owners who have previously received incentives not to prepay may receive additional equity from these sources.

#### 2. Equity Funded With RD Debt Repaid Through Rents.

Current RD policy is to fund equity payout with RD loans only in prepayment situations. These situations are not addressed in this Chapter. See Chapter 15 of HB 3-3560.

#### 3. Equity Funded With Third-Party Debt Repaid Through Rents.

Equity can be funded from a third-party loan including a Section 538 guaranteed loan that is repaid from rental income only if:

- a. The equity amount is limited to the lesser of an amount documented in an appraisal acceptable to Rural Development (See HB-1-3560, Chapter 7 and Attachment 7-C of HB-1-3560), or an amount supportable at rents within CRCU, after allowing for adequate O&M expenses and an adequate Reserve in accordance with this chapter.
- b. The restrictive-use period has not expired and the appraisal determines the reduction in value attributable to the remaining period of restricted use, using a method acceptable to RD. See Attachment 7-D and Attachment 7-A of HB-1-3560.

- c. A new 30-year Restrictive-Use Provision (RUP) is required. See Paragraph 7.31 D and [7 CFR 3560.406(g)] and the project received an initial loan to construct new units that was approved on or after December 15, 1989, and at least 20 years have elapsed since the date of the closing of the loan
- d. Subject to the restrictions of [7 CFR 3560.409], RD may subordinate its first lien position to a third-party equity loan that meets the requirements of this chapter provided RD determines that there is adequate Security Value to cover RD's loans and any loans senior to the RD loans.

4. Buyer/seller/cash flow notes.

If full payment is not made in cash to the seller at closing, no rental income may be used to pay any of the remaining amount of the purchase price, no lien may be placed on the project assets or income, and there must be no provisions that provide the note holder with any present or future interest or claim in the property, income, or assets of the property being sold or relinquished. 7 CFR 3560.406(c)(5) further provides that there must not be any provision that allows the property to revert back to the original owner for any reason during the term that any RD loan remains outstanding. These types of transactions are frequently referred to as buyer, seller, cash flow or carryback notes and do not meet RD requirements for recognized debt types. Therefore, they cannot be paid with project revenues or subsidies at any time an RD direct loan, grant or other RD authorized assistance remains outstanding on the property.

5. Use of Equity Loan Proceeds.

Proceeds of a proposed equity payout must be in accordance with [7 CFR 3560.406(e)].

The Agency cannot permit any equity payment to the borrower as part of an ownership transfer or sale of a property if any of the following conditions exists:

- a. The borrower's indebtedness to the Agency is not being 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.
- b. Any prior non-Agency liens against the property that are not paid in full or not being assumed by the transferee under this Chapter.
- c. Any required 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.
- d. Any management, operation and/or maintenance deficiencies cited in a compliance violation notice issued to the borrower by the Agency are not being corrected as part of the ownership transfer process.
- e. 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 without prior consent of RD HQ.

## 6. Determining Equity When Repairs Are Required.

When repairs are required to be completed before any equity is paid out to the seller and all parties to the transaction, including all participating lenders, mutually agree that such repairs cannot be completed due to seasonal opportunity or other circumstances beyond the seller's control before the transfer occurs, the Repair Agreement (See Attachment 7-B-1, Transfer Application Documents) must include a guarantee acceptable to RD, that the actual repair costs will not exceed the estimated repair costs. This guarantee, which may take the form of a cash escrow, bond, enforceable letter of credit or other valid form of surety acceptable to RD, will be provided by either the seller or purchaser to assure timely completion of the repair.

## 7. RD Approval.

The State Director may authorize a transfer involving equity payout only if:

- a. Any equity payout being proposed is paid from non-USDA funds,
- b. The equity payout will not result in an increase to the Basic Rents,
- c. No increase is proposed to the RTO,
- d. There is no modification of any USDA loan, and
- e. The buyer and seller do not hold an Identity of Interest (IOI) as defined by RD regulations.

## C. Equity Payout during the Term of an Existing RUP

When the property is nearing the end of its RUP, borrowers who are considering a transfer sometimes want to be compensated for the profits they hope to make from a future prepayment. The purpose of this section is to discuss how USDA will respond to requests to include equity payments to the seller as a Use of Funds in transfer transactions when the property is still within its RUP period.

- a. No equity payout is allowed from USDA loan funds.
- b. Equity payout is allowed from other funds, typically using a third-party loan, provided that the transfer otherwise meets the requirements of this chapter. See the discussion above for Agency requirements for third-party equity loans.
- c. RD understands that the Uniform Standards of Appraisal Practice do not permit the prospective value of a conversion to market-rate operations to be taken into account in determining market value if there are 10 years or more remaining in the RUP.
- d. RD requires appraisers to use a discounted cash flow approach to value in determining market value (unrestricted) when the RUP has not expired. The discounted cash flow projection would reflect regulated operations through the end of the RUP, through a conversion period to market-rate operations.

**D. Non-Equity Compensation Payments**

When there is no equity in the project, the transferee may choose to pay additional compensation as part of the negotiations with the transferor to reach a mutual agreement for the transfer. This situation is most appropriate when the buyer determines that the transfer will be in their best interests if they were to offer assistance to remove an existing RD borrower with compliance or performance problems, and RD concurs that non-equity compensation is less expensive than liquidating the property.

The State Director must request RD HQ to authorize the transaction. No RD loan funds may be used to pay the non-equity compensation. See Paragraph 7.29 F.

The proposed non-equity compensation must be applied first to satisfy any non-USDA claims, e.g. third-party loans, before any amounts may be paid to the seller/transferor.

**7.9 RETURN-TO-OWNER (RTO)**

**A. RTO in General**

The transferee’s initial investment and RTO, will be determined by RD analytical analysis at the time of transfer approval. The new owner's RTO will be computed based on the provisions of the Agency’s current transfer guidance and principles.

The maximum potential RTO for RD MFH transfers is based on the net cash flow from project operations, as determined by use of the RD analytical tool, PAT. The RTO calculation considers the amount of tax credit equity [as defined in 7 CFR 3560.406(d)] that is used for the RD RRH eligible hard costs of construction purposes (defined in 7 CFR 3560.68) and any additional owner contribution for hard construction costs in establishing the maximum RTO the specific project will support. The maximum potential RTO the buyer may be eligible to earn annually throughout the term of the loan is determined by RD at the time of transfer approval. This maximum RTO is computed through an analysis of the Rehabilitation total hard costs eligible under the RD Section 515 Program less all new Loans that do not exceed the RD as improved Security Value determined at the time of loan approval.

The new RTO may not exceed the amount remaining from the projected Net Operating Income (NOI) less debt service for all loans without agency debt deferral as determined in the final RD underwriting used for the transfer approval. NOI for payment of RTO will be based on the project budget post-rehabilitation, using rents not exceeding the lessor of CRCU or LIHTC or other restricted program rents, and after deducting all operating, reserve, vacancy, and other cushions and approved project operating costs.

If the transfer is from a non-profit to a limited-profit borrower, the initial investment to be shown in the loan agreement or resolution will be “None” unless the transferee contributes additional equity.

RTO as established for the transfer closing will remain unchanged throughout the term of the RD loan(s) included, assumed, or modified at the time of transfer closing unless modified at a future date by RD as part of an approved servicing action.

**B. RTO Based on Low Income Housing Tax Credits (LIHTC) Equity [7 CFR 3560.68] (Paragraph 5.12 of HB-1-3560)**

RTO in LIHTC properties is based on cash, not loan proceeds, invested in hard costs of construction as calculated in the RD PAT.

- Cash for this purpose includes LIHTC equity as defined in this Chapter.
- Hard cost for this purpose means actual material and labor cost only and does not include general requirements, overhead, general contractor fee/profit, or development fees to be paid from LIHTC syndication proceeds.

Loan Servicers should note that the authority for this RTO calculation is found in 7 CFR 3560.406 (d). The actual calculation is carried out in the RD analytical template (PAT) required by RD HQ. Note that this RTO calculation for transfers differs from the RTO calculations for prepayment transactions and the ROI calculations used in the project's initial/original development.

If the new RTO approved for the transfer decreases, it will be effective immediately upon closing and accrue to the new owner. Increased RTO does not begin until the associated repairs have been completed, inspected and accepted by RD. Until repairs have been completed and inspected, the existing ROI/RTO authorized in the seller's RD Loan Agreement/Resolution continues to be applicable and may be earned by the buyer for as may be provided in the purchase and sales agreement.

If the new RTO will begin in the future, there should be an addendum made to the RD Loan Agreement or Loan Resolution used for the respective type of transferee. The addendum should include language such as the following:

*A maximum potential earned annual authorized Return to Owner (RTO) in the amount of \$ ( ) has been determined allowable by RD based on the Agency's analytical analysis used in authorizing the transfer to the borrower named herein. The authorized RTO replaces any previous reference to Return-on-Investment (ROI) or the payment thereof which may be otherwise referenced herein. Any increase in RTO may only be earned starting the beginning of the first project fiscal year following the completion and RD approval of the agreed-upon rehabilitation.*

The addendum must be submitted to the Regional OGC for review of any state law issues.

The maximum new RTO is the amount supportable within NOI set forth in Paragraph 7.2 D 2 for the property using the post-rehab operating budget expenses, reserves and debt service used in the transfer underwriting analysis and documented in the PAT at the time of transfer approval. However, new maximum potential RTO described in 7.2 C is also limited to an amount that is at or below the lesser of CRCU or the LIHTC rents.

In reality, the purchaser may not be able to earn the full RTO in any given year.

- The Loan Agreement will contain the maximum potential new RTO based on the RD analysis and will remain the same for the term of the RD loan.
- The RTO amount in each year's budget may be lower because there may not be room in that year's proposed rents for the full RTO.

- The amount of RTO actually earned in each year may also be below the maximum RTO.
- RTO will not be allowed for any amount that exceeds the maximum potential described in this Chapter.

Tenant protection requirements may apply when increased RTO is approved. See Section 7, Paragraph 7.27 B.

The new RTO authorized by RD is specific to the property transfer transaction and will apply for the remaining term of the loan unless authorized as a separate future servicing action by RD which allows modification of the RTO.

## 7.10 FEES TO DEVELOPER

### A. Developer Fees in General

In accordance with §3560.54(a) (9), payment of a developer's fee is not an eligible use of RD loan funds unless they are being used in conjunction with a Section 538 GRRH loan in the transaction. The fees may be included in the total development costs if they are paid from other sources when analyzing the Federal Government assistance to the project.

- The Agency may recognize a developer's fee paid from other sources on construction or rehabilitation of up to 15 percent of the total development costs authorized for LIHTC purposes, or by another Federal Government program.
- For transfer proposals that include acquisition costs, the developer's fee on the acquisition cost may be recognized up to eight (8) percent of the acquisition costs only when authorized under a Federal Government program providing assistance.

The developer's fee is not included in determining the Agency's maximum debt limit and loan amount. Debt service on new debt may not be included in Basic Rents unless all proceeds are used for eligible Section 515 loan purposes. See acceptable uses at 7 CFR 3560.53, and 7 CFR 3565.205, if applicable.

RD recognizes, however, that some non-RD funders may allow developer/builder fees that are reasonable in their specifically defined and designated circumstances but such fees are not eligible for payment from any project revenues or sources. There is an exception for Section 538 loans, which can include a developer fee, however the maximum RD allowable rents may not be sufficient to support the amount of Section 538 debt and will require either a reduction or deferral of all or part of this fee.

### B. Deferred Developer Fee

In LIHTC transactions with third-party funding, the maximum developer fee allowable may exceed the amount that can be paid in cash from the transfer transaction's sources of funds. The amount of the unpaid developer fee is referred to as a deferred developer fee. Sponsors expect to collect their deferred developer fee from cash flow derived from the future successful operation of the property. The deferred developer fee may not be paid from operations. They may be paid from authorized RTO that is earned by the project and paid to the borrower.

RD does not permit borrowers to treat the deferred developer fee as a loan or to make payments toward the deferred developer fee from the operating account.



## 7.11 LOW INCOME HOUSING TAX CREDITS (LIHTCs)

### A. Relationship between Basic Rents and LIHTC Rents - General (Paragraph 7.4 F of HB-2-3560)

This section applies during the term in which the LIHTC rents are in effect, generally 15 to 30 years but may be longer for some properties and in some states.

LIHTC rent limitations require that the owner charge tenants no more than the maximum LIHTC rents. Therefore, LIHTC maximum rents may differ from the Basic Rents that are established in accordance with RD requirements. It is also possible that there will be different LIHTC rents for the same unit type due to differing LIHTC affordability requirements. See Paragraph 7.11 C. of this Handbook for a discussion of Tax Credit Rents.

The following is a summary of the relevant provisions of Chapter 7 of HB-2-3560, provided here for convenience, and does not modify or supersede HB-2-3560:

1. Basic Rents continue to be set by RD at the level necessary to provide for the physical and financial viability of the project. Basic Rents may be higher or lower than the maximum LIHTC rents.
2. If Basic Rents are higher than the maximum LIHTC rents, then:
  - The tenant portion of rent may not exceed the maximum LIHTC rent.
  - For tenants receiving RA and for tenants receiving Section 8 vouchers, the borrower may collect the full amount of RA or Section 8 voucher amounts not greater than Basic Rent without violating LIHTC requirements.
  - When RA is not available, the borrower is responsible for any shortfalls in revenue including all overage. See 7 CFR 3560.202(g).
3. If Basic Rents are equal to or lower than the maximum LIHTC rents, then:
  - The tenant portion will be based on 30 percent of the adjusted monthly income.
  - If 30 percent of the tenant's adjusted monthly income is above Basic Rent:
    - If the project was allocated LIHTCs after 1990, the borrower may charge tenants the appropriate overage due without regard to the maximum LIHTC rent. [Internal Revenue Code §42(g)(2)(B)(iv)]
    - If the project was allocated LIHTCs in 1990 or earlier, the borrower may not charge tenants more than the maximum LIHTC rent, and the borrower is responsible for any shortfall in overage that the borrower must pay to RD from non-project funds. See Paragraph 7.4, Exhibit 7-3, Example 2 of HB-2-3560.)
    - The determining factor is the allocation year for the LIHTCs. This factor would need to be verified with the State agency that allocated the LIHTCs.

The LIHTC maximum rents have no bearing on Note Rate rents, which continue to be set in the same manner as in non-LIHTC projects.

**B. Tax Credit Rents in LIHTC Transactions [7 CFR 3560.202(g)]**

The same unit type may not have more than one Basic Rent. However, in a Section 515 LIHTC property include multiple Tax Credit Rents based on the LIHTC award granted to the transferee. See Attachment 7-C, Tax Credit Rents in Transfer Transactions, for a detailed discussion of a Tax Credit Rent.

If rental income from Tax Credit Rents is less than what is needed for the property to cash flow, the borrower will be responsible for funding this shortfall as outlined below.

**C. Financial Viability When Basic Rents Exceed Maximum LIHTC Rents**

If the proposed transfer involves a revenue shortfall because Basic Rents exceed maximum authorized Tax Credit Rents and the estimated shortfall is less than the post-transfer RTO, the borrower will receive less than the full RTO. Each Form RD 3560-7 must show a positive cash flow on Line 30, and will show a level of RTO that is less than the maximum allowable RTO.

However, if the estimated shortfall is more than the new post-transfer RTO, the proposed transfer is not viable unless the borrower proposes a funding mechanism together with reducing the RTO to zero that is sufficient to cover the likely revenue shortfalls. An example of an adequate funding mechanism is an operating deficit reserve, funded from non-USDA funds that is adequate to cover projected revenue shortfalls over the LIHTC compliance period. A borrower's promise to pay future shortfalls over and above reducing RTO to zero is not an adequate funding mechanism, unless the promise is backed by a guarantee from a creditworthy entity.

RD HQ will provide technical assistance to State Offices on a case-by-case basis in implementing Tax Credit Rents.

**7.12 OTHER POLICY CONSIDERATIONS**

**A. Principal and Interest during Construction**

If the transfer includes new financing, any payments toward the new financing during construction must be paid from third-party funds and may not be paid from the operating account. The Sources and Uses of Funds statement should include a category entitled Construction Loan Interest or Construction Period Interest, and should show funds sufficient to pay any construction-period interest and/or principal on third-party debt.

Principal and interest on the pre-existing USDA loan(s) will continue to be an authorized payment from the operating account during the construction period.

Loan Servicers should expect that, typically, construction loan interest will be built into the construction loan amount.

## B. Transactions with Multiple Sources of Funds

Transfers may involve a variety of non-USDA funds such as LIHTC equity, HUD funds under the HOME or CDBG programs, and various State and local government programs, private loans, and private grants.

1. In these complex transactions, Loan Servicers will consider the following in order to ensure that costs are reasonable and that Basic Rents are no higher than necessary:
  - a. RD requirement that Basic Rents not exceed CRCU. See Paragraph 7.7 B.
  - b. RD guidelines to protect unassisted tenants against transfer-related rent increases. See Paragraph 7.27 B.
  - c. Subsidy-layering analyses by other government funders. Loan Servicers should request these analyses and should review them if provided. See the paragraph below on non-USDA funds.
  - d. The purchaser's applications to other funders, including any updated applications. Loan Servicers should require that purchasers provide these.
  - e. The final cost certification audit, if one is required by other funders. (This is a requirement for most HUD programs and for LIHTCs.) Loan Servicers should require that purchasers provide such documents. As a reminder, RD requires a cost certification audit whenever new RD funding is provided and an identity of interest exists, as defined by 7 CFR 1924.4 (i).
  - f. RD requirements that any loans, whose debt service will be built into the Basic Rents, be expended solely for eligible purposes. See Paragraph 7.7 C.
2. When non-USDA funds are involved, Loan Servicers should address the following items when evaluating a transfer request:
  - a. Loan Servicers should coordinate with other government funders so that the objectives of all of the funding agencies are achieved. When all the government funders speak with a united voice, it is more likely that the appropriate public purpose objectives will be achieved. The Loan Servicer should contact the other government funders to determine their objectives, concerns, and constraints, and to share USDA's objectives, concerns, and constraints.
  - b. Government providers of funds are required to have completed a subsidy layering or other analysis that is similar to the USDA Sources and Uses Comprehensive Evaluation (SAUCE) analysis to determine all the sources and uses of funds in the transaction, and to ensure that all government sources of funds are not more than necessary to carry out the transaction. This analysis will include determining that the proposed levels of compensation to the seller, purchaser, and contractor are acceptable. The Loan Servicer should request a copy of the subsidy layering analysis from each of the other government funders, including the LIHTC allocating agency. A USDA SAUCE analysis is required as follows:

- A USDA SAUCE analysis is required only if a subsequent RD loan is proposed.
  - In tax credit transactions, if the RD State Office obtains and accepts the tax credit agency's subsidy-layering review, no SAUCE analysis is required.
- c. Loan Servicers should determine whether the non-USDA funds are unconditionally committed, conditionally committed, or merely applied for. Loan Servicers should understand the conditions in other funders' conditional commitments. If funds are not yet firmly committed:
- Typically, USDA would withhold approval of the transfer until firm funding commitments from other funders have been received.
  - However, a third-party funder may need evidence of USDA's support for the proposed transaction. The State Office may issue a conditional approval conditioned on receipt of firm funding commitments that specifies that USDA approval will be withdrawn if a firm commitment is not received, and that the transfer cannot close until a firm commitment is received.
  - See Paragraph 7.29 H, for transfers involving a workout plan for a discussion of a rare situation in which it might be prudent for RD to allow a transfer to close prior to receiving the firm commitment for third-party funding.
  - RD understands that purchasers who are utilizing tax credits may want to accelerate the timing of the transfer in order to meet the tax credit carryover requirement to expend at least 10 percent of total funds for the transaction. In these situations, State Offices are encouraged to cooperate with purchasers. Sometimes this will result in transfers being closed before all non-USDA funds are firmly committed. In such situations, the State Office should reach written agreements with the purchaser regarding what will happen if the intended non-USDA funds are not actually received.
- d. Loan Servicers should understand the funding timetables of the other funds providers. They should be aware of when funding decisions will be made; and when initial funds will be available to be drawn by the purchaser. If the funding timetables of other funds providers are available early enough to support the viability of the transaction, the Loan Servicer should discuss the situation first with the other funders, and then with the purchaser and seller to attempt to identify solutions.
- e. Loan Servicers should establish when funds will be provided. Often, loan funds are provided only when the purchaser has already incurred the costs and requests reimbursement from the funder. Typically, LIHTC equity funds are paid partially at the start of construction, with the balance being paid over an extended period typically ending at some point well after construction completion. These situations may lead to a need for interim bridge/construction financing. The Loan Servicer should request a monthly sources and uses of funds statement from the purchaser to verify whether there will be sufficient sources of funds to cover each month's estimated uses of funds.

- f. Loan Servicers should determine if other funders require reserves other than the Replacement Reserve. Often an additional operating reserve, rent up/lease up reserve, or some similar account may require the owner to replenish any withdrawals that occur over the course of the loan from project cash flows or excess cash. These reserves will not be replenished by any project funds or from project operations, and must be funded directly by the owner or from earned RTO.
- g. Loan Servicers should understand when funds can be withdrawn and what approvals are required for withdrawal, and then decide whether those provisions are acceptable to RD.
- h. Loan Servicers should determine whether there will be conflicts in regulatory requirements; i.e., differences in reserve requirements. If so, they should work with the purchaser to identify solutions acceptable to RD. An appropriate inter-agency or inter-creditor agreement must be in place not later than the time of closing.

*This page is intentionally left blank*

## **SECTION 3: PRELIMINARY ASSESSMENT**

### **7.13 PRE-REQUEST CONSULTATION WITH BORROWER AND TRANSFEREE**

Purchasers are encouraged to consult with RD prior to submitting a transfer request.

Prior to submitting a 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 (See Attachment 7-B-1, Transfer Application Documents) and should encourage discussion with RD as questions arise during preparation of the transfer request. The Loan Servicer should also explain the process and provide any documentation necessary to assist the transferee in understanding RD's eligibility requirements and the basis used to evaluate a transfer application [7 CFR 3560.406].

Purchasers or Sellers may request that RD provide Attachment 7-E of HB 1-3560 Appraisal Information Sheet. Purchasers may request RD assistance in assembling the information referenced in Attachment 7-F of HB 1-3560, Appraisal Data Package Checklist. The request to RD for a transfer should come from the current borrower per [7 CFR 3560.406 (c)].

### **7.14 INITIAL RD REVIEW FOR COMPLETENESS**

A complete application must include all of the information listed in Attachment 7-D of this handbook, Transfer Request Checklist, before it can be reviewed for underwriting. If the application is incomplete, the application will be returned to the applicant with an explanation in sufficient detail outlining the items needing to be addressed to consider the application for underwriting review.

### **7.15 CONSULT WITH PDL D REGARDING UNUSUAL TRANSACTIONS**

Unusual and complex transactions not addressed in this Chapter should be identified and resolved as early as possible. State Offices should discuss unusual transaction features with PDL D as necessary to allow continued processing of the transfer request.

Transaction features that should be discussed with PDL D may include:

- Features that may require coordination with other agencies; e.g., the transaction includes new debt that is FHA-insured or Section 8 assistance provided by HUD.
- Exceptions to regulations or exceptions to this chapter that may be required.
- Transactions with proposed third-party financing in which the new debt service is proposed to be built into the new Basic Rents. The State Office and PDL D will need to discuss the USDA requirement that loan proceeds be expended for eligible purposes [7 CFR 3560.53 and Attachment 4-B of HB-1-3560].
- Transactions that have participated in or are participating in the MPR Revitalization Loan Program.
- Unusual or novel transactions likely to raise policy issues.

*This page is intentionally left blank*



## SECTION 4: EVALUATING THE TRANSFEREE

### 7.16 DETERMINE TRANSFEREE ELIGIBILITY

This Chapter only provides guidance to transfer a project to eligible applicants as prescribed in the Housing Act of 1949. The Loan Servicer will evaluate the transferee's eligibility based on the items submitted as part of the transfer request including evaluation and verification that:

- The transferee and the property satisfy the general program eligibility requirements;
- Identity-of-Interests are disclosed;
- Legal capability, formation, and capacity information has been provided; and
- The requirements of this Chapter are satisfied

If there are any deficiencies, the Loan Servicer will notify the transferee and, as appropriate, the borrower as outlined in Paragraph 7.6 B to establish a plan for their timely resolution.

#### A. U.S. Citizenship/Qualified Alien Status Requirements

Purchasers must provide to their attorney acceptable evidence of U.S. citizenship and/or qualified alien status.

Acceptable evidence of U.S. citizenship may include a valid U.S. birth certificate, a valid U.S. Passport, a valid U.S. Certificate of Naturalization, or other acceptable evidence of U.S. citizenship proposed by the applicant and determined by the Agency. Acceptable evidence of qualified alien status may include valid documentation issued by the U.S. Citizenship and Immigration Services (USCIS), or other acceptable documentation of qualified alien status proposed by the applicant and determined by the Agency.

**Attorney Certification.** The applicant's attorney must review applicable evidence to verify U.S. citizenship and/or qualified alien status, must certify that the Agency's U.S. citizenship and/or qualified alien status eligibility requirements are met by all purchaser applicants, and must submit the certification for Agency review.

The Loan Servicer will review the attorney certification to ensure the outlined citizenship/qualified alien status requirements are met.

#### B. Organizational Requirements

The Loan Servicer will ensure that the following requirements have been met.

- The organizational documents: (a) are properly signed; (b) include the correct state statute for the purchaser organization; (c) provide appropriate proof of organization and filing information; this may be in the form of a certification or opinion provided by the applicant's attorney or register; and (d) the State documentation and all necessary recording information is included. The Loan Servicer will then forward the organizational documents to OGC for review.

- Form AD 1047/1048 Certification Regarding Debarment and Form HUD-2530 Previous Participation Certification, will be used to identify the principals of the purchaser entity. The Loan Servicer will then check the principals against the list of debarred individuals at (<https://www.sam.gov/portal/SAM/#1>) and will document the results.
- Form RD 1910-11 Applicant Certification Federal Collection Policies for Consumer or Commercial Debts, will be properly completed and signed by the necessary parties.

### **C. Legal Capability**

The Loan Servicer must make a determination of the transferee's legal capability to successfully assume and operate the project based on an attorney's letter and organizational documents submitted as part of the application. The Loan Servicer may obtain OGC concurrence as needed to make such a determination. If there are any deficiencies, the Loan Servicer should follow the procedure in Paragraph 7.6 C.

### **D. Additional Requirements for Existing Borrowers**

If the transferee is an existing borrower with existing or past RD loans, and is acquiring title under the same name, refer to [7 CFR 3560.55(b)] and Section 3: 4.16, Paragraph D of HB-1-3560, for a detailed discussion on further eligibility requirements for current or previous borrowers. (Existing borrowers currently have one or more outstanding loans with RD and the ownership name will remain the same.) For existing borrowers and key principles 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 any workout agreement were beyond the borrower's control and were not due to inappropriate actions by the borrower; and
- Have no outstanding adverse audit or investigation findings issued by the OIG. Any OIG audit or investigation must be 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 (IOI) as defined in RD regulations. The Loan Servicer will verify that all IOI companies listed on Form RD 3560-30 have filed Form RD 3560-31.

As with non-IOI transfers, Loan Servicers must not approve IOI transfers until the State Office can certify that the following conditions are met:

- All RD loan accounts being transferred must be 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's security deposit account is fully funded.
- All outstanding unacceptable maintenance items have been resolved to RD satisfaction.
- Management is satisfactory, and there is an approved management plan and management agreement, if applicable.
- The transferee is in compliance with equal opportunity and fair housing requirements.

Completion of this step ensures that IOI transferees receive appropriate RD assistance in restoring security properties to compliance through transfers.

#### **F. Insurance**

All RD properties are required to be able to obtain and maintain insurance as required by program regulations. Applicants incapable of providing evidence of insurability prior to closing, are not eligible and will be processed under Paragraph 7.6 C. Completion of this step ensures that RD's security properties will be protected from all damage and loss following transfers.

#### **G. Site Control**

The transferee's documentation must show enforceable control of the property as described in Paragraph 7.6 A 2. As explained under [7 CFR 3560.61(d)], the transferee must own the land when the transfer is closed, or have an RD approved leasehold interest in land. Most commonly in transfer situations, site control will be in the form of an option-to-purchase from the borrower or in the form of a purchase contract. If the purchaser does not yet have site control, i.e., the right to purchase the project without further consents from the seller, the Loan Servicer should decline the transfer request and return the application to the purchaser.

#### **H. Eligible Transferee**

Attachment 7-A, Revitalization Guidance, states that 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 RRH program, and be considered eligible within program requirements.

An applicant will be considered ineligible if the applicant is currently in non-compliance with existing RD regulations including equal opportunity, fair housing, and accessibility requirements; or has an outstanding finding of non-compliance issued by RD including failing to follow any outstanding workout plans to which they are a party.

### **7.17 FINANCIAL REQUIREMENTS**

Refer to Paragraph 4.18 C of HB-1-3560 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. The Loan Servicer will follow the process outlined in RD Instruction 1910-C to order credit reports.

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;
- If applying for a subsequent 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; and
- The transferee has the financial ability to meet the program's requirements unless mitigated by the strength and ability of the key principals and documented in the application. In some cases, the applicant may voluntarily offer mitigation considerations (e.g. the principals offer evidence to document having clean credit, strong diversified financial capacity and the property will be managed by a third party management agent with relevant and positive MFH experience) to compensate for any short comings.

In transfer situations, the Loan Servicer's review of transferee financial capacity can generally be limited to the following:

- A determination that the transferee is solvent, i.e., not in danger of financial failure because of debts and obligations unrelated to the project.
- By reviewing the commercial credit report, the applicant entity and the principals have demonstrated credit worthiness in meeting past and present financial obligations.
- The absence of financial issues that might call into question the transferee's ability and willingness to operate the project in accordance with RD requirements, e.g. evidence that the transferee has a history of financial compliance violations.
- If the transaction calls for cash equity from the transferee, documentation that the transferee has sufficient financial capacity to provide that amount of cash equity. See above mitigation considerations.

## **7.18 MANAGEMENT CAPACITY**

The transferee must demonstrate that it will provide management acceptable to RD under [7 CFR 3560.102(e)] to ensure successful operation of the project. The Loan Servicer should refer to:

- Paragraph 5.9 E of HB-1-3560 for guidance on analyzing overall management capacity.
- Chapter 3 of HB-2-3560 contains detailed information on analyzing the management plan and the management certification, if applicable.
- IOI management companies being retained by a transferee must be held to the same standards as all other management agents successfully managing RD properties.

## **SECTION 5: EVALUATING THE PROJECT** *[7 CFR 3560.406(c) and (d)]*

### **7.19 DETERMINE PROJECT SUITABILITY**

The purchaser's written statements and the financial and operational history of the project will typically demonstrate that there is still a need for the project, and that the project is not obsolete. If there are questions, however, the Loan Servicer should refer to Chapter 6 of this Handbook to determine if additional analysis is required to verify that there is still a need for the project and the project is not obsolete. Any additional analysis should be prioritized in order to meet the timeframes for processing the transfer request.

Prior to entering into a transfer or other revitalization process, RD 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.

- 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.
- [7 CFR 3560.651 through 3560.663] may also be used during the transfer process for guidance in making this determination.

### **7.20 DETERMINE PROJECT ELIGIBILITY**

The Loan Servicer should ensure that 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. Typically, the purchaser's written statements (See Attachment 7-B-1, Transfer Application Documents) and the project's operational and financial history will provide the primary foundation for determining that the project will continue to be eligible.

The following addresses the various aspects of the project eligibility that are required in Paragraph 4.17 of HB-1-3560 and that were reviewed when the project was originally developed. In processing the transfer request the Loan Servicer should consider all of the following.

#### **A. Civil Rights Impact Analysis**

This requirement is satisfied through the civil rights review discussed in Paragraph 7.21. In addition, the State Civil Rights Coordinator is invited to participate in the site inspection. See Paragraph 7.22 B.

#### **B. State Historic Preservation Office**

This requirement is generally not applicable. See [7 CFR 1700] for additional guidance.

### **C. Flood Hazard Determination**

See Paragraph 7.22 E 3 for a discussion of when Form FEMA 81-93 Standard Flood Hazard Determination will be required.

### **D. Design Review**

If required by local building codes or enforcement agencies, or due to the scope and nature of the planned rehabilitation, the applicant, loan servicer and underwriter should consult RD Instruction 1924-A, any outstanding CNA guidance, and the respective program requirements for rehabilitation and repair designs that may require professional and technical assistance.

Applicants also intending to participate in the LIHTC program should discuss any additional design reviews that may be required to receive tax credits with the RD staff to coordinate development plans. See also Chapter 7.21 to determine if additional design review is needed to ensure full compliance with requirements.

### **E. Prohibited Conditions**

An example of prohibited conditions for a transfer is high vacancy in the area. This requirement is not applicable as an eligibility factor unless additional RD funding is proposed, in which case the Loan Servicer will consider Prohibited Conditions in connection with the new funding. See Paragraph 4.17 of HB-1-3560. High vacancy in the area would, of course, be a significant factor affecting project feasibility. Any other affordable housing projects in the market area also need to be evaluated to determine if there is a continuing need for the property being transferred.

### **F. Other Project Eligibility Requirements**

The Loan Servicer must verify that all Required Written Statements for a transfer as outlined in this Chapter were provided. See Attachment 7-B-1, Transfer Application Documents.

A restrictive-use agreement will be required [7 CFR 3560.406 (g)]. See also Paragraph 7.31 D.

## **7.21 CIVIL RIGHTS AND ACCESSIBILITY COMPLIANCE**

1. The Civil Rights Coordinator or designee will conduct a civil rights and accessibility compliance review, provided one has not been completed in the past 12 months. This review is usually conducted during the physical inspection. The review must be conducted to ensure that the project complies with the:
  - Section 504(c) of the Americans with Disability Act, which covers accessibility requirements;
  - Section 504 of the Rehabilitation Act of 1973;
  - Title VI of the Civil Rights Act of 1964; and
  - Title VIII of the Fair Housing Act of 1968.

2. The transferee must take action to mitigate any civil rights and accessibility concerns identified. Examples of civil rights deficiencies may include, but are not limited to, the following:
  - Failure to market units in accordance with Form HUD 935.2A, Affirmative Fair Housing Marketing Plan (AFHMP) - Multifamily Housing;
  - 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 accessibility practices;
  - Improper waiting lists and tenant selection routines;
  - Delaying or deferring maintenance; and
  - Handicapped accessibility concerns.

Any project in which civil rights and accessibility 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 accessibility review by the Civil Rights Coordinator.

## 7.22 PHYSICAL INSPECTION

All transfers require completion of a Capital Needs Assessment (CNA). For properties of nine units or more, an independent third-party CNA is required.

For properties with eight units or fewer, this requirement may be satisfied in either of the following ways:

1. A third-party CNA.
2. The purchaser accepts RD underwriter's average CNA needs for projects of similar age and condition.
  - RD underwriters will compile the amount of CNA needs approved for transfers and MPR transactions for the present fiscal year and most recent past 2 fiscal years to determine the approximate total CNA needs per unit in their respective state office areas and obtain HQ PDL D concurrence prior to utilization.
  - The average needs would be entered into the PAT and adjusted to add inflation for years 2-20 using the same inflation rate as used for O&M expense assumptions in the specific project's underwriting.
  - RD HQ may publish from time to time a revised per-unit-per-year amount reflecting the average needs from recent CNAs on a national basis which may be used if the state data is insufficient to present representative CNA cost estimates.
  - Underwriters should contact their respective HQRU for assistance.

Based on this information, transfers may require re-sizing of the reserve balance, i.e., a one-time additional deposit to the reserve may be required at the closing of the transfer; and/or re-sizing of the ongoing deposits, i.e., a higher on-going deposit may be required, so that future major repairs and replacements can be funded solely from the reserve.

The CNA includes an evaluation of any accessibility needs [7 CFR 3560.406(d)(9)] and must identify all immediate and long term repair and rehabilitation needs. See [7 CFR 3560.406(d) (5)].

A CNA provides a repair schedule for the property in its present condition, indicating repairs and replacements necessary for a property to function properly and efficiently over a span of 20 years. It is not an estimate of existing rehabilitation needs, or an estimate of rehabilitation costs. If any rehabilitation of the MFH property is planned as part of the proposed transfer, the rehabilitation repair list (also called a “Scope of Work”) should be developed outside of the CNA and must fit within the available funding resources being proposed. This rehabilitation repair list may be developed by the owner, a project architect, or an outside party (such as the CNA Provider, when qualified) hired by the owner. A copy of the rehabilitation repair list or Scope of Work should then be provided to the CNA Provider and will be reviewed and incorporated into the transfer underwriting analysis. The cost of such repairs and rehabilitation will be shown in the Sources and Uses in the PAT. The as-improved CNA/Reserve Analysis section of the PAT, will reflect only those capital items not initially fully cured in the RD approved Scope of Work and will be required to repaired or replaced within the 20-year analysis period of the PAT

#### **A. CNA Requirements**

See the current RD CNA Unnumbered Letter at <http://www.rd.usda.gov/files/02-18-16%20CNA%20UL.pdf> or contact your local RD office for more specific information about RD CNA requirements.

At a minimum, CNA submissions must contain all of the components identified within the 20-year cycle specified by RD. Incomplete CNAs will be returned and the application may be rejected upon the applicant’s failure to supply this information for any application over eight units.

For transactions that do not include third-party fully funded rehabilitation, the CNA scope of work requires the CNA provider to assess and evaluate the current ‘as-is’ physical condition of the property and, using the Estimated Useful Life table that is included as part of the Statement of Work, develop a 20-year Replacement Reserve schedule showing the timing and costs for the maintenance, repair, and replacement of all capital items at the property.

For transactions that include third-party funded rehabilitation, e.g., transactions involving the acquisition of tax credits, the scope of work requires the CNA provider to use the proposed and RD -approved third-party funded rehabilitation scope, and develop a 20-year Replacement Reserve schedule that assumes that the third-party funded rehabilitation will occur as planned. Because the rehabilitation will not be funded from the reserve, RD does not require the CNA to include the rehabilitation, and does not require the CNA provider to review the rehabilitation costs or scope.

Typically, the draft CNA is subsequently revised based on input from RD, the purchaser, and/or other funders to project the “Post Rehab” CNA indicating what repairs are planned for the property in the coming 20 years based on conditions after the rehabilitation is



completed. Items to be replaced during rehabilitation, such as appliances, that will need to be replaced again during the 20 years will be included in the “Post Rehab” CNA. Items, such as a new roof, that will not need replacement during the coming 20 years may also be included in the “Post Rehab” CNA- if the EUL is more than 20 years. The line item should not be removed from the CNA, but no data input will be necessary until an updated CNA is required. Appropriate comments should be included in the CNA report to acknowledge the scope of work or rehabilitation repairs that were considered.

## **B. State Office Review of CNA**

A draft of the completed CNA should be submitted by the CNA provider to the State Office for review by the State Designated CNA Reviewer. The State Designated CNA Reviewer will advise the CNA provider of any deficiencies in the report and, when these have been addressed by the provider, the state designated CNA reviewer will sign off on the final report. Processing of the CNA will begin when the State Designated CNA Reviewer’s approval of the CNA has been provided.

After receipt of the draft CNA, 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, additional units may be inspected. The State Architect and Civil Rights Coordinator are encouraged to participate in the on-site inspection.

The purpose of the inspection is to ensure that the transferee’s plans are adequate to ensure that RD’s decent, safe, and sanitary criteria are met. The inspection will also help RD assess compliance with applicable civil rights, accessibility, 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.

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

For RD-funded repairs, the detailed repair and rehabilitation plans and costs will be based on the CNA. The Loan Servicer should consider whether some or all of the repairs should be supported by contractor bids. For third-party funded repairs that were excluded from the CNA, the detailed repair and rehabilitation plans and costs will be based on similar analyses conducted for the purchaser and third-party funder that the Loan Servicer will review.

RD and the transferee must agree to and document all necessary repairs to make the housing decent, safe, and sanitary. The funds with respect to any work that will be completed after the transfer will be escrowed or otherwise placed under funding controls acceptable to the RD, and a plan for such work must be submitted. 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. RD must concur with the plan as part of the approval of the transfer.

If any tenants will be temporarily relocated during the rehabilitation, the transferee must have a detailed plan, acceptable to RD, for providing housing and services to these tenants. RD must concur with the plan as part of the approval of the transfer. The relocation

plan should detail the number of tenants who will be relocated, the number of days each tenant will be displaced, the daily estimate for lodging and meals, and details of other costs as applicable; e.g., temporary storage costs and transportation costs.

The level of review and documentation of a transferee's repair and rehabilitation plans should 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.

Exhibit 7-2, Funding Sources for Repairs, lists acceptable funding sources used to pay for improvements or repairs.

**Exhibit 7-2**  
**Funding Sources for Repairs**

The following is list of funding sources that may be used for any improvements or repairs.

- Transferee's cash contribution;
- Syndication proceeds;
- 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
- Rural Development loan funds only to the extent needed for essential repairs to ensure that the housing is decent, safe, and sanitary if no other funding sources are available.

#### **D. Required Repairs and the Repair Agreement**

The Repair Agreement (See Attachment 7-B-1, Transfer Application Documents) between the seller and purchaser must address all repairs that RD will require in connection with the transfer to be completed within the first 12 months of operation under the new owner.

These repairs will be identified in the CNA for completion in year 0 (for health and safety related repairs) or year 1.

- Year 0 health and safety-related repairs must always be addressed in the Repair Agreement.

- Year 1 repairs must be addressed in the Repair Agreement unless the Loan Servicer directs otherwise. For example, the Loan Servicer might agree to exclude year 1 items that are currently functioning but are estimated to require replacement within one year so long as they are specifically identified and addressed in underwriting and the PAT.

The Repair Agreement must ensure satisfactory and timely completion, generally within 12 months following closing. Satisfactory arrangements could include any of the following:

- Completion of urgent repairs as a precondition to RD's acceptance or approval of a transfer request, or the closing of the transfer.
- Withholding of funds to pay for repairs from proceeds of the transaction with the funds being under RD's control.
- Funding of RD required repairs from the proceeds of a subsequent Section 515 loan.
- Inclusion of funding for RD-required repairs in a repair escrow that is administered by a third-party lender, under procedures acceptable to RD.

#### **E. Environmental Review [7 CFR 3560.406 (d)(4)]**

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

RD 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 7 CFR part 1970 and Chapter 3, Section 3 of HB-1-3560.

##### 2. Due Diligence.

When additional RD 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. Documentation of Flood Hazard Determination.

Form FEMA 81-93 will be completed for all transfers involving new RD funding, and for any projects that did not have a flood hazard determination at the time of original development.

##### 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.

**F. Advance RD Approval Required for Third-Party Funded Repairs**

When there are third-party funded repairs, RD must approve the repair plan and cost estimate for the third-party funded repairs. Costs in the final plan will be evaluated by RD using cost data sources recognized by the housing industry.

**G. Reserve Must Be Adequate to Meet 20-Year Capital Needs Based on CNA**

Funding of the reserve account should be adequate in accordance with CNA requirements to meet estimated reserve-eligible needs over a 20-year analysis period. If appropriate, a one-time additional reserve deposit to be made at the closing of the transfer will be included in the costs of the transaction, and may affect the revitalization transaction's feasibility. Increases to annual reserve account funding will be included in the estimation of post-transaction rents and may affect the revitalization transaction's feasibility. The Loan Servicer will implement the reserve account changes approved in the transfer as required by 7 CFR 3560.306(j) which provides guidance for any change to reserve account requirements. The minimum reserve deposit that RD may consider will be the greater of (a) the amount required by the most restrictive rent program or third-party lender that will be in place on the property upon completion of the transfer and all repairs; or (b) rehabilitation or other improvements. Reserve accounts shall not be used to meet the CNA needs during the period covered to such an extent that the project will no longer have sufficient amounts to meet the routine servicing needs typically anticipated in the annual budget cycle unless appropriate servicing actions have been initiated by the RD servicing office.

## SECTION 6: EVALUATING FEASIBILITY

### 7.23 EVALUATE FEASIBILITY

Feasibility analysis is the process by which RD determines that the proposed transfer, if implemented, would support the property's long-term viability.

Feasibility analysis involves, without limitation, assessment of the proposed budget, the CNA, the proposed reserve deposit, any proposed payment to the seller, the proposed financing, and the proposed rents. For transfer analysis, the underwriting tool (PAT) considers the ongoing future operations by assuming that Basic Rents rise no faster than inflation to be consistent with typical third-party lending principles that the property should be viable for at least the 20-year CNA analysis period provided it also complies with required RD servicing regulations. This analysis assumes the new owner will comply with the ongoing terms and conditions over the term of the RD direct loan program servicing requirements.

#### A. Analytical Template

In order to evaluate feasibility, the Loan Servicer will complete an analytical template (PAT) in the format prescribed by PDDL, and found on SharePoint. The template is designed to support decision-making regarding feasibility, and to serve as a record of feasibility decisions in processing the transfer.

#### B. Compliance Issues

The transfer must address all known compliance issues whether relating to physical condition, financial condition, management findings, occupancy findings, civil rights and accessibility findings, or other issues that must be resolved in order to maintain compliance with RD requirements.

#### C. Repair Related Issues

The Loan Servicer will ensure that the CNA complies with the statement of work, that it accurately reflects the property's physical needs, and that the transfer is otherwise acceptable to RD.

- If the transferee is planning to make substantial repairs or undertake rehabilitation of the property, the Loan Servicer will consider whether the transferee's initial plans seem reasonable and that the estimated repair costs seem reasonable.
- If the transferee is proposing significant up-front rehabilitation, that there are adequate provisions for supervising the work, inspecting the work, and controlling the repair funds.
- The Loan Servicer will ensure there are sufficient sources of funds to carry out repairs and to pay other costs of the proposed transaction.

#### D. Third-Party Funding Issues

The Loan Servicer will determine whether:

- All sources of funds are committed. If not, whether it is plausible that firm commitments will be received in time to close the transfer as planned;

- Any third-party funding sources impose additional restrictions on the real property;
- Any third-party funding sources impose additional affordability requirements; or
- Any third-party funder requires a balloon payment prior to the expiration of the proposed RD loan terms.

The Loan Servicer should document any additional requirements and determine how they affect the operation of the project. For example, LIHTC and HOME funding involve additional restrictions on tenant eligibility and the maximum rents that may be charged.

### **E. Tenant Impact**

If the proposed transfer is likely to result in the physical displacement of tenants, e.g., because of planned rehabilitation work, the Loan Servicer will consider whether the proposed transfer includes an adequate tenant relocation plan.

If it is likely that the proposed rent increase will result in the economic displacement of tenants, unless adequate protections are in place, the Loan Servicer will consider whether the proposed transfer includes adequate protections for tenants and the terms, conditions and funding source for such protections.

### **F. Rents and the Proposed Operating Budget**

The Loan Servicer will consider the following to determine if the rents and proposed operating budget are sufficient for the operation of the housing as follows:

- Whether the CRCU rents are sufficient; see Paragraph 7.7 B;
- Whether the proposed transfer requires a rent increase; if so, determine whether the proposed rents will be at or below the lesser of CRCU or restricted rents;
- Whether the proposed O&M expenses are sufficient to support the property's long-term viability;
- Whether the proposed budget meets the minimum combined cushion and vacancy loss, see Paragraph 7.2 D 2;
- Whether the NOI is sufficient to meet the industry standard debt service coverage ratio (DSCR); see Paragraph 7.2 C 13 or 7.2 D 2;
- Whether the level of rent loss, i.e., vacancy plus bad debt, is reasonable in relation to the property's historical performance and local market conditions; see Paragraph 7.2 D 3;
- Whether the proposed operating budget includes an adequate operating margin equal to 20 percent of the total operating expense as underwritten (See Paragraph 7.2 D 5) so that the property can absorb reasonable, foreseeable fluctuations in revenues and expenses without risking deferred maintenance, default on RD loans, or other financial stresses;

- Whether the Debt Service Coverage Ratio (DSCR) is within the established Agency thresholds, see Paragraph 7.2 C 13 or 7.2 D 2;
- Whether the proposed rents are adequate to support adequate O&M expenses, an adequate Reserve deposit, and other costs of operation;
- Whether the proposed rents are otherwise achievable, e.g., in relation to tenant incomes; and
- Whether it is likely that the purchaser will need a future rent increase above the rate of inflation in order to provide for property viability; if so, the transfer does not satisfy viability principles and is not approvable; see Paragraph 7.29 H for a potential exception.

### **G. Sales Price/Equity Payout**

If the transfer calls for equity distributions to the existing owner:

- The appraisal report should meet RD requirements for determining equity;
- The proposed equity payout should comply with RD requirements; and
- The proposed transfer includes adequate provisions to ensure that the seller has met all applicable requirements before equity is paid.

### **H. RD Loans**

Normally a transfer will involve assumption of the entire balance of the borrower's existing loan. If, however, there is insufficient Security Value that will result in a shortfall, the Loan Servicer should determine the borrower's intentions to address any outstanding balance, and whether a write-down may be required as part of the transfer. See Chapter 11 of this Handbook for more information on write-downs.

After the transfer, the Loan Servicer should confirm:

- All RD loans will be current;
- The taxes and insurance account will be adequately funded, with all outstanding bills paid; and
- The security deposit account will be fully funded.

If the transferee is requesting a subsequent loan, the proposed amount of the subsequent loan should be reasonable and sufficient, based on the information and supporting documentation reviewed by the Loan Servicer. If any RD requirements are not likely to be met, the Loan Servicer and Underwriter, through negotiations with the applicant, should enter into a credible plan to cure all of the most serious deficiencies within 12 months and the remainder within the first 3 years using funds provided by the applicant unless the general operating account is adequately funded thru planned project operations under a detailed workout plan, or the application should be rejected and provide the applicant with appropriate appeal rights.

## **I. Other Feasibility Issues**

The Loan Servicer will consider whether the proposed transfer will result in a project classification of A or B in the MFIS system; and if there are any other conditions in the proposed transfer or the proposed budget, that either RD or the project's tenants may find objectionable. See Chapter 4 of this Handbook.



*This page is intentionally left blank*

## **SECTION 7: EVALUATING RD LOANS AND OVERALL RISK**

### **7.24 EXISTING RURAL DEVELOPMENT LOANS**

#### **A. New Terms or Same Loan Terms [7 CFR 3560.406 (j)]**

Loan Servicers will review the account to determine which type of transfer needs to occur. RD generally completes transfers on new rates and terms to extend the amortization period thereby reducing the amount of debt service needing to be included in tenant rents. RD may allow transfers at same rates and terms even if the transfer does not involve an increase in rents. In order for this latter 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, a same-rates-and-terms transfer may be justified on a case-by-case basis by RD HQ.

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.

#### **B. Existing Loans/New Terms - Amortization Period and Loan Term**

New rates and terms transfers require that the remaining term of the loan, i.e., the maturity date, does not extend past the lesser of (a) 30 years from the date of transfer; or (b) the remaining useful life of the property. 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 Loan Servicer typically will determine the remaining economic life of the housing based on the appraisal. However, the Loan Servicer may consider other information, including knowledge and experience of RD staff. If the remaining economic life as determined in the appraisal is not used, the Loan Servicer must document in the file why a different economic life was selected.

#### **C. Existing Loans/New Terms - 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 RD determines that this is in the best interest of the Government.

- 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 loan approval, whichever is lower.
- 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.

### **D. Closing Out An Existing Loan That Will Not Be Assumed In Full**

Typical transfers will result in the seller assuming the entire balance of the existing loan(s). If, however, there is insufficient Security Value and the existing loan balance will not be assumed in full, the Loan Servicer and the existing borrower must agree on the debt settlement of the existing loan. This is particularly important if the transfer will result in a loan shortfall or the borrower is requesting an equity payment because no equity will be paid.

The remainder of this paragraph discusses considerations that the Loan Servicer should take into account when the full balance of the existing loan will not be assumed by the purchaser.

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 RD'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 sufficiently complete to allow for the approval of the transfer. The Loan Servicer should:

- Determine if the transfer will result in a shortfall on the existing loan. If a write-down is needed, see Chapter 11 of this Handbook for more information;
- Initiate the debt settlement process, in accordance with Chapter 12 of this Handbook, if appropriate; and
- Determine if RD should pursue legal remedies against the borrower.

If there is insufficient Security Value to support the existing RD debt, the seller will not have equity in the property. If the seller does have equity that is supported by an appraisal meeting RD requirements and equity payout is proposed, consultation with PDL D would be appropriate. If the seller does not have equity, and non-equity compensation is proposed, see Paragraphs 7.8 D and 7.29 F.

#### **7.25 SUBSEQUENT RD LOANS [7 CFR 3560.406 (h) and (i)]**

RD 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. An RD subsequent loan may be:

- a parity loan; sharing the first lien position with the existing RD loan;
- a junior loan; junior to an existing non-RD loan and sharing the second lien position with the existing RD loan; or
- a soft second from a non-RD third-party.

A third-party subsequent loan may have the first lien position, with the existing RD loans accepting second lien position if the loan(s) are sufficiently secured. RD will execute its standard Subordination Agreement.

In any case, the Government must be in a secure position. If the transferee is requesting or receiving a subsequent RD 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.

## **7.26 VERIFY ADEQUATE SECURITY VALUE [7 CFR 3560.406 (d) (3)]**

The Security Value (determined in accordance with the regulations cited above) of the project covered by RD loans to be assumed by the transferee must be sufficient to ensure that all RD loans being assumed and all subsequent loans offered as a part of the transfer can be secured to a level that fully protects RD. Soft second and deferred loans are not included in this determination.

The proposed debt, including existing debt being assumed and any additional debt, shall be counted for determining the Security Value limitations set out in [7 CFR 3560.63]. Third-party 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, Agency-approved appraisals will be required when new debt is added or when the transfer will be approved and closed with 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 may appraisals be inflated to defer loan losses and write-offs, to avoid adverse tax consequences, or to support a higher tax credit basis.

## **7.27 ASSESS THE OVERALL RISK AND IMPACT ON RD 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 three questions as discussed in the following.

### **A. Is the Potential for Financial Loss to RD Better or No Worse Than With the Existing Borrower?**

For both the seller and purchaser, the Loan Servicer should consider financial strength, managerial strength, and prior experience. The Loan Servicer should examine the security for any increase in per unit debt for RD funding. The Loan Servicer should consider whether any proposed third-party funds are fully committed; if not, the transfer approval should be contingent upon receipt of a binding commitment for the third-party funds.

### **B. Will Any Financial Impact on Current and Future Tenants be Reasonable?**

The Loan Servicer should consider any significant change in property rents in relation to tenant incomes. If post-transfer rents approach or exceed CRCU and not all units are

covered by RA or Section 8, the Loan Servicer should consider whether the non-assisted units will be marketable at the proposed rents.

For current unsubsidized tenants, RD may require the tenant protections described below as a condition of approval, in order to determine that the transfer is in the best interests of residents and the Federal Government pursuant to [7 CFR 3560.406(b)].

- a. In these situations, RD may require that post-transfer rents for unsubsidized tenants be subsidized by the owner foregoing any authorized RTO, to the extent necessary to reduce the rental payment to the pre-transfer rent, or 30 percent of adjusted income, if higher.
- b. If RD requires the above condition be met, the applicant/transferee will only be required to subsidize the difference in rents that exists at the time of the transfer closing for any unsubsidized tenant that is negatively impacted by the post-transfer rents. For example, if at the time of the transfer, the 2BR rent increased by \$75, one unsubsidized tenant was negatively impacted, and that tenant occupied a 2BR unit at the time of the transfer, the subsidy to be provided by the applicant to the affected tenant remains at \$75 per month without regard to subsequent changes to the Basic Rents.
- c. Annual operating budgets are to reflect the amount of foregone RTO to fund the temporary rent protections. The obligation with respect to each unsubsidized tenant in place at the time of the transfer will end when the tenant:
  - Receives rental assistance;
  - Receives a housing voucher;
  - Voluntarily leaves the property;
  - Is evicted for proper cause; or
  - Has income increased to pay the post-transfer Basic Rent without being rent over-burdened. If, for example, the pre-transfer rent is \$250, at each recertification the unsubsidized tenant will pay the greater of \$250 or 30 percent of adjusted income, until the tenant can pay the full post-transfer Basic Rent.
- d. The following is loan agreement language that may be used as an addendum to document this requirement:

*As of [date], [number] income-producing units were unsubsidized units, of which [number] were occupied by the following Affected Tenants:*

*[Unit number, unit type, tenant name, pre-transfer Basic Rent, post-transfer Basic Rent]. Notwithstanding the authorized Return to Owner (RTO) level discussed in paragraph [x], the owner is responsible for any shortfall in overage that the borrower must pay to RD from non-project funds to subsidize the rents of all affected tenants. The subsidy for each unit is the difference between the pre-transfer Basic Rent and the post-transfer Basic Rent; that is, the rent to be paid by each affected tenant will be the then current Basic Rent minus the subsidy. The subsidy shall not increase or decrease based on*

*subsequent adjustments in Basic Rents. The owner is to fund the subsidy by foregoing otherwise allowable Return to Owner. Annual operating budgets are to reflect the amount of foregone Return to Owner to fund the temporary rent incentives.*

*This obligation will end when the last of the Affected Tenants is either assigned rental assistance, receives a housing voucher, voluntarily leaves the property, has his or her tenancy properly terminated for cause, or achieves increased income sufficient to afford the then current Basic Rent without exceeding 30 percent for rent and utilities. Furthermore, the borrower at all times remains obligated to observe all applicable occupancy and tenancy requirements of USDA regulations, including 7 CFR part 3560. When proposing and approving rent changes during the transition, the borrower and USDA agree that the Basic Rent rates and utility charges for a unit will not be affected by whether the tenant is an Affected Tenant.*

All addendums will be reviewed by the Regional OGC.

### **C. Will Housing Conditions Be Better or No Worse Than under the Current Borrower?**

The Loan Servicer should consider existing property conditions, any repair plans, or plans to increase available reserves. In addition, the Loan Servicer should examine the purchaser's demonstrated record of managing property effectively, maintaining good physical conditions, and providing services to tenants while keeping expenses reasonable and necessary in comparison with comparable RD properties in the state or region.

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 all questions in order to recommend the transfer. If the Loan Servicer answers no to one or more questions, 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 RD objectives.

## **7.28 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*. One signed copy of this form should be given to the transferee, another signed copy kept in the Field Office case file, and the original form kept in a secure location such as the Field Office safe.
- To transfer rental assistance, Loan Servicers need to prepare *Form RD 3560-55*.

- To record borrower eligibility to receive interest credit or rental assistance, Loan Servicers need to prepare *Form RD 3560-9*.
- 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.

## 7.29 OBTAIN PDL D CONCURRENCE

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.

If PDL D concurrence will be needed, the Loan Servicer will include in the docket the appropriate analytical template and any other information that will be needed for PDL D's review. When requesting PDL D concurrence, the State Office will forward only the materials needed for PDL D's review. The docket itself will not be forwarded to PDL D unless requested by PDL D, but the Loan Servicer needs to include in the docket all materials that the State Office will need to forward to PDL D.

To request PDL D concurrence, the State Director emails RD HQ to request PDL D's concurrence, attaching only those materials that are needed for PDL D's review. The following should be attached to the email:

- A transmittal summary outlining the areas in which concurrence is requested, discussing the relevant aspects of the proposed transfer, and certifying that the proposed transfer meets applicable RD transfer requirements. Use *Form RD 3560-20, Multi-Family Housing Transfer and Assumption Review and Recommendation*.
- If an appraisal is required by this chapter, the cover letter will certify that the appraiser evaluated the impact of any remaining RUP using methods acceptable to RD, and that the appraisal was otherwise completed in accordance with applicable RD requirements.
- The analytical template; either PAT or in the format prescribed by PDL D.
- Any additional information that may be needed for PDL D to perform its review; e.g., Loan Servicer memorandum concerning proposed business terms of new third-party debt.

The State must also email a pdf or fax a copy of the signed request letter to RD HQ.

Prior to forwarding the docket to OGC for review, PDL D's review and concurrence should be obtained and documented in the circumstances discussed below.

PDL D review and concurrence is required for all prepayment-related transfers; i.e., properties being transferred pursuant to Chapter 15 of this Handbook, and any transfers that include changes in the terms of RD's financing or additional investment of funds by RD.

For non-prepayment-related transfers unless otherwise stated below, PDL D's review will be limited to the analytical template (PAT or in the format prescribed by PDL D) supplied by the Loan Servicer.

#### **A. Equity Payout to Seller**

Using the PAT supplied by the Loan Servicer, PDL D will verify that the equity payout amount was correctly calculated and that the Basic Rents, including an adequate reserve deposit and adequate O&M expenses, do not exceed CRCU.

#### **B. Increased Debt Service Built Into the Basic Rents**

Using the PAT analytical tool supplied by the Loan Servicer, PDL D will verify that Basic Rents including an adequate reserve deposit and adequate O&M expenses do not exceed CRCU. On a case-by-case basis, PDL D may also ask the Loan Servicer to submit the Loan Servicer's determination that all uses of loan proceeds are eligible uses. In addition, the Loan Servicer must include in the docket, for PDL D review, a memorandum stating that the Loan Servicer has reviewed the proposed business terms of the new debt to verify the applicable RD guidelines listed below have been satisfied:

- The debt is fully amortizing;
- The maturity date is after the maturity date of all RD debt; and
- There is an agreement by the third-party lender, acceptable to PDL D, to extend the scheduled maturity on terms that do not require rents above CRCU.

#### **C. Increased Return to Owner**

Using the PAT supplied by the Loan Servicer, PDL D will verify that the new RTO has been correctly calculated as discussed in Paragraph 7.9. PDL D will verify that the proposed Basic Rents, including an adequate reserve deposit and adequate O&M expenses, do not exceed CRCU. If there are unsubsidized tenants, the Loan Servicer must include in the docket, for PDL D review, documentation that applicable tenant protection requirements have been satisfied as discussed in Paragraph 7.27.

#### **D. Section 515 Loan Modified**

If the underlying Section 515 loan(s) will be modified, e.g., change in rate, change in maturity date, change in Interest Credit payment or Note Rate payment, subordination, or modification to balance due, the Loan Servicer will document in the analytical template each of the proposed modifications. PDL D will review the proposed modification(s) to verify that applicable RD requirements have been satisfied.



### **E. Basic Rents Increase More Than \$25 per Month, and There Are Unassisted Tenants**

If Basic Rents increase more than \$25 per month and there are unassisted tenants, the Loan Servicer must include in the docket, for PDL D review, a discussion of:

- Whether the proposed Basic Rents include an adequate reserve deposit and adequate O&M expenses; if not, a workout agreement should be included.
- Any measures already taken to minimize the increase in Basic Rents.
- Any commitments by the State Office to transfer unused RA to this project, including an estimate of when unused RA might become available to this project.
- The impact of the proposed increase on current unassisted tenants.
- Any commitments by the purchaser to minimize the impact on current unassisted tenants.

### **F. Non-Equity Compensation**

PDL D's concurrence is required and PDL D will review the analytical template if the transfer involves non-equity compensation. See Paragraph 7.8 D.

### **G. Exceptions to Regulations**

If elements of the proposed transaction are not in accordance with applicable regulations, PDL D's approval of those elements must be obtained. PDL D will coordinate the approval of any exceptions that are required. Requests for exceptions must be made in accordance with [7 CFR 3560.8].

### **H. Transfers Not Meeting Viability Criteria (Transfers with Workout).**

This chapter requires post-transfer Basic Rents must support an adequate reserve deposit so that all projected reserve-eligible needs can be funded from the reserve, and are adequate to pay O&M expenses. However, from time to time, State Offices may propose for approval transfers that do not meet these criteria; for example, when there are compelling reasons such as outstanding physical issues and there is a credible plan to secure additional funding after the closing of the transfer.

When proposing a Transfer with Workout, the Loan Servicer must include in the transmittal letter to PDL D:

- A comparison between the proposed post-transfer rents and the (higher) rents that would otherwise be required under this chapter.
- The purchaser's plans for achieving financial viability and the time frame in which the purchaser plans to achieve viability.
- The written agreements between the State Office and the purchaser concerning the consequences to the property and the purchaser if the purchaser's plans cannot be implemented. If the proposed consequences include higher Basic Rents, a discussion of tenant impact must be included, covering the issues outlined in Paragraph 7.27 B.

**I. MPR Program Tools**

For transferees that have applied for or are currently participating in the MPR Program, awards of MPR Tools such as debt deferral of existing RD loans, grants, deferred payment or soft loans may be offered under an MPR NOSA. These require PDLN prior approval.

**J. Authorization**

RD HQ will provide the respective RD State Director with project-specific authorization based on the underwriting proposed and recommended by the state office. Authorities will include any appropriate waivers, exceptions, or other special conditions for the specific transaction. Each authorization is unique to the individual transfer transaction and does not establish policy or precedent. Each transfer stands on its own merits.

## SECTION 8: MAKING THE DECISION

Once RD 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 RD takes to process and close a transfer on either new or same terms are similar to each other.

### 7.30 OVERVIEW [7 CFR 3560.406 (k)]

RD has established specific requirements for implementing project transfers to ensure that the obligations and responsibilities of the transferor are formally passed to the transferee and that RD's security interests are protected. Specifically, these requirements ensure that:

- All accounts, property, and subsidy as applicable, with advice from regional OGC 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 or deed of trust (typically a same rates and terms transfer does not require a new mortgage or deed of trust unless required by the Regional OGC);
- The transferor is released from liability when all RD security is transferred and the total outstanding debt is assumed; and
- Applicable restrictive-use provisions are required for the transferred loans.

Exhibit 7-3, Basic Steps in Implementing Transfers, summarizes the steps Loan Servicers and Underwriters should take to implement approved transfers and may the order may be adjusted to meet the specific timelines necessary to successfully complete the transaction. These steps should be reviewed and coordinated with the RD Underwriter processing the transfer request and the RD Servicer.

### Exhibit 7-3

#### Basic Steps in Implementing Transfers

1. Determine current loan balances for transfer;
2. Prepare the closing package;
3. Review applicable closing requirements with the transferee;
4. Determine the new RUP;
5. Prepare and discuss the Letter of Conditions with applicable parties;
6. Obligate the subsequent loan, if applicable;
7. Approve the transfer;
8. OGC review for closing;
9. Close the transfer;
10. Release the seller from liability when authorized by OGC;
11. Assign leases and other legal documents to transferee;
12. Shift accounts, funds, and assets to transferee;
13. Inform new borrower of administrative responsibilities;
14. Schedule a follow-up servicing visit; and  
Monitor rehabilitation work.

**7.31 MAKING THE DECISION****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 record via field terminal. The Loan Servicer should contact NFAOC to verify the correct amounts and dates to be used in closing the transaction. 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;
- 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 a copy of Form RD 3560-52 to Form RD 3560-21 MFH Assumption Agreement, and place it in the field office safe.

## 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). The Loan Servicer must work with NFAOC to determine the disposition of future payments; e.g., as a refund to transferor or applied as an extra payment to the transferee's account. Loan Servicers should refer to the AMAS Manual, Chapter 4, for additional guidance and document the verified information with NFAOC prior to closing.

**B. Prepare the Closing Package**

## 1. Basic Components of the Docket

The Loan Servicer should verify that any items listed in the Transfer Request Checklist (Attachment 7-D) and not provided earlier; e.g., evidence of insurance, have been submitted by the transferee.

2. Other Supplemental Documentation

Other transfer docket items may include:

- Letter of Conditions;
- Mortgagee title policy;
- Title evidence or report of lien search;
- 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 request through final approval, is adequately and legally documented. Maintenance of this history allows RD to hold transferees accountable for compliance with all agreements signed during the transfer process.

**C. Review Applicable Requirements with the Transferee**

After closing instructions have been issued but before the transfer is closed, the Loan Servicer will carefully review 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 7.13.

**D. Determine New Restrictive Use Period Requirement**

Exhibit 7-4, RUPs for Transfers Outside the RD Prepayment Process does not address borrowers who are in the prepayment process (including re-amortizations in conjunction with incentives to avert prepayment).

For borrowers outside the prepayment process, restrictive-use provisions must be included in: (a) the release documents; (b) a restrictive-use agreement acceptable to RD and signed by the borrower; and (c) a deed restriction.

<b>Exhibit 7-4</b>		
<b>RUPs For Transfers <u>Outside the RD Prepayment Process</u></b>		
<i>[7 CFR 3560.406(g) and 7 CFR 3560.662 (b)]</i>		
<b>Type of Transfer (Outside the Prepayment Process)</b>	<b>20-Yr</b>	<b>30-Yr</b>
Third-party with debt for equity; USDA is not the lender		30-yr
All other transfers outside the prepayment process (no equity paid with loan funds of any type)	20-Yr	

For transfers occurring in the prepayment process, the State Office should work closely with PDL D, and the new RUP will be determined in accordance with applicable regulations and other guidance. See Chapter 15 of this Handbook.

### **E. Prepare the Draft Letter of Conditions**

Prepare the draft Letter of Conditions, containing the proposed conditions to RD's approval for the purchaser and seller to close the transfer. Review the draft Letter of Conditions with the purchaser. See also Paragraph 7.29.

### **F. Prepare to Close the Transfer and Obligate the Subsequent Loan**

Normally, a new Loan Agreement/Resolution will be required for all transfers with guidance from the Regional OGC. The following forms are always required if changes must be made to the existing loan agreement or the transfer is a new terms transfer.

1. Form RD 3560-33, Loan Agreement
2. Form RD 3560-34, Loan Agreement
3. Form RD 3560-35, Loan Resolution
4. Form RD 3560-51, (Required if new RD funds are being provided).

The Loan Servicer enters the required data on borrower and project characteristics into the appropriate AMAS screens. The account and project numbers is updated by AMAS to identify the transferee when completing the transfer closing documents.

The Loan Servicer must also ensure that the proper type of loan agreement or loan resolution is in effect, and secured by the mortgage or deed of trust at the time of transfer.

### **G. OGC Review**

After receiving any required PDL D concurrence, the State Director will forward the docket to OGC for review and preparation of final closing instructions. When transmitting the docket to OGC, include the draft Letter of Conditions for OGC review unless otherwise instructed by OGC.

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 the Letter of Conditions to the transferee. Within 10 days of receipt, the transferee will return a copy of the Letter of Conditions, signed and dated, to the Servicing Office. After receipt, the Field Office will schedule a meeting with the transferee to execute the obligating documents.

### **H. Approve the Transfer**

When the transfer is approved, the Loan Servicer completes Form RD 3560-20. Form RD 3560-20 is primarily a record of RD's determinations regarding the transfer.

Form RD 3560-20 should summarize 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 payments, assignment of project accounts, and leases and disposition of any equipment purchased with loan or project funds.

The Loan Servicer documents:

1. That the transfer will 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.
2. Any necessary actions to bring the project into compliance with regulations and loan instruments, such as Identity of Interest Statements, delinquent payments, under-funded reserves, accessibility issues, and deferred maintenance.
3. That any Required Repairs that were to be completed prior to closing have been completed. See Paragraph 7.22 D.

If Required Repairs were determined necessary, the Loan Servicer ensures that the Repair Agreement (See Attachment 7-B-1, Transfer Application Documents) provides for completion of the Required Repairs and states which party will be responsible and the source of funds.

The seller and purchaser will sign page 6 of Form RD 3560-20 to certify their agreement with the statements within the Form that relate to the purchase contract. The purchase contract between the buyer and seller is attached to the form as an addendum.

Upon receipt of the transfer authorization memo from RD HQ, the State Director or authorized designee will prepare and issue to the Applicant the formal approval letter based on that authorization, including any waivers, exceptions, or other special conditions; and any other specific conditions unique to the individual transfer transaction deemed necessary and appropriate.

Frequently, the transfer approval and closing conditions are addressed in the same letter. However, this should be discussed with the individual regional OGC to ensure the timely and efficient closing of the approved transaction.

Transfers that have been underwritten, reviewed and authorized will require reconsideration by RD HQ if they are not closed within six months from the date of the transfer authorization memo.

*This page is intentionally left blank*



## SECTION 9: IMPLEMENTING THE TRANSFER

### 7.32 CLOSING THE TRANSFER

#### A. Overview

RD will close the transfer according to the closing instructions received from OGC. After the transfer is approved, the Loan Servicer enters the transfer into the AMAS system within five business days after closing. The transferee has now become the new borrower.

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

The parties to the transfer are responsible for obtaining legal services necessary to accomplish the transfer.

- A for-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 its principals or employees must not be members, officers, directors, trustees, stockholders, or partners of the transferee or transferor entity.
- Non-profit organization transferees may use a designated attorney who is a member of their organization if the cost is reasonable, typical for the area, and earned.

#### B. Release the Seller From Liability

RD should release the seller from liability from any debts owed to RD 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 RD debts have been assumed or satisfied.

If all of a transferor's outstanding RD debt is not assumed or paid off at the time of the transfer or sale, RD will not release a borrower from liability unless RD 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 of this Handbook for debt settlement procedures.

#### C. Assign Leases to Transferee

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

#### D. Assign Rental Assistance Agreement to Transferee

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 process the transfer of RA through the AMAS system. If the transferee does not assume an existing agreement, the units will be considered unused and will be recaptured in accordance with 7 CFR 3560.259.

### **E. Assign Other Agreements to Transferee**

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 for any other purpose, the transfer will not be completed until NFAOC has charged the advance to the transferor's account.

### **F. Shift Accounts, Funds, and Assets to Transferee (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.

## **7.33 POST-CLOSING**

### **A. 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. RD HQ may also conduct post-closing reviews and analysis as they deem appropriate for program monitoring and administration.

### **B. Schedule a Follow-Up Servicing Visit**

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

### **C. Monitor Rehabilitation Work**

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

### **D. Reporting**

Following the transfer, transferees must submit monthly or quarterly project financial reports to RD to document the financial viability of the project.

**E. Tenant Certifications**

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

**F. 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 RD and those to which RD has previously agreed.

**G. Verify All AMAS/MFIS Data**

At completion of the transfer, the Loan Servicer will verify that all AMAS/MIFS data has been input or updated to accurately reflect the loan approval and closing conditions as underwritten, including the approved CNA and reserve funding schedules within 30 days of closing.

*This page left intentionally blank*

## ATTACHMENT 7-A REVITALIZATION GUIDANCE

This Attachment contains Revitalization Principles adopted by Rural Development to guide all multifamily housing activities.

This Attachment provides guidance on using Rural Development'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-Rural Development financiers, and Rural Development to help preserve this irreplaceable affordable rental housing option in rural America.

Rural Development 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 *[7 CFR part 3560]*.

**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 PDL D concurs with equity loan amounts and new RTO, and coordinates the approval of waivers, National Office approvals, or revitalization related policy issues.

These principles must be documented by Rural Development's loan servicer.

**Use effective processing strategies.** Rural Development 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 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.** Rural Development 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. Re-amortization of existing Rural Development debt to reduce debt service.
5. Reallocate unused RA units to assure affordability by existing tenants.
6. Allow for post-transaction asset management fee to a non-profit or public body.
7. Other waivers and National Office approvals as necessary.

## **ATTACHMENT 7-B-1 TRANSFER APPLICATION DOCUMENTS**

The following is a list of the documents constituting a complete application for Rural Development approval of a proposed transfer. Rural Development processing will begin only when a complete transfer request package has been submitted.

Transfer requests must be submitted at least 45 days prior to the proposed transfer approval date. [*7 CFR 3560.406 (c)*]. Unless otherwise noted, all documents are to be submitted at the time of application. Form numbers and references to applicable guidance are shown in italics.

### **The Proposed Transaction**

**1. Executive Summary.** An executive summary of significant aspects of the proposed transaction. Because each of the following will be supported by more detailed information that will also be provided, discussion should be brief in the executive summary. The following should be discussed:

**A. Acceptable Reason for Transfer.** Why the transfer satisfies at least one of the following (see paragraph 7.5).

- Facilitates the physical and financial revitalization of the property.
- Needed to remove a hardship to the current borrower that was caused by circumstances beyond the borrower's control (circumstances constituting 'hardship' are discussed in Paragraph 7.5).
- 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. Chapter 15 of HB-3-3560.
- The transfer will do no harm to Rural Development or tenants.
- Other circumstances exist which make the transfer in the best interest of the Government and the tenants of the project.

**B. How the proposed transaction will improve or maintain:**

- The viability of the property. Discuss the nature and extent of repairs. If the project is in an area experiencing economic stress, or if the project is experiencing occupancy challenges, discuss plans for ensuring that the project remains viable.
- The likelihood of loan repayment to Rural Development.
- The quality of housing for the tenants.

- C. Any concerns previously identified by Rural Development (e.g., maintenance issues, compliance findings) and how these concerns will be addressed.
- D. Proposed purchaser.
- E. Proposed management.
- F. Establish that the purchaser has site control. For example, sit control can be established through an option to purchase, or through a purchase and sale agreement.
- G. If the new proposed Return to Owner (RTO) differs from the RTO currently applicable to the seller, explain the reason for the proposed change and show that the proposed change is in accordance with applicable Rural Development requirements. See paragraph 7.0 and Exhibit 7.3
- H. Any financial commitments, financial concessions, or other economic benefits proposed to be provided by Rural Development. For example:
  - A change in rents
  - A change in interest rate or loan term or amortization.
  - Rental Assistance.
  - A subsequent Section 515 loan.
  - Subordination in lien position.
- I. Third-party funding. For each third-party funding source, discuss briefly (providing highlights of the more detail information called for under items 19 through 23 below):
  - Funding provider (names of debt/equity providers).
  - Commitment status (e.g. application submitted, conditional commitment received). Unless all non-USDA funds are fully committed, including a discussion explaining how the proposed transaction will change if some or all of the conditionally committed funds are not realized.
  - Timing issues, including:
    - ◇ Any deadlines for Rural Development approval of the transfer, or for closing the transfer.
    - ◇ When the proposed third-party funding is expected to be available to the project.
    - ◇ For loans, when it is anticipated that debt service payments will start, and how debt service payments will be funded prior to the time that Rural Development will allow project operating funds to be used to pay debt service.
  - Any restrictions that will be applicable to the project and/or the purchase, for example rent limitations, tenant eligibility requirements, and regulatory agreements. Discuss the nature and duration of any such requirements.



- Whether any accommodation by Rural Development (such as subordination in lien position) is proposed.
  - J. Any proposed compensation to parties having an identity of interest with either the seller or purchaser.
  - K. Any proposed interim financing (for example, a construction or bridge loan) that may be needed to pay for uses prior to the time that third-party funding sources become available.
2. **Required written statements.** If there are exceptions, the statement should be worded accordingly and should include an explanation of any exceptions. For example, “there is no identity-of-interest ... except that [include explanation].” If information is being provided by key principles to mitigate shortcomings in the transferee they will be added to this section and signed by the parties involved.
- A. **Joint Statement Concerning Project Equipment and Accounts.** Acknowledgement by the seller and purchaser that, “Rural Development 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 account”. See [7 CFR 3560.406(k)].
  - B. **Joint Statement Concerning Identity of Interest.** “A statement disclosing any identity-of-interest between the borrower and the party to which the housing project ownership is being transferred or sold.” See [7 CFR 3560.406(c)(1)].
  - C. **Joint Statement Concerning Environmental Review.** Statement by the seller and purchaser that, “The proposed transfer will not alter the purpose, operation, location, or design of the project as originally approved.”
  - D. **Joint Statement Authorizing Release of Information to Rural Development (if third-party funding is proposed).** Authorization from both the seller and purchaser to each third-party funder authorizing the third-party funder to release information to Rural Development.
  - E. **Seller Statement Concerning Project Financial Condition.** The seller’s 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.” See [7 CFR 3560.406(c)(2)].
  - F. **Purchaser Statement Concerning Transfer.** The purchaser’s written statement, signed by the proposed transferee or buyer, “Certify that the transferee or buyer will assume the borrower responsibilities and obligations specified in Rural Development program

requirements including requirements in a promissory note, loan agreement or other documents related to Rural Development loans held by the borrower entity.” See [7 CFR 3560.406(c)(4)].

- G. Joint Statement Concerning No Reversionary Interest.** “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.” See [C CFR 3560.406(c)(5)].
  - H. Purchaser Statement Concerning Tenant Certifications.** The purchaser’s plan for complying with the requirement that transferee must, “Ensure that tenant certifications in compliance with subpart D of this part for all occupied rental units are on file with Rural Development.” [7 CFR 3560.406(d)(10)].
  - I. Purchaser Statement Concerning Financial Reports.** “The purchaser’s agrees to submit financial reports to Rural Development as required under 7 CFR part 3560, subpart G.” [7 CFR 3560.406(d)(12)].
  - J. Purchaser Statement Concerning Credit (if applying for a subsequent loan).** The purchaser’s statement (accompanied by documentation acceptable to Rural Development) that, “The purchaser is unable to obtain sufficient credit elsewhere at rates that would allow for project rents within the payment ability of eligible residents.” Documentation may include letters from lenders or a certification from the applicant which identifies the lenders contacted along with rates and terms quote from lenders.
  - K. Seller Statement Concerning Five-Year Requirement (if applicable).** If the seller has owned the project less than five years, “The sellers acknowledges that the sellers will be ineligible for further Rural Development loans for the remainder of the 5-year period beginning on the date the seller acquired the project.” Paragraph 7.5 A.
  - L. Purchase Statement Regarding Appraisal.** A statement by the purchaser that that reflects, “The market value appraisal referenced in item 13 below was completed in accordance with HB-1-3560, Chapter 7, Attachment 7-C.” In addition, the purchaser must acknowledge whether there are any current restrictions or prepayment prohibitions on the property and must state that, “All restrictions and prepayment prohibitions were considered by the appraiser in determining the market value.”
- 3. MFH Transfer & Assumption Application Supplement.** Attachment 7-B-2.
  - 4. Partial Release or Subordination (if applicable).** If the proposed transaction includes partial release or subordination of Rural Development’s lien, include Application for Partial Release. *Form RD 3560-1.*
  - 5. Purchase and Sale Agreement.** Submit the applicable document, executed by purchaser and seller, in its entirety, including all attachments and amendments. Include any side agreements. The document must clearly recite all consideration to be paid to the seller, [7 CFR 3560.460 (d)(6)]. Purchasers and sellers may use *Form RD 440-34* as the purchase and sale agreement.
  - 6. Current Preliminary Title Report.** 7 CFR 3560.406.(d)(13)]. May be omitted for Deceased Borrower transfers (Paragraph 7.5 D.)

7. **Legal Services Agreement.** [7 CFR 3560.62(a)]. Provide a copy of any written contract for legal services that will be paid with Rural Development loan funds.

### **The Project and Proposed Repairs**

8. **Capital Needs Assessment (CNA).** See Paragraph 7.22. The CNA will be reviewed by the Rural Development CNA Reviewer and may need to be revised or adjusted to conform to Rural Development program requirements. Final approval of the CNA must be provided by the Rural Development CNA Reviewer prior to final approval of the transfer. May be omitted for Deceased Borrower transfer (Paragraph 7.5 D).
9. **Current Self Evaluation/Transition Plan.** See HB-2-3560, Chapter 3, Paragraph 3.5. Submit a current (less than 3 years old) Self Evaluation/Transition Plan, if applicable and completed in accordance with 7 CFR 3560 15b.
10. **Repair Agreement** [7 CFR 3560.406 (d)(7)]. May be omitted for Deceased Borrower transfer (Paragraph 7.8 B 6). This should be developed in light of the CNA and should address the following:
- A. Must be signed by seller and purchaser.
  - B. Must address known compliance issues.
    - Must identify all repairs known by the borrower to be necessary to bring the project into compliance with Rural Development requirements.
    - Must include any repairs required to correct any compliance violations previously cited by Rural Development.
    - Repairs to correct compliance issues must either be completed by the seller prior to transfer, or be subject to a workout agreement between the Rural Development and the purchaser.
  - C. If the CNA was prepared on the assumption that certain repairs have been completed, provide:
    - Evidence of Rural Development approval of the repair agreement and cost estimate for the third-party funded repairs.
    - Cost estimate for the repairs.
    - Month-to-month estimate for repair expenditures.
    - How the repairs are proposed to be funded.
  - D. Tenant relocation costs if tenant relocation is necessary to rehabilitate the property.

- E. The repair agreement must identify each up-front 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 Identify of Interest between the transferee and the party doing the work or providing materials and services.
- F. Division of responsibility for repairs between purchaser and seller.
- G. If equity is proposed to be paid out prior to completion of repairs, a guarantee acceptable to Rural Development that any repair costs in excess of the estimate will be paid from non-project funds.

**11. Cost Estimate (if applicable).** Form RD 1924-13. *“Estimate and Certificate of Actual Cost”*. Applicable if repairs will be funded by Rural Development.

### **Documentation of Market Rents and Value**

Rural Development strongly recommends that purchasers consult with Rural Development before ordering appraisal products, to verify that the correct instructions are being provided to the appraiser. See HB1-3560, Chapter 7 and Attachment 7-C for Rural Development requirements regarding instructions to the appraiser. Purchasers may request that Rural Development provide Attachment 7-D of HB-1-3560 Information Sheet. Purchasers may request Rural Development assistance in assembling the information referenced in Attachment 7-F of HB-1-3560 Appraisal Data Package Checklist. In all cases, appraisals will be required when new debt is added or when the transfer will be using new rates and terms. For transfers processed on ‘same rates and terms’ where no new Rural Development debit is requested, the Loan Servicer may waive the appraisal requirement if the Loan Servicer determines that the security is adequate for the Rural Development indebtedness being assumed. Appraisal fees are purchaser/seller expense and may not be paid from project funds. Loan Servicers must document their review and determinations based on a review of Rural Development reports conducted in accordance with the requirements of [7 CFR part 3560, subpart H (3560.3511 through 3560.400)].

**12. Market Value Appraisal “Prospective Market Value, Subject to Restricted Rents within 7 CFR 3560.752 (b) (1) (i)”**. Rural Development staff will use this appraisal in order to determine security value. See HB-1-3560, Chapter 7 and Attachment 7-C for appraisal guidance.

- A. The instructions to the appraiser must include language specified by Rural Development (see HB-1-3560, Attachment 7-C).
- B. This appraisal is required if the sum of the USDA loan balance at the time of transfer, plus any subsequent loan, will exceed \$100,000. This may be omitted for Deceased Borrower transfer (Paragraph 7.5 D).

**13. Market Value Appraisal – “Market Value, within 7 CFR 3560.752 (b)(1)(ii) with any current restrictions or prohibitions currently existing on the property taken into**

**consideration”; or “Market Value with 7 CFR 3560.752 (b)(1)(ii) Premised upon a Hypothetical Condition As-If Unsubsidized Conventional Housing.”** This appraisal establishes a value for used in analyzing the Rural Development’s limitations on sale price and equity pay-out. See HB-1-3560, Chapter 7 and for appraisal guidance.

- A. This appraisal is required whenever an equity pay-put is proposed to the seller.
- B. The instructions to the appraiser must include language specified by Rural Development (See HB-1-2560, Chapter 7, Attachment 7-C).
- C. If, at the time of the appraisal, a Restrictive-Use Provision or Restrictive-Use Covenant will be in effect, see HB-1-3560, Chapter 7, Attachment 7-C regarding Rural Development requirements that restrict (and may prohibit) the inclusion as a component of market value any value of the hypothetical future ability of the owner to convert the property to conventional housing use.

**14. Rent Comparability Study (RCS) or Area Market Rents Study (ARMS).** If neither of the preceding appraisal products is required for this transaction, an acceptable RCS or ARMS may be required to establish Conventional Rents for Comparable Units (CRCU).

- A. See Paragraph 7.7 B regarding when an RCS may be used.
- B. If an RCS is used, Rural Development’s Statement of Work must be used. See Paragraph 7.7 B.

**15. If No Appraisal Product is required.** Submit the purchaser’s best available evidence for CRCU. See Paragraph 7.8 F. May be omitted for Deceased Borrower transfers (Paragraph 7.5 D).

#### **Financial Aspects of the Transaction**

**16. Application for Federal Assistance. Form SF-424.** Required for all transfers other than Deceased Borrower transfers (Paragraph 7.5 D).

- A. Application for Federal Assistance. *Form SF-424.*
- B. Budget – Construction Programs. *Form SF-424C.*
- C. Assurances – Construction Programs. *Form SF-424D.*

**17. Proposed Project Budget.** Required for all transfers. Purchaser’s proposed project operating budgets covering the first year of operation following the transfer or sale. This budget form should set forth the project’s current Rural Development – approved budget in the “Current Budget” columns and the projects’ proposed budget after acquisition in the Proposed Budget columns.

- A. *Form RD 3560-7.*
- 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.

**18. Sources and Uses of Funds Statement.** May be omitted for Deceased Borrower transfer (Paragraph 7.5 D). Must be accompanied by a certification that:

- A. All sources of funding contemplated by the purchaser are included.
- B. Itemizes each proposed use of funds to be paid to the seller, the purchaser, any affiliate of the seller, or any affiliate of the purchaser. Each such use will identify the proposed amount, identify the entity to whom it is to be paid, disclose the nature of any identify of interest or affiliation with seller and/or purchaser, and discuss why the proposed amount is reasonable. If any portion of the amount to be paid to the seller will remain unpaid after the closing of the transfer, the purchaser must certify that no project revenue or assets (other than authorized RTO earned and paid to the purchaser) may be used to pay such amounts and that the purchaser's obligation to pay such amounts will be unsecured.

**Note Regarding Evidence of Insurance Coverage.** See Paragraph 7.16 F and [7 CFR 3560.406(d)(11)]. Evidence of insurance coverage is not required as part of the transfer application package. However, the transfer cannot be closed until Rural Development has approved the purchaser's insurance coverage.

### **Third-Party Funding (If Applicable)**

- 19. **Application for Funding.** Any application submitted by the purchaser to the proposed funder.
- 20. **Financial Pro Forma Information.** Include any estimates of repair costs, any information regarding proposed sources and uses of funds, and any revenue and expense projections submitted to the proposed funder, whether or not such documents were included in the application.
- 21. **Environmental Information.** Any environmental reports or analyses submitted by the purchaser to the proposed funder.
- 22. **Commitment Letter or Equivalent (if applicable).** Commitment letters may be conditional at the time of application. For LIHTC/TCAP/TCEP funding, provide a copy of the following: the reservation letter, any subsequent correspondence from the state allocating agency, and any Letter of Intent or similar correspondence from the proposed equity investor describing terms and conditions of its proposed investment. Before the transaction may be closed, the following will be required:
  - A. Commitment Letter
  - B. Documentation that any conditions in the commitment letter have been satisfied.

**23. Regulatory Requirements.** Documentation for any requirements to be imposed on the project and/or the purchaser as a condition of the proposed third-party funding.

**A.** For Low-Income Housing Tax Credits:

- The proposed Land Use Restriction Agreement or equivalent, showing the LIHTC set-aside by income level and unit type; and
- The current LIHTC income limits and maximum rents for the county in which the project is located.

**B.** For a proposed loan, a copy of the proposed loan agreement, note, security instrument (if applicable) and regulatory agreement (if applicable).

**C.** For a proposed grant, a copy of the proposed grant agreement and regulatory agreement (if applicable).

**24. Interim Financing.**

**A.** Include a month-by-month projection of interim financing draws and interest cost. This projection should take into account:

- Applicable Rural Development requirements regarding the use of project operating funds to pay debt service. See Paragraphs 7.7 C and 7.12 A.
- Any net interest cost for permanent loan funds that are borrowed up front but not available to the project until funding conditions (such as completion of rehabilitation) have been satisfied.
- Monthly costs for rehabilitation and other costs.
- Monthly receipts from other sources of funds such as tax credit equity.

**B.** If a source of repayment is from tax credit equity, the schedule of equity pay-in from the syndicator.

**C.** If a source of repayment is from permanent financing, the funding conditions that must be satisfied before the permanent financing will be available to the project.

**25. (Advisory to purchasers, no submission required) Sources and Use**

**Comprehensive Evaluation (SAUCE) Analysis.** Purchasers proposing to use a subsequent Rural Development loan should note that Rural Development must prepare a SAUCE analysis, or accept the tax credit agency's sources and uses analysis, as a pre-requisite to the closing of the transfer. A SAUCE analysis is not required for transfers not utilizing a subsequent Rural Development loan.

### **The Proposed Purchaser**

For purposes of the following documents, the terms "principal" and "affiliate" and "participation" are defined in *Form HUD-2530 Previous Participation Certification*.

- 26. Purchaser's Resume.** May be omitted for Deceased Borrower transfers (Paragraph 7.5 D).
- A. Proposed organizational structure.
  - B. Resume for each principal of the purchaser who has no previous participation with Rural Development. Resumes should be in sufficient detail for Rural Development to understand the nature of the new principal's real estate experience.
  - C. Disclosure of any proposed role(s) in the ownership or management of the project by affiliates of the purchaser or affiliates of the seller.
- 27. Previous Participation Certification (Form HUD-2530).** This form reflects the participation by principals of the proposed purchaser in other HUD and USDA multifamily projects over the past ten years. May be omitted for Deceased Borrower transfer (Paragraph 7.5 D).
- 28. Identity of Interest Certification.** As applicable, either:
- A. Certification of No Identity of Interest, *Form RD 3560-30*; or
  - B. Identity of Interest Disclosure, *Form RD 3560-31*.
- 29. Debarment/Suspension Certification.** As applicable, either:
- A. Certification Regarding Debarment, Suspension and other Responsibility Matters *Form AD 1047*; or
  - B. Certification Regarding Debarment Suspension: Ineligibility and Voluntary Exclusion *Form AD 1048*.
- 30. Purchaser's Financial Statements.** May be omitted for Deceased Borrower transfers (Paragraph 7.5 D). Current financial statements for:
- A. The applicant (i.e., the entity that will own the project). If the applicant is an entity that has not yet been formed, financial statements should be *pro forma* (after completing the proposed purchase).
  - B. Each proposed principal.
  - C. Non-profit applicants/principals may satisfy this requirement by submitting their current *IRS Form 990 "Return of Organization Exempt from Income Tax"* (with Schedules A & B).
  - D. Attachment 7-B-4, MFG Transfer & Assumption Certification for Financial Statements, must be included with all financial statements.
- 31. Credit Report Fees.** May be omitted for Deceased Borrower transfers (Paragraph 7.5 D), Purchaser's check, made out to USDA, for the required credit reports obtained initially as part of the transfer application and subsequently for any additional credit reports necessary prior to closing to verify the applicant's continued eligibility for participation in the transfer. Contact your local Rural Development Office to verify what the current credit reports fees are (current fees as of February 2008 are \$28 for each individual and \$40 for each other principal; e.g. a corporation or partnership).



- A. The purchaser.
- B. Each general partner of a purchaser that is a partnership, and spouse.
- C. Each managing member of a purchaser that is an LLC, and spouse.
- D. Each other partner/member who will have a 10 percent or greater interest.
- E. If an entity is existing or newly-formed, order a credit report. If an entity is to-be-formed, order a credit report (s) for existing principal(s) of the entity.

**32. Attorney Certification of Eligible U.S. Citizenship/Qualified Alien Status.** The purchaser's attorney must review all applicable evidence to verify U.S. citizenship and/or qualified alien status, must certify that the Agency's U.S. citizenship and/or qualified alien status eligibility requirements are met by each proposed principal applicant, and must submit the certification for Agency review.

### **Proposed Management**

**33. Management Plan.** The purchaser may satisfy this requirement by accepting the existing Rural Development-approved management plan and lease and occupancy rules of the seller. The management plan should include:

- A. A narrative description of the proposed record-keeping system.
- B. A copy of the proposed lease.
- C. A copy of the proposed occupancy rules.

**34. Attorney Opinion Regarding Proposed Lease.** This is required only if the purchaser will not continue to use the Rural Development-approved lease currently used by the seller. Transferee attorney's opinion regarding legal sufficiency and compliance of lease with State/local laws, ordinances and Rural Development regulations.

**35. Management Certification.** *Form RD 3560-13.* Required for all transfers, each time a management agreement or management plan is executed.

**36. Affirmative Fair Housing Marketing Plan.** *Form HUD 935.2A.* May be omitted for Deceased Borrower transfers (Paragraph 7.5 D).

### **Proposed Organizational Documents of the Purchaser**

**37. Purchaser's Organizational Documents.** May be omitted for purchasers who are individuals. If the Transferee is an entity that has not yet been formed, draft documents may be submitted. The submission must include all amendments.

- A. Purchaser is a corporation: provide the charter, articles of incorporation and bylaws, or equivalent.
- B. If the Transferee is a non-profit the following should also be submitted.

- Tax-exempt ruling from the IRS conferring 501(c)(3) or 501(c)(4) status.
- List of members on Board of Directors Purchaser is a partnership: provide the partnership agreement.

- C. Purchaser is a partnership: provide the partnership agreement.
- D. Purchaser is a trust: provide the trust agreement.
- E. The documents shall show that the corporation, partnership or trust is authorized to operate the property and to execute and be bound by the Regulatory Agreement.
- F. The documents (or minutes of meetings, as applicable) should establish clearly the authority of the persons executing the Regulatory Agreement and other documents for the Transferee.

**38. Attorney Certification.** Letter from the purchaser's attorney certifying the legal sufficiency of the organizational documents. The attorney must certify:

- A. The transferee's legal capacity to successfully assume and operate the project for the life of the Rural Development loan.
- B. That the organizational documents comply with the requirements of Paragraph 4.16 B of HF-1-3560 and [7 CFR 3560.55].
- C. For partnership purchasers, that the term of the partnership extends at least through the latest maturity of all existing and proposed Rural Development debt.
- D. For partnership purchasers, that the partnership agreement requires the General Partner(s) to maintain a five percent financial interest in the residual or refinancing proceeds of the partnership.
- E. That the organizational documents required prior written Rural Development approval for any of the following: withdrawal of a general partner/managing member, admission of a general partner/managing member, amending the organizational documents, and selling all or substantially all of the assets of the purchaser.

#### **Other**

**39. Assurance Agreement.** *Form RD 400-4*, Certifying civil rights compliance.

**40. Equal Opportunity Agreement.** *Form RD 400-1*.

**41. Lobbying Certifications (s).**

- A. Attachment 7-B-5, MFH Transfer & Assumption Certification for Contracts. Required.
- B. Lobbying Disclosure. *Form SF-LLL*. If applicable.

**42. Certification Regarding Drug-Free Workplace Requirements.** Either:

- A. *Form AD 1050* (for individual purchasers); or
- B. *Form AD 1049* (for other purchasers).

**43. Certification Regarding Collection Policies.** *Form RD 1910-11*.

**Other**

**44. (For Projects with HUD Section 8 Housing Assistance Payments (HAP) Contracts).**

Applicant should submit a letter from HUD indicating HUD's approval of the Section 8 HAP funding transfer. Formal approval from HUD is a pre-requisite for the closing of the transaction. Purchasers should note that HUD Section 8 rents are adjusted in accordance with HUD procedures and that generally, no rent adjustment should be expected in conjunction with the transfer.

**45. Request for Rental Assistance.** *Form RD 3560-25.* If Rental Assistance is being requested.

*This page is intentionally left blank*

**ATTACHMENT 7-B-2  
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 is in accordance with the terms of the security instruments held by USDA Rural Development (hereinafter referred to as "USDA") on their property is applying 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*). \_\_\_\_\_

**A. 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, non-profit, 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: \_\_\_\_\_ Email: \_\_\_\_\_

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

**B. Member/Owner Information** *(complete one)*

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

<b>Role</b>	<b>Exact Legal Name</b>	<b>Tax ID #</b>	<b>Non- Profit?</b>	<b>% Share</b>	<b>Mailing Address</b>	<b>Authorized Sign &amp; Title</b>
-------------	---------------------------------	---------------------	-------------------------	--------------------	----------------------------	--

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

<b>Role</b>	<b>Exact Legal Name</b>	<b>Tax ID #</b>	<b>Non- Profit?</b>	<b>% Share</b>	<b>Mailing Address</b>	<b>Authorized Sign &amp; Title</b>

**C. 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**

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

\_\_\_\_\_

This Transfer must close by no later than \_\_\_\_\_ because

\_\_\_\_\_

**D. Sources & Uses of Funds**

Funding Uses *	Amount
Total acquisition costs	\$
Total rehab costs	\$
Total all other costs	\$
<b>TOTAL PROJECT FUNDING</b>	<b>\$</b>

<b>Permanent Funding Sources</b>	<b>Amount</b>	<b>Status: Date/Committed or Pending</b>	<b>Anticipated rates/terms</b>	<b>Lien position proposed</b>
<b>Assumption of USDA loan</b>	\$	<b>Pending</b>	<b>1%, 50-yr amortization, 30 year term</b>	
<b>Borrower contribution</b>	\$			<b>n/a</b>
<b>9% Low Income Housing Tax Credit</b>	\$			<b>n/a</b>
<b>4% Low Income Housing Tax Credit</b>	\$			<b>n/a</b>
<b>Loan From:</b>	\$			
<b>Loan From:</b>	\$			
<b>Other:</b>	\$			
<b>Other:</b>	\$			
<b>Other</b>	\$			
<b>Other</b>	\$			
<b>Total Project Funding</b>	\$			

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



**E. 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 Rents	Post Transfer Basic Rent	Estimated Market Rent in Area
0 Bedroom				
1 Bedroom				
2 Bedroom				
3 Bedroom				
4 Bedroom				
<b>Total Units</b>				

**Tenant Subsidy at project:**

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

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

**F. Planned method of management and operation**

Management services provider and identification of any IOI or other related party affiliations to the seller or buyer:

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

*This page is intentionally left blank*

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	Rural town Bank	City	Other	Other
Total Acquisition	\$	\$	\$	\$	\$	\$	\$
Total Rehab	\$	\$	\$	\$	\$	\$	\$
Total Relocation	\$	\$	\$	\$	\$	\$	\$
Total New	\$	\$	\$	\$	\$	\$	\$
Total	\$	\$	\$	\$	\$	\$	\$
Total Survey &	\$	\$	\$	\$	\$	\$	\$
Total	\$	\$	\$	\$	\$	\$	\$
Total Permanent	\$	\$	\$	\$	\$	\$	\$
Total Attorney	\$	\$	\$	\$	\$	\$	\$
Total Reserve	\$	\$	\$	\$	\$	\$	\$
Total Appraisal	\$	\$	\$	\$	\$	\$	\$
Total	\$	\$	\$	\$	\$	\$	\$
Total Other	\$	\$	\$	\$	\$	\$	\$
Total Developer	\$	\$	\$	\$	\$	\$	\$
<b>TOTAL PROJECT COST</b>							

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.
Rural town Bank	\$	0.	3	3	\$	
City	\$	0.	3	3	\$	Residual receipts
Other	\$	0.	3	3	\$	
Other	\$	0.	3	3	\$	

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.

**ATTACHMENT 7-B-3**  
**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 American 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.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

*This page is intentionally left blank*

**ATTACHMENT 7-B-4**  
**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*, in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including contracts, subcontracts, and sub-grants under grants and loans) and that all sub-recipients 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)



*This page intentionally left blank*



## ATTACHMENT 7-C TAX CREDIT RENTS IN TRANSFER TRANSACTIONS

### [7 CFR 3560.202(g)]

Under applicable USDA regulations, borrowers are allowed to utilize Tax Credit Rents in Section 515 properties participating in the LIHTC program. The following discussion explains how the same unit type may have multiple Basic Rents in a Section 515 property with LIHTC. Rural Development refers to these situations as Tax Credit Rents. Note Rate Rents are not affected and continue to be set in the same manner as in non-LIHTC properties.

In most States, the competition for LIHTCs is intense. Most LIHTC allocation agencies provide priorities for proposals that provide for deeper affordability than the LIHTC minimum. Accordingly, a USDA borrower will sometimes propose transfers with multiple Tax Credit Rents in which a single unit may encompass two or more area median income levels.

Unit Type	LIHTC Allocation	# Units	Maximum LIHTC Rent	RD Basic Rent	LIHTC Credit Rent	Note Rent
1 BR	40% AMI	2 units	\$283	\$356	\$283	\$522
1 BR	50% AMI	2 units	\$389	\$356	\$369	\$522
1 BR	60% AMI	4 units	\$455	\$356	\$435	\$522
2 BR	40% AMI	8 units	\$312	\$420	\$312	\$597
2 BR	50% AMI	8 units	\$410	\$420	\$412	\$597
2 BR	60% AMI	16 units	\$508	\$420	\$489	\$597
3 BR	40% AMI	2 units	\$341	\$515	\$341	\$772
3 BR	50% AMI	2 units	\$410	\$515	\$451	\$772
3 BR	60% AMI	4 units	\$562	\$515	\$545	\$772
Total		48	\$250,320	\$244,896	\$244,896	\$353,472

For proposed transfers involving Tax Credit Rents, the Loan Servicer must determine whether the proposed rents will provide sufficient revenue to cover project costs including an adequate Transfer to Reserve. If sufficient revenue will not be available, the proposed transfer is not viable unless the borrower proposes an adequate plan for addressing the shortfall

A property with Tax Credit Rents is more difficult for the borrower to manage and more difficult for the USDA staff to monitor. Rural Development staff members are not responsible for assuring that borrowers are satisfying LIHTC compliance requirements. The LIHTC allocating agency is responsible for LIHTC compliance monitoring. Rural Development staff is, however, responsible for:

- Ensuring that tenants are not charged rents in excess of maximums allowed under USDA requirements.
- Ensuring that borrowers pay the correct amount of overage to USDA.
- Ensuring that borrowers cover shortfalls in revenue from reduced RTO and non-project funds.

In LIHTC properties, borrowers have powerful incentives to rent units only to households with incomes in the appropriate bracket to avoid losing LIHTC for that unit during the entire period of occupancy. One practical implication is that the borrower will need to maintain multiple waiting lists for the various LIHTC allocations. Accordingly, Rural Development staff should expect that borrowers will hold units vacant if there is no one on the waiting list in the appropriate income bracket, which could lead to increased vacancy losses in these projects. Rural Development staff should consider these factors carefully in judging the viability of the proposed transfer and in approving the proposed rent, vacancy allowance, and O&M expenses.

In LIHTC properties, it would be desirable if Rural Development could require that the LIHTC allocation be assigned to a specific unit. However, this is not possible and, the units will float throughout the property as a result of tenant turnover.

At the time that the Tax Credit Rents are implemented, Rural Development will require that the affected units be assigned based on tenant incomes (for example, the lowest 2 BR rent will be assigned to units occupied by the 2 BR tenants with the lowest incomes), and without regard to whether tenants are receiving RA.

Available RA will be assigned in accordance with existing Handbook requirements, see HB-2-3560, Paragraph 8.10. This guidance does not permit borrowers to shift RA to units with the highest Tax Credit Rents

The RD HQ will provide technical assistance to State Offices on a case-by-case basis in implementing Tax Credit rents, including assistance in assigning available RA.

---

*This page intentionally left blank*

## ATTACHMENT 7-D: TRANSFER REQUEST CHECKLIST

The following list of required documents constitutes a complete application for Agency approval of a proposed transfer. Agency processing will begin only when a complete transfer request package has been submitted as set forth below and as described in Attachment 7-B-1. The application package and all documents must have original signatures. Transfer requests must be submitted at least 45 days prior to the proposed transfer approval date. All documents must be submitted by the application.

### Proposed Transaction

Δ	Yes	Δ	No	Δ	N/A	Executive Summary (narrative)
Δ	Yes	Δ	No	Δ	N/A	Required written statement/certifications
Δ	Yes	Δ	No	Δ	N/A	MFH Transfer & Assumption Application Supplement (Attachment 7-B-2)
Δ	Yes	Δ	No	Δ	N/A	Application for Partial Release, Subordination or Consent (Form RD-3560-1)
Δ	Yes	Δ	No	Δ	N/A	Purchase and Sales Agreement
Δ	Yes	Δ	No	Δ	N/A	Current Preliminary Title Report
Δ	Yes	Δ	No	Δ	N/A	Legal Services Agreement

### The Project and Proposed Repairs

Δ	Yes	Δ	No	Δ	N/A	Capital Needs Assessment
Δ	Yes	Δ	No	Δ	N/A	Repair Agreement
Δ	Yes	Δ	No	Δ	N/A	Cost Estimate, if applicable (Form RD 1924-13, Estimate & Certificate of Actual Cost)

### Documentation of Market Rents and Value

Δ	Yes	Δ	No	Δ	N/A	Appraisal for USDA Security Value
Δ	Yes	Δ	No	Δ	N/A	Appraisal As-Is Unrestricted
Δ	Yes	Δ	No	Δ	N/A	Rent Comparability Study/ARMS
Δ	Yes	Δ	No	Δ	N/A	Purchasers best available evidence to support CRCU, if no appraisal

### Financial Aspects of the Transaction

Δ	Yes	Δ	No	Δ	N/A	Application for Federal Assistance (Form SF 424 & attachments)
Δ	Yes	Δ	No	Δ	N/A	Proposed Project Budget (Form RD 3560-7)
Δ	Yes	Δ	No	Δ	N/A	Sources and Uses of Funds Statement

### Third-Party funding (if applicable)

Δ	Yes	Δ	No	Δ	N/A	Application(s) for Funding
Δ	Yes	Δ	No	Δ	N/A	Financial Pro Forma Information
Δ	Yes	Δ	No	Δ	N/A	Environmental Information
Δ	Yes	Δ	No	Δ	N/A	Commitment Letters or Equivalent
Δ	Yes	Δ	No	Δ	N/A	Regulation Requirements
Δ	Yes	Δ	No	Δ	N/A	Interim Financing

**The Proposed Purchaser**

Δ	Yes	Δ	No	Δ	N/A	Purchaser's Resume
Δ	Yes	Δ	No	Δ	N/A	Previous Participation Certification (Form HUD 2530)
Δ	Yes	Δ	No	Δ	N/A	Identity of Interest Certification (Form RD 3560-30 or 3560-13)
Δ	Yes	Δ	No	Δ	N/A	Debarment/Suspension Certification (Form AD 1047 or AD 1048)
Δ	Yes	Δ	No	Δ	N/A	Purchaser's Financial Statements w/Attachments 7-B-3 MFH Transfer & Assumption Certification
Δ	Yes	Δ	No	Δ	N/A	Credit Report Fees
Δ	Yes	Δ	No	Δ	N/A	Attorney Certification of Eligible U.S. Citizenship/Qualified Alien Status submitted for Agency review

**Proposed Management**

Δ	Yes	Δ	No	Δ	N/A	Complete Management Plan
Δ	Yes	Δ	No	Δ	N/A	Attorney Opinion Regarding Proposed Lease & compliance with State/local laws & RD regulations
Δ	Yes	Δ	No	Δ	N/A	Management Certification (Form RD 3560-13)
Δ	Yes	Δ	No	Δ	N/A	Affirmative Fair Housing Marketing Plan (Form HUD 935.2A)

**Proposed Organizational Documents for Purchaser**

Δ	Yes	Δ	No	Δ	N/A	Purchaser's Organizational Documents
Δ	Yes	Δ	No	Δ	N/A	Attorney Certification certifying legal sufficiency

**Other:**

Δ	Yes	Δ	No	Δ	N/A	Assurance Agreement (Form RD 400-4)
Δ	Yes	Δ	No	Δ	N/A	Equal Opportunity Agreement (Form RE 400-1)
Δ	Yes	Δ	No	Δ	N/A	Lobbying Certification (Att. 7-B-4, MFH Transfer Certification & Form SF-LLL, if applicable)
Δ	Yes	Δ	No	Δ	N/A	Certification Regarding Drug-Free Workplace Requirements (Form AD 1049 or AD 1050)
Δ	Yes	Δ	No	Δ	N/A	Certification Regarding Collection Policies (Form RD 1910-11)
Δ	Yes	Δ	No	Δ	N/A	Letter from HUD concurring to transfer of HAP Contract & concurrence in post transfer rents
Δ	Yes	Δ	No	Δ	N/A	Request for Rental Assistance (Form RD 3560-25)