

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

7.1 INTRODUCTION

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

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

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

This chapter presents the requirements regarding project transfers and Rural Development's procedures for reviewing and approving such actions.

For purposes of the chapter, the term "applicant" or "transferee" or "purchaser" is used to refer to the entity that wishes to acquire the property and "borrower" or "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 Rural Development approval of a transfer, see Attachment 7-B-1.

SECTION 1: OVERVIEW

7.2 RURAL DEVELOPMENT'S OBJECTIVES AND GUIDING PRINCIPLES

A. Objectives

In evaluating transfer requests, the Loan Servicer should evaluate the government's best interests and be guided by Rural Development's three key objectives:

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

Through review of the purchaser's Executive Summary, as explained in Section 1 of Attachment 7-B-1, the Loan Servicer will determine whether the transfer meets these objectives. If a transfer does not meet each of the objectives, the Loan Servicer should work with the purchaser and the seller in an effort to resolve issues of concern.

B. Guiding Principles

In determining whether a transfer request will achieve these three objectives, the Loan Servicer should assess whether the transfer request is consistent with the following guiding principles:

- There is a need for the property in the community. This should be looked at in lieu of prepayment.
- When the transaction is complete, the property will be in the hands of eligible owners.
- The transaction will address the physical needs of the property.
- Existing tenants generally will not be displaced because of increased post transaction rents.
- Post transaction basic rents will not exceed conventional rents for comparable units (CRCU) unless an exception is allowable. See Paragraph 7.7 B.
- Any equity loan amount will be supported by a market value appraisal. [Paragraph 7.8 D and Attachment 7-D discusses appraisal requirements.]
- The Multi Family Housing Preservation and Direct Loan Division (MPDL) concurs with equity loan amounts or increased return to owner (RTO) and coordinates the approval of waivers for unusual transactions that fall outside of the normal transaction principles, National Office approvals, or revitalization related policy issues.

Revitalization Effective Processing Strategy #1 (see Attachment 7-A) states "the state Multi-Family Housing (MFH) preservation contact coordinates state revitalization activity." Individuals previously identified by their State Director as the designated MFH preservation contact will also coordinate revitalization efforts. Any change in designation or identification information should be sent to MPDL.

7.3 KEY ANALYTICAL CONCEPTS

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

Development, the transferee, and the borrower can address these problems or issues before completing the transfer.

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

A. Eligibility

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

- Is the transferee eligible?
- Will the project remain eligible?

B. Feasibility

The questions of feasibility require more in-depth analysis by the Loan Servicer. Feasibility is also a concept used for loan origination and is used to gain a better understanding of the transferee and the transferee's plans for the project. The Loan Servicer needs enough information to determine that the transferee and the project can be successful if the transfer is approved. See Paragraph 7.23.

C. Improve or Maintain Risk Levels

These questions build on the concept of feasibility to include a comparison with the existing borrower. Because a transfer involves existing tenants and an existing property, Rural Development must go beyond the questions of feasibility to ensure that the tenants and Rural Development will not face increased risks due to the transfer. For the particular risk factors that must be considered see Paragraph 7.27 A. For Rural Developments key transfer objectives that should be considered in evaluating these risks, see Paragraph 7.27 A.

7.4 DEFINITIONS

A. Transfer

This chapter applies to ownership transfers or sales [7 CFR 3560.406]. A transfer occurs whenever there is a change in a project's ownership:

- The title is transferred to a new owner, and the new owner assumes all liability for the debt; or
- There is a change in the legal entity owning the project, such that the transferee is considered to be 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).

Conversely, a change in membership (for example, a general partner interest is sold or bequeathed) would not constitute a transfer. Changes in membership (that is, changes in structure of the ownership entity that do not constitute transfers) do require some Rural Development involvement and are discussed in Chapter 5 of this Handbook.

Borrowers can request to transfer their project to another separate and distinct entity where the members are involved in both the transferring and the assuming entities, as long as the new entity is legally organized and meets applicable Rural Development 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. A Section 1031 exchange is an exchange of property in which capital gains tax deferral is available to real estate owners who sell their investment, rental or business real estate, and reinvest the proceeds in qualified replacement properties. The replacement property must be similar in nature (to be used for investment, rental or business), in other words "like-kind". The tax advantage in a Section 1031 exchange is that the property owner can defer their capital gains taxes associated with the property being sold. Also, by selling one property and buying a higher priced property, the property owner can get additional depreciation deductions. Section 1031 exchanges involve finding and working with a "qualified intermediary" who purchases the property being sold, purchases the replacement property, and transfers the replacement property to the seller.

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

This chapter does not apply to "non-program transfers," which are discussed in Chapter 6 of this Handbook. Non-program transfers arise in the following circumstances. Housing projects may be transferred or sold to entities that do not meet borrower eligibility requirements for the type of loans being assumed. However, such a transfer or sale will only be considered when it is determined by Rural Development to be in the best interest of the Federal Government and the objectives of the original loan can no longer be met. Significant conditions apply to non-program transfers as discussed in Chapter 6 of this Handbook and in the program regulations.

C. Related Definitions

The following are definitions for certain related terms:

- Identity-of-interest. See [7 CFR 3560.11].
- Non- equity compensation. A payment to the seller, from the buyer, when no equity exists in the property. This payment should come from non loan funds and have no impact on project rents. See Paragraph 7.8 E.
- Portfolio transaction. A transfer transaction involving multiple projects, with a common purchaser, all within one State.
- Third party funding. Sources of funds other than Rural Development funds and the purchaser's personal funds. Tax credit equity, HOME funds and Community Development Block Grant (CDBG) funds are just a few examples of third party

funding. Rural Development funds would include, for example, a subsequent Section 515 loan or a Section 583 loan. The purchaser's personal funds would include, for example, cash from the purchaser's checking account.

- Transferee. The purchaser. "Transferee" and "purchaser" are used interchangeably in this chapter.
- Transferor. The borrower or seller. "Transferor," "seller," and "borrower" are used interchangeably in this chapter.

7.5 CONDITIONS WHEN A TRANSFER MAY OCCUR AND TYPES OF TRANSFERS

A. Conditions When a Transfer May Occur

To ensure that projects continue to further the objectives of the program and that Rural Development's security is protected, Rural Development consent is required for all project transfers [7 CFR 3560.406 (b)]. Rural Development will pursue appropriate administrative and/or civil remedies with respect to transfers that occur without prior Rural Development approval, which Rural Development considers to be unauthorized sales. An unauthorized sale also constitutes a default on the Rural Development loan [7 CFR 3560, *subpart J*].

To explain why the transfer is needed, Rural Development suggests that the transferee document in its initial written transfer request that at least one of the following conditions are met:

- 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 Rural Development or tenants; or
- Other circumstances exist which make the transfer in the best interest of the Government.

Typically, Rural Development will not consider a transfer if the borrower has owned the property for less than five years. However, if the State Director determines that a hardship is present, the transfer may occur without penalty to the borrower. Examples of hardship include; but are not limited to:

- Illness or death of the borrower;
- Serious financial difficulties beyond a borrower's control that cause the borrower to shut down their business operation; or
- Inability of the borrower to obtain necessary credit on terms that would facilitate

refinancing the debt and allow for operation of the project at affordable rents.

B. Types of Transfers

There are many different characteristics and circumstances that may be present in a transfer. However, to provide a framework for understanding how requirements can vary across transfer requests, this chapter classifies transfers into three types according to the characteristics below.

- **Type I: Transfers Involving Assumption of Debt Only** – This type involves transfers where the transferee is simply assuming the existing Rural Development loan and no third party funding is involved. These transfers can involve a rent increase as long as rents do not exceed the CRCU standard. These transfers may involve modification of the Rural Development loan with “new rates and terms”. These transfers may also involve transfer of unused RA (Paragraph 9.16 of HB-2-3560). If other forms of Rural Development assistance are involved, the transfer would be Type II as discussed below. Type I transfers include portfolio transactions in which all of the individual transfer transactions are Type I transfers.
- **Type II: Transfers With Additional Rural Development Financing or Subsidy** – These requests involve transfers with additional financial assistance from Rural Development (e.g., a subsequent loan or debt deferral) together with the assumption of the existing Rural Development loan(s). Type II transfers, for example, include transfers utilizing Rural Development funds as part of the prepayment process. Multi Family Housing Preservation & Revitalization (MPR) Demonstration Program transactions, and portfolio transactions involving one or more Type II transfers. Transfers including third party funding fall into Type III as discussed below.
- **Type III: Transfers with Third Party Funding** – This type involves transfers where the transferee is bringing or seeking funding (i.e., financing or a subsidy) from a source other than Rural Development. Examples include transfers involving low-income housing tax credits, HOME funds, Section 538 loans or state housing trust funds. A transfer request is considered a Type III transfer as long as it involves third party funding. Type III transfers can be a single property transfer or a portfolio transfer. The third party funds do not have to be firmly committed at the time of the transfer request but will need to be committed before the transfer can be closed.

Exhibit 7-1, below, summarizes the requirements that apply to each type of transfer. All of the requirements that apply to Type I transfers (the “core requirements”) also apply to Type II and Type III transfers. The additional requirements for Type II transfers also apply to Type III transfers when a Type III transfer includes Type II funding from Rural Development (e.g., an MPR demonstration program transfer also using low-income housing tax credits).

For a list of documents to be submitted when requesting Rural Development approval of a transfer, see Attachment 7-B-1.

C. Level of Complexity

Some transfers raise complex issues and require close coordination between the borrower, purchaser, State Office, and National Office. However, simple transfers can be quickly and easily addressed between the borrower, purchaser, and State Office. For example, a simple transfer of title to a purchaser with proven capacity of a project without regulatory compliance issues, which does not require a rent increase or new funding from Rural Development, would proceed rapidly from application to approval to closing under the authority of the Loan Servicer with a final concurrence from the State Director. Compliance issues could include issues with the physical or financial condition of the property, poor management or noncompliance with civil rights and disability laws.

Transfers may be combined with other servicing actions. For example, a “loan agreement or loan resolution consolidation” under [7 CFR 3560.410(c)] could be combined with a portfolio transfer, so that two or more projects (pre-transfer) would constitute a single project (post-transfer), thereby reducing administrative burden for both the purchaser and Rural Development.

D. Deceased Borrower

When the spouse of a deceased individual borrower is not currently liable for the debt, the Loan Servicer can complete a transfer and assumption to the spouse using *Form RD 3560-21*, on the same rates and terms if the account is current or on new terms if it is not current. The Loan Servicer should obtain OGC advice and instructions before completing such a transfer. Attachment 7-B-1 notes the items in the transfer request checklist that need not be submitted in these situations. This exception is available only for a transfer to the deceased borrower’s spouse.

**Exhibit 7-1
Summary of Key Approval Requirements by Type of Transfer**

Program Transfers		
I. Assumption of Debt Only <i>[Core Requirements – all transfers]</i>	II. Transfer w/Rural Development Financing <i>[Additional Requirements]</i>	III. Transfer w/3rd Party Funding <i>[Additional Requirements]</i>
A. Completeness <input type="checkbox"/> Transfer Request is Complete <i>[Attachment 7-B-1]</i>	A. Completeness [No additional requirements.]	A. Completeness [No additional requirements.]
B. Transferee ** <i>[Section 4 of this Chapter]</i> <input type="checkbox"/> Citizenship <input type="checkbox"/> Organizational & Legal <input type="checkbox"/> Existing borrowers <input type="checkbox"/> Identify-of-interest <input type="checkbox"/> Site control <input type="checkbox"/> Insurance	B. Transferee [No additional requirements.]	B. Transferee [No additional requirements.]
C. Project <i>[Section 5 of this Chapter]</i> <input type="checkbox"/> Project will continue for the use initially approved [7.19, 7.20] <input type="checkbox"/> Civil rights & disability [7.21] <input type="checkbox"/> Capital Needs Assessment conducted [7.22] <input type="checkbox"/> Physical condition [7.22]	C. Project <input type="checkbox"/> Additional policy issues <i>[Section 2 of this Chapter]</i> <input type="checkbox"/> Additional physical condition requirements if rehabilitation involved [7.22] <input type="checkbox"/> If loan used for equity payment or increased RTO, required conditions met [7.8, 7.9] <input type="checkbox"/> Acceptable lien position [7.7, 7.8, 7.25] <input type="checkbox"/> Additional security requirements [7.26]	C. Project <input type="checkbox"/> Additional policy issues <i>[Section 2 of this Chapter]</i> <input type="checkbox"/> Additional physical condition requirements if rehabilitation involved [7.22] <input type="checkbox"/> If loan used for equity payment or increased RTO, required conditions met [7.8, 7.9] <input type="checkbox"/> Acceptable lien position [7.8] <input type="checkbox"/> Additional security requirements [7.26]
D. Feasibility <i>[Section 6 of this Chapter]</i> <input type="checkbox"/> Adequate sources of funds <input type="checkbox"/> Adequate operating budget <input type="checkbox"/> Transferee Capacity <input type="checkbox"/> Financial [7.17] <input type="checkbox"/> Management [7.18]	D. Feasibility <input type="checkbox"/> Subsequent loan requirements met [7.25]	D. Feasibility <input type="checkbox"/> Subsequent loan requirements met [7.25] <input type="checkbox"/> Additional requirements for projects receiving low-income housing tax credits [7.10, 7.11]

*** The project being transferred must be in compliance or have a Rural Development approved workout plan in place and on schedule. In addition, the purchaser (transferee) must be in compliance with Rural Development regulations or have a Rural Development approved workout plan in place and on schedule, with respect to any other Rural Development properties owned.*

7.6 PROCESSING A TRANSFER REQUEST

A. Key Steps

The Loan Servicer completes eight steps to move through the process of receiving a transfer application, evaluating the offer, and closing the transfer. These steps are listed in Exhibit 7-2.

Exhibit 7-2
Key Steps to Conduct a Transfer
1. Preliminary Assessment
2. Consulting with MPDL Regarding Unusual Transactions
3. Evaluating the Transferee
4. Evaluating the Project
5. Evaluating Feasibility
6. Evaluating Rural Development Loans and Overall Risk
7. Making the Decision
8. Implementing the Transfer

The Loan Servicer must complete all of the steps in Exhibit 7-2 for each transfer; however, the Loan Servicer may find that some steps in the process may be completed more quickly for some borrowers than others.

The Loan Servicer must demonstrate in the case file that the transfer application addresses the issues of eligibility, compliance, feasibility, and risk as discussed in this chapter.

- Consultation with MPDL (Step 2) is discussed in Paragraph 7.15.
- Types of transfers requiring MPDL concurrence are discussed in Paragraph 7.28.

B. Guidelines for Rural Development Processing of Transfer Requests

Once the application is complete, the Loan Servicer will conduct the evaluation of the transfer request within the following processing guidelines:

- 45 days if one property is involved.
- 90 days if 2-10 properties are involved.
- 120 days if 11 or more properties are involved.

The Loan Servicer should schedule the State Office review of the CNA, the required on-site inspection, and completion of the analytical template, so that the processing guidelines can be met.

C. 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. .
- Rural Development’s timeframe for processing the transfer request will be extended for the number of days beginning with the date of the notice and ending with the date Rural Development receives the needed information.
- If the information is not submitted within two weeks, Rural Development will consider the transfer request to have been withdrawn. The Loan Servicer may specify a longer time period where appropriate, not to exceed 30 days.

D. 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:

- Eligibility issues:
 - ◊ Ineligible transferee;
 - ◊ Ineligible project;
- Feasibility issues, such as:
 - ◊ CNA does not meet Rural Development requirements;
 - ◊ The proposed transfer does not address the property’s physical needs;
 - ◊ The appraisal submitted does not meet Rural Development 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 rents exceed CRCU (unless an exception is allowable under the regulation); and
 - ◊ Proposed rents are not adequate to support the property’s long-term viability.
- 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.
- The proposed management is not acceptable
- The proposed transfer would not result in a project classification of “A” or “B” in the MFIS system. When the provisions of the transfer agreement will correct all outstanding findings, the transfer agreement may be considered to be an acceptable workout plan for MFIS entry and reclassification after the transaction.

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 C. for incomplete transfer requests. Examples include:

- Proposed sales price (and/or equity pay-out) exceeds the allowable maximum, but the transfer request would be acceptable if the sales price (and/or equity pay-out) were reduced.
- Proposed rents exceed CRCU, but the transfer request would be acceptable with rents at or below CRCU.
- Proposed RTO exceeds the allowable maximum, but the transfer request would be acceptable if the proposed RTO were reduced.
- 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 if acceptable management / management documents were substituted. See Paragraph 7.26 for a further explanation of what is acceptable.
- The transfer request would be acceptable if an acceptable tenant protection plan were included. See Paragraph 7.27 for a further explanation of what is acceptable.

E. Payments Received while Transfer Pending

During the period that a transfer is pending in the Field Office, Deputy Chief, Finance Office (DCFO) 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 7 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 (March 2008) for additional guidance on processing transfers in AMAS.
- **Payment.** An interest only installment 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.

F. Uncompleted Transfer

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

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 within CRCU, a market-based measure. The CRCU standard is a benchmark meant to maintain the affordability of program units and avoid increasing Basic Rents above local conventional rents, a situation which could lead to non-competitive rents, excessive vacancies, or demand for new or increased rental assistance.

With the approval of the National Office, the CRCU standard may be exceeded in a transfer, but in no event can the unit rents in the transfer exceed 150% of CRCU level. Offices may find it necessary to exceed CRCU when the comparable rents are not sufficient to cover necessary operating, maintenance, and reserve costs at the property being transferred. This might occur in areas experiencing an economic decline which has led to rents in conventional properties being set below break-even levels. An increase in RTO or financing an equity pay out to a seller, while sometimes appropriate servicing actions, 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 whether the transferee can make loan payments immediately following the transfer and the long-term feasibility of the budget and rents to allow for a successful project. If there is any deficiency in the budget or rent structure, the transferee must take appropriate corrective action.

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 with the exception of a Section 538 Guaranteed Rural Rental Housing loan. If the transaction includes a Section 538 Guaranteed Rural Rental Housing loan, a developer fee may be included as part of the loan. Loan Servicers will insure 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 which are Rural Development approved repairs 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 and Attachment 4-B of HB-1-3560 and 7 *CFR* 3560.2.

The effective date of any rent increase resulting from a repair loan is following the completion of the repairs.

In addition, the Loan Servicer should review the budget to determine if the project reserve levels are adequate to allow for the necessary maintenance of the property over a 20-year CNA analysis period. If there are any deficiencies, the borrower must take appropriate corrective action.

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

In addition to Rural Development’s contractual requirements and any HUD Section 8 requirements, rents in Rural Development 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 conventional rents for comparable units in the area.

Attachment 7-A under Revitalization principles number (5) states that “post transaction basic rents will not exceed comparable market rents.” All project equity, rehabilitation, Rural Development or non-Rural Development debt service, reserve deposits, operating costs and RTO must be reflected in project basic rents which may not (except as provided below) exceed comparable market rents. That is, before determining the amount of equity pay-out or the amount of increased RTO, Rural Development will first establish a new reserve deposit level that is adequate to fund all reserve-eligible needs according to the CNA, and Rural Development will establish a new O&M expense level that is adequate to support the project.

Therefore, the relationship between proposed Basic Rents and CRCU must be established for all transfers, based on a CRCU determination by Rural Development using an acceptable method as discussed below.

The preferred methods for establishing CRCU rents are (a) an appraisal meeting Rural Development requirements (see Attachment 7-D and Chapter 7 of HB-1-3560); or (b) a Rent Comparability Study (RCS) meeting Rural Development requirements. If a RCS is used, Rural Development’s Statement of Work (SOW) should be used. Rural Development’s guidelines for a RCS are available in any Rural Development office.

Appraisal fees (including fees for Rent Comparability Studies) are purchaser/seller expenses and may not be paid from project funds.

When no appraisal is required (i.e., no new Rural Development funds are provided, and the transfer is on same rates and terms), one of the following alternative methods may be used to establish CRCU rents:

- Determinations by third parties:
 - ◇ Paragraph 4.18 of HB-1-3560 discusses a “market study” by an appraiser and a “market survey” by a non-appraiser. The “market study” (by an appraiser) is not an acceptable method to establish CRCU rents; however a market survey by a non-appraiser would be acceptable.
 - ◇ If the third party is an appraiser, a Rent Comparability Study 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.
- 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 are capped at 100% of CRCU if the proposed transfer includes increased RTO, or an equity pay-out to the seller. Non equity compensation can’t have an impact on rents.

In other situations (that is, when the proposed post-transfer rent increase is solely to support operations), Basic Rents may exceed CRCU but may not exceed 150% of CRCU [7 *CFR* 3560.406(d)(2)]. National Office concurrence is required in order to exceed CRCU.

Loan Servicers should note that Loan Servicer authority is capped at 100 percent of CRCU for transfer transactions (National Office Multi-family Preservation and Direct Loan (MPDL) concurrence is required in order to exceed CRCU for transfer transactions).

A rent increase is “solely to support operations” when the rent increase is for increased O&M expenses and/or an increased reserve deposit.

If the rent increase includes debt service on a new loan, generally Basic Rents must be at or below CRCU. An exception may be considered by Rural Development (and the rent increase is “solely to support operations”) if all of the following are true:

- No equity is being paid out.
- No increase in Return to Owner.
- 100% of loan proceeds are used for hard cost of repairs and other eligible purposes.

If, in processing a transfer, the State Office discovers that the existing Basic Rents exceed CRCU, the Loan Servicer must include documentation (to be forwarded later for MPLD review) that the above-CRCU rents were needed solely to meet operational requirements (that is, no increased RTO or equity pay-out was built into the pre-transfer rents). If documentation cannot be provided, a violation of [7 CFR 3560.406(d)(2)] has occurred, and the State Office and MPDL must decide how to restore compliance.

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 inspection by Rural Development. Debt service on new debt should not be included in Basic Rents until all eligible costs, funded with the proceeds of the new debt, have been expended.

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 more than 50% 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 515 loan purposes. See [7 CFR 3560.53] and Attachment 4-B of HB-1-3560.

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

7.8 SALES PRICE

A. Limitations on Sales Price

There is no limitation on sales price that is paid solely from assumption of existing debt plus non-Rural Development funds that do not affect the Basic Rents (for example, Low Income Housing Tax Credit equity, and the purchaser’s personal equity).

In all other situations, the sales price should not exceed the lower of two limitations. The first limitation is the total of:

- The appraised value of the real estate; and
- 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).

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 Pay-Out (General)

The intended purpose of this section is to clarify Rural Development's position as it pertains to paying out equity depending on different loan situations. Generally an equity payout pertains to transfers where the seller desires an equity payment.

1. *Equity Sources Not Affecting Basic Rents.* So long as the requirements of 7 CFR 3560.406(e) are met, Rural Development 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. Rural Development 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 Rural Development Debt Repaid Through Rents.* Note: current Rural Development policy is to fund equity pay-out with Rural Development loans only in prepayment situations. These 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:
 - The equity amount is limited to the lesser of an amount documented in an appraisal acceptable to Rural Development (see Attachment 7-D of this Handbook and Chapter 7 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.
 - The restrictive-use period has not expired, the appraisal determines the reduction in value attributable to the remaining period of restricted use, using a method acceptable to Rural Development. (Attachment 7-D of this Handbook and Attachment 7-A of HB-1-3560)
 - A new 30-year restrictive-use provision (RUP) is required. See Paragraph 7.31 D and [7 CFR 3560.406(g)].

- 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.
 - Subject to the restrictions of [7 CFR 3560.409], Rural Development may subordinate its first lien position to a third party equity loan that meets the requirements of this chapter provided Rural Development determines that there is adequate security value to cover Rural Development’s loans and any loans senior to the Rural Development loans.
4. *No Reversionary Interest.* If full payment is not made in cash to the seller, no rental income may be used to pay the remaining amount, and the seller will not have any reversionary interest in the project. [7 CFR 3560.406(c)(5)]
 5. *Use of Equity Loan Proceeds.* Proceeds of a proposed equity pay-out must be in accordance with [7 CFR 3560.406(e)].
 6. *Determining Equity When Repairs Are Required.* When repairs are required in connection with equity pay-out and will not be completed before the transfer occurs, the Repair Agreement (see Attachment 7-B-1) must include a guarantee, acceptable to Rural Development, that the actual repair costs will not exceed the estimated repair costs. Typically this guarantee (which might take the form of a letter of credit) will be provided by either the seller or purchaser.
 7. *Rural Development Approval.* The State Director may authorize a transfer involving equity pay-out only if:
 - The equity pay-out is proposed to be made from non-USDA funds.
 - The equity pay-out will not result in an increase to the Basic Rents.
 - No increase is proposed to the RTO.
 - There is no modification of any USDA loan.

C. Equity Pay-Out 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.

- No equity pay-out is allowed from USDA loan funds.
- Equity pay-out is allowed from other funds (typically, a third party loan is used; see the discussion above for Rural Development requirements for third party equity loans) provided that the transfer otherwise meets the requirements of this chapter.
- Rural Development 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.

- Rural Development requires appraisers to use a discounted cash flow approach 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, then a conversion period, then market-rate operations thereafter.

D. Summary of Relevant Appraisal Guidance.

See Attachment 7-D.

E. Non-Equity Compensation

In some cases, compensation may be paid to the transferor by the transferee when there is no equity in the project, in order to bring about the transfer. This situation is most appropriate when it is in the Rural Development's best interest to remove a borrower with compliance or performance problems, and non-equity compensation is less expensive than liquidating the property.

The State Director must ask the National Office to authorize the transaction (and no Rural Development 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 (for example, third party loans) before any amounts may be paid to the seller.

7.9 RETURN TO OWNER (RTO)

A. RTO in General

The transferee's initial investment and return on investment / Return to Owner will remain the same as that of the borrower unless:

- The transferee is a nonprofit entity, which is not eligible to receive a return on investment but may be eligible to earn an Asset Management Fee as described in [7 CFR 3560.303(b)(1)(ii)]; or
- The transferee contributes equity for payment of hard costs of construction (repair or rehabilitation), and Rural Development agrees to recognize a higher initial investment as described in Paragraph 7.9 B.

If the transfer is from a nonprofit 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.

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

Increased RTO is based on cash (not loan proceeds) invested in "hard costs" of construction. "Cash," for this purpose, includes LIHTC equity. "Hard cost," for this purpose, means actual material and labor cost only and does not include general requirements, overhead, or general contractor fee/profit.

Loan Servicers should note that the authority for this RTO calculation is found in [7 *CFR 3560.406 (d)*], and that this RTO calculation differs from the RTO calculations for prepayment transactions and for original development.

Increased RTO does not begin until the associated repairs have been completed and inspected by Rural Development. Until repairs have been completed and inspected, the existing RTO continues to be applicable.

If the increased RTO begins in the future, there should be an addendum made to the Loan Agreement. The addendum could include language such as the following: “The maximum annual Return on Investment (ROI) is in the amount of \$ _____. This amount has been determined by the allowable existing ROI of \$ _____ plus the proposed additional equity funds being contributed by the Partnership for payment of hard costs of construction. The indicated amount has been capped by the Comparable Rents for Conventional Units (CRCU) allowable rent at the time of transfer. The additional ROI may be earned starting the beginning of the first project fiscal year following the completion, and Rural Development approval, of the agreed upon rehabilitation.” The addendum must be submitted to the Regional OGC for review for any state law issues.

Increased RTO because of LIHTC equity is not time limited. The new RTO will apply for the remaining term of the loan unless there is a new servicing action.

The maximum new RTO continues to be limited to the RTO that is supportable within CRCU rents. This means that the proposed Basic Rents -- including an adequate reserve deposit, adequate O&M expenses, and the proposed increased RTO -- must be at or below CRCU.

If the post-transfer Basic Rents are below CRCU (for example, because the maximum LIHTC rents are below CRCU), the CRCU rents would still be used in the computation of maximum RTO. However, the purchaser may not be able to earn the full RTO in reality in any given year.

- The Loan Agreement will contain the maximum RTO (based on CRCU rents).
- 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.

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

Exhibit 7-3 illustrates how increased RTO is determined. The actual calculation is carried out in an analytical template in the format required by the National Office.

Exhibit 7-3. Example of Increased RTO Calculation				
1. Allocate Sources to Uses to Determine Equity for Hard Cost				
Sources of Funds	Uses of Funds			
	Acquisition	Hard Cost	Other Uses	Total
Loans				
515 Assumption	\$717,540	\$0	\$0	\$717,540
RD Subsequent Loan	\$0	\$250,000	\$0	\$250,000
HOME funds	\$0	\$186,550	\$0	\$186,550
Equity				
Cash from buyer	\$0	\$0	\$0	\$0
Tax credit equity	\$200,000	\$145,700	\$223,800	\$569,500
Total	\$917,540	\$582,250	\$223,800	\$1,723,590
Hard cost funded with equity		\$145,700		
2. Calculate Maximum New RTO Based on Rehabilitation				
Rehabilitation funded from equity sources		\$145,700		
RTO rate		8.0%		
Maximum increase in RTO		\$11,656		
Current RTO		\$2,792	\$10 PUPM *	
Maximum New RTO based on rehabilitation		\$14,448	\$50 PUPM *	
3. Calculate Maximum New RTO Based on CRCU				
CRCU Rents		\$154,944	\$538 PUPM *	
Minus current Basic rents		(\$113,472)	(\$394) PUPM *	
Minus increase in O&M expenses		(\$288)	(\$1) PUPM *	
Minus increase in Reserve deposit		(\$4,320)	(\$15) PUPM *	
Plus debt service savings (re amortization)		\$864	\$3 PUPM *	
Minus debt service on new loans		(\$13,536)	(\$47) PUPM *	
Maximum New RTO based on CRCU		\$24,192	\$84 PUPM *	
4. Conclusion: New RTO		\$14,448	Lesser of (2) or (3)	
* PUPM = per unit per month				

7.10 FEES TO DEVELOPER / BUILDER

A. Developer/Builder Fees in General

These fees cannot be paid from the proceeds of Rural Development loans, or from the operating account. See acceptable uses at [7 CFR 3560.306]. Rural Development recognizes, however, that in Type III transfers, non-Rural Development funders may allow developer / builder fees that are reasonable. Debt service on new debt may not be included in basic rents unless all proceeds are used for eligible 515 loan purposes (there is an exception for Section 538 loans, which can include a developer fee).

B. Deferred Developer Fee

Commonly, in transactions with third party funding, the maximum developer fee allowable exceeds the amount that can be paid in cash from the transfer transaction’s sources of funds. The balance is termed a “deferred developer fee.” Sponsors hope to collect their deferred developer fee from cash flow from the future successful operation of the property.

The deferred developer fee may not be paid from operations (but may be paid from authorized RTO that is earned by and paid to the borrower).

Rural Development 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)

The discussion in this section addresses the time period during which the LIHTC rents are in effect (generally 15 to 30 years but may be longer for some properties and in some states).

The discussion in this paragraph does not address Tax Credit Tiered Rents (different Basic Rents for the same unit type because of differing LIHTC affordability requirements); see Attachment 7-C and Paragraph 7.11 C. of this Handbook for a discussion of Tax Credit Tiered Rents. The following discussion explains how Basic Rents and maximum LIHTC rents can (and usually do) differ in Section 515 LIHTC projects not using Tax Credit Tiered Rents. The following is a summary of the relevant provisions of HB-2-3560, provided for convenience, and does not modify or supersede HB-2-3560.

Basic Rents continue to be set by Rural Development 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.

If Basic Rents are higher than the maximum LIHTC rents, then

- For tenants receiving RA and for tenants receiving Section 8, the tenant portion of the rent may not exceed the maximum LIHTC rent. The borrower may collect the full amount of RA (or Section 8) without violating LIHTC requirements.
- The borrower may not charge other tenants (non-RA, non-Section 8) more than the maximum LIHTC rent, and the borrower is responsible for any shortfalls in revenue (including all overage). See *7 CFR 3560.202(g)*.

If Basic Rents are equal to or lower than the maximum LIHTC rents, then:

- For Basic Rent tenants:

- ◇ Receiving RA or Section 8, the borrower may not collect more than the Basic Rent.
- ◇ Not receiving RA or Section 8, the borrower may not collect more than the Basic Rent.
- For above-Basic Rent tenants:
 - ◇ If the project was allocated LIHTCs after 1990, the borrower may charge tenants the appropriate overage rent, 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 (which the borrower must pay to Rural Development 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. Financial Viability When Basic Rents Exceed Maximum LIHTC Rents

If the proposed transfer involves a revenue shortfall because Basic Rents exceed maximum LIHTC 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.

If, however, the estimated shortfall is more than the post-transfer RTO, the proposed transfer is not viable unless the borrower proposes a funding mechanism that is sufficient (together with reducing the RTO to zero) to cover the likely revenue shortfalls. An example of an adequate funding mechanism is an operating deficit reserve, funded from non-USDA funds, adequate to cover projected revenue shortfalls over the LIHTC compliance period. In general, 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).

C. “Tax Credit Tiered Rents” in LIHTC Transactions [7 CFR 3560.202(g)]

The same unit type may have more than one Basic Rent in a Section 515 LIHTC property. The Note Rate Rents are not affected and continue to be set in the same manner as in non-LIHTC projects. Rural Development refers to these as Tax Credit Tiered Rents. See Attachment 7-C for a detailed discussion.

The National Office will provide technical assistance to State Offices on a case-by-case basis in implementing Tax Credit Tiered 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

Complex transfers may involve a variety of non-USDA funds such as Low Income Housing Tax Credit (LIHTC) equity, HUD funds under the HOME or CDBG programs, various State and local government programs, private loans, and private grants.

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:

- Rural Development requirement that Basic Rents not exceed CRCU. See Paragraph 7.7 B.
- Rural Development guidelines to protect unassisted tenants against transfer-related rent increases. See Paragraph 7.27 B.
- Subsidy layering analyses by other government funders. Loan Servicers should request these analyses and should review them if provided. See below.
- The purchaser’s applications to other funders (including any updated applications). Loan Servicers should require that purchasers provide these.
- 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, Rural Development requires a cost certification audit whenever new Rural Development funding is provided, and an identity of interest exists, as defined by 7 CFR 1924.4 (i).
- Rural Development 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.

When non-USDA funds are involved, Loan Servicers should address the following items when evaluating a transfer request:

- Loan Servicers should coordinate with other government funders so that the objectives of all of the funding agencies are achieved. When all of 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 each of the other government funders to determine their objectives, concerns, and constraints and to share USDA's objectives, concerns, and constraints.

- Government providers of funds are likely 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 of the sources and uses of funds in the transaction and to determine that the governmental funds (from all government sources) being used are no 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 this analysis from each of the other government funders.
 - ◇ A USDA SAUCE analysis is required only if a subsequent Rural Development loan is proposed.
 - ◇ In tax credit transactions, if the Rural Development State Office obtains and accepts the tax credit agency's subsidy layering review, no SAUCE analysis is required.
- 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 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. (“transfer with workout”) for discussion of a rare situation in which it might be prudent for Rural Development to allow a transfer to close prior to receiving the firm commitment for third party funding.
 - ◇ Rural Development 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% of total funds for the transaction). In these situations, State Offices are encouraged to cooperate with purchasers, which sometimes 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.
- Loan Servicers should understand the funding timetables of the other funds providers. When will funding decisions be made? When will initial funds be available to be drawn by the purchaser? If the funding timetables of other

fundings conflict with USDA's timetables or if sufficient funds will not be 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.

- 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.
- Loan Servicers should determine if reserves other than the Replacement Reserve will be required by other funders. Often an "operating reserve" will
- Loan Servicer should understand when funds can be withdrawn and what approvals are required for withdrawal and then decide whether those provisions are acceptable to Rural Development.
- Loan Servicers should determine whether there will be conflicts in regulatory requirements (i.e., differences in reserve requirements). If so, work with the purchaser to identify solutions acceptable to Rural Development. Typically, an inter-agency agreement is needed.

SECTION 3: PRELIMINARY ASSESSMENT (STEP 1)

7.13 PRE-REQUEST CONSULTATION WITH BORROWER AND TRANSFEREE

Revitalization Effective Processing Strategy #3 (see Attachment 7-A) states that "for each transaction, establish an up-front understanding for assessing capital needs, establishing the scope of rehabilitation and determining the appraised value." Accordingly, purchasers are encouraged to consult with Rural Development 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 (Attachment 7-B-1) and should encourage discussion with Rural Development as questions arise during preparation of the transfer request. In addition, the Loan Servicer should explain and provide any documentation necessary to assist the transferee in understanding Rural Development's eligibility requirements and the basis on which a transfer application is evaluated under [7 CFR 3560.406].

Purchasers may request that Rural Development provide Attachment 7-E 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.

The request to Rural Development for a transfer should come from the borrower per [7 CFR 3560.406 (c)].

7.14 INITIAL RURAL DEVELOPMENT REVIEW FOR COMPLETENESS

For the application to be considered complete and therefore eligible for review, the application must include all of the information listed in Attachment 7-E of this handbook Transfer Request Checklist. If the application is incomplete, the Loan Servicer will follow the procedure outlined in Paragraph 7.6 C.

7.15 CONSULT WITH MPDL REGARDING UNUSUAL TRANSACTIONS

MPDL wishes to facilitate unusual and complex transactions when needed to advance Rural Development's purposes and has learned that these transactions are more likely to be completed if unusual issues are identified and resolved as early as possible. Based on review of the purchaser's Executive Summary (see Attachment 7-B-1), State Offices should discuss unusual transaction features with MPDL as early as possible during the development of the transaction, generally soon after submission of the transfer request. Transaction features that should be discussed with MPDL 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, where the new debt service is proposed to be built into the new Basic Rents. The State Office and MPDL 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 or are participating in the MPR Revitalization Program.
- Unusual or novel transactions likely to raise policy issues.

SECTION 4: EVALUATING THE TRANSFEREE (STEP 2)

In reviewing and evaluating the transferee's eligibility, financial capability and management capability, if the Loan Servicer identifies any problems or issues of concern, the Loan Servicer should follow the procedure in Paragraph 7.6 C.

7.16 DETERMINE TRANSFEREE ELIGIBILITY

The Loan Servicer will evaluate the transferee's eligibility based on the items submitted as part of the transfer request. Rural Development's evaluation will verify that the transferee and the property satisfy the general eligibility, identity-of-interest, legal capability, and insurance requirements. If there are any deficiencies, the Loan Servicer will notify the transferee (and, as appropriate, the borrower) in accordance with the procedure outlined in Paragraph 7.6 C. The resolution of eligibility, identity of interest, legal capability and insurance deficiencies may, through Rural Development's discretion, include commitments acceptable to Rural Development to resolve some or all of the deficiencies in the future, but prior to closing.

The Loan Servicer must verify the transferee's and the project's eligibility before Rural Development can approve the transfer. Paragraphs 7.16 A through G address the various aspects of borrower eligibility that are discussed in Paragraph 5.8 of HB-1-3560 and discusses factors

that the Loan Servicer should consider in determining that the transferee is eligible. Paragraph 7.16 H addresses a key Revitalization Principle: “When the transaction is complete, the property will be in the hands of eligible owners.”

A. Citizenship Requirements

The purchaser must submit documentation of citizenship status. For partnerships, corporations, and trusts, documentation establishing the organization’s Tax Identification Number will be needed. For individual citizens, documentation establishing Social Security Number will be needed. For individuals with other citizenship status, refer to Paragraph 4.16 A. of HB-1-3560.

B. Organizational Requirements

Regarding the organizational documents, the Loan Servicer will verify that: (a) the organizational documents are properly signed; (b) they include the correct state statute for the purchaser organization; and (c) the State documentation and all necessary recording information is included. The Loan Servicer will then forward the organizational documents to OGC for review.

Regarding *Form AD 1047/1048* “Certification Regarding Debarment,” the Loan Servicer will use this form and *Form HUD-2530* “Previous Participation Certification,” to identify principals of the purchaser entity. The Loan Servicer will then check the principals against the list of debarred individuals at (<http://www.epls.gov/>) and will document his or her findings.

Regarding *Form RD 1910-11* “Applicant Certification Federal Collection Policies for Consumer or Commercial Debts,” the Loan Servicer will verify that the form is properly signed.

C. Legal Capability

The Loan Servicer must make a determination of the transferee’s legal capability to successfully assume and operate the project. This determination will be based on the 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. Requirements for Existing Borrowers

If the transferee is an existing borrower, refer to [7 *CFR* 3560.55(b)] and Paragraph 4.16 D of HB-1-3560, for a detailed discussion on further eligibility requirements for current or previous borrowers. The transferee must:

- Be in compliance with all program requirements or have been in compliance with an approved workout agreement for a minimum of six months for all other projects owned by members of the assuming entity;
- Have documented evidence that the conditions that resulted in the workout agreement were beyond the borrower’s control and were not due to inappropriate actions by the borrower; and

- No 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 IOI. 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:

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

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

F. Insurance

Once the purchaser submits evidence of insurance, the Loan Servicer must review the evidence of insurance coverage submitted in the application to verify that the transferee has obtained all required types of coverage and in the proper amounts. If there is any deficiency, the transferee must be required to take appropriate corrective action. Evidence of insurance is a Rural Development requirement for closing the transfer but does not have to be submitted at the time of the transfer request (see Attachment 7-B-1).

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

G. Site Control

The transferee's documentation must show control of the land as explained under [7 *CFR 3560.61(d)*] must own land when transfer is closed, or have a 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 submission to the purchaser.

H. Revitalization Principle #2: Eligible Owner

Attachment 7-A 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 Rural Rental Housing (RRH) program and be considered eligible within program requirements.

An applicant will be considered to be ineligible if the applicant is currently in noncompliance with existing Rural Development regulations including equal opportunity, fair housing, and accessibility requirements, or has an outstanding finding of non-compliance issued by Rural Development.

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

In transfer situations, generally the Loan Servicer’s review of transferee financial capacity can 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).
- The absence of financial issues that might call into question the transferee’s ability and willingness to operate the project in accordance with Rural Development requirements (for example, 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.

7.18 MANAGEMENT CAPACITY

The transferee must demonstrate that it will provide management acceptable to Rural Development 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.

SECTION 5: EVALUATING THE PROJECT (STEP 3) [7 *CFR* 3560.406(c) and (d)]

7.19 DETERMINE PROJECT SUITABILITY

Typically, the purchaser's written statements and the project's financial and operational history will 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.

The following addresses Revitalization Principle #1 (see Attachment 7-A) that states "there is a need for the property in the community." Prior to entering into a transfer or other revitalization process, Rural Development 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 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 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) 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 discussed in Paragraph 4.17 of HB-1-3560 (and that were reviewed when the project was originally developed) and discusses factors that the Loan Servicer should consider in processing the transfer request:

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 not applicable (except in a rare situation that the project is historically significant and the transfer includes rehabilitation to the building façade).

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

This requirement is not applicable (except in the rare situation that any planned rehabilitation is significant enough to affect the design of the project).

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 Rural Development 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 feasibility.

F. Other Project Eligibility Requirements

The Loan Servicer must verify that all Required Written Statements (see Attachment 7-B-1) were provided.

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

7.21 CIVIL RIGHTS AND DISABILITY COMPLIANCE

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

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

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

- Failure to market units in accordance with *Form HUD 935.2A, “Affirmative Fair Housing Marketing AFHM Plan - 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 disability practices;
- Improper waiting lists and tenant selection routines;
- Delaying or deferring maintenance; and
- Handicapped accessibility concerns.

7.22 PHYSICAL INSPECTION

All transfers require completion of a CNA. For properties of nine units or more, a third party CNA is required. For properties with eight units or less, this requirement may be satisfied in either of the following ways:

- A third party CNA.
- The purchaser accepts Rural Development’s published average CNA needs. For approved FY 2007 MPR Demonstration transactions, annual capital needs averaged \$1,110 per unit per year in 2007 dollars. For example, for an 8 unit project, underwritten in 2008, capital needs would be entered into the analytical template at \$9,146 per year each year for 20 years (8 x \$1,110 x 1.03 to account for inflation from 2007 to 2008). The analytical template would add inflation for years 2-20. The National Office may publish from time to time a revised per unit per year amount reflecting the average needs from recent CNAs.

Based on this information, all transfers 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 re-sizing of the ongoing deposits (i.e., a higher ongoing 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 Requirements

See the current Rural Development CNA Unnumbered Letter at <http://www.rurdev.usda.gov/rhs/mfh/MPR/MPRHome.htm>, or contact your local Rural Development office for more specific information about Rural Development CNA requirements.

For transactions that do not include third-party 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 (for example, transactions involving the acquisition of tax credits), the scope of work requires the CNA provider to use the proposed (and Rural Development -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, Rural Development 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 Rural Development, the purchaser, and/or other funders.

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 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 commence 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 inspection is to ensure that the transferee's plans are adequate to ensure that Rural Development's decent, safe, and sanitary criteria are met. The inspection will also help Rural Development assess compliance with applicable civil rights, disability, and environmental requirements. The Loan Servicer will conduct a compliance review if one had not been completed in the past 12 months prior to the physical inspection. Pictures of any deficiencies will be made part of the applicant's file.

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

For Rural Development funded repairs, the detailed repair and rehabilitation plans and costs will be based on the CNA, and 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.

Rural Development and the transferee must agree to and document all necessary repairs to make the housing decent, safe, and sanitary, and any planned rehabilitation. 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 Rural Development) 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. Rural Development 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 Rural Development, for providing housing and services to these tenants. Rural Development 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 must be adequate based on the level of repairs and rehabilitation required for the property. The objectives of the analysis are to ensure that the property is in full compliance with program requirements, the plans meet the best interest of the tenants, and the transferee has the financial and management capacity to fulfill the plans.

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

<p>Exhibit 7-4</p> <p>Funding Sources for Repairs</p> <ul style="list-style-type: none"> • 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 (as a last resort and only to the extent needed for essential repairs to ensure that the housing is decent, safe, and sanitary).
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D. Required Repairs and the Repair Agreement

The Repair Agreement (see Attachment 7-B-1) between the seller and purchaser must address all repairs that Rural Development will require in connection with the transfer. Generally these repairs will be identified in the CNA for completion in year zero (for health and safety related repairs) or year one. Year zero (health and safety) repairs must always be addressed in the Repair Agreement. Year one repairs must be addressed in the Repair Agreement unless the Loan Servicer directs otherwise (for example, the Loan Servicer might agree to exclude year one items that are currently functioning but are estimated to require replacement within one year).

The Repair Agreement must assure satisfactory and timely completion (generally within 12-18 months following closing). Satisfactory arrangements could include:

- Completion of urgent repairs as a precondition to:
 - ◇ Rural Development’s acceptance of a transfer request; or
 - ◇ Rural Development’s 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 Rural Development’s control.
- Funding of Rural Development required repairs from the proceeds of a subsequent Section 515 loan.
- Inclusion of funding for Rural Development-required repairs in a repair escrow that is administered by a third party lender, under procedures acceptable to Rural Development .

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

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

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

2. Due Diligence

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

3. Form FEMA 81-93

Form FEMA 81-93 will be completed for all transfers involving new Rural Development 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 Rural Development Approval Required for Third Party Funded Repairs

When there’s a third party funded repairs, Rural Development must approve the repair plan and cost estimate for the third party funded repairs. Costs in the final plan

will be evaluated by Rural Development using cost data sources recognized by the housing industry.

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

Funding to the reserve account should be adequate, in accordance with CNA determined 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. [7 CFR 3560.306(j)] provides guidance to any change to reserve account requirements.

SECTION 6: EVALUATING FEASIBILITY (STEP 4)

7.23 EVALUATE FEASIBILITY

Feasibility analysis is the process by which Rural Development 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. After the transfer, if Basic Rents rise no faster than inflation, the property should be viable for at least the 20-year CNA analysis period.

A. Analytical Template

In order to evaluate feasibility, complete an analytical template in the format prescribed by MPDL which can be found on sharepoint. This 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 disability findings, or other issues that must be resolved in order to restore compliance with Rural Development requirements).

C. Repair Related Issues

Does the CNA comply with the statement of work? Does the CNA accurately reflect the property's physical needs? Is it otherwise acceptable to Rural Development?

Is the transferee planning to make substantial repairs or undertake rehabilitation of the property, and do the transferee's initial plans seem reasonable?

Do the estimated repair costs seem reasonable?

If significant up-front rehabilitation is proposed, are there adequate provisions for supervising the work, inspecting the work, and controlling the repair funds?

Are there sufficient sources of funds to carry out repairs and to pay other costs of the proposed transaction?

D. Third Party Funding Issues

Are all sources of funds committed? If not, is it plausible that firm commitments will be received in time to close the transfer as planned?

Do any third-party funding sources impose additional restrictions on the real property? Do any third-party funding sources impose additional affordability requirements? If so, the Loan Servicer should document the 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

Is the proposed transfer likely to result in the physical displacement of tenants (for example, because of planned rehabilitation work)? If so, does the proposed transfer include an adequate tenant relocation plan?

Is it likely that the proposed rent increase will result in the economic displacement of tenants, unless adequate protections are in place? If so, does the proposed transfer include adequate protections for tenants?

F. Rents and the Proposed Operating Budget

Follow these steps to determine if the rents and proposed operating budget are sufficient for the operation of the housing:

- Determine CRCU rents, see Paragraph 7.7 B.
- Will the proposed transfer require a rent increase? If so, will the proposed rents be at or below CRCU?
- Are the proposed O&M expenses adequate to support the property's long-term viability?
- Is the level of rent loss (vacancy plus bad debt) reasonable in relation to the property's historical performance and local market conditions?
- Does the proposed operating budget include an adequate operating margin ("cushion"), so that the property can absorb reasonable, foreseeable fluctuations in revenues and expenses without risking deferred maintenance, default on Rural Development loans, or other financial stresses?
- Are the proposed rents adequate to support adequate O&M expenses, an adequate Reserve deposit, and other costs of operation?
- Are the proposed rents otherwise achievable (for example, in relation to tenant incomes)?

- Is it 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 Pay-Out

Does the transfer call for equity distributions to the existing owner? If so:

- Does the appraisal report meet Rural Development requirements for determining equity?
- Does the proposed equity pay-out comply with Rural Development requirements?
- Does the proposed transfer include adequate provisions to ensure that the seller has met all applicable requirements before equity is paid?

H. Rural Development Loans

Normally a transfer will involve assumption of the entire balance of the borrower's existing loan. If, however, there is insufficient security value, there will be a shortfall, the Loan Servicer should determine the borrower's intentions to address any outstanding balance. Will a write down be required as part of the transfer? See Chapter 11 of this Handbook for more information on write downs.

After the transfer:

- Will all Rural Development loans be current?
- Will the taxes and insurance account be adequately funded, with all outstanding bills paid?
- Will the security deposit account be fully funded?

Is the transferee requesting a subsequent loan? Does the proposed amount of the subsequent loan seem reasonable and sufficient based on the information and supporting documentation reviewed by the Loan Servicer? If any of the answers to these questions is no, the loan servicer, through negotiations with the applicant, should be met to cure these deficiencies, enter into a credible plan to cure any deficiencies or reject the application and provide appeal rights.

I. Other Feasibility Issues

Will the proposed transfer result in a project classification of "A" or "B" in the MFIS system?

Are there any other conditions in the proposed transfer or the proposed budget that Rural Development or the project's tenants may find objectionable?

SECTION 7: EVALUATING RURAL DEVELOPMENT LOANS AND OVERALL RISK (STEP 5)

7.24 EXISTING RURAL DEVELOPMENT LOANS

A. New Terms or Same Terms? [7 CFR 3560.406 (j)]

Loan Servicers will review the account to determine which type of transfer needs to occur. Rural Development generally completes transfers on “new rates and terms.” Rural Development does allow transfers at same rates and terms even if the transfer does involve an increase in rents. In order for this type of transfer to take place, it is incumbent upon the borrower to demonstrate how a transfer under same rates and terms is in the best interest of the Government. For example, if the new owner under a transfer has applied for tax credits and to qualify for nine percent credits, it is necessary to retain same rates and terms, it could be justified to allow a same rates and terms transfer. Before making a recommendation on the transfer, the Loan Servicer should determine if the transfer will be on new terms or the same terms and address any issues or obstacles that this may present.

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 Rural Development 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 Rural Development 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 less.
- The interest rate on Labor Housing loans will be the rate specified in the note, generally one 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 Rural Development's best interest to accept an option that is less than the lowest-cost option. The Loan Servicer should ensure that the necessary actions to resolve any issues with the existing borrower are completed, or far enough along in the process, to allow for the completion of the transfer. The Loan Servicer should:

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

If there is insufficient security value to support the existing Rural Development debt, typically the seller will not have equity in the property. If the seller does have equity that is supported by an appraisal meeting Rural Development requirements and equity pay-out is proposed, consultation with MPDL would be appropriate. If the seller does not have equity, and non-equity compensation is proposed, see Paragraphs 7.8 E. and 7.29 F.

7.25 SUBSEQUENT RURAL DEVELOPMENT LOANS [7 CFR 3560.406 (h) and (i)]

Rural Development 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. A Rural Development subsequent loan may be a parity loan (sharing the first lien position with the existing Rural Development loan) or a junior loan (junior to an existing non-Rural Development loan and sharing the second lien position with the existing Rural Development loan), or a soft second from a third party. A third party subsequent loan may have the first lien position, with the existing Rural Development loans accepting second lien position if the loan(s) are sufficiently secured (Rural Development 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 loan from Rural Development, 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 THERE IS 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 Rural Development loans to be assumed by the transferee must be sufficient to ensure that all Rural Development loans being assumed and all subsequent loans offered as a part of the transfer can be secured to a level that fully protects Rural Development. Soft second loans are not included in this determination.

The proposed debt (existing debt being assumed and any additional debt) shall be counted for determining the security value limitations set out in [7 CFR 3560.63]. Soft second mortgages secured only by proceeds from a future sale of the property may be excluded from the debt ceiling and security value calculations.

In all cases, appraisals will be required when new debt is added or when the transfer will be approved and closed new rates and terms. The amount of indebtedness to be assumed will be based on an appraisal that complies with the Uniform Standards of Professional Appraisal Practices (USPAP). In no instances will appraisals be inflated to defer loan losses and write-offs, to avoid adverse tax consequences, or to support a higher tax credit basis.

7.27 ASSESS THE OVERALL RISK AND THE IMPACT ON RURAL DEVELOPMENT 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:

A. Is the Potential for Financial Loss to Rural Development 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 Rural Development 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, Rural Development 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)].

- In these situations, Rural Development may require that post transfer rents for unsubsidized tenants be subsidized by the owner foregoing the ROI, to the extent necessary to reduce the rental payment to the pre-transfer rent (or 30% of adjusted income, if higher).
- If Rural Development 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.
- Annual operating budgets are to reflect the amount of foregone return on investment 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 either:
 - ◇ 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 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% of adjusted income, until the tenant can pay the full post-transfer Basic Rent.
- 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 (ROI) level / discussed in paragraph [x], the owner is 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% of income 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 shall 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.

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, they must continue to work with the transferee to resolve any outstanding issues before recommending the transfer. The information the Loan Servicer receives as part of the application and documentation completed during the review process will account for most of the documentation required. However, the Loan Servicer should include a narrative statement in the case file explaining how the Loan Servicer reached the conclusion that the transfer meets the objectives of Rural Development.

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*. They should give a signed copy of this form to the transferee, keep another signed copy in the Field Office case file, and retain the original form in 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*.

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

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

7.29 OBTAIN MPDL 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 MPDL 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 MPDL's review. When requesting MPDL concurrence, the State Office will forward only the materials needed for MPDL's review. The docket itself will not be forwarded to MPDL, unless requested by MPDL, but the Loan Servicer needs to include in the docket all materials that the State Office will need to forward to MPDL.

To request MPDL concurrence, the State Director emails the National Office to request MPDL's concurrence, attaching only those materials that are needed for MPDL'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 Rural Development 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 Rural Development, and that the appraisal was otherwise completed in accordance with applicable Rural Development requirements.
- The analytical template (in the format prescribed by MPDL).
- If this paragraph indicates MPDL will need to review additional information, the appropriate additional information (e.g., Loan Servicer memorandum concerning proposed business terms of new third party debt).

The State must also fax a copy of the signed request letter to the National Office.

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

MPDL review and concurrence is required for all prepayment-related transfers (i.e., properties being transferred pursuant to Chapter 15 of this Handbook).

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

A. Equity Pay-Out to Seller.

Using the analytical template supplied by the Loan Servicer, MPDL will verify that the equity pay-out 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 analytical template supplied by the Loan Servicer, MPDL 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, MPDL 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 MPDL review, a memorandum stating that the Loan Servicer has reviewed the proposed business terms of the new debt to verify the applicable Rural Development guidelines listed below have been satisfied:

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

C. Increased Return To Owner.

Using the analytical template supplied by the Loan Servicer, MPDL will verify that the new Return To Owner has been correctly calculated as discussed in Paragraph 7.9 B. MPDL 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 MPDL review, documentation that applicable tenant protection requirements have been satisfied as discussed in Paragraph 7.27.

D. Section 515 Loan Modified.

If the underlying 515 loan(s) will be modified (for example, 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. MPDL will review the proposed modification(s) to verify that applicable Rural Development requirements have been satisfied.

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

For these transfers, the Loan Servicer must include in the docket, for MPDL 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).
- 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.

MPDL's concurrence is required (and MPDL will review the analytical template) if the transfer involves non-equity compensation (see Paragraph 7.8 E).

G. Exceptions to Regulations.

If elements of the proposed transaction are not in accordance with applicable regulations, MPDL's approval of those elements must be obtained. MPDL 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 to support an adequate reserve deposit (i.e., so that all projected reserve-eligible needs can be funded from the reserve) and adequate 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 when 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 MPDL:

- 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. Transfers That Have Applied For, Or Are Currently Participating In, the Multifamily Portfolio Revitalization (MPR) Program.

Awards of “MPR Tools” such as debt deferral, grants, deferred payment or soft loans require MPDL approval.

SECTION 8: MAKING THE DECISION (STEP 6)

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

7.30 OVERVIEW [7 CFR 3560.406 (k)]

Rural Development has established specific requirements for implementing project transfers to assure that the obligations and responsibilities of the transferor are formally passed to the transferee and that Rural Development’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 (a “same rates and terms” transfer does not require a new mortgage or deed of trust);
- The transferor is released from liability when all Rural Development security is transferred and the total outstanding debt is assumed; and
- Applicable restrictive-use provisions are required for the transferred loans.

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

Exhibit 7-5

Basic Steps for Implementing Transfers

1. Determine current loan balances for transfer;
2. Prepare the closing package;
3. Review applicable requirements with the transferee;
4. Determine the new RUP;
5. Write the Letter of Conditions;
6. Obligate the subsequent loan, if applicable;
7. OGC review;
8. Approve the transfer;
9. Close the transfer;
10. Release the seller from liability;
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
15. 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 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 DCFO to determine the disposition of future payments (as a refund to transferor or apply it as an extra payment to the transferee’s account). Loan Servicers should refer to the AMAS Manual, Chapter 4, for additional guidance.

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-E) and not provided earlier (for example, 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 Rural Development 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 carefully reviews with the transferee the applicable loan program regulations and loan agreement or resolution, if this was not fully completed during the preliminary request meeting in accordance with Paragraph 7.13.

D. Determine New Restrictive Use Period Requirement

Exhibit 7-6 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 Rural Development and signed by the borrower; and (c) a deed restriction.

Exhibit 7-6		
RUPs For Transfers <u>Outside the Prepayment Process</u>		
<i>[7 CFR 3560.406(g) and 7 CFR 3560.662(b)]</i>		
Type of Transfer (Outside the Prepayment Process)	20-Yr	30-Yr
Third party equity loan (i.e., USDA is not the lender)		30-yr
All other transfers outside the prepayment process (i.e., no equity paid with loan funds)	20-Yr	

For transfers occurring in the prepayment process, the State Office should work closely with MPDL, 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 Rural Development's approval for the purchaser and seller to close the transfer. Review the draft Letter of Conditions with the purchaser.

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

Form RD 3560-51 is required if new Rural Development funds are being provided.

Normally, a new Loan Agreement/Resolution will be required for all transfers with guidance from the Regional OGC. *Forms RD 3560-33, "Loan Agreement," 3560-34, "Loan Agreement," or 3560-35, "Loan Resolution,"* are always required if changes must be made to the existing loan agreement, or the transfer is a new terms transfer.

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

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

G. OGC Review

After receiving MPDL concurrence, the State Director will forward the docket to OGC for review and preparation of 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

The Loan Servicer completes *Form RD 3560-20*. The purchase contract between the buyer and seller should be attached as an addendum. The *Form RD 3560-20* is primarily a record of Rural Development's determinations regarding the transfer; however, the seller and purchaser sign page six to certify their agreement with those statements within the Form that relate to the purchase contract.

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 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.

The Loan Servicer documents any necessary actions to bring the project into compliance with regulations and loan instruments, such as delinquent payments, under funded reserves, accessibility issues, and deferred maintenance.

If any Required Repairs were to be completed prior to closing, the Loan Servicer documents that they have been completed. See Paragraph 7.22 D.

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

SECTION 9: IMPLEMENTING THE TRANSFER (STEP 7)

7.32 CLOSING THE TRANSFER

A. Overview

Rural Development 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 (5) 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 Rural Development and those to which Rural Development has previously agreed, unless prior written approval is obtained from the National Office.

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

B. Release the Seller from Liability

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

If all of a transferor's outstanding Rural Development debt is not assumed or paid off at the time of the transfer or sale, Rural Development will not release a borrower from liability unless Rural Development 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 any other purpose, the transfer will not be completed until DCFO 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.

1. Reporting

Following the transfer, transferees must submit monthly or quarterly project financial reports to Rural Development to demonstrate the financial viability of the project.

2. Tenant Certifications

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

3. Identification of All Creditors

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

B. Schedule a Follow-up Servicing Visit

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

C. Monitoring Rehabilitation Work

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

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 MPDL concurs with equity loan amounts or increased 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. Reamortization of existing Rural Development debt to reduce debt service.
 5. Reallocate unused RA units to assure affordability by existing tenants.
 6. Allow for a post-transaction asset management fee to a nonprofit or public body.
 7. Other waivers and National Office approvals as necessary.
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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 see [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, see Chapter 15 of this Handbook.
 - 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, site control can be established through an option to purchase, or through a purchase and sale agreement.
- G. If the proposed Return to Owner differs from the Return to Owner 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 7.9.
- 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 detailed information called for below):
- Funding provider.
 - Commitment status (e.g., application submitted, conditional commitment received).
 - 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 purchaser, 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]”.
- A. **Joint Statement Concerning Project Equipment and Accounts.**
Acknowledgment 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
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maintenance account, reserve account, tenant security deposit account, tax and insurance escrow accounts”. 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 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, certifying 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 [7 CFR 3560.406(c)(5)].
- H. **Purchaser Statement Concerning Tenant Certifications.** The purchaser’s plan for complying with the requirement that “[a] 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 agreement 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 5 years, the seller's acknowledgment that the seller 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.
3. **MFH Transfer & Assumption Application Supplement**, Attachment 7-B-2.
4. **MFH Transfer & Assumption Contact List**, Attachment 7-B-3.
5. **Partial Release or Subordination (if applicable).** If the proposed transaction includes partial release or subordination of Rural Development's lien, must include Form RD 3560-1.
6. **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, see [7 CFR 3560.406(d)(6)]. Purchasers and sellers may use *Form RD 440-34*, "Option to Purchase Real Property," as the purchase and sale agreement.
7. **Current preliminary title report**, See [7 CFR 3560.406(d)(13)]. May be omitted for Deceased Borrower transfers (Paragraph 7.5 D.)
8. **Legal services agreement**, See [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

9. **Capital Needs Assessment ("CNA")** see Paragraph 7.22. The CNA will be reviewed by the RD State Office Architect and may need to be revised or adjusted to conform with Rural Development program requirements. Final approval of the CNA must be provided by the RD State Office Architect prior to final approval of the transfer. May be omitted for Deceased Borrower transfers (Paragraph 7.5 D).
10. **Repair Agreement**, see [7 CFR 3560.406(d)(7)]. May be omitted for Deceased Borrower transfers (Paragraph 7.5 D). 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:
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- 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 Identity 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,*” will need to be submitted 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. For Rural Development requirements regarding instructions to the appraiser, see Attachment 7-D and Chapter 7 of HB-1-3560. Purchasers may request that Rural Development provide Attachment 7-E 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. 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 debt 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. 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 3560.351 through 3560.400].

12. **Appraisal for USDA Security Value.** See Attachment 7-D and Chapter 7 of HB-1-3560.
- A. The instructions to the appraiser must include language specified by Rural Development, see Attachment 7-D.
 - B. Appraisal for security value is required if the sum of the USDA loan balance at the time of transfer, plus any subsequent loan, will exceed \$100,000. May be omitted for Deceased Borrower transfers, see Paragraph 7.5 D.
13. **Appraisal As-Is Unrestricted.** See Attachment 7-D and Chapter 7 of HB-1-3560.
- A. Appraisal of the as-is unrestricted value is required whenever an equity pay-out is proposed to the seller. An as-is unrestricted appraisal means the property will be valued as a conventional property with no rent or subsidy restrictions.

- B. The instructions to the appraiser must include language specified by Rural Development, see Attachment 7-D.
 - C. If, at the time of the proposed transfer, a Restrictive Use Provision or Restrictive Use Covenant will be in effect, the appraiser must take into account the reduction in value attributable to the remaining restriction, using appraisal methods specified by Rural Development, see Attachment 7-D.
14. **Rent Comparability Study (“RCS”).** If neither of the preceding appraisal products is required for this transaction, an RCS may be required to establish 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 E. May be omitted for Deceased Borrower transfers (Paragraph 7.5 D).

Financial Aspects of the Transaction

16. **Form SF-424, “Application for Federal Assistance”.** Required for all transfers other than Deceased Borrower transfers (Paragraph 7.5 D).
- A. Application for Federal Assistance. *Form SF-424.*
 - B. Budget Information – 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 project’s 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 transfers (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 that is proposed to be paid to the seller, the purchaser, any affiliate of the seller, or any affiliate of the purchaser. Each such proposed use will identify the proposed amount, will identify the entity to whom it is proposed to be paid, will disclose the nature of any identity of interest / affiliation with seller and/or purchaser, and will 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 Return To Owner 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. 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. See Paragraph 7.16 F and [7 CFR 3560.406(d)(11)].

Third Party Funding (If Applicable)

The following should be submitted with respect to each proposed source of third party funds.

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. 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-to-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 Uses 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. **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 transfers (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. *Form AD 1047*, “Certification Regarding Debarment, Suspension and other Responsibility Matters” or
 - B. *Form AD 1048*, “Certification Regarding Debarment Suspension: Ineligibility and Voluntary Exclusion.”
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. Nonprofit applicants principals may satisfy this requirement by submitting their current *IRS Form 990 “Return of Organization Exempt from Income Tax”* (with Schedules A & B); and
-

- D. Attachment 7-B-4 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 following required credit reports. Recommend you contact your local RD 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% 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 the existing principal(s) of the entity..
32. **Proof of Citizenship.** For each proposed principal, documents establishing citizenship (including social security or tax identification number).

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. **Form RD 3560-13, "Multi-Family Project Borrower's/Management Agent's Management Certification."** 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 nonprofit 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 DirectorsPurchaser 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 capability 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 HB-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 minimum five percent financial interest in the residual or refinancing proceeds of the partnership.
 - E. That the organizational documents require 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. *Form RD 400-4*, "**Assurance Agreement.**" Certifying civil rights compliance.
40. *Form RD 400-1*, "**Equal Opportunity Agreement.**"
41. **Lobbying Certification(s).**
- A. Attachment 7-B-5 is required.
 - B. *Form SF-LLL*, "Disclosure of Lobbying Activities," if applicable.
42. **Certification Regarding Drug-Free Workplace Requirements.** Either:
- A. *Form AD 1050* "Certification Regarding Drug-Free Workplace Requirements (Grants) - Alternative II for Grantees Who Are Individuals."
 - B. *Form AD 1049* "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I - For Grantees Other Than Individuals."
43. *Form RD 1910-11.*

Other (As Applicable)

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. *Form RD 3560-25, “Initial Request for Rental Assistance or Operating Assistance.”*
This form is used if Rental Assistance is being requested.

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 (hereafter referred to as "USDA") on their property applies for release or subordination of the liens of said security instruments and consent to the following transaction:

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

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, nonprofit, corporation, LLC, tribe, public body, cooperative, individual

Tax ID #: _____
Date of formation: _____
Official Mailing Address: _____
Developer/Sponsor Name: _____

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

Primary contact person for this transaction: _____

Capacity: _____

Organization: _____

Address: _____

Phone: _____ Fax: _____ E-mail: _____

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

B. Member/Owner information (complete one):

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

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

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

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

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

Estimated 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 acquisitions costs	\$ _____
Total rehab costs	\$ _____
Total all other costs	\$ _____
TOTAL PROJECT FUNDING	\$ _____

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

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

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

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

Tenant Subsidy at project:

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

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

F. Planned method of management and operation

Management services to be provided by:

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

General discussion of management plan: _____

7. Certifications

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

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

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

CERTIFICATION

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

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

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

Date Signed: _____
Applicant/Transferee

MFH Transfer Development Budget (Sources & Uses of Funds)

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

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

Balanced

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

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

Interim Financing Detail (for all sources other than USDA)

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

**ATTACHMENT 7-B-3
MFH TRANSFER & ASSUMPTION CONTACT LIST**

Applicant's Representatives:

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

Applicant:

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

Developer:

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

Applicant's Consultant:

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

Applicant's Attorney:

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

Other:

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

Financing & Underwriting:

Interim Lender:

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

Permanent Lender:

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

Lender's Counsel:

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

Bond Issuer:

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

Bond Counsel:

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

Bond Underwriter:

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

Tax Credit Investor:

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

Tax Credit Investor's Counsel:

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

Other:

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

Other:

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

Professional Services:

Comprehensive Needs Assessment analyst:

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

Appraiser:

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

Market Study analyst:

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

Escrow:

Title Company to handle the transfer:

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

Phone: _____ Fax: _____ E-mail: _____

Other:

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

Phone: _____ Fax: _____ E-mail: _____

Construction:

Architect:

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

Phone: _____ Fax: _____ E-mail: _____

General Contractor:

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

Phone: _____ Fax: _____ E-mail: _____

Other:

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

Phone: _____ Fax: _____ E-mail: _____

Operation & Management:

Current Property Manager:

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

Proposed New Property Manager:

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

ATTACHMENT 7-B-4
MFH TRANSFER & ASSUMPTION FINANCIAL STATEMENT CERTIFICATION
Financial Statement Certification

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

Financial Statement of: _____

Date of Financial Statement: _____

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

Signature

Date

Name

Title

ATTACHMENT 7-B-5
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 subawards at all tiers (including contracts, subcontracts, and subgrants under grants and loans) and that all subrecipients shall certify and disclose accordingly.

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

_____	_____
(signed)	(date)

(name)	

(title)	

(name of certifying entity)	

ATTACHMENT 7-C

TAX CREDIT TIERED RENTS IN LIHTC TRANSACTIONS

[7 CFR 3560.202(g)]

The following discussion explains how the same unit type may have more than one Basic Rent in a Section 515 LIHTC property. Note Rate Rents are not affected, and continue to be set in the same manner as in non-LIHTC projects. Rural Development refers to these situations as “Tax Credit Tiered Rents”.

In most States, the competition for LIHTCs is intense. Most LIHTC allocating agencies provide priorities for proposals that provide for deeper affordability than the LIHTC minimum. Accordingly, USDA borrowers will sometimes propose transfers with Tax Credit Tiered Rents in which a single unit type may encompass two or more different Basic Rent levels. Under applicable USDA regulations, borrowers are allowed to utilize Tax Credit Tiered Rents in Section 515 LIHTC properties.

For example, in a project containing 20 2BR units:

- 10 units have maximum rents at 30% of 60% of Area Median Income (AMI), which is the normal LIHTC maximum rent.
- 4 units have maximum rents at 30% of 50% of AMI.
- 4 units have maximum rents at 30% of 40% of AMI.
- 2 units are not covered by LIHTC requirements (because, at the time of LIHTC approval, they were occupied by tenants with incomes above the LIHTC maximum income).

In this example, the 2BR unit type would have as many as 4 different Basic Rents. This will make the project more difficult to manage for the borrower, more difficult to monitor for the LIHTC allocating agency, and more difficult to monitor for USDA staff. One practical implication is that the borrower will need to maintain multiple waiting lists for the 2BR units. For proposed transfers involving Tax Credit Tiered Rents, the Loan Servicer must determine whether the proposed Tax Credit Tiered 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 as discussed in subsection 2 above.

In Tax Credit Tiered Rent projects, borrowers have powerful incentives to rent units only to households with incomes in the appropriate bracket (because failure to do so would sacrifice the LIHTC for that unit during the entire period of occupancy). Accordingly, Rural Development staff should expect that borrowers will hold units vacant if there is no waiting list in the appropriate income bracket, which could lead to increased vacancy losses in these projects. A potentially offsetting factor is that the deeply-affordable units are more likely to have waiting lists, which could lead to reduced 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 Basic Rents, vacancy allowance, and O&M expenses.

In Tax Credit Tiered Rent projects, it would be desirable if Rural Development could require that the deeply-affordable units be “fixed” (that is, assigned to specific physical units). However, as a practical matter, the deeply-affordable units will “float” as the result of changes in tenant incomes. Rural Development staff 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 are, 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 Return to Owner and non-project funds.

When Basic Rents are being increased in order to provide increased RTO, tenant protection requirements apply. See [7 CFR 3560.406(b)] and Paragraph 7.27 B.

In Tax Credit Tiered Rent projects, Note Rate rents are not affected, and Note Rate rents continue to be set in the same manner as for other projects. Note Rate rents will be set based on the weighted average of the Tax Credit Tiered Basic Rents for each unit type.

Example. The table below illustrates that Note Rate rents are set based on the weighted average (total Basic Rent, divided by total units) of the tiered Basic Rents.

Unit Type	LIHTC Tier	# Units	Tiered Basic Rent	Note Rate Differential	Note Rents
2BR	40% AMI	8	\$312		\$597
2BR	50% AMI	8	\$410		\$597
2BR	60% AMI	16	\$489		\$597
Total (Monthly)		32	\$13,600		
Weighted Average			\$425	\$172	\$597

In the example above, the \$597 note rate rent is the \$425 weighted average Basic Rent plus the \$172 Note Rate differential.

The Note Rate differential for each unit type was established at the time of original processing and remains unchanged unless the loan is re-amortized. The differential is this unit type's share of the difference between the debt payment at the Interest Credit rate and the debt payment at the note rate of interest. That is, each 2BR unit's share of the RHS debt payment was reduced \$172 per month as a result of the Section 515 interest credit.

Example: The table below illustrates tiered rents in a 48-unit project with 1BR, 2BR and 3BR unit types, and three LIHTC rent tiers. Basic Rents vary within each unit type, but Note Rate rents remain the same for each unit type.

Unit Type	LIHTC Tier	# Units	Maximum LIHTC Rent	Pre-Transfer Basic Rent	Tiered Basic Rent	Rent Change	Note Rents
1BR	40% AMI	2	\$283	\$300	\$283	(\$17)	\$522
1BR	50% AMI	2	\$369	\$300	\$369	\$69	\$522
1BR	60% AMI	4	\$455	\$300	\$435	\$135	\$522
2BR	40% AMI	8	\$312	\$375	\$312	(\$63)	\$597
2BR	50% AMI	8	\$410	\$375	\$410	\$35	\$597
2BR	60% AMI	16	\$508	\$375	\$489	\$114	\$597
3BR	40% AMI	2	\$341	\$450	\$341	(\$109)	\$772
3BR	50% AMI	2	\$451	\$450	\$451	\$1	\$772
3BR	60% AMI	4	\$562	\$450	\$545	\$95	\$772
Total		48	\$250,320	\$216,000	\$244,896	\$28,896	\$353,472

At the time that the Tax Credit Tiered Rents are implemented, Rural Development will require that the affected units be assigned based on tenant incomes (for example, the lowest 2BR rent tier will be assigned to units occupied by the 2BR 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 Tiered Rents.

The National Office will provide technical assistance to State Offices on a case by case basis in implementing Tax Credit Tiered Rents, including assistance in assigning available RA.

ATTACHMENT 7-D

SUMMARY OF RELEVANT APPRAISAL GUIDANCE

The following summarizes requirements from Chapter 7 of HB-1-3560 but does not modify or supersede that chapter.

1. *General Instructions to Appraiser.* The instructions to the appraiser must include:
 - a. Where to obtain 7 CFR part 3560, subpart P (Sections 3560.751 through 3560.800).
 - b. Where to obtain HB-1-3560, Chapter 7 including all attachments.
 - c. Value types must be approached consistent with HB-1-3560, Attachment 7-C.
 - d. Property rights valued must be consistent with Attachment 7-B-1.
 - e. Value types included in the appraisal must be consistent with HB-1-3560, Attachment 7-C.
 - f. Valuation of Rural Development's interest credit subsidy must be consistent with HB-1-3560, Attachment 7-H.

2. *Intended Use of Appraisal.* As applicable:
 - a. To establish the market value of the property, which will be considered in establishing the allowable amount of equity pay-out.
 - b. To fulfill underwriting requirements for the proposed assumption of the existing permanent financing.
 - c. To fulfill underwriting requirements for proposed new permanent financing.

3. *(For equity pay-out, if RUP has expired)* Market Value, As-Is, Unrestricted must be determined.
 - a. Including a hypothetical condition that the property is a conventional, market property.
 - b. Specify Prospective Value if rehabilitation will be done.
 - c. Take into account any costs of conversion from restricted to unrestricted operations.
 - d. Value the fee simple estate, subject to short-term leases.

4. *(For equity pay-out, if RUP has not expired)* Market Value, As-Is, Subject to Restricted Rents must be determined.
 - a. Provide the expiration date of the RUP to the appraiser.
 - b. Use a discounted cash flow method, reflecting.
 - c. Operation as currently restricted through the end of the RUP.
 - d. Prospective value Unrestricted as of the end of the RUP, taking into account any costs of conversion from restricted to unrestricted operations.

- e. Specify Prospective Value if rehabilitation will be done.
 - f. Value the fee simple estate, as restricted, subject to short-term leases.
 - g. Include the value of rental assistance, consistent with HB-1-3560, Attachment 7-A.
 - h. Separately value all favorable financing. The value of the Rural Development's interest credit subsidy must be consistent with HB- 1-3560, Attachment 7-H.
5. *(For all transfers, to establish security value)* Market Value, As-Is, Subject to Restricted Rents must be determined.
- a. Assume that the current restrictions will continue for the remaining term of Rural Development's mortgage.
 - b. Value the fee simple estate, as restricted, subject to short-term leases.
 - c. Specify Prospective Value if rehabilitation will be done.
 - d. Include the value of rental assistance, consistent with HB- 1-3560, Attachment 7-A.
 - e. Separately value all favorable financing. The value of the Rural Development's interest credit subsidy must be consistent with HB- 1-3560, Attachment 7-H.
-

ATTACHMENT 7-E: 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

- YES NO N/A Executive Summary (narrative)
- YES NO N/A Required written statements/certifications
- YES NO N/A MFH Transfer & Assumption Application Supplement (Attachment 7-B-2)
- YES NO N/A MFH Transfer & Assumption Contact List (Attachment 7-B-3)
- YES NO N/A Application for Partial Release, Subordination or Consent (Form RD 3560-1)
- YES NO N/A Purchase and Sales Agreement
- YES NO N/A Current Preliminary Title Report
- YES NO N/A Legal Services Agreement

The Project and Proposed Repairs

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

Documentation of Market Rents and Value

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

Financial Aspects of the Transaction

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

Third Party funding (if applicable)

- YES NO N/A Application(s) for Funding
- YES NO N/A Financial Pro Forma Information
- YES NO N/A Environmental Information
- YES NO N/A Commitment Letters or Equivalent
- YES NO N/A Regulation Requirements
- YES NO N/A Interim Financing

The Proposed Purchaser

- YES NO N/A Purchaser's Resume
- YES NO N/A Previous Participation Certification (Form HUD 2530)
- YES NO N/A Identity of Interest Certification (Form RD 3560-30 or 3560-31)
- YES NO N/A Debarment/Suspension Certification (Form AD 1047 or AD 1048)
- YES NO N/A Purchaser's Financial Statements w/Attachment 7-B-4 MFH Transfer & Assumption Certification
- YES NO N/A Credit Report Fees
- YES NO N/A Proof of Citizenship (Federal tax ID number or Social Security Number)

Proposed Management

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

Proposed Organizational Documents for Purchaser

- YES NO N/A Purchaser's Organizational Documents
- YES NO N/A Attorney Certification certifying legal sufficiency

Other

- YES NO N/A Assurance Agreement (Form RD 400-4)
 - YES NO N/A Equal Opportunity Agreement (Form RD 400-1)
 - YES NO N/A Lobbying Certification (Att. 7-B-5, MFH Transfer Certification & Form SF-LLL, if applicable)
 - YES NO N/A Certification Regarding Drug-Free Workplace Requirements (Form AD 1049 or AD 1050)
 - YES NO N/A Certification Regarding Collection Policies (Form RD 1910-11)
 - YES NO N/A Letter from HUD concurring in transfer of HAP Contract & concurrence in post transfer rents
 - YES NO N/A Request for Rental Assistance (Form RD 3560-25)
-